

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1972
Second Extraordinary Session, 1971

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FOREWORD

This volume contains the Acts of the West Virginia Legislature for the 1972 Regular Session and the Second Extraordinary Session of 1971, and resolutions of general interest adopted during these sessions.

Regular Session, 1972

The second regular session of the 60th Legislature convened on January 12 and expired at midnight March 11. However, the session having been extended by proclamation of the Governor for the purpose of completing work on the annual Budget Bill, final adjournment did not come until 1:29 A.M., March 12.

Bills totaling 1154 were introduced in the two houses during the session—749 House and 405 Senate. The Legislature passed 144 bills—87 House and 57 Senate. The Governor approved 135 bills and vetoed 9.

There were 123 concurrent resolutions introduced during the session—82 House and 41 Senate, of which 18 House and 8 Senate were adopted. Nineteen House Joint and 16 Senate Joint Resolutions were introduced proposing amendments to the State Constitution. The Legislature adopted three of the Joint Resolutions—HJR 18 and SJR 4 and 11. The House had 45 House Resolutions and the Senate had 22 Senate Resolutions, of which 30 House and 20 Senate were adopted.

The Senate failed to pass 57 House Bills passed by the House and 44 Senate Bills passed by that body failed passage by the House.

Second Extraordinary Session, 1971

This session started on October 26, 1971, and adjourned *sine die* on November 4, 1971.

The proclamation of the Governor convening the session stated five items of business for consideration as follows: (1) Redistricting the State into Senatorial Districts and apportioning the membership of the House of Delegates, (2) creating county airport authorities, (3) appropriation for the West Virginia Labor-Management Relations Board, (4) regional planning and development, and (5) an appropriation for capital improvements at Huntington State Hospital.

Thirteen bills were introduced in the two houses during the session—six House bills and seven Senate bills. The Legislature passed six bills—five House and one Senate—carrying out in full the purposes for which the session was called. The Governor approved five of the acts and vetoed one. The act vetoed was S. B. No. 3, redistricting the State into senatorial districts.

There were 12 concurrent resolutions introduced—eight House and four Senate—of which two House and two Senate were adopted. The House had 13 plain House Resolutions with 12 of them being adopted; and the Senate had six Senate Resolutions, all six being adopted.

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

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

TABLE OF CONTENTS

ACTS AND RESOLUTIONS

Regular Session, 1972

GENERAL LAWS AND COURTS OF LIMITED JURISDICTION

Chapter	ACTIONS AND SUITS	Page
1.	Limitation on Actions to Enforce Liens Created by Deeds of Trust or Mortgages _____	1
2.	Order in Which Debts of Decedent to Be Paid by Personal Representative _____	3
3.	Substitution of Trustees by Court Under a Deed, Will or Other Writing _____	4
	AGRICULTURE	
4.	Control and Eradication of Insect Pests, Plant Diseases and Noxious Weeds _____	5
	ALCOHOLIC LIQUORS	
5.	Licensing and Regulating Private Clubs Selling Alcoholic Liquors _____	12
	APPEAL AND ERROR	
6.	Appeals from Courts of Record of Limited Jurisdiction _____	17
	APPROPRIATIONS	
7.	General Appropriations (Budget Bill) _____	19
8.	Transferring a Line Item in the Appropriations for the Department of Veterans Affairs _____	104
9.	Supplementary Appropriation for Flood Relief in Logan County and Other Areas _____	104
10.	Transferring Amounts Between Items of Total Appropriations for Tax Department, Department of Motor Vehicles and Alcohol Beverage Control Commissioner _____	108
11.	Transferring Amounts Between Items of Total Appropriations for Certain Spending Units _____	107
	ARCHIVES AND HISTORY	
12.	West Virginia Historic Preservation Act _____	110

Chapter	ATTORNEY GENERAL	Page
13.	Attorney General As Counsel for State, Duties and Powers as to Prosecuting Attorneys and As Counsel for National Guardsmen	118
BANKS AND BANKING		
14.	Off-premises Banking Facilities	120
CLAIMS AGAINST THE STATE		
15.	Finding and Declaring Certain Claims Against the Department of Mental Health to Be Moral Obligations and Directing Payment Thereof	121
16.	Finding and Declaring Certain Claims Against the State to Be Moral Obligations and Directing Payment Thereof.....	123
CONFLICT OF INTEREST		
17.	Exempting Students Employed Under College and University Part-time Student Employees Programs from Filing Disclosure Statements	127
CORPORATIONS		
18.	Conditions on Which Building and Loan Associations May Take Mortgage or Deed of Trust	129
19.	Taxation of Business Development Corporations	132
20.	Loans by the West Virginia Housing Development Fund and Corporate Powers Generally	133
COUNTY COURTS AND COUNTY OFFICERS		
21.	Powers and Duties of County Courts and Compensation of County Officials, Their Deputies, Assistants and Employees	148
22.	County Courts May Require Permits for Occupancy of Mobile Homes or House Trailers	172
23.	Group Insurance Plans for County Officers and Employees.....	173
24.	Deposit of Excess County Funds at Interest in Time-Deposit Accounts	175
25.	General Powers of County Parks and Recreation Commissions	176
26.	Maximum Age of Deputy Sheriffs Under Civil Service.....	183
COURTS AND THEIR OFFICERS		
27.	Salaries of Judges of Circuit Courts	189
28.	Juvenile Court Referee System	191
29.	Retirement of Judges of Courts of Record	194
30.	Jurisdiction of the Common Pleas Court of Cabell County and Salary of the Judge Thereof	196
31.	Jurisdiction of the Domestic Relations Court of Cabell County and Salary of the Judge Thereof	199
32.	Intermediate Court of Harrison County	203
33.	Salary of the Judges of the Court of Common Pleas of Kanawha County	218
34.	Salary of the Judge of the Domestic Relations Court of Kanawha County	219
35.	Salary of the Judge of the Criminal Court of Marion County	220

TABLE OF CONTENTS

vii

COURTS AND THEIR OFFICERS—(Continued)

Chapter	Page
36. Jurisdiction of the Common Pleas Court of Marshall County and Salary of the Judge Thereof _____	220
37. Term of the Judge of the Intermediate Court of McDowell County _____	223
38. Intermediate Court of Raleigh County _____	225

CRIMES AND THEIR PUNISHMENT

39. Unlawful to Make, Carry, Possess, Sell, Give or Use Incendiary Devices, Commonly Known As Molotov Cocktails, and Penalties for Offenses _____	234
---	-----

CRIMINAL PROCEDURE

40. Release of Prisoners for Work or Other Purpose by Court Having Criminal Jurisdiction _____	235
41. Suspension of Sentence and Release on Probation; and Presentence Diagnosis and Classification _____	238
42. Court and County Probation Officers and Assistants _____	240

DEPARTMENT OF FINANCE AND ADMINISTRATION

43. Department of Finance and Administration and Its Division of Purchases _____	243
--	-----

DEPARTMENT OF PUBLIC SAFETY

44. Retirement Awards and Benefits for Members of the Department of Public Safety and Their Dependents _____	254
45. Court Disposition Reports to Criminal Identification Bureau of the Department of Public Safety _____	258

DOMESTIC RELATIONS

46. Uniform Reciprocal Enforcement of Support Act _____	262
---	-----

DOWER

47. Proceedings for Release of Dower in Real Estate _____	277
---	-----

EDUCATIONAL BROADCASTING AUTHORITY

48. Powers of the Educational Broadcasting Authority, Including Authority to Enter into Royalty Agreements _____	278
--	-----

ELECTIONS

49. Compensation and Mileage Allowance of Election Officials _____	280
50. Production of a Motion Picture Film Explaining and Illustrating Election Procedures _____	281
51. Filing Fees of Candidates for Public Office and Form and Contents of Primary Election Ballots _____	282
52. Submission of Amendments to the State Constitution Proposed by the Legislature to the Voters _____	287

EMINENT DOMAIN

53. Relocation Assistance and Real Property Acquisition Policies in Connection with Real Property Acquired Through the Right of Eminent Domain _____	292
--	-----

Chapter	FIRES	Page
54.	Authority of Local Fire Departments	296
	HEALTH	
55.	Dissemination of Information Concerning Sterilization Procedures by Local Boards of Health	300
56.	Compulsory Testing of School Children and School Personnel for Tuberculosis	301
57.	Repealing Statute Relating to Possession of Cigarettes or Cigarette Paper by Persons Under Twenty-one Years of Age	302
	INSURANCE	
58.	Notice to Insurer of Loss Under Automobile Insurance Policies	303
59.	Investment of Assets in Revenue Bonds by Insurer	308
	JUSTICES OF THE PEACE	
60.	Fees of Justices in Criminal Cases	309
	LEGAL CAPACITY	
61.	Granting Adult Status to Eighteen-Year-Olds	310
	LEGAL HOLIDAYS	
62.	Days Observed As Legal Holidays	388
	LEGISLATURE	
63.	Blennerhassett Historical Commission	389
64.	Legislative Building Commission	393
	LIBRARIES	
65.	Interstate Library Compact	400
	MENTALLY ILL PERSONS	
66.	Mental Health-Mental Retardation Facilities	408
67.	Hospitalization of Mentally Ill and Retarded Persons, and Duty of Sheriff As to Transportation of Such Persons	411
	MINES AND MINERALS	
68.	Qualifications and Salary of Deputy Director for Oil and Gas; Compensation of Inspectors, and Per Diem of Members of Oil and Gas Inspectors' Examining Board	417
69.	West Virginia Oil and Gas Conservation Commission	424
	MOTOR VEHICLES	
70.	Driver License Compact	446
71.	License Required of Operators and Chauffeurs and Enforcement of Traffic Regulations and Laws of the Road	452
72.	Implied Consent for Chemical Test of Motor Vehicle Drivers for Intoxication	455
73.	Lamps or Illumination Devices on Motor Vehicles	457
74.	Standards for Vehicle Mufflers	459
75.	Security Requirements Following a Motor Vehicle Accident	459

MUNICIPALITIES

Chapter	Page
76. Authority of Municipalities to Employ Special Counsel _____	465
77. General Powers of Municipalities, Including Authority As to Construction of Buildings or Other Structures Crossing Air Space Above Streets, Etc. _____	466
78. Municipal Business and Occupation or Privilege Tax _____	474
79. Transfer of Balances in Sinking Fund to General Fund of Municipality _____	476
80. Authority of Municipality to Contract for Fire Prevention and Extinguishment Outside Corporate Limits _____	479

NATURAL RESOURCES

81. Licensing Persons to Hunt with a Revolver or Pistol _____	482
82. Class K Nonresident Six-day, Statewide, Fishing License _____	483
83. Recovery of Costs Incurred by the State in Fire Fighting _____	484
84. West Virginia Water Development Authority _____	485
85. Interstate Mining Compact _____	513
86. Coal Refuse Disposal Control Act _____	523
87. Qualifications of Conservation Officers of the Department of Natural Resources _____	529

PROFESSIONS AND OCCUPATIONS

88. Formation of Legal Corporations for the Practice of Law _____	530
89. Practice of Medicine and Surgery and Utilization of Mobile Care Paramedics _____	534
90. Formation of Medical Corporations _____	537
91. Practice of Dentistry and Utilization of Services of Dental Hygienists and Dental Assistants _____	539
92. Per Diem Allowance of Members of the Board of Embalmers and Funeral Directors _____	549
93. Registration and Other Fees for Registered Professional Nurses _____	552
94. Licensing Assistants to Osteopathic Physicians and Surgeons _____	557
95. Qualifications of Applicant for License to Practice Psychology; and License Fees and Permits _____	559

PUBLIC INSTITUTIONS

96. Establishment of Work and Study Release Units by Commissioner of Public Institutions _____	563
97. Appointment and Qualifications of the Director of Mental Health and Superintendents of Institutions Under the Control of the Commissioner of Public Institutions, and the Administration of State Institutions and Hospitals _____	564
98. Transfer of Inmates of State Institutions or Facilities _____	574
99. Transfer of Youths to and from Forestry Camps, Industrial Schools and Like Facilities _____	575

PUBLIC SERVICE COMMISSION

100. Motor Vehicles Exempt from Regulation by the Public Service Commission _____	577
---	-----

ROADS AND HIGHWAYS

101. Making Roads in State Parks, Forests and Public Hunting and Fishing Areas a Part of the State Road System _____	578
--	-----

ROADS AND HIGHWAYS—(Continued)		
Chapter		Page
102.	Amount of State Road Bonds That May Be Offered for Sale at Any One Time	584
103.	Issuance and Sale of \$20 Million of Road Bonds Under Authority of Better Roads Amendment of 1964	585
SCHOOLS		
104.	Comprehensive Course of Driver Education for Public Secondary Schools	594
105.	Multi-county Regional Education Service Agencies	601
106.	Adoption of Textbooks for Public Elementary Schools	602
107.	Reimbursement of County Superintendent of Schools for Traveling Expenses	607
108.	Compensation of Members of County Boards of Education	608
109.	Powers of County Boards of Education Generally, Including Authority to Transport School Children Across County Lines	610
110.	Length of Public School Instructional Term	613
111.	Computation of Certain Tax-Sheltered Annuities Under the Teachers Retirement System	615
112.	Reimbursing Counties for Moneys Expended in Appraisal of Real Property	618
113.	Approval of County Board of Education Budgets by Board of Finance	624
114.	Scholarship Awards and Limitation on Amount Thereof	625
115.	Establishment of a Graduate College in the County of Kanawha	627
SUGGESTION OF SALARY AND WAGES		
116.	Payments in Satisfaction of Suggestee Execution	629
TAXATION		
117.	Creation of Tax Districts Within Counties and Assessment of Property	632
118.	Repealing Section 28, Article 11, Chapter 11, of the Code, Relating to Imposition of an Estate Tax	643
119.	Exempting Credit Unions from the Business and Occupation Tax	643
120.	Gasoline and Special Fuel Excise Tax	648
121.	Motor Carrier Road Tax	670
122.	Meaning of Terms in Personal Income Tax Law	689
123.	Corporation Net Income Tax	690
124.	Tax Relief for Elderly Homeowners and Renters	697
UNEMPLOYMENT COMPENSATION		
125.	Claims Procedure, Appeals and Payment of Claims Pending Appeal	708
VETERANS		
126.	Per Diem of Members of Veterans' Council, Department of Veterans Affairs, for Attendance of Meetings	713

TABLE OF CONTENTS

xi

WELFARE	
Chapter	Page
127. Abolishing County General Relief Funds	714
128. State Departments and Agencies to Make Available Information Concerning Recipients of Assistance to Department of Welfare	719
129. Criminal Offenses and Penalties for Obtaining, Attempting to Obtain or Abetting in Obtaining Welfare Assistance Through Fraudulent Means	720

WORKMEN'S COMPENSATION

130. Classification of Workmen's Compensation Death Benefits and the Awarding of Such Benefits to Nonresident Alien Beneficiaries	721
---	-----

LOCAL LAWS

131. Authorizing the County Court of Hancock County to Advance Funds to the City of New Cumberland for Additions to Its Water System	725
132. Meetings of Huntington Board of Park Commissioners	726
133. County Court of Jefferson County Authorized to Convey Land to Jefferson County Fireman's Association, Inc.	727
134. County Court of Mineral County Authorized to Enter into Intergovernmental Agreements Regarding Cumberland Municipal Airport	729
135. County Court of Morgan County Authorized to Purchase Certain Real Property for Use by the County	730

RESOLUTIONS

(Only resolutions of general interest, adopted during the session, are listed.)

CONCURRENT

HCR 56. Adopting the Apple As the Official State Fruit	731
SCR 9. Creating a Committee to Study and Recodify the Corporation Law of the State	732
Authorizing and Continuing Studies by the Joint Committee on Government and Finance	733

JOINT

HJR 18. Proposing an Amendment to the Constitution of the State, designated the "Federal Grants and County and Municipal Aid Amendment"	734
SJR 4. Proposing an Amendment to the Constitution of the State, designated the "Better School Buildings Amendment"	735
SJR 11. Proposing an Amendment to the Constitution of the State, designated the "Removing Tax on Household Goods and Personal Effects Amendment"	737

Second Extraordinary Session, 1971

Chapter	AIRPORTS	Page
1. County Airport Authorities		739
	APPROPRIATIONS	
2. Supplementary Appropriation for Huntington State Hospital		749
3. Expenditure of Appropriation by the West Virginia Labor-Management Relations Board		750
	LEGISLATURE	
4. Apportionment of Membership of the House of Delegates...		751
	PLANNING AND DEVELOPMENT	
5. Regional Planning and Development		754

MEMBERS OF THE HOUSE OF DELEGATES

Regular Session, 1972

OFFICERS

Speaker—¹Lewis N. McManus, Beckley

Clerk—C. A. Blankenship, Pineville

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

Doorkeeper—Dannie Wingo, Yukon

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

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

²Appointed January 11, 1971, to fill the vacancy caused by the death of Michael R. Prestera, a Delegate-elect.

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

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

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

⁵Appointed January 7, 1972, to fill the vacancy caused by the resignation of Robert C. Halbritter.

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

MEMBERS OF THE SENATE

Regular Session, 1972

OFFICERS

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

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

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

†Appointed October 18, 1971, to fill vacancy caused by resignation of John E. Carrigan.

(D) Democrats	22
(R) Republicans	11
Total	33

STANDING COMMITTEES OF THE SENATE

Regular Session, 1972

AGRICULTURE

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

CONFIRMATIONS

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

EDUCATION

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

ELECTIONS

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

FINANCE

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

HEALTH

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

INSURANCE AND CORPORATIONS

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

INTERSTATE COOPERATION

Gainer (*Chairman*), Moreland (*Vice Chairman*), Neeley, Nelson, Susman, Bowers and Deem. The President is a non-voting member.

JUDICIARY

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

LABOR

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

LOCAL GOVERNMENT

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

MILITARY

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

MINES AND MINING

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

NATURAL RESOURCES

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

PUBLIC INSTITUTIONS

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

RULES

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

TRANSPORTATION

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

JOINT COMMITTEES**ENROLLED BILLS**

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

GOVERNMENT AND FINANCE

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

JOINT RULES

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

STANDING COMMITTEES OF THE HOUSE OF DELEGATES

Regular Session, 1972

AGRICULTURE AND NATURAL RESOURCES

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

BANKING AND INSURANCE

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

CONSTITUTIONAL REVISION

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

EDUCATION

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

FINANCE

Burke (*Chairman*), Fantasia (*Vice Chairman*), Colombo, Crandall, D'Aurora, Edgar, Farley, Griffith, Hager (of Logan), Kincaid, Neely, Perry, Reed, Richardson, Rutledge, Tucker, Withrow, Buck, Gewe, Herndon, Kopelman, Ours, Rogerson, Romine and Terry.

HEALTH AND WELFARE

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

INDUSTRY AND LABOR

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

INTERSTATE COOPERATION

Hager of Logan (*Chairman*), Edgar, Fantasia, Kopp, Loop, Buck and Potter. The Speaker is a nonvoting member.

JUDICIARY

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

POLITICAL SUBDIVISIONS

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

REDISTRICTING

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

ROADS AND TRANSPORTATION

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

RULES

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

STATE AND FEDERAL AFFAIRS

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

HOUSE COMMITTEES

JOINT COMMITTEES

ENROLLED BILLS

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

GOVERNMENT AND FINANCE

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

JOINT RULES

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

ERRATA

A transposition by the printer resulted in an error in line 5, Account No. 286, Chapter 7, Page 39. The line should read "Statewide Testing Program \$176,000.00."

LEGISLATURE OF WEST VIRGINIA

ACTS OF 1972

REGULAR SESSION

CHAPTER 1

(House Bill No. 1050—By Mr. Steptoe and Mr. Seibert)

[Passed March 9, 1972; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to enforcement of certain liens.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.

§55-2-5. Enforcement of certain liens.

1 No lien reserved on the face of any conveyance of real
2 estate, or lien created by any trust deed or mortgage on
3 real estate, shall be valid or binding as a lien on such real
4 estate, after the expiration of twenty years from the date
5 on which the debt or obligation secured thereby be-
6 comes due, unless suit to enforce the same shall have been
7 instituted prior to the expiration of such period. If any
8 debt or obligation incurred or maturing subsequent to
9 the debt or obligation secured by a lien reserved on the
10 face of any conveyance of real estate, or lien created by
11 any trust deed or mortgage on real estate, be also secured,
12 in whole or in part, by the same lien, such lien shall con-
13 tinue to be valid and binding as a lien on such real estate

14 for a period of twenty years from the date on which such
15 subsequent debt or obligation secured by such lien be-
16 comes due, but not thereafter unless suit to enforce the
17 same shall have been instituted prior to the expiration of
18 such period. No extension of the original time of payment
19 of such debt or obligation, or renewal of any note or
20 other evidence of indebtedness secured by such lien, or
21 provision for such extension or renewal in such convey-
22 ance, trust deed or mortgage, shall operate to extend the
23 limitation of twenty years hereinbefore provided: *Pro-*
24 *vided*, That the lien reserved or created as aforesaid shall
25 continue to be valid and be enforceable, if, prior to the
26 expiration of the original period of limitations, the vendor
27 or the mortgagee or the trustee or beneficiary, or their
28 successors or assigns, shall execute and cause to be re-
29 corded in the office where the lien instrument was re-
30 corded an affidavit setting forth the unpaid balance of
31 the debt and interest secured by such lien instrument.
32 Upon the filing of such affidavit the lien of the lien instru-
33 ment shall continue and be enforceable for an additional
34 period of twenty years from the date of the filing of such
35 affidavit unless sooner released, and the clerk of the court
36 shall cause the extension affidavit to be recorded and in-
37 dexed in the same manner as the lien instrument and
38 shall note the fact of filing such extension affidavit on the
39 margin of the page where such lien instrument is record-
40 ed. Such affidavit shall recite the book and page of re-
41 cordation of the deed, deed of trust or mortgage. The
42 provisions of this section shall apply, with like effect, to
43 every such lien now existing, as well as to every such
44 lien hereafter reserved or created.

CHAPTER 2

(House Bill No. 506—By Mr. Steptoe)

[Passed March 10, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section twenty-one, article two,
chapter forty-four of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, relating to raising the amount preferably payable for funeral expenses; raising the amount preferably allowable for claims of physicians, accounts of druggists, claims of professional nurses and accounts of hospitals and sanitariums; requiring the excess of amounts preferably paid for funeral expenses and physicians, druggists, professional nurses and hospitals and sanitariums to be paid only if the commissioner of accounts determines them to be reasonable and to have been necessarily incurred.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.

§44-2-21. Order in which debts of decedent to be paid.

1 When the assets of the decedent in the hands of his personal representative, after the payment of charges of administration, are not sufficient for the satisfaction of all demands against him, they shall be applied in the following order:

6 (a) To the payment of funeral expenses, to an amount not exceeding six hundred dollars;

8 (b) To the claims of physicians, not exceeding one hundred dollars, for services rendered during the last illness of the decedent; and accounts of druggists, not exceeding the same amount, for articles furnished during the same period; and claims of professional nurses or other person rendering service as nurse to the decedent, at his request or the request of some member of his immediate family, not exceeding the same amount, for services rendered during the same period; and accounts of hospitals and sanitariums, not exceeding the same amount, for articles furnished and services rendered during the same period;

20 (c) To debts due the United States;

21 (d) To debts due this state;

- 22 (e) To taxes and levies assessed upon the decedent
23 previous to his death;
- 24 (f) To debts due as trustee for persons under disabili-
25 ties, as receiver or commissioner under decree of court of
26 this state, as personal representative, guardian, committee
27 or other fiduciary, where the qualification was in this
28 state;
- 29 (g) To the balances on any items listed in subdivisions
30 (a) and (b) hereof but only to the extent that they are
31 determined by the commissioner of accounts to be reason-
32 able in amount and to have been necessarily incurred,
33 and to all other demands except those in the next class;
- 34 (h) To voluntary obligations.

CHAPTER 3

(House Bill No. 508—By Mr. Steptoe)

[Passed March 10, 1972; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article fourteen, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to substitution of trustees by circuit court or judge for trustee in deed, will or other writing.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. SUBSTITUTION OF TRUSTEES; POWERS OF SURVIVING OR REMAINING TRUSTEES.

§44-14-1. By circuit court or judge, for trustee in deed, will or other writing; appointment of ancillary trustee under certain circumstances.

- 1 When the trustee, or, if there is more than one trustee,
2 one or more of the trustees, in any will, deed or other
3 writing, die or remove beyond the limits of this state, or

4 decline to accept the trust, or having accepted, resign the
5 same, or refuse to act as trustee, or be unable due to phys-
6 ical or mental disability to perform his or their duties un-
7 der the trust, the circuit court of the county in which such
8 will was admitted to probate, or such deed or other writing
9 is or may be recorded, or the judge of such court in vaca-
10 tion, may, on motion of any party interested, and upon
11 satisfactory evidence of such death, removal, declination,
12 resignation, refusal or inability, appoint a trustee or trust-
13 tees in the place of the trustee or trustees named in such
14 instrument and so dying, removing, declining, resigning or
15 refusing, or being unable to perform his or their duties
16 under the trust.

17 If any such trust, other than a security trust, include
18 real property situate in this state, and the trustee, or, if
19 there be more than one trustee, one or more of the trust-
20 tees, appointed by or under the will, deed or other
21 writing creating such trust and required under the pro-
22 visions thereof to act in respect of such real property,
23 be a corporation or association chartered under the laws
24 of any other state or jurisdiction which is not qualified
25 under the laws of this state to hold property or transact
26 business in this state, and refuses or is unable to so qual-
27 ify, such court, or the judge thereof in vacation, may in
28 like manner appoint an ancillary trustee of such trust to
29 act with respect to such real property situate in this state
30 pursuant to, and with all the powers and authorities
31 granted to the trustee or trustees of such trust by, the
32 provision of the will, deed or other writing creating such
33 trust.

CHAPTER 4

(House Bill No. 594—By Mr. Burke)

[Passed February 23, 1972; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, five, seven, eight, ten, thirteen and fourteen, article twelve,

chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to insect pests, plant diseases and noxious weeds.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, seven, eight, ten, thirteen and fourteen, article twelve, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 12. INSECT PESTS, PLANT DISEASES AND NOXIOUS WEEDS.

- §19-12-2. Definitions.
- §19-12-3. Commissioner to enforce article; powers and duties generally.
- §19-12-4. Detection and abundance surveys; findings of commissioner; eradication and suppression.
- §19-12-5. Rules and regulations for eradication, etc., of plant pests and other insects and noxious weeds; enjoining violations of article or rules and regulations.
- §19-12-7. Infected or infested nursery stock, articles or materials subject to seizure, etc.
- §19-12-8. Right of entry on premises.
- §19-12-10. Inspection of nurseries; orders of commissioner as to eradication or control of infestation.
- §19-12-13. Inspection of plants, etc., by commissioner upon request; certificate stating results of inspection.
- §19-12-14. Permit required to sell, transport, etc., plant pests or noxious weeds.

§19-12-2. Definitions.

1 The following definitions shall apply in the interpreta-
 2 tion and enforcement of this article. All words shall be
 3 construed to import either the plural or the singular, as
 4 the case demands:

5 (a) "Department" means the department of agricul-
 6 ture of the state of West Virginia.

7 (b) "Commissioner" means the commissioner of agri-
 8 culture of the state of West Virginia and his duly autho-
 9 rized representatives.

10 (c) "Agent" means any person soliciting orders for
 11 nursery stock under the partial or full control of a
 12 nurseryman or dealer.

13 (d) "Dealer" means any person not a grower of nur-
 14 sery stock, who buys, receives on consignment or other-

15 wise acquires and has in his possession nursery stock for
16 the purpose of offering or exposing for sale, reselling, re-
17 shipping or distributing same. Each separate location shall
18 constitute a dealership.

19 (e) "Nursery" means any grounds or premises on or
20 in which nursery stock is being propagated or grown for
21 sale or distribution, including any grounds or premises on
22 or in which nursery stock is being fumigated, treated,
23 packed or stored or otherwise prepared or offered for sale
24 or movement to other localities.

25 (f) "Nurseryman" means and includes any person who
26 owns, leases, manages or is in charge of a nursery.

27 (g) "Nursery stock" means all trees, shrubs and woody
28 vines, including ornamentals, bush fruits, grapevines, fruit
29 trees and nut trees, whether cultivated, native or wild,
30 and all buds, grafts, scions, fruit pits and cuttings from
31 such plants. It also means sod, including sod plugs and
32 sod-producing plants, and such herbaceous plants, includ-
33 ing strawberry plants, narcissus plants and narcissus
34 bulbs as the commissioner declares by regulation to be so
35 included whenever he considers control of the movement
36 of such plants and bulbs necessary for the control of any
37 destructive plant pest. Florists' or greenhouse plants for
38 inside culture or use, unless declared otherwise by the
39 commissioner, as herein authorized, shall not be consid-
40 ered nursery stock, except that all woody plants, whether
41 greenhouse or field grown, if for outside planting, are
42 hereby defined as nursery stock.

43 (h) "Person" means any individual or combination of
44 individuals, partnership, corporation, company, society, as-
45 sociation, governmental organization, or other business
46 entity and each officer, agent or employee thereof.

47 (i) "Plant and plant products" means trees, shrubs,
48 vines; forage, fiber, cereal plants and all other plants;
49 cuttings, grafts, scions, buds and lumber and all other
50 parts of plants; and fruit, vegetables, roots, bulbs, seeds,
51 wood, lumber and all other parts of plants and plant
52 products.

53 (j) "Plant pest" means any living stage of: Any in-
54 sects, mites, nematodes, slugs, snails, protozoa or other
55 invertebrate animals, bacteria, fungi, other parasitic plants
56 or reproductive parts thereof, viruses or any organisms
57 similar to or allied with any of the foregoing, or any in-
58 fectious substances, which can directly or indirectly in-
59 jure or cause disease or damage in any plants or parts
60 thereof, or any processed, manufactured or other products
61 of plants.

62 (k) "Host" means any plant or plant product upon
63 which a pest is dependent for completion of any portion
64 of its life cycle.

65 (l) "Regulated article" means any article of any char-
66 acter, as described in the quarantine or other order of the
67 commissioner carrying or capable of carrying a pest.

68 (m) "Certificate" means a document issued or autho-
69 rized by the commissioner indicating that a regulated
70 article is not contaminated with a pest.

71 (n) "Permit" means a document issued or authorized
72 by the commissioner to provide for a movement of reg-
73 ulated articles to restricted destinations for limited han-
74 dling, utilization or processing.

75 (o) "Noxious weed" means *rosa multiflora* commonly
76 known as *multiflora rose* or parts thereof; *cannabis sativa*
77 L. commonly known as *marihuana* or any parts thereof
78 and *opium poppy* or any parts thereof.

79 (p) "Infected area" means any area of uncontrolled
80 growth of plant pests, other insects or noxious weeds, and
81 any area of cultivated or controlled growth of *cannabis*
82 *sativa* L., commonly known as *marihuana*, or of *opium*
83 *poppy*.

84 (q) "Quarantine" means a legal declaration by the
85 commissioner which specifies:

86 (1) The noxious weeds.

87 (2) The articles to be regulated.

88 (3) Conditions governing movement.

89 (4) The area or areas quarantined.

90 (5) Exemptions.

§19-12-3. Commissioner to enforce article; powers and duties generally.

1 (a) It shall be the duty of the commissioner to exer-
2 cise the powers and duties imposed upon him by this ar-
3 ticle for the purpose of protecting agricultural, horticul-
4 tural and other interests of the state from plant pests or
5 other insects and noxious weeds and for this purpose he
6 is hereby authorized and empowered to promulgate such
7 rules and regulations as are necessary to effectively eradi-
8 cate, suppress or control plant pests or other insects or
9 noxious weeds or to retard the dissemination of plant
10 pests or other insects or noxious weeds as far as may be
11 practical and to employ or contract with such persons as
12 may be appropriate.

13 (b) The commissioner is hereby authorized and em-
14 powered to cooperate with the federal government and
15 any agencies, departments and instrumentalities thereof,
16 the state of West Virginia and any agencies, departments
17 or political subdivisions thereof and any other state or
18 commonwealth and any agencies, departments or political
19 subdivisions thereof, in order to carry out the effective
20 administration of this article.

§19-12-4. Detection and abundance surveys; findings of commissioner; eradication and suppression.

1 The commissioner shall cause detection and abundance
2 surveys to be made for plant pests or other insects or
3 noxious weeds of a highly injurious nature that may be
4 present in the state to determine the necessity for estab-
5 lishing control practices. When the commissioner deter-
6 mines that a new and dangerous plant pest or other insect
7 or noxious weed exists within the state or that an estab-
8 lished pest or weed requires control and the nature of the
9 pest or weed dictates immediate action, he shall proceed
10 with a plan of eradication or suppression.

§19-12-5. Rules and regulations for eradication, etc., of plant pests and other insects and noxious weeds; enjoining violations of article or rules and regulations.

1 The commissioner may promulgate rules and regula-
2 tions under which he may proceed to eradicate or suppress

3 and prevent the dissemination of plant pests or other in-
4 sects or noxious weeds as far as may be practical and such
5 rules and regulations as are necessary to carry out the
6 purpose of this article. Any person violating any of the
7 provisions of this article or any rules or regulations pro-
8 mulgated thereunder may be enjoined from continuing
9 such violation or violations upon proper application to the
10 circuit court of any county, and a judge thereof shall not
11 require a bond as a condition precedent to the issuance of
12 the injunction.

§19-12-7. Infected or infested nursery stock, articles or materials subject to seizure, etc.

1 The commissioner is hereby authorized to stop the de-
2 livery of, destroy, stop sale, to seize, to treat or to order
3 returned to point of origin, at the owner's expense, any
4 nursery stock or any article or material whatsoever trans-
5 ported or moved within this state or being transported into
6 this state from any place outside thereof, if such nursery
7 stock, article or material is found by him to be infested or
8 infected with any dangerous plant pest or other insect or
9 noxious weed or is in violation of any part of this article
10 whether or not there is attached a valid certificate of in-
11 spection.

§19-12-8. Right of entry on premises.

1 To effectuate the purpose of this article, the commis-
2 sioner is hereby invested with authority, during reason-
3 able working hours, to enter upon any public or private
4 premises, except private residences, to examine and sam-
5 ple all plants and trees, soil, articles, and substances
6 which are suspected of being infested or infected with
7 dangerous plant pests or other insects or noxious weeds
8 in discharge of the duties prescribed by this article. No
9 person shall obstruct or hinder him in the discharge of
10 his duties.

§19-12-10. Inspection of nurseries; orders of commissioner as to eradication or control of infestation.

1 All stock in custody of any dealer or person shall be
2 subject to inspection. It shall be the duty of the commis-

3 sioner to provide for the annual inspection, or more often
4 if necessary, of all nurseries within the state.

5 The commissioner may order the owner or any person
6 in charge of any infested or infected nursery stock or
7 other nursery material, article or host plants, in-
8 cluding soil, to take such necessary measures as will
9 eradicate or control the said infestation or infection as he
10 may deem necessary or proper. Such owner or person in
11 charge shall carry out the order of the commissioner
12 within the period of time designated in the order. If such
13 owner or person in charge shall refuse or fail to carry out
14 any such order, the commissioner may cause to be per-
15 formed such eradication or control measures as are re-
16 quired by the order which shall be at the expense of the
17 owner or person in charge.

**§19-12-13. Inspection of plants, etc., by commissioner upon re-
quest; certificate stating results of inspection.**

1 Any person growing or possessing any plants or plant
2 products or any other substance, material or thing may
3 apply to the commissioner for a special inspection for the
4 purpose of determining the presence of plant pests or
5 noxious weeds which might prevent the movement or
6 use of same. The expenses incurred in making the inspec-
7 tion shall be paid by the person making such request.
8 The commissioner may comply with such request and
9 shall issue to the person requesting an inspection a cer-
10 tificate stating the results of the inspection.

**§19-12-14. Permit required to sell, transport, etc., plant pests
or noxious weeds.**

1 No person shall sell, barter, expose, offer for sale or
2 move, transport, deliver, ship or offer for shipment into
3 or within this state any plant pest or other insects or
4 noxious weeds in any living stage without first obtaining
5 a permit from the commissioner. Such permit shall be
6 issued only after it has been determined that the plant
7 pests or other insects or noxious weeds are not injurious,
8 are generally present already or are for scientific purposes
9 subject to specified safeguards.

CHAPTER 5

(Com. Sub. for House Bill No. 631—By Mr. Myles
and Mr. Seibert)

[Passed February 28, 1972; in effect July 1, 1972. Approved by the Governor.]

AN ACT to repeal section eight, article seven, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections four, six, seven, ten, eleven and twelve of said article seven; and to further amend said article seven by adding thereto a new section, designated section thirteen-a, relating to alcoholic liquors and licenses for private clubs for the sale thereof; providing that a license to operate a private club of a specified type shall not be issued to applicants who discriminate because of race or color; increasing the amount of the bond required for a license to operate a private club; changing the state fees required for a license to operate a private club; providing for the payment of the annual state license fees; relating to the municipal fees for private clubs located within the corporate limits of such municipality; repealing the bottle tax imposed upon alcoholic liquor sold in private clubs and provisions with respect to a bottle marker, stamp or designation in connection therewith; relating to the powers and duties of the alcohol beverage control commissioner and his duly authorized agents with respect to private clubs; specifying certain prohibited acts; providing criminal penalties; and providing for reports of violations to county prosecuting attorneys.

Be it enacted by the Legislature of West Virginia:

That section eight, article seven, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections four, six, seven, ten, eleven and twelve of said article seven be amended and reenacted; and that said article seven be further amended by adding thereto a new section, designated section thirteen-a, all to read as follows:

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

- §60-7-4. Application for license; information required; verification; application to be accompanied by fees; bond; college fraternities and sororities ineligible for license; racial discrimination by applicants.
- §60-7-6. Annual license fee; partial fee.
- §60-7-7. Municipal fee.
- §60-7-10. Duties and powers of commissioner.
- §60-7-11. Licensee must purchase alcoholic liquors from or through commissioner.
- §60-7-12. Certain acts of licensee prohibited; penalties.
- §60-7-13a. Commissioner to report violations to prosecuting attorney.

§60-7-4. Application for license; information required; verification; application to be accompanied by fees; bond; college fraternities and sororities ineligible for license; racial discrimination by applicants.

- 1 (a) Application for a license to operate a private club
2 shall be made on such form as may be prescribed by
3 the commissioner and shall include:
- 4 (1) The name of the applicant;
- 5 (2) If such applicant be an unincorporated associa-
6 tion, the names and addresses of the members of its
7 governing board;
- 8 (3) If such applicant be a corporation, the names and
9 addresses of its officers and directors;
- 10 (4) The place at which such applicant will conduct
11 its operations and whether the same is owned or leased
12 by the applicant;
- 13 (5) The number of members of the applicant;
- 14 (6) The name or names of any national organizations
15 with which applicant is affiliated and the nature of such
16 affiliation;
- 17 (7) The size and nature of the dining and kitchen
18 facilities operated by applicant; and
- 19 (8) Such other information as the commissioner may
20 reasonably require which shall include, but not be limited
21 to, the criminal records, if any, of each member of the
22 applicant's governing board and/or its officers and di-
23 rectors who have been convicted of a felony or a crime
24 involving moral turpitude.
- 25 (b) Such application shall be verified by each mem-
26 ber of the governing board of the applicant if an unin-

27 corporated association or, if the applicant be a corpora-
28 tion, by each of its officers and all members of its board
29 of directors. Such application shall be accompanied by
30 the license fee hereinafter prescribed and by a bond of
31 the applicant in the penal sum of five thousand dollars
32 with a corporate surety authorized to transact business
33 in the state of West Virginia, payable to the state of
34 West Virginia, which bond shall be conditioned on the
35 payment of all fees herein prescribed and on the faithful
36 performance of and compliance with the provisions of
37 this article.

38 (c) Under no circumstance shall any college fraternity
39 or sorority be issued a license to operate a private club.

40 (d) No license to operate a private club will be issued
41 to applicants who discriminate against any person or
42 group of persons because of race or color of such person
43 or group of persons except clubs as defined in clauses (1)
44 and (2), subdivision (a), section two of this article.

§60-7-6. Annual license fee; partial fee.

1 (a) The annual license fee for a license issued under
2 the provisions of this article to a fraternal or veterans
3 organization or a nonprofit social club shall be seven
4 hundred fifty dollars.

5 (b) The annual license fee for a license issued under
6 the provisions of this article to a private club other than
7 a private club of the type specified in subsection (a)
8 of this section shall be one thousand dollars if such pri-
9 vate club has less than one thousand members and two
10 thousand five hundred dollars if such private club has
11 one thousand or more members.

12 (c) The fee for any such license issued following the
13 first day of January of any year and to expire on the
14 thirtieth day of June of such year shall be one half of
15 the annual license fee prescribed by subsections (a) and
16 (b) of this section six.

17 (d) All such fees shall be paid by the commissioner
18 to the state treasurer and credited to the general revenue
19 fund of the state.

§60-7-7. Municipal fee.

1 Any municipality in this state is hereby authorized
2 to levy a fee for revenue purposes only upon any licensee
3 whose premises are situate within such municipality,
4 which fee shall not exceed one half the amount of the
5 license fee levied by this state under the provisions of
6 section six of this article. Any such municipality is hereby
7 authorized and empowered to enact and adopt ordinances
8 necessary for the collection and enforcement of such fee.

§60-7-10. Duties and powers of commissioner.

1 The commissioner is hereby authorized:

2 (a) To enforce the provisions of this article.

3 (b) To enter the premises of any licensee at reason-
4 able times for the purpose of inspecting the same, and
5 determining the compliance of said licensee with the
6 provisions of this article and any rules and regulations
7 promulgated by the commissioner pursuant to the pro-
8 visions of this article.

9 (c) To promulgate such reasonable rules and regula-
10 tions as may be necessary for the execution and enforce-
11 ment of the provisions of this article, which may include
12 but shall not be limited to the hours during which
13 licensees may sell alcoholic liquors, and the use, handling,
14 service and sale of such alcoholic liquors. Such rules and
15 regulations shall be promulgated in accordance with the
16 provisions of article three, chapter twenty-nine-a of the
17 code in like manner as if said article three of said chap-
18 ter twenty-nine-a were set forth in extenso in this sub-
19 division.

20 (d) To issue subpoenas and subpoenas duces tecum
21 for the purposes of conducting hearings under the pro-
22 visions of section thirteen of this article, which subpoenas
23 and subpoenas duces tecum shall be issued in the time,
24 for the fees, and shall be enforced in the manner speci-
25 fied in section one, article five, chapter twenty-nine-a of
26 this code with like effect as if said section one were set
27 forth in extenso in this subdivision.

28 The authority granted in subdivisions (a), (b), and
29 (d) of this section may also be exercised by the duly
30 authorized agents of the commissioner.

§60-7-11. Licensee must purchase alcoholic liquors from or through commissioner.

1 All licensees shall purchase all alcoholic liquors sold
2 by them from the West Virginia alcohol beverage con-
3 trol commissioner at prices established by such commis-
4 sioner for sales of such alcoholic liquors to the public
5 generally.

§60-7-12. Certain acts of licensee prohibited; penalties.

1 (a) It shall be unlawful for any licensee, or agent,
2 employee or member thereof, on such licensee's prem-
3 ises to:

4 (1) Sell or offer for sale any alcoholic liquors other
5 than from the original package or container;

6 (2) Authorize or permit any disturbance of the peace;
7 obscene, lewd, immoral or improper entertainment, con-
8 duct or practice; gambling or any slot machine, multiple
9 coin console machine, multiple coin console slot machine
10 or device in the nature of a slot machine;

11 (3) Sell, give away, or permit the sale of, gift to, or
12 the procurement of any alcoholic liquors, for any minor,
13 mental incompetent, or person who is physically inca-
14 pacitated due to the consumption of alcoholic liquor, or
15 the use of drugs;

16 (4) Sell, give or dispense alcoholic liquors in or on
17 any licensed premises or in any rooms directly con-
18 nected therewith, between the hours of three o'clock a.m.
19 and one o'clock p.m. on any Sunday;

20 (5) Permit the consumption by, or serve to, on the
21 licensed premises any alcoholic liquors, covered by this ar-
22 ticle, to any person under the age of twenty-one years;

23 (6) With the intent to defraud, alter, change or mis-
24 represent the quality, quantity or brand name of any
25 alcoholic liquor;

26 (7) Sell or offer for sale any alcoholic liquor to any
27 person who is not a duly elected or approved dues pay-

28 ing member in good standing of said private club or a
29 guest of such member; or

30 (8) Violate any reasonable rule or regulation of the
31 commissioner.

32 (b) It shall further be unlawful for any licensee to
33 advertise in any news media or other means, outside of
34 the licensee's premises, the fact that alcoholic liquors
35 may be purchased thereat.

36 (c) Any person who violates any of the foregoing
37 provisions shall be guilty of a misdemeanor, and, upon
38 conviction thereof, shall be punished by a fine of not less
39 than one hundred dollars nor more than five hundred
40 dollars, or by imprisonment in the county jail for a
41 period not to exceed one year, or by both fine and im-
42 prisonment.

§60-7-13a. Commissioner to report violations to prosecuting attorney.

1 The commissioner shall report violations of any of the
2 provisions of section twelve of this article to the prosecut-
3 ing attorney of the county in which the licensed premise
4 is located.

CHAPTER 6

(House Bill No. 1149—By Mr. Myles)

[Passed March 9, 1972; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four and fourteen, article four, chapter fifty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to appeals from, or writs of error or supersedeas to, any judgment, decree or order rendered or made by a court of record of limited jurisdiction; requiring a notice of intent in criminal cases to be filed within sixty days after judgment is entered by a court of record of limited jurisdiction; relating to contents of notice of intent; relating to process upon any such appeal, writ of error or

supersedeas; and relating to time for presentation of record and the giving of bond in any such case.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. APPEALS FROM COURTS OF RECORD OF LIMITED JURISDICTION.

§58-4-4. Time for appeal or writ of error; notice of intent to file petition in criminal cases to be filed with clerk stating grounds.

§58-4-14. Time for presenting record and giving bond.

§58-4-4. Time for appeal or writ of error; notice of intent to file petition in criminal cases to be filed with clerk stating grounds.

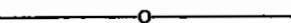
1 No petition shall be presented to the circuit court or
2 judge for an appeal from, or writ of error or supersedeas
3 to, any judgment, decree or order rendered or made by
4 such court of limited jurisdiction, whether the state be a
5 party thereto or not, which shall have been rendered or
6 made more than four months before such petition is
7 presented: *Provided*, That for good cause shown the
8 judge of such court of limited jurisdiction may, prior
9 to the expiration of such period of four months, by order
10 entered of record extend such period for an additional
11 period not to exceed one month.

12 In criminal cases no petition for appeal or writ of error
13 shall be presented unless a notice of intent to file such
14 petition shall have been filed with the clerk of the court
15 in which the judgment was entered within sixty days after
16 such judgment was entered. The notice shall fairly state
17 the grounds for the petition without restricting the right
18 to assign additional grounds in the petition.

§58-4-14. Time for presenting record and giving bond.

1 No process shall issue upon any appeal, writ of error
2 or supersedeas allowed by a circuit court or judge to or
3 from a judgment, decree or order, if, when the record is
4 delivered to the clerk of the circuit court, four months

5 (or the extended period, if any, allowed by order pur-
6 suant to section four of this article) shall have elapsed
7 since the date of such judgment, decree or order; but the
8 appeal, writ of error or supersedeas shall be dismissed
9 whenever it appears that four months or the extended
10 period, if any, as the case may be, has elapsed since
11 such date before the record is delivered to such clerk,
12 or that two months have elapsed since the date when the
13 appeal, writ of error or supersedeas was granted before
14 such bond is given as is required to be given before the
15 appeal, writ of error or supersedeas takes effect.



CHAPTER 7

(Com. Sub. for Senate Bill No. 44—Originating in the
Senate Committee on Finance)

[Passed March 12, 1972; in effect from passage. Approved by the Governor March 16, 1972, after reducing three items and deleting two items and a portion of another. For details of the action of the Governor on this bill, see his communication to the Secretary of State, dated 3/16/72, in the House Journal of March 11, 1972.]

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

Be it enacted by the Legislature of West Virginia:

Title

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

TITLE 1. GENERAL PROVISIONS.

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

1 **Section 1. General Policy.**—The purpose of this act is to
2 appropriate money necessary for economical and efficient
3 discharge of the duties and responsibilities of the state and

4 its agencies during the fiscal year one thousand nine hun-
5 dred seventy-three.

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

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

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

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

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

1 **Sec. 3. Classification of Appropriations.**—An appro-
2 priation for:

3 “Personal Services” shall be expended only for the pay-
4 ment of salaries, wages, fees and other compensation for
5 skill, work, or employment, except from the appropriations
6 made to the spending units of State Government, there
7 may be transferred upon approval of the Governor, to a
8 special account an amount sufficient to match Federal
9 Funds under any Federal Acts.

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

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

14 “Repairs and Alterations” shall include all expenditures,
15 for materials, supplies and labor used in repairing and

16 altering buildings, grounds and equipment, other than per-
17 sonal service;

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

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

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

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

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

TITLE 2. APPROPRIATIONS.

§1. Appropriations from general revenue.

AGRICULTURE

Department of agriculture—Acct. No. 510	57, 82
Department of agriculture (agricultural awards)—Acct. No. 515	58, 82
Department of agriculture (division of rural resources)— Acct. No. 513	57
Department of agriculture (meat inspection)—Acct. No. 514	58
Department of agriculture (soil conservation committee)— Acct. No. 512	57

BUSINESS AND INDUSTRIAL RELATIONS

Antiquities commission—Acct. No. 478	56
Bureau of labor and department of weights and measures— Acct. No. 450	52
Council of State Governments—Acct. No. 472	55
Department of banking—Acct. No. 480	56
Department of commerce—Acct. No. 465	53

Department of mines—Acct. No. 460.....	53
Interstate commission on Potomac river basin—Acct. No. 473.....	55
Interstate education compact—Acct. No. 477.....	55
Interstate mining compact—Acct. No. 471.....	55
Ohio river basin commission—Acct. No. 469.....	54, 82
Ohio river valley water sanitation commission—Acct. No. 474.....	55
Southern regional education board—Acct. No. 475.....	55
State commission on manpower, technology and training— Acct. No. 470.....	54
West Virginia air pollution commission—Acct. No. 476.....	55
West Virginia labor management relations board—Acct. No. 452.....	53
West Virginia nonintoxicating beer commissioner—Acct. No. 490.....	56
West Virginia racing commission—Acct. No. 495.....	57
West Virginia state aeronautics commission—Acct. No. 485.....	56

CHARITIES AND CORRECTION

Andrew S. Rowan memorial home—Acct. No. 384.....	45
Forestry camp for boys No. 1 (Davis)—Acct. No. 371.....	43
Huttonsville Correctional Center—Acct. No. 376.....	45, 80
West Virginia children's home—Acct. No. 380.....	45
West Virginia forestry camp No. 2 (Leckie)—Acct. No. 373.....	44
West Virginia industrial home for girls—Acct. No. 372.....	44, 79
West Virginia industrial school for boys—Acct. No. 370.....	43
West Virginia penitentiary—Acct. No. 375.....	44, 80
West Virginia state prison for women—Acct. No. 374.....	44

CONSERVATION AND DEVELOPMENT

Department of natural resources—Acct. No. 565.....	59, 82
Geological and economic survey commission—Acct. No. 520.....	59
Public land corporation—Acct. No. 566.....	60

EDUCATIONAL

Department of archives and history—Acct. No. 340.....	42
Department of education—Acct. No. 286.....	39
Department of education (aid for exceptional children)— Acct. No. 296.....	41
Educational broadcasting authority—Acct. No. 291.....	40
State board of education (early childhood education)— Acct. No. 278.....	38
State board of education (to implement federal vocational educa- tion act)—Acct. No. 293.....	41
State board of education (vocational division)—Acct. No. 294.....	41
State board of education (vocational division—adult basic educa- tion)—Acct. No. 289.....	40
State board of school finance (state aid to schools)—Acct. No. 295.....	41
State department of education (school lunch program)— Acct. No. 287.....	40
State department of education (teacher education program)— Acct. No. 277.....	38

State FFA-FHA camp and conference center—Acct. No. 336.....	42
Teachers retirement board—Acct. No. 298.....	42, 79
West Virginia board of regents—Acct. No. 280.....	39
West Virginia board of regents (control)—Acct. No. 279.....	38, 79
West Virginia library commission—Acct. No. 350.....	43
West Virginia schools for the deaf and blind—Acct. No. 333.....	42
West Virginia University (medical school)—Acct. No. 285.....	39

EXECUTIVE

Governor's office—Acct. No. 120.....	31
Governor's office (civil contingent fund)—Acct. No. 124.....	31
Governor's office (custodial fund)—Acct. No. 123.....	31
Governor's office (disaster relief-federal matching)— Acct. No. 126.....	32
Governor's office (federal-state coordination)—Acct. No. 125.....	32

FISCAL

Auditor's office (general administration)—Acct. No. 150.....	32
Auditor's office (social security)—Acct. No. 151.....	32
Department of finance and administration—Acct. No. 210.....	34, 79
Sinking fund commission—Acct. No. 170.....	33
State board of insurance—Acct. No. 225.....	38
State commissioner of public institutions—Acct. No. 190.....	34
State tax department—Acct. No. 180.....	33
State tax department (property appraisal)—Acct. No. 185.....	34
Treasurer's office—Acct. No. 160.....	33

INCORPORATING AND RECORDING

Secretary of state—Acct. No. 250.....	37
---------------------------------------	----

LEGAL

Attorney general—Acct. No. 240.....	37
Commission on uniform state laws—Acct. No. 245.....	37

HEALTH AND WELFARE

Barboursville state hospital—Acct. No. 424.....	51, 81
Colin Anderson Center—Acct. No. 419.....	49, 80
Commission on mental retardation—Acct. No. 411.....	49
Commission on post-mortem examination—Acct. No. 401.....	46
Denmar state hospital—Acct. No. 432.....	52
Department of mental health—Acct. No. 410.....	48, 80
Department of veterans affairs—Acct. No. 404.....	47
Department of veterans affairs (patriotic exercises)—Acct. No. 403.....	46
Department of welfare—Acct. No. 405.....	47
Department of welfare (food stamp and government donated food)—Acct. No. 407.....	48
Department of welfare (medical programs)—Acct. No. 408.....	48

Fairmont emergency hospital—Acct. No. 425	51
Guthrie Center—Acct. No. 418	49
Hopemont state hospital—Acct. No. 430	51
Huntington state hospital—Acct. No. 422	50, 81
Lakin state hospital—Acct. No. 423	50, 81
Pinecrest state hospital—Acct. No. 431	51, 81
Spencer state hospital—Acct. No. 421	50, 81
State board of education (rehabilitation division)—Acct. No. 440	52
State commission on aging—Acct. No. 406	48
State health department—Acct. No. 400	46, 80
Welch emergency hospital—Acct. No. 426	51
Weston state hospital—Acct. No. 420	49, 81

JUDICIAL

Auditor's office—Acct. No. 111	30
Judicial council—Acct. No. 118	31
State law library—Acct. No. 114	30, 79
Supreme court of appeals—Acct. No. 110	30, 78

LEGISLATIVE

House of Delegates—Acct. No. 102	27
Joint expenses—Acct. No. 103	29
Senate—Acct. No. 101	26

MISCELLANEOUS BOARDS AND COMMISSIONS

Boarl of architects—Acct. No. 595	63
Board of chiropractic examiners—Acct. No. 588	62
Board of embalmers and funeral directors—Acct. No. 593	62
Board of examiners for practical nurses—Acct. No. 587	62
Board of land surveyors—Acct. No. 585	61
Board of law examiners—Acct. No. 597	63, 83
Board of osteopathy—Acct. No. 591	62
Board of pharmacy—Acct. No. 590	62
Board of professional foresters—Acct. No. 586	61
Board of registration for professional engineers—Acct. No. 594	62
Board of sanitarians—Acct. No. 599	63
Human rights commission—Acct. No. 598	63
State veterinary board—Acct. No. 596	63
West Virginia public employees insurance board—Acct. No. 615	64
West Virginia public employees retirement board—Acct. No. 614	63, 83

PROTECTION

Adjutant general (state militia)—Acct. No. 580	61, 82
Auditor's office (social security)—Acct. No. 582	82
Department of civil and defense mobilization—Acct. No. 581	61
Department of public safety—Acct. No. 570	60
Insurance commissioner—Acct. No. 616	65

§2. Appropriations from other funds.

PAYABLE FROM SPECIAL REVENUE FUND

Auditor's office (land department operating fund)—Acct. No. 812.....	69
Department of agriculture—Acct. No. 818.....	71
Department of finance and administration (division of purchases— revolving fund)—Acct. No. 814.....	69
Department of finance and administration (information system services division fund)—Acct. No. 8151-01.....	70
Department of natural resources—Acct. No. 830.....	73
Department of public safety (inspection fees)—Acct. No. 835.....	74
Public service commission—Acct. No. 829.....	72
Public service commission (gas pipeline division)—Acct. No. 8285.....	72
Public service commission (motor carrier division)— Acct. No. 829.....	73
Real estate commission—Acct. No. 801.....	68
State committee of barbers and beauticians—Acct. No. 822.....	71
Treasurer's office—Acct. No. 800.....	68
West Virginia alcohol beverage control—Acct. No. 837.....	74
West Virginia board of regents (special capital improvement fund)—Acct. No. 854.....	77
West Virginia board of regents (state system special capital im- provement fund)—Acct. No. 8535.....	76
West Virginia board of regents—West Virginia University (special capital improvement fund)—Acct. No. 853.....	76
West Virginia civil service system—Acct. No. 840.....	75
West Virginia racing commission—Acct. No. 808.....	68

PAYABLE FROM STATE ROAD FUND

Department of motor vehicles—Acct. No. 671.....	62, 83
State department of highways—Acct. No. 670.....	65
State tax department (gasoline tax division)—Acct. No. 672.....	67

PAYABLE FROM GENERAL SCHOOL FUND

Department of education (veterans education)—Acct. No. 702.....	67
---	----

PAYABLE FROM MEDICAL FUND

West Virginia university (medical school)—Acct. No. 873.....	77
--	----

PAYABLE FROM WORKMEN'S COMPENSATION FUND

Workmen's compensation commission—Acct. No. 900.....	78
--	----

- §3. Supplemental and deficiency appropriations.
- §4. Appropriations from surplus revenue.
- §5. Awards for claims against the state.
- §6. Legislative findings of fact claims.
- §7. Special revenue appropriations.
- §8. Specific funds and collection accounts.

- §9. Appropriation for refunding erroneous payments.
- §10. Sinking fund deficiencies.
- §11. Appropriations from taxes and license fees.
- §12. Appropriations to pay cost of publication of delinquent corporations.
- §13. Appropriations for local governments.
- §14. Total appropriations.
- §15. General school fund.

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

LEGISLATIVE

1—Senate

Acct. No. 101

	<i>Fiscal Year</i> 1971-72
1 Compensation and per diem of officers and	
2 attaches	\$ 95,000.00
	<i>Fiscal Year</i> 1972-73
1 Compensation of Members	\$ 151,900.00
2 Compensation and per diem of officers and	
3 attaches	300,000.00
4 Expenses of Members	113,500.00
5 Current Expenses and Contingent Fund.....	150,000.00
6 To pay cost of printing the 1972 edition of	
7 Blue Book	55,000.00
8 The distribution of which shall be made by	
9 the office of the Clerk of the Senate and	
10 shall include seventy-five copies for each	
11 member of the Legislature and two copies	
12 to each classified and approved High and	
13 Junior High school and one to each Ele-	
14 mentary school within the state.	

15 The appropriations for the Senate for the
16 fiscal year 1971-72 are to remain in full
17 force and effect, and are hereby reappro-
18 priated to June 30, 1973.

19 Any balances so reappropriated may be
20 transferred and credited to the 1972-73 ac-
21 counts.

22 Upon written request of the Clerk of the
23 Senate the State Auditor shall transfer
24 amounts between items of the total appro-
25 priation in order to protect or increase the
26 efficiency of service.

27 The Clerk of the Senate is authorized to draw
28 his requisitions upon the Auditor, payable
29 out of the contingent fund of the Senate for
30 any bills for supplies and services that may
31 have been incurred by the Senate and not
32 included in the appropriation bill, and for
33 supplies and services incurred after ad-
34 journment, and for the necessary operation
35 of the Senate offices, the requisition for
36 same to be accompanied by the bills to be
37 filed with the Auditor.

38 On and after the first day of July, one thou-
39 sand nine hundred seventy-two, for duties
40 imposed by law and by the Senate, the
41 Clerk of the Senate shall be paid a
42 monthly salary of twenty-five hundred
43 dollars, payable from the amount appro-
44 priated for compensation and per diem of
45 officers and attaches.

2—House of Delegates

Acct. No. 102

Fiscal Year
1971-72

1 Compensation and per diem of officers and		
2 employees	\$	95,000.00

	<i>Fiscal Year</i> 1972-73
3 Compensation of Members	415,900.00
4 Compensation and per diem of officers and 5 employees	220,000.00
6 Expenses of Members	276,000.00
7 Current Expenses and Contingent Fund	170,000.00
8 The appropriations for the House of Dele-	
9 gates for the fiscal year 1971-72 are to re-	
10 main in full force and effect, and are here-	
11 by reappropriated to June 30, 1973.	
12 Any balances so reappropriated may be trans-	
13 ferred and credited to the 1972-73 accounts.	
14 Upon the written request of the Clerk of the	
15 House of Delegates, the State Auditor shall	
16 transfer amounts between items of the total	
17 appropriation in order to protect or in-	
18 crease the efficiency of the service.	
19 The Clerk of the House of Delegates, with	
20 approval of the Speaker, is authorized to	
21 draw his requisitions upon the Auditor,	
22 payable out of the contingent fund of the	
23 House of Delegates, for any bills for sup-	
24 plies and services that may have been in-	
25 curred by the House of Delegates, and not	
26 included in the appropriation bill, for bills	
27 for services and supplies incurred in prep-	
28 aration for the opening of the session and	
29 after adjournment, and for the necessary	
30 operation of the House of Delegates' offices,	
31 the requisition for the same to be accom-	
32 panied by bills to be filed with the Auditor.	
33 For duties imposed by law and by the House	
34 of Delegates, including salary allowed by	
35 law as keeper of the rolls, the Clerk of the	
36 House of Delegates shall be paid a monthly	
37 salary as provided in House Resolution No.	
38 14, adopted January 21, 1972, payable from	

39 the contingent fund of the House of Dele-
 40 gates, and the full-time employees of the
 41 Clerk's office shall be paid at the salaries
 42 provided in said resolution.

43 The Speaker of the House of Delegates, upon
 44 recommendation of the Chairman of the
 45 Finance Committee, shall have authority
 46 to employ such staff personnel during and
 47 between sessions of the Legislature as shall
 48 be needed, and the Clerk of the House is
 49 hereby authorized to draw requisitions
 50 upon the State Auditor, payable out of the
 51 appropriation for Contingent Expenses for
 52 such services.

3—Joint Expenses

Acct. No. 103

	<i>Fiscal Year</i> 1971-72
1 To pay the cost of legislative printing -----	\$ 70,000.00

	<i>Fiscal Year</i> 1972-73
1 To pay the cost of Legislative Printing -----	\$ 220,000.00
2 Commission on Interstate Cooperation.....	35,000.00
3 Joint Committee on Government and Finance	1,875,223.00
4 Other Legislative Committees.....	55,500.00

5 The appropriations for Joint Expenses for the
 6 fiscal year 1971-72 are to remain in full
 7 force and effect and are hereby reappro-
 8 priated to June 30, 1973.

9 Any balances so reappropriated may be
 10 transferred and credited to the 1972-73 ac-
 11 counts.

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

JUDICIAL

4—*Supreme Court of Appeals*

Acct. No. 110

1	Salaries of Judges	\$	175,000.00
2	Other Personal Services		249,648.00
3	Current Expenses		47,500.00
4	Equipment		5,000.00
			<hr/>
5	Total	\$	477,148.00

5—*Judicial Auditor's Office*

Acct. No. 111

1	Salaries of Judges	\$	856,000.00
2	Other Personal Services		174,400.00
3	Current Expenses		45,400.00
4	Judges Retirement System		375,000.00
5	Criminal Charges		600,000.00
			<hr/>
6	Total	\$	2,050,800.00

7 This appropriation shall be administered by
 8 the State Auditor who shall draw his requi-
 9 sition for warrants in payments of salaries
 10 in the form of payrolls, making deductions
 11 therefrom as required by law, for taxes and
 12 other items. The appropriation for Judges
 13 Retirement System is to be transferred to
 14 the Judges Retirement Fund, in accord-
 15 ance with the law relating thereto, upon
 16 requisition of the State Auditor.

6—*State Law Library*

Acct. No. 114

1	Personal Services	\$	67,147.00
2	Current Expenses		9,500.00
3	Equipment		45,000.00
			<hr/>
4	Total	\$	121,647.00

7—*Judicial Council*

Acct. No. 118

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

EXECUTIVE

8—*Governor's Office*

Acct. No. 120

1 Salary of Governor	\$	31,242.00
2 Other Personal Services		143,240.00
3 Current Expenses		60,000.00
4 Equipment		15,000.00
5 Publication of Governor's Papers and In-		
6 augural Expense		80,000.00
7 Total	\$	329,482.00

9—*Governor's Office—Custodial Fund*

Acct. No. 123

1 Total	\$	75,000.00
2 To be used for current general expenses, in-		
3 cluding compensation of employees, house-		
4 hold maintenance, cost of official functions,		
5 and any additional household expenses oc-		
6 casioned by such official functions.		

10—*Governor's Office—Civil Contingent Fund*

Acct. No. 124

1 Total	\$	400,000.00
2 Of this appropriation there may be expended,		
3 at the discretion of the governor, an amount		
4 not to exceed \$1,000.00 as West Virginia's		
5 contribution to the Interstate Oil Compact		
6 Commission.		
7 Any unexpended balance remaining in this		
8 appropriation at the close of the fiscal year		
9 1971-72 is hereby reappropriated for ex-		
10 penditure during the fiscal year 1972-73.		

11—*Governor's Office—Federal-State Coordination*

Acct. No. 125

1	Total	\$ 1,250,000.00
2	Any unexpended balance remaining in this	
3	account at the close of the fiscal year 1971-	
4	72 is hereby reappropriated for expenditure	
5	during the fiscal year 1972-73.	

12—*Governor's Office—Disaster Relief-Federal Matching*

Acct. No. 126

1	Total	\$ 50,000.00
2	To match and aid Federal Programs, and any	
3	part of this appropriation may be trans-	
4	ferred to any department for such purposes.	

FISCAL

13—*Auditor's Office—General Administration*

Acct. No. 150

1	Salary of State Auditor	\$ 21,237.00
2	Other Personal Services	554,780.00
3	Current Expenses	151,925.00
4	Equipment	13,000.00
5	Microfilm Program	10,000.00
6	Total	\$ 750,942.00

14—*Auditor's Office—Social Security*

Acct. No. 151

1	To match contributions of state employees for	
2	social security	\$ 4,500,000.00
3	The above appropriation is intended to cover	
4	the state's share of social security costs for	
5	those spending units operating from Gen-	
6	eral Revenue Fund. The State Department	
7	of Highways, Department of Motor Ve-	
8	hicles, Workmen's Compensation Commis-	
9	sion, Public Service Commission, and other	

10 departments operating from Special Reve-
 11 nue Fund and/or Federal Funds shall pay
 12 their proportionate share of the social se-
 13 curity cost for their respective divisions.
 14 Any unexpended balance remaining in this
 15 appropriation at the close of the fiscal year
 16 1971-72 is hereby reappropriated for ex-
 17 penditure during the fiscal year 1972-73.

15—*Treasurer's Office*

Acct. No. 160

1	Salary of State Treasurer	\$	20,968.00
2	Other Personal Services		181,220.00
3	Current Expenses		44,468.00
4	Equipment		9,500.00
5	Board of Investments		2,500.00
6	Total	\$	258,656.00

16—*Sinking Fund Commission*

Acct. No. 170

1	Personal Services	\$	36,618.00
2	Current Expenses		3,300.00
3	Equipment		1,500.00
4	Total	\$	41,418.00

17—*State Tax Department*

Acct. No. 180

1	Personal Services	\$	2,369,100.00
2	Current Expenses		1,574,530.00
3	Equipment		46,000.00
4	Circuit Breaker Reimbursement		200,000.00
5	Total	\$	4,189,630.00

6 The above appropriation "Circuit Breaker
 7 Reimbursement" is to be used in accor-
 8 dance with Engrossed House Bill No. 751,
 9 1972 Regular Session of the Legislature.

18—*State Tax Department*
Property Appraisal

Acct. No. 185

1	Personal Services	\$ 700,000.00
2	Other Expenses	300,000.00
3	Reimbursement to Counties	80,000.00
		<hr/>
4	Total	\$ 1,080,000.00
5	The above appropriation "Reimbursement to	
6	Counties" is to be used pursuant to the	
7	provisions of Engrossed House Bill No. 1048,	
8	1972 Regular Session of the Legislature.	
9	Any balance remaining in the "Property Ap-	
10	praisal Account" at the close of the fiscal	
11	year 1971-72 is hereby reappropriated for	
12	expenditure during the fiscal year 1972-73.	

19—*State Commissioner of Public Institutions*

Acct. No. 190

1	Salary of Commissioner	\$ 16,000.00
2	Salaries of Board Members—Board of Pro-	
3	bation and Parole	36,000.00
4	Other Personal Services	484,900.00
5	Current Expenses	135,900.00
6	Equipment	4,500.00
		<hr/>
7	Total	\$ 677,300.00

20—*Department of Finance and Administration*

Acct. No. 210

1	Personal Services	\$ 925,550.00
2	Current Expenses	513,360.00
3	Repairs and Alterations	68,460.00
4	Equipment	19,530.00
5	Postage	290,000.00
6	Records Management	49,000.00
7	Office of State Emergency Planning.....	25,000.00
8	State Agency Surplus Property	53,000.00
9	Transportation Division—Vehicles	100,000.00

10	Major Building Repairs	200,000.00
11	Fire Service Fee	75,000.00
12	Total	\$ 2,318,900.00

13 The Workmen's Compensation Commission,
 14 Department of Welfare, Public Service
 15 Commission, Department of Natural Re-
 16 sources, Department of Motor Vehicles,
 17 State Department of Highways, State
 18 Health Department and State Tax Depart-
 19 ment—Income Tax Division shall reim-
 20 burse the Postage appropriation of the De-
 21 partment of Finance and Administration
 22 monthly for all meter service. Any spend-
 23 ing unit operating from Special Revenue
 24 or receiving reimbursement for postage
 25 costs from the Federal Government shall
 26 refund to the Postage account of the De-
 27 partment of Finance and Administration
 28 such amounts. Should this appropriation for
 29 Postage be insufficient to meet the mailing
 30 requirements of the State spending units as
 31 set out above, any excess postage meter
 32 service requirements shall be a proper
 33 charge against the units, and each spending
 34 unit shall refund to the Postage appropria-
 35 tion of the Department of Finance and Ad-
 36 ministration any amounts required for that
 37 Department for postage in excess of this
 38 appropriation.

39 Any unexpended balance remaining in the
 40 "Postage Account" at the close of the fiscal
 41 year 1971-72 is hereby reappropriated for
 42 expenditure during the fiscal year 1972-73.

43 Any unexpended balance remaining in
 44 "Major Building Repairs", at the close of
 45 the fiscal year 1971-72 is hereby reappropri-
 46 ated for expenditure during the fiscal year
 47 1972-73. Major Building Repairs to include

48 maintenance and repairs to Governor's
49 Mansion.

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

56 There also is appropriated for the State
57 Agency for Surplus Property all sums
58 of money collected by that agency from
59 the sale of surplus state property which has
60 been declared expendable by the director
61 of the Purchasing Division, and a special
62 account created for expenditure for the pur-
63 chase of operating equipment.

21—*State Board of Insurance*

Acct. No. 225

1 Personal Services	\$ 19,920.00
2 Current Expenses	8,900.00
3 Equipment	600.00
4 Self-Insurance Fund	100,000.00
5 Combined Insurance Premiums	1,100,000.00
6 Total	<u>\$ 1,229,420.00</u>

7 The above appropriation on line five is for the
8 purpose of paying premiums for fire, auto-
9 mobile and bonds for the various state
10 agencies. Should this appropriation be in-
11 sufficient to meet the premium require-
12 ments of the state spending units, any
13 excess premium requirements shall be a
14 proper charge against the units and each
15 spending unit shall reimburse to the Board
16 of Insurance any amounts required for
17 that department for premiums in excess
18 of this appropriation.

19 Any unexpended balance remaining in the
20 appropriation for "Self-Insurance Fund"

21 at the close of the fiscal year 1971-72 is
 22 hereby reappropriated for expenditure dur-
 23 ing the fiscal year 1972-73.

24 Any or all of the funds appropriated for "Self-
 25 Insurance Fund" may be transferred to
 26 a special account for disbursement for pay-
 27 ment of premiums.

LEGAL

22—Attorney General

Acct. No. 240

1	Salary of Attorney General	\$	21,505.00
2	Other Personal Services		644,280.00
3	Current Expenses		64,750.00
4	Equipment		14,500.00
5	To protect the resources or tax structure of		
6	the State in controversies or legal proceed-		
7	ings affecting same		3,250.00
8	Total	\$	748,285.00

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

23—Commission on Uniform State Laws

Acct. No. 245

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

INCORPORATING AND RECORDING

24—Secretary of State

Acct. No. 250

1	Salary of Secretary of State	\$	20,699.00
2	Other Personal Services		111,740.00

APPROPRIATIONS

[Ch. 7

3	Current Expenses	40,015.00
4	Equipment	5,107.00
5	Produce and Distribute Training Film	25,400.00
6	Total	\$ 202,961.00

EDUCATIONAL

25—State Department of Education

Acct. No. 277

1	Teacher Education Program	\$ 125,000.00
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26—State Board of Education

Acct. No. 278

1	Early Childhood Demonstration	\$ 350,000.00
2	Early Childhood Ed. (Public Kindergarten)	3,500,000.00
3	Total	\$ 3,850,000.00

27—West Virginia Board of Regents (Control)

Acct. No. 279

1	Personal Services	\$51,744,263.00
2	Current Expenses	6,916,652.00
3	Repairs and Alterations	2,089,767.00
4	Equipment	3,384,798.00
5	Oak Wilt Research	10,000.00
6	Veterinary Tuition	66,900.00
7	Educational T.V.	611,463.00
8	Bureau for Coal Research	310,000.00
9	Forestry Products	93,500.00
10	Regional Research Institute	83,000.00
11	Intensive Agriculture-Demonstration Trial	26,000.00
12	Individual Accreditation	300,000.00
13	New Programs	350,000.00
14	Center of Economic Action	47,500.00
15	Community and Development Research	22,000.00
16	Unclassified	100,000.00
17	Title I—Matching Funds	130,000.00
18	Awareness Program	50,000.00

19	Scholarship Program	425,000.00
20	Facilities and Scholarship Administration —	47,630.00
21	Total	\$ 66,808,473.00

28—*West Virginia Board of Regents*

Acct. No. 280

1	Personal Services	\$ 252,694.00
2	Current Expenses	87,800.00
3	Equipment	4,000.00
4	Total	\$ 344,494.00

29—*West Virginia University—Medical School*

Acct. No. 285

1	Personal Services	\$ 3,786,825.00
2	Current Expenses	1,299,955.00
3	Repairs and Alterations	214,775.00
4	Equipment	350,420.00
5	Intern and Residency Support Programs	
6	for Community Hospitals	300,000.00
7	Total	\$ 5,951,975.00
8	To be transferred to the West Virginia Uni-	
9	versity—Medical School Fund upon the	
10	requisition of the Governor.	

30—*Department of Education*

Acct. No. 286

1	Personal Services	\$ 680,320.00
2	Current Expenses	191,700.00
3	Equipment	9,350.00
4	National Defense Education Act	355,554.00
5	Total	\$ 2,163,885.00
6	Safety Education—Aid to Counties	135,000.00
7	State Aid to Children's Home	25,000.00
8	Comprehensive Education Program	1,000,000.00
9	Total	\$ 2,572,924.00

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

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

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

Acct. No. 287

1	Personal Services	\$	98,100.00
2	Current Expenses		19,510.00
3	Aid to Counties—Includes hot lunches and		
4	canning for hot lunches		650,000.00
<hr/>			
5	Total	\$	767,610.00

32—*State Board of Education—Vocational Division*

Acct. No. 289

1	Personal Services	\$	126,945.00
2	Current Expenses		68,900.00
3	Equipment		2,050.00
4	Vocational Aid		378,335.00
5	Adult Basic Education		250,000.00
<hr/>			
6	Total	\$	826,230.00

33—*Educational Broadcasting Authority*

Acct. No. 291

1	Personal Services	\$	42,040.00
2	Current Expenses		29,020.00
3	Equipment		2,000.00
4	Regional ETV		1,135,192.00
<hr/>			
5	Total	\$	1,208,252.00

6 For participation in the construction and
 7 operation of Regional ETV stations by Mar-
 8 shall University, Concord College, Bluefield

9 State College, West Virginia Institute of
 10 Technology and West Virginia State Col-
 11 lege and may be transferred to Special
 12 Revenue accounts for matching County
 13 and/or Federal Funds.

34—*State Board of Education—Vocational Division*

Acct. No. 293

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

35—*State Board of Education—Vocational Division*

Acct. No. 294

1 Total.....\$ 150,000.00
 2 Any unexpended balance remaining in the
 3 appropriation "Aid to Counties" at the
 4 close of the fiscal year 1971-72 is hereby re-
 5 appropriated for expenditure during the
 6 fiscal year 1972-73.

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

Acct. No. 295

1 State Aid to Schools\$156,346,378.00

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

Acct. No. 296

1	Personal Services	\$ 47,645.00
2	Current Expenses	16,240.00
3	Out-of-State Instruction	100,000.00
4	Aid to Counties	2,000,000.00
		<hr/>
5	Total.....	\$ 2,163,885.00

6 The appropriation for "Out-of-State Instruc-
 7 tion" may be expended to provide instruc-
 8 tion, care and maintenance for educable
 9 persons who have multiple handicaps and
 10 for whom the state provides no facilities.

38—*Teachers Retirement Board*

Acct. No. 298

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

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

Acct. No. 333

1	Personal Services	\$ 1,282,342.00
2	Current Expenses	237,139.00
3	Repairs and Alterations	63,850.00
4	Equipment	54,800.00
5	Environmental Replacement (Heating Con-	
6	version)	175,000.00
7	Total	\$ 1,813,131.00
8	Any unexpended balance remaining in the	
9	appropriation "Intermediate Classroom	
10	Dormitory Unit" at the close of the fiscal	
11	year 1971-72 is hereby reappropriated for	
12	expenditure during the fiscal year 1972-73.	

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

Acct. No. 336

1	Personal Services	\$ 60,570.00
2	Current Expenses	10,000.00
3	Repairs and Alterations	14,950.00
4	Equipment	18,100.00
5	Total	\$ 103,620.00

41—*Department of Archives and History*

Acct. No. 340

1	Personal Services	\$ 89,275.00
2	Current Expenses	21,900.00

3	Equipment	22,600.00
4	Total	\$ 133,775.00

42—*West Virginia Library Commission*

Acct. No. 350

1	Personal Services	\$ 155,640.00
2	Current Expenses	5,145.00
3	Equipment	5,000.00
4	Books and Periodicals	31,480.00
5	To Match Federal Funds	410,000.00
6	Library Matching Fund	250,000.00
7	Total	\$ 857,265.00
8	Any unexpended balance remaining in the	
9	appropriation "Library Matching Fund" at	
10	the close of the fiscal year 1971-72 is hereby	
11	reappropriated for expenditure during the	
12	fiscal year 1972-73.	

CHARITIES AND CORRECTION

43—*West Virginia Industrial School for Boys*

Acct. No. 370

1	Personal Services	\$ 695,720.00
2	Current Expenses	234,800.00
3	Repairs and Alterations	59,150.00
4	Equipment	30,160.00
5	Total	\$ 1,019,830.00

44—*Forestry Camp for Boys No. 1 (Davis)*

Acct. No. 371

1	Personal Services	\$ 158,473.00
2	Current Expenses	99,050.00
3	Repairs and Alterations	15,300.00
4	Equipment	21,300.00
5	Total	\$ 294,123.00

45—*West Virginia Industrial Home for Girls*

Acct. No. 372

1	Personal Services	\$	293,420.00
2	Current Expenses		108,500.00
3	Repairs and Alterations		29,100.00
4	Equipment		26,100.00
5	Vocational Training		5,000.00
6	Total	\$	462,120.00

46—*West Virginia Forestry Camp No. 2 (Leckie)*

Acct. No. 373

1	Personal Services	\$	156,076.00
2	Current Expenses		108,465.00
3	Repairs and Alterations		15,225.00
4	Equipment		22,050.00
5	Total	\$	301,816.00

47—*West Virginia State Prison for Women*

Acct. No. 374

1	Personal Services	\$	79,974.00
2	Current Expenses		43,715.00
3	Repairs and Alterations		9,000.00
4	Equipment		7,500.00
5	Total	\$	140,189.00

48—*West Virginia Penitentiary*

Acct. No. 375

1	Personal Services	\$	1,306,185.00
2	Current Expenses		576,030.00
3	Repairs and Alterations		71,650.00
4	Equipment		40,100.00
5	Repairs to Roof and Replacement of Windows		
6	and Sash (Security Windows)		158,700.00

7	Replacement of Sanitary System (Sewers)	
8	and Construction of Boiler Plant	419,875.00
		<hr/>
9	Total	\$ 2,572,540.00
10	Any or all of the accounts "Repairs to Roof	
11	and Replacement of Windows and Sash	
12	(Security Windows)"; "Replacement of	
13	Sanitary System (Sewers) and Construc-	
14	tion of Boiler Plant" may be used to match	
15	and aid Federal Funds.	

49—*Huttonsville Correctional Center*

Acct. No. 376

1	Personal Services	\$ 723,512.00
2	Current Expenses	225,750.00
3	Repairs and Alterations	36,750.00
4	Equipment	19,000.00
		<hr/>
5	Total	\$ 1,005,012.00

50—*West Virginia Children's Home*

Acct. No. 380

1	Personal Services	\$ 84,815.00
2	Current Expenses	51,180.00
3	Repairs and Alterations	14,000.00
4	Equipment	14,600.00
		<hr/>
5	Total	\$ 164,595.00

51—*Andrew S. Rowan Memorial Home*

Acct. No. 384

1	Personal Services	\$ 451,570.00
2	Current Expenses	199,610.00
3	Repairs and Alterations	33,700.00
4	Equipment	40,150.00
		<hr/>
5	Total	\$ 725,030.00

HEALTH AND WELFARE

52—State Health Department

Acct. No. 400

1	Personal Services	\$ 900,600.00
2	Current Expenses	137,695.00
3	Equipment	22,515.00
4	Emergency Medical Services	35,000.00
5	Cancer Control and Treatment	200,000.00
6	Local Health Services	1,000,000.00
7	Dental Clinics	114,000.00
8	Heart Disease Control	125,000.00
9	Maternal and Child Healthmobile Medical	
10	Examination Clinic	225,000.00
11	Home Health Services	40,000.00
12	Mobile Chest X Ray & Diagnostic Services	
13	for Tuberculosis Control	80,000.00
14	Hospital and Medical Facilities Construction	
15	Program	17,500.00
16	Special Project for Eradication of Tubercu-	
17	losis	245,000.00
18	Environmental Health Services	123,335.00
19	Nursing Home Inspection Unit	76,000.00
20	Biologicals for Immunization and Veneral	
21	Disease	51,000.00
22	Total	\$ 3,392,645.00

52-a—Commission on Post-mortem Examination

Acct. No. 401

1	Total	\$ 125,000.00
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53—Department of Veterans Affairs

Acct. No. 403

1	In aid of Veterans Day Patriotic Exercises...	\$ 3,000.00
2	To be expended subject to the approval of the	
3	Department of Veterans Affairs upon pres-	

4 entation of satisfactory plans by the Graf-
 5 ton G.A.R. Post, American Legion, Vet-
 6 erans of Foreign Wars and Sons of
 7 Veterans.

54—*Department of Veterans Affairs*

Acct. No. 404

1	Personal Services	\$ 269,270.00
2	Current Expenses	70,800.00
3	Equipment	5,100.00
4	To provide Educational Opportunities for	
5	Children of War Veterans as provided by	
6	Chapter thirty-nine, Acts of the Legisla-	
7	ture, one thousand nine hundred and forty-	
8	three	20,000.00
<hr/>		
9	Total	\$ 365,170.00
10	Any unexpended balance remaining in the	
11	appropriation "To Provide Educational Op-	
12	portunities for Children of War Veterans"	
13	at the close of the fiscal year 1971-72 is	
14	hereby reappropriated for expenditure dur-	
15	ing the fiscal year 1972-73.	

55—*Department of Welfare*

Acct. No. 405

1	Personal Services	\$ 3,837,520.00
2	Current Expenses	2,099,840.00
3	Equipment	42,515.00
4	Public Assistance Grants (Classified Aid)	16,300,000.00
5	Child Welfare Services	3,562,000.00
6	Emergency Assistance Program	1,350,000.00
7	Social Security Matching Fund	281,685.00
<hr/>		
8	Total	\$ 27,473,560.00

56—*State Commission on Aging*

Acct. No. 406

1	Personal Services	\$ 40,730.00
2	Current Expenses	2,970.00
3	Programs for Elderly	88,000.00
4	Total	\$ 131,700.00

57—*Department of Welfare—Food Stamp and
Government Donated Food*

Acct. No. 407

1	Personal Services	\$ 1,148,065.00
2	Current Expenses	556,005.00
3	Equipment	57,145.00
4	Total	\$ 1,761,215.00

58—*Department of Welfare—Medical Programs*

Acct. No. 408

1	Personal Services	\$ 1,063,648.00
2	Current Expenses	270,355.00
3	Equipment	10,667.00
4	Direct Aid (Medical)	9,820,000.00
5	Total	\$ 11,164,670.00

59—*Department of Mental Health*

Acct. No. 410

1	Personal Services	\$ 802,650.00
2	Current Expenses	217,610.00
3	Equipment	14,800.00
4	Research and Training	30,000.00
5	Civil Service Costs	68,100.00
6	Division of Health Education	18,500.00
7	Community Mental Retardation Program	320,000.00
8	Alcohol and Drug Abuse Program	350,000.00
9	Community Mental Health Programs	752,412.00
10	Roney's Point Branch Hospital	200,000.00
11	Total	\$ 2,774,072.00

12 Any unexpended balance remaining in the
 13 account "Mental Health Center—Prince-
 14 ton" at the close of the fiscal year 1971-72
 15 is hereby reappropriated for expenditure
 16 during fiscal year 1972-73.

60—*Commission On Mental Retardation*

Acct. No. 411

1 Total\$ 32,000.00

61—*Guthrie Center*

Acct. No. 418

1	Personal Services	\$ 451,895.00
2	Current Expenses	174,407.00
3	Repairs and Alterations	60,400.00
4	Equipment	51,500.00
		<hr/>
5	Total	\$ 738,202.00

62—*Colin Anderson Center*

Acct. No. 419

1	Personal Services	\$ 2,200,500.00
2	Current Expenses	385,000.00
3	Repairs and Alterations	72,790.00
4	Equipment	99,500.00
		<hr/>
5	Total	\$ 2,757,790.00

6 Any unexpended balance remaining in the
 7 appropriation "Capital Outlay Improve-
 8 ment" at the close of fiscal year 1971-72 is
 9 hereby reappropriated for expenditure
 10 during the fiscal year 1972-73.

63—*Weston State Hospital*

Acct. No. 420

1	Personal Services	\$ 3,820,850.00
2	Current Expenses	1,191,200.00
3	Repairs and Alterations	120,750.00

4	Equipment	105,000.00
5	Psychiatric Training Center for Student	
6	Nurses	310,000.00
7	Total	\$ 5,547,800.00

64—*Spencer State Hospital*

Acct. No. 421

1	Personal Services	\$ 1,947,160.00
2	Current Expenses	645,000.00
3	Repairs and Alterations	75,000.00
4	Equipment	75,000.00
5	Total	\$ 2,742,160.00

65—*Huntington State Hospital*

Acct. No. 422

1	Personal Services	\$ 2,537,350.00
2	Current Expenses	843,580.00
3	Repairs and Alterations	139,625.00
4	Equipment	78,500.00
5	Student Nurse Affiliation Program	51,000.00
6	Total	\$ 3,650,055.00

66—*Lakin State Hospital*

Acct. No. 423

1	Personal Services	\$ 1,198,920.00
2	Current Expenses	341,250.00
3	Repairs and Alterations	102,000.00
4	Equipment	59,100.00
5	Total	\$ 1,701,270.00

6 Any unexpended balance remaining in the
7 appropriation "Renovate Classroom Build-
8 ing, Construct Ward Building", at the close
9 of the fiscal year 1971-72 is hereby reappro-
10 priated for expenditure during the fiscal
11 year 1972-73.

67—*Barboursville State Hospital*

Acct. No. 424

1 Personal Services	\$ 627,700.00
2 Current Expenses	189,000.00
3 Repairs and Alterations	47,250.00
4 Equipment	18,050.00
5 Total	\$ 882,000.00

68—*Fairmont Emergency Hospital*

Acct. No. 425

1 Personal Services	\$ 416,530.00
2 Current Expenses	145,440.00
3 Repairs and Alterations	24,700.00
4 Equipment	16,000.00
5 Total	\$ 602,670.00

69—*Welch Emergency Hospital*

Acct. No. 426

1 Personal Services	\$ 602,900.00
2 Current Expenses	220,500.00
3 Repairs and Alterations	52,800.00
4 Equipment	60,300.00
5 Total	\$ 936,500.00

70—*Hopemont State Hospital*

Acct. No. 430

1 Personal Services	\$ 1,751,260.00
2 Current Expenses	353,500.00
3 Repairs and Alterations	41,200.00
4 Equipment	26,000.00
5 Total	\$ 2,171,960.00

71—*Pinecrest State Hospital*

Acct. No. 431

1 Personal Services	\$ 1,456,965.00
2 Current Expenses	493,500.00

3	Repairs and Alterations	73,400.00
4	Equipment	26,300.00
		<hr/>
5	Total.....	\$ 2,050,165.00

72—Denmar State Hospital

Acct. No. 432

1	Personal Services	\$ 1,167,190.00
2	Current Expenses	317,000.00
3	Repairs and Alterations	48,200.00
4	Equipment	103,300.00
		<hr/>
5	Total	\$ 1,635,690.00

73—State Board of Education—Rehabilitation Division

Acct. No. 440

1	Personal Services	\$ 696,202.00
2	Current Expenses	167,075.00
3	Rehabilitation Center	674,911.00
4	Case Services	1,283,080.00
5	Supervisory Services for Vending Stand Pro-	
6	gram for the Blind	54,291.00
7	Training and Special Projects	89,206.00
8	Social Security Matching Fund	55,000.00
		<hr/>
9	Total	\$ 3,019,765.00

BUSINESS AND INDUSTRIAL RELATIONS

74—Bureau of Labor and Department of
Weights and Measures

Acct. No. 450

1	Personal Services	\$ 597,480.00
2	Current Expenses	195,975.00
3	Equipment	32,350.00
		<hr/>
4	Total	\$ 825,805.00

75—*West Virginia Labor Management Relations Board*

Acct. No. 452

1	Total.....	38,000.00
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76—*Department of Mines*

Acct. No. 460

1	Personal Services	\$ 1,570,180.00
2	Current Expenses	257,517.00
3	Equipment	53,000.00
4	Total.....	\$ 1,880,697.00

77—*Department of Commerce*

Acct. No. 465

1	Personal Services	\$ 403,530.00
2	Current Expenses	832,000.00
3	Equipment	5,000.00
4	Mt. State Forest Festival	25,000.00
5	Alpine Festival	3,000.00
6	West Virginia Historical Drama Association ..	35,000.00
7	Calhoun County Wood Festival	2,500.00
8	Arts and Humanities Fund	150,000.00
9	New Martinsville Regatta	2,500.00
10	Braxton County Regatta	4,000.00
11	Independence Hall, Wheeling, West Virginia	125,000.00
12	White Water Weekend	2,000.00
13	Industrial Development Loan Fund	500,000.00
14	Oil and Gas Festival	2,500.00
15	National Youth Science Camp	80,000.00
16	West Virginia Water Festival	15,000.00
17	Cherry River Navy	2,000.00
18	Mothers Day Founders Festival	2,000.00
19	Total.....	\$ 2,191,030.00
20	The above appropriations, Mountain State	
21	Forest Festival, Alpine Festival, White	
22	Water Weekend, Oil and Gas Festival, West	

23 Virginia Water Festival, Calhoun County
 24 Wood Festival, New Martinsville Regatta,
 25 Braxton County Regatta, West Virginia
 26 Historical Drama Association, Cherry River
 27 Navy, and the Mothers Day Founders Festi-
 28 tival shall be expended only upon autho-
 29 rization of the Commerce Commissioner
 30 and in accordance with the provisions of
 31 Chapter 5-A of the Code of West Virginia.

32 All Federal moneys received as reimburse-
 33 ments to the Department of Commerce, for
 34 moneys expended from the General Rev-
 35 enue fund for Arts and Humanities are
 36 hereby reappropriated for the purposes as
 37 originally made, including Personal Serv-
 38 ices, Current Expenses and Equipment.

39 Any unexpended balance remaining in the
 40 appropriation "Independence Hall, Wheel-
 41 ing, West Virginia" at the close of the fiscal
 42 year 1971-72 is hereby reappropriated for
 43 expenditure during the fiscal year 1972-73.

44 Any unexpended balance remaining in the
 45 account "National Youth Science Camp"
 46 at the close of the fiscal year 1971-72 is
 47 hereby reappropriated for expenditure dur-
 48 ing the fiscal year 1972-73.

78—*Ohio River Basin Commission*

Acct. No. 469

1	Total.....	\$	20,500.00
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79—*State Commission on Manpower, Technology
and Training*

Acct. No. 470

1	Personal Services	\$	23,165.00
2	Current Expenses		7,200.00
3	Equipment		600.00
4	Total.....	\$	30,965.00

79-a—*Interstate Mining Compact*

Acct. No. 471

1	Total	\$	10,000.00
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80—*Council of State Governments*

Acct. No. 472

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

Acct. No. 473

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

82—*Ohio River Valley Water Sanitation Commission*

Acct. No. 474

1	West Virginia's contribution to the Ohio		
2	River Valley Water Sanitation Commis-		
3	sion	\$	23,657.00

83—*Southern Regional Education Board*

Acct. No. 475

1	West Virginia's contribution to Southern		
2	Regional Education Board	\$	75,000.00
3	To be expended upon requisition of the		
4	Governor.		

84—*West Virginia Air Pollution Commission*

Acct. No. 476

1	Personal Services	\$	314,055.00
2	Current Expenses		89,635.00
3	Equipment		18,750.00
			18,750.00
4	Total	\$	422,440.00

85—*Interstate Education Compact*

Acct. No. 477

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

86—*Antiquities Commission*

Acct. No. 478

1 Personal Services\$ 15,915.00
 2 Current Expenses 6,300.00
 3 Equipment 1,500.00

 4 Total\$ 23,715.00

87—*Department of Banking*

Acct. No. 480

1 Personal Services\$ 162,000.00
 2 Current Expenses 62,600.00
 3 Equipment 2,600.00

 4 Total\$ 227,200.00

88—*West Virginia State Aeronautics Commission*

Acct. No. 485

1 Personal Services\$ 28,407.00
 2 Current Expenses 19,210.00
 3 Equipment 1,600.00
 4 Aerial Markers 1,200.00
 5 Civil Air Patrol Expenses 12,000.00

 6 Total\$ 62,417.00

7 Any unexpended balance remaining in the
 8 appropriation "Airport Matching Fund" at
 9 the close of the fiscal year 1971-72 is hereby
 10 reappropriated for expenditure during fis-
 11 cal year 1972-73.

89—*West Virginia Nonintoxicating Beer Commissioner*

Acct. No. 490

1 Personal Services\$ 154,490.00
 2 Current Expenses 67,280.00
 3 Equipment 3,000.00

 4 Total\$ 224,770.00

90—*West Virginia Racing Commission*

Acct. No. 495

1	Personal Services	\$ 278,260.00
2	Current Expenses	37,980.00
3	Equipment	2,500.00
4	Total	\$ 318,740.00

AGRICULTURE

91—*Department of Agriculture*

Acct. No. 510

1	Salary of Commissioner	\$ 20,699.00
2	Other Personal Services	876,060.00
3	Current Expenses	331,985.00
4	Equipment	30,000.00
5	Total	\$ 1,258,744.00
6	Out of the above funds a sum may be used to	
7	match Federal Funds for the eradication	
8	and control of pest and plant diseases.	

92—*Department of Agriculture—Soil Conservation
Committee*

Acct. No. 512

1	Personal Services	\$ 127,410.00
2	Current Expenses	45,150.00
3	Watershed Program	100,000.00
4	Total	\$ 272,560.00
5	Any unexpended balance remaining in the	
6	Watershed Program at the end of the fiscal	
7	year 1971-72 is hereby reappropriated for	
8	expenditure during fiscal year 1972-73.	

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

Acct. No. 513

1	Matching Fund	\$ 360,000.00
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2 Any part or all of this appropriation may be
 3 transferred to Special Revenue Fund for
 4 the purpose of matching Federal Funds for
 5 the above-named program.

94—*Department of Agriculture—Meat Inspection*

Acct. No. 514

1	Unclassified	\$	276,000.00
2	Any part or all of this appropriation may be		
3	transferred to Special Revenue Fund for		
4	the purpose of matching Federal Funds for		
5	the above-named program.		
6	Any unexpended balance remaining in the		
7	appropriation "Meat Inspection" at the		
8	close of the fiscal year 1971-72 is hereby		
9	reappropriated for expenditure during the		
10	fiscal year 1972-73.		

95—*Department of Agriculture—Agricultural Awards*

Acct. No. 515

1	West Virginia State Fair	\$	30,000.00
2	Agricultural Awards		45,000.00
3	Walnut Festival		3,500.00
4	Apple Festival		1,500.00
5	Marshall Fair		2,500.00
6	Strawberry Festival		3,500.00
7	Town and Country Days		2,500.00
8	Buckwheat Festival		1,000.00
9	Potato Festival		1,500.00
10	Agricultural Exposition		5,000.00
11	Webster County Logging Festival		2,000.00
12	Paden City Labor Day Festival		2,000.00
13	Jackson County Junior Fair		1,500.00
14	Mason County Fair		3,500.00
15	Tyler County Fair		1,250.00
16	Total	\$	106,250.00

CONSERVATION AND DEVELOPMENT

96—*Geological and Economic Survey Commission*

Acct. No. 520

1	Personal Services	\$ 295,705.00
2	Current Expenses	115,932.00
3	Repairs and Alterations	6,000.00
4	Equipment	51,100.00
5	Cooperative Mapping and Water Studies Pro-	
6	gram	150,000.00
7	Total	\$ 618,737.00
8	Of the above appropriation for "Cooperative	
9	Mapping and Water Studies Program", the	
10	sum of \$65,000.00 may be used to cooperate	
11	with the United States Geological Survey	
12	in Ground Water Resources Study.	

97—*Department of Natural Resources*

Acct. No. 565

1	Personal Services	\$ 2,747,645.00
2	Current Expenses	737,950.00
3	Repairs and Alterations	285,000.00
4	Equipment	280,000.00
5	Subsistence for Conservation Officers	210,500.00
6	Debt Service	675,000.00
7	Grave Creek Mound Park	150,000.00
8	Clarke-McNary Fire Prevention	400,000.00
9	A.R.A.-E.D.A. Park Programs	100,840.00
10	Water Resources Board	12,840.00
11	U.S. Geological Survey	42,500.00
12	Rabies Control	31,500.00
13	NYC Program	30,000.00
14	Work Incentive Program	254,000.00
15	French Creek Game Farm	41,180.00
16	Berkeley Springs State Park	101,280.00
17	Reclamation Board of Review	15,000.00
18	Repairs, Replacement of Equipment and Fur-	
19	nishings at State Parks and State Forests...	400,000.00
20	Land Purchase and Development of Sand-	
21	stone Falls	75,000.00

22	Purchase of Land at Pipestem State Park.....	25,000.00
23	Land Purchase and Upgrading Facilities at	
24	Laural Lake	132,500.00
25	Coal Refuse Disposal Control Act	200,000.00

26	Total	\$ 6,947,735.00
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27 Out of the above appropriation for "Subsist-
28 ence for Conservation Officers", subsistence
29 shall be paid at the rate of five dollars per
30 calendar day to the chief conservation offi-
31 cer and each full-time uniformed conserva-
32 tion officer, under his direct supervision
33 whose primary duties and responsibilities
34 are law enforcement.

35 Any or all funds appropriated for "Clarke-
36 McNary Fire Prevention" may be trans-
37 ferred to special fund to match and aid
38 Federal Funds.

39 Any unexpended balance remaining in the
40 appropriations "Capital Improvements,
41 State Parks," "Cacapon State Park Golf
42 Course," and "Grave Creek Mound Park"
43 at the close of the fiscal year 1971-72 is
44 hereby reappropriated for expenditure
45 during the fiscal year 1972-73.

46 Any or all of the appropriation "Capital
47 Improvements, State Parks" may be used
48 to match and aid Federal Funds.

98—Public Land Corporation

Acct. No. 566

1	Total	\$ 50,000.00
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PROTECTION

99—Department of Public Safety

Acct. No. 570

1	Personal Services	\$ 4,788,960.00
2	Current Expenses	2,200,000.00

3	Repairs and Alterations	140,000.00
4	Equipment	850,000.00
5	Emergency Fund	10,000.00
		<hr/>
6	Total	\$ 7,988,960.00

100—Adjutant General—State Militia

Acct. No. 580

1	Personal Services	\$ 108,799.00
2	Current Expenses	206,495.00
3	Repairs and Alterations	24,400.00
4	Equipment	6,310.00
5	Compensation of Commanding Officers, Cleri-	
6	cal Allowances and Uniform Allowances....	94,700.00
7	Property Maintenance	206,000.00
8	State Armory Board	1,005,852.00
		<hr/>
9	Total	\$ 1,652,556.00

101—Department of Civil and Defense Mobilization

Acct. No. 581

1	Personal Services	\$ 46,615.00
2	Current Expenses	12,960.00
3	Repairs and Alterations	500.00
4	Equipment	700.00
		<hr/>
5	Total	\$ 60,775.00

102—West Virginia State Board of Land Surveyors

Acct. No. 585

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

103—State Board of Professional Foresters

Acct. No. 586

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

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

Acct. No. 587

1 To pay the per diem of members and other		
2 general expenses	\$	33,000.00
3 From Collections		33,000.00

105—*State Board of Chiropractic Examiners*

Acct. No. 588

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

106—*State Board of Pharmacy*

Acct. No. 590

1 To pay the per diem of members and other		
2 general expenses	\$	35,000.00
3 From Collections		35,000.00

107—*State Board of Osteopathy*

Acct. No. 591

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

108—*State Board of Embalmers and Funeral Directors*

Acct. No. 593

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

109—*State Board of Registration for Professional Engineers*

Acct. No. 594

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

110—*State Board of Architects*

Acct. No. 595

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

111—*State Veterinary Board*

Acct. No. 596

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

112—*State Board of Law Examiners*

Acct. No. 597

1 To pay the per diem of members and other		
2 general expenses	\$	3,900.00

113—*Human Rights Commission*

Acct. No. 598

1 Personal Services	\$	131,595.00
2 Current Expenses		65,280.00
3 Equipment		3,125.00
4 Total	\$	200,000.00

114—*West Virginia State Board of Sanitarians*

Acct. No. 599

1 To pay the per diem of members and other		
2 general expenses	\$	800.00
3 From Collections		800.00

115—*West Virginia Public Employees Retirement Board*

Acct. No. 614

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

4 The above appropriation is intended to cover
 5 the state's share of the West Virginia Pub-
 6 lic Employee's Retirement cost in accord-
 7 ance with Chapter 5, Article 10 of the Code
 8 of West Virginia for those departments
 9 operating from General Revenue Fund.
 10 The State Department of Highways, De-
 11 partment of Motor Vehicles, State Tax De-
 12 partment—Gasoline Tax Division, Work-
 13 men's Compensation Commission, Public
 14 Service Commission, and other depart-
 15 ments operating from Special Revenue
 16 Funds and/or Federal Funds shall pay
 17 their proportionate share of the retirement
 18 costs for their respective divisions. When
 19 specific appropriations are not made such
 20 payments may be made from the balances
 21 in the various Special Revenue Funds in
 22 excess of specific appropriations.

116—*West Virginia Public Employees Insurance Board*

Acct. No. 615

1 Expense Fund	\$	60,000.00
2 Public Employees Health Insurance—State		
3 Contribution		2,071,630.00
		<hr/>
4 Total.....	\$	2,131,630.00

5 The above appropriation is intended to cover
 6 the state's share of Public Employees
 7 Health Insurance costs for those spending
 8 units operating from General Revenue
 9 Fund. The State Department of Highways,
 10 Department of Motor Vehicles, Workmen's
 11 Compensation Commission, Public Service
 12 Commission, and other departments oper-
 13 ating from Special Revenue Funds and/or
 14 Federal Funds shall pay their proportion-
 15 ate share of the Public Employees Health
 16 Insurance cost for their respective divi-
 17 sions. When specific appropriations are not

- 18 made such payments may be made from
 19 the balances in the various Special Re-
 20 nue Funds in excess of specific appropria-
 21 tions.
 22 Any or all of the above appropriation may
 23 be transferred to a Special Revenue Ac-
 24 count for disbursement.

117—*Insurance Commissioner*

Acct. No. 616

1 Personal Services	\$ 384,415.00
2 Current Expenses	86,000.00
3 Repairs and Alterations	5,775.00
4 Equipment	5,250.00
	<hr/>
5 Total	\$ 481,440.00

- 1 **Sec. 2. Appropriations from Other Funds.**—From the
 2 funds designated there is hereby appropriated condition-
 3 ally upon the fulfillment of the provisions set forth in
 4 Chapter 5-A, Article 2 of the Code of West Virginia the
 5 following amounts, as itemized, for expenditure during
 6 the fiscal year one thousand nine hundred seventy-three.

118—*State Department of Highways*

Acct. No. 670

TO BE PAID FROM STATE ROAD FUND

1 Federal-Aid Construction—Interstate Pro-	
2 gram	\$172,000,000.00
3 Federal-Aid Construction—ABC Program.....	20,000,000.00
4 Appalachian Program	100,000,000.00
5 Interstate Maintenance	5,000,000.00
6 Maintenance	
7 —Expressway, Trunkline and Feeder.....	24,700,000.00
8 Maintenance	
9 —State Local Service	34,100,000.00
10 Nonfederal Aid Construction	20,000,000.00
11 Emergency Road Operations	8,200,000.00
12 Scenic Highway	1,200,000.00

13	Forest Highway	300,000.00
14	General Operations	23,000,000.00
15	Equipment Purchases	2,000,000.00
16	Inventory Purchases	1,000,000.00
17	Debt Service	37,600,000.00
18	Total	\$449,100,000.00

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

29 Funds in excess of amounts herein appropri-
 30 ated may be made available by budget
 31 amendment upon request of the Highways
 32 Commissioner and approval of the Gov-
 33 ernor.

34 The State Commissioner of Highways shall
 35 have the authority to operate revolving
 36 funds within the state road fund for the
 37 operation and purchase of various types of
 38 equipment used directly and indirectly in
 39 the construction and maintenance of roads
 40 and for the purchase of inventories and
 41 materials and supplies: *Provided*, That the
 42 operation of such revolving funds shall not
 43 cause expenditures in excess of the fore-
 44 going appropriations.

45 There is hereby appropriated, within the
 46 above line items, sufficient moneys for the
 47 payment of claims, accrued or arising dur-
 48 ing this budgetary period, to be paid in ac-
 49 cordance with Chapter 14, Article 2, Sec-
 50 tions 7 and 8 of the Code of West Virginia,
 51 one thousand nine hundred thirty-one, as
 52 amended.

53 Notwithstanding the provisions of Chapter
 54 5-A, Article 2, Section 19 of the Code of
 55 West Virginia, one thousand nine hundred
 56 thirty-one, as amended, transfer of amounts
 57 between the line items of appropriation
 58 herein is authorized.

119—*Department of Motor Vehicles*

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

1 Personal Services	\$ 892,160.00
2 Current Expenses	908,760.00
3 Equipment	30,000.00
4 Purchase of License Plates	260,000.00
5 Social Security Matching Fund	54,041.00
6 Public Employees Retirement Matching Fund	97,149.00
7 Public Employees Health Insurance	24,505.00
8 Total	<u>\$ 2,266,615.00</u>

120—*State Tax Department—Gasoline Tax Division*

Acct. No. 672

TO BE PAID FROM STATE ROAD FUND

1 Personal Services	\$ 276,410.00
2 Current Expenses	105,000.00
3 Equipment	4,000.00
4 Social Security Matching Fund	15,084.00
5 Public Employees Health Insurance	8,700.00
6 Total	<u>\$ 409,194.00</u>

121—*Department of Education—Veterans Education*

Acct. No. 702

TO BE PAID FROM GENERAL SCHOOL FUND

1 Personal Services	\$ 108,706.00
2 Current Expenses	23,350.00
3 Total	<u>\$ 132,056.00</u>

- 4 Expenditures from this appropriation shall
 5 not exceed the amount to be reimbursed by
 6 the Federal Government.
 7 Federal Funds in excess of the amounts here-
 8 by appropriated may be made available by
 9 budget amendment upon request of the
 10 State Superintendent of Schools and ap-
 11 proval of the Governor for any emergency
 12 which might arise in the operation of this
 13 division during the fiscal year.

122—*Treasurer's Office*

Acct. No. 800

TO BE PAID FROM SPECIAL REVENUE FUND

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

123—*Real Estate Commission*

Acct. No. 801

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services	\$	38,065.00
2 Current Expenses		12,530.00
3 Social Security Matching Fund		1,865.00
4 Public Employees Retirement Matching Fund		3,265.00
5 Public Employees Health Insurance		870.00
6 Total	\$	56,595.00
7 The total amount of this appropriation shall		
8 be paid out of collections of license fees as		
9 provided by law.		

124—*West Virginia Racing Commission*

Acct. No. 808

TO BE PAID FROM SPECIAL REVENUE FUND

1 Medical Expenses	\$	5,000.00
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2 The total amount of this appropriation shall
 3 be paid from Special Revenue Fund out
 4 of collections of license fees and fines as
 5 provided by law.

6 No expenditures shall be made from this
 7 account except for hospitalization, medical
 8 care, and/or funeral expenses for persons
 9 contributing to this fund.

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

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

Acct. No. 812

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services	\$	25,800.00
2 Current Expenses		16,000.00
3 Microfilm Program		5,000.00
4 Public Employees Health Insurance		600.00
5 Total	\$	47,400.00

6 The total amount of this appropriation shall
 7 be paid from Special Revenue Fund out of
 8 fees and collections as provided by law.

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

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

Acct. No. 814

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services	\$	208,195.00
2 Current Expenses		20,000.00

3	Equipment	10,000.00
4	Social Security Matching Fund	11,212.00
5	Public Employees Retirement Matching Fund	20,229.00
6	Public Employees Health Insurance	11,400.00
		<hr/>
7	Total.....	\$ 281,036.00
8	The total amount of this appropriation shall	
9	be paid from Special Revenue Fund as pro-	
10	vided by Chapter 5-A, Article 2 of the Code	
11	of West Virginia.	
12	The above appropriation includes salaries	
13	and operating expenses.	
14	There is hereby appropriated from this fund,	
15	in addition to the above appropriation, the	
16	necessary amount for the purchase of sup-	
17	plies for resale.	
18	Special funds in excess of the amounts here-	
19	in appropriated may be made available by	
20	budget amendments upon request of the	
21	Department of Finance and Administration	
22	and approval of the Governor.	

*127—Department of Finance and Administration—
Information System Services Division Fund*

Acct. No. 8151-01

TO BE PAID FROM SPECIAL REVENUE

1	Personal Services	\$ 1,320,000.00
2	Current Expenses	2,151,543.00
3	Social Security Matching Fund.....	72,415.00
4	Public Employees Retirement Matching	
5	Fund	132,297.00
6	Public Employees Health Insurance.....	69,000.00
		<hr/>
7	Total.....	\$ 3,745,255.00
8	The total amount of this appropriation shall	
9	be paid from Special Revenue Fund out of	
10	collections made by the Department of	
11	Finance and Administration as provided by	
12	law. It is the intention that special funds	

13 in excess of the amounts hereby appro-
 14 priated may be made available by budget
 15 amendments upon request of the Commis-
 16 sioner of Finance and Administration and
 17 approval of the Governor.

128—*Department of Agriculture*

Acct. No. 818

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services	\$ 241,450.00
2 Current Expenses	59,790.00
3 Equipment	25,000.00
4 Social Security Matching Fund	13,000.00
5 Public Employees Retirement Matching Fund	25,000.00
6 Public Employees Health Insurance	10,000.00
<hr/>	
7 Total	\$ 374,240.00

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

129—*State Committee of Barbers and Beauticians*

Acct. No. 822

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services	\$ 73,324.00
2 Current Expenses	35,700.00
3 Equipment	1,000.00
4 Social Security Matching Fund	3,984.00
5 Public Employees Retirement Matching Fund	7,072.00
6 Public Employees Health Insurance	1,584.00
<hr/>	
7 Total	\$ 122,664.00

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

130—*Public Service Commission*

Acct. No. 828

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salaries of Commissioners	\$	48,000.00
2	Other Personal Services		835,375.00
3	Current Expenses		134,235.00
4	Equipment		17,085.00
5	Social Security Matching Fund		31,360.00
6	Public Employees Retirement Matching Fund		80,000.00
7	Public Employees Health Insurance		13,000.00
8	Total	\$	1,159,055.00

9 The total amount of this appropriation shall
 10 be paid from Special Revenue Fund out of
 11 collections for special license fees from
 12 public service corporations as provided by
 13 law. Out of the above appropriation
 14 \$5,000.00 may be transferred to the State
 15 Water Resources Commission of the De-
 16 partment of Natural Resources for use in
 17 cooperation with the U. S. Geological Sur-
 18 vey in a program of stream gauging.

131—*Public Service Commission*
Gas Pipeline Division

Acct. No. 8285

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	86,080.00
2	Current Expenses		19,650.00
3	Equipment		5,000.00
4	Social Security Matching Fund		2,950.00
5	Public Employees Retirement Matching Fund		7,310.00

6	Public Employees Health Insurance	864.00
7	Total	\$ 121,854.00
8	The total amount of this appropriation shall	
9	be paid from Special Revenue Fund out	
10	of receipts collected for or by the Public	
11	Service Commission pursuant to and in	
12	the exercise of regulatory authority over	
13	pipeline companies.	

132—*Public Service Commission—Motor Carrier Division*

Acct. No. 829

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 344,815.00
2	Current Expenses	88,305.00
3	Equipment	5,060.00
4	Social Security Matching Fund	20,100.00
5	Public Employees Retirement Matching Fund	30,757.00
6	Public Employees Health Insurance	6,740.00
7	Total	\$ 495,777.00
8	The total amount of this appropriation shall	
9	be paid from Special Revenue Fund out of	
10	receipts collected for or by the Public Ser-	
11	vice Commission pursuant to and in the	
12	exercise of regulatory authority over motor	
13	carriers as authorized by law.	

133—*Department of Natural Resources*

Acct. No. 830

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 1,588,575.00
2	Current Expenses	640,500.00
3	Repairs and Alterations	103,000.00
4	Equipment	188,500.00
5	Public Employees Health Insurance	48,000.00
6	Land Purchase and Buildings	300,000.00
7	Total	\$ 2,868,575.00

8 The total amount of this appropriation shall
 9 be paid from Special Revenue Fund out of
 10 fees collected by the Department of Natu-
 11 ral Resources. Expenditures shall be limited
 12 to the amounts appropriated except for
 13 Federal Funds received and Special Funds
 14 collected at state parks. Special Funds in
 15 excess of the amounts hereby appropriated
 16 may be made available by budget amend-
 17 ment upon request of the Department of
 18 Natural Resources and approval of the
 19 Governor.

134—*Department of Public Safety—Inspection Fees*

Acct. No. 835

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	168,381.00
2	Current Expenses		103,720.00
3	Repairs and Alterations		8,600.00
4	Equipment		15,600.00
5	Social Security Matching Fund		1,262.00
6	Public Employees Health Insurance		4,440.00
7	Total	\$	302,003.00

8 The total amount of this appropriation shall
 9 be paid from Special Revenue Fund out of
 10 fees collected for inspection stickers as
 11 provided by law.
 12 Special Funds in excess of the amounts here-
 13 by appropriated may be made available by
 14 budget amendment upon request of the De-
 15 partment of Public Safety and approval of
 16 the Governor for the purpose of repairs
 17 to, or construction of, police barracks.

135—*West Virginia Alcohol Beverage Control*

Acct. No. 837

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salary of Commissioner	\$	16,000.00
2	Other Personal Services		4,407,210.00

3	Current Expenses	1,380,000.00
4	Repairs and Alterations	30,500.00
5	Equipment	252,500.00
6	Social Security Matching Fund	245,000.00
7	Public Employees Retirement Matching	
8	Fund	445,000.00
9	Public Employees Health Insurance	120,000.00
		<hr/>
10	Total	\$ 6,896,210.00
11	The total amount of this appropriation shall	
12	be paid from Special Revenue Fund out of	
13	liquor revenues.	
14	The above appropriation includes the salaries	
15	of store personnel, store inspectors, store	
16	operating expenses and equipment; and	
17	salaries, expenses and equipment of ad-	
18	ministration offices.	
19	There is hereby appropriated from liquor	
20	revenues, in addition to the above appro-	
21	priation, the necessary amount for the pur-	
22	chase of liquor, as provided by law.	

136—West Virginia Civil Service System

Acct. No. 840

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 257,290.00
2	Current Expenses	106,950.00
3	Social Security Matching Fund	17,067.00
4	Public Employees Retirement Matching Fund	29,276.00
5	Public Employees Health Insurance	8,280.00
		<hr/>
6	Total	\$ 418,863.00
7	The total amount of this appropriation shall	
8	be paid from Special Revenue Fund sup-	
9	ported by participating agencies as pro-	
10	vided by law.	
11	The Governor is hereby authorized to make	
12	available by budget amendment, upon re-	
13	quest of the Civil Service Commission,	

- 14 funds in excess of the amounts hereby
15 appropriated.

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

Acct. No. 853

TO BE PAID FROM SPECIAL REVENUE FUND

- | | | |
|----|--|---------------|
| 1 | Debt Service | \$ 550,417.00 |
| 2 | The total amount of this appropriation shall | |
| 3 | be paid from the nonrevolving Capital | |
| 4 | Improvement Fund created by the 1959 | |
| 5 | Legislature, amended by the 1963 Legis- | |
| 6 | lature. | |
| 7 | Any unexpended balance remaining in the | |
| 8 | appropriation for the fiscal year 1971-72 | |
| 9 | is hereby reappropriated for expenditure | |
| 10 | during the fiscal year 1972-73. | |

138—*Board of Regents—State System Special Capital
Improvement Fund*

Acct. No. 8535

TO BE PAID FROM SPECIAL REVENUE FUND

- | | | |
|----|--|------------------|
| 1 | Miscellaneous Projects | \$ 800,000.00 |
| 2 | Renovation of Existing Buildings | 245,000.00 |
| 3 | Property Acquisition | 195,000.00 |
| 4 | Campus Long Range Land Utilization and | |
| 5 | Facilities Master Planning | 150,000.00 |
| 6 | West Virginia University, Natatorium | 1,500,000.00 |
| 7 | Parkersburg Community College, Learning | |
| 8 | Resources Center and Technical Instruc- | |
| 9 | tional Facility, Phase I | 2,000,000.00 |
| 10 | Marshall University, Academic Facility, | |
| 11 | Phase I | 3,000,000.00 |
| 12 | Shepherd College, Academic Building | 2,300,000.00 |
| 13 | West Liberty State College, Science Building | 3,000,000.00 |
| 14 | West Virginia University—Woodburn Circle | |
| 15 | —Martin Hall Renovation | 1,000,000.00 |
| 16 | Total | \$ 14,190,000.00 |

17 The total amount of this appropriation shall
 18 be paid from the Capital Improvement
 19 Fund created by the 1971 Legislature.
 20 The appropriation of items on lines 1 through
 21 6 is to be paid on a cash basis and made
 22 available from date of passage; items on
 23 lines 7 through 15 are to be started as
 24 funds become available and then only in
 25 listed order of priority.

139—*Board of Regents—Special Capital Improvement Fund*
 Acct. No. 854

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service and Reserve Requirements _____\$ 2,324,167.00
 2 The total amount of this appropriation shall
 3 be paid from the nonrevolving Capital
 4 Improvement Fund created by the 1959
 5 Legislature, as amended.
 6 Any unexpended balance remaining in the
 7 appropriation for the fiscal year 1971-72 is
 8 hereby reappropriated for expenditure dur-
 9 ing the fiscal year 1972-73.

140—*West Virginia University—Medical School*
 Acct. No. 873

TO BE PAID FROM MEDICAL SCHOOL FUND

1 Personal Services	\$ 14,492,081.00
2 Current Expenses	4,722,969.00
3 Repairs and Alterations	811,807.00
4 Equipment	1,325,118.00
5 Intern and Residency Support Program for 6 Community Hospitals	310,000.00
7 Total	<u>\$ 21,661,975.00</u>

8 The above includes the appropriation to be
 9 transferred from Account No. 285.
 10 Special funds in excess of the amounts here-
 11 by appropriated may be made available by

- 12 budget amendment upon request of the
 13 Board of Regents and approval of the
 14 Governor.

141—*Workmen's Compensation Commission*

Acct. No. 900

TO BE PAID FROM WORKMEN'S COMPENSATION FUND

1 Personal Services	\$ 1,143,040.00
2 Current Expenses	437,085.00
3 Equipment	23,700.00
4 Social Security Matching Fund	64,000.00
5 Public Employees Retirement Matching Fund	120,000.00
6 Public Employees Health Insurance	33,040.00
7 U. S. Department of Labor Statistics	28,447.00

8 Total

8 Total

- 9 There is hereby authorized to be paid out of
 10 the above appropriation for current ex-
 11 penses the amount necessary for the pre-
 12 miums on bonds given by the State Treas-
 13 urer and bond custodian for the protection
 14 of the Workmen's Compensation Fund.
 15 This sum shall be transferred to the Board
 16 of Insurance.

- 1 **Sec. 3. Supplemental and Deficiency Appropriations.—**
 2 From the State Fund, General Revenue, except as other-
 3 wise provided, there are hereby appropriated the follow-
 4 ing amounts, as itemized, for expenditure during the
 5 fiscal year one thousand nine hundred seventy-two to
 6 supplement the 1971-72 appropriations, and to be available
 7 for expenditure upon date of passage.

142—*Supreme Court of Appeals*

Acct. No. 110

1 Current Expenses	\$ 11,000.00
2 Equipment	20,000.00
3 Total	<hr/> \$ 31,000.00

143—*State Law Library*

Acct. No. 114

1	Personal Services	\$	1,800.00
2	Current Expenses		12,000.00
3	Total	\$	13,800.00

144—*Department of Finance and Administration*

Acct. No. 210

1	Current Expenses	\$	53,000.00
2	Equipment		7,000.00
3	Postage		30,000.00
4	Fire Service Fee		73,965.00
5	Total	\$	163,965.00

145—*West Virginia Board of Regents (Control)*

Acct. No. 279

1	Marshall University	\$	195,000.00
2	The above appropriation is to be used for		
3	the establishing on the campus of or prop-		
4	erty owned by Marshall University, a track		
5	field and baseball field.		
6	Any unexpended balance remaining in the		
7	appropriation at the close of the fiscal year		
8	1971-72 is hereby reappropriated for the		
9	expenditure during the fiscal year 1972-73.		

146—*Teachers Retirement Board*

Acct. No. 298

1	Benefit Fund—Payments to Retired Teachers	\$	0,000,000.00
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147—*West Virginia Industrial Home for Girls*

Acct. No. 372

1	Personal Services	\$	3,725.00
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148—*West Virginia Penitentiary*

Acct. No. 375

1	Purchase of Building and Land.....	\$	40,000.00
2	Repairs and Alterations		20,000.00
3	Renovation and Installation of Recreation		
4	Equipment		25,000.00
5	Total.....	\$	85,000.00

149—*Huttonsville Correctional Center*

Acct. No. 376

1	Current Expenses	\$	50,000.00
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150—*State Department of Health*

Acct. No. 400

1	Local Health Services	\$	50,000.00
2	Out of the above appropriation a sum of		
3	\$25,000.00 is to be used to develop a com-		
4	munity Health Center in Tyler County,		
5	West Virginia.		
6	Any unexpended balance remaining in the		
7	above appropriation at the close of the		
8	fiscal year 1971-72 is hereby reappropriated		
9	for expenditure during the fiscal year 1972-		
10	73.		

151—*Department of Mental Health*

Acct. No. 410

1	Day Care Centers	\$	30,000.00
2	Community Mental Health Programs.....		54,226.00
3	Roney's Point Branch Hospital.....		20,900.00
4	Total.....	\$	105,126.00

152—*Colin Anderson Center*

Acct. No. 419

1	Personal Services	\$	54,150.00
2	Current Expenses		24,830.00
3	Equipment		13,816.00
4	Total	\$	92,796.00

153—*Weston State Hospital*

Acct. No. 420

1	Current Expenses	\$	27,000.00
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154—*Spencer State Hospital*

Acct. No. 421

1	Personal Services	\$	9,000.00
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2	Current Expenses		31,800.00
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3	Repairs and Alterations		16,000.00
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4	Boiler Plant		529,000.00
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5	Total	\$	585,800.00
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6 Any unexpended balance remaining in the
7 appropriation "Boiler Plant" at the close
8 of the fiscal year 1971-72 is hereby reappro-
9 priated for expenditure during the fiscal
10 year 1972-73.

155—*Huntington State Hospital*

Acct. No. 422

1	Current Expenses	\$	17,800.00
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156—*Lakin State Hospital*

Acct. No. 423

1	Current Expenses	\$	18,500.00
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157—*Barboursville State Hospital*

Acct. No. 424

1	Personal Services	\$	10,000.00
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2	Current Expenses		4,500.00
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3	Total	\$	14,500.00
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158—*Pinecrest State Hospital*

Acct. No. 431

1	Personal Services	\$	15,975.00
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2	Equipment		7,166.00
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3	Total	\$	23,141.00
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159—*Ohio River Basin Commission*

Acct. No. 469

1	Total	\$	15,100.00
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160—*Department of Agriculture*

Acct. No. 510

1	Marihuana and Multiflora Rose Eradication		
2	Program	\$	60,000.00
3	Laboratory Facility—Rent and Moving Ex-		
4	penses		196,700.00
			256,700.00
5	Total	\$	256,700.00

6 Any unexpended balance remaining in the
7 above appropriation at the close of the
8 fiscal year is hereby reappropriated for ex-
9 penditure during the fiscal year 1972-73.

161—*Department of Agriculture—Agricultural Awards*

Acct. No. 515

1	Webster Logging Festival	\$	1,000.00
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162—*Department of Natural Resources*

Acct. No. 565

1	Equipment	\$	111,000.00
2	Purchase of Land and Building		58,000.00
			169,000.00
3	Total	\$	169,000.00

163—*Adjutant General*

Acct. No. 580

1	Current Expenses	\$	34,500.00
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164—*State Auditor's Office—Social Security*

Acct. No. 582

1	Total	\$	400,000.00
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165—*State Board of Law Examiners*

Acct. No. 597

1 Total\$ 250.00

166—*West Virginia Public Employees Retirement Board*

Acct. No. 614

1 Employers Accumulation Fund\$ 0,000,000.00

167—*Department of Motor Vehicles*

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

1 License Plates—Total\$ 171,363.00

1 **Sec. 4. Appropriations from Surplus Revenue.**—The
 2 following items are hereby appropriated from the State
 3 Fund, General Revenue and are to be available for ex-
 4 penditure during the fiscal year 1972-73, out of surplus
 5 funds only, subject to the terms, conditions, and priority
 6 schedule set forth in this section.

7 By Executive Message No. 23, dated February twenty-
 8 one, one thousand nine hundred seventy-two, the Governor
 9 stated, in part, that surplus revenues available for ap-
 10 propriation from the State Fund, General Revenue will be
 11 \$46,027,910.00 by the end of the 1971-72 fiscal year. It is the
 12 intent and mandate of this Legislature that the following
 13 itemized appropriations made by this section shall be pay-
 14 able only from the surplus accrued as of June 30, 1972.

15 In the event that surplus revenues as of June 30, 1972
 16 are not sufficient to meet all appropriations made by this
 17 section, then the appropriation shall be available, in prior-
 18 ity order as listed, only to the extent of the total actual
 19 surplus accrued as of June 30, 1972.

Item I. *West Virginia Schools for the Deaf
 and the Blind*\$ 1,215,050.00

1 New Dormitory and Equipment.

Item II. *State Board of Education-Vocational
 Rehabilitation*\$ 4,148,000.00

- 1 Construction of Student Activities Center
- 2 Building. May also be used for the con-
- 3 struction of client dormitories if Federal
- 4 matching funds become available.

Item III. *Department of Agriculture*\$ 150,000.00

- 1 Construction of a new Cold Storage Facil-
- 2 ity at Inwood, West Virginia.

Item IV. *State Board of Education-Vocational Education*\$ 3,500,000.00

- 1 Division for the Construction of Compre-
- 2 hensive Community Technical Education
- 3 Centers with participating funds from the
- 4 Federal Vocational Training Act—Appala-
- 5 chian Regional Commission and Economic
- 6 Development Administration.

Item V. *Governor's Office—Federal-State Co-ordination*\$ 3,000,000.00

- 1 Earmarked specifically for participation in
- 2 the Environmental Protection Agency
- 3 Sewage and Water Treatment Facility Pro-
- 4 gram—State Matching Funds for Water
- 5 Quality Sewage Programs.

Item VI. *Mental Health—Total*\$ 7,442,360.00

The above appropriation is for the following:

1. *Weston State Hospital* 200,000.00

- 1 Repair and replace roof of main building.
- 2 The roof has deteriorated due to age and
- 3 leaks. This roof has been leaking several
- 4 years and has caused considerable damage
- 5 to the building and contents.

2. *Colin Anderson Center* 194,400.00

- 1 Air conditioning of Dormitory and Cottage
- 2 Building. This work will provide air con-
- 3 ditioning and air circulation for this section
- 4 which is plagued with poor air circulation

5 in both winter and summer. This project
6 is completely designed and can be installed
7 for use next summer.

3. *Colin Anderson, Weston, Lakin, Spencer,
Huntington, Barboursville* 619,400.00

1 Provide fire detection devices and other
2 renovations necessary to comply to recom-
3 mendations of the State Fire Marshal. This
4 will eliminate only the most serious of
5 our fire hazard violations.

4. *Spencer State Hospital* 1,181,800.00

1 Food Service and Administration Building.
2 Demolish the present food service building
3 and center of the main hospital building
4 and construct new building for food service,
5 food storage and the administration section.
6 This construction will eliminate a serious
7 fire hazard since part of each of these build-
8 ings have been closed by the State Fire
9 Marshal's Office.

5. *Colin Anderson Center* 351,000.00

1 Kitchen and Food Storage Building. The
2 existing kitchen and food storage area is
3 located in the basement of the Dormitory
4 Building. This area is subject to floods
5 from surface water and sewers which on
6 occasions have contaminated food.

6. *Roney's Point Center* 140,000.00

1 Day Care and Workshop for the Mentally
2 Retarded. Provide day care and rehabilita-
3 tion services for Wheeling area. Federal
4 Funds have been allocated for the construc-
5 tion of this project and construction can
6 start as soon as additional State funds are
7 available. The estimated cost of this proj-
8 ect is \$843,096 and \$140,000 of State funds
9 are necessary for matching funds and to
10 cover miscellaneous costs.

7. <i>Colin Anderson, Weston, Lakin, Spencer</i>	440,000.00
1 Upgrade electrical distribution system. Sys-	
2 tem is antiquated and does not meet the	
3 modern day supply and demand.	
8. <i>Weston State Hospital</i>	220,000.00
1 Repairs to Steam Distribution System. Be-	
2 cause of the complexity of the problems,	
3 this should be done in several stages. These	
4 repairs will correct the most serious sec-	
5 tions of the heating system.	
9. <i>Lakin State Hospital</i>	1,508,260.00
1 New construction, renovation and remodel-	
2 ing to develop adolescent training and	
3 treatment, housing for adult male patients	
4 and supporting facilities.	
10. <i>Huntington State Hospital</i>	1,021,500.00
1 New construction of multi-purpose build-	
2 ing for central kitchen, dining room and	
3 recreation area. This building will replace	
4 the current recreation building and the	
5 crafts department located over the main	
6 kitchen and, also, will contain space for	
7 additional classrooms.	
11. <i>Spencer State Hospital</i>	200,000.00
1 Water Tank. The present open top tank	
2 does not meet the Health Department's	
3 regulations.	
12. <i>Weston State Hospital</i>	200,000.00
1 Water Tank. The present open top tank	
2 does not meet the Health Department's	
3 regulations.	
13. <i>Weston State Hospital</i>	1,166,000.00
1 New construction of new multi-purpose	
2 and therapeutics building. At present,	
3 there is no single building in which various	
4 activity therapies, recreation, education,	
5 canteen and similar services can be carried	

6 out. This has resulted with programs pres-
 7 ently scattered throughout the large hos-
 8 pital complex, often in inadequate and im-
 9 properly designed structures, and with
 10 resultant loss of efficiency.

Item VII. *Public Institutions—Total*\$ 5,809,500.00

The above appropriation is for the following:

1. <i>West Virginia Penitentiary</i>		750,000.00
1 Construction of new dining room, construc-		
2 tion of a psychiatric ward, food shop and		
3 kitchen; relocation of hospital within the		
4 institution and construction of facility for		
5 mentally ill.		
2. <i>Denmar State Hospital</i>		136,000.00
1 Roofing Nurses Home	\$ 12,000.00	
2 Sewers and sewage treatment..	29,000.00	
3 Power Plant		
4 (for emergency use)	20,000.00	✓
5 150,000 Gallon Water Tank	40,000.00	
6 Renovate Prison Barracks to be		
7 used as efficiency apartments	35,000.00	
3. <i>Pinecrest State Hospital</i>		19,000.00
1 Construct a new destructor	8,000.00	
2 Construct metal building for		
3 storage	11,000.00	
4. <i>Hopemont State Hospital</i>		992,500.00
1 Fire Alarm System for Units		
2 "A" and "B"	16,000.00	
3 Fire Alarm System for Admin-		
4 istration Building and Annex	15,500.00	
5 Deep Well Water System	6,000.00	
6 Gas Turbine Auxiliary 300 KW		
7 Electric Standby Power Unit	35,000.00	
8 Renovation of Conley Hall	920,000.00	
5. <i>Fairmont Emergency Hospital</i>		1,000,000.00
1 New Building and renovation.		

6. <i>Andrew S. Rowan Memorial Home</i>	1,885,000.00
1 Construction of Men's Dormitory.	
7. <i>Huttonsville Correctional Center</i>	203,000.00
1 Indoor Recreation Facilities.	
8. <i>Forestry Camp for Boys (Leckie)</i>	11,000.00
1 Preconstructed Steel Building.	
9. <i>Industrial Home for Girls</i>	88,000.00
1 Renovation of Sutton Hall.	
10. <i>Forestry Camp for Boys (Davis)</i>	30,000.00
1 Shop Building.	
11. <i>Industrial School for Boys</i>	695,000.00
1 New Dormitory	675,000.00
2 Portico	20,000.00
Item VIII. <i>Statewide Comprehensive Mental Health Centers</i>	\$ 2,000,000.00
1 To match Federal Funds for construction	
2 of statewide comprehensive community	
3 mental health centers, and mental re-	
4 tardation centers.	
Item IX. <i>Department of Natural Resources—</i>	
Total	\$ 4,708,000.00

The above appropriation is for the following:

1. <i>French Creek Game Farm</i>	150,000.00
1 Develop water supply for all facilities and	
2 uses of the area. Upgrade present animal	
3 and bird exhibits in the public zoo areas.	
4 Purchase of adjacent land. Construction	
5 of two lakes and access roads.	
2. <i>Twin Falls State Park</i>	150,000.00
1 Pave park roads and cabin area roads.	
2 Pave golf cart paths. Grade, drain and	
3 base two mile trail to falls. Construct ga-	
4 rage at residence. Construct game courts.	
5 Construct picnic area (100 sites). Expand	

6	camping facilities. Bureau of Outdoor	
7	Recreation Reimbursement is available.	
	3. <i>Cabwaylingo State Forest</i>	180,000.00
1	Correct poor drinking water condition by	
2	developing approved water supply, reser-	
3	voir and treatment system. Improve-	
4	ments to campground area, rock basing	
5	and draining road, and approved rest-	
6	room facilities. Construct two reservoirs	
7	to handle water storage needs. Group	
8	camp improvements. Bureau of Outdoor	
9	Recreation Reimbursement is available.	
	4. <i>Grave Creek Mound</i>	100,000.00
1	Land purchase, demolition and parking lot	
2	construction.	
	5. <i>Grandview State Park</i>	220,000.00
1	Construct storage building. Pave and light	
2	existing parking lot. Construct canopy	
3	shelter and expand concession area for	
4	amphitheatre. Land purchase and con-	
5	struct new parking lot, pave and light	
6	(pending purchase). Bureau of Outdoor	
7	Recreation Reimbursement is available.	
	6. <i>Cedar Creek State Park</i>	120,000.00
1	Construct new water system and park	
2	office. Bureau of Outdoor Recreation	
3	Reimbursement is available.	
	7. <i>Camp Creek State Forest</i>	75,000.00
1	Construct dam on Farley's Branch.	
2	Bureau of Outdoor Recreation Reim-	
3	bursment is available. Development of	
4	new picnic area around dam.	
	8. <i>Watoga State Park</i>	235,000.00
1	Construct maintenance building and work-	
2	shop. Construct and develop campsites	
3	along Greenbrier River. Boat docks and	
4	walkways. Bureau of Outdoor Recreation	
5	Reimbursement (Partial) is available.	

9. <i>Big Ditch (Webster County)</i>	100,000.00
1 Campground and picnic development, in-	
2 cluding utilities. Bureau of Outdoor Rec-	
3 reation Reimbursement is available. Soil	
4 Conservation Service Cost Participation	
5 is available.	
10. <i>Stonewall Jackson Lake (State Park)</i> ...	300,000.00
1 Land purchase. Federal Aid is available.	
11. <i>Plum Orchard Lake</i>	30,000.00
1 Campsites. Bureau of Outdoor Recreation	
2. Reimbursement is available.	
12. <i>Cooper's Rock State Forest</i>	250,000.00
1 Emergency need for the development of an	
2 adequate water and filtering system so	
3 as to provide necessary water for all	
4 needs. Completion of partially developed	
5 picnic area. Top coat of hot-laid asphalt	
6 cement from Route 73 to and including	
7 parking area at "Rocks." Place rock and	
8 blacktop parking lot and spur roads in	
9 the picnic area. Construction of a resi-	
10 dence, garage, storage building, water	
11 and accessories for added permanent per-	
12 sonnel. Construction of a restaurant and	
13 visitors center, to include all necessary	
14 water, electric and sanitary facilities.	
15 Construction of equipment and storage	
16 building. Bureau of Outdoor Recreation	
17 Reimbursement (Partial) is available.	
13. <i>Mill Creek—Staats Mills</i> <i>(Jackson County)</i>	410,000.00
1 Land acquisition and recreational develop-	
2 ment (picnic, camping areas, utilities,	
3 etc.). Bureau of Outdoor Recreation	
4 Reimbursement is available. Soil Conser-	
5 vation Service Cost Participation is	
6 available.	

14. <i>Little Beaver State Park</i>	220,000.00
1 Lake Restoration Campground and Picnic	
2 Development. Construct Sanitary Faci-	
3 lities and Water System. Construct	
4 park headquarters and concession. Land	
5 acquisition. Bureau of Outdoor Recrea-	
6 tion Reimbursement is available.	
15. <i>Beech Fork Lake (State Park)</i>	100,000.00
1 Land purchase. Bureau of Outdoor Recrea-	
2 tion Reimbursement is available.	
16. <i>Canyon Rim (Fayette County)</i>	130,000.00
1 Land purchase 2,000 acres. Bureau of Out-	
2 door Recreation Reimbursement is avail-	
3 able.	
17. <i>Greenbrier State Forest</i>	125,000.00
1 Develop water and filtering system so as	
2 to provide acceptable water for all forest	
3 needs. Water drainage correction in cabin	
4 area and winterize cabins. Service build-	
5 ing in cabin area. Expansion of camp-	
6 ground area and playground develop-	
7 ment. Overlook development (Kate's	
8 Mountain). Bureau of Outdoor Recrea-	
9 tion Reimbursement (Partial) is avail-	
10 able.	
18. <i>Cass Scenic Railroad</i>	70,000.00
1 Construct "Rolling Stock" storage facility.	
2 Construct picnic shelters. Construct ex-	
3 tension of switchbacks for passing pur-	
4 poses. Feasibility Study for future de-	
5 velopment of the Cass Scenic Railroad.	
6 Bureau of Outdoor Recreation Reim-	
7 bursement (Partial) is available.	
19. <i>Babcock State Park</i>	20,000.00
1 Improve water system, install pipeline,	
2 etc. Bureau of Outdoor Recreation Reim-	
3 bursement is available.	

20. <i>Blackwater Falls State Park</i>	80,000.00
1 Construct residence. Pave sled run road	
2 and parking area. Bureau of Outdoor	
3 Recreation Reimbursement is available.	
21. <i>Fire Control</i>	60,000.00
1 Forestry Division Improvements a/o re-	
2 placements to observer's cabins and for-	
3 est fire towers. There are five sites	
4 where these facilities have deteriorated	
5 to a condition that replacement is im-	
6 perative. Location: Ivy Knob Tower Site,	
7 Raleigh County; Huff Knob Tower Site,	
8 Mercer County; Sugar Grove Tower Site,	
9 Nicholas County; Blair Mt. Tower Site,	
10 Logan County; Bee Mt. Tower Site,	
11 Kanawha County. Maintenance and stor-	
12 age shop needed for fire control equip-	
13 ment 20' x 20' equipment storage shed	
14 and shop area with benches. Overall	
15 dimensions of building to 20' x 60' with	
16 an all weather parking area adjacent.	
17 Location: Kanawha State Forest, Kana-	
18 wha County. Federal Aid is available.	
22. <i>Panther State Forest</i>	50,000.00
1 Campground and picnic area development.	
2 Bureau of Outdoor Recreation Reim-	
3 bursement is available.	
23. <i>Tomlinson Run State Park</i>	150,000.00
1 Siltation removal and lake improvement.	
2 Completion of day-use recreational area	
3 and sanitary systems. Bureau of Outdoor	
4 Recreation Reimbursement is available.	
24. <i>North Bend State Park</i>	75,000.00 ✓
1 For developing and upgrading the camp-	
2 sites.	
25. <i>Seneca State Forest</i>	100,000.00
1 Construction of Office-Interpretative Build-	
2 ing, water, sewer line and septic tank-	

3 drainage field. Rock basing and black-
 4 topping road from office to lake area ap-
 5 proximately two miles. Expansion of pic-
 6 nic facilities including construction and
 7 development of a twenty-five site camp-
 8 ing area. Construction of storage and
 9 planning building. Landscaping, includ-
 10 ing cement walks, trees and shrubs, grass
 11 and appropriate sign. Land acquisition.
 12 Development of access road along Green-
 13 brier River front. Develop approved
 14 sanitary facilities for cabin and picnic
 15 area. Bureau of Outdoor Recreation Re-
 16 imbursement is available.

26. *Upper Buffalo Fork (Marion County)*

Land Acquisition 100,000.00

1 Soil Conservation Service Cost Participa-
 2 tion is available.

27. *Tygart Lake State Park* 80,000.00

1 Construct parking lot exit road and boat
 2 dock parking lot.

28. *Kanawha State Forest Land Acquisition* 220,000.00

1 Campground expansion and improvements.
 2 Bureau of Outdoor Recreation Reim-
 3 bursement is available.

29. *Beartown State Park* 20,000.00

1 Construction of roads, parking area and
 2 trails. Bureau of Outdoor Recreation
 3 Reimbursement is available.

30. *Chief Logan State Park* 60,000.00

1 Install filtering system for pool. Construct
 2 maintenance and shop building. Bureau
 3 of Outdoor Recreation Reimbursement
 4 is available.

31. *Rumsey Memorial* 15,000.00

1 Land acquisition and ground improve-
 2 ments.

32. <i>Reeds Creek Fish Hatchery Pendleton County</i>	600,000.00
33. <i>Pleasant Creek Public Hunting & Fishing Area</i>	30,000.00
1 Upgrade campsites and sanitary facilities.	
2 Construct and install boat ramps. Bureau	
3 of Outdoor Recreation Reimbursement	
4 is available.	
34. <i>Putnam County Recreational Development</i>	3,000.00
1 Project development.	
35. <i>Lost River State Park</i>	30,000.00
1 Road improvements. Land acquisition and	
2 campground development.	
36. <i>Moncove Lake</i>	50,000.00
1 Picnic and camping facilities.	
Item X. <i>FFA-FHA Camp and Conference Center</i>	\$ 525,000.00
1 Dining Hall and Water Tank.	
Item XI. <i>West Virginia Board of Regents</i>	\$ 300,000.00
1 A performance testing facility.	
Item XII. <i>Central Mental Health-Mental Retardation Facility</i>	\$ 6,000,000.00
1 To establish, develop, operate, and main-	
2 tain a new central mental health-mental	
3 retardation facility for the evaluation,	
4 diagnosis, treatment, research and train-	
5 ing and rehabilitation of persons disabled	
6 by mental illness and/or mental retarda-	
7 tion and to include, but not to be limited	
8 to, alcoholism and drug abuse facilities,	
9 specific residential facilities designed for	
10 diagnosis, treatment, research and train-	
11 ing, and rehabilitation of mentally ill	
12 children, adolescents, and other special-	
13 ized groups; such facility to be located on	

14 a site selected in accordance with the
 15 state comprehensive mental health and
 16 mental retardation plans, such facility
 17 shall also serve as a designated com-
 18 ponent as one of the fourteen regional
 19 mental health centers.

Item XIII. *State Aeronautics Commission*.....\$ 450,000.00 ✓
 1 Airport Matching Fund.

Item XIV. *West Virginia Library Commission* \$ 450,000.00
 1 State Matching Fund

1 **Sec. 5. Awards for Claims Against the State.**—From
 2 the funds designated there are hereby appropriated for
 3 the remainder of the fiscal year 1971-72 and to remain in
 4 effect until June 30, 1973, for payment of claims against
 5 the state, the following amounts as itemized:

6 (a) Claims versus the Department of Highways:

7 To Be Paid from State Road Fund

8	(1) Estate of L. M. Gates, by Florence	
9	C. Gates, Executrix	\$ 89.25
10	(2) Safeco Insurance Company	166.86
11	(3) Frank & Arnold Whitehair	107.08
12	(4) William Bryant	400.00
13	(5) Bertha G. Barton	2,531.00
14	(6) Harleysville Mutual Insurance Co.,	
15	subrogee of Lena Nancy Shaver ...	226.88
16	(7) Arden Harmon	27.86
17	(8) Vecellio and Grogan, Inc., and	
18	Foster and Creighton Co.	5,331.25
19	(9) Lurleen (Mrs. John, Jr.) Buckner..	171.96
20	(10) Steve and Mary Bukovinsky	725.00
21	(11) Nationwide Insurance Co., subro-	
22	gee for Fred or Carolyn Runyon ...	553.65
23	(12) Collins and Ruth Rivers	3,246.00
24	(13) Tri-State Stone Corporation	112,910.24
25	(14) Earl L. Wright	106.75

26	(15)	Herbert and Lovie Thomas	900.00
27	(16)	Joseph and Kathleen Sands	1,450.00
28	(17)	Gloria L. Randolph	235.00
29	(18)	Clyde W. Reinhart	3,381.99
30	(19)	Jerry A. Robey	42.23
31	(20)	Paul W. Dixon	6,500.00
32	(21)	Paul W. Dixon	1,210.00
33	(22)	Roy W. Powers	131.32
34	(23)	Vecellio and Grogan, Inc.	5,895.68
35	(24)	Robert D. Smith	220.42
36	(25)	Murl E. Atkins	945.57
37	(26)	Sam Caldwell	1,082.95
38	(27)	A. M. Foley	3,530.54
39	(28)	The Trustees, Kanawha Aerie No. 1040, Fraternal Order of Eagles ...	2,776.09
40			
41	(29)	Kayton Theatre, Inc.	701.81
42	(30)	Anna Cater Murad, widow and sole devisee of Louis F. Murad, de- ceased, and Ida Cater, widow	1,296.95
43			
44			
45	(31)	Progressive Investments, Inc.	1,249.04
46	(32)	Freda Tabit, widow and devisee of Andrew Tabit, deceased	1,874.38
47			
48	(33)	Algie Chiles	751.57
49	(34)	Joseph W. Drasnin, trading and do- ing business as Drasnin's Men's Shop	2,400.00
50			
51			
52	(35)	Mary Ellis	437.00
53	(36)	John Fragale, d/b/a Top Hat Bil- liards	159.78
54			
55	(37)	Aetna Insurance Company, sub- rogee of John Fragale, d/b/a Top Hat Billiards	55.11
56			
57			
58	(38)	Fidelity-Phenix Insurance Com- pany, subrogee of John Fragale, d/b/a Top Hat Billiards	27.55
59			
60			

61	(39)	Home Insurance Company, subrogee of John Fragale, d/b/a Top Hat Billiards	55.11
62			
63			
64	(40)	New Hampshire Insurance Company, subrogee of John Fragale, d/b/a Top Hat Billiards	55.11
65			
66			
67	(41)	Phoenix Assurance Company, subrogee of John Fragale, d/b/a Top Hat Billiards	68.88
68			
69			
70	(42)	Phoenix Insurance Company, subrogee of John Fragale, d/b/a Top Hat Billiards	68.88
71			
72			
73	(43)	Eddie Gonano, trading and doing business as Ed's Place	3,032.53
74			
75	(44)	Belva Halsey, d/b/a Belva's Beauty Shop	1,000.00
76			
77	(45)	L. J. Hark, trading and doing business as Drasnin's Tailor Shop	2,280.88
78			
79	(46)	Robert W. Jackson, trading and doing business as Henderson's Drug Store	2,368.27
80			
81			
82	(47)	E. W. Kelly, trading and doing business as E. W. Kelly Store	1,450.00
83			
84	(48)	Mearns, Inc., a corporation, trading and doing business as The Fashion Shop	11,000.00
85			
86			
87	(49)	Montgomery Hardware Company, Inc.	5,125.01
88			
89	(50)	Montgomery Motors, Inc.	1,055.37
90	(51)	Aetna Insurance Company, subrogee of Montgomery Motors, Inc.	4,723.55
91			
92	(52)	Fidelity-Phenix Insurance Company, subrogee of Montgomery Motors, Inc.	7,834.13
93			
94			
95	(53)	Home Insurance Company, subrogee of Montgomery Motors, Inc.	11,336.52
96			
97	(54)	Phoenix Insurance Company, subrogee of Montgomery Motors, Inc.	10,000.00
98			

99	(55)	The Phoenix Insurance Company..	37,536.42
100	(56)	O. E. Palmer, Administrator, c t a	
101		d b n the estate of A. A. Mitchell,	
102		deceased, and Mary Rose	269.00
103	(b)	Claims versus the Office of the Governor:	
104		To Be Paid from General Revenue Fund	
105	(1)	George N. Peraldo, d/b/a Pauley	
106		Drilling Company	11,119.33
107	(2)	United Air Lines, Inc.	1,040.20
108	(c)	Claims versus the State Auditor:	
109		To Be Paid from General Revenue Fund	
110	(1)	Maciej Gal	3,100.46
111	(d)	Claims versus the Department of	
112		Finance and Administration:	
113		To Be Paid from General Revenue Fund	
114	(1)	Retreading Research Associates,	
115		Inc.	5,400.00
116	(e)	Claims versus the West Virginia Board	
117		of Regents:	
118		To Be Paid from General Revenue Fund	
119	(1)	State Farm Mutual Automobile In-	
120		surance Co., as subrogee for Da-	
121		maris O. Wilson	97.56
122	(2)	Appraisal & Realty Service, Inc. ...	750.00
123	(3)	Thomas Oliver Mucklow	1,595.00
124	(f)	Claims versus the Department of Mental	
125		Health:	
126		To Be Paid from General Revenue Fund	
127	(1)	Singer Sheet Metal Company, Inc...	5,928.00
128	(g)	Claims versus the Department of Labor:	
129		To Be Paid from General Revenue Fund	
130	(1)	Lawrence Barker	300.00
131	(h)	Claims versus the Adjutant General:	
132		To Be Paid from General Revenue Fund	
133	(1)	Andy & Lora Shanabarger	89.00

134	(i)	Claims versus the Department of Natural	
135		Resources:	
136		To Be Paid from General Revenue Fund	
137	(1)	Budget Rent A Car of Cleveland,	
138		Inc.	44.59
139	(2)	Fred E. Blair	1,464.00
140	(3)	Willard Blair	1,236.00
141	(4)	Trebag Enterprises, Inc.	3,000.00
142	(j)	Claims versus the State Building Com-	
143		mission:	
144		To Be Paid from Special Revenue Fund	
145	(1)	First National Bank of South	
146		Charleston, as assignee of C & D	
147		Equipment Company	29,907.68
148	(2)	Orpha E. Jones	5,425.00
149	(k)	Claims versus the Department of	
150		Finance and Administration:	
151		To Be Paid from Special Revenue Fund	
152	(1)	Columbia Ribbon & Carbon Manu-	
153		facturing Company	3,186.80
154	(l)	Claims versus the Alcohol Beverage	
155		Control Commissioner:	
156		To Be Paid from Special Revenue Fund	
157	(1)	Blanton M. Friddle	946.95

158 The Legislature finds that the above moral obligations
 159 and the appropriations made in satisfaction thereof shall
 160 be the full compensation of all claimants, and that prior
 161 to the payment to any claimant provided for in this bill,
 162 the court of claims shall receive a release from said
 163 claimant releasing any and all claims for moral obliga-
 164 tions arising from the matters considered by the
 165 Legislature in the finding of the moral obligations and
 166 the making of the appropriations for said claimant. The
 167 court of claims shall deliver all releases obtained from
 168 claimants to the department against which the claim
 169 was allowed.

1 **Sec. 6. Legislative Findings of Fact Claims.**—The
 2 Legislature has heretofore made findings of fact that

3 the state has received the benefit of the commodities
 4 and services rendered by certain claimants herein and
 5 has considered claims against the state and the depart-
 6 ment of mental health, an agency thereof, which have
 7 arisen due to over-expenditures of departmental appro-
 8 priations by officers of such state spending unit, such
 9 claims having been previously considered by the court
 10 of claims which also found that the state has received the
 11 benefit of the commodities and services rendered by each
 12 claimant, but were denied by the court of claims on the
 13 purely statutory grounds that to allow such claims would
 14 be condoning illegal acts contrary to the laws of the state.
 15 The Legislature, pursuant to its findings of fact and also
 16 by the adoption of the findings of fact by the court of
 17 claims as its own, and, while not condoning such illegal
 18 acts, hereby declares it to be the moral obligation of the
 19 state to pay each such claim in the amount specified
 20 below, and directs the auditor to issue warrants upon
 21 receipt of a properly executed requisition supported by
 22 an itemized invoice, statement or other satisfactory docu-
 23 ment as required by Section 10, Article 3, Chapter
 24 12 of the Code of West Virginia, one thousand nine hun-
 25 dred thirty-one, as amended, for the payment thereof
 26 out of any fund appropriated and available for the pur-
 27 pose.

28	Claims versus the Department of Mental	
29	Health:	
30	To Be Paid from General Revenue Fund	
31	(1) The Upjohn Company	\$ 136.70
32	(2) P. B. & S. Chemical Company	56.25
33	(3) Ralph E. Rinard, d/b/a Rinard Coal	
34	Company	633.60
35	(4) 3M Business Products Center Com-	
36	pany	61.40
37	(5) Karoll's, Inc.	1,308.94
38	(6) Will Ross, Inc.	190.05

39	(7) Bristol Laboratories, Division of	
40	Bristol-Myers Company	462.50

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

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

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

1 **Sec. 8. Specific Funds and Collection Accounts.**—A
 2 fund or collection account, which by law is dedicated to a
 3 specific use is hereby appropriated in sufficient amount to
 4 meet all lawful demands upon the fund or collection ac-
 5 count, and shall be expended according to the provisions of
 6 Chapter 12, Article 3 of the Code of West Virginia.

1 **Sec. 9. Appropriation for Refunding Erroneous Pay-**
 2 **ments.**—Money that has been erroneously paid into the
 3 state treasury is hereby appropriated out of the fund into
 4 which it was paid for refund to the proper person.

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

1 **Sec. 10. Sinking Fund Deficiencies.**—There is hereby
2 appropriated to the governor a sufficient amount to meet
3 a deficiency that may arise in the funds of the state sink-
4 ing fund commission because of the failure of any state
5 agency for either general obligation or revenue bonds or
6 any local taxing district for general obligation bonds to
7 remit funds necessary for the payment of interest and
8 sinking fund requirements. The governor is authorized to
9 transfer from time to time such amounts to the state sink-
10 ing fund commission as may be necessary for this purpose.

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

1 **Sec. 11. Appropriations from Taxes and License Fees.**
2 —There is hereby appropriated from the soft drink tax
3 revenues for administration and enforcement of the law
4 relating to said tax, a sum not to exceed two and one-half
5 percent of the total revenues collected. All such salaries
6 and expenses, authorized by law as aforesaid, shall be paid
7 by the tax commissioner through the state treasury out
8 of gross collections.

9 There is hereby appropriated from the cigarette tax
10 revenues for administration and enforcement of the law
11 relating to said tax, a sum not to exceed one and one-half
12 percent of the total revenues collected. All such salaries
13 and expenses, authorized by law as aforesaid, shall be
14 paid by the tax commissioner through the state treasury
15 out of gross collections.

1 **Sec. 12. Appropriations to Pay Costs of Publication**
2 **of Delinquent Corporations.**—There is hereby appropriated
3 out of the state fund, general revenue, out of funds not
4 otherwise appropriated to be paid upon requisition of the
5 auditor and/or the governor, as the case may be, a sum
6 sufficient to pay the cost of publication of delinquent cor-
7 porations as provided by Chapter 11, Article 12, Sections 75
8 and 77 of the Code of West Virginia.

1 **Sec. 13. Appropriations for Local Governments.—**

2 There is hereby appropriated for payment to counties, dis-
3 tricts, and municipal corporations such amounts as will be
4 necessary to pay taxes due county, district, and municipal
5 corporations and which have been paid into the treasury:

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

1 **Sec. 14. Total Appropriations.—**Where only a total
2 sum is appropriated to a spending unit that total sum shall
3 include personal services, current expenses, and capital
4 outlay, except as otherwise provided in Title 1, Section 3.

1 **Sec. 15. General School Fund.—**The balance of the
2 proceeds of the general school fund remaining after the
3 payment of the appropriations made by this act is appro-
4 priated for expenditure in accordance with Chapter 18,
5 Article 9-A, Section 16 of the Code of West Virginia.

TITLE 3. ADMINISTRATION.

§1. Appropriations conditional.

§2. Constitutionality.

1 **Section 1. Appropriations Conditional.—**The expendi-
2 ture of the appropriations made by this act, except those
3 appropriations made to the legislative and judicial
4 branches of the state government, are conditioned upon
5 the compliance by the spending unit with the require-
6 ments of Chapter 5-A, Article 2 of the Code of West
7 Virginia.

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

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

CHAPTER 8

(House Bill No. 775—By Mr. Speaker, Mr. McManus,
and Mr. Edgar)

[Passed February 23, 1972; in effect from passage. Approved by the Governor.]

AN ACT transferring an amount between items of the total appropriation of a state spending unit as appropriated by chapter six, acts of the Legislature, regular session, one thousand nine hundred seventy-one, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That an item of the total appropriation of Account No. 404, chapter six, acts of the Legislature, regular session, one thousand nine hundred seventy-one, be transferred so as to read as follows:

48—*Department of Veterans Affairs*

Acct. No. 404

Out of the above appropriations there shall be transferred from Line Item 4, to provide Educational Opportunities for Children of War Veterans, an amount of \$5,000.00 to Line Item 1, Personal Services.

CHAPTER 9

(House Bill No. 1209—By Mr. Speaker, Mr. McManus)

[Passed February 28, 1972; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year end-

ing June thirtieth, one thousand nine hundred seventy-one, to the Governor's Office, Account No. 120, chapter six, acts of the Legislature, regular session, one thousand nine hundred seventy-one, known as the "Budget Bill," for flood relief in Logan county and other areas.

WHEREAS, An emergency flood disaster has occurred in Logan County, West Virginia, resulting in death, injury, property loss and dispossession to the detriment of the safety, health and welfare of citizens of this state and necessitating expenditure of public moneys in aid thereof; and

WHEREAS, By Executive Message No. 23, dated February twenty-one, one thousand nine hundred seventy-two, the governor transmitted to the Legislature a revised statement of the state fund, general revenue, including the fiscal year 1971-72, revised as of January three, one thousand nine hundred seventy-two, in which it is set forth and stated that cash balances and investments, as of July one, one thousand nine hundred seventy-one, amounted to \$26,131,154.30, which said amount is reduced by net appropriation balances forwarded of \$15,488,477.51, thereby leaving a net unencumbered cash balance of \$10,642,706.79 available for appropriation and expenditure for said fiscal year 1971-72; a portion of said net unencumbered cash balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore,

Be it enacted by the Legislature of West Virginia:

That Account No. 120, chapter six, acts of the Legislature, regular session, one thousand nine hundred seventy-one, known as the Budget Bill, be supplemented by adding thereto the following sum to the designated line item:

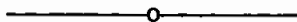
EXECUTIVE

8—Governor's Office

Acct. No. 120

1	19a Disaster Relief	\$1,000,000.00
2	The above appropriation is to be expended in connection	
3	with the emergency flood disaster in Logan county, West	
4	Virginia, and other affected nearby areas. Any unexpended	
5	balance remaining in this appropriation at the close of	

6 the fiscal year 1971-72 is hereby reappropriated for ex-
7 penditure during the fiscal year 1972-73.



CHAPTER 10

(Com. Sub. for Senate Bill No. 312—By Mr. Hubbard)

[Passed February 29, 1972; in effect from passage. Approved by the Governor.]

AN ACT transferring amounts between items of the total appropriations for certain state spending units as appropriated by chapter six, acts of the Legislature, regular session, one thousand nine hundred seventy-one, known as the "Budget Bill", as amended.

WHEREAS, Certain spending units have indicated a need to transfer specific amounts between items of appropriation heretofore made by the Legislature for such spending units; and

WHEREAS, Such transfers are necessary in accordance with article seven, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, creating an information system services division within the department of finance and administration, and in compliance with Executive Order, 3-71, by the governor, enacted October first, one thousand nine hundred seventy-one, effective January first, one thousand nine hundred seventy-two; therefore,

Be it enacted by the Legislature of West Virginia:

That items of the total appropriations of Account No. 180, Account No. 671, and Account No. 837, chapter six, acts of the Legislature, regular session, one thousand nine hundred seventy-one, as amended, be transferred so as to read as follows:

1	12—State Tax Department	
2	Acct. No. 180	
3	1 Personal Services	\$2,348,758.00
4	2 Current Expenses	961,455.00

5	110— <i>Department of Motor Vehicles</i>	
6	Acct. No. 671	
7	To BE PAID FROM STATE ROAD FUND	
8	1 Personal Services	\$ 944,446.00
9	2 Current Expenses	724,279.00
10	5 Social Security Matching Fund	48,949.00
11	6 Public Employees Retirement Matching	
12	Fund	87,892.00
13	125— <i>West Virginia Alcohol Beverage Control</i>	
14	Acct. No. 837	
15	To BE PAID FROM SPECIAL REVENUE FUND	
16	2 Other Personal Services	\$4,185,090.00
17	3 Current Expenses	1,217,101.00
18	6 Social Security Matching Fund	228,225.00
19	7 Public Employees Retirement Matching	
20	Fund	398,584.00

The foregoing constitutes transfers of amounts from one item of appropriation to another item of appropriation within the total appropriation of each designated spending unit. The revised amounts as itemized for expenditure during the fiscal year one thousand nine hundred seventy-one—seventy-two, shall be available for expenditure as revised upon the effective date of this bill.

CHAPTER 11

(Senate Bill No. 342—Originating in the Senate Committee on Finance)

[Passed March 8, 1972; in effect from passage. Approved by the Governor.]

AN ACT transferring amounts between items of the total appropriations for certain state spending units as appropriated by chapter six, acts of the Legislature, regular session, one thousand nine hundred seventy-one, known as the "Budget Bill".

WHEREAS, Certain spending units have indicated a need to transfer specific amounts between items of appropriation heretofore made by the Legislature for such spending units; and

WHEREAS, Such transfers are necessary in order to protect or to increase the efficiency of the service by each of such spending units; therefore,

Be it enacted by the Legislature of West Virginia:

That items of the total appropriations of Account No. 180, Account No. 240, Account No. 373, Account No. 375, Account No. 376, Account No. 380, Account No. 426, Account No. 430, Account No. 432, Account No. 465, Account No. 829, and Account No. 837, chapter six, acts of the Legislature, regular session, one thousand nine hundred seventy-one, be transferred so as to read as follows:

17—Attorney General

Acct. No. 240

2 Other Personal Services	\$	577,528.00
3 Current Expenses		74,250.00
4 Equipment		21,500.00

41—West Virginia Forestry Camp (Leckie)

Acct. No. 373

3 Repairs and Alterations	\$	14,500.00
4 Equipment		21,000.00

43—West Virginia Penitentiary

Acct. No. 375

1 Personal Services	\$	1,234,800.00
2 Current Expenses		548,600.00

44—Huttonsville Correctional Center

Acct. No. 376

3 Repairs and Alterations	\$	35,000.00
4 Equipment		18,000.00

45—West Virginia Children's Home

Acct. No. 380

2 Current Expenses	\$	44,130.00
3 Repairs and Alterations		11,500.00
4 Equipment		12,100.00

59—*Welch Emergency Hospital*

Acct. No. 426

1 Personal Services	\$ 406,388.00
3 Repairs and Alterations	72,500.00
4 Equipment	19,590.00

60—*Hopemont State Hospital*

Acct. No. 430

1 Personal Services	\$ 1,528,414.00
2 Current Expenses	350,000.00

62—*Denmar State Hospital*

Acct. No. 432

1 Personal Services	\$ 885,338.00
2 Current Expenses	273,000.00

12—*State Tax Department*

Acct. No. 180

1 Personal Services	\$ 2,292,758.00
2 Current Expenses	1,017,455.00

67—*Department of Commerce*

Acct. No. 465

1 Personal Services	\$ 413,750.00
2 Current Expenses	792,000.00

122—*Public Service Commission—Motor Carrier Division*

Acct. No. 829

1 Personal Services	\$ 325,180.00
2 Equipment	8,860.00

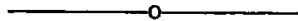
125—*West Virginia Alcohol Beverage Control*

Acct. No. 837

2 Other Personal Services	\$ 4,095,090.00
3 Current Expenses	1,297,101.00
4 Repairs and Alterations	39,000.00

The foregoing constitutes transfers of amounts from one item of appropriation to another item of appropriation within the total appropriation of each designated spending unit. The amounts as itemized for expenditure during the fiscal year

one thousand nine hundred seventy-two, shall be available for expenditure upon the effective date of this act.



CHAPTER 12

(Senate Bill No. 207—By Mr. McCourt, Mr. President,
and Mr. Hubbard)



[Passed March 7, 1972; in effect from passage. Approved by the Governor.]



AN ACT to amend and reenact section fifteen, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact article one, chapter twenty-nine of said code, all relating to historic preservation; natural resources; organization and administration; the public land corporation; department of archives and history; short title; legislative findings; department of archives and history created; office of state historian and archivist; powers and duties; organization and advisory commissions established; and providing for the delivery of official books to the archivist for their preservation.

Be it enacted by the Legislature of West Virginia:

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

Chapter

20. Natural Resources.

29. Miscellaneous Boards and Officers.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-15. Public land corporation.

1 The public land corporation of West Virginia, hereto-
2 fore created and established, shall be continued as an

3 activity of the department of natural resources. The cor-
4 poration may sue and be sued, contract and be contracted
5 with, plead and be impleaded, and have and use a common
6 seal. It shall be a public benefit corporation composed
7 of the governor as chairman, the director of the depart-
8 ment of natural resources as secretary, the commissioner
9 of agriculture, the attorney general, the director of the
10 engineering experiment station at West Virginia Uni-
11 versity and the state historian and archivist, none of
12 whom shall receive additional compensation as members
13 of the corporation.

14 The corporation shall be vested with the title of the
15 state in public land, the title to which now is or may
16 hereafter become absolutely vested in the state of West
17 Virginia by reason of any law governing the title of lands
18 within the state, except such public lands of the state as
19 may be by law specifically allocated to and used by other
20 state agencies, institutions and departments.

21 The corporation is hereby authorized and empowered
22 to:

23 (1) Acquire from any persons or the state commis-
24 sioner of forfeited lands, by purchase, lease or other
25 agreement, any lands necessary and required for public
26 use;

27 (2) Acquire by purchase, condemnation, lease, or
28 agreement, receive by gifts and devises, or exchange,
29 rights-of-way, easements, waters and minerals suitable
30 for public use;

31 (3) Sell, purchase or exchange lands or stumpage for
32 the purpose of consolidating lands under state or federal
33 government administration;

34 (4) Negotiate and effect loans or grants from the gov-
35 ernment of the United States or any agency thereof for
36 acquisition and development of such lands as may be
37 authorized by law to be acquired for public use;

38 (5) Expend the income from the use and development
39 of public lands for the purpose of liquidating obligations
40 incurred in the acquisition, development and administra-
41 tion of such lands, until all such obligations have been

42 fully discharged, and thereafter pay such income into the
43 state fund for general revenue purposes and uses;

44 (6) Expend the income from the use and development
45 of public lands for the purchase, development, restoration
46 and preservation for public use, of sites, structures, ob-
47 jects and documents of prehistoric, historical, archeologi-
48 cal, architectural and cultural significance to the state
49 of West Virginia; and

50 (7) Expend the income from the use and development
51 of public lands for the purpose of obtaining grants or
52 matching moneys available from the government of the
53 United States or any of its instrumentalities for prehistoric,
54 historic, archeological, architectural and cultural purposes.

55 The corporation shall have the authority to designate
56 lands to which it has title for development and ad-
57 ministration for the public use including forestation, rec-
58 reation, wildlife, stock grazing, agricultural rehabilitation
59 and homesteading or other conservation activities and
60 may contract or lease for the proper development of oil,
61 gas or minerals, except that no contract or lease may be
62 entered into for the extraction and removal by stripping
63 or auger mining of coal, and water rights within or upon
64 the lands or property under its control. It shall convey,
65 assign, or allot lands to the title or custody of proper
66 departments or other agencies of state government for
67 administration and control within the functions of such
68 departments or other agencies as provided by law. The
69 corporation shall make proper lands available for the
70 purpose of cooperating with the government of the United
71 States in the relief of unemployment and hardship or for
72 any other public purpose. The corporation shall report an-
73 nually to the Legislature on its public land holdings, its
74 financial condition and its operations and shall make such
75 recommendations to the Legislature as deemed proper
76 concerning the acquisition, development, disposition and
77 use of public lands.

78 During the continuance of the Blennerhassett historical
79 commission, the public land corporation and its members
80 shall consult with and keep the said Blennerhassett his-
81 torical commission fully informed as to any official action

82 to be taken or proposed to be taken pursuant to this act
83 regarding or affecting Blennerhassett island and its pre-
84 historic, historic, archeological, architectural, cultural and
85 recreational significance or development or any of the
86 powers and duties of the Blennerhassett historical com-
87 mission.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 1. DEPARTMENT OF ARCHIVES AND HISTORY.

§29-1-1. Short title.

§29-1-2. Legislative findings.

§29-1-3. Department of archives and history created; office of state
historian and archivist.

§29-1-4. Powers and duties.

§29-1-5. Organization.

§29-1-6. Advisory commissions established.

§29-1-7. Delivery to state historian and archivist of official books,
records and documents not in current use; prima facie
evidence.

§29-1-1. Short title.

- 1 This article shall be known and may be cited as the
- 2 "West Virginia Historic Preservation Act of 1972."

§29-1-2. Legislative findings.

1 That the state of West Virginia, being possessed of a
2 heritage that is both ancient and honorable, should
3 undertake a program of systematically identifying, re-
4 storing, preserving, protecting and developing those sites,
5 structures, documents and objects which are of a
6 prehistoric, historical, archeological, architectural and
7 cultural significance by reason of their association with
8 the heritage of the state of West Virginia from the earliest
9 times of the reorganized government of Virginia or of
10 the dominion or colony of Virginia as related to the area
11 which comprises the state of West Virginia for the public
12 use and to serve as a constant reminder of a past
13 that is rich in history and as a source of inspiration for
14 the future. It is the purpose of this article to provide
15 for a coordinated and comprehensive approach to the
16 preservation of the cultural, scientific and historic heri-
17 tage of the state of West Virginia.

§29-1-3. Department of archives and history created; office of state historian and archivist.

1 A department of archives and history and the office
2 of state historian and archivist are hereby created and
3 established.

4 The state historian and archivist shall be appointed by
5 the governor, with the advice and consent of the Senate,
6 for a term of four years and shall be the chief executive
7 officer of the department.

§29-1-4. Powers and duties.

1 The department of archives and history and the state
2 historian and archivist shall have the following powers
3 and duties:

4 (1) Locate, identify, excavate, preserve, protect, re-
5 store, acquire and recommend for acquisition to the pub-
6 lic land corporation, prehistoric, historic, archeological,
7 architectural and cultural sites, structures, documents and
8 objects worthy of preservation;

9 (2) To survey, investigate and register such prehis-
10 toric, historic, archeological, architectural and cultural
11 sites, structures, documents and objects either upon its
12 own initiative or in cooperation with the West Virginia
13 antiquities commission, reputable societies, organizations
14 or agencies of the state and federal government;

15 (3) To operate and maintain a state library and to
16 collect for permanent preservation therein all valuable
17 papers and documents relating to the state of West Vir-
18 ginia, and the territory included therein from the earliest
19 times, together with all public records, state papers, docu-
20 ments of the Legislature, executive and judicial depart-
21 ments, and the reports of all state officials, boards and
22 directors, of state institutions, educational, charitable,
23 penal and otherwise, from the twentieth of June, eighteen
24 hundred and sixty-three, to which the annual additions
25 shall be added as produced;

26 (4) To preserve and protect the battle flags and regi-
27 mented flags borne by West Virginians in war;

28 (5) To submit to the governor and the Legislature an
29 annual report of its activities and needs, including a list-

30 ing of all the state's papers, public documents, books,
31 pamphlets and other property belonging to the state;

32 (6) To mark by proper monument, tablets or markers,
33 prehistoric, historic, archeological, architectural, scenic
34 or geological sites within the state and to arrange for the
35 purchase, replacement, care of and maintenance of such
36 monuments, tablets or markers and formulate and pre-
37 pare appropriate copy for them and to protect, preserve
38 and display the Fairfax stones;

39 (7) To transmit to the department of finance and ad-
40 ministration for publication or republication matters of
41 prehistorical, historical, archeological, architectural or
42 cultural interest, to cooperate with said department in
43 compiling, printing and distributing such publications,
44 and to sell publications, postcards and other souvenirs
45 of a prehistorical, historical, archeological, architectural
46 or cultural nature at the state museum and at prehistori-
47 cal, historical, archeological, architectural or cultural
48 properties administered by the department and to devote
49 the revenue arising therefrom to the work of the de-
50 partment;

51 (8) To enter into agreements with responsible private
52 historical, archeological, architectural or cultural associ-
53 ations, foundations and similar organizations or with the
54 National Park Service, or with state agencies, for carry-
55 ing on services or programs, or for the purpose of raising
56 money in order to further improve and develop pre-
57 historical, historical, archeological, architectural or cul-
58 tural properties, museums, publications and other func-
59 tions of the department: *Provided*, That said agreements
60 shall be approved by the governor;

61 (9) With the advice and consent of the governor to
62 accept, receive and expend gifts, donations, contributions,
63 endowments, bequests or devises or money, security, or
64 property, both real and personal, or any interest therein
65 and to accept, receive and administer the same subject to
66 any terms, limitations or restrictions placed thereon by
67 the donor;

68 (10) To cooperate with agencies and instrumentalities
69 of the United States of America and to cooperate with and

70 advise the public land corporation in the purchase, de-
71 velopment, restoration and preservation for public use, of
72 sites, structures, objects and documents of prehistoric, his-
73 torical, archeological, architectural and cultural signifi-
74 cance to the state of West Virginia;

75 (11) To apply for and accept any grants or other
76 moneys available for the purpose of this article from the
77 federal government or any of its departments, agencies
78 or instrumentalities;

79 (12) To maintain an office in the state capitol, city of
80 Charleston;

81 (13) To have and use an official seal for use in official
82 business;

83 (14) To dispose of real and personal property which
84 does not have sufficient prehistoric, historic, archeological,
85 architectural or cultural value to justify its retention:
86 *Provided, however,* That such disposals shall not be made
87 without the consent of the governor or of an advisory
88 commission appointed by him pursuant to section six of
89 this article;

90 (15) To make agreements with the executive depart-
91 ment and state boards, commissions and agencies, for the
92 provision of state papers to the department and to such
93 state institutions of higher learning as request them;

94 (16) To make reasonable rules and regulations govern-
95 ing the public use of its facilities and library;

96 (17) To edit and publish a quarterly historical maga-
97 zine devoted to the history, biography, bibliography, and
98 genealogy of West Virginia.

99 During the continuance of the Blennerhassett historical
100 commission, the department of archives and history and
101 the state historian and archivist shall consult with and
102 keep the said Blennerhassett historical commission fully
103 informed as to any official action to be taken or proposed
104 to be taken pursuant to this act regarding or affecting
105 Blennerhassett island and its prehistoric, historic, arche-
106 ological, architectural, cultural and recreational signifi-
107 cance or development or any of the powers and duties
108 of the Blennerhassett historical commission.

§29-1-5. Organization.

1 The department of archives and history shall be com-
2 posed of such administrative divisions as the state his-
3 torian and archivist shall deem necessary and proper for
4 effectuating the purposes of this article.

§29-1-6. Advisory commissions established.

1 In consultation with the state historian and archivist,
2 the governor may establish and appoint such advisory
3 commissions as are necessary and proper for carrying out
4 the purposes of this article. All members of such com-
5 missions shall serve without remuneration, but may be
6 reimbursed for any and all reasonable and necessary ex-
7 pense incurred in the performance of their duties: *Pro-*
8 *vided*, That unless the Blennerhassett historical commis-
9 sion has ceased to exist, no such advisory commission
10 shall be appointed regarding Blennerhassett island with-
11 out the approval of the Blennerhassett historical commis-
12 sion.

§29-1-7. Delivery to state historian and archivist of official books, records and documents not in current use; prima facie evidence.

1 Any state, county or other official may turn over to the
2 state historian and archivist, with his consent, for perma-
3 nent preservation and record in the state department of
4 archives and history, any official books, records, docu-
5 ments, original papers, or files, not in current use in his
6 office, taking a receipt therefor: *Provided*, That such
7 official shall first make and keep on record in his official
8 files a certified copy of such book, record, document,
9 original paper, or file. Such official may in like manner
10 turn over to the state historian and archivist, with his
11 consent, for the use of the state, any printed books,
12 records, documents or reports not in current use in his
13 office. Nothing herein, however, shall be construed to
14 allow the removal of any books or records affecting the
15 title to any estate within the jurisdiction of the official
16 having custody of such records. The state historian and
17 archivist shall embody in his report to the governor a
18 general list of all such books, records, documents or pa-

19 pers so received; and upon the request of any person
20 entitled thereto shall furnish a certified copy of any such
21 record, document, paper, or extract therefrom, and such
22 certified copy shall be entitled to the same weight as
23 evidence as though certified by the official by whom such
24 record, document, or paper was deposited with the state
25 historian and archivist.

CHAPTER 13

(House Bill No. 516—By Mr. Kopelman)

[Passed March 8, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section two, article three, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the attorney general acting as counsel in defense of national guardsmen.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ATTORNEY GENERAL.

§5-3-2. Act as counsel for state; duties and powers as to prosecuting attorneys; defense of national guardsmen.

1 The attorney general shall appear as counsel for the
2 state in all causes pending in the supreme court of ap-
3 peals, or in any federal court, in which the state is in-
4 terested; he shall appear in any cause in which the state
5 is interested that is pending in any other court in the
6 state, on the written request of the governor, and when
7 such appearance is entered he shall take charge of and
8 have control of such cause; he shall defend all actions
9 and proceedings against any state officer in his official
10 capacity in any of the courts of this state or any of the
11 federal courts when the state is not interested in such

12 cause against such officer, but should the state be in-
13 terested against such officer, he shall appear for the
14 state; he shall institute and prosecute all civil actions and
15 proceedings in favor of or for the use of the state which
16 may be necessary in the execution of the official duties of
17 any state officer, board or commission on the written re-
18 quest of such officer, board or commission; he may con-
19 sult with and advise the several prosecuting attorneys in
20 matters relating to the official duties of their office, and
21 may require a written report from them of the state and
22 condition of the several causes, in which the state is a
23 party, pending in the courts of their respective counties;
24 he may require the several prosecuting attorneys to per-
25 form, within the respective counties in which they are
26 elected, any of the legal duties required to be performed
27 by the attorney general which are not inconsistent with
28 the duties of the prosecuting attorneys as the legal rep-
29 resentatives of their respective counties; when the per-
30 formance of any such duties by the prosecuting attorney
31 conflicts with his duties as the legal representative of his
32 county, or for any reason any prosecuting attorney is
33 disqualified from performing such duties, the attorney
34 general may require the prosecuting attorney of any
35 other county to perform such duties in any county other
36 than that in which such prosecuting attorney is elected
37 and for the performance of which duties outside of the
38 county in which he is elected the prosecuting attorney
39 shall be paid his actual traveling and other expenses out
40 of the appropriation for contingent expenses for the de-
41 partment for which such services are rendered; the at-
42 torney general shall keep in proper books, a register of
43 all causes prosecuted or defended by him in behalf of the
44 state or its officers and of the proceedings had in re-
45 lation thereto, and deliver the same to his successor in
46 office; and he shall preserve in his office all his official
47 opinions and publish the same in his biennial report.

48 Upon request of any member of the West Virginia
49 national guard who has been named defendant in any
50 civil action arising out of that guardsman's action while
51 under orders from the governor relating to national guard
52 assistance in disasters and civil disorders, the attorney

53 general shall appear as counsel for and represent such
54 guardsman.

CHAPTER 14

(Senate Bill No. 91—By Mr. McCourt, Mr. President)

[Passed February 15, 1972; in effect ninety days from pasage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article eight, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the prohibition of branch banks and limitations on purchase of bank stock, to permit any banking institution to operate for certain limited purposes one off-premises banking facility within two thousand feet of the banking house premises.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.

§31A-8-12. Branch banks forbidden; one limited off-premises facility permitted; limitation on purchase of bank stock.

- 1 (a) No banking institution shall:
- 2 (1) Install or maintain any branch bank; or
- 3 (2) Engage in business at any place other than
- 4 at its principal office in this state: *Provided*, That at any
- 5 time any such banking institution may operate one and
- 6 only one off-premises walk-in or drive-in banking facility,
- 7 on or in conjunction with or entirely separate from a
- 8 parking lot for the customers of such banking institution,
- 9 for the purpose of receiving bank deposits of all kinds,
- 10 cashing checks, making change, selling and issuing money

11 orders and travelers checks and receiving payments on
12 installment, savings and rental accounts, and for no other
13 purposes, provided such off-premises banking facility is
14 located within two thousand feet of the banking house
15 premises of the banking institution operating such off-
16 premises facility measured between the nearest points of
17 the banking house premises and the premises on which
18 such off-premises banking facility is located.

19 (b) It shall be unlawful for any person to purchase
20 and hold stock in any banking institution for the purpose
21 of selling, negotiating or trading participation in the
22 ownership thereof either for the purpose of perfecting
23 control of one or more such banking institutions or for
24 the purpose of inducing other persons, firms or corpora-
25 tions or the general public to become participating owners
26 therein. Nothing herein shall prevent the ownership of
27 stock in any such banking institution by any person for
28 investment purposes.

29 (c) Any violation of any provision of this section shall
30 constitute a misdemeanor offense punishable by applic-
31 able penalties as provided in section fifteen of article
32 eight of this chapter.

CHAPTER 15

(Senate Bill No. 390—Originating in the Senate Committee
on Finance)

[Passed March 8, 1972; in effect from passage. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

§1. Finding and declaring certain claims against the department of mental health to be moral obligations of the state, and directing payment thereof.

1 The Legislature has heretofore made findings of fact
 2 that the state has received the benefit of the commodities
 3 and services rendered by certain claimants herein and
 4 has considered claims against the state and the depart-
 5 ment of mental health, an agency thereof, which have
 6 arisen due to over-expenditures of departmental appro-
 7 priations by officers of such state spending unit, such
 8 claims having been previously considered by the court
 9 of claims which also found that the state has received the
 10 benefit of the commodities and services rendered by each
 11 claimant, but were denied by the court of claims on the
 12 purely statutory grounds that to allow such claims would
 13 be condoning illegal acts contrary to the laws of the state.
 14 The Legislature, pursuant to its findings of fact and also
 15 by the adoption of the findings of fact by the court of
 16 claims as its own, and, while not condoning such illegal
 17 acts, hereby declares it to be the moral obligation of the
 18 state to pay each such claim in the amount specified
 19 below, and directs the auditor to issue warrants upon
 20 receipt of a properly executed requisition supported by
 21 an itemized invoice, statement or other satisfactory docu-
 22 ment as required by section ten, article three, chapter
 23 twelve of the code of West Virginia, one thousand nine
 24 hundred thirty-one, as amended, for the payment thereof
 25 out of any fund appropriated and available for the pur-
 26 pose.

27 *Claims versus the Department of Mental Health*

28 TO BE PAID FROM GENERAL REVENUE FUND

29	(1) The Upjohn Company.....	\$ 136.70
30	(2) P. B. & S. Chemical Company.....	56.25
31	(3) Ralph E. Rinard, d/b/a Rinard Coal Company	633.60
32	(4) 3M Business Products Center Company.....	61.40
33	(5) Karoll's, Inc.....	1,308.94
34	(6) Will Ross, Inc.....	190.05
35	(7) Bristol Laboratories, Division of	
36	Bristol-Myers Company	462.50

CHAPTER 16

(House Bill No. 1170—By Mr. Buck and Mr. Kincaid)

[Passed March 10, 1972; in effect from passage. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

§1. **Finding and declaring certain claims against the department of highways; state building commission; West Virginia board of regents; department of finance and administration; adjutant general; office of the governor; department of mental health; state auditor; department of natural resources; alcohol beverage control commissioner; and department of labor, to be moral obligations of the state, and directing payment thereof.**

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

11 (a) Claims against the department of highways:

12	(1) Estate of L. M. Gates, by Florence	
13	C. Gates, Executrix	\$ 89.25
14	(2) Safeco Insurance Company	166.86
15	(3) Frank & Arnold Whitehair	107.08
16	(4) William Bryant	400.00
17	(5) Bertha G. Barton	2,531.00
18	(6) Harleysville Mutual Insurance Co.	
19	subrogee of Lena Nancy Shaver ...	226.88

20	(7)	Arden Harmon	27.86
21	(8)	Vecellio and Grogan, Inc., and	
22		Foster and Creighton Co.	5,331.25
23	(9)	Lurleen (Mrs. John, Jr.) Buckner....	171.96
24	(10)	Steve and Mary Bukovinsky	725.00
25	(11)	Nationwide Insurance Co., subrogee	
26		for Fred or Carolyn Runyon	553.65
27	(12)	Collins and Ruth Rivers	3,246.00
28	(13)	Tri-State Stone Corporation	112,910.24
29	(14)	Earl L. Wright	106.75
30	(15)	Herbert and Lovie Thomas	900.00
31	(16)	Joseph and Kathleen Sands	1,450.00
32	(17)	Gloria L. Randolph	235.00
33	(18)	Clyde W. Reinhart	3,381.99
34	(19)	Jerry A. Robey	42.23
35	(20)	Paul W. Dixon	6,500.00
36	(21)	Paul W. Dixon	1,210.00
37	(22)	Roy W. Powers	131.32
38	(23)	Vecellio and Grogan, Inc.	5,895.68
39	(24)	Robert D. Smith	220.42
40	(25)	Murl E. Atkins	945.57
41	(26)	Sam Caldwell	1,082.95
42	(27)	A. M. Foley	3,530.54
43	(28)	The Trustees, Kanawha Aerie No.	
44		1040, Fraternal Order of Eagles...	2,776.09
45	(29)	Kayton Theatre, Inc.	701.81
46	(30)	Anna Cater Murad, widow and sole	
47		devisee of Louis F. Murad, de-	
48		ceased, and Ida Cater, widow	1,296.95
49	(31)	Progressive Investments, Inc.	1,249.04
50	(32)	Freda Tabit, widow and devisee of	
51		Andrew Tabit, deceased	1,874.38
52	(33)	Algie Chiles	751.57
53	(34)	Joseph W. Drasnin, trading and doing	
54		business as Drasnin's Men's Shop	2,400.00
55	(35)	Mary Ellis	437.00
56	(36)	John Fragale, d/b/a Top Hat Billiards	159.78
57	(37)	Aetna Insurance Company, subrogee	
58		of John Fragale, d/b/a Top Hat	
59		Billiards	55.11

60	(38)	Fidelity-Phenix Insurance Com-	
61		pany, subrogee of John Fragale,	
62		d/b/a Top Hat Billiards	27.55
63	(39)	Home Insurance Company, subrogee	
64		of John Fragale, d/b/a Top Hat	
65		Billiards	55.11
66	(40)	New Hampshire Insurance Company,	
67		subrogee of John Fragale, d/b/a	
68		Top Hat Billiards	55.11
69	(41)	Phoenix Assurance Company, sub-	
70		rogee of John Fragale, d/b/a Top	
71		Hat Billiards	68.88
72	(42)	Phoenix Insurance Company, sub-	
73		rogee of John Fragale, d/b/a Top	
74		Hat Billiards	68.88
75	(43)	Eddie Gonano, trading and doing	
76		business as Ed's Place	3,032.53
77	(44)	Belva Halsey, d/b/a Belva's	
78		Beauty Shop	1,000.00
79	(45)	L. J. Hark, trading and doing business	
80		as Drasnin's Tailor Shop	2,280.88
81	(46)	Robert W. Jackson, trading and doing	
82		business as Henderson's Drug Store	2,368.27
83	(47)	E. W. Kelly, trading and doing busi-	
84		ness as E. W. Kelly Store	1,450.00
85	(48)	Mearns, Inc., a corporation, trad-	
86		ing and doing business as The	
87		Fashion Shop	11,000.00
88	(49)	Montgomery Hardware Company, Inc.	5,125.01
89	(50)	Montgomery Motors, Inc.	1,055.37
90	(51)	Aetna Insurance Company, subrogee	
91		of Montgomery Motors, Inc.	4,723.55
92	(52)	Fidelity-Phenix Insurance Company,	
93		subrogee of Montgomery Motors,	
94		Inc.	7,834.13
95	(53)	Home Insurance Company, subrogee	
96		of Montgomery Motors, Inc.	11,336.52
97	(54)	Phoenix Insurance Company, sub-	
98		rogee of Montgomery Motors, Inc.	10,000.00

99	(55)	The Phoenix Insurance Company	37,536.42
100	(56)	O. E. Palmer, Administrator, c t a	
101		d b n the estate of A. A. Mitchell,	
102		deceased, and Mary Rose	269.00
103	(b)	Claims against the state building	
104		commission:	
105	(1)	First National Bank of South	
106		Charleston, as assignee of C & D	
107		Equipment Company	29,907.68
108	(2)	Orpha E. Jones	5,425.00
109	(c)	Claims against the West Virginia	
110		board of regents:	
111	(1)	State Farm Mutual Automobile In-	
112		surance Co., as subrogee for	
113		Damaris O. Wilson	97.56
114	(2)	Appraisal & Realty Service, Inc.	750.00
115	(3)	Thomas Oliver Mucklow	1,595.00
116	(d)	Claims against the department of	
117		finance and administration:	
118	(1)	Retreading Research Associates, Inc.	5,400.00
119	(2)	Columbia Ribbon & Carbon Manu-	
120		facturing Company	3,186.80
121	(e)	Claims against the Adjutant General:	
122	(1)	Andy & Lora Shanabarger	89.00
123	(f)	Claims against the office of the governor:	
124	(1)	George N. Peraldo, d/b/a Pauley	
125		Drilling Company	11,119.33
126	(2)	United Air Lines, Inc.	1,040.20
127	(g)	Claims against the department of mental	
128		health:	
129	(1)	Singer Sheet Metal Company, Inc.	5,928.00
130	(h)	Claims against the state auditor:	
131	(1)	Maciej Gal	3,100.46
132	(i)	Claims against the department of	
133		natural resources:	
134	(1)	Budget Rent A Car of Cleveland, Inc.	44.59
135	(2)	Fred E. Blair	1,464.00
136	(3)	Willard Blair	1,236.00
137	(4)	Trebag Enterprises, Inc.	3,000.00

138	(j)	Claims against the alcohol beverage	
139		control commissioner:	
140	(1)	Blanton M. Friddle	946.95
141	(k)	Claims against the department of labor:	
142	(1)	Lawrence Barker	300.00
143		The Legislature finds that the above moral obligations	
144		and the appropriations made in satisfaction thereof shall	
145		be the full compensation for all claimants, and that prior	
146		to the payments to any claimant provided for in this	
147		bill, the court of claims shall receive a release from said	
148		claimant releasing any and all claims for moral obliga-	
149		tions arising from the matters considered by the Legis-	
150		lature in the finding of the moral obligations and the	
151		making of the appropriation for said claimant. The court	
152		of claims shall deliver all releases obtained from claimants	
153		to the department against which the claim was allowed.	

CHAPTER 17

(House Bill No. 1088—By Mr. Burke)

[Passed March 9, 1972; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to conflicts of interest; providing that persons employed under the colleges and universities part-time employees program are exempt from the provisions of this article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DISCLOSURE.

§6B-1-1. Statements to be filed by members of the Legislature and certain officers and employees; suspension for noncompliance; report of statements filed; forms for statements; exceptions.

1 In the year one thousand nine hundred sixty-nine and
2 every calendar year thereafter, every person who is or
3 was at any time during the preceding calendar year, a
4 member of the Legislature, an officer, agent, servant or
5 employee in the executive branch of state government
6 or an employee or judge in the judicial branch of state
7 government, shall, between January one and January
8 fifteen in each year file with the clerk of the Senate if
9 a member of that body, with the clerk of the House
10 of Delegates if a member of that body, with the secretary
11 of state if an officer, agent, servant or employee in the
12 executive branch of state government and with the clerk
13 of the supreme court of appeals if an employee or judge
14 of the judicial branch of state government, a written
15 statement under oath of:

16 (1) The name of every corporation, firm, association,
17 partnership or sole proprietorship, in which he, his
18 spouse, or his unemancipated minor child or children, own
19 either in his or their own name or beneficially at least
20 ten percent of such business entity, which is then fur-
21 nishing or which within the previous calendar year has
22 furnished to the state, commodities or printing as those
23 terms are defined in section one, article one, chapter
24 five-a of this code.

25 (2) The name of each person, corporation, firm, part-
26 nership or other business association in, for, or of which
27 he is an officer, director, agent, attorney, representative,
28 employee, partner or employer, and which to his actual
29 knowledge is then furnishing or within the previous
30 calendar year has furnished to the state, commodities or
31 printing as those terms are defined in section one, article
32 one, chapter five-a of this code.

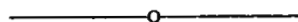
33 (3) Any other interest or relationship which might
34 reasonably be expected to be particularly affected by
35 legislative action or in the public interest should be dis-
36 closed.

37 Those persons to whom the provisions of subdivisions
38 (1), (2) and (3) above are not applicable shall file a
39 written statement under oath to that effect, such state-
40 ment to be filed within the time and with the appropriate
41 official as above specified.

42 Any person other than a constitutional officer who
43 shall fail or refuse to file a written statement under oath
44 as required under subdivisions (1), (2) or (3) above or
45 the preceding paragraph hereof shall by operation of law
46 be automatically suspended without pay from his office,
47 position or employment, as the case may be, in, with or
48 by the government of this state, until such statement
49 is filed.

50 On or before January thirty-first of each year the clerk
51 of the Senate, the clerk of the House of Delegates, the
52 secretary of state and the clerk of the supreme court of
53 appeals shall prepare a report containing the statements
54 for the previous calendar year required to be filed pur-
55 suant to this section. Copies of such reports shall be
56 open to public inspection in their respective offices, and
57 shall be retained for a period of five years after the date
58 of the preparation thereof. Each house may adopt rules
59 to implement the provisions of this section, insofar as
60 they relate to members of the Legislature.

61 The clerk of the Senate, the clerk of the House of Dele-
62 gates, the secretary of state and the clerk of the supreme
63 court of appeals shall prepare forms for such written
64 statements and distribute the same to those persons who
65 are required to file such written statements with him:
66 *Provided*, That the provisions of this article shall not
67 apply to persons receiving hourly compensation under the
68 aid to dependent children of unemployed parents pro-
69 gram, to persons receiving compensation under the foster
70 grandparents program, to part-time student employees
71 of colleges or universities, and to volunteer fire fighters
72 compensated from state funds.



CHAPTER 18

(Senate Bill No. 41—By Mr. Brotherton)

[Passed March 9, 1972; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-one and forty-three, article six, chapter thirty-one of the code of West

Virginia, one thousand nine hundred thirty-one, as amended, relating to building and loan associations; providing that no building and loan association shall take a mortgage or deed of trust upon real estate unless a written report thereon shall have been made by an appraiser examining the real estate and thereafter approved by at least two members of the appraisal committee indicating adequate security for the loan described in such mortgage or deed of trust; increasing from ninety to ninety-five percent of the appraised value of improved real estate the amount which may be secured by a mortgage or deed of trust taken by a savings and loan association, with certain exceptions; and authorizing any building and loan association whose accounts are insured by the federal savings and loan insurance corporation to make any loan or investment permitted to be made by any federal savings and loan association doing business in this state on January two, one thousand nine hundred seventy-two.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. BUILDING AND LOAN ASSOCIATIONS.

§31-6-21. Conditions on which association may take mortgage or deed of trust.

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

§31-6-21. **Conditions on which association may take mortgage or deed of trust.**

1 No building and loan association shall:

2 First: Take a mortgage or deed of trust upon real
3 estate unless a written application is first made for the
4 loan described in such mortgage or deed of trust, showing
5 the date, name of applicant, amount of loan desired, de-
6 scription of the real estate offered, and other information
7 necessary, and unless a written report thereon shall have
8 been made by an appraiser examining the real estate and
9 thereafter approved by at least two members of the ap-
10 praisal committee indicating, in their judgment, it affords

11 adequate security for such loan. Such report shall show
12 separately the value of the land and the value of the im-
13 provements and of the building or buildings erected
14 thereon. The application and the report shall be filed and
15 preserved with all the other papers relating to the loan.

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

28 Third: Take a mortgage or deed of trust upon real
29 estate unless the title to such real estate is approved by
30 the attorney of the association.

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

1 In addition to all other powers conferred by this article,
2 building and loan associations whose accounts are in-
3 sured by the federal savings and loan insurance corpora-
4 tion are authorized and empowered to make any loan
5 or investment permitted to be made by any federal
6 savings and loan association doing business in this state
7 on the second day of January, one thousand nine hun-
8 dred seventy-two: *Provided*, That all such loans and in-
9 vestments shall be made upon the same terms and
10 conditions and subject to the same restrictions and limita-
11 tions as were at said date prescribed for loans and
12 investments made by such a federal savings and loan
13 association doing business in this state under the pro-
14 visions of the Homeowners Loan Act of one thousand
15 nine hundred thirty-three, as amended, and the "Rules

16 and Regulations for the Federal Savings and Loan Sys-
17 tem," as amended, promulgated by the federal home
18 loan bank board: *Provided, however,* That (a) whenever
19 and wherever authorization by charter or bylaws of
20 such a federal savings and loan association was at said
21 date required by said law or said rules and regulations
22 as a prerequisite to the making of any such loan or
23 investment, such authorization in the case of a building
24 and loan association may be granted by its charter or
25 constitution and bylaws, as the case may be, or by
26 amendments thereto heretofore or hereafter duly adopted;
27 (b) whenever or wherever authorization of the members
28 of such a federal savings and loan association was at
29 said date required by said law or by said rules and
30 regulations as a prerequisite to the making of any such
31 loan or investment, such authorization may in the case
32 of a building and loan association be granted by its share-
33 holders; and (c) whenever and wherever approval by
34 the board of directors of such a federal savings and
35 loan association was at said date required by said law
36 or by said rules and regulations as a prerequisite to the
37 making of any such loan or investment, such approval
38 may in the case of a building and loan association be
39 granted by the board of directors of such building and
40 loan association.

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

CHAPTER 19

(House Bill No. 1244—By Mr. Seibert)

[Passed March 11, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section thirteen, article four-
teen, chapter thirty-one of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, relating to the taxation of business development corporations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. WEST VIRGINIA BUSINESS DEVELOPMENT CORPORATIONS.

§31-14-13. Exemption from payment of business and occupation taxes; treatment as banking institution for purposes of property taxation.

1 Every corporation organized under the provisions of
2 this article shall be exempt from payment or collection
3 of the business and occupation tax as provided for by
4 chapter eleven, article thirteen of the code of West Vir-
5 ginia, one thousand nine hundred thirty-one, as amended,
6 upon the business done by it. Upon certification by the
7 corporation to the state tax commissioner that it is a
8 corporation organized under and pursuant to the provi-
9 sions of this article, such corporation shall not be required
10 to file annual or other returns under the requirements
11 of said chapter and article. Every business development
12 corporation organized under the provisions of this article
13 shall be taxed as a banking institution for the purposes
14 of article three, chapter eleven of this code.

CHAPTER 20

(Senate Bill No. 351—By Mr. Brotherton)

[Passed March 8, 1972; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, six, nineteen and twenty-one, article eighteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the West Virginia housing development fund, legislative findings and pur-

poses, the addition of new legislative findings and purposes concerning the desirability of occupancy of some units in residential housing developments for low and moderate income persons and families by persons and families of higher income, the need for federally insured construction loans, uninsured construction loans, and long-term uninsured mortgage loans to sponsors of residential housing for persons and families of low and moderate income and to persons and families of low and moderate income; the definition of certain terms, and the addition of definitions of certain terms; the powers of the fund and the addition of powers respecting the types of investments that the fund may make with funds not required for immediate disbursement, the making and publishing of rules and regulations respecting uninsured mortgage lending by the fund, the making of uninsured construction loans and long-term uninsured mortgage loans, and the acquisition, holding, developing and selling or otherwise disposing of real property, and interests in real property; and the addition of the limitation that no real property shall be purchased or leased by the fund from, or sold, leased or otherwise disposed of by the fund to, any director or officer of the fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-2. Legislative findings and purpose.

§31-18-3. Definitions.

§31-18-6. Corporate powers.

§31-18-19. Operating loan fund.

§31-18-21. Prohibition on funds inuring to the benefit of or being distributable to directors, officers or private persons.

§31-18-2. Legislative findings and purpose.

- 1 (a) The Legislature hereby finds and declares that as a
- 2 result of public actions involving highways, public facil-
- 3 ities, flood control projects, and urban renewal activities,
- 4 and as a result of the spread of slum conditions and blight

5 to formerly sound urban and rural neighborhoods, there
6 exists in the state of West Virginia a serious shortage of
7 sanitary, decent and safe residential housing available at
8 low prices or rentals to persons and families of low and
9 moderate income. This shortage is severe in certain urban
10 areas of the state, is especially critical in the rural areas
11 of West Virginia, and is inimical to the health, welfare
12 and prosperity of all residents of the state and to the
13 sound growth of West Virginia communities.

14 (b) The Legislature hereby finds and declares further
15 that private enterprise and investment have not been able
16 to produce, without assistance, the needed construction
17 of sanitary, decent and safe residential housing at low
18 prices or rentals which persons and families of low and
19 moderate income can afford, to provide sufficient long-
20 term mortgage financing for residential housing for oc-
21 cupancy by persons and families of low and moderate in-
22 come, or to achieve the urgently needed rehabilitation
23 of much of the present low and moderate income housing
24 stock. It is imperative that the supply of residential
25 housing for persons and families displaced by public
26 actions or natural disaster be increased; and that private
27 enterprise and investment be encouraged both to sponsor
28 land development for residential housing for such per-
29 sons and families and to sponsor, build and rehabilitate
30 residential housing for such persons and families, and
31 that private financing be supplemented by financing as
32 in this article provided, to help prevent the recurrence of
33 slum conditions and blight and assist in their permanent
34 elimination throughout West Virginia.

35 (c) The Legislature hereby finds and declares further
36 that experience has demonstrated that concentration in
37 residential housing developments of only persons and
38 families who, without some form of private or public as-
39 sistance, do not have incomes sufficient to afford sanitary,
40 decent and safe residential housing, frequently does not
41 eliminate undesirable social conditions and frequently
42 does not permanently eliminate slum conditions, and that
43 in such instances occupancy of some of the residential
44 housing units in such residential housing developments

45 by persons and families of higher income is desirable and
46 beneficial in achieving the stated public purposes for en-
47 acting this legislation.

48 (d) The Legislature hereby finds and declares further
49 that its intention by enacting this legislation is to provide
50 for the creation and establishment of the West Virginia
51 housing development fund, the corporate purpose of
52 which is to provide temporary financing for development
53 costs, land development and residential housing con-
54 struction to public and private sponsors of land develop-
55 ment for residential housing or residential housing, new
56 or rehabilitated, for sale or rental to persons and families
57 of low and moderate income; further to provide federally
58 insured construction loans to sponsors of land develop-
59 ment for residential housing for occupancy by persons
60 and families of low and moderate income or residential
61 housing for occupancy by persons and families of low
62 and moderate income who are eligible or potentially
63 eligible for federally insured mortgages or federal mort-
64 gages; further to provide uninsured construction loans to
65 sponsors of land development for residential housing or
66 residential housing for occupancy by persons and families
67 of low and moderate income and to persons and families of
68 low and moderate income who may construct such hous-
69 ing; further to provide long-term federally insured mort-
70 gage financing to public and private sponsors of residential
71 housing for occupancy by persons and families of low and
72 moderate income and to persons and families of low and
73 moderate income who may purchase such housing; further
74 to provide long-term uninsured mortgage financing to
75 public and private sponsors of residential housing for
76 occupancy by persons and families of low and moderate
77 income and to persons and families of low and moderate
78 income who may purchase such housing; further to pro-
79 vide technical, consultative and project assistance service
80 to public and private sponsors of such land development or
81 residential housing; further to increase the construction
82 of low and moderate income housing through the purchase
83 or investment in long-term federal mortgages or federally
84 insured mortgages, or uninsured mortgages, on housing
85 for persons and families of low and moderate income con-

86 structured in this state thereby increasing the supply of
87 long-term mortgage financing and freeing funds avail-
88 able therefor for use in short-term construction financing;
89 and finally to assist in coordinating federal, state, regional
90 and local public and private efforts and resources to
91 otherwise increase the supply of such residential hous-
92 ing.

93 (e) The Legislature hereby finds and declares further
94 that in accomplishing this purpose, the West Virginia
95 housing development fund, created and established by
96 this article, is acting in all respects for the benefit of the
97 people of the state of West Virginia to serve a public pur-
98 pose in improving and otherwise promoting their health,
99 welfare and prosperity, and that the West Virginia hous-
100 ing development fund, so created and established, is em-
101 powered, hereby, to act on behalf of the state of West
102 Virginia and its people in serving this public purpose for
103 the benefit of the general public.

§31-18-3. Definitions.

1 As used in this article, unless the context otherwise
2 requires:

3 (1) "Development costs" means the costs approved by
4 the housing development fund as appropriate expendi-
5 tures by the housing development fund, or by sponsors
6 of land development for residential housing or residential
7 housing, within this state, prior to commitment and ini-
8 tial advance of the proceeds of a federally insured con-
9 struction loan, federally insured mortgage or federal
10 mortgage, or other public assistance programs, or unin-
11 sured construction loan, or uninsured mortgage loan and
12 for which temporary loans may be made by the housing
13 development fund, including but not limited to:

14 (a) Payments for options to purchase properties on
15 the proposed residential housing site, deposits on con-
16 tracts of purchase, or, with prior approval of the housing
17 development fund, payments for the purchase of such
18 properties;

19 (b) Legal and organizational expenses, including pay-
20 ments of attorneys' fees, project manager and clerical
21 staff salaries, office rent and other incidental expenses;

22 (c) Payment of fees for preliminary feasibility studies,
23 advances for planning, engineering and architectural
24 work;

25 (d) Expenses for tenant surveys and market analyses;
26 and

27 (e) Necessary application and other fees;

28 (2) "Federally insured construction loan" means a
29 construction loan for land development for residential
30 housing or residential housing which is either secured by
31 a federally insured mortgage or a federal mortgage, or
32 which is insured by the United States or an instrumen-
33 tality thereof, or a commitment by the United States or
34 an instrumentality thereof to insure such a loan;

35 (3) "Federally insured mortgage" means a mortgage
36 loan for land development for residential housing or resi-
37 dential housing insured or guaranteed by the United
38 States or an instrumentality thereof, or a commitment by
39 the United States or an instrumentality thereof to insure
40 such a mortgage;

41 (4) "Federal mortgage" means a mortgage loan for
42 land development for residential housing or residential
43 housing made by the United States or an instrumentality
44 thereof, or a commitment by the United States or an
45 instrumentality thereof to make such a mortgage loan;

46 (5) "Housing development fund" means the West Vir-
47 ginia housing development fund created and established
48 by section four of this article;

49 (6) "Land development" means the process of acquir-
50 ing land for residential housing construction, and of mak-
51 ing, installing or constructing nonresidential housing im-
52 provements, including waterlines and water supply in-
53 stallations, sewer lines and sewage disposal installations,
54 steam, gas and electric lines and installations, roads,
55 streets, curbs, gutters, sidewalks, whether on or off the
56 site, which the housing development fund deems neces-
57 sary or desirable to prepare such land for residential
58 housing construction within this state;

59 (7) "Operating loan fund" means the operating
60 loan fund which may be created and established by the

61 housing development fund in accordance with section
62 nineteen of this article;

63 (8) "Persons and families of low and moderate in-
64 come" means persons and families, irrespective of race,
65 creed, national origin or sex, determined by the housing
66 development fund to require such assistance as is made
67 available by this article on account of personal or family
68 income not sufficient to afford sanitary, decent and safe
69 housing, and to be eligible or potentially eligible to
70 occupy residential housing constructed and financed,
71 wholly or in part, with federally insured construction
72 loans, federally insured mortgages, federal mortgages or
73 with other public or private assistance, or with unin-
74 sured construction loans, or uninsured mortgage loans,
75 and in making such determination the fund shall take
76 into account the following: (a) The amount of the total
77 income of such persons and families available for housing
78 needs, (b) the size of the family, (c) the cost and condi-
79 tion of housing facilities available, (d) the eligibility of
80 such persons and families for federal housing assistance
81 of any type predicated upon low or moderate income
82 basis, and (e) the ability of such persons and families to
83 compete successfully in the normal housing market and
84 to pay the amounts at which private enterprise is pro-
85 viding sanitary, decent and safe housing: *Provided*, That
86 to the extent found and determined by the housing de-
87 velopment fund, by resolution, to be necessary or appro-
88 priate for the purposes of eliminating undesirable social
89 conditions and permanently eliminating slum conditions,
90 the income limitation requirements of this article may
91 be waived as to any persons or families who are eligible
92 to occupy residential housing constructed in whole, or in
93 part, with federally insured construction loans, federally
94 insured mortgages or federal mortgages under housing
95 assistance or mortgage insurance programs of the United
96 States, or an instrumentality thereof, predicated upon any
97 low or moderate income basis;

98 (9) "Residential housing" means a specific work or
99 improvement within this state undertaken primarily to
100 provide dwelling accommodations, including the acquisi-
101 tion, construction or rehabilitation of land, buildings and

102 improvements thereto, for residential housing, and such
103 other nonhousing facilities as may be incidental or appur-
104 tenant thereto;

105 (10) "Uninsured construction loan" means a construc-
106 tion loan for land development for residential housing
107 or residential housing which is not secured by either a
108 federally insured mortgage or a federal mortgage, and
109 which is not insured by the United States or an instru-
110 mentality thereof, and, as to which there is no commit-
111 ment by the United States or an instrumentality thereof
112 to provide insurance;

113 (11) "Uninsured mortgage" and "uninsured mortgage
114 loan" means a mortgage loan for land development for
115 residential housing or residential housing which is not
116 insured or guaranteed by the United States or an instru-
117 mentality thereof, and as to which there is no commit-
118 ment by the United States or an instrumentality thereof
119 to provide insurance.

§31-18-6. Corporate powers.

1 The housing development fund is hereby granted, has
2 and may exercise all powers necessary or appropriate to
3 carry out and effectuate its corporate purpose, including
4 but not limited to the following:

5 (1) To make or participate in the making of federally
6 insured construction loans to sponsors of land develop-
7 ment for residential housing for occupancy by persons
8 or families of low and moderate income or residential
9 housing for occupancy by persons or families of low and
10 moderate income who are eligible or potentially eligible
11 for federally insured mortgages or federal mortgages.
12 Such loans shall be made only upon determination by
13 the housing development fund that construction loans
14 are not otherwise available, wholly or in part, from
15 private lenders upon reasonably equivalent terms and
16 conditions;

17 (2) To make temporary loans, with or without inter-
18 est, but with such security for repayment as the housing
19 development fund determines reasonably necessary and
20 practicable, from the operating loan fund, if created,
21 established, organized and operated in accordance with

22 the provisions of section nineteen of this article, to defray
23 development costs to sponsors of land development for
24 residential housing for occupancy by persons and families
25 of low and moderate income or residential housing con-
26 struction for occupancy by persons and families of low
27 and moderate income which is eligible or potentially
28 eligible for federally insured construction loans, federally
29 insured mortgages, federal mortgages, or uninsured con-
30 struction loans or uninsured mortgage loans;

31 (3) To make or participate in the making of long-
32 term federally insured mortgage loans to sponsors of
33 residential housing for occupancy by persons and families
34 of low and moderate income, or to persons and families
35 of low and moderate income who may purchase such
36 residential housing who are eligible or potentially eligible
37 for federally insured mortgages or federal mortgages.
38 Such loans shall be made only upon determination by
39 the housing development fund that long-term mortgage
40 loans are not otherwise available, wholly or in part,
41 from private lenders upon reasonably equivalent terms
42 and conditions;

43 (4) To accept appropriations, gifts, grants, bequests
44 and devises, and to utilize or dispose of the same to carry
45 out its corporate purpose;

46 (5) To make and execute contracts, releases, com-
47 promises, compositions and other instruments necessary
48 or convenient for the exercise of its powers, or to carry
49 out its corporate purpose;

50 (6) To collect reasonable fees and charges in connec-
51 tion with making and servicing its loans, notes, bonds,
52 obligations, commitments and other evidences of indebted-
53 ness, and in connection with providing technical, con-
54 sultative and project assistance services. Such fees and
55 charges shall be limited to the amounts required to pay
56 the costs of the housing development fund, including
57 operating and administrative expenses, and reasonable
58 allowances for losses which may be incurred;

59 (7) To invest any funds not required for immediate
60 disbursement in any of the following securities:

- 61 (i) Direct obligations of or obligations guaranteed
62 by the United States of America;
- 63 (ii) Bonds, debentures, notes or other evidences of
64 indebtedness issued by any of the following agencies:
65 Bank for Cooperatives; Federal Intermediate Credit
66 Banks; Federal Home Loan Bank System; Export-Import
67 Bank of the United States; Federal Land Banks; the
68 Federal National Mortgage Association or the Govern-
69 ment National Mortgage Association;
- 70 (iii) Public housing bonds issued by public agencies
71 or municipalities and fully secured as to the payment
72 of both principal and interest by a pledge of annual con-
73 tributions under an annual contributions contract or
74 contracts with the United States of America; or temporary
75 notes issued by public agencies or municipalities or
76 preliminary loan notes issued by public agencies or
77 municipalities, in each case, fully secured as to the pay-
78 ment of both principal and interest by a requisition or
79 payment agreement with the United States of America;
- 80 (iv) Certificates of deposit secured by obligations of
81 the United States of America;
- 82 (v) Direct obligations of or obligations guaranteed
83 by the state of West Virginia;
- 84 (vi) Direct and general obligations of any other state
85 within the territorial United States, to the payment of
86 the principal of and interest on which the full faith and
87 credit of such state is pledged: *Provided*, That at the
88 time of their purchase, such obligations are rated in
89 either of the two highest rating categories by a nationally
90 recognized bond rating agency; and
- 91 (vii) Any fixed interest bond, note or debenture of
92 any corporation organized and operating within the
93 United States: *Provided*, That such corporation shall
94 have a minimum net worth of fifteen million dollars
95 and its securities or its parent corporation's securities are
96 listed on one or more of the national stock exchanges:
97 *Provided, however*, That (1) such corporation has earned
98 a profit in eight of the preceding ten fiscal years as re-
99 flected in its statements, and (2) such corporation has

100 not defaulted in the payment of principal or interest
101 on any of its outstanding funded indebtedness during its
102 preceding ten fiscal years, and (3) the bonds, notes or
103 debentures of such corporation to be purchased are rated
104 "AA" or the equivalent thereof or better than "AA" or
105 the equivalent thereof by at least two or more nationally
106 recognized rating services, such as Standard and Poor's,
107 Dun & Bradstreet or Moody's;

108 (8) To sue and be sued;

109 (9) To have a seal and alter the same at will;

110 (10) To make, and from time to time, amend and
111 repeal bylaws, rules and regulations not inconsistent with
112 the provisions of this article;

113 (11) To appoint such officers, employees and consul-
114 tants as it deems advisable and to fix their compensation
115 and prescribe their duties;

116 (12) To acquire, hold and dispose of personal property
117 for its corporate purposes;

118 (13) To enter into agreements or other transactions
119 with any federal or state agency, any person and any
120 domestic or foreign partnership, corporation, association
121 or organization;

122 (14) To acquire real property, or an interest therein, in
123 its own name, by purchase or foreclosure, where such
124 acquisition is necessary or appropriate to protect any
125 loan in which the housing development fund has an
126 interest and to sell, transfer and convey any such prop-
127 erty to a buyer and, in the event such sale, transfer or
128 conveyance cannot be effected with reasonable promptness
129 or at a reasonable price, to lease such property to a
130 tenant;

131 (15) To sell, at public or private sale, any mortgage
132 or other negotiable instrument or obligation securing a
133 construction, land development, mortgage or temporary
134 loan;

135 (16) To procure insurance against any loss in connec-
136 tion with its property in such amounts, and from such
137 insurers, as may be necessary or desirable;

138 (17) To consent, whenever it deems it necessary or
139 desirable in the fulfillment of its corporate purpose, to
140 the modification of the rate of interest, time of payment
141 or any installment of principal or interest, or any other
142 terms, of any mortgage loan, mortgage loan commitment,
143 construction loan, temporary loan, contract or agreement
144 of any kind to which the housing development fund is a
145 party;

146 (18) To make and publish rules and regulations re-
147 specting its federally insured mortgage lending, uninsured
148 mortgage lending, construction lending and temporary
149 lending to defray development costs and any such other
150 rules and regulations as are necessary to effectuate its
151 corporate purpose;

152 (19) To borrow money to carry out and effectuate its
153 corporate purpose and to issue its negotiable bonds or
154 notes as evidence of any such borrowing in such principal
155 amounts and upon such terms as shall be necessary to
156 provide sufficient funds for achieving its corporate pur-
157 pose, except that no negotiable notes shall be issued to
158 mature more than ten years from date of issuance and
159 no negotiable bonds shall be issued to mature more than
160 fifty years from date of issuance;

161 (20) To issue renewal notes, to issue bonds to pay
162 notes and, whenever it deems refunding expedient, to
163 refund any bonds by the issuance of new bonds, whether
164 the bonds to be refunded have or have not matured except
165 that no such renewal notes shall be issued to mature
166 more than ten years from date of issuance of the notes
167 renewed and no such refunding bonds shall be issued to
168 mature more than fifty years from the date of issuance;

169 (21) To apply the proceeds from the sale of renewal
170 notes or refunding bonds to the purchase, redemption, or
171 payment of the notes or bonds to be refunded;

172 (22) To provide technical services to assist in the plan-
173 ning, processing, design, construction or rehabilitation of
174 residential housing for occupancy by persons and families
175 of low and moderate income or land development for
176 residential housing for occupancy by persons and families
177 of low and moderate income;

178 (23) To provide consultative project assistance services
179 for residential housing for occupancy by persons and
180 families of low and moderate income and for land develop-
181 ment for residential housing for occupancy by persons
182 and families of low and moderate income, and for the
183 residents thereof with respect to management, training
184 and social services;

185 (24) To promote research and development in scientific
186 methods of constructing low cost residential housing of
187 high durability;

188 (25) To participate in the making of or to make loans
189 to qualified federally approved mortgagees and in con-
190 nection therewith, or independently thereof, to take as
191 collateral security, invest in, purchase, acquire, sell or
192 participate in the sale of, or take assignments of, notes
193 and mortgages, evidencing loans for the construction,
194 rehabilitation, purchase or refinancing of housing for per-
195 sons and families of low and moderate income in this
196 state: *Provided*, That the fund shall obtain such written
197 assurances as shall be satisfactory to it that the proceeds
198 of such loans, investments or purchases will be used, as
199 nearly as practicable, for the making of or investment in
200 long-term federally insured mortgage loans or federally
201 insured construction loans for low and moderate income
202 housing in this state or that other moneys in an amount
203 approximately equal to such proceeds shall be committed
204 and used for such purpose;

205 (26) To make or participate in the making of un-
206 insured construction loans to sponsors of land develop-
207 ment for residential housing for occupancy by persons
208 and families of low and moderate income or residential
209 housing for occupancy by persons and families of low and
210 moderate income. Such loans shall be made only upon
211 determination by the housing development fund that
212 construction loans are not otherwise available, wholly or
213 in part, from private lenders upon reasonably equivalent
214 terms and conditions;

215 (27) To make or participate in the making of long-
216 term uninsured mortgage loans to sponsors of residential
217 housing for occupancy by persons and families of low

218 and moderate income, or to persons and families of low
219 and moderate income who may purchase such residential
220 housing. Such loans shall be made only upon determina-
221 tion by the housing development fund that long-term
222 mortgage loans are not otherwise available, wholly or in
223 part, from private lenders upon reasonably equivalent
224 terms and conditions; and

225 (28) To obtain options to acquire and to acquire real
226 property, or any interest therein, in its own name, by
227 purchase, or lease, or otherwise, which is found by the
228 housing development fund to be suitable, or potentially
229 suitable, as a site, or as part of a site, for the construction
230 of residential housing for occupancy by persons and
231 families of low and moderate income; to hold such real
232 property; to make loans to finance the performance of
233 land development activities on or in connection with any
234 such real property or to perform land development activi-
235 ties on or in connection with any such real property; and
236 to sell, transfer and convey, lease or otherwise dispose of
237 such real property, or lots, tracts or parcels of such real
238 property, for such prices, upon such terms, conditions and
239 limitations, and at such time or times as the housing
240 development fund shall determine, to sponsors of resi-
241 dential housing for occupancy by persons and families
242 of low and moderate income or to persons and families
243 of low and moderate income: *Provided*, That if the hous-
244 ing development fund shall determine that any such real
245 property or any lots, tracts or parcels of such real prop-
246 erty are not at any time or times needed for present or
247 future residential housing for occupancy by persons and
248 families of low and moderate income, the housing develop-
249 ment fund may sell, transfer and convey, lease or other-
250 wise dispose of the same, to such purchasers or lessees,
251 for such prices, upon such terms, conditions and limita-
252 tions, and for such uses and purposes as the housing
253 development fund shall determine.

§31-18-19. Operating loan fund.

- 1 (a) The board of directors of the housing development
- 2 fund may create and establish a special revolving loan

3 fund of moneys made available by contribution or loan,
4 to be known as the operating loan fund and to be gov-
5 erned, administered and accounted for by the directors,
6 officers and managerial staff of the housing development
7 fund as a public purpose trust account separate and dis-
8 tinct from any other moneys, fund or funds owned and
9 managed by the housing development fund.

10 (b) The purpose for organizing and operating the
11 operating loan fund shall be to provide a source from
12 which the housing development fund may make tem-
13 porary loans, with or without interest, but with such
14 security for repayment as the housing development fund
15 deems reasonably necessary and practicable; such loans
16 to be used to defray development costs to sponsors of
17 land development for residential housing construction for
18 occupancy by persons and families of low and moderate
19 income or residential housing construction for occupancy
20 by persons and families of low and moderate income
21 which is eligible or potentially eligible for federally in-
22 sured construction loans, federally insured mortgages or
23 federal mortgages or other public assistance programs or
24 uninsured construction loans or uninsured mortgage
25 loans.

26 (c) No temporary loans shall be made by the housing
27 development fund from the operating loan fund except
28 in accordance with a written loan agreement which shall
29 include, but not be limited to, the following terms and
30 conditions:

31 (1) The proceeds of all such loans shall be used only to
32 defray the development costs of such proposed residential
33 housing;

34 (2) All such loans shall be repaid in full, with or with-
35 out interest as provided in the agreement;

36 (3) All repayments shall be made concurrent with
37 receipt by the borrower of the proceeds of a construction
38 loan or mortgage, as the case may be, or at such other
39 times as the housing development fund deems reasonably
40 necessary or practicable; and

41 (4) Specification of such security for repayments upon
42 such terms and conditions as the housing development

43 fund deems reasonably necessary or practicable to en-
44 sure all repayments.

45 (d) No funds from the operating loan fund shall be
46 used to carry on propaganda, or otherwise attempt to
47 influence legislation.

**§31-18-21. Prohibition on funds inuring to the benefit of or
being distributable to directors, officers or private
persons.**

1 No part of the funds of the housing development fund,
2 or of the operating loan fund, shall inure to the benefit
3 of or be distributable to its directors or officers or other
4 private persons except that the housing development fund
5 shall be authorized and empowered to pay reasonable
6 compensation, other than to the directors, including the
7 chairman, vice-chairman and treasurer of the board of
8 directors and the secretary of the board of directors, for
9 services rendered and to make loans and exercise its other
10 powers as previously specified in furtherance of its cor-
11 porate purpose: *Provided*, That no such loans shall be
12 made, and no property shall be purchased or leased
13 from, or sold, leased or otherwise disposed of, to any di-
14 rector or officer of the housing development fund.

CHAPTER 21

(Com. Sub. for House Bill No. 1202—By Mr. Dinsmore)

[Passed March 11, 1972; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections five-(one) through five-(fifty-four), inclusive, article one, chapter seven; to repeal sections five, five-(one) through five-(fifty-five), inclusive, article two, chapter eleven; to amend and reenact section five, article one, chapter seven; to further amend said article one by adding thereto four new sections, designated sections three-q, three-r, four and five-a; and to amend and

reenact article seven of said chapter seven, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to county government, county courts and other county officers and their deputies, assistants and employees; the composition, powers and duties of county courts and other county officers; setting forth legislative findings of fact and a declaration of policy with respect to such compensation, powers and duties; establishing county in-service training programs; classifying counties on the basis of assessed valuations for the purpose of determining compensation of elected county officials; the compensation of county commissioners and the compensation of other elected county officials, county deputies, assistants and employees; the county budget; assistant prosecuting attorneys, and their appointment and compensation; the appointment of an attorney to prosecute cases; the procedure for the payment of compensation of county officials, deputies, assistants and employees; affidavits as to compensation; illegal orders for compensation; providing prohibitions; the allowance for the expenses of sheriffs and prosecuting attorneys; the training of sheriffs and their deputies; the payment of training expenses by the county court; the mileage allowance for county officials and their deputies, assistants and employees and reports in connection therewith; annual reports by county officers; the source of compensation paid judges of courts of limited jurisdiction; providing criminal penalties; providing a severability clause; and relating to the deputies, assistants and employees of assessors.

Be it enacted by the Legislature of West Virginia:

That sections five-(one) through five-(fifty-four), inclusive, article one, chapter seven be repealed; that sections five, five-(one) through five-(fifty-five), inclusive, article two, chapter eleven be repealed; that section five, article one, chapter seven be amended and reenacted; that said article one be further amended by adding thereto four new sections, designated sections three-q, three-r, four and five-a; and that article seven of said chapter seven be amended and reenacted, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all to read as follows:

Article**1. County Courts Generally.****7. Training Programs for County Employees, etc.; Compensation of Elected County Officials; County Assistants, Deputies and Employees. Their Number and Compensation.****ARTICLE 1. COUNTY COURTS GENERALLY.**

§7-1-3q. County commissions on intergovernmental relations created and established; composition of commission; powers and duties of commission; executive secretary; duties of executive secretary.

§7-1-3r. Purposes of section; county commissions on crime, delinquency and correction created and established; composition of commission; powers and duties of commission; executive secretary; duties of executive secretary.

§7-1-4. Compensation of commissioners for services in court.

§7-1-5. Duties of county commissioners; payment for services other than services in court.

§7-1-5a. Salaries of county commissioners.

§7-1-3q. County commissions on intergovernmental relations created and established; composition of commission; powers and duties of commission; executive secretary; duties of executive secretary.

1 There is hereby established in each county a commis-
 2 sion on intergovernmental relations. The commission
 3 shall be composed of the members of the county court
 4 and such other members as may be designated by the
 5 county court. Members other than the county court
 6 members shall serve at the will and pleasure of a ma-
 7 jority of the county court members.

8 This commission shall assemble and disseminate in-
 9 formation concerning federal programs which provide
 10 financial assistance to the residents of their county. Such
 11 programs shall include but not be limited to,

12 1. Public Health Service Act, as amended. Public
 13 Law 89-97.

14 2. Housing and Urban Development Act of 1968, as
 15 amended.

16 3. Health Insurance for the aged under Public Law
 17 89-97, as amended.

18 4. Supplementary medical insurance for the aged under
 19 Public Law 89-97, as amended.

20 5. Housing and Urban Development Act of 1968, as
 21 amended, as it pertains to interest reduction payments

22 and rental and cooperative housing for lower income
23 families.

24 6. Housing Act of 1964, as amended, by Public Law
25 85-560, relating to rehabilitation loans.

26 7. The Emergency Employment Assistance Act of 1971.

27 8. Job opportunity programs and on the job training
28 under various federal acts.

29 9. Neighborhood improvement and development pro-
30 grams under various federal acts.

31 10. Library and other public facility improvement
32 programs under various federal programs.

33 The commission shall cooperate with municipalities,
34 other county agencies, state and federal agencies to effect
35 the purposes of this section. Appropriate state agencies
36 are authorized to give such technical assistance as may
37 be requested by the commission.

38 The clerk of the county court of each county shall be
39 the executive secretary to the commission and as such
40 shall attend all meetings, keep a record of all proceedings,
41 assemble and disseminate such information as may be
42 required by the commission and to perform such other
43 duties as may reasonably be required by the commission
44 to effectuate the purposes of this section.

**§7-1-3r. Purposes of section; county commissions on crime, de-
linquency and correction created and established;
composition of commission; powers and duties of
commission; executive secretary; duties of execu-
tive secretary.**

1 The enactment of the Omnibus Crime Control and Safe
2 City Streets Act of 1968 and subsequent amendments
3 thereto with millions of federal dollars available to
4 local units of government in the fiscal year one thousand
5 nine hundred seventy-two—one thousand nine hundred
6 seventy-three, and the probability that this program will
7 be continued and expanded in future years makes the es-
8 tablishment of a county agency to insure that the county
9 may make the best use of the benefits of this act.

10 There is hereby established in each county a county
11 commission on crime, delinquency and correction. The
12 commission shall consist of the members of the county
13 court and such other members as may be designated by
14 the county court. Members other than the county court
15 members shall serve at the will and pleasure of the
16 county court.

17 This commission shall collect and compile all data and
18 other information with respect to police agencies, courts
19 of record and justice of peace courts, prosecution of
20 crimes, probation, jails, juvenile detention facilities, and
21 such other matters as might be concerned with the total
22 criminal justice system.

23 The commission shall work closely with the governor's
24 committee on crime, delinquency and correction estab-
25 lished by Executive Order 7-A66 dated September one, one
26 thousand nine hundred sixty-six.

27 The commission shall analyze the data and informa-
28 tion herein required, shall determine federal funds
29 available under the provisions of the state plan de-
30 veloped by the aforesaid governor's committee on
31 crime, delinquency and correction, and shall make
32 recommendations to the governing body with respect
33 to priorities in the expenditure of funds.

34 The commission may make recommendations with
35 respect to steps to be taken in the county designed to
36 improve the criminal justice system.

37 The clerk of the circuit court of each county shall be
38 the executive secretary to the commission and as such
39 shall attend all meetings, keep a record of all proceed-
40 ings, shall collect and compile such data and information
41 as may be required by the commission and perform
42 such other duties as reasonably may be required by the
43 commission to effectuate the purposes of this section.

§7-1-4. Compensation of commissioners for services in court.

1 Each commissioner who attends the session of said court
2 shall receive for his services two dollars per day for every
3 day he shall so attend, to be paid out of the county
4 treasury.

§7-1-5. Duties of county commissioners; payment for services other than services in court.

1 It shall be the duty of the county commissioners of
2 each county to visit each quarter and inspect institutions
3 within their county for housing and caring for the poor,
4 to inspect the jails, and to arrange for the feeding and
5 care of the prisoners therein, and to investigate the con-
6 ditions of the poor within their county, not housed within
7 such institutions; to visit detention homes for children
8 within their counties, if any; to visit and inspect
9 bridges and bridge approaches under their control; to
10 provide for and have general supervision over the repair
11 and maintenance of the county courthouse, jails, houses
12 for the poor and other county property, so as to prevent
13 the undue deterioration thereof; to supervise and control
14 the maintenance and operation of airport or airports
15 owned and/or operated by the county court; to super-
16 vise and control the purchase, erection and maintenance
17 of airport facilities; to supervise and control the purchase
18 of furniture, fixtures and equipment, and janitors' and
19 other supplies for their county; to attend the annual
20 meeting of county assessors, and such district meetings
21 as may be called by the state tax commissioner, on mat-
22 ters pertaining to the work of the county assessors and
23 the county courts as boards of review and equalization;
24 to review and equalize the assessments made by the as-
25 sessors; to inspect and review the lists of property, both
26 real and personal, made up by the assessor and his dep-
27 uties for taxable purposes, and to point out to the as-
28 sessor any property, real and personal, which the said
29 assessors of their respective counties may have over-
30 looked or omitted to place on said tax lists; to call to the
31 attention of the assessor all real estate or personal prop-
32 erty belonging to churches, lodges, schools or other charit-
33 able institutions which may have been overlooked or
34 omitted by the assessor or his deputies in making up his
35 lists of property for entry on the land and personal prop-
36 erty books; to cooperate with the county public assistance
37 council and supervise the general management of the
38 fiscal affairs and business of each county; and as a further
39 part of their duties they shall be empowered to pur-

40 chase, lease, rent, control, supervise, inspect, maintain and
41 erect public parks, playgrounds and recreational facilities,
42 to purchase, lease or rent equipment therefor, and to em-
43 ploy qualified recreational directors and personnel; to
44 construct new Four-H camps on county property; to
45 operate stone quarries and sand deposits on county-
46 owned or leased property; to construct buildings for or
47 aid in constructing and/or equipping civil defense
48 buildings on sites approved by state office of civil de-
49 fense; and to operate dog pounds for county-municipal-
50 ities; and to purchase, lease, rent, control, supervise, in-
51 spect, maintain, and erect public markets and to purchase,
52 rent or lease equipment therefor, and to employ qualified
53 personnel to operate such public markets; and as a further
54 part of their duties they shall be empowered to purchase,
55 lease, rent, control, supervise, inspect, maintain and erect
56 county mental health clinics and engage in any program
57 designed for the betterment of the mental and physical
58 well-being of the residents of their county, and to co-
59 operate with any public or private agency for these pur-
60 poses; to establish and participate in regional planning
61 and development councils; to establish and participate in
62 county commissions on intergovernmental relations as
63 required by section three-q of this article; to establish
64 and participate in county commissions on crime, de-
65 linquency and correction as required by section three-r
66 of this article.

67 Compensation shall be allowed and paid out of the
68 county treasury, in the same manner as salaries are paid,
69 to each county commissioner of each county (except as
70 otherwise provided by law for the county of Ohio), for
71 services performed for such county concerning the visit-
72 ing of the poor, inspection of jails, bridges and bridge ap-
73 proaches, and for visiting detention homes for children;
74 and for providing for and supervising the repair and
75 maintenance of the county courthouse, jails, houses for
76 the poor and other county property; for supervising and
77 controlling the maintenance and operation of airport or
78 airports owned and/or operated by the county court, and
79 supervising and controlling the purchase, erection and
80 maintenance of airport facilities; and for supervising and

81 controlling the purchase of furniture, fixtures and equip-
82 ment and janitors' and other supplies of their county;
83 and for attending the annual meeting of assessors and
84 such district meetings as may be called by the state tax
85 commissioner, on matters pertaining to the work of as-
86 sessors and county courts as boards of review and equaliz-
87 ation; for reviewing and equalizing the assessments made
88 by the assessors; for inspecting and reviewing the lists of
89 property, both real and personal, made up by the assessor
90 and his deputies for taxable purposes, and for pointing
91 out to the assessor any property, real and personal, which
92 the said assessors of their respective counties may have
93 overlooked or omitted to place on said tax lists; for call-
94 ing to the attention of the assessor all real estate or per-
95 sonal property belonging to churches, lodges, schools or
96 other charitable institutions which may have been over-
97 looked or omitted by the assessor or his deputies in mak-
98 ing up his lists of property for entry on the land and
99 personal property books; for purchasing, leasing, renting,
100 controlling, supervising, inspecting, maintaining and erect-
101 ing public parks, playgrounds and recreational facilities,
102 and the purchasing, leasing or renting the equipment
103 therefor, and employing qualified recreational directors
104 and personnel therefor; for constructing new Four-H
105 camps on county property; operating stone quarries and
106 sand deposits on county-owned or leased property, con-
107 structing buildings for or aiding in construction and/or
108 equipping civil defense buildings on sites approved by
109 state office of civil defense; operating dog pounds for
110 county-municipalities; and to purchase, lease, rent, con-
111 trol, supervise, inspect, maintain and erect public markets,
112 and to purchase, rent or lease equipment therefor, and to
113 employ qualified personnel to operate such public markets;
114 for constructing fallout shelters and aiding individuals to
115 construct fallout shelters through furnishing available in-
116 formation; for purchasing, leasing, renting, controlling,
117 supervising, inspecting, maintaining and/or erecting
118 county mental health clinics and/or engaging in pro-
119 grams for the betterment of the mental and/or physical
120 well-being of the residents of their county; for conducting
121 a survey of all abandoned and dilapidated buildings or

122 structures within the county and to prepare an inventory
 123 thereof which inventory shall be made available to any
 124 agency of state or federal government or to local govern-
 125 mental agencies upon request; for establishing and par-
 126 ticipating in regional planning and development councils;
 127 for establishing and participating in county commissions
 128 on intergovernmental relations as required by section
 129 three-q of this article; for establishing and participating
 130 in county commissions on crime, delinquency and cor-
 131 rection as required by section three-r of this article; and
 132 for supervising the general management of the fiscal af-
 133 fairs and business of each county, within their counties,
 134 and other business by such commissioners, in addition to
 135 compensation for services in court, the sums of money
 136 provided in section five-a of this article.

§7-1-5a. Salaries of county commissioners.

1 In addition to the payment for services in court as
 2 described in section four of this article, all county com-
 3 missioners shall be paid compensation out of the county
 4 treasury in amounts hereafter set forth for each class
 5 of county as determined by the provisions of section
 6 three, article seven, chapter seven: *Provided*, That as to
 7 any county having a tribunal in lieu of a county court,
 8 the county commissioners of such county may be paid
 9 less than the minimum compensation limits of the county
 10 court for the particular class of such county.

11	Class I	\$12,600
12	Class II	\$ 9,000
13	Class III	\$ 7,500
14	Class IV	\$ 5,400
15	Class V	\$ 3,600
16	Class VI	\$ 2,100
17	Class VII	\$ 900

18 The compensation hereinabove provided shall be paid
 19 on and after January one, one thousand nine hundred
 20 seventy-three.

**ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES,
 ETC.; COMPENSATION OF ELECTED COUNTY OF-
 FICIALS; COUNTY ASSISTANTS, DEPUTIES AND**

EMPLOYEES, THEIR NUMBER AND COMPENSATION.

- §7-7-1. Legislative findings and purpose.
- §7-7-2. Establishment of county in-service training programs; further additional duties for prosecuting attorney in any county in excess of two hundred thousand.
- §7-7-3. Classification of counties for purpose of determining compensation of elected county officials.
- §7-7-4. Compensation of elected county officials other than county commissioners for each class of county; effective date.
- §7-7-5. Additional compensation for county clerks.
- §7-7-6. Additional compensation for circuit clerks.
- §7-7-7. County assistants, deputies and employees; their number and compensation; county budget.
- §7-7-8. Assistant prosecuting attorneys; appointment and compensation; when court may appoint attorney to prosecute.
- §7-7-9. Procedure for payment of compensation.
- §7-7-10. Affidavits acknowledging receipt of compensation.
- §7-7-11. Illegal orders for compensation.
- §7-7-12. Sharing compensation prohibited.
- §7-7-13. Allowance for expenses of sheriff.
- §7-7-14. Training of sheriffs and deputies; payment of expenses thereof by county court.
- §7-7-15. Allowance for expenses of prosecuting attorney.
- §7-7-16. Mileage allowance for county officials, their assistants, deputies and employees.
- §7-7-17. Annual reports by county officers of expenditures for assistants, deputies and employees.
- §7-7-18. Source of compensation paid judges of courts of limited jurisdiction.
- §7-7-19. Compliance with Economic Stabilization Act of 1970.
- §7-7-20. Penalties.
- §7-7-21. Severability.

§7-7-1. Legislative findings and purpose.

1 The Legislature hereby takes cognizance of the pro-
2 visions of chapter twenty-three, acts of the Legislature,
3 regular session, one thousand nine hundred seventy-one,
4 as partially amended by chapter thirteen, acts of the
5 Legislature, first extraordinary session, one thousand
6 nine hundred seventy-one, and the decision of the su-
7 preme court of appeals, Case No. 13156, decided by the
8 supreme court on February twenty-two, one thousand
9 nine hundred seventy-two, and the conclusions set forth
10 in the opinion of the court in said proceeding.

11 The Legislature hereby finds as a fact that the Legis-
12 lature did impose upon the county commissioners in each
13 county broad new and additional duties by the enact-

14 ment of committee substitute for house bill number
15 three, passed in special session November three, one thou-
16 sand nine hundred seventy-one, and that the new and
17 additional duties of county commissioners under said
18 act will begin with the organizational meetings of the
19 various regional planning and development councils dur-
20 ing the month of May, one thousand nine hundred seventy-
21 two. The Legislature hereby finds as a fact that the new
22 and additional duties imposed under the provisions of
23 the aforementioned house bill number three, are such
24 that they would justify the increase in compensation
25 as provided in section five-a, article one of this chapter
26 without being in violation of the provisions of section
27 thirty-eight, article six of the constitution of West Vir-
28 ginia.

29 The Legislature hereby further finds, as a fact, that
30 the duties required by sections three-q and three-r, ar-
31 ticle one, chapter seven as herein provided, constitute
32 new and additional duties for county commissioners and
33 as such justify the increased compensation provided by
34 section five-a, article one, chapter seven without violating
35 the provisions of section thirty-eight, article six of the
36 constitution of West Virginia.

37 The Legislature hereby further finds as a fact that
38 the duties imposed upon county clerks by the provisions
39 of section three-q, article one, chapter seven, as herein
40 provided, constitute new and additional duties for county
41 clerks and as such justify the additional compensation
42 provided by section five of this article without violating
43 the provisions of section thirty-eight, article six of the
44 constitution of West Virginia.

45 The Legislature hereby further finds as a fact that the
46 duties imposed upon circuit clerks by the provisions of
47 section three-r, article one, chapter seven, as herein pro-
48 vided, constitute new and additional duties for circuit
49 clerks and as such justify the additional compensation
50 provided by section six of this article without violating
51 the provisions of section thirty-eight, article six of the
52 constitution of West Virginia.

53 The Legislature hereby further finds and declares that
54 the amendments made by this act to this article are in-
55 tended to modify the provisions of this article so as to
56 cause the same to be in full compliance with the provi-
57 sions of the constitution of West Virginia, and to be in
58 full compliance with the decisions of the supreme court of
59 appeals of West Virginia.

**§7-7-2. Establishment of county in-service training programs;
further additional duties for prosecuting attorney in
any county in excess of two hundred thousand.**

1 There is hereby established county in-service training
2 programs as hereinafter set forth.

3 The attorney general is hereby authorized and di-
4 rected to establish such in-service training programs as
5 in his opinion will do most to assist the prosecuting at-
6 torneys in the performance of their duties. The attorney
7 general is authorized to accept any federal aid which may
8 be made available or any financial assistance which may
9 be available from any private nonprofit organization for
10 the purposes of this section. The prosecuting attorney in
11 any county having a population in excess of two hundred
12 thousand shall also discharge the additional duties im-
13 posed upon him by the provisions of section thirteen-a,
14 article five, chapter forty-nine of this code.

15 The state tax commissioner is hereby authorized and
16 directed to establish such in-service training programs
17 for county commissioners, county clerks, circuit clerks,
18 assessors, sheriffs and their assistants and employees as
19 in his opinion will do most to modernize and improve
20 the services of their respective offices. The state tax
21 commissioner is authorized to accept any federal aid
22 which may be made available or any financial assistance
23 which may be available from any private nonprofit orga-
24 nization for the purpose of this article.

25 Each of the county officials mentioned in this section,
26 and, at his option, one or more of his assistants, deputies
27 and employees, shall participate in the programs estab-
28 lished under this section.

29 The county court is authorized and directed to expend
30 funds for the purpose of reimbursing such officials and

31 employees for the actual amount expended by them for
 32 food, lodging and registration while in attendance at
 33 meetings called by the attorney general or the tax com-
 34 missioner for the purpose of this section, not to exceed
 35 thirty-five dollars per day, with mileage not to exceed
 36 the rate of ten cents per mile to be computed according
 37 to the distance by the nearest practicable route for travel
 38 to and from such meetings.

**§7-7-3. Classification of counties for purpose of determining
 compensation of elected county officials.**

1 For the purpose of determining the compensation of
 2 elected county officials, the counties of the state of West
 3 Virginia are hereby grouped into seven classes based
 4 on their assessed valuation of property, all classes. These
 5 seven classes and the minimum and maximum valuation
 6 of property, all classes, established to determine the
 7 classification of each county are as follows:

	Minimum Assessed Valuation of Property,	Maximum Assessed Valuation of Property,
8		
9		
10	Class All Classes	All Classes
11	Class I \$600,000,000	No limit
12	Class II \$450,000,000	\$599,999,999
13	Class III \$200,000,000	\$449,999,999
14	Class IV \$100,000,000	\$199,999,999
15	Class V \$ 50,000,000	\$ 99,999,999
16	Class VI \$ 15,000,000	\$ 49,999,999
17	Class VII 0	\$ 14,999,999

18 The assessed valuation of property, all classes, that shall
 19 be used as the base to determine the class of a county shall
 20 be the assessed valuation of property, all classes, of the
 21 county as certified by the county assessor, state auditor
 22 and county clerk prior to March twenty-nine, one thou-
 23 sand nine hundred seventy-two.

24 Prior to March twenty-nine, one thousand nine hun-
 25 dred seventy-six and each fourth year thereafter, the
 26 county court of each county shall determine if the as-
 27 sessed valuation of property, all classes, of the county, as
 28 certified by the county assessor, state auditor and county
 29 clerk, is within the minimum and maximum limits of a

30 class above or below the class in which the county then
 31 is. If the county court so determines, it shall record the
 32 new classification of the county with the state auditor
 33 and state tax commissioner and record its action on its
 34 county court record.

35 The classification of each county shall be subject to re-
 36 view by the state tax commissioner. He shall determine
 37 if the classification of each county is correct based on the
 38 final assessed valuation of property, all classes, certified
 39 to him by the county assessor, state auditor and county
 40 clerk. If he finds that a county is incorrectly classified
 41 he shall notify the county court of that county promptly
 42 of his finding and in any case shall notify the county
 43 court prior to June thirtieth of that current fiscal year.
 44 Any county court so notified shall correct its classification
 45 immediately and make any necessary corrections in the
 46 salaries of its elected county officials for the next fiscal
 47 year.

**§7-7-4. Compensation of elected county officials other than
 county commissioners for each class of county; ef-
 fective date.**

1 For the purpose of determining the compensation to be
 2 paid to the elected county officials of each county, the
 3 following compensations for each county office by class
 4 are hereby established and shall be used by each county
 5 court in determining the compensation of each of their
 6 county officials other than compensation of members of
 7 the county court:

		County	Circuit		Prosecuting
	Sheriff	Clerk	Clerk	Assessor	Attorney
10 Class I	\$12,000	\$15,000	\$15,000	\$12,000	\$22,000
11 Class II	8,400	12,000	12,000	8,400	13,500
12 Class III	10,000	13,000	13,000	12,000	14,000
13 Class IV	10,000	10,800	10,800	10,000	13,500
14 Class V	9,000	9,600	9,600	9,000	9,600
15 Class VI	6,900	6,900	6,900	6,900	6,900
16 Class VII	4,200	3,000	2,400	3,600	2,100

17 Any county clerk, circuit clerk, joint clerk of the county
 18 and circuit court, if any, county assessor, sheriff and

19 prosecuting attorney of a Class I county shall devote full
 20 time to his public duties to the exclusion of any other em-
 21 ployment. Notwithstanding the effective date of this act,
 22 the compensation provided in this section for sheriffs,
 23 assessors and prosecuting attorneys shall become effec-
 24 tive January one, one thousand nine hundred seventy-
 25 three, and the compensation provided in this section for
 26 county clerks, circuit clerks and joint clerks of county and
 27 circuit courts shall become effective January one, one
 28 thousand nine hundred seventy-five.

29 In the case of a county that has a joint clerk of the
 30 county and circuit court, the compensation of the joint
 31 clerk shall be fixed in an amount twenty-five percent
 32 higher than the compensation would be fixed for the
 33 county clerk if it had separate offices of county clerk and
 34 circuit clerk.

§7-7-5. Additional compensation for county clerks.

1 In addition to the salary provided for the county
 2 clerks in section four of this article, the county court of
 3 each county shall pay additional compensation in the
 4 amounts hereinafter set forth in this section to each
 5 clerk for the performance of the new and additional duties
 6 required of the clerk by the provisions of section three-q,
 7 article one, chapter seven. Such additional compensation
 8 shall be paid for by the calendar years ending December
 9 thirty-first, one thousand nine hundred seventy-three and
 10 December thirty-first, one thousand nine hundred seventy-
 11 four, in the following amounts:

	Calendar year	Calendar year	
	ending	ending	
	Dec. 31, 1973	Dec. 31, 1974	
15	Class I	\$3,000	\$3,000
16	Class II	\$1,000	\$1,000
17	Class III	\$2,400	\$2,400
18	Class IV	\$2,100	\$2,100
19	Class V	\$1,500	\$1,500
20	Class VI	\$1,200	\$1,200
21	Class VII	\$ 600	\$ 600

22 There shall be no additional compensation paid for
 23 these duties after the calendar year ending December
 24 thirty-first, one thousand nine hundred seventy-four.

§7-7-6. Additional compensation for circuit clerks.

1 In addition to the salary provided for the circuit
 2 clerks in section four of this article, the county court of
 3 each county shall pay additional compensation in the
 4 amounts hereinafter set forth in this section to each
 5 clerk for the performance of the new and additional duties
 6 required of the clerk by the provisions of section three-r,
 7 article one, chapter seven. Such additional compensation
 8 shall be paid for by the calendar years ending December
 9 thirty-first, one thousand nine hundred seventy-three, and
 10 December thirty-first, one thousand nine hundred seventy-
 11 four, in the following amounts:

	Calendar year ending Dec. 31, 1973	Calendar year ending Dec. 31, 1974
15 Class I	\$3,000	\$3,000
16 Class II	\$1,000	\$1,000
17 Class III	\$2,400	\$2,400
18 Class IV	\$2,100	\$2,100
19 Class V	\$1,500	\$1,500
20 Class VI	\$1,200	\$1,200
21 Class VII	\$ 600	\$ 600

22 There shall be no additional compensation paid for
 23 these duties after the calendar year ending December
 24 thirty-first, one thousand nine hundred seventy-four.

§7-7-7. County assistants, deputies and employees; their number and compensation; county budget.

1 The county clerk, circuit clerk, joint clerk of the county
 2 and circuit court, if any, sheriff, county assessor and
 3 prosecuting attorney, by and with the advice and consent
 4 of the county court, may appoint and employ, to assist
 5 them in the discharge of their official duties for and dur-
 6 ing their respective terms of office, assistants, deputies
 7 and employees.

8 The county clerk, circuit clerk, joint clerk of the coun-
9 ty and circuit court, if any, sheriff, county assessor and
10 prosecuting attorney shall, prior to March second of each
11 year, file with the county court a detailed request for
12 appropriations for anticipated or expected expenditures
13 for their respective offices, including the compensation
14 for their assistants, deputies and employees, for the
15 ensuing fiscal year.

16 The county court shall, prior to March twenty-ninth of
17 each year by order fix the total amount of money
18 to be expended by the county for the ensuing fiscal
19 year, which amount shall include the compensation
20 of county assistants, deputies and employees. Each
21 county court shall enter its order upon its county court
22 record.

23 The county clerk, circuit clerk, joint clerk of the county
24 and circuit court, if any, sheriff, county assessor and
25 prosecuting attorney shall then fix the compensation of
26 their assistants, deputies and employees based on the
27 total amount of money designated for expenditure by
28 their respective offices by the county court, and the
29 amount so expended shall not exceed the total expendi-
30 ture designated by the county court for each office.

31 The county officials, in fixing the individual compen-
32 sation of their assistants, deputies and employees, and
33 the county court in fixing the total amount of money to
34 be expended by the county, shall give due consideration
35 to the duties, responsibilities and work required of the
36 assistants, deputies and employees and their compensa-
37 tion shall be reasonable and proper.

38 After the county court has fixed the total amount of
39 money to be expended by the county for the ensuing
40 fiscal year and after each county official has fixed the
41 compensation of each of his assistants, deputies and em-
42 ployees, as provided in this section, each county official
43 shall file prior to June thirtieth, with the clerk of the
44 county court a budget statement for the ensuing fiscal
45 year setting forth the name, or the position designation
46 if then vacant, of each of his assistants, deputies and
47 employees, the period of time for which each is em-

48 ployed, or to be employed if the position is then vacant,
49 and his monthly or semimonthly compensation.

50 All budget statements required to be filed by this sec-
51 tion shall be verified by an affidavit by the county offi-
52 cial making them. Among other things contained in
53 the affidavit shall be the statement that the amounts
54 shown therein are the amounts actually paid or intended
55 to be paid to the assistants, deputies and employees
56 without rebate, and without any agreement, understand-
57 ing or expectation that any part thereof shall be repaid to
58 him, and that, prior to the time the affidavit is made, noth-
59 ing has been paid or promised him on that account, and
60 that if he shall thereafter receive any money, or thing of
61 value, on account thereof, he will account for and pay
62 the same to the county. Until the statements required
63 by this section have been filed, no allowance or payments
64 shall be made to any county official or their assistants,
65 deputies and employees.

66 Each county official named in this section shall have
67 the authority to discharge any of his assistants, deputies
68 or employees by filing with the clerk of the county court
69 a discharge statement specifying the discharge action.

**§7-7-8. Assistant prosecuting attorneys; appointment and com-
pensation; when court may appoint attorney to pros-
ecute.**

1 The prosecuting attorney of each county may, in ac-
2 cordance with and limited by the provisions of section
3 seven of this article, appoint practicing attorneys to assist
4 him in the discharge of his official duties during his term
5 of office. Any attorney so appointed shall be classified
6 as an assistant prosecuting attorney and shall take the
7 same oath and may perform the same duties as his prin-
8 cipal. Each assistant shall serve at the will and pleasure
9 of his principal and may be removed from office by the
10 circuit court of the county in which he is appointed for
11 any cause for which his principal might be removed.

12 If, in any case, the prosecuting attorney and his as-
13 sistants are unable to act, or if in the opinion of the
14 court it would be improper for him or his assistants

15 to act, the court shall appoint some competent practicing
16 attorney to act in that case. The court shall certify
17 to the county court the performance of that service when
18 completed and recommend to the county court a reason-
19 able compensation for the attorney for his service, and
20 the compensation, when allowed by the county court,
21 shall be paid out of the county treasury. No provision
22 of this section shall be construed to prohibit the employ-
23 ment by any person of a practicing attorney to assist in
24 the prosecution of any person or corporation charged
25 with a crime.

26 The compensation to be paid to an assistant prosecut-
27 ing attorney shall include compensation provided by law
28 for any services he renders as attorney for any adminis-
29 trative board or officer of his county. No assistant prose-
30 cuting attorney shall serve as attorney for any other
31 political subdivision of this state.

§7-7-9. Procedure for payment of compensation.

1 The compensation of the county clerk, circuit clerk,
2 joint clerk of the county and circuit court, if any, sheriff,
3 county assessor, prosecuting attorney, and their assistants,
4 deputies and employees shall be paid monthly or semi-
5 monthly by the county court, which compensation shall
6 be paid out of the county treasury in the manner pre-
7 scribed by law.

8 The county court, after the filing of the budget state-
9 ment specified in section seven of this article, may, by
10 order of record, authorize and order a draft on the county
11 treasurer, payable out of the general county fund, to be
12 drawn in favor of the county official, assistant, deputy
13 or employee named in this statement, in payment of the
14 compensation to which the person is entitled.

15 The draft shall not be issued to the county official,
16 assistant, deputy or employee until the proper county
17 official has filed a detailed monthly or semimonthly state-
18 ment with the county treasurer and has filed with the
19 county clerk a duplicate copy of the monthly or semi-
20 monthly statement, together with a receipt from the
21 county treasurer, showing that the person to be paid
22 has paid into the county treasury all moneys belonging

23 to the county that have been collected by him during
24 that pay period as shown by the monthly or semimonthly
25 statement.

26 When the order for the draft has been entered of record,
27 the president and clerk of the county court shall be au-
28 thorized to issue and approve by their signature the
29 draft.

§7-7-10. Affidavits acknowledging receipt of compensation.

1 At the end of each fiscal year, each county official,
2 assistant, deputy and employee shall sign and submit to
3 the clerk of the county court an affidavit which shall be
4 in the following form:

5 No. _____, 19_____

6 Name _____

7 Position or job title _____ County_____

8 Description of services rendered:

9 (Describe service and specify period [dates] of service)

10 _____

11 _____

12 I hereby certify that I have rendered the services
13 herein stated, that I have received the full compensation
14 to which I was entitled for those services rendered for
15 my own use and benefit, and that I have not paid, de-
16 posited, assigned, or contracted to pay, deposit or assign,
17 any part of my full compensation for the use of any
18 other person, or in any way, directly or indirectly, paid
19 or given, or contracted to pay or give, any reward or
20 compensation for my position or job or the emoluments
21 thereof to any other person.

22 (Signed)_____

23 If the services to the county of a county official, assis-
24 tant, deputy or employee terminate before the end of a
25 fiscal year, the official, assistant, deputy or employee
26 shall, at the time his services end, sign and submit the
27 above affidavit to the clerk of the county court.

28 All affidavits submitted shall be filed and preserved by
29 the clerk of the county court.

§7-7-11. Illegal orders for compensation.

1 If any clerk shall issue and deliver a draft to any county
2 clerk, circuit clerk, joint clerk of the county and circuit
3 court, if any, sheriff, county assessor, prosecuting at-
4 torney, or any of their assistants, deputies or employees,
5 in payment of their compensation, without all the ap-
6 plicable requirements of this article being complied
7 with, the draft so issued and delivered shall be illegal
8 and invalid. The clerk and the sureties on his bond shall
9 be liable to the county court of his county for the pay-
10 ment thereof.

§7-7-12. Sharing compensation prohibited.

1 No county official shall receive or be paid, directly
2 or indirectly, any part of the compensation of any assis-
3 tant, deputy or employee, or any fee or reward for
4 appointing him to his position. No member of a county
5 court shall receive or be paid, directly or indirectly, any
6 part of the compensation of any other county officer
7 named in this article, or of any county assistant, deputy
8 or employee. If any county commissioner or county
9 official violates the provisions of this section, he shall
10 be guilty of a misdemeanor, and, upon conviction thereof,
11 shall be fined not more than five hundred dollars, or im-
12 prisoned in the county jail not more than one year, or
13 both fined and imprisoned. Any county commissioner or
14 county official so convicted shall forfeit his office.

§7-7-13. Allowance for expenses of sheriff.

1 The county court of every county having a population
2 of thirty thousand or less as determined by the latest
3 official census available which, as provided in section
4 two-a, article eight of this chapter, has directed the
5 sheriff as jailer to feed prisoners shall, in addition to his
6 compensation, allow to the sheriff for keeping and feeding
7 each prisoner, other than federal prisoners or prisoners
8 held under civil process as provided by law, one dollar
9 and twenty-five cents per day for each prisoner.

10 The limitation per day shall not include cost of per-
11 sonal service, bed or bedding, soaps and disinfectants
12 and items of like kind, the cost of all of which shall be

13 paid out of the allowance fixed by the county court
14 under the provisions of present law.

15 All supplies of whatever kind for keeping and feeding
16 prisoners shall be purchased upon the requisition of the
17 sheriff under rules and regulations prescribed by the
18 county court. At the end of each month the sheriff shall
19 file with the county court a detailed statement showing
20 the name of each prisoner, date of commitment and date
21 of discharge, the number of days in jail, and shall also
22 file an itemized statement showing each purchase and
23 the cost thereof for keeping and feeding prisoners.

24 The county court of every county shall allow the actual
25 and necessary expenses incurred or expended by the
26 sheriff in the discharge of his duties, including, but not
27 limited to those incurred in arresting, pursuing or trans-
28 porting persons accused or convicted of crimes and
29 offenses; in the cost of law enforcement and safety equip-
30 ment; in conveying or transporting a prisoner from and
31 to jail to participate in court proceedings, and in con-
32 veying or transferring any person to or from any state
33 institution where he may be committed from his county,
34 where by law the sheriff is authorized to convey or
35 transfer the person. The county court shall allow the
36 actual and necessary expenses incurred or expended in
37 serving summonses, notices or other official papers in con-
38 nection with the sheriff's office.

39 Every sheriff shall file monthly, under oath, a full and
40 accurate account of all the actual and necessary ex-
41 penses incurred by him, his deputies, assistants and
42 employees in the performance and discharge of their
43 official duties supported by verified accounts before reim-
44 bursement thereof shall be allowed by the county court.
45 Reimbursement, properly allowed, shall be made from the
46 general county fund.

§7-7-14. Training of sheriffs and deputies; payment of expenses thereof by county court.

1 The county court of each county is authorized, at its
2 discretion, to expend from the general county fund, upon
3 request and requisition by the sheriff of the county, the
4 necessary and proper travel expenses, per diem allowance

5 of not less than three dollars fifty cents per day and
6 tuition expenses for the training of the sheriff and his
7 deputies of the county in the performance of their duties,
8 as sheriff and deputy, at any training school or academy
9 available therefor located in this state.

§7-7-15. Allowance for expenses of prosecuting attorney.

1 In addition to his compensation, the prosecuting at-
2 torney and his assistants shall be reimbursed for actual
3 traveling expenses within the state in the performance of
4 their official duties, and when out of the state for the
5 purpose of taking depositions in cases in which other
6 counsel is not employed by the court under section one,
7 article three, chapter sixty-two of this code, which ex-
8 penses shall be duly itemized and verified, and shall, if
9 found correct, be allowed by the county court and be
10 paid monthly out of the general county fund.

§7-7-16. Mileage allowance for county officials, their assistants, deputies and employees.

1 The county court of each county shall allow to each
2 county official and to their deputies, assistants and em-
3 ployees, when they are required to drive their personally
4 owned car in the actual performance and discharge of
5 their official duties, reimbursement at the rate of ten
6 cents for each mile traveled in their personally owned
7 car.

8 Every county official shall file monthly, under oath, a
9 full and accurate account of all the actual mileage driven
10 by him, his deputies, assistants and employees, in the
11 performance and discharge of their official duties sup-
12 ported by verified accounts before reimbursement thereof
13 shall be allowed by the county court. Reimbursement,
14 properly allowed, shall be made from the general county
15 fund.

§7-7-17. Annual reports by county officers of expenditures for assistants, deputies and employees.

1 Every county official named in this article shall, on the
2 first day of June of each year, file with the county court
3 and with the state tax commissioner, an itemized sworn

4 statement of the amount expended by him, including com-
5 pensation, emoluments and other outlay of money or
6 thing of value for the twelve months last preceding the
7 time of filing the report, for the services of all his as-
8 sistants, deputies and employees.

§7-7-18. Source of compensation paid judges of courts of limited jurisdiction.

1 The compensation of every judge of a court of record
2 of limited jurisdiction established by the Legislature
3 under section nineteen, article eight of the constitution,
4 and the compensation of every person who serves as
5 judge of any of those courts when the judge of the
6 court cannot act, shall be paid out of the treasury of
7 the county and not out of the treasury of the state.

§7-7-19. Compliance with Economic Stabilization Act of 1970.

1 Nothing herein contained shall be construed to permit
2 the compensation of the judge of any statutory court, of-
3 ficer or employee to be in excess of the amount (taking
4 into consideration the compensation he now receives as
5 supplemental compensation from any county, county
6 court, or other political subdivision) which can be paid
7 under the rules and regulations of the pay board estab-
8 lished by the president of the United States by virtue of
9 the authority vested in him by the Economic Stabilization
10 Act of 1970, as from time to time amended; nor shall this
11 section be construed to permit the annual salary of such
12 judge, officer or employee to be reduced to a sum below
13 that which he was being paid by the state of West Vir-
14 ginia and any county, county court, or other political sub-
15 division on June thirty, one thousand nine hundred
16 seventy-two.

§7-7-20. Penalties.

1 If any county clerk, circuit clerk, joint clerk of any
2 county and circuit court, sheriff, county assessor or
3 prosecuting attorney fail to file the detailed request for
4 appropriations or the budget statement as provided in
5 section seven of this article or fail to file the monthly or
6 semimonthly statement as provided in section nine of

7 this article or fail to file the statement of expenditures as
8 provided for in section seventeen of this article, or if any
9 county clerk, circuit clerk, joint clerk of any county and
10 circuit court, sheriff, county assessor, prosecuting at-
11 torney, their assistants, deputies or employees, fail to
12 comply with any of the requirements provided in this
13 article, he shall, except where another penalty is pre-
14 scribed, be guilty of a misdemeanor, and, upon conviction
15 thereof, shall be fined not less than fifty dollars nor more
16 than one hundred dollars, or imprisoned in the county
17 jail not less than thirty days nor more than six months, or
18 both fined and imprisoned.

§7-7-21. Severability.

1 If any provision of this article or the application thereof
2 to any person or circumstance is held invalid, such in-
3 validity shall not affect other provisions or applications
4 of the article, and to this end the provisions of this article
5 are declared to be severable.

CHAPTER 22

(House Bill No. 737—By Mr. Perry)

[Passed March 11, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-p, authorizing and empowering the county court of any county to require permits for the occupancy of any mobile home or house trailer; providing for the issuance of such permits by the assessor of any such county; authorizing the assessor to prescribe forms; authorizing fees for such permits; specifying that such fees shall become a part of the county treasury; and providing criminal offenses and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COUNTY COURTS GENERALLY.

§7-1-3p. Authority to require permits for mobile homes or house trailers; penalty.

1 The county court of any county is hereby authorized
2 and empowered to require by order entered of record
3 that no person shall locate, place or maintain for resi-
4 dency purposes a mobile home or house trailer, excluding
5 motor homes, travel trailers and camper vehicles, in such
6 county for more than thirty days until the owner of
7 such mobile home or house trailer shall have first obtained
8 a permit to do so from the assessor of such county. Such
9 permit shall be for information purposes and an appli-
10 cation for any such permit shall be made upon such forms
11 as may be prescribed by the assessor. A fee not exceeding
12 two dollars, to be fixed by the county court by order
13 entered of record, may be charged by the assessor for
14 the issuance of any such permit. All fees so collected
15 shall become a part of the county treasury.

16 Any person violating any such county court order shall
17 be guilty of a misdemeanor, and, upon conviction thereof,
18 shall be fined not less than ten nor more than one hundred
19 dollars. Justices of the peace shall have concurrent juris-
20 diction with courts of record with criminal jurisdiction
21 of any offense under this section.

CHAPTER 23

(House Bill No. 1121—By Mr. Fantasia and Mr. Shingleton)

[Passed March 11, 1972; in effect ninety days from passage. Approved by the Governor.]

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

nine hundred thirty-one, as amended, relating to authorizing a county court to pay the entire premium for employees group insurance policies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. FISCAL AFFAIRS.

§7-5-20. Group insurance programs authorized.

1 Every county through its county court shall have
2 plenary power and authority to negotiate for, secure and
3 adopt for the officers and regular employees thereof,
4 other than provisional, temporary, emergency and inter-
5 mittent employees, who are in officer or employee status
6 with such county on and after the effective date of this
7 section, a policy or policies of group insurance written
8 by a carrier or carriers chartered under the laws of any
9 state and duly licensed to do business in this state and
10 covering life; health; hospital care; surgical or medical
11 diagnosis, care and treatment; drugs and medicines;
12 remedial care; other medical supplies and services; or any
13 other combination of these; and any other policy or poli-
14 cies of group insurance which in the discretion of the
15 county court bear a reasonable relationship to the fore-
16 going coverages. The provisions and terms of any such
17 group plan or plans of insurance shall be approved in
18 writing by the insurance commissioner of this state as
19 to form, rate and benefits.

20 The county court is hereby authorized and empowered
21 to pay the entire premium cost, or any portion thereof
22 of said group policy or policies. Whenever the above
23 described officers or regular employees shall indicate in
24 writing that they have subscribed to any of the aforesaid
25 insurance plans on a group basis and the entire cost
26 thereof is not paid by the county court, the county court
27 is hereby authorized and empowered to make periodic
28 premium deductions of the amount of the contribution
29 each such subscribing officer or employee is required to
30 make for such participation from the salary or wage pay-

31 ments due each such subscribing officer or employee as
32 specified in a written assignment furnished to the county
33 clerk by each such subscribing officer or employee.

34 When a participating officer or employee shall retire
35 from his office or employment, he may, if he so elects
36 and the insurance carrier or carriers agree, remain a
37 member of the group plan by paying the entire premium
38 for coverage involved.

CHAPTER 24

(House Bill No. 967—By Mr. Beneke)

[Passed March 10, 1972; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article six, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the deposit at interest of excess county funds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. COUNTY DEPOSITORIES.

§7-6-5. Interest on deposits.

1 The county treasurer is authorized to establish with
2 such depositories two accounts, one to be designated "de-
3 mand deposit account" and the other to be designated
4 "time deposit account." When it appears to any of the
5 various fiscal bodies of the county that funds on deposit in
6 its demand deposit account exceed the current require-
7 ments or demands, or that funds should be deposited
8 in the time deposit account, and that a transfer or de-
9 posit of such funds or a portion thereof to or in the time
10 deposit account would earn interest thereon, the treasurer
11 shall, with the approval in writing of each fiscal body

12 whose funds are involved, transfer or deposit such funds
13 or a portion of such funds to said time deposit account.

14 The depositories shall pay interest on public funds de-
15 posited therein in time deposit accounts at a rate of
16 interest equal to but not more than that paid by such
17 depositories on private funds deposited in similar time
18 deposit accounts. Nothing herein contained shall be con-
19 strued as requiring the transfer or deposit of any por-
20 tion of public funds to time deposit accounts and such
21 shall not be done except at the direction of a fiscal body.
22 When interest is credited to any such time deposit ac-
23 count, the depository shall report in writing the amount
24 thereof to the clerk of the county court and the treasurer,
25 each separately, before noon of the next business day.
26 All of such interest shall be allocated by the treasurer
27 to each fiscal body whose funds were on deposit in such
28 time deposit account, such allocation to be made on the
29 basis of the amount of funds of each fiscal body in such
30 time deposit account and the length of time each body's
31 funds were in such account. Within ten days after receipt
32 of the depository's report showing that interest has been
33 credited to such time deposit account, the treasurer shall
34 make the foregoing allocation of interest and report the
35 same to each of the fiscal bodies whose funds are in-
36 volved.

CHAPTER 25

(House Bill No. 1159—By Mr. Potter)

[Passed March 11, 1972; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article eleven; and sections seven and eight, article twelve, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to county parks and recreation commissions; relating to the general powers and authority of county parks and recreation commissions; authorizing county parks and recreation commissions to

borrow money and execute and deliver evidences of indebtedness and give security therefor and to issue and sell revenue bonds; incorporating the provisions of article sixteen, chapter eight of the code with respect to the powers and authority of county parks and recreation commissions; authorizing county parks and recreation commissions to establish, charge and collect reasonable fees and charges; providing that no indebtedness or obligation incurred by any county parks and recreation commission shall give any right against the county or any member of the county court or any member of any such commission; providing that no indebtedness of any nature of any such commission shall constitute an indebtedness of the county or of the county court or be a charge against any property of the county, the rights of creditors of any such commission to be solely against any such commission as a corporate body; authorizing any such county parks and recreation commission to enter into any agreement; exempting any such county parks and recreation commission from the payment of any taxes or fees; exempting the property of any such county parks and recreation commission from all municipal and county taxes; providing that bonds, notes, debentures and other evidences of indebtedness of any such commission, together with the interest and income thereon shall be exempt from taxation; relating to development authorities generally; relating to and expanding the powers and authority of development authorities; incorporating the provisions of article sixteen, chapter eight of the code with respect to the powers and authority of development authorities; setting forth certain legislative findings with respect to the powers and authority of development authorities; and relating to the incurring of indebtedness by development authorities.

Be it enacted by the Legislature of West Virginia:

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

Article

- 11. County Parks and Recreation Commissions.**
- 12. County Development Authorities.**

ARTICLE 11. COUNTY PARKS AND RECREATION COMMISSIONS.**§7-11-2. Commission a body corporate; perpetual existence; name; power and authority; authority of county court; indebtedness of commission; agreements; tax exemption.**

1 Any parks and recreation commission created by a
2 county court pursuant to the authority of this article shall
3 be a public corporate body with perpetual existence and
4 a corporate seal. It shall be known as the (name of coun-
5 ty) county parks and recreation commission. Any board
6 of park and recreation commissioners heretofore created
7 under the former provisions of this article shall hereafter
8 be known as the (name of county) county parks and rec-
9 reation commission, and such commission shall succeed
10 to all of the properties, interest and assets of any such
11 board of park and recreation commissioners. The com-
12 mission shall have the power and authority to receive and
13 control any gift, federal grant, other grant, donation and
14 bequest or devise; to exercise the right of eminent domain
15 if an order of the county court authorizing exercise of the
16 right as to any proposed acquisition is first made and en-
17 tered; to take and hold title to any real or personal prop-
18 erty; to receive all operating and capital funds appropri-
19 ated by the county court to the commission; to receive
20 all income and other funds, whether in cash or check,
21 received by the county court and derived from properties
22 and facilities devoted to park and recreational uses and
23 under the control of said commission; to receive all re-
24 cepts from income producing park and recreational prop-
25 erties and facilities under the control of the commission;
26 to deposit, invest, manage and disburse, all such funds,
27 income or receipts, including the interest or income
28 earned thereon or therefrom; to borrow money and exe-
29 cute and deliver negotiable notes, mortgage bonds, other
30 bonds, debentures and other evidences of indebtedness
31 therefor, and give such security therefor as shall be re-
32 quisite, including giving a mortgage or deed of trust on
33 the properties or facilities under the control of the com-
34 mission or assigning or pledging the gross or net revenues
35 therefrom; to raise funds by the issuance and sale of rev-
36 enue bonds in the manner provided by the applicable

37 provisions of article sixteen, chapter eight of this code,
38 it being hereby expressly provided that for the purpose
39 of the issuance and sale of revenue bonds, the commis-
40 sion is a "governing body" as that term is used in said
41 article sixteen; to establish, charge and collect reasonable
42 fees and charges for services or for the use of any part
43 of the properties or facilities under its control, or for both
44 services and such use; to sue and be sued; to contract and
45 be contracted with; to obtain one or more insurance pol-
46 icies affording coverage for loss of or damage to the prop-
47 erties and facilities under its control and affording public
48 liability coverage for the legal liability of the commission,
49 its officers, agents and employees; to adopt bylaws gov-
50 erning the operation of the commission and specifying
51 the powers and duties of its officers; and to do any and all
52 things which may be necessary or convenient to carry
53 out and effectuate the purposes and provisions of this
54 article.

55 Any such county court is hereby empowered and au-
56 thorized to transfer to any such commission all such funds
57 or income, as provided for in the preceding paragraph of
58 this section, and such county court may require a blanket
59 surety bond covering those individuals authorized to sign
60 checks on behalf of the commission in a penal sum not in
61 excess of twenty-five thousand dollars.

62 The commission may incur any proper indebtedness
63 and issue any obligations and give any security therefor
64 which it may deem necessary and advisable in connection
65 with carrying out any of its purposes. No indebtedness
66 or obligation incurred by the commission shall give any
67 right against the county or any member of the county
68 court or any member of the commission. No indebtedness
69 of any nature of the commission shall constitute an in-
70 debtedness of the county or the county court or be a
71 charge against any property of the county. The rights
72 of creditors of the commission shall be solely against the
73 commission as a corporate body and shall be satisfied
74 only out of property held by it in its corporate ca-
75 pacity.

76 Without in any way limiting the generality of any of
77 the other provisions of this article, the commission may, in

78 connection with obtaining moneys or property for its
79 purposes, enter into any agreement with any person, in-
80 cluding the federal government, or any department,
81 agency or subdivision thereof, containing such provi-
82 sions, covenants, terms and conditions as the commis-
83 sion may deem advisable.

84 The commission shall be exempt from the payment of
85 any taxes or fees to the state or any subdivision thereof
86 or any municipality or to any officer or employee of the
87 state or of any subdivision thereof or of any municipality.
88 The property of the commission shall be exempt from all
89 municipal and county taxes. Bonds, notes, debentures
90 and other evidences of indebtedness of the commission
91 are declared to be issued for a public purpose and to be
92 public instrumentalities, and, together with interest and
93 income thereon, shall be exempt from taxation.

ARTICLE 12. COUNTY DEVELOPMENT AUTHORITIES.

§7-12-7. Powers generally.

§7-12-8. Incurring indebtedness; rights of creditors.

§7-12-7. Powers generally.

1 The development authority is hereby given power and
2 authority as follows: (1) To make and adopt all nec-
3 essary bylaws, rules and regulations for its organization
4 and operations not inconsistent with law; (2) To elect
5 its own officers, to appoint committees and to employ
6 and fix compensation for personnel necessary for its op-
7 eration; (3) To enter into contracts with any person,
8 agency, governmental department, firm or corporation,
9 including both public and private corporations, and gen-
10 erally to do any and all things necessary or convenient
11 for the purpose of promoting, developing and advancing
12 the business prosperity and economic welfare of the
13 county in which it is intended to operate, its citizens and
14 industrial complex, including, without limiting any of
15 the foregoing, the construction of any building or struc-
16 ture for lease to the federal government or any of its
17 agencies or departments, and in connection therewith to
18 prepare and submit bids and negotiate with the federal
19 government or such agencies or departments in accor-
20 dance with plans and specifications and in the manner

21 and on the terms and conditions and subject to any re-
22 quirements, regulations, rules and laws of the United
23 States of America for the construction of said buildings
24 or structures and the leasing thereof to the federal gov-
25 ernment or such agencies or departments; (4) to amend
26 or supplement any contracts or leases or to enter into
27 new, additional or further contracts or leases upon such
28 terms and conditions, for such consideration and for such
29 term of duration, with or without option of renewal, as
30 may be agreed upon by the authority and such person,
31 agency, governmental department, firm or corporation;
32 (5) unless otherwise provided for in, and subject to the
33 provisions of, such contracts, or leases, to operate, repair,
34 manage, and maintain such buildings and structures and
35 provide adequate insurance of all types, and in connec-
36 tion with the primary use thereof and incidental thereto
37 to provide such services, such as barber shops, news-
38 stands, drugstores and restaurants, and to effectuate such
39 incidental purposes, grant leases, permits, concessions or
40 other authorizations to any person or persons, upon such
41 terms and conditions, for such consideration and for such
42 term of duration as may be agreed upon by the author-
43 ity and such person, agency, governmental department,
44 firm or corporation; (6) to delegate any authority given
45 to it by law to any of its officers, committees, agents or
46 employees; (7) to apply for, receive and use grants-in-
47 aid, donations and contributions from any source or
48 sources, and to accept and use bequests, devises, gifts
49 and donations from any person, firm or corporation; (8)
50 to acquire lands and other real property by gift, purchase,
51 or construction, or in any other lawful manner, and hold
52 title thereto in its own name; (9) to purchase or other-
53 wise acquire, own, hold, sell and dispose of personal prop-
54 erty and real estate, and to own, hold, sell, lease or other-
55 wise dispose of all or part of such personal property and
56 any real property which it may own; (10) pursuant to a
57 determination by the board that there exists a continuing
58 need for programs to alleviate and prevent unemploy-
59 ment within the county in which the authority is intended
60 to operate or aid in the rehabilitation of areas in said
61 county which are underdeveloped, decaying or otherwise

62 economically depressed, and that moneys or funds of the
63 authority are necessary therefor, to borrow money and
64 execute and deliver the authority's negotiable notes,
65 mortgage bonds, other bonds, debentures, and other evi-
66 dences of indebtedness therefor, on such terms as the
67 authority shall determine, and give such security there-
68 for as shall be requisite, including giving a mortgage or
69 deed of trust on its real or personal property and facili-
70 ties in connection with the issuance of mortgage bonds;
71 (11) to raise funds by the issuance and sale of revenue
72 bonds in the manner provided by the applicable pro-
73 visions of article sixteen, chapter eight of this code, it
74 being hereby expressly provided that a development
75 authority created under this article is a "governing body"
76 within the definition of that term as used in said article
77 sixteen, chapter eight of this code; and (12) to expend its
78 funds in the execution of the powers and authority here-
79 in given, which expenditures, by the means authorized
80 herein, are hereby determined and declared as a matter
81 of legislative finding to be for a public purpose and use,
82 in the public interest, and for the general welfare of the
83 people of West Virginia, to alleviate and prevent eco-
84 nomic deterioration and to relieve the existing critical
85 condition of unemployment existing within the state.

§7-12-8. Incurring indebtedness; rights of creditors.

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

16 be satisfied only out of property held by it in its cor-
17 porate capacity.

CHAPTER 26

(House Bill No. 517—By Mr. Scott)

[Passed March 6, 1972; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eight, nine and seventeen, article fourteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to civil service coverage for certain deputy sheriffs in certain counties; increasing from sixty to sixty-five years of age the maximum age of one who may be reinstated as a deputy sheriff in a county having civil service for deputy sheriffs; increasing from sixty to sixty-five years of age the maximum age of any person serving as a deputy sheriff in any such county who may be considered as having been appointed under said article; and increasing from sixty to sixty-five years of age the maximum age of any deputy sheriff in any such county.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

- §7-14-8. Form of application; age requirements; exceptions.
- §7-14-9. Character and notice of competitive examinations; qualifications of applicants; competitive examinations to be prescribed by state civil service commission; press representatives; posting eligible list; medical examinations; exceptions as to and training of deputies serving on effective date of article.
- §7-14-17. Removal, discharge, suspension or reduction in rank or pay; appeal; reduction in number of deputies; no person subject to article may serve as deputy after age sixty-five.
- §7-14-8. Form of application; age requirements; exceptions.
- 1 The civil service commission in each such county shall
 - 2 require persons applying for admission to any competitive

3 examination provided for under this article or under the
4 rules and regulations of the commission to file in its of-
5 fice, within a reasonable time prior to the proposed com-
6 petitive examination, a formal application in which the
7 applicant shall state under oath or affirmation:

8 (1) His full name, residence and post-office address;

9 (2) His United States citizenship, age and the place
10 and date of his birth;

11 (3) His health and his physical capacity for the po-
12 sition of deputy sheriff;

13 (4) His business, employments and residences for at
14 least three previous years; and

15 (5) Such other information as may reasonably be re-
16 quired, relative to the applicant's qualifications and fit-
17 ness for the position of deputy sheriff.

18 Blank forms for such applications shall be furnished by
19 the commission, without charge, to all persons requesting
20 the same. The commission may require, in connection
21 with the application, such certificates of citizens, phy-
22 sicians or others, having pertinent knowledge concerning
23 the applicant, as the good of the service may require.

24 No application for original appointment shall be re-
25 ceived on and after the effective date of this article, if
26 the person applying is less than twenty-one years of age
27 or more than forty-five years of age at the date of his
28 application: *Provided*, That in the event any applicant
29 formerly served as a deputy sheriff for a period of more
30 than six months in the county to which he makes appli-
31 cation, and resigned as a deputy sheriff at a time when
32 there were no charges of misconduct or other misfeasance
33 pending against him, within a period of two years next
34 preceding the date of his application, and at the time of
35 his application resides within the county in which he
36 seeks appointment by reinstatement, then such applicant
37 shall be eligible for appointment by reinstatement in
38 the discretion of the civil service commission, even
39 though such applicant shall be over the age of forty-five
40 years, provided he is not sixty-five years of age or over,
41 and such applicant, providing his former term of service

42 as deputy sheriff so justifies, may be reappointed by rein-
43 statement without a competitive examination, but such
44 applicant shall undergo a medical examination; and if
45 such applicant shall be so appointed by reinstatement as
46 aforesaid, he shall be the lowest in rank in the sheriff's
47 office next above the probationers of the office.

**§7-14-9. Character and notice of competitive examinations;
qualifications of applicants; competitive examina-
tions to be prescribed by state civil service com-
mission; press representatives; posting eligible list;
medical examinations; exceptions as to and train-
ing of deputies serving on effective date of article.**

1 All competitive examinations for appointments or pro-
2 motions to all positions of deputy sheriff shall be prac-
3 tical in their character, and shall relate to such matters,
4 and include such inquiries, as will fairly and fully test
5 the comparative merit and fitness of the person or persons
6 examined to discharge the duties of the position sought
7 by him or them. The state civil service commission shall
8 prepare and prescribe, from time to time, the competitive
9 examination to be given by the civil service commission
10 of each such county. All competitive examinations shall
11 be open to all applicants who have fulfilled the prelimi-
12 nary requirements specified in other sections of this ar-
13 ticle.

14 Adequate public notice of the date, time and place of
15 every competitive examination held under the provisions
16 of this article, together with information as to the position
17 to be filled, shall be given at least two weeks prior to such
18 competitive examination. The commission shall adopt
19 reasonable rules and regulations for permitting the pres-
20 ence of representatives of the press at any such com-
21 petitive examination. The commission shall post, in a
22 public place at its office, the eligible list, containing the
23 names and grades of those who have passed such com-
24 petitive examinations for positions as deputy sheriffs,
25 under this article, and shall indicate thereon such ap-
26 pointments as may be made from said list.

27 All applicants for appointment or promotion to any
28 position as a deputy sheriff in any such county who have

29 passed the competitive examination specified above shall,
30 before being appointed or promoted, undergo a medical
31 examination which shall be conducted under the super-
32 vision of a board composed of two doctors of medicine
33 appointed for such purpose by the sheriff of the county.
34 Such board must certify that an applicant is free from
35 any bodily or mental defects, deformity or diseases which
36 might incapacitate him from the performance of the
37 duties of the position desired and is physically fit to per-
38 form such duties before said applicant shall be appointed
39 or promoted to any position. Notwithstanding the first
40 sentence of this paragraph, in the event the commission
41 deems it expedient, the medical examination may be
42 given prior to the competitive examination, and if the
43 medical examination is not passed as aforesaid, the ap-
44 plicant shall not be admitted to the competitive examina-
45 tion.

46 All deputies who are employed as deputies on the effec-
47 tive date of this article shall be considered to have been
48 appointed under the provisions of this article, without
49 regard to their age, provided they are not on said date
50 sixty-five years of age or older, and without competitive
51 examination or medical examination, and shall hold their
52 positions in accordance therewith for one year from the
53 effective date of this article. The civil service commission
54 shall, however, establish or prescribe a training program
55 for deputies who are employed as such on the effective
56 date of this article, giving due consideration to available
57 training personnel and programs. Such deputies must
58 complete such training program and must score a mini-
59 mum of sixty points on a written examination in which
60 one hundred points would be the highest possible score.
61 The examination shall be given in accordance with rules
62 and regulations to be promulgated by the civil service
63 commission of the county. A deputy failing to qualify
64 under the provisions of this paragraph may be continued
65 in his position at the discretion of the sheriff but in no
66 event for a period of more than one year. Such person
67 may be reexamined at the discretion of the civil service
68 commission of the county and may qualify as provided
69 in this paragraph.

§7-14-17. Removal, discharge, suspension or reduction in rank or pay; appeal; reduction in number of deputies; no person subject to article may serve as deputy after age sixty-five.

1 (a) On and after the effective date of this article, no
2 deputy sheriff of any county subject to the provisions of
3 this article shall be removed, discharged, suspended or
4 reduced in rank or pay except for just cause, which shall
5 not be religious or political, except as provided in section
6 fifteen of this article; and no such deputy shall on and
7 after the effective date of this article, be removed, dis-
8 charged, suspended or reduced except as provided in this
9 article and in no event until he shall have been furnished
10 with a written statement of the reasons for such action.
11 For the purpose of the remainder of this subsection and
12 subsections (b) and (c) of this section, the term "suspen-
13 sion" shall mean only (1) a suspension in excess of fifteen
14 days, or (2) a suspension in any calendar year which
15 when added to any previous suspension or suspensions
16 within the same calendar year results in a total period
17 of suspension in excess of fifteen days within such same
18 calendar year, and for the purpose of the remainder of
19 this subsection and said subsections (b) and (c), a mem-
20 ber shall not be considered to be suspended or sought
21 to be suspended unless his suspension meets the fore-
22 going definition of said term. In every case of such re-
23 moval, discharge, suspension or reduction, a copy of the
24 statement of reasons therefor and of the written answer
25 thereto, if the deputy sought to be removed, discharged,
26 suspended or reduced desires to file such written answer,
27 shall be furnished to the civil service commission and
28 entered upon its records. If the deputy sought to be re-
29 moved, discharged, suspended or reduced shall demand
30 it, the civil service commission shall grant him a public
31 hearing, which hearing shall be held within a period of
32 ten days from the filing of the charges in writing or the
33 written answer thereto, whichever shall last occur. At
34 such hearing the burden shall be upon the removing,
35 discharging, suspending or reducing sheriff, hereinafter
36 in this section referred to as "removing sheriff," to justify
37 his action, and in the event the removing sheriff fails

38 to justify his action before the commission, then the
39 deputy removed, discharged, suspended or reduced shall
40 be reinstated with full pay, forthwith and without any
41 additional order, for the entire period during which he
42 may have been prevented from performing his usual em-
43 ployment, and no charges shall be officially recorded
44 against his record. A written record of all testimony
45 taken at such hearing shall be kept and preserved by
46 the civil service commission, which record shall be sealed
47 and not be open to public inspection, if no appeal be
48 taken from the action of the commission.

49 (b) In the event that the civil service commission
50 shall sustain the action of the removing sheriff, the deputy
51 removed, discharged, suspended or reduced on or after
52 the effective date of this article, shall have an immediate
53 right of appeal to the circuit court of the county. In the
54 event that the commission shall reinstate the deputy
55 removed, discharged, suspended or reduced, the remov-
56 ing sheriff shall have an immediate right of appeal to
57 said circuit court. Any appeal must be taken within
58 ninety days from the date of entry by the civil service
59 commission of its final order. Upon an appeal being taken
60 and docketed with the clerk of the circuit court of said
61 county, the circuit court shall proceed to hear the ap-
62 peal upon the original record made before the commis-
63 sion and no additional proof shall be permitted to be
64 introduced. The circuit court's decision shall be final, but
65 the deputy or removing sheriff, as the case may be,
66 against whom the decision of the circuit court is rendered
67 shall have the right to petition the supreme court of ap-
68 peals for a review of the circuit court's decision as in
69 other civil cases. Such deputy or removing sheriff shall
70 also have the right, where appropriate, to seek in lieu of
71 an appeal, a writ of mandamus.

72 (c) The removing sheriff and the deputy sought to be
73 removed, discharged, suspended or reduced shall at all
74 times, both before the civil service commission and upon
75 appeal, be given the right to employ counsel to represent
76 them.

77 (d) If for reasons of economy or other reasons it shall,
78 on and after the effective date of this article, be deemed

79 necessary by any appointing sheriff to reduce the num-
80 ber of his deputies, he shall follow the procedure set
81 forth in this subsection (d). The reduction in the numbers
82 of the deputy sheriffs of the county shall be effected by
83 suspending the last man or men, including probationers,
84 who have been appointed as deputies. Such removal
85 shall be accomplished by suspending the number desired
86 in the inverse order of their appointment: *Provided,*
87 That in the event the number of deputies shall again
88 be increased in numbers to the strength existing prior
89 to such reduction of deputies, the deputies suspended
90 under the terms of this subsection (d) shall be reinstated
91 in the inverse order of their suspension before any new
92 appointments of deputy sheriffs in the county shall be
93 made.

94 (e) Notwithstanding any other provision of this ar-
95 ticle, no deputy sheriff in any county subject to the pro-
96 visions of this article shall, on or after the effective date
97 of this article, serve as a deputy sheriff in any county
98 subject to the provisions of this article after he attains
99 the age of sixty-five.

CHAPTER 27

(Senate Bill No. 308—By Mr. McCourt, Mr. President,
and Mr. McKown)

[Passed March 8, 1972; in effect July 1, 1972. Approved by the Governor.]

AN ACT to amend and reenact section four, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salaries of judges of circuit courts, and the manner of computing such salaries.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. COMPENSATION AND ALLOWANCES.**§6-7-4. Salaries of judges of circuit courts; manner of computing amount thereof; limitation on such salaries and on salaries of judges of statutory courts of record.**

1 The salaries of the judges of the various circuit courts
2 shall be paid solely out of the state treasury. No county,
3 county court, board of commissioners or other political
4 subdivision shall supplement or add to such salaries.

5 The annual salary of all circuit judges shall be twenty-
6 six thousand dollars per year, except as follows:

7 (1) For each circuit in which the circuit court serves
8 as an appellate court for a statutory court of record the
9 salary of the circuit judge shall be twenty-six thousand
10 five hundred dollars per year.

11 (2) For each circuit in which the circuit court serves
12 as appellate court for two statutory courts of record the
13 salary of the circuit judge shall be twenty-seven thousand
14 dollars per year.

15 (3) For each circuit in which the circuit court serves as
16 appellate court for three statutory courts of record the
17 salary shall be twenty-seven thousand five hundred dol-
18 lars per year.

19 (4) For each circuit in which the circuit court serves as
20 appellate court for four statutory courts of record the
21 salary shall be twenty-eight thousand dollars per year.

22 (5) For each circuit in which the circuit court serves
23 as appellate court for five or more statutory courts of
24 record the salary shall be twenty-eight thousand five
25 hundred dollars per year.

26 For the purpose of this section, county courts, justice
27 of the peace courts and administrative boards and
28 agencies exercising limited judicial functions shall not be
29 considered courts of record.

30 When any statutory court of record has more than one
31 judge or one division, each such judge or division shall be
32 treated, considered and counted, for the purpose of this
33 section only, as a separate statutory court of record.

34 For the purpose of this section, in those circuits where
35 there is more than one circuit judge and one or more

36 statutory court of record, the number of statutory courts
37 of record shall be divided among the circuit judges and
38 their annual salary paid accordingly.

39 No circuit judge shall be paid an annual salary that
40 exceeds the annual salary paid to any one of the judges
41 of the supreme court of appeals.

42 No judge of a statutory court of record in West Virginia
43 shall be paid a salary by the county court of the county
44 in which the statutory court exists in excess of the mini-
45 mum annual salary paid to a circuit judge as herein
46 provided.

47 Nothing herein contained shall be construed to permit
48 the compensation of any judge in excess of the amount
49 (taking into consideration the compensation he now re-
50 ceives as supplemental compensation from any county,
51 county court, or other political subdivision) which can be
52 paid under the rules and regulations of the pay board
53 established by the President of the United States by vir-
54 tue of the authority vested in him by the Economic
55 Stabilization Act of 1970, as from time to time amended;
56 nor shall this section be construed to permit the annual
57 salary of a circuit judge to be reduced to a sum below
58 that which he was being paid by the state of West Vir-
59 ginia and any county, county court, or other political sub-
60 division on June thirty, one thousand nine hundred
61 seventy-two.

CHAPTER 28

(Com. Sub. for House Bill No. 979—By Mr. Steptoe and Mr. Albright)

[Passed March 7, 1972; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-a, relating to the creation of a statewide juvenile court referee system; allowing referee to hold detention hearing;

authorizing the department of welfare to provide juvenile facilities; and review by judge.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5A. JUVENILE COURT REFEREE SYSTEM.

§49-5A-1. Juvenile court referee; qualifications; compensation; authority; "child," etc., defined.

§49-5A-2. Investigation and release of child taken into custody; detention hearings.

§49-5A-3. Orders of juvenile court referee or judge following detention hearing; force and effect and finality of such orders.

§49-5A-4. Review of order following detention hearing.

§49-5A-5. Detention in other counties.

§49-5A-6. Assistance of department of welfare.

§49-5A-1. Juvenile court referee; qualifications; compensation; authority; "child," etc., defined.

1 In each county, the judge of the court exercising orig-
2 inal juvenile jurisdiction in cases or proceedings relat-
3 ing to dependent and neglected or delinquent children
4 may appoint one person who is qualified by education
5 and experience to serve as juvenile court referee on a
6 full-time or part-time basis who shall serve at the will
7 and pleasure of the appointing judge. The salary of
8 such referee shall be fixed by the appointing judge, by
9 and with the consent of the county court, and shall be
10 paid out of the county treasury. It shall be the duty
11 of the referee to hold any detention hearing determined
12 necessary pursuant to the provisions of section two of
13 this article. Each referee shall also perform such other
14 duties as are assigned to him by the appointing judge
15 to carry out the purposes of this article. Referees shall
16 not be permitted to conduct hearings on the merits of
17 any case.

18 As used in this article, the terms "child" or "children"
19 shall have the meaning ascribed to those terms else-
20 where in this chapter.

§49-5A-2. Investigation and release of child taken into custody; detention hearings.

1 A child who has been arrested or who under color

2 of law is taken into the custody of any officer or employee
3 of the state or any political subdivision thereof shall be
4 forthwith afforded a hearing to ascertain if such child
5 shall be further detained. In connection with any such
6 hearing, the provisions of section thirteen, article five of
7 this chapter shall apply. It shall be the duty of the
8 judge or referee to avoid incarceration of such child in
9 any jail. Unless the circumstances of the case otherwise
10 require, taking into account the welfare of such child as
11 well as the interest of society, such child shall be forth-
12 with released into the custody of his parent or parents,
13 relative, guardian or other responsible adult or agency.
14 A hearing on the merits may be held at the same time
15 as the detention hearing, as may be required by law or
16 as may be deemed suitable.

**§49-5A-3. Orders of juvenile court referee or judge following
detention hearing; force and effect and finality of
such orders.**

1 After a detention hearing conducted by a judge or
2 referee an order shall be forthwith entered setting forth
3 the findings of fact and conclusions of law with respect to
4 further detention pending hearing and disposition of the
5 child proceedings involving such juvenile. A copy of
6 such order shall be furnished to the juvenile court judge,
7 if entered by a referee, and to the child and his at-
8 torney, if any, and to the parent or parents or guardian
9 of the child. A detention order of a judge or referee
10 shall become effective immediately, subject to the right
11 of review provided for in section four of this article, and
12 shall continue in effect until modified or vacated by the
13 judge. In the event any referee under this article shall
14 order further detention, the judge shall within two days
15 of the entry of the referee's order afford to the child
16 a new hearing upon the issue of further detention, to
17 which hearing the provisions of this and the preceding
18 sections shall apply.

§49-5A-4. Review of order following detention hearing.

1 Upon the application of any person in interest or on his
2 own motion, a judge may modify or vacate any order en-
3 tered in his court after a detention hearing and enter such

4 order as to detention or release from detention as he
5 deems just and proper.

§49-5A-5. Detention in other counties.

1 If further detention is ordered, the court or referee,
2 with the consent of the child or his counsel may order
3 such child to be detained in a facility other than a jail
4 in a county other than the county in which such court
5 sits if no facility other than a jail exists in the county
6 wherein the court sits.

§49-5A-6. Assistance of department of welfare.

1 With the approval of the commissioner of welfare the
2 department of welfare is authorized to assign the neces-
3 sary personnel and provide adequate space for the sup-
4 port and operation of any facility not a jail providing for
5 the detention of children as provided in this article, sub-
6 ject to and not inconsistent with the appropriation and
7 availability of funds.

CHAPTER 29

(Com. Sub. for Senate Bill No. 189—By Mr. McKown and Mr. Hubbard)

[Passed March 8, 1972; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections six, seven and eight, article nine, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to eligibility for and payment of pay or benefits under the retirement system for judges of courts of record; authorizing retirement after twenty-four years of service regardless of age; authorizing a judge with not less than ten years judicial service to receive credit for service as a prosecuting attorney; relating to the ineligibility of judges who are receiving pay or benefits from such retirement system to practice law or hold any public office or trust; and authorizing retirement under such system of judges because of disability after ten years of service.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-6. Eligibility for and payment of benefits.

§51-9-7. Ineligibility to receive pay or benefits.

§51-9-8. Retirement upon disability.

§51-9-6. Eligibility for and payment of benefits.

1 Except as otherwise provided in sections five, twelve
2 and thirteen of this article, any person who is now serv-
3 ing, or who shall hereafter serve, as a judge of any court
4 of record of this state and shall have served as such
5 judge for a period of not less than sixteen full years and
6 shall have reached the age of sixty-five years, or who has
7 served as judge of such court or of that court and other
8 courts of record of the state for a period of sixteen full
9 years or more (whether continuously or not and whether
10 said service be entirely before or after this article be-
11 came effective, or partly before and partly after said
12 date, and whether or not said judge shall be in office on
13 the date he shall become eligible to benefits hereunder)
14 and shall have reached the age of sixty-five years, or who
15 is now serving, or who shall hereafter serve, as a judge
16 of any court of record of this state and shall have served
17 as such judge for a period of not less than twenty-four
18 full years, regardless of age, shall, upon a determination
19 and certification of his eligibility as provided in section
20 nine hereof, be paid from the fund annual retirement
21 benefits, so long as he shall live, in an amount equal to
22 seventy-five percent of the annual salary of the office
23 from which he has retired based upon such salary of such
24 office as such salary may be changed from time to time
25 during the period of his retirement and the amount of his
26 retirement benefits shall be based upon and be equal
27 to seventy-five percent of the highest annual salary of
28 such office for any one calendar year during the period
29 of his retirement, and shall be payable in monthly in-

30 stallments: *Provided*, That such retirement benefits shall
31 be paid only after said judge has resigned as such or, for
32 any reason other than his impeachment, his service as
33 such has ended: *Provided, however*, That the provisions
34 of this article shall apply to those judges who were in
35 office at the time it originally became effective, those
36 who have since become judges, those who have retired
37 under the provisions thereof, and those who shall here-
38 after serve as judges of the courts of record of this state.

39 In determining eligibility for the benefits provided by
40 this section, any portion of the term of office of any judge
41 of a court of record which shall have elapsed while such
42 judge was on active duty (including leaves, furloughs,
43 and time consumed going to his place of duty and return-
44 ing to his place of residence after discharge or release
45 from active duty) in the armed forces of the United
46 States shall be considered as served: *Provided further*,
47 That any judge who enters active duty in the armed
48 forces of the United States during his term of office and
49 after the effective date of this article shall during, or
50 within one year after such military service, pay into the
51 state treasury all contributions required by section four
52 of this article, and, by reason of such military service
53 not deducted from his salary: *Provided further*, That if a
54 judge of a court of record has served for a period of not
55 less than ten full years and has made payments into the
56 judges retirement fund as provided in this article for
57 each month during which he served as judge, following
58 the effective date of this section, any portion of time
59 which he had served as prosecuting attorney in any
60 county in this state shall qualify as years of service.

§51-9-7. Ineligibility to receive pay or benefits.

1 A judge who retires under the provisions of any sec-
2 tion of this article and accepts the pay or benefits pay-
3 able under this article shall not, while receiving said
4 pay or benefits, be permitted to hold any public office or
5 trust for which he receives compensation. If, after retire-
6 ment under the provisions of this article and while re-
7 ceiving pay or benefits payable under said article, he

8 shall be elected or appointed to any public office or trust
9 for which he receives any salary or other compensation,
10 his pay or benefits under this article shall be suspended
11 for such time only as he shall occupy such office or
12 trust.

13 A judge who retires because of disability and accepts
14 the pay or benefits payable under this article because of
15 his disability shall not, while receiving said pay or
16 benefits because of his disability, be permitted to practice
17 law. If, after disability retirement under the provisions
18 of this article and while receiving pay or benefits pay-
19 able under said article because of his disability, he shall
20 enter the practice of law, his pay or benefits under this
21 article because of his disability shall be suspended for
22 such time only as he shall be engaged in the practice
23 of law.

§51-9-8. Retirement upon disability.

1 Whenever a judge of a court of record of this state, who
2 is not disqualified from participation herein as provided
3 in section five of this article, who shall have served for
4 ten full years, shall become physically or mentally in-
5 capacitated to perform the duties of his office as judge
6 during the remainder of his term and shall make a
7 written application to the governor for his retirement,
8 setting forth the nature and extent of his disability and
9 tendering his resignation as such judge upon condition that
10 upon its acceptance he be retired with pay under the pro-
11 visions of this article, the governor shall make such inves-
12 tigation as he shall deem advisable and, if he shall deter-
13 mine that such disability exists and that the public ser-
14 vice is suffering and will continue to suffer by reason of
15 such disability, he shall thereupon accept the resignation
16 and, by written order filed in the office of the secretary
17 of state, direct the retirement of the judge for the un-
18 expired portion of the term for which such judge was
19 elected or appointed. The secretary of state shall there-
20 upon file a certified copy of said order with the state
21 auditor. When so accepted, said resignation shall create
22 a vacancy in said office of judge, which shall be filled by

23 appointment or election as provided by law. The retired
24 judge shall thereupon be paid annual retirement pay
25 during the remainder of his unexpired term in an
26 amount equal to the annual salary he was receiving at
27 the time of his retirement, which annual retirement pay,
28 so long as it shall be paid to him, shall be in lieu of
29 any and all retirement benefits such judge may other-
30 wise have received under the provisions of this article:
31 *Provided*, That when the payment of said retirement
32 pay shall have terminated, such judge, even though he
33 shall not have arrived at the age of sixty-five years,
34 shall, so long as the disability determined by the gover-
35 nor continues to exist, be paid the retirement benefits for
36 which provision is made in section six of this article.

CHAPTER 30

(House Bill No. 762—By Mr. Daugherty and Mr. White, of Cabell)

[Passed February 21, 1972; in effect July 1, 1972. Approved by the Governor.]

AN ACT to amend and reenact sections two and twenty-four, chapter twenty-eight, acts of the Legislature, regular session, one thousand eight hundred ninety-three, as last amended and reenacted by chapter thirty-three, acts of the Legislature, regular session, one thousand nine hundred seventy, relating to the jurisdiction, and the judge's salary of the common pleas court of Cabell county.

Be it enacted by the Legislature of West Virginia:

That sections two and twenty-four, chapter twenty-eight, acts of the Legislature, regular session, one thousand eight hundred ninety-three, as last amended and reenacted by chapter thirty-three, acts of the Legislature, regular session, one thousand nine hundred seventy, be amended and reenacted to read as follows:

COMMON PLEAS COURT OF CABELL COUNTY.

- §2. Jurisdiction.
§24. Salary of judge.

§2. Jurisdiction.

1 That said common pleas court of Cabell county shall
2 have original jurisdiction within said county of all crimes,
3 felonies, misdemeanors, criminal proceedings, and all
4 matters in anywise relating thereto, and all civil actions,
5 civil matters and proceedings in anywise relating there-
6 to.

7 Such jurisdiction of said common pleas court shall be
8 general, common and concurrent with the jurisdiction of
9 the circuit court of such county in all and every respect
10 as the same is constituted and set forth in section twelve,
11 article eight of the constitution of West Virginia, and by
12 the laws and statutes of the state of West Virginia, ex-
13 cept where the matters in controversy in civil suits or pro-
14 ceedings shall exceed the sum of two hundred thousand
15 dollars, including appellate jurisdiction in all matters of
16 probate arising in the county court wherein an appeal or
17 writ of error may be allowed, which appellate jurisdiction
18 shall be concurrent with that of the circuit court.

§24. Salary of judge.

1 The judge of the common pleas court of Cabell county
2 shall receive for his services twenty-four thousand five
3 hundred dollars annually, payable monthly in installments
4 beginning on the first day of July, one thousand nine hun-
5 dred seventy-two, which amount shall be provided for and
6 paid by the county court, out of the treasury of said
7 county, which provision as to salary shall not repeal the
8 existing provision until the said first day of July, one thou-
9 sand nine hundred seventy-two.

10 All acts or parts of acts inconsistent or in conflict here-
11 with are hereby repealed.

CHAPTER 31

(House Bill No. 759—By Mr. White, of Cabell, and Mr. Romine)

[Passed February 21, 1972; in effect July 1, 1972. Approved by the Governor.]

AN ACT to amend and reenact section two, chapter one hundred sixty-eight, acts of the Legislature, regular session,

one thousand nine hundred twenty-one, as last amended and reenacted by chapter thirty-four, acts of the Legislature, regular session, one thousand nine hundred seventy-one; and to amend and reenact section four, chapter one hundred sixty-eight, acts of the Legislature, regular session, one thousand nine hundred twenty-one, as last amended and reenacted by chapter thirty-four, acts of the Legislature, regular session, one thousand nine hundred seventy, relating to the jurisdiction of the domestic relations court of Cabell county; relating to such court generally; relating to the salary of the chief probation officer; providing for an additional probation officer; and relating to the salaries of probation officers and of the judge of the court.

Be it enacted by the Legislature of West Virginia:

1 That section two, chapter one hundred sixty-eight,
2 acts of the Legislature, regular session, one thousand
3 nine hundred twenty-one, as last amended and reenacted
4 by chapter thirty-four, acts of the Legislature, regular
5 session, one thousand nine hundred seventy-one; and that
6 section four, chapter one hundred sixty-eight, acts of the
7 Legislature, regular session, one thousand nine hundred
8 twenty-one, as last amended and reenacted by chapter
9 thirty-four, acts of the Legislature, regular session, one
10 thousand nine hundred seventy, be amended and re-
11 enacted to read as follows:

DOMESTIC RELATIONS COURT OF CABELL COUNTY.

§2. Jurisdiction.

§4. Salary of judge.

§2. Jurisdiction.

1 The said domestic relations court shall have jurisdic-
2 tion within the said county of Cabell, concurrent with
3 the circuit court, of all matters and causes arising out
4 of or pertaining to annulment of marriages, separate
5 maintenance suits, divorce, alimony, the custody and
6 maintenance of children of litigants and the adjudica-
7 tion of property rights arising out of the same, and of all
8 other matters and causes coming within the purview of
9 chapter forty-eight of the code of West Virginia, one
10 thousand nine hundred thirty-one, and all amendments

11 and reenactments thereof concerning domestic relations,
12 habeas corpus proceedings; of all matters and causes
13 coming within the purview of chapter forty-nine of the
14 code of West Virginia, one thousand nine hundred thirty-
15 one, as enacted by chapter one, acts of the Legislature
16 of West Virginia, one thousand nine hundred thirty-six,
17 and of all amendments and reenactments thereof, com-
18 monly known as the child welfare law; of all matters and
19 causes coming within the purview of chapter eighteen
20 of the code of West Virginia, one thousand nine hundred
21 thirty-one, and all amendments and reenactments thereof,
22 commonly called the general school law; of all matters
23 and causes coming within the purview of chapter forty-
24 eight of the code of West Virginia, one thousand nine
25 hundred thirty-one, and of all amendments and reenact-
26 ments thereof, commonly known as the reciprocal de-
27 pendency law; of all matters and causes coming within
28 the purview of chapter forty-eight of the code of West
29 Virginia, one thousand nine hundred thirty-one, and all
30 amendments and reenactments thereof, commonly known
31 as the adoption law; and of all matters and causes com-
32 ing within the purview of chapter forty-eight of the code
33 of West Virginia, one thousand nine hundred thirty-one,
34 and of all amendments and reenactments thereof, com-
35 monly known as the change of name law; and of all
36 matters and causes coming within the purview of chap-
37 ter forty-eight of the code of West Virginia, one thou-
38 sand nine hundred thirty-one, and of all amendments
39 and reenactments thereof, commonly known as the main-
40 tenance of illegitimate children law; and of all matters
41 and causes coming within the purview of chapter forty-
42 four, article ten, section fourteen of the code of West
43 Virginia, one thousand nine hundred thirty-one, and of
44 all amendments and reenactments thereof, commonly
45 known as the approval of the compromising of infants'
46 claims for damages; and of all matters and causes coming
47 within the purview of chapter forty-eight, article one, sec-
48 tion six-c of the code of West Virginia, one thousand
49 nine hundred thirty-one, and of all amendments and
50 reenactments thereof, commonly known as the issuance
51 of marriage license in case of emergency or extraordinary

52 circumstances; and of all matters and causes coming
53 within the purview of chapter fifty-five, article seven-a
54 of the code of West Virginia, one thousand nine hundred
55 thirty-one, and of all amendments and reenactments
56 thereof, commonly known as the liability of parents; and
57 of all matters and causes coming within the purview of
58 chapter thirty-seven of the code of West Virginia, one
59 thousand nine hundred thirty-one, and of all amend-
60 ments and reenactments thereof, commonly known as
61 the approval of the sale, lease or mortgage of infants'
62 lands; and of all matters and causes coming within the
63 purview of chapter sixty-one, article seven, section two,
64 commonly known as license to carry weapons; how
65 obtained; and shall have concurrent with the circuit
66 court of Cabell county, supervision and control of pro-
67 ceedings before justices and other inferior tribunals by
68 mandamus, prohibition and certiorari, and of all matters
69 and causes coming within the purview of all other or
70 future acts of the Legislature touching the subject mat-
71 ter of any and all said laws and acts, and the amend-
72 ments and reenactments thereof, and of the common law
73 of said state relating to the subject matter thereof. In-
74 dependently of any of the foregoing matters, the said
75 domestic relations court shall also have and is hereby
76 given what was heretofore recognized as general equity
77 jurisdiction concurrent with the circuit court, excepting
78 in cases involving the enforcement of criminal laws and
79 labor disputes, and excepting cases where it shall appear
80 from the pleadings that the matter or thing in contro-
81 versy exceeds in value the sum of three hundred fifty
82 thousand dollars. The proceedings and modes of pro-
83 cedure and power and jurisdiction conferred by law upon
84 the circuit court or the common pleas court in any and
85 all of said matters and causes are hereby conferred upon
86 and shall be exercised by said domestic relations court.

87 The court is authorized and empowered to appoint and
88 discharge one chief probation officer at a yearly salary
89 of ten thousand five hundred dollars and two probation
90 officers at a yearly salary of ten thousand two hundred
91 fifty dollars each, which said salaries shall be paid by the
92 county court in monthly installments, and in addition

93 thereto the said county court shall reimburse the said
94 probation officers of their necessary expenses actually in-
95 curred monthly in the performance of official duties in-
96 cluding an allowance of ten cents per mile for their auto-
97 mobile driven in the performance of official duties. The
98 court is further authorized and empowered to appoint and
99 discharge such medical, clerical and secretarial assistance
100 as shall enable it to discharge all of the duties required of
101 it under the provisions of this section and the general laws
102 of the state and such person or persons shall be paid
103 by the county court monthly upon the written approval
104 of the judge of the said court.

§4. Salary of judge.

1 The judge of the domestic relations court of Cabell
2 county shall receive for his services twenty-four thousand
3 five hundred dollars, annually, payable monthly in install-
4 ments beginning on the first day of July, one thousand
5 nine hundred seventy-two, which amount shall be pro-
6 vided for and paid by the county court, out of the treasury
7 of said county, which provision as to salary shall not re-
8 peal the existing provision until the said first day of July,
9 one thousand nine hundred seventy-two.

10 All acts or parts of acts inconsistent or in conflict
11 herewith are hereby repealed.

CHAPTER 32

(Senate Bill No. 306—By Mr. Neeley)

[Passed February 25, 1972; in effect July 1, 1972. Approved by the Governor.]

AN ACT to amend and reenact sections one, five, six, seven, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty and thirty-one, chapter twenty-seven, acts of the Legislature, regular

session, one thousand nine hundred nine; to amend and reenact sections two and four of said chapter twenty-seven, as last amended and reenacted by chapter two hundred twelve, acts of the Legislature, regular session, one thousand nine hundred sixty-seven; to amend and reenact section three of said chapter twenty-seven, as last amended and reenacted by chapter two hundred four, acts of the Legislature, regular session, one thousand nine hundred fifty-one; and to further amend said chapter twenty-seven by adding thereto six new sections, designated sections eleven-a, thirty-two, thirty-three, thirty-four, thirty-five and thirty-six, all relating to the change of the name of the criminal court of Harrison county to the "intermediate" court of Harrison county, the jurisdiction and salary of the judge of said court.

Be it enacted by the Legislature of West Virginia:

That sections one, five, six, seven, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty and thirty-one, chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred nine, be amended and reenacted; that sections two and four of said chapter twenty-seven, as last amended and reenacted by chapter two hundred twelve, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, be amended and reenacted; that section three of said chapter twenty-seven, as last amended and reenacted by chapter two hundred four, acts of the Legislature, regular session, one thousand nine hundred fifty-one, be amended and reenacted; and that said chapter twenty-seven be further amended by adding thereto six new sections, designated sections eleven-a, thirty-two, thirty-three, thirty-four, thirty-five and thirty-six, all to read as follows:

INTERMEDIATE COURT OF HARRISON COUNTY.

- §1. Court of limited jurisdiction established; name of court.
- §2. Jurisdiction concurrent with circuit court; in what cases and proceedings.
- §3. Election, qualifications and term of judge.
- §4. Salary of judge.
- §5. What powers and jurisdiction conferred on court, etc.; power of judge in vacation as to felonies, etc.

- §6. Jurisdiction is presumed, unless contrary appears.
- §7. May punish for contempt.
- §9. Grand jury for each term.
- §10. Clerk of circuit court is clerk of intermediate court.
- §11. Sheriff or deputies to execute all processes in same manner as provided by law as issuing from circuit courts.
- §11a. Petit jurors impaneled in same manner as for circuit court.
- §12. Indictments found or pending in circuit court may be certified to intermediate court; recognizance.
- §13. Change of venue.
- §14. County court to provide supplies.
- §15. Cause certified to circuit court; special judge.
- §16. Cases where appeals allowed to intermediate court concurrent with circuit court.
- §17. Appeals may be allowed, etc.
- §18. Appeal, writ of error or supersedeas, how obtained; what law to govern proceedings; no appeal allowed in certain cases, unless, etc.
- §19. Appeal, writ of error or supersedeas to be docketed in circuit court; how proceeded in.
- §21. Proceedings in circuit court on appeals, writs of error, etc., duty of clerk of court.
- §22. Writ of habeas corpus, power to grant concurrent with that of supreme or circuit court; provisions of law governing.
- §23. Prosecuting attorney or his assistant to attend terms of court; what duties to perform and for what compensation.
- §24. Certain sections of article eight, chapter seven made applicable.
- §25. Court stenographer appointed; compensation.
- §26. No grand juries impaneled in circuit court.
- §27. How contested election determined.
- §28. How vacancy in office filled.
- §29. Removal of judge from office.
- §30. Chapter sixty-two of the code made applicable.
- §31. Chapter fifty-one of the code made applicable.
- §32. In taxation of costs clerk governed by same rules as in circuit court.
- §33. West Virginia reports and bound acts to be furnished court.
- §34. Rules to be held in clerk's office in same manner as circuit courts.
- §35. Upon judgments of court, creditors entitled to liens, etc., to secure or recover same as in circuit court.
- §36. Attachments may be issued by clerk under same regulations as in circuit court.

§1. Court of limited jurisdiction established; name of court.

1 The court of limited jurisdiction heretofore established
2 in the county of Harrison, designated "The Criminal
3 Court of Harrison County" is hereby continued in and
4 for said county, to be held and presided over by a judge
5 elected or to be elected or appointed as provided by this
6 act, which court shall be designated and known as "The
7 Intermediate Court of Harrison County."

§2. Jurisdiction concurrent with circuit court; in what cases and proceedings.

1 The said court, which is the same court originally
2 established by chapter twenty-seven, acts of the Legisla-
3 ture, regular session, one thousand nine hundred nine,
4 but with its name and jurisdiction changed as in this act
5 provided, shall continue to have jurisdiction within the
6 said county of Harrison concurrent with the circuit court
7 of all felonies and misdemeanors committed within said
8 county of Harrison. Said court shall also have jurisdic-
9 tion concurrent with the circuit court of said county,
10 and shall have the supervision and control of criminal
11 proceedings before justices of said county, the mayor
12 of any incorporated city, town or village therein, by
13 appeal, mandamus, prohibition and certiorari, and shall
14 have concurrent jurisdiction with said circuit court of
15 bastardy proceedings, actions for the maintenance of
16 illegitimate children, adoption proceedings and all juve-
17 nile and other matters of which the aforesaid circuit court
18 of Harrison county was given jurisdiction by the general
19 laws of West Virginia or of which the court hereby estab-
20 lished may be given jurisdiction by such general laws. It
21 shall also have jurisdiction concurrent with said circuit
22 court for the collection of all recognizances taken by said
23 intermediate court and for the collection of all bonds
24 taken by said intermediate court, or by the clerk thereof
25 in vacation, to secure the payment of judgments for fines
26 and costs rendered by said court, and for the collection
27 of all recognizances and bonds taken by the justices
28 of said county or the mayor of any incorporated city,
29 town or village in said county in relation to criminal
30 proceedings before said justices or mayor. The said court
31 shall also have jurisdiction concurrent with the circuit
32 court of said county in all matters set forth in articles
33 one, two, three, four, five, seven, eight and nine, chapter
34 forty-eight of the code of West Virginia, one thousand
35 nine hundred thirty-one, as amended.

36 The said court shall likewise have jurisdiction within
37 said county of Harrison, concurrent with the circuit court
38 of said county, in all actions of ejectment, and in all civil
39 actions or proceedings, except where it shall appear from

40 the pleadings that the matter or thing in controversy
41 in any such proceeding or action, exclusive of interests
42 and costs, exceeds in value the sum of seventy-five
43 thousand dollars and all summary proceedings at law
44 and any other manner of action or proceeding at law
45 authorized by the general laws of West Virginia, as well
46 as of appeals from judgments of the justices of said
47 county when such appeals shall lie to the said court
48 in the same manner and under the same regulations as
49 provided in the general laws for appeals from justices;
50 the approval of compromise by fiduciaries of liabilities
51 where acting as guardian for an infant in accordance with
52 the provisions of section seven, article five, chapter forty-
53 four of the code of West Virginia; concerning the transfer
54 of securities the property of an infant in the name of
55 a fiduciary in accordance with the provisions of section
56 eight, article five, chapter forty-four of the code of West
57 Virginia; direction to fiduciaries concerning moneys be-
58 longing to a minor in accordance with the provisions of
59 section one, article six, chapter forty-four of the code
60 of West Virginia; authority for investment by a fiduciary
61 when the beneficiary of trust funds is the property of
62 a minor in accordance with the provisions of section
63 three, article six, chapter forty-four of the code of West
64 Virginia; instruction of fiduciaries where minor is bene-
65 ficiary of an estate or trust as provided in section four,
66 article six, chapter forty-four of the code of West Vir-
67 ginia; authorization of disbursements by guardians from
68 income and corpus of the estate of infant wards as pro-
69 vided in section eight, article ten, chapter forty-four of
70 the code of West Virginia; sale of personal estate by
71 guardian in accordance with the provisions of section
72 nine, article ten, chapter forty-four of the code of West
73 Virginia; proceedings between guardians and wards in
74 accordance with the provisions of section thirteen, article
75 ten, chapter forty-four of the code of West Virginia; the
76 approval of compromising an infant's claim for damages
77 in accordance with the provisions of section fourteen,
78 article ten, chapter forty-four of the code of West Vir-
79 ginia; the transfer of property of nonresident infant to
80 foreign guardian in accordance with the provisions of

81 section three, article eleven, chapter forty-four of the
82 code of West Virginia; the transfer of proceeds of sale
83 belonging to nonresident infant to foreign guardian in
84 accordance with section four, article eleven, chapter
85 forty-four of the code of West Virginia; the approval
86 of the sale, lease, mortgage or deeding in trust of infants'
87 lands in accordance with the provisions of article one,
88 chapter thirty-seven of the code of West Virginia; re-
89 lease of dower of an infant in accordance with the pro-
90 visions of section nine, article one, chapter thirty-seven
91 of the code of West Virginia; all matters and causes com-
92 ing within the purview of section two, article seven,
93 chapter sixty-one of the code of West Virginia, commonly
94 known as "license to carry weapons."

95 Said court shall have general equity jurisdiction in
96 actions, causes, matters and proceedings before it within
97 its jurisdiction with power to grant injunctions and to
98 require and take recognizances.

99 The proceedings, modes of procedures, powers and juris-
100 diction conferred by law upon the circuit court of Harri-
101 son county in any and all said actions, causes, matters
102 and proceedings, are hereby conferred upon and shall
103 be exercised by said court.

104 The judge of said court shall have the same powers in
105 vacation as to any and all of said actions, causes, matters
106 and proceedings that are conferred upon the judge of
107 the circuit court of said county.

§3. Election, qualifications and term of judge.

1 The judge of the aforesaid criminal court of Harrison
2 county elected at the general election held in this state
3 on the Tuesday after the first Monday in November, one
4 thousand nine hundred sixty-eight, shall hold his office
5 as judge of said court and of the court hereby established
6 for the term of eight years from the first day of January,
7 one thousand nine hundred sixty-nine, and until his suc-
8 cessor is duly elected and qualified; and at the general
9 election in this state to be held on the Tuesday after the
10 first Monday in November, one thousand nine hundred
11 seventy-six, and every eight years thereafter, there shall
12 be elected by the legal voters of said county a judge of

13 the intermediate court of Harrison county. He shall be
14 disqualified from practicing law in all courts of this state
15 during his continuance in office, and preside over said
16 court for the term of eight years from the first day of
17 January succeeding said election, and shall be, except as
18 to jurisdiction, subject to the laws in force governing
19 circuit judges.

§4. Salary of judge.

1 The judge of the intermediate court of Harrison county,
2 West Virginia, shall receive for his services a salary of
3 twenty thousand dollars per year; said amount to be paid
4 in twelve equal monthly installments from year to year
5 by the county court of said county, out of funds of said
6 county, in the manner provided by statute.

**§5. What powers and jurisdiction conferred on court, etc.;
power of judge in vacation as to felonies, etc.**

1 The powers and jurisdiction conferred upon the circuit
2 courts in the trial of criminal and civil cases and pro-
3 ceedings and modes of procedure authorized therein,
4 within the county of Harrison, are hereby conferred upon,
5 and shall be exercised by said intermediate court of
6 Harrison county. And the judge of said intermediate
7 court shall have the same powers in vacation as to
8 felonies, misdemeanors and other offenses committed in
9 the said county of Harrison that are conferred upon the
10 judge of the circuit court of said county.

§6. Jurisdiction is presumed, unless contrary appears.

1 It shall not be necessary for any cause or proceeding in
2 said intermediate court that the facts authorizing it to
3 take jurisdiction of the case or proceeding shall be set
4 forth upon the record, but jurisdiction shall be presumed
5 unless the contrary plainly appears from the record.

§7. May punish for contempt.

1 The said intermediate court shall have the same powers
2 to punish for contempt as are conferred upon the circuit
3 court by law.

§9. Grand jury for each term.

1 The said intermediate court shall impanel a grand jury

2 at each term thereof, and said court, or the judge thereof
3 may, in his discretion, order a grand jury to be drawn or
4 summoned to attend at any special or adjourned term of
5 said court. Such grand jury may consider any offense
6 against the laws committed within said county of Har-
7 rison, whether the same shall have been committed be-
8 fore the next preceding term of the court or not, and
9 whether the accused shall have been held for trial or not,
10 prior to the next preceding regular term, and all the pro-
11 visions of chapter fifty-two of the code of West Virginia,
12 in regard to grand juries in the circuit court, shall apply,
13 so far as applicable, to the grand juries in said inter-
14 mediate court. The grand and petit juries serving in said
15 court shall be chosen and impaneled in the same manner
16 as they are chosen and impaneled by law in the circuit
17 court, and shall receive the same compensation as said
18 jurors in the circuit court.

§10. Clerk of circuit court is clerk of intermediate court.

1 The clerk of the circuit court of Harrison county shall
2 be ex officio clerk of said intermediate court and perform
3 the duties thereof, and shall receive the same fees as are
4 allowed by law, for similar services, to the clerk of the
5 circuit court; and, in the discharge of his duties as clerk
6 of the intermediate court, he shall be subject to all
7 statutes relating to the clerk of the circuit court. All
8 processes, rules and orders of said court in the exercise of
9 its jurisdiction shall be signed by the clerk thereof, and
10 be directed to the sheriffs of the proper counties, wherein
11 the same are to be executed, and they shall be executed
12 in like manner and with the same effect as processes is-
13 suing from the circuit court of said county. And the county
14 court of said county shall allow said clerk a compensa-
15 tion for his services of four hundred dollars per year in
16 addition to the compensation that may be allowed the
17 clerk of the circuit court of said county.

**§11. Sheriff or deputies to execute all processes in same manner
as provided by law as issuing from circuit courts.**

1 The sheriff of Harrison county, and the sheriffs of the
2 several counties in the state, shall, by themselves or their

3 deputies, execute all processes of said court, or issued by
4 the clerks thereof, directed to them respectively and all
5 processes issued by the clerk thereof shall be directed to
6 and executed by them in the same manner as is provided
7 by law as processes issuing from the circuit court or the
8 clerk thereof. And the sheriff of Harrison county shall
9 perform the same duties and services for the intermedi-
10 ate court of Harrison county, as he is now by law re-
11 quired to perform for the circuit court of said county.
12 And in the execution of the processes, rules and orders
13 of said court, said officers shall have the same powers and
14 likewise be subject to the same liabilities, govern them-
15 selves by the same rules and principles of law and the
16 statutes of the state, and be entitled to the same fees as
17 though process issued from the circuit court of said
18 county. And the county court of said county shall allow
19 the sheriff of said county for his services hereunder an
20 additional compensation of two hundred dollars per year.

§11a. Petit jurors impaneled in same manner as for circuit court.

1 The petit juries for said court shall be chosen and im-
2 paneled in the same manner as they are chosen and im-
3 paneled in the circuit court, and shall receive the same
4 compensation.

§12. Indictments found or pending in circuit court may be certified to intermediate court; recognizance.

1 The circuit court of said county may in its discretion
2 certify to said intermediate court for trial all indictments
3 and prosecutions for felonies, misdemeanors and offenses
4 now pending in said circuit court or that may hereafter
5 be found by the grand juries impaneled in said circuit
6 court; and the said circuit court may in its discretion
7 take proper recognizances from the defendant inailable
8 cases, and also from witnesses for the state, for their ap-
9 pearance before the said intermediate court.

§13. Change of venue.

1 A change of venue in any case pending in said court
2 may be ordered as provided in chapter sixty-two of the
3 code of West Virginia.

§14. County court to provide supplies.

1 It shall be the duty of the county court of Harrison
2 county to provide all record books and other stationery
3 that may be necessary for said intermediate court, and
4 likewise a seal for the said court; but full faith and credit
5 shall be given to the record of said court and certificates
6 of its judge and clerk whether the seal of the court be
7 affixed thereto or not, in like manner, and with the same
8 effect as if the same were records of the circuit court
9 similarly authenticated.

§15. Cause certified to circuit court; special judge.

1 If the judge of said court in his judgment cannot prop-
2 erly preside at the hearing of any cause pending therein,
3 said cause may be, in his discretion, certified to, and the
4 original papers, together with a copy of the orders of the
5 court, filed in the circuit court of said county, and the
6 cause shall be docketed therein and proceeded with as
7 though the cause had originally been brought and pro-
8 ceedings therein had in the circuit court. When for any
9 cause the judge of said intermediate court is incapable
10 of acting, or is absent, a special judge may be elected in
11 the same manner as a special judge of the circuit court,
12 and be governed in all respects so far as applicable by
13 the laws governing special judges of the circuit court,
14 and he shall be allowed twenty-five dollars a day to be
15 paid out of the county treasury.

§16. Cases where appeals allowed to intermediate court concurrent with circuit court.

1 Every person sentenced to imprisonment by the judg-
2 ment of a justice, or the judgment of the mayor of any
3 incorporated city, town or village, in said county, or to
4 the payment of a fine of ten dollars or more, shall be
5 allowed an appeal, as provided in section ten, article
6 eighteen, chapter fifty of the code of West Virginia, to
7 the intermediate court of said county, concurrent with the
8 circuit court of said county, and all the provisions of said
9 section shall apply to said appeal and govern the pro-
10 ceedings thereon, and the same shall be proceeded in,
11 heard and determined, and with like effect, as is provided

12 in said section ten, article eighteen, chapter fifty of the
13 code.

§17. Appeals may be allowed, etc.

1 Appeals may be allowed and writs of error and super-
2 sedeas awarded to the judgments, decrees and orders of
3 said court, by the circuit court of said county, or the judge
4 thereof in vacation, in the following cases:

5 (1) In all civil cases where the matter in controversy
6 exclusive of costs, is of greater value or amount than one
7 hundred dollars, wherein there is a final judgment or
8 order.

9 (2) In controversies concerning the title or boundaries
10 of land, the probate of a will, or the appointment of a
11 personal representative, guardian, committee or curator.

12 (3) Concerning a mill, road, way, ferry or landing.

13 (4) Concerning the right of a corporation, county or
14 district to levy tolls or taxes.

15 (5) In any case of quo warranto, habeas corpus, manda-
16 mus or prohibition.

17 (6) In any case involving freedom or the constitutional-
18 ity of a law.

19 (7) In any case wherein there is a decree or order dis-
20 solving or refusing to dissolve an injunction, or requiring
21 money to be paid, or real estate to be sold, or the pos-
22 session or title of the property to be changed, or ad-
23 judicating the principles of the cause.

24 (8) In any case where there is a judgment or order
25 quashing or abating, or refusing to quash or abate on
26 attachment.

27 (9) In any case where there is an order granting a new
28 trial or rehearing; and in such cases an appeal may be
29 taken from the order without waiting for the new trial
30 or rehearing to be had.

31 (10) In any case when judgment is rendered against
32 a defendant in case of a felony or misdemeanor.

33 (11) In cases relating to the public revenue, the right
34 of appeal shall belong to the state as well as to the
35 defendant.

§18. Appeal, writ of error or supersedeas, how obtained; what law to govern proceedings; no appeal allowed in certain cases, unless, etc.

1 Any person who is a party to any such controversy
2 wishing to obtain an appeal, writ of error or supersedeas,
3 in the cases named in the seventeenth section of this act,
4 may present to the circuit court of Harrison county, or
5 the judge thereof in vacation, a petition therefor, and
6 chapter fifty-eight of the code of West Virginia concern-
7 ing appeals to the supreme court of appeals shall, so far
8 as applicable, govern the proceedings on such appeal,
9 writ of error or supersedeas, as to the duties of the peti-
10 tioner, the said court and the clerk thereof: *Provided*,
11 That no such appeal, writ of error or supersedeas to said
12 court shall be allowed unless the petition therefor be
13 presented in six months from the date of such judgment
14 or order.

§19. Appeal, writ of error or supersedeas to be docketed in circuit court; how proceeded in.

1 Every appeal, writ of error or supersedeas from said
2 intermediate court shall be docketed in the circuit court
3 of said county, and shall be proceeded with in the same
4 manner as appeals, writs of error or supersedeas are
5 proceeded in when heard and determined in the supreme
6 court of appeals.

§21. Proceedings in circuit court on appeals, writs of error, etc., duty of clerk of court.

1 The said circuit court, where an appeal, writ of error
2 or supersedeas has been allowed by the said court or
3 the judge thereof in vacation shall, upon the hearing
4 thereof, affirm said judgment or order if there be no
5 error therein prejudicial to the appellant, or reverse the
6 same in whole or in part if erroneous, and the circuit
7 court may retain the case for trial or remand the same
8 back to said intermediate court to be further proceeded
9 in and finally determined. The clerk of said circuit court
10 shall, as soon as practicable, transmit the decision of said
11 circuit court to the clerk of said intermediate court.

§22. Writ of habeas corpus, power to grant concurrent with that of supreme or circuit court; provisions of law governing.

1 The intermediate court of Harrison county and the
2 judge thereof in vacation shall, concurrent with the
3 supreme court of appeals or the circuit court of said
4 county, or any judge of any circuit court in vacation,
5 grant the writ of habeas corpus ad subjiciendum as pro-
6 vided in article four, chapter fifty-three of the code of
7 West Virginia. All provisions of said article and chapter
8 shall be applicable thereto. The same shall be governed
9 as therein provided. But in no case shall the same be
10 issued by the said intermediate court or the judge there-
11 of in vacation on the application of any person unless
12 he shall by himself, or by someone in his behalf, apply
13 for the same by petition showing by affidavit or other
14 evidence probable cause to believe that he is detained in
15 the county of Harrison without lawful authority.

§23. Prosecuting attorney or his assistant to attend terms of court; what duties to perform and for what compensation.

1 The prosecuting attorney of Harrison county shall at-
2 tend the terms of said intermediate court either by him-
3 self or his assistant, and shall perform the duties of his
4 office as required by section one, article four, chapter
5 seven of the code, and for the compensation therein
6 stated and provided, and in addition thereto the county
7 court of said county shall allow the said prosecuting at-
8 torney four hundred dollars per year, in addition to the
9 amount allowed by law to the said prosecuting attorney.

§24. Certain sections of article eight, chapter seven made applicable.

1 Sections three and four, article eight, chapter seven
2 of the code of West Virginia shall apply to the inter-
3 mediate court of Harrison county and the judge thereof
4 in the same manner and to the same extent as they do to
5 the circuit court of Harrison county and the judge thereof.

§25. Court stenographer appointed; compensation.

1 The judge of said intermediate court shall appoint a
2 court stenographer for said court, who shall attend the
3 terms of said intermediate court and take the evidence
4 and transcribe the same when required so to do. For his
5 services he shall receive the same compensation and be
6 paid in the same manner as stenographers in the circuit
7 courts of this state are paid.

§26. No grand juries impaneled in circuit court.

1 From and after the first term of said intermediate
2 court held under this act, no grand juries shall be im-
3 paneled in the circuit court, unless the judge of said
4 circuit court directs a grand jury to be summoned and
5 impaneled at a regular or special term of said court or
6 by order entered of record.

§27. How contested election determined.

1 If the office of judge of said intermediate court be con-
2 tested the said contest shall be heard and determined in
3 the same manner as the election of judges of the circuit
4 courts are determined.

§28. How vacancy in office filled.

1 If from any cause the office of judge of said intermediate
2 court shall become vacant, the vacancy shall be filled in
3 the same manner as in the case of a vacancy in the
4 office of judge of the circuit court.

§29. Removal of judge from office.

1 The judge of said intermediate court may be removed
2 from office for the same reasons and in the same manner
3 as judges of the circuit courts.

§30. Chapter sixty-two of the code made applicable.

1 Chapter sixty-two of the code of West Virginia shall
2 apply to the intermediate court of Harrison county and
3 to the judge thereof in vacation, in the same manner and
4 to the same extent that it does to the circuit court of
5 Harrison county, or to the judge thereof in vacation, and
6 the same powers may be exercised within the county

7 of Harrison by said intermediate court, and the judge
8 thereof in vacation, concurrent with the circuit court
9 of said county, as provided for in said chapter. All
10 examinations, recognizances, warrants of commitment
11 and certificates of other proceedings, made returnable to
12 the circuit court of Harrison county under the provisions
13 of said chapter sixty-two may be made returnable like-
14 wise to said intermediate court of Harrison county, con-
15 current with the circuit court of said county.

§31. Chapter fifty-one of the code made applicable.

1 Chapter fifty-one of the code of West Virginia shall
2 apply to the intermediate court of Harrison county in
3 the same manner and to the same extent that it does to
4 the circuit courts of the state.

§32. In taxation of costs clerk governed by same rules as in circuit court.

1 In the taxation of costs in said court the clerk and
2 court shall be governed by the same rules and pro-
3 visions of law as are provided in the circuit court.

§33. West Virginia reports and bound acts to be furnished court.

1 The West Virginia reports and bound acts of the Legis-
2 lature are to be delivered to the said judge of the said
3 court in the same manner as they are required to be de-
4 livered to the circuit courts of the state.

§34. Rules to be held in clerk's office in same manner as circuit courts.

1 Rules shall be held for said court in the clerk's office
2 thereof in the same manner with like effect and under the
3 regulations provided by law in respect to circuit courts.

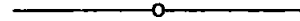
§35. Upon judgments of court, creditors entitled to liens, etc., to secure or recover same as in circuit court.

1 Upon every judgment of said court the judgment credi-
2 tors shall be entitled to all liens, executions and remedies
3 to secure or recover the same to which they would be en-
4 titled if the same were a judgment of the circuit court of

5 said Harrison county; judgments rendered in said inter-
 6 mediate court may be docketed in the judgment lien
 7 docket kept in the county clerk's office of any county in
 8 like manner and with like effect as other judgments, and
 9 executions on said judgments may likewise be docketed
 10 the same as executions from the circuit court.

§36. Attachments may be issued by clerk under same regulations as in circuit court.

1 Attachments may be issued by the clerk of said inter-
 2 mediate court under the same regulations and in the same
 3 cases as attachments are now issued by the clerks of the
 4 circuit courts, whenever applicable, and be served in the
 5 same manner and with like effect.



CHAPTER 33

(Senate Bill No. 238—By Mr. Brotherton and Mr. Poffenbarger)

[Passed February 25, 1972; in effect July 1, 1972. Approved by the Governor.]

AN ACT to amend and reenact section ten, chapter thirty-two, acts of the Legislature, regular session, one thousand nine hundred sixty-four, as last amended and reenacted by chapter thirty-six, acts of the Legislature, regular session, one thousand nine hundred seventy, relating to the court of common pleas of Kanawha county and to the salary of the judges thereof.

Be it enacted by the Legislature of West Virginia:

That section ten, chapter thirty-two, acts of the Legislature, regular session, one thousand nine hundred sixty-four, as last amended and reenacted by chapter thirty-six, acts of the Legislature, regular session, one thousand nine hundred seventy, be amended and reenacted to read as follows:

COURT OF COMMON PLEAS OF KANAWHA COUNTY.

§10. Salary of judges; payment from county treasury.

1 After the first day of July, one thousand nine hundred
 2 seventy-two, each of said judges shall for their services

3 receive twenty-five thousand dollars per annum, to be
4 paid in monthly installments out of the county treasury
5 of Kanawha county, out of funds of said treasury, in
6 the manner provided by statute.

CHAPTER 34

(Senate Bill No. 239—By Mr. Brotherton and Mr. Poffenbarger)

[Passed February 25, 1972; in effect July 1, 1972. Approved by the Governor.]

AN ACT to amend and reenact section four, chapter one hundred seventy-two, acts of the Legislature, regular session, one thousand nine hundred forty-seven, as last amended and reenacted by chapter thirty-seven, acts of the Legislature, regular session, one thousand nine hundred seventy, relating to the domestic relations court of Kanawha county and to the salary of the judge thereof.

Be it enacted by the Legislature of West Virginia:

That section four, chapter one hundred seventy-two, acts of the Legislature, regular session, one thousand nine hundred forty-seven, as last amended and reenacted by chapter thirty-seven, acts of the Legislature, regular session, one thousand nine hundred seventy, be amended and reenacted to read as follows:

DOMESTIC RELATIONS COURT OF KANAWHA COUNTY.

§4. Salary.

1 The judge of the domestic relations court of Kanawha
2 county, West Virginia, shall, from and after the first day
3 of July, one thousand nine hundred seventy-two, receive
4 for his services a salary in the amount of twenty-five
5 thousand dollars per annum, to be paid in monthly in-
6 stallments out of the county treasury of Kanawha county,
7 out of the funds of said treasury, in the manner provided
8 by statute.

CHAPTER 35

(House Bill No. 1189—By Mr. Neely)

[Passed March 10, 1972; in effect July 1, 1972. Approved by the Governor.]

AN ACT to amend and reenact section four, chapter sixty-nine, acts of the Legislature, regular session, one thousand nine hundred nineteen, as last amended by chapter thirty-nine, acts of the Legislature, regular session, one thousand nine hundred seventy, relating to the salary of the judge of the criminal court of Marion county.

Be it enacted by the Legislature of West Virginia:

That section four, chapter sixty-nine, acts of the Legislature, regular session, one thousand nine hundred nineteen, as last amended by chapter thirty-nine, acts of the Legislature, regular session, one thousand nine hundred seventy, be amended and reenacted to read as follows:

CRIMINAL COURT OF MARION COUNTY.

§4. Salary of Marion county criminal court judge.

1 The judge of said criminal court shall receive for his
 2 services a salary of twenty thousand dollars per year,
 3 said amount to be fixed and paid from year to year, in
 4 equal monthly installments, by the county court of said
 5 county, out of the funds of said county, as provided by
 6 statute.

CHAPTER 36

(House Bill No. 956—By Mr. Rogerson and Mr. Polen)

[Passed March 11, 1972; in effect July 1, 1972. Approved by the Governor.]

AN ACT to amend and reenact sections two and five, chapter forty, acts of the Legislature, regular session, one thousand

nine hundred seventy, relating to the jurisdiction and salary of the judge of the common pleas court of Marshall county.

Be it enacted by the Legislature of West Virginia:

That sections two and five, chapter forty, acts of the Legislature, regular session, one thousand nine hundred seventy, be amended and reenacted, all to read as follows:

COMMON PLEAS COURT OF MARSHALL COUNTY.

§2. Jurisdiction.

§5. Salary of judge.

§2. Jurisdiction.

1 The court shall have jurisdiction within Marshall coun-
2 ty, concurrent with the circuit court of said county, of
3 causes, matters, proceedings and suits relating to (a)
4 affirmation of marriages, annulment of marriages, separ-
5 ate maintenance, divorce, alimony, the care, custody,
6 maintenance and education of children of litigants and
7 the adjudication of property rights arising out of same,
8 and all other causes and matters arising within the pro-
9 visions of chapter forty-eight, article two of the official
10 code of West Virginia, commonly known as "the divorce
11 law," and of all amendments and reenactments thereof;
12 (b) adoption proceedings arising out of article four of
13 the chapter last aforesaid, and of all amendments and re-
14 enactments thereof; (c) proceedings for a change of name
15 arising out of article five of the chapter last aforesaid, and
16 of all amendments and reenactments thereof; (d) the
17 enforcement of support of dependents arising out of
18 article nine of the chapter last aforesaid, and of all amend-
19 ments and reenactments thereof; (e) of all civil actions or
20 proceedings at law, except where it shall appear from the
21 pleadings that the matter in controversy exceeds the value
22 of two hundred twenty-five thousand dollars; (f) of all
23 cases arising under chapter forty-nine, articles five, six and
24 seven of the official code of West Virginia, and all amend-
25 ments and reenactments thereof; (g) appellate jurisdic-
26 tion in all cases, civil and criminal, from judgments of
27 justices of the peace in said county, police judges or may-

28 ors of any incorporated city, town or village, or of any
29 inferior tribunal therein, wherein an appeal, writ of error,
30 supersedeas or writ of certiorari may be allowed; (h) all
31 proceedings under article one, chapter thirty-seven of the
32 official code of West Virginia, and all amendments and
33 reenactments thereof; (i) all proceedings by prohibition,
34 mandamus, quo warranto, habeas corpus or certiorari; (j)
35 proceedings under section six-c, article one, chapter forty-
36 eight of the official code of West Virginia, as amended; (k)
37 all proceedings under article seven, chapter forty-eight
38 of the official code of West Virginia, as amended; (l) all
39 proceedings under section four, article ten, chapter fifty-
40 six and sections eight through fifteen, inclusive, article
41 ten, chapter forty-four of the official code of West Vir-
42 ginia, as amended; (m) compulsory school attendance
43 and truancy arising out of chapter eighteen, article eight
44 of the official code of West Virginia, and of all amend-
45 ments and reenactments thereof; (n) the release of per-
46 sons from jail, as provided by chapter sixty-two, article
47 ten, section four of the official code of West Virginia, and
48 of all amendments and reenactments thereof; (o) all mat-
49 ters and causes coming within the purview of section two,
50 article seven, chapter sixty-one of the official code of West
51 Virginia, commonly known as the "license to carry wea-
52 pons statute," and of all amendments and reenactments
53 thereof; (p) any and all other matters arising under the
54 present and future laws of the state of West Virginia, com-
55 mon or statutory, incidental to the foregoing, including,
56 but not limited to, the disposition of property and property
57 interest involved in any such matters, and, as well, the
58 adjudication of any and all rights, titles and interests
59 necessary or incidental to a full determination of all such
60 matters pending in said court.

61 Said court shall have general equity jurisdiction in
62 causes, matters, proceedings and suits before it within
63 its jurisdiction with power to grant injunctions and to
64 require and take recognizance.

65 The proceedings, modes of procedures, power and juris-
66 diction conferred by law upon the circuit court of Mar-
67 shall county in any and all said causes, matters, proceed-

68 ings and suits, are hereby conferred upon and shall be
69 exercised by said court.

70 The judge of said court shall have the same powers
71 in vacation as to any and all of said causes, matters, pro-
72 ceedings and suits that are conferred upon the judge of
73 the circuit court of said county.

74 It shall not be necessary in such causes or proceedings
75 to set forth upon the record the facts authorizing said
76 court to take jurisdiction thereof, but jurisdiction shall
77 be presumed unless the contrary plainly appears from
78 the record.

§5. Salary of judge.

1 The judge of said court shall, for his services, receive
2 the sum of twenty thousand dollars per annum, to be paid
3 in monthly installments out of the treasury of Marshall
4 county, from and after the first day of July, one thousand
5 nine hundred seventy-two. The salary of said judge shall
6 continue, as provided in chapter forty, acts of the Legis-
7 lature, regular session, one thousand nine hundred
8 seventy, until the first day of July, one thousand nine hun-
9 dred seventy-two. The county court shall annually make
10 provision by appropriate levy and appropriation for the
11 payment of said salary.

CHAPTER 37

(House Bill No. 1045—By Mr. Pauley and Mr. Scott)

[Passed February 28, 1972; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, chapter thirty-six, acts of the Legislature, regular session, one thousand eight hundred ninety-three, as last amended and reenacted by chapter thirty-six, acts of the Legislature, regular session, one thousand nine hundred seventy-one, relating to the term of office of the intermediate court of McDowell

county, providing for a four-year term following the one thousand nine hundred seventy-two general election and an eight-year term thereafter.

Be it enacted by the Legislature of West Virginia:

That section three, chapter thirty-six, acts of the Legislature, regular session, one thousand eight hundred ninety-three, as last amended and reenacted by chapter thirty-six, acts of the Legislature, regular session, one thousand nine hundred seventy-one, be amended and reenacted to read as follows:

THE INTERMEDIATE COURT OF McDOWELL COUNTY.

§3. Judge; election; term; qualifications; removal from office; filling vacancy.

1 The judge of the intermediate court of McDowell county
2 elected at the general election held in this state on the
3 Tuesday after the first Monday in November, one thou-
4 sand nine hundred seventy-two, shall hold said office
5 for the term of four years from the first day of January,
6 one thousand nine hundred seventy-three, and until his
7 successor is duly elected and qualified; and at the general
8 election in this state to be held on the Tuesday after
9 the first Monday in November, one thousand nine hun-
10 dred seventy-six, and every eight years thereafter, there
11 shall be elected by the legal voters of the county a judge
12 of the intermediate court of McDowell county, who shall
13 be a resident member of the bar of the county, and shall
14 be disqualified from practicing law in all the courts of
15 this state during his continuance in office, who shall pre-
16 side over the court for the term of four years from the
17 first day of January, one thousand nine hundred seventy-
18 three, and thereafter for terms of eight years beginning
19 January one, one thousand nine hundred seventy-seven
20 and shall be, except as to jurisdiction, subject to the laws
21 in force governing circuit judges. The judge of the court
22 may be removed from office for the same reasons, and in
23 the same manner, as judges of circuit courts. And if from
24 any cause the office shall become vacant, the vacancy
25 shall be filled in the same manner as in the case of a va-
26 cancy in the office of the judge of the circuit court.

CHAPTER 38

(House Bill No. 1038—By Mr. Sparacino and Mrs. Merritt)

[Passed March 9, 1972; in effect July 1, 1972. Approved by the Governor.]

AN ACT to amend and reenact chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred seven, relating to abolition of the criminal court of Raleigh county as heretofore established; creation of a new intermediate court of Raleigh county; jurisdiction; the judges qualifications, term and salary; clerk; duties of sheriff; transfer of pending cases; miscellaneous provisions.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred seven, be amended and reenacted to read as follows:

INTERMEDIATE COURT OF RALEIGH COUNTY.

- §1. Criminal court abolished; intermediate court created.
- §2. Intermediate court generally.
- §3. Jurisdiction.
- §4. Judge; qualifications, term, appointment and election.
- §5. Salary.
- §6. Clerk; his powers, duties and compensation.
- §7. Power and duties of sheriff.
- §8. Transfer of pending causes.
- §9. Terms of court; maturity of causes; procedure; appointment of probation staff, clerical, and secretarial assistants and fixing salaries.
- §10. Supplies; finances; seal; courtrooms.
- §11. Contempt.
- §12. Appeals; limitations thereon.
- §13. Effective date.
- §14. Separability; repeal.

§1. Criminal court abolished; intermediate court created.

1 The criminal court of Raleigh county heretofore created
2 is hereby abolished and there is hereby created a new
3 court to be known and designated as the intermediate
4 court of Raleigh county. For the sole purpose of per-
5 petuity of retirement benefits for retired judges of the
6 criminal court, the intermediate court shall be deemed

7 a successor to the criminal court and such judges shall
8 be entitled to full benefits under article nine, chapter
9 fifty-one of the code of West Virginia.

§2. Intermediate court generally.

1 The intermediate court of Raleigh county shall be a
2 court of limited jurisdiction for the county of Raleigh, to
3 be held and presided over by a judge to be appointed or
4 elected as provided in this chapter. Whenever and wher-
5 ever the word "court" is hereafter used in this chapter, it
6 shall be taken to mean and refer to the intermediate court
7 of Raleigh county, unless the context clearly indicates
8 otherwise.

§3. Jurisdiction.

1 The court shall have jurisdiction within Raleigh county,
2 concurrent with the circuit court of said county, of ac-
3 tions, causes, matters, proceedings and suits relating to
4 (a) those matters within the purview of article one,
5 chapter forty-eight of the code of West Virginia and
6 of all amendments and reenactments thereof, of which
7 the circuit court now has exclusive jurisdiction, including
8 the issuance of a marriage license in an emergency or
9 under extraordinary circumstances as now provided in
10 section six-c of said article and chapter; (b) affirmation
11 of marriages, annulment of marriages, separate mainte-
12 nance, divorce, alimony, the care, custody, maintenance
13 and education of children of litigants and the adjudica-
14 tion of property rights arising out of same and all other
15 causes and matters arising within the provisions of article
16 two, chapter forty-eight of the code of West Virginia,
17 commonly known as "the divorce law," and of all amend-
18 ments and reenactments thereof; (c) adoption proceed-
19 ings arising out of article four of the chapter last afore-
20 said and of all amendments and reenactments thereof;
21 (d) proceedings for a change of name arising out of article
22 five of the chapter last aforesaid and of all amendments
23 and reenactments thereof; (e) the enforcement of support
24 of dependents arising out of article nine of the chapter
25 last aforesaid and of all amendments and reenactments
26 thereof; (f) the care and disposition of delinquent, defec-
27 tive, neglected and dependent children and juvenile of-

28 fenders arising out of articles five, six and seven, chapter
29 forty-nine of the code of West Virginia and of all amend-
30 ments and reenactments thereof; (g) all proceedings aris-
31 ing out of article eight, chapter forty-nine of the code of
32 West Virginia, known as the "Interstate Compact on Ju-
33 veniles," and of all amendments and reenactments there-
34 of; (h) compulsory school attendance and truancy aris-
35 ing out of article eight, chapter eighteen of the code of
36 West Virginia and of all amendments and reenactments
37 thereof; (i) habeas corpus proceedings involving the
38 award and custody of children under the age of twenty-
39 one years; (j) the collection of recognizances and bonds
40 taken by said court, or of bonds taken by the clerk thereof
41 in vacation, to secure the payment of judgments for fines
42 and costs rendered by said court; (k) the approval of com-
43 promise by fiduciaries of liabilities where acting as guar-
44 dian for an infant in accordance with the provisions of
45 section seven, article five, chapter forty-four of the code
46 of West Virginia and of all amendments and reenactments
47 thereof; (l) concerning the transfer of securities the prop-
48 erty of an infant in the name of a fiduciary in accordance
49 with the provisions of section eight, article five, chapter
50 forty-four of the code of West Virginia and of all amend-
51 ments and reenactments thereof; (m) direction to fiduci-
52 aries concerning moneys belonging to a minor in accor-
53 dance with the provisions of section one, article six, chap-
54 ter forty-four of the code of West Virginia and of all
55 amendments and reenactments thereof; (n) authority for
56 investment by a fiduciary when the beneficiary of trust
57 funds is the property of a minor in accordance with the
58 provisions of section three, article six, chapter forty-four
59 of the code of West Virginia and of all amendments and
60 reenactments thereof, and authority for investment or
61 disbursement by a guardian or committee for a person
62 receiving veteran's benefits, in accordance with the pro-
63 visions of article fifteen, chapter forty-four of the code of
64 West Virginia and of all amendments and reenactments
65 thereof; (o) instruction of fiduciaries where minor is ben-
66 efiary of an estate or trust as provided in section four,
67 article six, chapter forty-four of the code of West Vir-
68 ginia and of all amendments and reenactments thereof;
69 (p) authorization of disbursements by guardians from in-

70 come and corpus of the estate of infant wards as provided
71 in section eight, article ten, chapter forty-four of the code
72 of West Virginia and of all amendments and reenactments
73 thereof; (q) sale of personal estate by guardian in accor-
74 dance with the provisions of section nine, article ten, chap-
75 ter forty-four of the code of West Virginia and of all
76 amendments and reenactments thereof; (r) proceedings
77 between guardians and wards in accordance with the pro-
78 visions of section thirteen, article ten, chapter forty-four
79 of the code of West Virginia and of all amendments and
80 reenactments thereof; (s) the approval of compromising
81 an infant's claim for damages in accordance with the pro-
82 visions of section fourteen, article ten, chapter forty-four
83 of the code of West Virginia and of all amendments and
84 reenactments thereof; (t) the transfer of property of non-
85 resident infant or nonresident insane person to foreign
86 guardian in accordance with the provisions of section
87 three, article eleven, chapter forty-four of the code of
88 West Virginia and of all amendments and reenactments
89 thereof; (u) the transfer of proceeds of sale belonging
90 to nonresident infant to foreign guardian in accordance
91 with section four, article eleven, chapter forty-four of the
92 code of West Virginia and of all amendments and reenact-
93 ments thereof; (v) the approval of the sale, lease, mort-
94 gage or deeding in trust of infants' lands or insane per-
95 sons' lands in accordance with the provisions of article
96 one, chapter thirty-seven of the code of West Virginia
97 and of all amendments and reenactments thereof; (w)
98 release of dower of an infant in accordance with the pro-
99 visions of section nine, article one, chapter thirty-seven
100 of the code of West Virginia and of all amendments and
101 reenactments thereof; (x) all matters coming within the
102 purview of section one, article one, chapter forty-eight of
103 the code of West Virginia, relating to the age of consent
104 and of all amendments and reenactments thereof;

105 Said court shall have jurisdiction in actions, causes,
106 matters, proceedings and suits which would have been
107 matters in equity prior to the adoption of the West Vir-
108 ginia rules of civil procedure, which are before it within
109 its jurisdiction with power to grant injunctions and to
110 require and take recognizances.

111 The proceedings, modes of procedures, power and juris-
112 diction conferred by law upon the circuit court of Raleigh
113 county in any and all said actions, causes, matters, pro-
114 ceedings and suits, are hereby conferred upon and shall be
115 exercised by said court.

116 It shall not be necessary in any such actions, causes,
117 matters, proceedings or suits to set forth upon the record
118 the facts authorizing said court to take jurisdiction there-
119 of, but jurisdiction shall be presumed unless the contrary
120 plainly appears from the record.

§4. Judge; qualifications, term, appointment and election.

1 The principal presiding officer of the court shall be a
2 judge whose qualifications, term, appointment, election
3 and tenure shall be as follows: The person elected or ap-
4 pointed to said office of judge shall be a member of the
5 West Virginia State Bar and a resident of Raleigh county.
6 At the general election to be held on the Tuesday after
7 the first Monday in November, one thousand nine hundred
8 seventy-four, and at the general election to be held at
9 intervals of eight years thereafter, some attorney, quali-
10 fied as aforesaid, shall be elected, in the manner provided
11 by law for the election of circuit judges, to be judge of
12 said court for the next ensuing term of eight years, be-
13 ginning on January first next following such election.
14 Candidates for the office of judge of the court shall be
15 nominated in the same manner as are candidates for the
16 office of judge of the circuit court. The judge of the court
17 may be removed from office for the same reasons and in
18 the same manner as a judge of the circuit court. If from
19 any cause the office of judge of the court shall become
20 vacant including the vacancy to occur when the provisions
21 of this act become effective, the vacancy shall be filled in
22 the same manner as in the case of a vacancy in the office
23 of the judge of the circuit court. Any judge so elected or
24 appointed shall continue in said office until his successor
25 is elected and qualified.

§5. Salary.

1 The judge of the intermediate court of Raleigh county
2 shall for his services receive the sum of twenty thousand
3 five hundred dollars per annum to be paid in monthly in-

4 stallments out of the county treasury of Raleigh county.
5 The county court of Raleigh county shall annually make
6 provisions by appropriate levy and appropriation for the
7 payment of said salary.

§6. Clerk; his powers, duties and compensation.

1 The clerk of the circuit court of Raleigh county shall,
2 ex officio, be, act as and perform the duties of clerk of
3 the intermediate court of Raleigh county and shall exer-
4 cise the same powers and duties arising within the juris-
5 diction of the court as are performed by him as clerk of
6 the circuit court. All processes, rules and orders of the
7 court, in the exercise of its jurisdiction, shall be signed
8 by the clerk thereof to be directed to the sheriffs of the
9 proper counties wherein the same are to be executed in
10 like manner and with the same effect as processes issuing
11 from the circuit court of Raleigh county.

§7. Powers and duties of sheriff.

1 The sheriff of Raleigh county and the sheriffs of the
2 several counties in the state shall by themselves or their
3 deputies execute all processes of said court, issued by the
4 clerk thereof, directed to them respectively, and all pro-
5 cesses emanating from said court shall be directed to and
6 be executed by them in the same manner as is provided
7 by law as to processes issuing from the circuit court by
8 said clerk. The sheriff of Raleigh county shall perform
9 the same duties and services for said court as he is now
10 by law required to perform for the circuit court of Raleigh
11 county. In the execution of processes, rules and orders of
12 the court, the sheriff shall have the same powers and
13 rights, be subject to the same liabilities, govern himself
14 by the same rules and principles of law and the statutes
15 of the state, as though said processes issued from the
16 circuit court of Raleigh county.

§8. Transfer of pending causes.

1 The judge of the circuit court of Raleigh county may, in
2 his discretion, on and after the first day of July, one
3 thousand nine hundred seventy-two, certify to the
4 intermediate court of Raleigh county any portion or all
5 of the divorce proceedings, suits for annulment of mar-

6 riage and any and all other matters pending in said courts
7 and properly coming within the jurisdiction of this court
8 as defined in section three hereof, and all such matters,
9 suits, actions, petitions and proceedings so certified to the
10 intermediate court of Raleigh county shall be docketed
11 and thereafter proceeded with therein according to law.
12 The judge of the said circuit court, in his discretion, may
13 also direct the clerk of his court to certify to and to
14 docket all such matters, suits, actions, petitions, and pro-
15 ceedings properly within the jurisdiction of the inter-
16 mediate court of Raleigh county as may be instituted on
17 and after the first day of July, one thousand nine hundred
18 seventy-two, in the circuit court in the intermediate
19 court of Raleigh county. In the event of the absence or
20 disqualification of the judge of the circuit court, any
21 matter coming within the purview of this act, pending in
22 said court, may be certified by the judge of the intermed-
23 iate court of Raleigh county to the intermediate court of
24 Raleigh county, docketed therein and proceeded with ac-
25 cording to law.

26 The judge of the intermediate court of Raleigh county
27 shall not exercise any criminal jurisdiction except crim-
28 inal juvenile jurisdiction as provided by law, nor hold
29 any jury trials.

30 In any action or proceeding where a party is entitled
31 to a jury trial, and demands the same, or the court orders
32 a jury trial, the said action or proceeding shall be trans-
33 ferred by the judge of the intermediate court of Raleigh
34 county in its entirety to the circuit court for disposition
35 as though the same had been originally instituted in the
36 circuit court. For the purpose of effecting such transfer,
37 the intermediate court of Raleigh county shall have juris-
38 diction in all matters brought before it.

**§9. Terms of court; maturity of causes; procedure; appoint-
ment of probation staff, clerical, and secretarial assistants
and fixing salaries.**

1 For the purpose of maturing, docketing, hearing and
2 determining all matters, suits, petitions and other pro-
3 ceedings properly determinable in the intermediate
4 court of Raleigh county there shall be regularly con-

5 tinued and held three terms of court each year, beginning
6 on the third Monday in the months of March, June and
7 November of each year. Special terms of said court may
8 be called and held whenever, in the discretion of the
9 judge of the court, public interest requires such special
10 terms. The judge of the court shall have like jurisdiction
11 and authority, in vacation of the court, to make and enter
12 such proper orders in any matter, suit, action, petition or
13 proceeding pending in the court as the judges of the cir-
14 cuit courts have under the laws of the state. All matters
15 arising under the jurisdiction of the court, other than suits
16 for divorce, separation, annulment of marriages and af-
17 firmation of marriages, may be heard and determined
18 either in term time or in vacation: *Provided*, That proper
19 notice of any such proceedings be given as provided by
20 law for the particular case.

21 The mode of procedure in cases instituted in this court
22 shall be the same as that prescribed for the circuit court
23 in similar causes. The court is authorized and empowered
24 to appoint such additional officers, commissioners and
25 probation officers, and clerical and secretarial assistance
26 as may be authorized by law and as shall enable the court
27 to discharge all the duties required of it under the pro-
28 visions of this chapter, and the general laws of the state,
29 which appointments shall be entered of record in the
30 office of the circuit clerk, with a copy to be filed with the
31 county court. Such personnel or staff of the judge shall be
32 paid such salaries, fees and expenses as may be deter-
33 mined by the court and authorized by law from any
34 available source, including federal grant money or by
35 the county court: *Provided*, That for all such sums
36 as shall be paid by the county court, the judge shall
37 first obtain the approval of the county court of Raleigh
38 county of the expenses to be incurred and the salary or
39 salaries to be paid. The county court shall at its next
40 meeting, regular or special, approve or disapprove in
41 whole or in part, said appointments, in writing, and shall
42 notify the judge of said court of its action. If the county
43 court fails or refuses to act on said appointments as here-
44 in provided, said appointments shall be deemed to have
45 been approved. If the county court disapproves any ap-

46 pointment, such appointment shall be nullified to the
47 extent that the county court shall not be obligated to
48 pay any expenses or salary for such disapproved appoint-
49 ment. Such appointments shall be made by the judge
50 and the appointees shall serve during the pleasure of the
51 judge.

52 The appointment of the probation officer and secretarial
53 and other assistants, when made by the judge, shall be
54 entered on the law order book of the court. A copy of the
55 order of appointment shall be transmitted to the clerk
56 of the county court. Thereupon, the county court shall
57 make provision for payment and shall pay the salaries
58 of the probation officer, clerical and secretarial assistants
59 as shown by the order of appointment. The annual sal-
60 aries provided for in said order of appointment shall be
61 paid in equal monthly installments. Expenses and mileage
62 accounts of the probation officer shall be itemized and
63 verified and presented to and paid by the county court, if
64 such accounts are approved by the judge. The county
65 court shall provide such office space, equipment and
66 supplies for the probation staff, clerical and secretarial
67 assistants as the judge shall deem necessary and adequate.

§10. Supplies; finances; seal; courtrooms.

1 It shall be the duty of the county court of Raleigh
2 county to provide a current West Virginia code and all
3 record and other books and stationery that may be neces-
4 sary for the court. Likewise, a seal for the court shall be
5 provided, but full faith and credit shall be given to the
6 records of the court and certificates of its judge or clerk,
7 whether the seal of the court be affixed thereto or not,
8 in like manner and with the same effect as if the same
9 were records of the circuit court similarly authenticated.
10 The county court of Raleigh county shall likewise fur-
11 nish such rooms, furniture and equipment for the proper
12 conduct and administration of the court and shall, through
13 annual levy and appropriations, make provision for the
14 payment for all such rooms, supplies and equipment and
15 as well for such clerical, secretarial and other official help
16 and expenses as may be required by the court.

§11. Contempt.

1 The court shall have the same powers to punish for
2 contempt as are conferred upon the circuit court by law.

§12. Appeals; limitations thereon.

1 Appeals may be allowed and writs of error and super-
2 sedeas awarded to judgments, decrees, rulings and orders
3 of the court, or the judge thereof, by the circuit court
4 of Raleigh county, or the judge thereof, in all matters
5 arising within the jurisdiction of this court for which mat-
6 ters appeals may be allowed and writs of error and super-
7 sedeas awarded by the supreme court of appeals if such
8 matters had originally arisen in the circuit court of Ral-
9 eigh county. In the event the circuit court of Raleigh
10 county or the judge thereof refuses an application for writ
11 of error and supersedeas or an appeal, application there-
12 for may be made direct to the supreme court of appeals
13 of the state or to any judge thereof. In all such cases such
14 application shall be made within four months next fol-
15 lowing the date of the entry of the final order, judgment,
16 or decree of this court or the circuit court as the case may
17 be.

§13. Effective date.

1 This chapter shall become effective on the first day of
2 July, one thousand nine hundred seventy-two.

§14. Separability; repeal.

1 The provisions of this chapter shall be construed as sep-
2 arable and severable and, should any provision or part
3 hereof be held unconstitutional or for any reason invalid,
4 the remaining provisions or parts shall not be thereby
5 affected.

CHAPTER 39

(Com. Sub. for Senate Bill No. 114—By Mr. McCourt, Mr. President)

[Passed March 8, 1972; in effect ninety days from passage. Approved by the
Governor.]

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

as amended, by adding thereto a new section, designated section eight, setting forth various prohibitions as to a molotov cocktail; defining the term "molotov cocktail"; establishing criminal offenses; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

§61-3-8. Prohibitions as to molotov cocktails; penalty.

1 It shall be unlawful for any person to make, carry,
2 possess, sell, give or use any type of incendiary device,
3 commonly known as a molotov cocktail, which is hereby
4 defined to mean a makeshift incendiary bomb made of a
5 breakable container filled with flammable liquid and pro-
6 vided with a wick composed of any substance capable of
7 bringing a flame into contact with the liquid, but is not
8 intended to mean a device commercially manufactured
9 primarily for the purpose of illumination, or other such
10 use.

11 Any person who shall violate any provision of this sec-
12 tion shall be guilty of a felony, and, upon conviction
13 thereof, shall be confined in the penitentiary not less than
14 one year nor more than five years.

15 The possession, sale or control by a person or persons of
16 any such device or container containing flammable liquid
17 is prima facie evidence of a violation of this section.

CHAPTER 40

(Senate Bill No. 73—By Mr. Brotherton)

[Passed March 11, 1972; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

by adding thereto a new article, designated article eleven-a, relating to the release of certain prisoners by courts of record having criminal jurisdiction for purposes of employment and other reasons; authorizing petitions for such release; relating to suitable employment for prisoners; relating to the duty of probation officers and the division of correction with respect to suitable employment for such prisoners; relating to wages or salary earned by such prisoners while on release; providing for trust accounts therefor; relating to attachment or execution on earnings and priorities with respect thereto; providing for lack of liability on part of employer when earnings are paid to clerk; relating to disposition of earnings paid to clerk; relating to reduction of term for good behavior and faithful performance of duties; and requiring adequate facilities for administration of release privilege.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.

§62-11A-1. Release for work and other purposes by courts of record with criminal jurisdiction.

- 1 (1) When a defendant is sentenced or committed for a
- 2 term of one year or less by a court of record having crimi-
- 3 nal jurisdiction, such court may in its order grant to such
- 4 defendant the privilege of leaving the jail during necessary
- 5 and reasonable hours for any of the following purposes:
- 6 (a) To work at his employment;
- 7 (b) To seek employment;
- 8 (c) To conduct his own business or to engage in other
- 9 self-employment, including, in the case of a woman,
- 10 housekeeping and attending to the needs of her family;
- 11 (d) To attend an educational institution;
- 12 (e) To obtain medical treatment;
- 13 (f) To devote time to any other purpose approved by
- 14 the court.

15 (2) Whenever an inmate who has been granted the
16 privilege of leaving the jail under this section is not
17 engaged in the activity for which such leave is granted,
18 he shall be confined in jail.

19 (3) An inmate sentenced to ordinary confinement may
20 petition the court at any time after sentence for the
21 privilege of leaving jail under this section and may re-
22 new his petition in the discretion of the court. The court
23 may withdraw the privilege at any time by order entered
24 with or without notice.

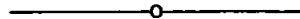
25 (4) If the inmate has been granted permission to
26 leave the jail to seek or take employment, the court's
27 probation officers, or if none, the state's division of cor-
28 rection shall assist him in obtaining suitable employment
29 and in making certain that employment already obtained
30 is suitable. Employment shall not be deemed suitable if
31 the wages or working conditions or other circumstances
32 present a danger of exploitation or of interference in a
33 labor dispute in the establishment in which the inmate
34 would be employed.

35 (5) If an inmate is employed for wages or salary, the
36 clerk of the court shall collect the same, or shall require
37 the inmate to turn over his wages or salary in full when
38 received, and shall deposit the same in a trust account
39 and shall keep a ledger showing the status of the ac-
40 count of each inmate. Earnings levied upon pursuant
41 to writ of attachment or execution or in other lawful
42 manner shall be collected from the employer and shall not
43 be collected hereunder, but when the clerk has requested
44 transmittal of earnings prior to levy, such request shall
45 have priority. When an employer transmits such earn-
46 ings to the clerk pursuant to this subsection he shall have
47 no liability to the inmate for such earnings. From such
48 earnings the clerk shall pay the inmate's board and per-
49 sonal expenses both inside and outside the jail and shall
50 deduct installments on fines, if any, and, to the extent
51 directed by the court, shall pay the support of the in-
52 mate's dependents: *Provided*, That at least twenty-five
53 percent of the earnings collected by the clerk on behalf
54 of an inmate shall be paid for the support of such inmate's

55 dependents, if any. If sufficient funds are available after
56 making the foregoing payments, the clerk may, with the
57 consent of the inmate, pay, in whole or in part, any un-
58 paid debts of the inmate. Any balance shall be retained,
59 and shall be paid to the inmate at the time of his dis-
60 charge.

61 (6) An inmate who is serving his sentence pursuant
62 to this section shall be eligible for a reduction of his
63 term for good behavior and faithful performance of
64 duties in the same manner as if he had served his term
65 in ordinary confinement.

66 (7) The court shall not make an order granting the
67 privilege of leaving the institution under this section
68 unless it is satisfied that there are adequate facilities
69 for the administration of such privilege in the jail or
70 other institution in which the defendant will be confined.



CHAPTER 41

(Com. Sub. for House Bill No. 970—By Mr. Queen)

[Passed March 11, 1972; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article twelve by adding thereto a new section, designated section seven-a, relating to the suspension of sentence and release on probation by the court for persons convicted of crimes; the time during which the court may suspend such sentence and grant probation; the remanding of persons who have been found guilty or pleaded guilty to felonies to the custody of the commissioner of public institutions for diagnosis and classification prior to the pronouncing of sentence; the time period during which such person may be so remanded; requiring the commissioner to report his findings to the court; credit for time served while in custody of such commissioner and penalty for escape while in such custody.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. PROBATION AND PAROLE.

§62-12-3. Suspension of sentence and release on probation.

§62-12-7a. Presentence diagnosis and classification; power of court; custody of convicted person; penalty for escape.

§62-12-3. Suspension of sentence and release on probation.

1 Whenever, upon the conviction of any person eligible
2 for probation under the preceding section, it shall appear
3 to the satisfaction of the court that the character of the
4 offender and the circumstances of the case indicate that
5 he is not likely again to commit crime and that the public
6 good does not require that he be fined or imprisoned, the
7 court, upon application or of its own motion, may suspend
8 the imposition or execution of sentence and release the
9 offender on probation for such period and upon such
10 conditions as are provided by this article; but in no case,
11 except as provided by the following section, shall the
12 court have authority to suspend the execution of a sen-
13 tence after the convicted person has been imprisoned for
14 thirty days under the sentence.

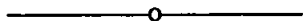
§62-12-7a. Presentence diagnosis and classification; power of court; custody of convicted person; penalty for escape.

1 Notwithstanding any other provision of law, when any
2 person has been found guilty of, or pleads guilty to, a
3 felony, the court may, prior to pronouncing of sentence,
4 direct that such person be delivered into the custody of
5 the commissioner of public institutions who shall cause
6 such person to be forthwith transferred to the diagnostic
7 and classification division of the Huttonsville correctional
8 center for a period not to exceed sixty days. During such
9 period such person shall undergo examination, diagnosis
10 and classification and he shall then be remanded and de-
11 livered to the custody of the sheriff of the county wherein
12 he was found guilty or entered such plea. Within ten days

13 following the termination of such examination, diagnosis
14 and classification, the commissioner of public institutions
15 shall make or cause to be made a report to the court
16 wherein the person was found guilty, or entered his plea
17 of guilty, containing the results, findings, conclusions and
18 recommendations of the commissioner with respect to such
19 person.

20 Whenever any person is remanded into the custody of
21 the commissioner of public institutions pursuant to this
22 section, such person shall be given credit on any sentence
23 subsequently imposed by the court equal to the time
24 spent in such custody.

25 Any person who has been delivered into the custody of
26 the commissioner under the provisions of this section and
27 who escapes from such custody, shall be guilty of a felony,
28 and, upon conviction thereof, shall be confined in the
29 penitentiary for one year. The term of confinement under
30 this section shall commence at the expiration of any
31 sentence such person would be subject to for the offense
32 for which such person had been found guilty or to which
33 he had entered his plea of guilty, as the case may be.



CHAPTER 42

(Senate Bill No. 268—By Mr. Gilligan and Mr. Hedrick)

[Passed March 11, 1972; in effect July 1, 1972. Approved by the Governor.]

AN ACT to amend and reenact section five, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to court and county probation officers and assistants; salaries.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. PROBATION AND PAROLE.**§62-12-5. Court and county probation officers and assistants.**

1 The judge of any court actively exercising jurisdiction
2 in criminal cases and having authority to place offenders
3 on probation is authorized to appoint a court or county
4 probation officer and a clerical assistant to serve during
5 the pleasure of the appointing judge, and in addition in
6 counties having a population of more than one hun-
7 dred thousand, such judge is authorized to appoint an
8 assistant court or county probation officer: *Provided,*
9 That the appointing judge shall first obtain the approval
10 of the county court or the county courts in his judicial
11 circuit of the expenses to be incurred and the salary or
12 salaries to be paid the court or county probation officer
13 and clerical assistants, which approval shall be discre-
14 tionary with said county court or courts and shall be
15 required before any appointment made hereunder be-
16 comes effective.

17 The appointment of a court or county probation officer,
18 assistant court or county probation officer and clerical
19 assistant shall be in writing and entered on the order
20 book of the court by the judge making such appointment
21 and a copy of said order of appointment shall be delivered
22 to the county court of the county in which said court or
23 county probation officer, assistant court or county pro-
24 bation officer and clerical assistant shall serve. The said
25 order of appointment shall state the monthly salary fixed
26 by said judge, to be paid the court or county probation
27 officer, assistant court or county probation officer or cleri-
28 cal assistant so appointed. A court or county probation
29 officer shall receive for his services a monthly salary of
30 not less than three hundred nor more than nine hundred
31 dollars per month; an assistant court or county probation
32 officer shall receive for his services a monthly salary of
33 not less than three hundred and not more than seven hun-
34 dred dollars per month. A clerical assistant shall receive
35 for his services a salary not to exceed three hundred
36 dollars per month. The county court shall make provi-
37 sions for payment and pay monthly the salary of the
38 court or county probation officer, assistant court or

39 county probation officer and clerical assistant as desig-
40 nated in the order of appointment.

41 The county court shall provide adequate office space,
42 equipment and supplies for the court or county probation
43 officer, assistant court or county probation officer and
44 clerical assistant, to be approved by the appointing judge.
45 The county court shall reimburse a court or county pro-
46 bation officer and an assistant court or county probation
47 officer for all expenses actually and necessarily incurred
48 in line of duty in the field.

49 No judge shall appoint any court or county probation
50 officer, assistant court or county probation officer or cleri-
51 cal assistant who is related to him either by consanguinity
52 or affinity.

53 A judge of a circuit court whose circuit comprises more
54 than one county, having authority to appoint a court or
55 county probation officer, may appoint a court or county
56 probation officer and a clerical assistant in each county
57 of such circuit, or may appoint the same person as a
58 court or county probation officer and also the same per-
59 son as a clerical assistant in two or more of such counties.

60 When a judge has appointed a court or county proba-
61 tion officer and a clerical assistant to serve in a judicial
62 circuit including more than one county, the salary and
63 expenses of such appointees shall be contributed by each
64 county sharing in the services of such appointees in the
65 proportion agreed upon by such counties, if they agree,
66 otherwise in the proportion of the populations in the
67 counties derived from the last United States census.

68 In lieu of, or in addition to, the court or county pro-
69 bation officers, assistant court or county probation officers
70 and clerical assistant provided for in this section, the
71 judge may avail himself of the services of state proba-
72 tion and parole officers; and any such services which may
73 be provided to the court or judge by said state probation
74 and parole officers, shall be rendered at no additional cost
75 to any court or judge so using them. The board of pro-
76 bation and parole may assist any court or county proba-
77 tion officer, upon request, with information relative to
78 procedure, printed forms, and technique applicable to
79 probation methods.

80 Nothing contained in this section shall in any manner
81 alter, modify, affect or supersede the appointment, tenure
82 or salary of any probation officer appointed by any court
83 under any special act of the Legislature heretofore or
84 hereafter enacted.

CHAPTER 43

(Senate Bill No. 61—By Mr. Brotherton)

[Passed February 25, 1972; in effect July 1, 1972. Approved by the Governor.]

AN ACT to amend and reenact sections two and five, article one; and sections four, ten, twelve, thirteen, fourteen and fourteen-a, article three, all of chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section seven, article eleven, chapter forty-seven of said code, relating to the department of finance and administration and the commissioner thereof; abolishing the office of director of the purchasing division of such department and creating a new office of director of the purchasing division of such department; relating to the director of the purchasing division of such department and the qualifications for the office of such director and the salary of such director; relating to the bond of the commissioner; requiring the director of the purchasing division to be bonded; setting forth detailed provisions as to the bonds of the commissioner and the director of the purchasing division; relating to the cost of all such bonds; relating to rules and regulations which the director of the purchasing division must promulgate with respect to the giving of notice to vendors who pay an annual fee therefor and to the insertion of provisions in all state contracts as to damages in the event of vendor default and the qualifications of state buyers; specifying certain qualifications to be met for employment as a state buyer; requiring state buyers to be bonded separately or by a blanket bond; setting forth detailed provisions as to such bonds; relating to the cost of any such

bond or bonds; expressly providing civil service coverage for the office of director of each division of said department and for state buyers; relating to the testing or evaluation of commodities and to the preparation, custody and maintenance of reports with respect to deficiencies in vendor performance; relating to the purchase of commodities or printing without advertising for sealed bids or on the open market; specifying that bids shall not be altered or withdrawn after the appointed hour for the opening of such bids; relating to bids and duplicate bids submitted by vendors and the preservation thereof with notations thereon; relating to any deviation with respect to such duplicate bids; relating to the prequalification of a vendor to do business with the state; specifying additional information to be furnished incident to the prequalification of a vendor to do business with the state; providing exceptions to the prequalification requirements; providing criminal penalties; and providing certain exemptions under the fair trade act.

Be it enacted by the Legislature of West Virginia:

That sections two and five, article one, and sections four, ten, twelve, thirteen, fourteen and fourteen-a, article three, all of chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section seven, article eleven, chapter forty-seven of said code be amended and reenacted, all to read as follows:

Chapter

- 5A. Department of Finance and Administration.**
- 47. Regulation of Trade.**

CHAPTER 5A.

DEPARTMENT OF FINANCE AND ADMINISTRATION.

Article

- 1. Department of Finance and Administration.**
- 3. Purchasing Division.**

ARTICLE 1. DEPARTMENT OF FINANCE AND ADMINISTRATION.

- §5A-1-2.** Department of finance and administration and office of commissioner continued; commissioner; divisions; directors.
- §5A-1-5.** Oath and bond of commissioner; bond required for director of the purchasing division; bonds for other directors and employees; cost of bonds.

§5A-1-2. Department of finance and administration and office of commissioner continued; commissioner; divisions; directors.

1 The department of finance and administration and the
2 office of commissioner of finance and administration are
3 hereby continued in the executive branch of state govern-
4 ment. The commissioner shall be the chief executive
5 officer of the department and director of the budget and
6 shall be appointed by the governor, by and with the ad-
7 vice and consent of the Senate, for a term not exceeding
8 the term of the governor. The commissioner shall serve
9 at the will and pleasure of the governor. The annual
10 compensation of the commissioner shall be twenty
11 thousand dollars. There shall be in the department of
12 finance and administration a budget division, a purchas-
13 ing division and a general services division. Each divi-
14 sion shall be headed by a director who shall be appointed
15 by the commissioner. The office of director of the pur-
16 chasing division is hereby abolished, and a new office of
17 director of the purchasing division is hereby created. No
18 person shall be appointed director of the purchasing di-
19 vision unless such person is at the time of appointment
20 a graduate of an accredited college or university
21 and shall have spent a minimum of ten of the fifteen
22 years immediately preceding his appointment employed
23 in an executive capacity in purchasing for any unit of
24 government or for any business, commercial or industrial
25 enterprise. The director of the purchasing division shall
26 receive an annual salary of eighteen thousand dollars.
27 Any person appointed as director of any division shall
28 after such appointment be subject to the provisions of
29 article six, chapter twenty-nine of this code.

§5A-1-5. Oath and bond of commissioner; bond required for director of the purchasing division; bonds for other directors and employees; cost of bonds.

1 The commissioner, before entering upon the duties of
2 his office, shall take and subscribe to the oath prescribed
3 by section five, article four of the constitution of West
4 Virginia. He shall execute a bond in the penalty of one

5 hundred thousand dollars, payable to the state of West
6 Virginia, with a corporate bonding or surety company
7 authorized to do business in this state as surety thereon,
8 approved by the governor, in form prescribed by the at-
9 torney general and conditioned upon the faithful per-
10 formance of his duties and the accounting for all money
11 and property coming into his hands by virtue of his
12 office. The oath and bond shall be filed with the secretary
13 of state.

14 The director of the purchasing division shall also
15 execute a bond in the penalty of one hundred thousand
16 dollars, payable to the state of West Virginia, with a
17 corporate bonding or surety company authorized to do
18 business in this state as surety thereon, approved by the
19 governor, in form prescribed by the attorney general
20 and conditioned upon the faithful performance of his
21 duties under the provisions of this chapter and all rules
22 and regulations promulgated pursuant to such chapter
23 and the accounting for all money and property coming
24 into his hands by virtue of his office. The bond shall be
25 filed with the secretary of state. The other division di-
26 rectors and all other employees shall be covered by
27 bonds in cases where the commissioner thinks it neces-
28 sary, which bonds shall be in the penalty prescribed by
29 the commissioner and shall be filed with the secretary of
30 state.

31 The cost of all such surety bonds shall be paid from
32 funds appropriated to the department of finance and ad-
33 ministration.

ARTICLE 3. PURCHASING DIVISION.

- §5A-3-4. Rules and regulations of director.
- §5A-3-10. Examination and testing of purchases; report required.
- §5A-3-12. Publication of solicitations for sealed bids; purchase of products of nonprofit workshops.
- §5A-3-13. Purchasing in open market on competitive bids.
- §5A-3-14. Bids to be based on standard specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder; uniform bids; record of bids.
- §5A-3-14a. Prequalification disclosure by vendors required; form and contents; register of vendors; false affidavits, etc.; penalties.

§5A-3-4. Rules and regulations of director.

1 (a) The director shall adopt and amend rules and
2 regulations to:

3 (1) Authorize a department to purchase specified com-
4 modities directly and prescribe the manner in which such
5 purchases shall be made;

6 (2) Authorize, in writing, a department to purchase
7 commodities in the open market for immediate delivery
8 in emergencies, define such emergencies and prescribe
9 the manner in which such purchases shall be made and
10 reported to the director; and for the purposes mentioned
11 in subdivision (1) and this subdivision (2), the head of
12 any department, or the financial governing board of any
13 institution, may, with the approval of the director, make
14 requisitions upon the auditor for a sum to be known as
15 an advance allowance account, in no case to exceed five
16 percent of the total of the appropriations for any such
17 department, and the auditor shall draw his warrant upon
18 the treasurer for such accounts; and all such advance
19 allowance accounts shall be accounted for by the head
20 of the department or institution once every thirty
21 days or oftener if required by the state auditor or
22 director;

23 (3) Prescribe the manner in which commodities shall
24 be purchased, delivered, stored and distributed;

25 (4) Prescribe the time for making requisitions and
26 estimates of commodities, the future period which they
27 are to cover, the form in which they shall be submitted
28 and the manner of their authentication;

29 (5) Prescribe the manner of inspecting all deliveries
30 of commodities, and making chemical and physical tests
31 of samples submitted with bids and samples of deliveries
32 to determine compliance with specifications;

33 (6) Prescribe the amount of deposit or bond to be
34 submitted with a bid or contract and the amount of
35 deposit or bond to be given for the faithful performance
36 of a contract;

37 (7) Prescribe a system whereby the director shall be
38 required upon the payment by a vendor of an annual fee

39 established by the director, to give notice to such vendor
40 of all bid solicitations for commodities of the type with
41 respect to which such vendor specified notice was to be
42 given, but no such fee shall exceed the cost of giving the
43 notice to such vendor;

44 (8) Prescribe that each state contract entered into by
45 the purchasing division shall contain provisions for
46 liquidated damages, or provisions for the determination
47 of the amount or amounts which the vendor shall owe
48 as damages, in the event of default under such contract
49 by such vendor; and

50 (9) Provide for such other matters as may be neces-
51 sary to give effect to the foregoing rules and regulations
52 and the provisions of this article.

53 (b) The director shall also adopt and amend rules and
54 regulations to prescribe qualifications to be met by any
55 person who, on and after the effective date of this sec-
56 tion, is to be employed in the purchasing division as a
57 state buyer. Such rules and regulations shall provide
58 that no person shall be so employed as a state buyer
59 unless such person at the time of employment either
60 is (1) a graduate of an accredited college or uni-
61 versity or (2) has at least four years' experience in
62 purchasing for any unit of government or for any busi-
63 ness, commercial or industrial enterprise. Any person
64 employed as a state buyer on the effective date of this
65 section and any person employed on and after the effec-
66 tive date of this section as a state buyer shall execute
67 a bond in the penalty of fifty thousand dollars, payable
68 to the state of West Virginia, with a corporate bonding
69 or surety company authorized to do business in this
70 state as surety thereon, in form prescribed by the attorney
71 general and conditioned upon the faithful performance
72 of his duties under the provisions of this chapter and
73 the rules and regulations of the director. In lieu of
74 separate bonds for such state buyers, a blanket surety
75 bond may be obtained. Any such bond or bonds shall
76 be filed with the secretary of state. The cost of any
77 such bond or bonds shall be paid from funds appropriated
78 to the department of finance and administration. Those

79 persons now serving as state buyers shall remain subject
80 to the provisions of article six, chapter twenty-nine of
81 this code, and those persons employed as state buyers on
82 and after the effective date of this section shall be sub-
83 ject to the provisions of said article six.

**§5A-3-10. Examination and testing of purchases; report re-
quired.**

1 Within the limit of funds available for the purpose, the
2 director, or some person appointed by him for that pur-
3 pose, shall examine and test upon delivery commodities
4 purchased by the state to determine whether such com-
5 modities conform to the standard specifications promul-
6 gated and adopted pursuant to section five of this article,
7 and whether the commodities delivered conform with the
8 purchase orders and contracts therefor. If such test dis-
9 closes or the spending unit determines that the commod-
10 ities fail to so conform, the director, or the person ap-
11 pointed by him to perform such test as aforesaid, or the
12 spending unit, as the case may be, shall prepare a report,
13 which shall name the commodities and the vendor who or
14 which supplied them and shall enumerate the reasons
15 why such commodities failed to conform to the standard
16 specifications or with the purchase contracts. One copy of
17 such report shall be delivered to the chief officer of the
18 spending unit for which the commodities were purchased,
19 one copy shall be furnished to the vendor and one copy
20 shall be preserved by the director as a public record.

**§5A-3-12. Publication of solicitations for sealed bids; purchase
of products of nonprofit workshops.**

1 The director shall solicit sealed bids for the purchase of
2 commodities and printing which is estimated to exceed
3 two thousand dollars. No spending unit shall issue a
4 series of requisitions which would circumvent this two
5 thousand dollar maximum. Bids shall be obtained by
6 public notice published as a Class II legal advertisement
7 in compliance with the provisions of article three, chapter
8 fifty-nine of this code, and the publication area for such
9 publication shall be the county where the department or

10 agency making the requisition is located. Such notice
11 shall be so published within the fourteen days next pre-
12 ceding the final date of submitting bids. The notice may
13 also be published by any other advertising medium the
14 director may deem advisable. The director may also
15 solicit sealed bids by sending requests by mail to pros-
16 pective suppliers and by posting notice on a bulletin
17 board in his office: *Provided*, That the director shall, with-
18 out competitive bidding, purchase commodities and print-
19 ing produced and offered for sale by nonprofit workshops,
20 as defined in section one, article one of this chapter, which
21 are located in this state: *Provided, however*, That such
22 commodities and printing shall be of a price and quality
23 comparable to other commodities and printing otherwise
24 available.

§5A-3-13. Purchasing in open market on competitive bids.

1 The director may make a purchase of commodities and
2 printing of two thousand dollars or less in amount in the
3 open market, but such purchase shall, wherever possible,
4 be based on at least three competitive bids.

**§5A-3-14. Bids to be based on standard specifications; period
for alteration or withdrawal of bids; awards to
lowest responsible bidder; uniform bids; record
of bids.**

1 Bids shall be based on the standard specifications
2 promulgated and adopted in accordance with the pro-
3 visions of section five of this article, and shall not be
4 altered or withdrawn after the appointed hour for the
5 opening of such bids. All open market orders, purchases
6 based on advertised bid requests, or contracts made by
7 the director or by a state department shall be awarded
8 to the lowest responsible bidder, taking into consideration
9 the qualities of the articles to be supplied, their con-
10 formity with specifications, their suitability to the re-
11 quirements of the state government and the delivery
12 terms. Any or all bids may be rejected. If all bids re-
13 ceived on a pending contract are for the same unit price
14 or total amount, the director shall have authority to reject

15 all bids, and to purchase the required commodities and
16 printing in the open market, if the price paid in the open
17 market does not exceed the bid prices.

18 All bidders submitting bid proposals to the purchasing
19 division are required to submit an exact or duplicate copy
20 to the state auditor. Both copies must be received at the
21 respective offices prior to the specified date and time of
22 the bid openings. The failure to deliver or the nonreceipt
23 of these bid forms at either of these offices prior to the
24 appointed date and hour are grounds for rejection of the
25 bids. In the event of any deviation between the copies
26 submitted to the purchasing division and the state auditor,
27 such bids as to which there is such deviation shall be
28 rejected, if the deviation relates to the quantity, quality
29 or specifications of the commodities or printing to be
30 furnished or to the price therefor or to the date of de-
31 livery or performance. After the award of the order or
32 contract, the director, or someone appointed by him for
33 that purpose, shall indicate upon the successful bid and its
34 copy in the office of the state auditor that it was the
35 successful bid. Thereafter, the copy of each bid in the
36 possession of the director and the state auditor shall be
37 maintained as a public record by both of them, shall be
38 open to public inspection in the offices of both the director
39 and the state auditor and shall not be destroyed by either
40 of them without the written consent of the legislative
41 auditor.

**§5A-3-14a. Prequalification disclosure by vendors required;
form and contents; register of vendors; false
affidavits, etc.; penalties.**

1 The director shall reject any bid received from any
2 vendor unless the vendor has filed with the director an
3 affidavit of the vendor or the affidavit of a member of
4 the vendor's firm, or, if the vendor be a corporation, the
5 affidavit of an officer, director or managing agent, of such
6 corporation, disclosing the following information:

7 (1) If the vendor be an individual, his name and resi-
8 dence address, and, if he has associates or partners sharing
9 in his business, their names and residence addresses;

10 (2) If the vendor be a firm, the name and residence
11 address of each member, partner or associate of the firm;

12 (3) If the vendor be a corporation created under the
13 laws of this state, the name and business address of the
14 corporation; the names and residence addresses of the
15 president, vice president, secretary, treasurer and general
16 manager, if any, of the corporation; and the names and
17 residence addresses of each stockholder of the corporation
18 owning or holding at least ten percent of the capital stock
19 thereof;

20 (4) If the vendor be a foreign corporation, the name
21 and business address of the corporation; the names and
22 residence addresses of the president, vice president, secre-
23 tary, treasurer and general manager, if any, of the cor-
24 poration; and the names and residence addresses of each
25 stockholder of the corporation owning or holding at least
26 ten percent of the capital stock thereof;

27 (5) A list of other states with which the vendor is
28 qualified to do business and a statement of whether any
29 state has disqualified the vendor to do business with it,
30 and if so, a statement of the particulars pertaining to the
31 disqualification;

32 (6) A statement of whether the vendor in submitting
33 a bid is acting as agent for some other individual, firm
34 or corporation, and if so, a statement of the principal
35 authorizing such representation shall be attached to the
36 affidavit;

37 (7) A statement of the vendor's net worth;

38 (8) The vendor's latest Dun & Bradstreet rating, if
39 there be any such rating as to such vendor;

40 (9) A list of one or more banking institutions to serve
41 as references for such vendor;

42 (10) A statement of whether or not those owning a
43 controlling interest of such vendor or serving as the
44 managers or officers of such vendor have done business
45 within the preceding ten years under a different name or
46 under a form of business organization (that is, as an
47 individual, firm or corporation) different from the form
48 of business organization of the vendor at the time of

49 the making of such affidavit, and if so, the names or forms
50 of business organization, or both such names and forms,
51 under which such business was conducted; and

52 (11) The name and state of incorporation of each cor-
53 poration in which at least ten percent of the capital stock
54 is cumulatively owned by those owning a controlling
55 interest of such vendor or those serving as the managers
56 or officers of such vendor.

57 Whenever a change occurs in the information hereto-
58 fore submitted as required, such change shall be reported
59 immediately in the same manner as required in the orig-
60 inal disclosure affidavit.

61 The affidavit and information so received by the direc-
62 tor shall be kept in a register of vendors which shall be
63 a public record and open to public inspection during
64 regular business hours in the director's office and made
65 readily available to the public at such time.

66 The director may waive the above requirements in the
67 case of any corporation listed on any nationally recog-
68 nized stock exchange and in the case of any vendor who
69 or which is the sole source for the commodity in question.

70 Any person who makes such affidavit falsely or who
71 shall knowingly file or cause to be filed with the director,
72 an affidavit containing a false statement of a material
73 fact or omitting any material fact, shall be guilty of a
74 misdemeanor, and, upon conviction thereof, shall be fined
75 not more than one thousand dollars, and, in the discretion
76 of the court, confined in jail not more than one year. In
77 any such case, an individual so convicted shall be ad-
78 judged forever incapable of holding any office of honor,
79 trust or profit in this state, or of serving as a juror.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 11. FAIR TRADE ACT.

§47-11-7. Exemptions.

1 This article shall not apply to any contract or agree-
2 ment between or among producers, except as provided in
3 subdivision (c) of section two of this article, or between
4 or among wholesalers or between or among retailers as

5 to sale or resale prices. This article shall not apply to
6 any sale to or any contract or purchase made by the state
7 of West Virginia or any of its departments or agencies or
8 any political subdivision of or municipality within said
9 state or any of their departments or agencies.

CHAPTER 44

(House Bill No. 894—By Mr. Speaker, Mr. McManus, and Mr. Lohr)

[Passed February 24, 1972; in effect July 1, 1972. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-eight, twenty-eight-f and twenty-eight-h, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to retirement awards and benefits for members of the department of public safety and widows and dependents thereof.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-28. Retirement; awards and benefits.

§15-2-28f. Awards and benefits to dependents of member—When member dies in performance of duty, etc.

§15-2-28h. Same—When member dies after retirement or after serving twenty years.

§15-2-28. Retirement; awards and benefits.

- 1 (a) The retirement board shall retire any member of
- 2 the department of public safety when such member
- 3 (1) Shall have attained the age of fifty-five years and
- 4 shall have completed twenty-five years of service as a
- 5 member of said department, or
- 6 (2) Has completed twenty-five years of service as a
- 7 member of said department and shall have attained the
- 8 age of fifty-five years, or

9 (3) Has attained the age of fifty-five years and shall
10 have completed twenty-five years of service as a member
11 of said department.

12 (b) The retirement board shall retire any member of
13 said department of public safety when such member shall
14 have lodged with the secretary of the retirement board
15 the voluntary petition in writing of such member for re-
16 tirement, and

17 (1) Has or shall have completed not less than twenty-
18 five years of service as a member of said department,
19 or

20 (2) Has or shall have attained the age of fifty years
21 and has or shall have completed not less than twenty
22 years of service as a member of said department, or

23 (3) Being under the age of fifty years has or shall have
24 completed twenty years of service as a member of said
25 department.

26 (c) When the retirement board shall retire any mem-
27 ber under any of the foregoing provisions of this section,
28 said board shall, by order in writing, make an award
29 directing that such member shall be entitled to receive
30 annually and that there shall be paid to such member
31 from the death, disability and retirement fund in equal
32 monthly installments during the natural lifetime of such
33 member while in status of retirement one or the other of
34 two amounts, whichever shall be the greater, namely:

35 (1) Either an amount equal to four percent of the
36 aggregate of salary paid to such member during the
37 whole period of service as a member of the department
38 of public safety; or

39 (2) The sum of two thousand four hundred dollars.

40 It is provided, however, that when a member has or
41 shall have served twenty years or longer but less than
42 twenty-five years as a member of said department and
43 shall be retired under any of the provisions of this sec-
44 tion before he shall have attained the age of fifty years,
45 payment of monthly installments of the amount of retire-
46 ment award to such member shall commence on the date
47 such member shall attain the age of fifty years.

**§15-2-28f. Awards and benefits to dependents of member—
When member dies in performance of duty, etc.**

1 The widow or the children under the age of eighteen
2 years or dependent parent or parents of any member who
3 has lost or shall lose his life by reason of injury, illness
4 or disease resulting from an occupational risk or hazard
5 inherent in or peculiar to the service required of members
6 while such member was or shall be engaged in the per-
7 formance of his duties as a member of said department
8 or if said member shall die from any cause after having
9 been retired pursuant to the provisions of section twenty-
10 eight-b of this article, shall be entitled to receive and shall
11 be paid from the death, disability and retirement fund
12 benefits as follows: To the widow annually, in equal
13 monthly installments during her lifetime or until her
14 remarriage one or the other of two amounts, whichever
15 shall be the greater, namely:

16 (1) An amount equal to two and one-half percent of
17 the total salary which would have been earned by said
18 deceased member during twenty-five years of service in
19 said department based on his average earnings while em-
20 ployed as a member of said department.

21 (2) The sum of one thousand two hundred dollars.

22 In addition thereto such widow shall be entitled to
23 receive and there shall be paid to her thirty dollars
24 monthly for each child until such child shall attain the
25 age of eighteen years. If such widow shall die or remarry
26 or if there be no widow there shall be paid monthly to
27 such child or children from the death, disability and re-
28 tirement fund the sum of thirty dollars each until such
29 child or children shall respectively attain the age of
30 eighteen years. If there be no widow and no child or
31 children, there shall be paid annually in equal monthly
32 installments from said death, disability and retirement
33 fund to the dependent parents of said deceased member
34 during their joint lifetimes a sum equal to the amount
35 which a widow, without children, would have received:
36 *Provided*, That when there shall be but one dependent
37 parent surviving, such parent shall be entitled to receive
38 during his or her lifetime one half the amount which both
39 parents, if living, would have been entitled to receive.

§15-2-28h. Same—When member dies after retirement or after serving twenty years.

1 When any member of said department has heretofore
2 completed or hereafter shall complete twenty years of
3 service or longer as a member of said department and
4 has died or shall die from any cause or causes other than
5 those specified in section twenty-eight-b of this article
6 before having been retired by the retirement board, and
7 when a member in retirement status has died or shall
8 die after having been retired by the retirement board
9 under the provisions of section twenty-eight of this ar-
10 ticle, there shall be paid annually in equal monthly
11 installments from said fund to the widow of said mem-
12 ber, commencing on the date of the death of said member
13 and continuing during her lifetime or until remarriage
14 an amount equal to one half the retirement benefits said
15 deceased member was receiving while in status of re-
16 tirement, or would have been entitled to receive to
17 the same effect as if such member had been retired under
18 the provisions of section twenty-eight of this article
19 immediately prior to the time of his death; and in addi-
20 tion thereto said widow shall be entitled to receive
21 and there shall be paid to her from said fund the sum
22 of twenty dollars monthly for each child under the age
23 of eighteen years until such child or children respectively
24 shall attain the age of eighteen years. If such widow
25 die or remarry, or if there be no widow there shall be
26 paid monthly from said fund to each child under the
27 age of eighteen years of said deceased member the sum
28 of thirty dollars until such child or children respectively
29 attain the age of eighteen years. If there be no widow
30 or no widow eligible to receive benefits and no child
31 or children there shall be paid annually in equal monthly
32 installments from said fund to the dependent parents of
33 said deceased member during their joint lifetimes a sum
34 equal to the amount which a widow without children
35 would have been entitled to receive: *Provided*, That when
36 there shall be but one dependent parent surviving such
37 parent shall be entitled to receive during his or her life-
38 time one half the amount which both parents, if living,
39 would have been entitled to receive.

CHAPTER 45

(Senate Bill No. 170—By Mr. Brotherton)

[Passed March 8, 1972; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-nine, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the criminal identification bureau of the department of public safety; requiring the various courts, clerks thereof, justices, mayors and prosecutors to furnish certain information to such bureau; and providing for offenses and penalties therefor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-29. Criminal identification bureau; establishment; officer in charge; purpose; fingerprints, photographs, records and other information; reports by courts and prosecuting attorneys; offenses and penalties.

1 (a) The superintendent of the department of public
2 safety shall establish, equip and maintain at the depart-
3 mental headquarters a criminal identification bureau, for
4 the purpose of receiving and filing fingerprints, photo-
5 graphs, records and other information pertaining to the
6 investigation of crime and the apprehension of criminals,
7 as hereinafter provided. The superintendent shall ap-
8 point or designate a regularly enlisted member of the
9 department as officer in charge of the criminal identifica-
10 tion bureau and such officer shall be responsible to the
11 superintendent for the affairs of the bureau. Members
12 of the department assigned to the criminal identification
13 bureau shall carry out their duties and assignments
14 in accordance with internal management rules and

15 regulations pertaining thereto promulgated by the super-
16 intendent.

17 (b) The criminal identification bureau shall cooperate
18 with identification bureaus of other states and of the
19 United States to develop and carry on a complete inter-
20 state, national and international system of criminal
21 identification.

22 (c) The criminal identification bureau may furnish
23 fingerprints, photographs, records or other information
24 to authorized law-enforcement and governmental agencies
25 of the United States and its territories, of foreign coun-
26 tries duly authorized to receive the same, of other
27 states within the United States and of the state of West
28 Virginia upon proper request stating that the finger-
29 prints, photographs, records or other information re-
30 quested are necessary in the interest of and will be used
31 solely in the administration of official duties and the
32 criminal laws.

33 (d) The criminal identification bureau may furnish,
34 with the approval of the superintendent, fingerprints,
35 photographs, records or other information to any private
36 or public agency, person, firm, association, corporation
37 or other organization, other than a law-enforcement or
38 governmental agency as to which the provisions of sub-
39 section (c) of this section shall govern and control, but
40 all requests under the provisions of this subsection (d)
41 for such fingerprints, photographs, records or other in-
42 formation must be accompanied by a written authoriza-
43 tion signed and acknowledged by the person whose finger-
44 prints, photographs, records or other information is to be
45 released.

46 (e) The criminal identification bureau may furnish
47 fingerprints, photographs, records and other information
48 of persons arrested or sought to be arrested in this state
49 to the identification bureau of the United States govern-
50 ment and to other states for the purpose of aiding law
51 enforcement.

52 (f) Persons in charge of any penal or correctional in-
53 stitution, including any city or county jail, in this state

54 shall take, or cause to be taken, the fingerprints and
55 description of all persons lawfully committed thereto or
56 confined therein and furnish the same in duplicate to
57 the criminal identification bureau, department of public
58 safety. Such fingerprints shall be taken on forms approved
59 by the superintendent of the department of public safety.
60 All such officials as herein named may, when possible to
61 do so, furnish photographs to the criminal identification
62 bureau of such persons so fingerprinted.

63 (g) Members of the department of public safety, and all
64 other state law-enforcement officials, sheriffs, deputy sher-
65 iffs, constables, and each and every peace officer in this
66 state, shall take or cause to be taken the fingerprints and
67 description of all persons arrested or detained by them,
68 charged with any crime or offense in this state, in which
69 the penalty provided therefor is confinement in any penal
70 or correctional institution, or of any person who they have
71 reason to believe is a fugitive from justice or an habitual
72 criminal, and furnish the same in duplicate to the criminal
73 identification bureau, department of public safety, on
74 forms approved by the superintendent of said department
75 of public safety. All such officials as herein named may,
76 when possible to do so, furnish to the criminal identifica-
77 tion bureau, photographs of such persons so fingerprinted.
78 For the purpose of obtaining data for the preparation and
79 submission to the governor and the Legislature by the de-
80 partment of public safety of an annual statistical report
81 on crime conditions in the state, the clerk of any court
82 of record, the justice of any justice court and the mayor
83 or clerk of any municipal court before which a person
84 appears on any criminal charge shall report to the criminal
85 identification bureau the sentence of the court or other
86 disposition of the charge and the prosecuting attorney of
87 every county shall report to the criminal identification
88 bureau such additional information as the bureau may
89 require for such purpose, and all such reports shall be
90 on forms prepared and distributed by the department
91 of public safety, shall be submitted monthly and shall
92 cover the period of the preceding month.

93 (h) Any person who has been fingerprinted or photo-
94 graphed in accordance with the provisions of this section,
95 who is acquitted of the charges upon which he or she was
96 arrested, and who has no previous criminal record, may,
97 upon the presentation of satisfactory proof to the super-
98 intendent of the department of public safety, have such
99 fingerprints or photographs, or both, returned to them.

100 (i) All state, county and municipal law-enforcement
101 agencies shall submit to the bureau uniform crime reports
102 setting forth their activities in connection with law
103 enforcement. It shall be the duty of the bureau to adopt
104 and promulgate rules and regulations prescribing the
105 form, general content, time and manner of submission of
106 such uniform crime reports. Willful or repeated failure
107 by any state, county or municipal law-enforcement
108 official to submit the uniform crime reports required by
109 this article shall constitute neglect of duty in public
110 office. The bureau shall correlate the reports submitted
111 to it and shall compile and submit to the governor and
112 the Legislature semiannual reports based on such re-
113 ports. A copy of such reports shall be furnished to all
114 prosecuting attorneys and law-enforcement agencies.

115 (j) Neglect or refusal of any person mentioned in this
116 section to make the report required herein, or to do or
117 perform any act on his or her part to be done or per-
118 formed in connection with the operation of this section,
119 shall constitute a misdemeanor, and such person shall,
120 upon conviction thereof, be punished by a fine of not
121 less than twenty-five nor more than two hundred dollars,
122 or by imprisonment in the county jail for a period of
123 not exceeding sixty days, or both, in the discretion of the
124 court. Such neglect shall constitute misfeasance in office
125 and subject such person to removal from office. Any per-
126 son who willfully removes, destroys, or mutilates any of
127 the fingerprints, photographs, records or other informa-
128 tion of the department of public safety, shall be guilty
129 of a misdemeanor, and such person shall, upon conviction
130 thereof, be punished by a fine not exceeding one hundred
131 dollars, or by imprisonment in the county jail for a

132 period of not exceeding six months, or by both, in the
133 discretion of the court.

CHAPTER 46

(Senate Bill No. 123—By Mr. Moreland and Mr. Deem)

[Passed March 11, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact article nine, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the revised uniform reciprocal enforcement of support act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT.

- §48-9-1. Purposes.
- §48-9-2. Definitions.
- §48-9-3. Remedies cumulative.
- §48-9-4. Extent of duties of support.
- §48-9-5. Interstate rendition.
- §48-9-6. Conditions of interstate rendition.
- §48-9-7. Law governing duty of support; presumption as to presence of obligor.
- §48-9-8. Remedies of state or political subdivision furnishing support.
- §48-9-9. How duties of support enforced.
- §48-9-10. Jurisdiction.
- §48-9-11. Contents and filing of petition for support; venue.
- §48-9-12. Prosecuting attorney to represent obligee.
- §48-9-13. Petition for a minor.
- §48-9-14. Duty of initiating court.
- §48-9-15. Costs and fees.
- §48-9-16. Jurisdiction by arrest.
- §48-9-17. State information agency.
- §48-9-18. Duty of court and officials of this state as responding state.
- §48-9-19. Further duties of court and officials in responding state.
- §48-9-20. Hearing and continuance.
- §48-9-21. Evidence of husband and wife.
- §48-9-22. Rules of evidence.
- §48-9-23. Order of support.
- §48-9-24. Responding court to transmit copies to initiating court.
- §48-9-25. Additional powers of responding court.
- §48-9-26. Adjudication of issue of paternity.
- §48-9-27. Additional duties of responding court.

- §48-9-28. Additional duty of initiating court.
§48-9-29. Proceedings not to be stayed because of pending or prior action; support order pendente lite.
§48-9-30. Effect of support order made under another law or by court of another state.
§48-9-31. Effect of participation in proceeding.
§48-9-32. Application of article where obligee and obligor are in different counties in this state.
§48-9-33. Appeals.
§48-9-34. Additional remedies for enforcement of foreign support order.
§48-9-35. Registration of foreign support order.
§48-9-36. Clerk to maintain registry of foreign support order.
§48-9-37. Prosecuting attorney to represent obligee.
§48-9-48. Registration procedure; notice; prosecuting attorney to enforce order.
§48-9-39. Effect of registration; enforcement procedure.
§48-9-40. Uniformity of interpretation.
§48-9-41. Short title.
§48-9-42. Severability.

§48-9-1. Purposes.

- 1 The purposes of this article are to improve and extend
- 2 by reciprocal legislation the enforcement of duties of
- 3 support.

§48-9-2. Definitions.

- 1 As used in this article unless the context requires other-
- 2 wise:

- 3 (1) "Court" means the criminal, intermediate or circuit
- 4 court, or any other court of record having jurisdiction in
- 5 this state and, when the context requires, means the
- 6 court of any other state as defined in a substantially
- 7 similar reciprocal law.

- 8 (2) "Duty of support" means a duty of support whether
- 9 imposed or imposable by law or by order, decree or
- 10 judgment of any court, whether interlocutory or final,
- 11 or whether incidental to an action for divorce, separation,
- 12 separate maintenance or otherwise and includes the duty
- 13 to pay arrearages of support past due and unpaid.

- 14 (3) "Governor" includes any person performing the
- 15 functions of governor or the executive authority of any
- 16 state covered by this article.

- 17 (4) "Initiating state" means a state in which a pro-
- 18 ceeding pursuant to this or a substantially similar re-
- 19 ciprocal law is commenced. "Initiating court" means the
- 20 court in which a proceeding is commenced.

- 21 (5) "Law" includes both common and statutory law.

22 (6) "Obligee" means a person including a state or po-
23 litical subdivision to whom a duty of support is owed or a
24 person including a state or political subdivision that has
25 commenced a proceeding for enforcement of an alleged
26 duty of support or for registration of a support order.
27 It is immaterial if the person to whom a duty of support
28 is owed is a recipient of public assistance.

29 (7) "Obligor" means any person owing a duty of sup-
30 port or against whom a proceeding for the enforcement
31 of a duty of support or registration of a support order is
32 commenced.

33 (8) "Prosecuting attorney" means the public official in
34 the appropriate place who has the duty to enforce crim-
35 inal laws relating to the failure to provide for the sup-
36 port of any person.

37 (9) "Register" means to record in the registry of
38 foreign support orders.

39 (10) "Registering court" means any court of this state
40 in which a support order of a rendering state is registered.

41 (11) "Rendering state" means a state in which the
42 court has issued a support order for which registration is
43 sought or granted in the court of another state.

44 (12) "Responding state" means a state in which any
45 responsive proceeding pursuant to the proceeding in the
46 initiating state is commenced. "Responding court" means
47 the court in which the responsive proceeding is com-
48 menced.

49 (13) "State" includes a state, territory or possession of
50 the United States, the District of Columbia, the Common-
51 wealth of Puerto Rico and any foreign jurisdiction in
52 which this or a substantially similar reciprocal law is in
53 effect.

54 (14) "Support order" means any judgment, decree or
55 order of support in favor of an obligee whether tem-
56 porary or final, or subject to modification, revocation or
57 remission, regardless of the kind of action or proceeding
58 in which it is entered.

§48-9-3. Remedies cumulative.

1 The remedies herein provided are in addition to and
2 not in substitution for any other remedies.

§48-9-4. Extent of duties of support.

1 Duties of support arising under the law of this state,
2 when applicable under section seven, bind the obligor
3 present in this state regardless of the presence or resi-
4 dence of the obligee.

§48-9-5. Interstate rendition.

1 The governor of this state may:

2 (1) Demand of the governor of another state the sur-
3 render of a person found in that state who is charged
4 criminally in this state with failing to provide for the
5 support of any person; or

6 (2) Surrender on demand by the governor of another
7 state a person found in this state who is charged crimi-
8 nally in that state with failing to provide for the support
9 of any person. Provisions for extradition of criminals not
10 inconsistent with this article apply to the demand even
11 if the person whose surrender is demanded was not in
12 the demanding state at the time of the commission of
13 the crime and has not fled therefrom. The demand, the
14 oath, and any proceedings for extradition pursuant to
15 this section need not state or show that the person whose
16 surrender is demanded has fled from justice or at the
17 time of the commission of the crime was in the demand-
18 ing state.

§48-9-6. Conditions of interstate rendition.

1 (a) Before making the demand upon the governor of
2 another state for the surrender of a person charged
3 criminally in this state with failing to provide for the
4 support of a person, the governor of this state may re-
5 quire any prosecuting attorney of this state to satisfy him
6 that at least sixty days prior thereto the obligee initiated
7 proceedings for support under this article or that any
8 proceeding would be of no avail.

9 (b) If, under a substantially similar reciprocal law,
10 the governor of another state makes a demand upon the
11 governor of this state for the surrender of a person
12 charged criminally in that state with failure to provide
13 for the support of a person, the governor may require
14 any prosecuting attorney to investigate the demand and
15 to report to him whether proceedings for support have

16 been initiated or would be effective. If it appears to the
17 governor that a proceeding would be effective but has not
18 been initiated he may delay honoring the demand for a
19 reasonable time to permit the initiation of a proceeding.

20 (c) If proceedings have been initiated and the person
21 demanded has prevailed therein the governor may decline
22 to honor the demand. If the obligee prevailed and the
23 person demanded is subject to a support order, the gov-
24 ernor may decline to honor the demand if the person
25 demanded is complying with the support order.

§48-9-7. Law governing duty of support; presumption as to presence of obligor.

1 Duties of support applicable under this article are those
2 imposed under the laws of any state where the obligor
3 was present for the period during which support is
4 sought. The obligor is presumed to have been present in
5 the responding state during the period for which support
6 is sought until otherwise shown.

§48-9-8. Remedies of state or political subdivision furnishing support.

1 If a state or a political subdivision furnishes support
2 to an individual obligee it has the same right to initiate
3 a proceeding under this article as the individual obligee
4 for the purpose of securing reimbursement for support
5 furnished and of obtaining continuing support.

§48-9-9. How duties of support enforced.

1 All duties of support, including the duty to pay arrear-
2 ages, are enforceable by a proceeding under this article
3 including a proceeding for civil contempt. The defense
4 that the parties are immune to suit because of their re-
5 lationship as husband and wife or parent and child is not
6 available to the obligor.

§48-9-10. Jurisdiction.

1 Jurisdiction of any proceeding under this article is
2 vested in courts of record.

§48-9-11. Contents and filing of petition for support; venue.

1 (a) The petition or complaint shall be verified and
2 shall state the name and, so far as known to the obligee,

3 the address and circumstances of the obligor and the per-
4 sons for whom support is sought, and all other pertinent
5 information. The obligee may include in or attach to the
6 petition or complaint any information which may help in
7 locating or identifying the obligor including a photograph
8 of the obligor, a description of any distinguishing marks
9 on his person, other names and aliases by which he has
10 been or is known, the name of his employer, his finger-
11 prints and his social security number.

12 (b) The petition or complaint may be filed in the
13 appropriate court of any state in which the obligee resides.
14 The court shall not decline or refuse to accept and for-
15 ward the petition or complaint on the ground that it
16 should be filed with some other court of this or any
17 other state where there is pending another action for
18 divorce, separation, annulment, dissolution, habeas
19 corpus, adoption or custody between the same parties
20 or where another court has already issued a support
21 order in some other proceeding and has retained jurisdic-
22 tion for its enforcement.

§48-9-12. Prosecuting attorney to represent obligee.

1 If this state is acting as an initiating state the prose-
2 cuting attorney, upon the request of the court or the
3 state department of welfare, shall represent the obligee
4 in any proceeding under this article.

§48-9-13. Petition for a minor.

1 A petition or complaint on behalf of a minor obligee
2 may be executed and filed by a person having legal
3 custody of the minor without appointment as guardian ad
4 litem.

§48-9-14. Duty of initiating court.

1 If the initiating court finds that the petition or com-
2 plaint sets forth facts from which it may be determined
3 that the obligor owes a duty of support and that a court
4 of the responding state may obtain jurisdiction of the
5 obligor or his property, it shall so certify and cause three
6 copies of the petition or complaint and its certificate and
7 one copy of this article to be sent to the responding court.
8 Certification shall be in accordance with the requirements

9 of the initiating state. If the name and address of the re-
10 sponding court is unknown and the responding state has
11 an information agency comparable to that established
12 in the initiating state it shall cause the copies to be sent
13 to the state information agency or other proper official
14 of the responding state, with a request that the agency
15 or official forward them to the proper court and that the
16 court of the responding state acknowledge their receipt
17 to the initiating court.

§48-9-15. Costs and fees.

1 An initiating court shall not require payment of either
2 a filing fee or other costs from the obligee, but may re-
3 quest the responding court to collect fees and costs from
4 the obligor. A responding court shall not require pay-
5 ment of a filing fee or other costs from the obligee, but it
6 may direct that all fees and costs requested by the
7 initiating court and incurred in this state when acting
8 as a responding state, including fees for filing of pleadings,
9 service of process, seizure of property, stenographic or
10 duplication service or other service supplied to the obligor,
11 be paid in whole or in part by the obligor. These costs
12 or fees do not have priority over amounts due to the
13 obligee.

§48-9-16. Jurisdiction by arrest.

1 If the court of this state believes that the obligor may
2 flee it may:
3 (1) As an initiating court, request in its certificate that
4 the responding court obtain the body of the obligor by
5 appropriate process; or
6 (2) As a responding court, obtain the body of the
7 obligor by appropriate process. Thereupon it may release
8 him upon his own recognizance or upon his giving a bond
9 in an amount set by the court to assure his appearance
10 at the hearing.

§48-9-17. State information agency.

1 (a) The office of the attorney general is designated as
2 the state information agency under this article. It shall:
3 (1) Compile a list of the courts and their addresses
4 in this state having jurisdiction under this article and

5 transmit it to the state information agency of every other
6 state which has adopted this or a substantially similar
7 law. Upon the adjournment of each session of the Leg-
8 islature, the agency shall distribute copies of any amend-
9 ments to this article and a statement of their effective
10 date to all other state information agencies;

11 (2) Maintain a register of lists of courts received from
12 other states and transmit copies thereof promptly to every
13 court in this state having jurisdiction under this article;
14 and

15 (3) Forward to the court in this state which has juris-
16 diction over the obligor or his property petitions, certifi-
17 cates and copies of the act it receives from courts or in-
18 formation agencies of other states.

19 (b) If the state information agency does not know the
20 location of the obligor or his property in the state and
21 no state location service is available, it shall use all means
22 at its disposal to obtain this information, including the
23 examination of official records in the state and
24 other sources such as telephone directories, real property
25 records, vital statistics records, police records, requests
26 for the name and address from employers who are able
27 or willing to cooperate, records of motor vehicle license
28 offices, requests made to the tax offices, both state and
29 federal, where such offices are able to cooperate, and re-
30 quests made to the social security administration as per-
31 mitted by the social security act, as amended.

§48-9-18. Duty of court and officials of this state as responding state.

1 (a) After the responding court receives copies of the
2 petition or complaint, certificate and act from the initi-
3 ating court the clerk of the court shall docket the case
4 and notify the prosecuting attorney of his action.

5 (b) The prosecuting attorney shall prosecute the case
6 diligently. He shall take all action necessary in accor-
7 dance with the laws of this state to enable the court to
8 obtain jurisdiction over the obligor or his property and
9 shall request the court to set a time and place for a hear-

10 ing and give notice thereof to the obligor in accordance
11 with law.

§48-9-19. Further duties of court and officials in responding state.

1 (a) The prosecuting attorney on his own initiative shall
2 use all means at his disposal to locate the obligor or his
3 property, and if because of inaccuracies in the petition or
4 complaint or otherwise the court cannot obtain jurisdic-
5 tion, the prosecuting attorney shall inform the court of
6 what he has done and request the court to continue the
7 case pending receipt of more accurate information or an
8 amended petition or complaint from the initiating court.

9 (b) If the obligor or his property is not found in the
10 county, and the prosecuting attorney discovers that the
11 obligor or his property may be found in another county of
12 this state or in another state, he shall so inform the court.
13 Thereupon, the clerk of the court shall forward the docu-
14 ments received from the court in the initiating state to a
15 court in the other county or to a court in the other state
16 or to the information agency or other proper official of the
17 other state with a request that the documents be for-
18 warded to the proper court. All powers and duties pro-
19 vided by this article apply to the recipient of the docu-
20 ments so forwarded. If the clerk of a court of this state
21 forwards documents to another court, he shall forthwith
22 notify the initiating court.

23 (c) If the prosecuting attorney has no information as
24 to the location of the obligor or his property, he shall
25 so inform the initiating court.

§48-9-20. Hearing and continuance.

1 If the obligee is not present at the hearing and the
2 obligor denies owing the duty of support alleged in the
3 petition or offers evidence constituting a defense, the
4 court shall upon request of either party, continue the
5 hearing to permit evidence relative to the duty to be
6 adduced by either party by deposition or by appearing in
7 person before the court. The court may designate the
8 judge of the initiating court as a person before whom a
9 deposition may be taken.

§48-9-21. Evidence of husband and wife.

1 Laws attaching a privilege against the disclosure of
2 communications between husband and wife are inappli-
3 cable to proceedings under this article. Husband and
4 wife are competent witnesses and may be compelled to
5 testify to any relevant matter, including marriage and
6 parentage.

§48-9-22. Rules of evidence.

1 In any hearing for the civil enforcement of this article,
2 the court is governed by the rules of evidence applicable
3 in a civil action in a court of record. If the action is
4 based on a support order issued by another court a certi-
5 fied copy of the order shall be received as evidence of the
6 duty of support, subject only to any defenses available
7 to an obligor with respect to paternity or to a defendant
8 in an action or a proceeding to enforce a foreign money
9 judgment. The determination or enforcement of a duty
10 of support owed to one obligee is unaffected by any
11 interference by another obligee with rights of custody or
12 visitation granted by a court.

§48-9-23. Order of support.

1 If the responding court finds a duty of support, it may
2 order the obligor to furnish support or reimbursement
3 therefor and subject the property of the obligor to the
4 order. Support orders made pursuant to this article shall
5 require that payments be made to the clerk of the court
6 of the responding state. The court and prosecuting at-
7 torney of any county in which the obligor is present or
8 has property have the same powers and duties to enforce
9 the order as have those of the county in which it was
10 first issued. If enforcement is impossible or cannot be
11 completed in the county in which the order was issued,
12 the prosecuting attorney shall send a certified copy of the
13 order to the prosecuting attorney of any county in which
14 it appears that proceedings to enforce the order would be
15 effective. The prosecuting attorney to whom the certified
16 copy of the order is forwarded shall proceed with enforce-
17 ment and report the results of the proceedings to the
18 court first issuing the order.

§48-9-24. Responding court to transmit copies to initiating court.

1 The responding court shall cause a copy of all support
2 orders to be sent to the initiating court.

§48-9-25. Additional powers of responding court.

1 In addition to the foregoing powers, a responding court
2 may subject the obligor to any terms and conditions
3 proper to assure compliance with its orders and in par-
4 ticular to:

5 (1) Require the obligor to furnish a cash deposit or a
6 bond of a character and amount to assure payment of
7 any amount due;

8 (2) Require the obligor to report personally and to
9 make payments at specified intervals to the clerk of the
10 court; and

11 (3) Punish under the power of contempt the obligor
12 who violates any order of the court.

§48-9-26. Adjudication of issue of paternity.

1 If the obligor asserts as a defense that he is not the
2 father of the child for whom support is sought and it
3 appears to the court that the defense is not frivolous,
4 and if both of the parties are present at the hearing or
5 the proof required in the case indicates that the presence
6 of either or both of the parties is not necessary, the court
7 may adjudicate the paternity issue. Otherwise the court
8 may adjourn the hearing until the paternity issue has
9 been adjudicated.

§48-9-27. Additional duties of responding court.

1 A responding court has the following duties which may
2 be carried out through the clerk of the court:

3 (1) To transmit to the initiating court any payment
4 made by the obligor pursuant to any order of the court
5 or otherwise; and

6 (2) To furnish to the initiating court upon request a
7 certified statement of all payments made by the obligor.

§48-9-28. Additional duty of initiating court.

1 An initiating court shall receive and disburse forth-

2 with all payments made by the obligor or sent by the re-
3 sponding court. This duty may be carried out through
4 the clerk of the court.

§48-9-29. Proceedings not to be stayed because of pending or prior action; support order pendente lite.

1 A responding court shall not stay the proceeding or
2 refuse a hearing under this article because of any pend-
3 ing or prior action or proceeding for divorce, separation,
4 annulment, dissolution, habeas corpus, adoption or cus-
5 tody in this or any other state. The court shall hold a
6 hearing and may issue a support order pendente lite. In
7 aid thereof it may require the obligor to give a bond for
8 the prompt prosecution of the pending proceeding. If the
9 other action or proceeding is concluded before the hear-
10 ing in the instant proceeding and the judgment therein
11 provides for the support demanded in the petition or
12 complaint being heard the court must conform its sup-
13 port order to the amount allowed in the other action
14 or proceeding. Thereafter the court shall not stay en-
15 forcement of its support order because of the retention
16 of jurisdiction for enforcement purposes by the court in
17 the other action or proceeding.

§48-9-30. Effect of support order made under another law or by court of another state.

1 A support order made by a court of this state pursuant
2 to this article does not nullify and is not nullified by a
3 support order made by a court of this state pursuant to any
4 other law or by a support order made by a court of any
5 other state pursuant to a substantially similar law or any
6 other law, regardless of priority of issuance, unless other-
7 wise specifically provided by the court. Amounts paid
8 for a particular period pursuant to any support order
9 made by the court of another state shall be credited
10 against amounts accruing or accrued for the same period
11 under any support order made by the court of this state.

§48-9-31. Effect of participation in proceeding.

1 Participation in any proceeding under this article does
2 not confer jurisdiction upon any court over any of the
3 parties thereto in any other proceeding.

§48-9-32. Application of article where obligee and obligor are in different counties in this state.

1 This article applies if both the obligee and the obligor
2 are in this state but in different counties. If the court of
3 the county in which the petition or complaint is filed
4 finds that the petition or complaint sets forth facts from
5 which it may be determined that the obligor owes a
6 duty of support and finds that a court of another county
7 in this state may obtain jurisdiction over the obligor or
8 his property, the clerk of the court shall send the petition
9 or complaint and a certification of the findings to the
10 court of the county in which the obligor or his property
11 is found. The clerk of the court of the county receiving
12 these documents shall notify the prosecuting attorney of
13 their receipt. The prosecuting attorney and the court in
14 the county in which the copies are forwarded then shall
15 have duties corresponding to those imposed upon them
16 when acting for this state as a responding state.

§48-9-33. Appeals.

1 If the attorney general is of the opinion that a support
2 order is erroneous and presents a question of law war-
3 ranting an appeal in the public interest, he may:

4 (a) Perfect an appeal to the proper appellate court if
5 the support order was issued by a court of this state, or

6 (b) If the support order was issued in another state,
7 cause the appeal to be taken in the other state. In
8 either case expenses of appeal may be paid on his order
9 from funds appropriated for his office.

§48-9-34. Additional remedies for enforcement of foreign support order.

1 If the duty of support is based on a foreign support
2 order, the obligee has the additional remedies provided
3 in sections thirty-five through thirty-nine of this article.

§48-9-35. Registration of foreign support order.

1 The obligee may register the foreign support order in a
2 court of this state in the manner, with the effect, and for
3 the purposes herein provided.

§48-9-36. Clerk to maintain registry of foreign support order.

1 The clerk of the court shall maintain a registry of
2 foreign support orders in which he shall file foreign sup-
3 port orders.

§48-9-37. Prosecuting attorney to represent obligee.

1 If this state is acting either as a rendering or a register-
2 ing state the prosecuting attorney upon the request of
3 the court or the state department of welfare shall repre-
4 sent the obligee in proceedings under sections thirty-four
5 through thirty-nine of this article.

§48-9-38. Registration procedure; notice; prosecuting attorney to enforce order.

1 (a) An obligee seeking to register a foreign support
2 order in a court of this state shall transmit to the clerk
3 of the court (1) three certified copies of the order with
4 all modifications thereof, (2) one copy of the reciprocal
5 enforcement of support law of the state in which the
6 order was made, and (3) a statement verified and signed
7 by the obligee, showing the post-office address of the
8 obligee, the last known place of residence and post-office
9 address of the obligor, the amount of support remaining
10 unpaid, a description and the location of any property of
11 the obligor available upon execution, and a list of the
12 states in which the order is registered. Upon receipt of
13 these documents the clerk of the court, without payment
14 of a filing fee or other cost to the obligee, shall file them
15 in the registry of foreign support orders. The filing con-
16 stitutes registration under this article.

17 (b) Promptly upon registration the clerk of the court
18 shall send by certified or registered mail to the obligor
19 at the address given a notice of the registration with a
20 copy of the registered support order and the post-office
21 address of the obligee. He shall also docket the case and
22 notify the prosecuting attorney of his action. The prose-
23 cuting attorney shall proceed diligently to enforce the
24 order.

§48-9-39. Effect of registration; enforcement procedure.

1 (a) Upon registration, the registered foreign support

2 order shall be treated in the same manner as a support
3 order issued by a court of this state. It has the same
4 effect and is subject to the same procedures, defenses and
5 proceedings for reopening, vacating or staying as a sup-
6 port order of this state and may be enforced and satisfied
7 in like manner.

8 (b) The obligor has twenty days after the mailing of
9 notice of the registration in which to petition the court to
10 vacate the registration or for other relief. If he does not
11 so petition the registered support order is confirmed.

12 (c) At the hearing to enforce the registered support
13 order the obligor may present only matters that would be
14 available to him as defenses in an action to enforce a
15 foreign money judgment. If he shows to the court that an
16 appeal from the order is pending or will be taken or that
17 a stay of execution has been granted, the court shall stay
18 enforcement of the order until the appeal is concluded,
19 the time for appeal has expired, or the order is vacated,
20 upon satisfactory proof that the obligor has furnished
21 security for payment of the support ordered as required
22 by the rendering state. If he shows to the court any
23 ground upon which enforcement of a support order of
24 this state may be stayed the court shall stay enforce-
25 ment of the order for an appropriate period if the obligor
26 furnishes the same security for payment of the support
27 ordered that is required for a support order of this state.

§48-9-40. Uniformity of interpretation.

1 This article shall be so construed as to effectuate its
2 general purpose to make uniform the law of those states
3 which enact a substantially similar law.

§48-9-41. Short title.

1 This article may be cited as the "Revised Uniform
2 Reciprocal Enforcement of Support Act."

§48-9-42. Severability.

1 If any provision of this article or the application there-
2 of to any person or circumstance is held invalid, the in-
3 validity does not affect other provisions or applications of
4 this article, and to this end the provisions of this article
5 are severable.

CHAPTER 47

(House Bill No. 509—By Mr. Steptoe)

[Passed March 10, 1972; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article one, chapter forty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to proceedings by a civil action for release of dower in real estate which the owner has contracted to sell.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE I. DOWER.

§43-1-6. Proceedings for release of dower in real estate which owner has contracted to sell.

1 If the owner of real estate contracts to sell the same, and
2 the spouse of such owner refuses to release his or her
3 dower interest therein, such owner, or the person con-
4 tracting to purchase, may institute a civil action for the
5 purpose of having the dower interest released and the
6 contract consummated. The court on the hearing may, in
7 its discretion, and if satisfied that the contract of sale was
8 made in good faith and without design to force such
9 spouse to part with his or her dower interest, approve
10 the sale and price, and cause to be paid to such spouse
11 such gross sum, computed according to the method provid-
12 ed in article two of this chapter, as shall represent the
13 present value of his or her inchoate dower right. Upon
14 such payment as aforesaid the court shall order a release
15 of the dower interest, by such spouse, or if he or she re-
16 fuses to execute the release, then such release shall be
17 executed by a special commissioner to be appointed by
18 the court for the purpose, which release shall be effectual
19 to pass the property to the purchaser free of such right
20 of dower.

CHAPTER 48

(Senate Bill No. 82—By Mr. Galperin and Mr. Palumbo)

[Passed February 15, 1972; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article five, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the educational broadcasting authority, powers of the authority and the right to enter into royalty agreements or receive moneys for the use of programs by stations outside this state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. EDUCATIONAL BROADCASTING AUTHORITY.

§10-5-3. Powers of authority.

1 The authority shall have the power:

2 (1) To act as advisor and consultant to television and
3 radio stations concerning noncommercial educational pro-
4 grams supported by federal, state, county, city or private
5 funds.

6 (2) To cooperate with and assist all local and state
7 educational institutions in planning and development of
8 the use of educational radio, television and related
9 media.

10 (3) To promote and coordinate the use of these media
11 for noncommercial educational purposes.

12 (4) To construct, maintain and operate educational
13 broadcasting, closed circuit or related facilities located at
14 a suitable site or sites within this state including, with-
15 out limitation thereby, production centers, broadcasting
16 stations and a broadcasting network connecting such
17 communities or stations as may be designated by the
18 authority.

19 (5) To acquire in the name of the state for the use
20 and benefit of the authority by purchase, lease or agree-
21 ment, any property, both real and personal, and any
22 interest in such property necessary to carry out the pro-
23 visions of this article.

24 (6) To apply for and receive any license from the
25 appropriate federal agency necessary to operate any
26 educational broadcasting, closed circuit or related facility.

27 (7) To supervise and approve the origination and
28 transmission of all noncommercial educational radio,
29 television and related media programs in this state which
30 would be carried through the facilities of a state network.

31 (8) To employ such personnel as may be necessary to
32 operate and maintain any facility created under the pro-
33 visions of this article.

34 (9) To lease from communications common carriers
35 and use such transmission channels as may be necessary
36 or, if it determines it could more economically construct
37 and maintain such transmission channels, it may design,
38 construct, maintain and operate the same, including a
39 television microwave network.

40 (10) To sue and be sued, plead and be impleaded.

41 (11) To contract and be contracted with, including
42 the power to enter into contracts with any person, firm
43 or corporation, including any like authority of neigh-
44 boring states; and shall have the authority, within state
45 regulations, to enter into program royalty and distribu-
46 tion contracts and receive moneys for these purposes:
47 *Provided*, That such contracts shall be for noncommercial
48 purposes only.

49 (12) To have and use a corporate seal.

50 (13) To promulgate reasonable rules and regulations
51 to carry out the provisions of this article in accordance
52 with the provisions of article three, chapter twenty-nine-a
53 of the code.

54 (14) To perform such other services in behalf of non-
55 commercial educational radio, television and related media
56 as it may consider to be in the best interest of the state.

CHAPTER 49

(House Bill No. 793—By Mr. Queen)

[Passed March 8, 1972; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-four, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increased compensation and mileage per election officials.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-44. Compensation of election officials; expenses.

1 Each ballot commissioner shall be allowed and paid a
2 sum, to be fixed by the county court, not exceeding
3 twenty-five dollars for each day he shall serve as such,
4 but in no case shall a ballot commissioner receive allow-
5 ance for more than ten days' services for any one primary,
6 general or special election. Each commissioner of election
7 and poll clerk shall be allowed and paid a sum, to be
8 fixed by the county court, not exceeding ten dollars for
9 one day's services for attending the school of instructions
10 for election officials and a sum not exceeding thirty
11 dollars for his services at any one election: *Provided*, That
12 each commissioner of election and poll clerk shall be
13 paid and allowed a sum not exceeding ten dollars for
14 his services at any of the three special elections herein-
15 after specified and described. The commissioners of elec-
16 tion obtaining and delivering the election supplies, as
17 provided in section twenty-four of this article, and re-
18 turning them as provided in articles five and six of this
19 chapter, shall be allowed and paid an additional sum,
20 likewise fixed by the county court, not exceeding ten dol-
21 lars for all such services at any one election and, in addi-
22 tion, shall be allowed and paid mileage at the rate of
23 ten cents per mile necessarily traveled in the perform-

24 ance of such services. The compensation of election of-
25 ficers, cost of printing ballots, and all other expenses
26 incurred in holding and making the return of elections,
27 other than the three special elections hereinafter speci-
28 fied and described, shall be audited by the county court
29 and paid out of the county treasury.

30 The compensation of election officers, cost of printing
31 ballots, and all other reasonable and necessary expenses
32 in holding and making the return of a special election
33 for the purpose of taking the sense of the voters on the
34 question of calling a constitutional convention, of a
35 special election to elect members of a constitutional con-
36 vention, and of a special election to ratify or reject the
37 proposals, acts and ordinances of a constitutional conven-
38 tion shall be obligations of the state incurred by the bal-
39 lot commissioners, clerks of the circuit courts, clerks of
40 the county courts, and county courts of the various coun-
41 ties as agents of the state, and all such expenses shall be
42 audited by the secretary of state. The secretary of state
43 shall prepare and transmit to the county courts forms on
44 which the county courts shall certify all such expenses
45 of such special elections to the secretary of state. If
46 satisfied that such expenses as certified by the county
47 courts are reasonable and were necessarily incurred, the
48 secretary of state shall requisition the necessary warrants
49 from the auditor of the state to be drawn on the state
50 treasurer, and shall mail such warrants directly to the
51 vendors of such special election services, supplies and
52 facilities.

CHAPTER 50

(House Bill No. 811—By Mr. Ball and Mr. Stone)

[Passed March 6, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section forty-six, relating to training film for election officials.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-46. Training film for election officials.

1 The secretary of state in conjunction with West Vir-
2 ginia board of regents shall produce a motion picture film
3 which shall explain and illustrate the procedures for
4 conducting elections, the duties of the various election
5 officials and the methods of voting both on paper ballots
6 and machines.

7 One copy of such film shall be distributed to the clerk
8 of the county court of each county to be kept and pre-
9 served by him. Such film shall be shown to all election
10 officials before each primary or general election as part
11 of their instructional program.

12 While such film is not being used by the clerk for
13 instructional purposes, it shall be available to any duly
14 organized civic, religious, educational or charitable group
15 without charge, except that the clerk shall require a
16 cash deposit on such use in an amount to be determined
17 by the secretary of state.

18 The secretary of state shall cause such film to be
19 amended, edited or reproduced whenever he is of the
20 opinion such revision is necessary in light of changes
21 in the election laws of this state.

22 No office holder or person seeking election to any office
23 shall appear in such film either in person or by visual
24 image or by name.

CHAPTER 51

(House Bill No. 570—By Mr. Speaker, Mr. McManus)

[Passed February 23, 1972; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eight and thirteen, article five, chapter three of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, requiring and specifying the amount of filing fees which must be paid by candidates for nomination for or election to office; relating to the place of payment of such filing fees; relating to the disposition of such filing fees; relating to the form and contents of the official primary election ballot; relating to separate ballots; and relating to alternating names of candidates and ballots.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-8. Filing fees and their disposition.

§3-5-13. Form and contents of ballots.

§3-5-8. Filing fees and their disposition.

1 Every person who becomes a candidate for nomination
2 for or election to office in any primary election, shall, at
3 the time of filing the certificate of announcement as re-
4 quired in this article, pay a filing fee as follows:

5 (a) A candidate for president of the United States,
6 for vice-president of the United States, for United States
7 senator, for member of the United States house of rep-
8 resentatives, for governor and for all other state elective
9 offices shall pay a fee equivalent to one percent of the
10 annual salary of the office for which the candidate an-
11 nounces;

12 (b) A candidate for the office of judge of a circuit
13 court and judge of any court of record of limited juris-
14 diction shall pay a fee equivalent to one percent of the
15 total annual salary of the office paid from any and all
16 sources for which the candidate announces;

17 (c) A candidate for member of the house of delegates
18 shall pay a fee of thirty-three dollars, and a candidate
19 for state senator shall pay a fee of sixty-six dollars;

20 (d) A candidate for sheriff, prosecuting attorney, cir-
21 cuit clerk, county clerk, assessor, member of the county
22 court and member of the county board of education shall

23 pay a fee equivalent to one percent of the annual salary
24 of the office for which the candidate announces: *Pro-*
25 *vided*, That the fee in no case shall be less than five dol-
26 lars. A candidate for any other county office shall pay a
27 fee of five dollars;

28 (e) A candidate for justice of the peace in districts
29 having a population of five thousand or less shall pay a
30 fee of ten dollars; in districts having a population of
31 more than five thousand and not more than twenty-five
32 thousand, fifteen dollars; and in districts having more
33 than twenty-five thousand population, each candidate
34 shall pay a fee of twenty-five dollars;

35 (f) A candidate for constable in districts having a
36 population of five thousand or less shall pay a fee of five
37 dollars; in districts having a population of more than five
38 thousand and not more than twenty-five thousand, ten
39 dollars; and in all other districts fifteen dollars;

40 (g) Delegates to the national convention of any po-
41 litical party shall pay the following filing fees:

42 A candidate for delegate-at-large shall pay a fee of
43 twenty dollars; and a candidate for delegate from a con-
44 gressional district shall pay a fee of ten dollars;

45 (h) Candidates for members of political executive
46 committees and other political committees shall pay the
47 following filing fees:

48 A candidate for member of a state executive committee
49 of any political party shall pay a fee of ten dollars; a
50 candidate for member of a county executive committee
51 of any political party shall pay a fee of one dollar; and a
52 candidate for member of a congressional, senatorial or
53 delegate district committee of any political party shall
54 pay a fee of one dollar.

55 Candidates filing for an office to be filled by the voters
56 of one county shall pay the filing fee to the clerk of the
57 circuit court, and candidates filing for an office to be filled
58 by the voters of more than one county shall pay the
59 filing fee to the secretary of state at the time of filing
60 their certificates of announcement, and no certificate of
61 announcement shall be received until the filing fee is
62 paid.

63 All moneys received by such clerk from such fees shall
64 be credited to the general county fund. Moneys received
65 by the secretary of state from fees paid by candidates for
66 offices to be filled by all the voters of the state shall be
67 deposited in a special fund for that purpose and shall be
68 apportioned and paid by him to the several counties on
69 the basis of population, and that received from candi-
70 dates from a district or judicial circuit of more than one
71 county shall be apportioned to the counties comprising
72 the district or judicial circuit in like manner. When such
73 moneys are received by sheriffs, it shall be credited to
74 the general county fund.

§3-5-13. Form and contents of ballots.

1 The official primary ballot shall contain at the left of
2 each column of names of candidates, a perpendicular
3 column, and shall be so printed as to leave a square at
4 the left of each name on the ballot.

5 On such primary ballot, the names of candidates for
6 president of the United States, for United States senator
7 and for representative in Congress, shall be placed in the
8 first column of candidates; the names of candidates for
9 all state offices, and all other offices to be filled by the
10 voters of a political division greater than a county, in-
11 cluding the state executive committee, in the second
12 column; the names of all candidates for county offices,
13 including members of the House of Delegates and con-
14 gressional, senatorial and delegate district executive com-
15 mittees, shall be placed in the third column; the names of
16 all candidates for office in the magisterial districts shall be
17 placed in the fourth column; and the names of all can-
18 didates for delegates to the national convention of the
19 party shall be placed in the fifth column and in counties
20 using voting machines the names of all candidates for
21 delegates to the national convention of the party shall
22 be placed after the names of all other candidates for all of
23 the other above specified offices.

24 The face of every primary election ballot shall conform
25 as nearly as practicable to that used at the general elec-
26 tion.

27 The secretary of state, or the circuit court clerk, as the
28 case may be, shall arrange the names of the candidates
29 to be printed on the ballot in alphabetical order, accord-
30 ing to the surname, under the title of the respective of-
31 fices upon the ballot.

32 A separate ballot, in connection with a primary elec-
33 tion, for election of members of county board of educa-
34 tion, shall be printed in bold type, under the caption,
35 "Nonpartisan Ballot for Election of Members of the
36 -----County Board of Education." The
37 names of the candidates for election to the county board
38 of education, and the number of candidates for which
39 each voter is entitled to vote shall be printed beneath
40 the caption, without reference to political party affilia-
41 tion, and without designation as to a particular term of
42 office.

43 In printing each set of ballots the position of the names
44 of the candidates shall be changed in each office division
45 as many times as there are candidates in that office di-
46 vision. As nearly as possible an equal number of ballots
47 shall be printed after each change. In making the change
48 of position, the printer shall take the line of type con-
49 taining the first name in the office division concerned and
50 place it at the bottom of the list of names in that di-
51 vision and move up the column so that the name that
52 before was second shall be first after the change. After
53 the ballots are printed they shall be kept in separate
54 piles, one pile for each change in position, and shall then
55 be gathered by taking one from each pile. Sample ballots
56 shall be in the same form as the official ballot, but the
57 order of the names thereon need not be alternated.

58 All ballots used in primary elections shall be printed on
59 paper conforming as nearly as practicable in weight, tex-
60 ture, and color to the samples furnished by the secretary
61 of state, and the paper shall be sufficiently thick so that
62 the printing cannot be discernible from the back. On the
63 back of the ballot shall be printed in black ink, and in
64 plain legible, black face pica type, the name of the
65 political party as contained in the heading or "Non-
66 partisan Board of Education," as the case may be, fol-
67 lowed by the word "ballot." Under this designation shall

68 be printed two blank lines followed by the words "poll
69 clerks."

CHAPTER 52

(Senate Bill No. 125—By Mr. Gainer and Mr. Bowers)

[Passed March 6, 1972; in effect from passage. Approved by the Governor.]

AN ACT to repeal section thirteen, article six, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said chapter by adding thereto a new article, designated article eleven, relating to amendments to the state constitution and how such are proposed; providing procedures for withdrawal of proposed amendments from consideration by the voters; providing procedures to determine a title, summary, and the position on the ballot for each proposed amendment and for designation of the election at which a proposed amendment is to be submitted; duties of the secretary of state with respect to publication of proposed amendments and payment for such publication; designating the form of the ballot on constitutional amendments and designating duties of election officials; generally providing for election procedures in regard to proposed constitutional amendments; relating to proclamation by secretary of state of the results of vote on proposed amendment; and providing that amendments shall be in effect from the date of ratification by the voters.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article six, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said chapter be amended by adding thereto a new article, designated article eleven, to read as follows:

ARTICLE 11. AMENDMENTS TO THE STATE CONSTITUTION.

§3-11-1. Proposing amendments to state constitution; withdrawal of proposed amendments.

§3-11-2. Title and summary of amendments; position on ballot; election for submission of amendment.

§3-11-3. Publication of proposed amendment by secretary of state. "

§3-11-4. Form of ballot; election.

§3-11-5. Certificates of election commissioners; canvass of vote; certifying result.

§3-11-6. Proclamation of result of election by secretary of state; effective date of amendment ratified.

§3-11-1. Proposing amendments to state constitution; withdrawal of proposed amendments.

1 Any amendment to the constitution of the state may
2 be proposed in either house of the Legislature by a joint
3 resolution.

4 When an amendment as proposed is agreed to as pro-
5 vided by section two, article fourteen of the constitution,
6 the question of ratification or rejection of such amend-
7 ment shall be submitted to the voters of the state.

8 The Legislature may, by concurrent resolution adopted
9 by a two-thirds vote of the members elected to each
10 house, withdraw from consideration the question of rati-
11 fication or rejection by the voters of such amendment in
12 any session prior to the election at which it is to be
13 submitted to the voters.

§3-11-2. Title and summary of amendment; position on ballot; designation of election for submission of amendment.

1 In any joint resolution proposing an amendment to
2 the West Virginia constitution, for ratification or rejec-
3 tion by the voters, the Legislature shall for convenience
4 of reference thereto, assign a title to such proposed
5 amendment and shall set forth a summary of the pur-
6 pose of such proposed amendment. If the Legislature
7 shall fail in any such resolution to include a title and
8 summary, or either, the secretary of state shall supply
9 such omission or omissions, and certify the same to the
10 ballot commissioners of each county. Whether set forth
11 in such resolution or certified by the secretary of state,
12 it shall be the duty of the ballot commissioners in each
13 county to place upon the official ballot at the election
14 at which such proposed amendment is to be voted upon,

15 or upon the ballot label in counties where voting machines
16 are used, the title and summary of such proposed con-
17 stitutional amendment.

18 The Legislature may, in the joint resolution, give a
19 proposed amendment a number. If this is done, and if
20 there is more than one amendment submitted at the
21 same election, the position of such amendment on the
22 ballot shall be in accordance with the number so desig-
23 nated. When numbers are not so designated by the
24 Legislature, the secretary of state, in certifying the elec-
25 tion ballot, shall number the amendments consecutively
26 in accordance with the dates of their final submission
27 by the Legislature.

28 The Legislature shall, in the joint resolution, designate
29 the election at which the proposed constitutional amend-
30 ment shall be submitted to the voters.

§3-11-3. Publication of proposed amendment by secretary of state.

1 The secretary of state shall cause each proposed amend-
2 ment, with its title and summary of purpose, to be pub-
3 lished as a Class I legal advertisement at least three
4 months before such election in some newspaper in every
5 county in the state in which a newspaper is printed. The
6 cost of such publication, determined in accordance with
7 the provisions of section three, article three, chapter
8 fifty-nine of this code, shall be paid out of funds appro-
9 priated to the office of secretary of state.

§3-11-4. Form of ballot; conduct of election.

1 For the purpose of enabling the voters of the state to
2 vote on the question of proposed amendments to the con-
3 stitution at the election at which they are to be submitted,
4 the board of ballot commissioners of each county shall
5 place upon, and at the foot of, the official ballot to be
6 voted at that election, under the heading "Ballot on Con-
7 stitutional Amendments," as to each proposed amendment,
8 the following:

9 No. _____ (title of amendment)
10

11 -----
 12 -----
 13 (summary of purpose)

14 For

15 Against

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

**§3-11-5. Certificates of election commissioners; canvass of vote;
 certifying result.**

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

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

16 "Amendment No. _____
 17 (title of amendment)

18 "For ratification _____ votes.

19 "Against ratification _____ votes.

20 "Given under our hands this day of,
21 one thousand nine hundred"

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

32 The said certificates, together with the ballots cast on
33 the question of said proposed amendment, shall be laid
34 before the commissioners of the county court within such
35 time as will enable the commissioners of the county court
36 to convene as a board of canvassers on the fifth day (Sun-
37 days excepted) after such election for the purpose of
38 ascertaining the result of said election. As soon as the
39 result of said election in the county upon the question
40 of such ratification or rejection is ascertained, two cer-
41 tificates of such result shall be made out and signed by
42 said commissioners as a board of canvassers, in the fol-
43 lowing form or to the following effect:

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

51 "Amendment No.
52 (title of amendment)

53 "For ratification votes.

54 "Against ratification votes.

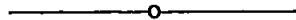
55 "Given under our hands this day of,
56 one thousand nine hundred"

57 Separate certificates shall be made as to each constitu-
58 tional amendment.

59 One of the certificates shall be filed in the office of the
60 clerk of the county court and the other forwarded by
61 registered mail to the secretary of state, who shall file
62 and preserve the same until the day on which the result
63 of said election in the state is to be ascertained, as pro-
64 vided in section six of this article.

**§3-11-6. Proclamation of result of election by secretary of
state; effective date of amendment ratified.**

1 On the twenty-fifth day after the election is held, or as
2 soon thereafter as practicable, the secretary of state shall
3 ascertain from said certificates the result of the election
4 in the state, and declare the same by proclamation pub-
5 lished as a Class I-0 legal advertisement in two news-
6 papers printed at the seat of government. The cost of
7 such publication, determined in accordance with the pro-
8 visions of section three, article three, chapter fifty-nine
9 of this code, shall be paid out of funds appropriated to
10 the office of secretary of state. If a majority of the votes
11 cast at said election upon said question be for ratification
12 of an amendment, the amendment so ratified shall be in
13 force and effect from the date of such ratification, as part
14 of the constitution of the state.



CHAPTER 53

(Com. Sub. for House Bill No. 1016—By Mr. Speaker,
Mr. McManus)

[Passed March 11, 1972; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three, providing for implementation of the act of Congress entitled "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970"; defining terms; setting forth a statement of purposes; requiring and authorizing each agency of government to adopt rules and regulations,

having the force and effect of law, to implement the provisions of such congressional act and make applicable to such agency the policies and requirements of such congressional act which are pertinent to the mission and functions of such agency; requiring coordination of all such rules and regulations with the office of federal-state relations; providing that certain types of payments shall not be considered as income or resources for certain purposes; setting forth specific provisions for the West Virginia department of highways; relating to the element of value or damage in eminent domain proceedings; authorizing assistance even though the dislocation or acquisition occasioning the same occurred prior to the effective date of the article if federal funds are available for the payment of such assistance; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. IMPLEMENTATION OF UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970.

§54-3-1. Definitions.

§54-3-2. Statement of purposes.

§54-3-3. Implementation of federal act; powers of state agencies; payments under act not considered income or resources for certain purposes.

§54-3-4. Construction of article; assistance for dislocation, etc., occurring prior to effective date.

§54-3-5. Severability.

§54-3-1. Definitions.

1 As used in this article, the term:

2 (1) "Federal act" means the "Uniform Relocation As-
3 sistance and Real Property Acquisition Policies Act of
4 1970," being Public Law 91-646, enacted by the Ninety-
5 first Congress of the United States of America.

6 (2) "State agency" means the state of West Virginia
7 or any department, agency or instrumentality thereof, or
8 any county, municipality or other political subdivision

9 thereof or any department, agency or instrumentality of
10 any such county, municipality or political subdivision,
11 and, without in any way limiting the generality of the
12 foregoing, includes boards of education, public service
13 districts or any combination of any of the foregoing.

14 (3) "Person" means any individual, partnership, as-
15 sociation or corporation.

§54-3-2. Statement of purposes.

1 The purposes of this article are (1) to require the es-
2 tablishment of a uniform policy for the fair and equitable
3 treatment by state agencies of persons displaced from
4 property in order that such persons shall not suffer dis-
5 proportionate injuries as a result of programs designed
6 for the benefit of the public as a whole and (2) to en-
7 courage and expedite the acquisition of real property or
8 any interest therein by agreements with persons so as to
9 avoid litigation and relieve congestion in the courts, to
10 assure consistent treatment of persons and promote pub-
11 lic confidence in the land acquisition practices of any
12 state agency.

§54-3-3. Implementation of federal act; powers of state agencies; payments under act not considered income or resources for certain purposes.

1 In order to accomplish the purposes set forth in section
2 two of this article and to satisfy the requirements of sec-
3 tions two hundred ten and three hundred five of such
4 federal act, each state agency is hereby required and is
5 hereby granted plenary power and authority to adopt
6 rules and regulations, which shall have the force and ef-
7 fect of law, to implement the provisions of such federal
8 act and make applicable to such state agency the policies
9 and requirements of such federal act which are pertinent
10 to the mission and functions of such state agency, in-
11 cluding, without in any way limiting the generality of the
12 foregoing, the carrying out of all procedures and the mak-
13 ing of all financial assistance payments, relocation assist-
14 ance payments, replacement housing payments, loans and
15 expense reimbursement payments required by such fed-
16 eral act, subject only to any restrictions or limitations im-

17 posed by the constitution of the state of West Virginia. All
18 rules and regulations promulgated pursuant to the pro-
19 visions of this section shall be coordinated with the of-
20 fice of federal-state relations of this state in order to in-
21 sure uniformity in such rules and regulations, to the
22 fullest extent practicable, as contemplated in section two
23 of this article.

24 No payment of the type referred to in section two hun-
25 dred sixteen of such federal act received by any person
26 under this article and such rules and regulations shall be
27 considered as income or resources for the purpose of
28 determining the eligibility or extent of eligibility of any
29 person for assistance under any state law, or under any
30 state or local tax law or ordinance, and no such payment
31 shall be considered as income or resources of any recipient
32 of public assistance and no such payment shall be de-
33 ducted from the amount of aid to which the recipient
34 would otherwise be entitled.

**§54-3-4. Construction of article; assistance for dislocation, etc.,
occurring prior to effective date.**

1 Neither the provisions of this article nor any rules and
2 regulations promulgated pursuant to section three of this
3 article are intended to abrogate or derogate the provisions
4 of section twenty, article two-a, chapter seventeen of this
5 code, and, to the extent not in conflict with said section
6 twenty, the West Virginia department of highways shall
7 be considered to be a state agency within the meaning
8 of this article. To the extent that such department may
9 expend funds or make payments pursuant to the pro-
10 visions of this article and such rules and regulations, such
11 expenditures or payments are hereby declared to be a
12 cost of highway construction and may be expended and
13 paid from the state road fund.

14 Neither the provisions of this article nor any rules and
15 regulations promulgated pursuant to section three of this
16 article shall be construed or interpreted so as to create
17 any element of value or damage not in existence prior
18 to the effective date of this article in any condemnation
19 proceedings brought under the power of eminent domain

20 exercised by any state agency except to the extent, if
21 any, required by applicable law of the United States; but,
22 notwithstanding any other provision of law, whenever a
23 state agency in a condemnation proceeding pays a sum
24 into court as representing the fair market value of prop-
25 erty to be acquired, the amount of the award or verdict
26 pertaining to such property shall not be less than such
27 sum.

28 Any state agency may provide assistance as contem-
29 plated in such federal act even though the dislocation or
30 acquisition occasioning the same occurred prior to the
31 effective date of this article if federal funds are available
32 for the payment of any such assistance.

§54-3-5. Severability.

1 If any provision of this article or the application thereof
2 to any person or circumstance is held unconstitutional or
3 invalid, such unconstitutionality or invalidity shall not
4 affect, impair or invalidate other provisions or applica-
5 tions of the article, and to this end the provisions of this
6 article are declared to be severable.

CHAPTER 54

(Com. Sub. for Senate Bill No. 116—By Mr. McCourt, Mr. President)

[Passed February 24, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-a, relating to the authority of a fire chief or other fireman in command and the subordinates of either to enter any building or upon any premises where a fire is in progress or where a fire is suspected for the purpose of extinguishing the same or to enter any building or premises adjacent thereto for the purpose of protecting such adjacent building or adjacent premises or for the purpose of extinguishing a fire in progress in another build-

ing or premises; relating to the authority of any such chief or other fireman in command and the subordinates of either in extinguishing a fire or answering a fire call or in returning to station and the duties of others in connection therewith; authorizing any such chief or other fireman in command to take and preserve property which indicates that fire was intentionally set and providing judicial procedures in connection therewith; relating to investigative powers to determine causes of fires; authorizing prohibitions against entry into the scene of a fire after extinguishment of such fire and providing exceptions in connection therewith; prohibiting any attack upon a fireman or fire-fighting equipment or emergency vehicles; prohibiting the hindering or obstructing of any fireman, equipment or emergency vehicles; creating criminal offenses; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3A. AUTHORITY OF LOCAL FIRE DEPARTMENTS.

- §29-3A-1. Entry of buildings on fire or where reasonable cause to believe a fire is in progress; adjoining premises.
- §29-3A-2. Authority of chief or other fireman in command when answering alarm or extinguishing fire.
- §29-3A-3. Person in command at fire scene may take and preserve certain property; restitution.
- §29-3A-4. Conducting investigation to determine cause of fire.
- §29-3A-5. Person attacking or hindering or obstructing firemen or emergency equipment; penalties.

§29-3A-1. Entry of buildings on fire or where reasonable cause to believe a fire is in progress; adjoining premises.

- 1 The chief of any fire department or company or other
- 2 fireman in command at a fire and the subordinates of
- 3 either upon the order or direction of either shall have
- 4 the right at any time of the day or night (a) to enter
- 5 any building or upon any premises where a fire is in
- 6 progress, or where there is reasonable cause to believe
- 7 a fire is in progress, for the purpose of extinguishing the
- 8 same or (b) to enter any building or premises adjacent

9 thereto for the purpose of protecting such adjacent build-
10 ing or adjacent premises or for the purpose of extinguish-
11 ing the fire which is in progress in another building or
12 premises.

**§29-3A-2. Authority of chief or other fireman in command
when answering alarm or extinguishing fire.**

1 When a fire is in progress all bystanders and other per-
2 sons shall obey all proper orders duly given by the chief
3 of any fire department or company or other fireman in
4 command at a fire and the subordinates of either upon
5 the order or direction of either.

6 While any fire department or company is in the process
7 of answering an alarm of fire or extinguishing a fire or
8 returning to station, the chief or other fireman in com-
9 mand of such fire department or company at that time
10 shall have the authority to maintain order at the fire or
11 its vicinity, direct the actions of the firemen at the fire,
12 keep bystanders or other persons at a safe distance from
13 the fire and fire equipment, facilitate the speedy move-
14 ment and operation of fire-fighting equipment and fire-
15 men, and until the arrival of a police officer, direct and
16 control traffic in person or by any subordinate and facili-
17 tate the movement of traffic. The fire chief or other fire-
18 man in command shall display his fireman's badge, or
19 other proper means of identification. Notwithstanding
20 any other provision of law, the authority granted in this
21 section shall extend to the activation of traffic control
22 signals designed to facilitate the safe egress and ingress
23 of fire-fighting equipment at a fire station.

**§29-3A-3. Person in command at fire scene may take and pre-
serve certain property; restitution.**

1 The chief of any fire department or company or other
2 fireman in command of fire fighters at the scene of any
3 fire is authorized and empowered to take and preserve
4 any property which indicates that the fire was intention-
5 ally set. Any person whose property is so held may peti-
6 tion the circuit court of the county within which the
7 property was taken or the judge thereof in vacation for
8 return of the property, and the court may order restitu-

9 tion upon such conditions as are appropriate for the
10 preservation of evidence, including requiring the post-
11 ing of bond.

§29-3A-4. Conducting investigation to determine cause of fire.

1 To determine the cause of any fire, the chief of any
2 fire department or company or other authorized fireman
3 may enter the scene of such fire within a forty-eight hour
4 period after such fire has been extinguished.

5 If there is evidence that a fire was of incendiary origin,
6 the fire chief or other authorized fireman may control
7 who may enter the scene of such fire by posting no tres-
8 passing signs at such scene for a period of forty-eight
9 hours after such fire has been extinguished.

10 During the period that the scene of a fire is posted
11 against trespassing, no person shall enter such scene,
12 except that an owner, lessee or any other person having
13 personal property at such scene may enter at any time
14 after such scene has been declared safe by authorized
15 fire department or company officials to recover or salvage
16 personal property if said owner, lessee or person is ac-
17 companied by or is granted permission to enter such
18 scene by an authorized fire department or company
19 official.

**§29-3A-5. Person attacking or hindering or obstructing firemen
or emergency equipment; penalties.**

1 It shall be unlawful, while any fire department or
2 company or fireman is in the process of answering an
3 alarm of fire or extinguishing a fire or returning to station,
4 for any person to:

5 (1) Attack any fireman or fire-fighting equipment or
6 emergency vehicles with any firearms, knives, fire bombs
7 or any object endangering life or property;

8 (2) Take any action for the purpose of hindering or
9 obstructing any fireman, equipment or emergency vehicle
10 by any means; or

11 (3) Refuse to take any action for the purpose of hinder-
12 ing or obstructing any fireman, equipment or emergency
13 vehicle by any means.

14 Any person violating the provisions of this section shall
15 be guilty of a felony, and, upon conviction thereof, shall
16 be imprisoned in the penitentiary not less than one nor
17 more than ten years, or, at the discretion of the court, be
18 confined in jail not exceeding twelve months or fined not
19 exceeding five hundred dollars, or both.

20 Any person willfully violating any of the provisions
21 of sections two or four of this article shall be guilty of
22 a misdemeanor, and, upon conviction thereof, shall be
23 fined not less than ten dollars nor more than one hun-
24 dred dollars.

CHAPTER 55

(House Bill No. 792—By Mrs. Smirl)

[Passed March 9, 1972; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting local boards of health to disseminate information about sterilization procedures in their family planning and child spacing program.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2B. FAMILY PLANNING AND CHILD SPACING.

§16-2B-2. Local boards of health authorized to establish clinics; supervision; purposes; abortion not approved; approval by state board of programs.

1 A local board of health, created and maintained pur-
2 suant to the provisions of article two or article two-a of
3 this chapter, is authorized to establish and operate within
4 its jurisdiction, one or more family planning and child
5 spacing clinics under the supervision of a licensed phy-
6 sician for the purpose of disseminating information, con-

7 ducting medical examinations and distributing family
8 planning and child spacing appliances, devices, drugs,
9 approved methods and medication without charge to in-
10 digent and medically indigent persons on request and
11 with the approval of said licensed physician. Such in-
12 formation, appliances, devices, drugs, approved methods
13 and medication shall be dispensed only in accordance
14 with the recipients' expressed wishes and beliefs and in
15 accordance with all state and federal laws for the dispens-
16 ing of legend drugs: *Provided*, That the procedure of
17 abortion shall not be considered an approved method of
18 family planning and child spacing within the intent of
19 this section and is expressly excluded from the programs
20 herein authorized. All local boards of health receiving
21 state or federal funds for family planning or child spacing
22 programs shall first receive approval by the state board
23 of health of their general plan of operation of such pro-
24 grams.

CHAPTER 56

(House Bill No. 900—By Mr. Speaker, Mr. McManus,
and Mrs. Withrow)

[Passed March 9, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section four-a, article three, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compulsory testing for tuberculosis of school children; time period within which the test is to be made.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE, INFECTIOUS AND OTHER DISEASES.

§16-3-4a. Compulsory testing for tuberculosis of school children and school personnel; X rays required for

reactors; suspension from school or employment for pupils and personnel found to have tuberculosis in a communicable stage.

1 All first grade pupils and all students transferring from
2 a school located outside this state shall furnish a certi-
3 ficate from a licensed physician stating that a tuberculin
4 skin test approved by the director of the department of
5 health has been made within four months prior to the
6 beginning of the school year or during the first seven
7 months of the current school year. Test results must
8 be recorded on the certificate. Positive reactors to the
9 skin test must be immediately x-rayed, and receive
10 annual X rays thereafter, or at more frequent intervals
11 if medically indicated. Pupils found to have tuberculosis
12 in a communicable stage will not be allowed to attend
13 school until their disease has been arrested and is no
14 longer communicable.

15 All school personnel shall have an annual chest X ray
16 or an approved tuberculin skin test within four months
17 prior to the beginning of each school year. Positive re-
18 actors to the skin test are to be immediately x-rayed
19 and re-x-rayed annually or at more frequent intervals
20 if medically indicated. Reactors who are annually x-rayed
21 will not be required to have an annual skin test. School
22 personnel found to have tuberculosis in a communicable
23 stage shall have their employment discontinued or
24 suspended until their disease has been arrested and is
25 no longer communicable. School personnel who have
26 not had the required examination will be suspended
27 from employment until reports of examination are con-
28 firmed.

CHAPTER 57

(House Bill No. 1001—Originating in the House Committee
on the Judiciary)

[Passed March 11, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to repeal section six, article nine, chapter sixteen of
the code of West Virginia, one thousand nine hundred

thirty-one, as amended, relating to duties of law-enforcement officers in regard to persons under twenty-one years of age possessing cigarettes or cigarette paper.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. PUBLIC HEALTH.

§1. Repeal of section relating to possession of cigarette or cigarette paper; duties of officers; penalty for failure to perform.

1 Section six, article nine, chapter sixteen of the code
2 of West Virginia, one thousand nine hundred thirty-one,
3 as amended, is hereby repealed.

CHAPTER 58

(House Bill No. 730—By Mr. Myles)

[Passed March 9, 1972; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-one, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to un-insured motorist insurance coverage.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. THE INSURANCE POLICY.

§33-6-31. Motor vehicle policy to include an omnibus clause and uninsured motorists coverage; conditions for recovery under endorsement; rights and liabilities of insurer.

1 (a) No policy or contract of bodily injury liability
2 insurance, or of property damage liability insurance, cov-
3 ering liability arising from the ownership, maintenance
4 or use of any motor vehicle, shall be issued or delivered

5 in this state to the owner of such vehicle, or shall be
6 issued or delivered by any insurer licensed in this state
7 upon any motor vehicle for which a certificate of title
8 has been issued by the department of motor vehicles of
9 this state, unless it shall contain a provision insuring the
10 named insured and any other person, except a bailee
11 for hire and any persons specifically excluded by any
12 restrictive endorsement attached to the policy, respon-
13 sible for the use of or using the motor vehicle with the
14 consent, expressed or implied, of the named insured or
15 his spouse against liability for death or bodily injury
16 sustained, or loss or damage occasioned within the cov-
17 erage of the policy or contract as a result of negligence
18 in the operation or use of such vehicle by the named in-
19 sured or by such person: *Provided*, That in any such
20 automobile liability insurance policy or contract, or en-
21 dorsement thereto, if coverage resulting from the use of
22 a nonowned automobile is conditioned upon the consent
23 of the owner of such motor vehicle, the word "owner"
24 shall be construed to include the custodian of such non-
25 owned motor vehicles.

26 (b) Nor shall any such policy or contract be so issued
27 or delivered unless it shall contain an endorsement or
28 provisions undertaking to pay the insured all sums which
29 he shall be legally entitled to recover as damages from
30 the owner or operator of an uninsured motor vehicle,
31 within limits which shall be no less than the require-
32 ments of section two, article four, chapter seventeen-d
33 of the code of West Virginia, as amended from time
34 to time: *Provided*, That such endorsement or pro-
35 visions may exclude the first three hundred dollars of
36 property damage resulting from the negligence of an un-
37 insured motorist.

38 (c) As used in this section, the term "bodily injury"
39 shall include death resulting therefrom, and the term
40 "named insured" shall mean the person named as such
41 in the declarations of the policy or contract and shall
42 also include such person's spouse if a resident of the same
43 household, and the term "insured" shall mean the named
44 insured and, while resident of the same household, the
45 spouse of any such named insured, and relatives of either,

46 while in a motor vehicle or otherwise, and any person, ex-
47 cept a bailee for hire, who uses, with the consent,
48 expressed or implied, of the named insured, the motor
49 vehicle to which the policy applies or the personal rep-
50 resentative of any of the above; and the term "unin-
51 sured motor vehicle" shall mean a motor vehicle as to
52 which there is no (i) bodily injury liability insurance
53 and property damage liability insurance both in the
54 amounts specified by section two, article four, chapter
55 seventeen-d, as amended from time to time, or (ii) there
56 is such insurance, but the insurance company writing
57 the same denies coverage thereunder, or (iii) there is no
58 certificate of self insurance issued in accordance with the
59 provision of section two, article six, chapter seventeen-d
60 of the code of West Virginia. A motor vehicle shall be
61 deemed to be uninsured if the owner or operator thereof
62 be unknown: *Provided*, That recovery under the en-
63 dorsement or provisions shall be subject to the condi-
64 tions hereinafter set forth.

65 (d) Any insured intending to rely on the coverage
66 required by subsection (b) of this section shall, if any
67 action be instituted against the owner or operator of an
68 uninsured motor vehicle, cause a copy of the summons
69 and a copy of the complaint to be served upon the insur-
70 ance company issuing the policy, in the manner pre-
71 scribed by law, as though such insurance company were
72 a named party defendant; such company shall thereafter
73 have the right to file pleadings and to take other action
74 allowable by law in the name of the owner, or operator,
75 or both, of the uninsured motor vehicle or in its own
76 name. Nothing in this subsection shall prevent such
77 owner or operator from employing counsel of its own
78 choice and taking any action in his own interest in con-
79 nection with such proceeding.

80 (e) If the owner or operator of any motor vehicle
81 which causes bodily injury or property damage to the
82 insured be unknown, the insured, or someone in his be-
83 half, in order for the insured to recover under the unin-
84 sured motorist endorsement or provision, shall:

85 (i) Within twenty-four hours after the insured dis-
86 cover, and being physically able to report the occurrence

87 of such accident, the insured, or someone in his behalf,
88 shall report the accident to a police, peace or judicial
89 officer, or to the commissioner of motor vehicles, unless
90 the accident shall already have been investigated by a
91 police officer; and

92 (ii) Notify the insurance company, within sixty days
93 after such accident, that the insured or his legal repre-
94 sentative has a cause or causes of action arising out of
95 such accident for damages against a person or persons
96 whose identity is unknown and setting forth the facts
97 in support thereof; and, upon written request of the in-
98 surance company communicated to the insured not later
99 than five days after receipt of such statement, shall
100 make available for inspection the motor vehicle which
101 the insured was occupying at the time of the accident;
102 and

103 (iii) Upon trial establish that the motor vehicle,
104 which caused the bodily injury or property damage,
105 whose operator is unknown, was a "hit and run" motor
106 vehicle, meaning a motor vehicle which causes damage
107 to the property of the insured arising out of physical
108 contact of such motor vehicle therewith, or which causes
109 bodily injury to the insured arising out of physical con-
110 tact of such motor vehicle with the insured or with a
111 motor vehicle which the insured was occupying at the
112 time of the accident. If the owner or operator of any
113 motor vehicle causing bodily injury or property damage
114 be unknown, an action may be instituted against the un-
115 known defendant as "John Doe," in the county in which
116 the accident took place or in any other county in which
117 such action would be proper under the provisions of ar-
118 ticle one, chapter fifty-six of this code; service of pro-
119 cess may be made by delivery of a copy of the complaint
120 and summons or other pleadings to the clerk of the court
121 in which the action is brought, and service upon the in-
122 surance company issuing the policy shall be made as
123 prescribed by law as though such insurance company
124 were a party defendant. The insurance company shall
125 have the right to file pleadings and take other action
126 allowable by law in the name of John Doe.

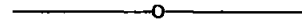
127 (f) An insurer paying a claim under the endorsement
128 or provisions required by subsection (b) of this section
129 shall be subrogated to the rights of the insured to whom
130 such claim was paid against the person causing such
131 injury, death or damage to the extent that payment was
132 made. The bringing of an action against the unknown
133 owner or operator as John Doe or the conclusion of such
134 an action shall not constitute a bar to the insured, if the
135 identity of the owner or operator who caused the injury
136 or damages complained of, becomes known, from bring-
137 ing an action against the owner or operator theretofore
138 proceeded against as John Doe. Any recovery against
139 such owner or operator shall be paid to the insurance
140 company to the extent that such insurance company
141 shall have paid the insured in the action brought against
142 such owner or operator as John Doe, except that such
143 insurance company shall pay its proportionate part of
144 any reasonable costs and expenses incurred in connection
145 therewith, including reasonable attorney's fees. Nothing
146 in an endorsement or provision made under this subsec-
147 tion, nor any other provision of law, shall operate to pre-
148 vent the joining, in an action against John Doe, of the
149 owner or operator of the motor vehicle causing injury
150 as a party defendant, and such joinder is hereby specifi-
151 cally authorized.

152 (g) No such endorsement or provisions shall contain
153 any provision requiring arbitration of any claim arising
154 under any such endorsement or provision, nor may any-
155 thing be required of the insured except the establishment
156 of legal liability, nor shall the insured be restricted or
157 prevented in any manner from employing legal counsel
158 or instituting legal proceedings.

159 (h) The provisions of subsections (a) and (b) of this
160 section shall not apply to any policy of insurance to the
161 extent that it covers the liability of an employer to his
162 employees under any workmen's compensation law.

163 (i) The commissioner of insurance shall formulate and
164 require the use of standard policy provisions for the in-
165 surance required by this section, but use of such standard
166 policy provisions may be waived by the commissioner in
167 the circumstances set forth in section ten of this article.

168 (j) A motor vehicle shall be deemed to be uninsured
169 within the meaning of this section, if there has been a
170 valid bodily injury or property damage liability policy
171 issued upon such vehicle, but which policy is uncollectible
172 in whole or in part, by reason of the insurance company
173 issuing such policy upon such vehicle being insolvent or
174 having been placed in receivership. The right of sub-
175 rogation granted insurers under the provisions of sub-
176 section (f) of this section shall not apply as against any
177 person or persons who is or becomes an uninsured mo-
178 torist for the reasons set forth in this subsection.



CHAPTER 59

(House Bill No. 760—By Mr. White, of Cabell)

[Passed February 25, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section eighteen, article eight, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the percentage of assets which an insurer may invest in revenue bonds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. INVESTMENTS.

§33-8-18. Revenue bonds.

1 Any insurer may invest, subject to the limits prescribed
2 by sections five and six of this article, in revenue bonds
3 issued by any state or the United States, or any agency
4 or instrumentality thereof, or any county, city, town, vil-
5 lage or district of any state, if by statutory or other legal
6 requirements applicable thereto such revenue bonds are
7 payable as to both principal and interest from special
8 revenues pledged or otherwise appropriated or by law

9 required to be provided for the purpose of such payment,
10 but not including any obligations payable solely out of
11 special assessments on properties benefited by local im-
12 provements: *Provided*, That such revenue bonds consti-
13 tute a first and paramount lien upon such special revenues
14 and that such bonds are not in default as to any payment
15 of principal or interest. No insurer shall invest in more
16 than five percent of any one issue of such revenue bonds,
17 nor more than two percent of its assets in such revenue
18 bonds payable from any one public project, nor shall any
19 insurer invest in such revenue bonds in the aggregate ex-
20 ceeding twenty percent of its assets.

CHAPTER 60

(Com. Sub. for House Bill No. 503—By Mr. Steptoe)

[Passed March 9, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section eleven, article seventeen,
chapter fifty of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to fees of
justices in criminal cases and proceedings to require se-
curity to keep the peace.

Be it enacted by the Legislature of West Virginia:

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

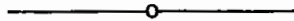
ARTICLE 17. FEES, FINES AND COSTS.

§50-17-11. Fees of justices in criminal cases.

1 (1) Every justice shall be entitled to a fee of eight
2 dollars in each criminal case and proceeding before him,
3 whether a hearing is held or not, which fee shall consti-
4 tute his compensation for all official services performed
5 by him in connection with any single case, including affi-
6 davit for warrant, search and seizure warrant, warrant for
7 arrest, trial examination, issuing subpoenas and copies

8 thereof, warrant summoning and swearing a jury when
 9 required, swearing and certifying attendance of witnesses,
 10 entering judgment and taxing costs, making and certify-
 11 ing a transcript of his docket in any particular case and
 12 transmitting the same to the clerk of the circuit court, the
 13 department of motor vehicles, or any other office to which
 14 he may be by law required to certify such transcript, and
 15 for executing any bond or recognizance. No other fees
 16 shall be taxed or charged by any justice in such cases and
 17 proceedings. The provisions of this section shall not apply
 18 to proceedings to require security to keep the peace, and
 19 the fees and costs incidental thereto shall be assessed and
 20 collected as in civil cases.

21 (2) For issuing sheep warrant, appointing and swear-
 22 ing appraisers and docketing same\$2.50.



CHAPTER 61

(Com. Sub. for House Bill No. 667—By Mr. Steptoe and Mr. Seibert)

[Passed March 11, 1972; in effect ninety days from passage. Approved by the
 Governor.]

AN ACT to amend and reenact section ten, article two, chap-
 ter two; section eight, article fourteen, chapter seven;
 section twelve, article fourteen, chapter eight; section
 seventeen, article fifteen, chapter eight; section twelve,
 article sixteen, chapter eleven; section five, article two,
 chapter fifteen; section one, article four-b, chapter sixteen;
 section two, article five-b, chapter sixteen; sections four
 and five, article nine, chapter sixteen; sections four and
 seven, article two, chapter seventeen-b; section ten, ar-
 ticle eight, chapter eighteen; sections four and six, article
 seventeen, chapter eighteen; section nine, article twenty-
 three, chapter nineteen; section eight-a, article five-a,
 chapter twenty; sections one and three, article four, chap-
 ter twenty-seven; section one, article two, chapter thirty;
 section six, article four, chapter thirty; section five, article
 five, chapter thirty; section five, article six, chapter thirty;

section five, article eight, chapter thirty; sections two and three, article nine, chapter thirty; section six, article ten, chapter thirty; section three, article eleven, chapter thirty; section three, article twelve, chapter thirty; section five, article thirteen-a, chapter thirty; section four, article fourteen, chapter thirty; sections two and three, article fifteen, chapter thirty; section four, article sixteen, chapter thirty; section five, article seventeen, chapter thirty; section four, article twenty, chapter thirty; section seven, article twenty-one, chapter thirty; section six, article twenty-two, chapter thirty; section twelve, article one, chapter thirty-two; section two, article twelve, chapter thirty-three; sections nine and eleven, article one, chapter thirty-five; sections one, four and seven, article seven, chapter thirty-six; sections one and two, article four, chapter forty-one; section twelve, article five, chapter forty-one; section seven, article ten, chapter forty-four; section four, article twelve, chapter forty-seven; sections eight, twelve and twelve-a, article one, chapter forty-eight; section seven, article four, chapter forty-eight; section two, article two, chapter forty-nine; section one, article three, chapter forty-nine; section two, article five, chapter forty-nine; sections twenty and twenty-three, article four, chapter fifty; section one, article one, chapter fifty-two; section seven, article two, chapter fifty-five; section two, article one, chapter fifty-eight; section one, article two, chapter fifty-eight; section twenty-two, article three, chapter sixty; section twelve, article seven, chapter sixty and section two, article seven, chapter sixty-one, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter two of said code by adding thereto a new article, designated article three, all relating to defining "under disability," "infant" and "minor" to include or mean persons under the age of eighteen years; relating to a misdescription in pleadings; relating to residency requirements for reinstatement as a municipal policeman under civil service; relating to preference for members of armed forces in applying for membership in the department of public safety; reducing from twenty-one to eighteen the age required for qualification as a deputy sheriff under civil service, municipal policeman under

civil service, municipal fireman under civil service, holder of a license in connection with nonintoxicating beer, member of department of public safety, holder of a license to operate a hospital, voluntary water quality monitor, attorney, dentist, pharmacist, embalmer, funeral director, optometrist, certified public accountant, public accountant, veterinarian, chiropodist-podiatrist, architect, land surveyor, osteopathic physician and surgeon, midwife, chiropractor, sanitarian, physical therapist, psychologist, landscape architect, security salesman, insurance agent, broker or solicitor, real estate broker, and person entitled to perform marriage ceremony; relating to sanitarians, physical therapists and psychologists generally; relating to the age required to consent to an autopsy of a deceased parent and to methods of consenting with respect to autopsies generally; relating to the age at which a person may possess or have sold or given to him cigarettes and other tobacco products and accessories; relating to the age for a chauffeur's license to drive particular vehicles; relating to proof of age before commissioner of motor vehicles; relating to age involving the deaf and blind; relating to fees and testing involving dentists; reducing from twenty-one to eighteen the age at which consent of others is necessary for voluntary hospitalization or release from a state mental hospital; relating to the age at which a member of a church or other religious body has the right to vote on selling, conveying or encumbering property thereof or preventing conveyances of or creation of liens on the same; relating to the age for betting at racetracks; defining a minor as a person who has not attained the age of eighteen years for purposes of the uniform gifts to minors act; reducing from twenty-one to eighteen the age at which, if he or his descendant die unmarried and without issue, a pretermitted or afterborn child's statutory share would revert to the persons to whom it was given by a will; relating to the age under which a person is under disability for the purpose of impeaching or establishing a will; relating to the age of a child at which a guardianship terminates; relating to the age of a child at which a consent of others is necessary before marriage; relating to the age at which one may be adopted as an adult; re-

lating to the effect of reducing legal capacity from twenty-one to eighteen on limitation of actions; relating to the age of parent at which the consent of the judge of a court having jurisdiction of adoption proceedings is not necessary for such parent to give up his child for adoption; relating to the age of child under jurisdiction of department of welfare; relating to the age at which a person is still subject to the jurisdiction of a juvenile court; relating to the age below which a party may not act as his own attorney before a justice of the peace; relating to the age below which a party to an action in a justice of the peace court must have a guardian appointed for him; relating to the age at which persons are first liable to serve as jurors; relating to the age when attained by a ward at which a right of action on his guardian's or curator's bond first accrues; relating to the age of a party at which a judgment or decree need not be arrested or reversed for appearance of such person by attorney; relating to the age after which an infant is allowed to show cause against a decree or order; relating to the age under which a person may not be sold or served any alcoholic liquors; relating to age at which sales may be permitted in private clubs; relating to prohibitions concerning private clubs; relating to the age one must attain to qualify for a license to carry a dangerous weapon; relating to pleading and practice and harmless errors; granting to persons eighteen years of age full capacity to conduct or deal in their own affairs, but providing several savings or limiting provisions; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That section ten, article two, chapter two; section eight, article fourteen, chapter seven; section twelve, article fourteen, chapter eight; section twelve, article sixteen, chapter eleven; section five, article two, chapter fifteen; section one, article four-b, chapter sixteen; section two, article five-b, chapter sixteen; sections four and five, article nine, chapter sixteen; sections four and seven, article two, chapter seventeen-b; section ten, article eight, chapter eighteen; sections four and six, article seventeen, chapter eighteen; section nine, article twenty-three,

chapter nineteen; section eight-a, article five-a, chapter twenty; sections one and three, article four, chapter twenty-seven; section one, article two, chapter thirty; section six, article four, chapter thirty; section five, article five, chapter thirty; section five, article six, chapter thirty; section five, article eight, chapter thirty; sections two and three, article nine, chapter thirty; section six, article ten, chapter thirty; section three, article eleven, chapter thirty; section three, article twelve, chapter thirty; section five, article thirteen-a, chapter thirty; section four, article fourteen, chapter thirty; sections two and three, article fifteen, chapter thirty; section four, article sixteen, chapter thirty; section five, article seventeen, chapter thirty; section four, article twenty, chapter thirty; section seven, article twenty-one, chapter thirty; section six, article twenty-two, chapter thirty; section twelve, article one, chapter thirty-two; section two, article twelve, chapter thirty-three; sections nine and eleven, article one, chapter thirty-five; sections one, four and seven, article seven, chapter thirty-six; sections one and two, article four, chapter forty-one; section twelve, article five, chapter forty-one; section seven, article ten, chapter forty-four; section four, article twelve, chapter forty-seven; sections eight, twelve and twelve-a, article one, chapter forty-eight; section seven, article four, chapter forty-eight; section two, article two, chapter forty-nine; section one, article three, chapter forty-nine; section two, article five, chapter forty-nine; sections twenty and twenty-three, article four, chapter fifty; section one, article one, chapter fifty-two; section seven, article two, chapter fifty-five; section two, article one, chapter fifty-eight; section one, article two, chapter fifty-eight; section twenty-two, article three, chapter sixty; section twelve, article seven, chapter sixty and section two, article seven, chapter sixty-one, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that chapter two of said code be amended by adding thereto a new article, designated article three, all to read as follows:

Chapter

- 2. Common Law, Statutes, Legal Holidays and Definitions, Legal Capacity.**
- 7. County Courts and Officers.**
- 8. Municipal Law, Municipalities and Counties; Intergovernmental Relations.**

11. Taxation.
15. Public Safety.
16. Public Health.
- 17B. Motor Vehicle Operators' and Chauffeurs' Licenses.
18. Education.
19. Agriculture.
20. Natural Resources.
27. Mentally Ill Persons.
30. Professions and Occupations.
32. Speculative Securities and Fraudulent Sales; Face-Amount Certificates; Issuance and Sale of Checks, Drafts, Money Orders, etc.
33. Insurance.
35. Property of Religious, Educational and Charitable Organizations.
36. Estates in Property.
41. Wills.
44. Administration of Estates and Trusts.
47. Regulation of Trade.
48. Domestic Relations.
49. Child Welfare.
50. Justices and Constables.
52. Juries.
55. Actions, Suits and Arbitration; Judicial Sales.
58. Appeal and Error.
60. State Control of Alcoholic Liquors.
61. Crimes and their Punishment.

CHAPTER 2. COMMON LAW, STATUTES, LEGAL HOLIDAYS AND DEFINITIONS, LEGAL CAPACITY.

Article

2. Legal Holidays; Construction of Statutes; Definitions.
3. Legal Capacity.

ARTICLE 2. LEGAL HOLIDAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.

§2-2-10. Rules for construction of statutes.

- 1 The following rules shall be observed in the construc-
- 2 tion of statutes, unless a different intent on the part of
- 3 the Legislature be apparent from the context:
- 4 (a) A word importing the singular number only may
- 5 be applied to several persons or things, as well as to
- 6 one person or thing; a word importing the plural num-
- 7 ber only may be applied to one person or thing as well
- 8 as to several; and a word importing the masculine gen-
- 9 der only may be applied to females as well as males;

10 (b) Words purporting to give a joint authority to
11 three or more persons confer such authority upon a ma-
12 jority of them, and not upon any less number;

13 (c) The words "written" or "in writing" include any
14 representation of words, letters or figures, whether by
15 printing, engraving, writing or otherwise. But when
16 the signature of any person is required, it must be in
17 his own proper handwriting, or his mark, attested, proved,
18 or acknowledged;

19 (d) The words "preceding," "succeeding" or "follow-
20 ing" used in reference to any section or sections of a
21 chapter or statute, mean next preceding, next succeed-
22 ing or next following that in which such reference is
23 made, unless a different interpretation be required by
24 the context;

25 (e) An officer shall be deemed to have qualified when
26 he has done all that the law required him to do before
27 he proceeds to exercise the authority and discharge the
28 duties of his office;

29 (f) The words "the governor" are equivalent to "the
30 executive of the state" or "the person having the execu-
31 tive power";

32 (g) The word "justice" is equivalent to the words
33 "justice of the peace," and the word "notary," to "notary
34 public";

35 (h) The word "state," when applied to a part of the
36 United States and not restricted by the context, includes
37 the District of Columbia and the several territories, and
38 the words "United States" also include the said district
39 and territories;

40 (i) The word "person" or "whoever" shall include
41 corporations, societies, associations and partnerships, if
42 not restricted by the context;

43 (j) The words "personal representative" include the
44 executor of a will, the administrator of the estate of a
45 deceased person, the administrator of such estate with
46 the will annexed, the administrator de bonis non of such
47 estate, whether there be a will or not, the sheriff or other
48 officer lawfully charged with the administration of the

49 estate of a deceased person, and every other curator or
50 committee of a decedent's estate for or against whom
51 suits may be brought for causes of action which accrued
52 to or against such decedent;

53 (k) The word "will" embraces a testament, a codicil,
54 an appointment by will or writing in the nature of a
55 will in exercise of a power, also any other testamentary
56 disposition;

57 (l) The word "judgment" includes decrees and orders
58 for the payment of money or the conveyance or delivery
59 of land or personal property, or some interest therein, or
60 any undertaking, bond or recognizance which has the legal
61 effect of a judgment;

62 (m) The words "under disability" include persons
63 under the age of eighteen years, insane persons, and
64 convicts while confined in the penitentiary;

65 (n) The words "insane person" include everyone who
66 is an idiot, lunatic, non compos or deranged;

67 (o) The word "convict" means a person confined in
68 the penitentiary of this or any other state, or of the
69 United States;

70 (p) The word "land" or "lands" and the words "real
71 estate" or "real property" include lands, tenements and
72 hereditaments, and all rights thereto and interests therein
73 except chattel interests;

74 (q) The words "personal estate" or "personal prop-
75 erty" include goods, chattels, real and personal, money,
76 credits, investments and the evidences thereof;

77 (r) The word "property" or "estate" embraces both
78 real and personal estate;

79 (s) The word "offense" includes every act or omission
80 for which a fine, forfeiture or punishment is imposed
81 by law;

82 (t) The expression "laws of the state" includes the
83 constitution of the state and the constitution of the United
84 States, and treaties and laws made in pursuance thereof;

85 (u) The word "town" includes a city, village or town,
86 and the word "council," any body or board, whether

87 composed of one or more branches, who are authorized
88 to make ordinances for the government of a city, town
89 or village;

90 (v) When a council of a town, city or village, or
91 any board, number of persons or corporations, are au-
92 thorized to make ordinances, bylaws, rules, regulations
93 or orders, it shall be understood that the same must be
94 consistent with the laws of this state;

95 (w) The words "county court" include any existing
96 tribunal created in lieu of a county court; the words
97 "commissioner of the county court" and "county commis-
98 sioner" mean, and have reference to, the commissioners,
99 or one of them, composing the county court, in pursuance
100 of section twenty-two, article eight of the constitution
101 as amended, or any existing tribunal created in lieu of
102 a county court;

103 (x) The word "horse" embraces a mare and a geld-
104 ing;

105 (y) The words "railroad" and "railway" shall be con-
106 strued by the courts of this state to mean the same thing
107 in law; and, in any proceeding wherein a railroad com-
108 pany or a railway company is a party, it shall not be
109 deemed error to call a railroad company a railway
110 company or vice versa; nor shall any demurrer,
111 plea or any other defense be set up to a mo-
112 tion, pleading or indictment in consequence of such
113 misdescription;

114 (z) The sectional headings or headlines of the several
115 sections of this code printed in black-faced type are in-
116 tended as mere catchwords to indicate the contents of
117 the section and shall not be deemed or taken to be titles
118 of such sections, or as any part of the statute, and, unless
119 expressly so provided, they shall not be so deemed when
120 any of such sections, including the headlines, are amended
121 or reenacted.

122 (aa) The words "infant" and "minor" mean persons
123 under the age of eighteen years as such words are used
124 in this code or in rules and regulations promulgated by
125 the supreme court of appeals.

ARTICLE 3. LEGAL CAPACITY.**§2-3-1. Legal capacity; saving provisions.**

1 After the effective date of this section, except as other-
2 wise specifically provided in this code, no person who is
3 eighteen years of age or older shall lack legal capacity,
4 by reason of his age, to enter into contracts, sell or pur-
5 chase real property, create a lien, execute any legal or
6 other written instrument, prosecute or defend legal ac-
7 tions or deal in his own affairs in any manner whatso-
8 ever.

9 The provisions of this section, and the provisions of
10 this act reducing various prescribed age requirements to
11 eighteen years of age, shall not, however, affect any
12 rights, duties, obligations or interests accruing or vesting
13 by virtue of any statute, act, event, transaction, order,
14 judgment or decree prior to the effective date of this act
15 or any cause of action which arose or any civil action
16 instituted prior to the effective date of this act, and any
17 such right, duty, obligation, interest, cause of action or
18 civil action may be enforced, exercised, enjoyed, ter-
19 minated, discharged, consummated, prosecuted or main-
20 tained with like effect as if this act had not been enacted.
21 Moreover, the provisions of this section shall not affect
22 any acts performed or transactions entered into by a per-
23 son under the age of twenty-one years prior to the effec-
24 tive date of this act, and under no circumstances what-
25 ever shall any of the changes made by this act have any
26 effect upon any of the terms or provisions of or any con-
27 ditions imposed by any last will and testament, trust
28 agreement or any other written instrument of any kind
29 or character executed prior to the effective date of this
30 section. No change in the general age of legal capacity
31 or in the definitions of the words "under disability," "in-
32 fant" or "minor" contained in section ten, article two of
33 this chapter shall alter any statute of limitations as to
34 causes of action arising before the effective date of this
35 act.

CHAPTER 7. COUNTY COURTS AND OFFICERS.**ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.**

§7-14-8. Form of application; age requirements; exceptions.

1 The civil service commission in each such county shall
2 require persons applying for admission to any competi-
3 tive examination provided for under this article or under
4 the rules and regulations of the commission to file in its
5 office, within a reasonable time prior to the proposed
6 competitive examination, a formal application in which
7 the applicant shall state under oath or affirmation:

8 (1) His full name, residence and post-office address;

9 (2) His United States citizenship, age and the place
10 and date of his birth;

11 (3) His health and his physical capacity for the posi-
12 tion of deputy sheriff;

13 (4) His business, employments and residences for at
14 least three previous years; and

15 (5) Such other information as may reasonably be re-
16 quired, relative to the applicant's qualifications and fit-
17 ness for the position of deputy sheriff.

18 Blank forms for such applications shall be furnished
19 by the commission, without charge, to all persons re-
20 questing the same. The commission may require, in con-
21 nection with the application, such certificates of citizens,
22 physicians or others, having pertinent knowledge con-
23 cerning the applicant, as the good of the service may
24 require.

25 No application for original appointment shall be re-
26 ceived on and after the effective date of this article, if
27 the person applying is less than eighteen years of age
28 or more than forty-five years of age at the date of his
29 application: *Provided*, That in the event any applicant
30 formerly served as a deputy sheriff for a period of more
31 than six months in the county to which he makes ap-
32 plication, and resigned as a deputy sheriff at a time when
33 there were no charges of misconduct or other misfeasance
34 pending against him, within a period of two years next
35 preceding the date of his application, and at the time of
36 his application resides within the county in which he
37 seeks appointment by reinstatement, then such applicant
38 shall be eligible for appointment by reinstatement in the
39 discretion of the civil service commission, even though

40 such applicant shall be over the age of forty-five years,
41 provided he is not sixty-five years of age or over, and
42 such applicant, providing his former term of service as
43 a deputy sheriff so justifies, may be reappointed by rein-
44 statement without a competitive examination, but such
45 applicant shall undergo a medical examination; and if
46 such applicant shall be so appointed by reinstatement as
47 aforesaid, he shall be the lowest in rank in the sheriff's
48 office next above the probationers of the office.

CHAPTER 8. MUNICIPAL LAW, MUNICIPALITIES AND COUNTIES; INTERGOVERNMENTAL RELATIONS.

Article

14. **Law and Order; Police Force or Department; Powers, Authority and Duties of Law-Enforcement Officials and Policemen; Police Matrons; Special School Zone and Parking Lot or Parking Building Police Officers; Civil Service for Certain Police Departments.**
15. **Fire Fighting; Fire Companies and Departments; Civil Service for Paid Fire Departments.**

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPART- MENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICE- MEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILD- ING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

§8-14-12. Form of application; age and residency require- ments; exceptions.

1 The policemen's civil service commission in each Class
2 I and Class II city shall require individuals applying for
3 admission to any competitive examination provided for
4 under the civil service provisions of this article or under
5 the rules and regulations of said commission to file in its
6 office, within a reasonable time prior to the proposed ex-
7 amination, a formal application in which the applicant
8 shall state under oath or affirmation:

- 9 (1) His full name, residence and post-office address;
- 10 (2) His United States citizenship, age and the place
11 and date of his birth;
- 12 (3) His state of health and his physical capacity for
13 the public service;

14 (4) His business and employments and residences for
15 at least three previous years; and

16 (5) Such other information as may reasonably be re-
17 quired, touching upon the applicant's qualifications and
18 fitness for the public service.

19 Blank forms for such applications shall be furnished
20 by the commission, without charge, to all individuals re-
21 questing the same. The commission may require, in con-
22 nection with such application, such certificates of citi-
23 zens, physicians and others, having pertinent knowledge
24 concerning the applicant, as the good of the service may
25 require.

26 No application for original appointment shall be re-
27 ceived if the individual applying is less than eighteen
28 years of age or more than thirty-five years of age at the
29 date of his application: *Provided*, That in the event any
30 applicant formerly served upon the paid police depart-
31 ment of the city to which he makes application, for a
32 period of more than his probationary period, and re-
33 signed from the department at a time when there were
34 no charges of misconduct or other misfeasance pending
35 against such applicant, within a period of two years next
36 preceding the date of his application, and at the time of
37 his application resides within the corporate limits of the
38 city in which the paid police department to which he
39 seeks appointment by reinstatement is located, then such
40 individual shall be eligible for appointment by reinstate-
41 ment in the discretion of the policemen's civil service
42 commission, even though such applicant shall be over
43 the age of thirty-five years, and such applicant, providing
44 his former term of service so justifies, may be appointed
45 by reinstatement to the paid police department without
46 a competitive examination, but such applicant shall un-
47 dergo a medical examination; and if such individual shall
48 be so appointed by reinstatement to the paid police de-
49 partment, he shall be the lowest in rank in the depart-
50 ment next above the probationers of the department.

51 Any applicant for original appointment must have
52 been a resident for one year, during some period of
53 time prior to the date of his application, of the city

54 in which he seeks to become a member of the paid
55 police department: *Provided*, That if the commission
56 deems it necessary it may consider for original appoint-
57 ment or for reinstatement under the preceding proviso of
58 this section applicants who are not residents of the city
59 but who have been residents of the county in which the
60 city or any portion of the territory thereof is located for
61 a period of at least one year.

**ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPART-
MENTS; CIVIL SERVICE FOR PAID FIRE DEPART-
MENTS.**

**§8-15-17. Form of application; age and residency require-
ments; exceptions.**

1 The firemen's civil service commission in each munici-
2 pality shall require individuals applying for admission
3 to any competitive examination provided for under the
4 civil service provisions of this article or under the rules
5 and regulations of the commission to file in its office,
6 within a reasonable time prior to the proposed examina-
7 tion, a formal application in which the applicant shall
8 state under oath or affirmation:

9 (1) His full name, residence and post-office address;

10 (2) His United States citizenship, age and the place
11 and date of his birth;

12 (3) His state of health, and his physical capacity for
13 the public service;

14 (4) His business and employments and residences for
15 at least three previous years; and

16 (5) Such other information as may reasonably be
17 required, touching upon the applicant's qualifications and
18 fitness for the public service.

19 Blank forms for such applications shall be furnished by
20 the commission, without charge, to all individuals request-
21 ing the same. The commission may require, in connection
22 with such application, such certificates of citizens, phy-
23 sicians and others, having pertinent knowledge concern-
24 ing the applicant, as the good of the service may require.

25 No application for original appointment shall be re-
26 ceived if the individual applying is less than eighteen

27 years of age or more than thirty-five years of age at the
28 date of his application: *Provided*, That in the event any
29 applicant formerly served upon the paid fire department
30 of the municipality to which he makes application, for a
31 period of more than six months, and resigned from the
32 department at a time when there were no charges of
33 misconduct or other misfeasance pending against such
34 applicant, within a period of two years next preceding
35 the date of his application, and at the time of his ap-
36 plication resides within the corporate limits of the munici-
37 pality in which the paid fire department to which he
38 seeks appointment by reinstatement is located, then such
39 individual shall be eligible for appointment by rein-
40 statement in the discretion of the firemen's civil service
41 commission, even though such applicant shall be over
42 the age of thirty-five years, and such applicant, providing
43 his former term of service so justifies, may be appointed
44 by reinstatement to the paid fire department without a
45 competitive examination, but such applicant shall un-
46 dergo a medical examination; and if such individual shall
47 be so appointed by reinstatement to the paid fire depart-
48 ment, he shall be the lowest in rank in the department
49 next above the probationers of the department.

50 Any applicant for original appointment must have
51 been a resident for one year, during some period of time
52 prior to the date of his application, of the municipality
53 in which he seeks to become a member of the paid fire
54 department: *Provided*, That if the commission deems it
55 necessary it may consider for original appointment ap-
56 plicants who are not residents of the municipality but
57 who have been residents of the county in which the
58 municipality or any portion of the territory thereof is
59 located for a period of at least one year.

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-12. Form of application for license; fee and bond; re- fusal of license.

1 A license may be issued by the commissioner to any
2 person who submits an application therefor, accompanied

3 by a license fee, and, where required, a bond, stating
4 under oath:

5 (a) The name and residence of the applicant, how
6 long he has resided there, that he has been a resident of
7 the state for a period of two years next preceding the
8 date of his application, that he is eighteen years of age,
9 and, if a firm, association, partnership or corporation,
10 the residence of the members or officers for a period of
11 two years next preceding the date of such application:
12 *Provided*, That if any person, firm, partnership, associa-
13 tion or corporation applies for a license as a distributor,
14 such person, or in the case of a firm, partnership, asso-
15 ciation, the members or officers thereof, shall state under
16 oath that he or they have been bona fide residents of
17 the state for four years preceding the date of such applica-
18 tion;

19 (b) The place of birth of applicant and that he is a
20 citizen of the United States and, if a naturalized citizen,
21 when and where naturalized; and, if a corporation, or-
22 ganized or authorized to do business under the laws of
23 the state, when and where incorporated, with the name
24 and address of each officer; that each officer is a citizen
25 of the United States and a person of good moral char-
26 acter; and if a firm, association or partnership, the place
27 of birth of each member of the firm, association or part-
28 nership, that each member is a citizen of the United
29 States and if a naturalized citizen, when and where
30 naturalized, each of whom must qualify and sign the
31 application: *Provided*, That the requirements as to
32 residence shall not apply to the officers of a corpora-
33 tion which shall apply for a Class B retailer's license,
34 but the officers, agent, or employee who shall manage
35 and be in charge of the licensed premises shall possess
36 all of the qualifications required of an individual applicant
37 for a retailer's license, including the requirement as to
38 residence;

39 (c) The particular place for which the license is de-
40 sired and a detailed description thereof;

41 (d) The name of the owner of the building and, if
42 the owner is not the applicant, that such applicant is
43 the actual and bona fide lessee of the premises;

44 (e) That the place or building in which it is proposed
45 to do business conforms to all laws of health and fire
46 regulations applicable thereto, and is a safe and proper
47 place or building, and is not within three hundred feet
48 of any school or church, measured from front door to
49 front door, along the street or streets: *Provided*, That
50 this requirement shall not apply to a Class B licensee,
51 or to any place now occupied by a beer licensee, so long
52 as it is continuously so occupied: *Provided, however*,
53 That the prohibition against locating any such proposed
54 business in a place or building within three hundred feet
55 of any school shall not apply to any college or university
56 that has notified the commissioner, in writing, that it
57 has no objection to the location of any such proposed
58 business in a place or building within three hundred
59 feet of such college or university;

60 (f) That the applicant has never been convicted of
61 a felony, or a violation of the liquor laws either federal
62 or state;

63 (g) That the applicant is the only person in any
64 manner pecuniarily interested in the business so asked
65 to be licensed, and that no other person shall be in any
66 manner pecuniarily interested therein during the con-
67 tinuance of the license;

68 (h) That the applicant has not during five years next
69 immediately preceding the date of said application had
70 a nonintoxicating beer license revoked, nor during the
71 same period been convicted of any criminal offense.

72 The foregoing provisions and requirements are man-
73 datory prerequisites for the issuance of a license, and in
74 the event any applicant fails to qualify under the same,
75 license shall be refused. In addition to the information
76 furnished in any application, the commissioner may make
77 such additional and independent investigation of each
78 applicant, and of the place to be occupied, as deemed
79 necessary or advisable; and for this reason each and
80 all applications, with license fee and bond, must be filed
81 thirty days prior to the beginning of any fiscal year,
82 and if application is for an unexpired portion of any

83 fiscal year, issuance of license may be withheld for such
84 reasonable time as necessary for investigation.

85 The commissioner may refuse a license to any applicant
86 under the provisions of this article if he shall be of
87 the opinion:

88 (a) That the applicant is not a suitable person to be
89 licensed; or,

90 (b) That the place to be occupied by the applicant
91 is not a suitable place; or is within three hundred feet
92 of any school or church, measured from front door to
93 front door along the street or streets: *Provided*, That
94 this requirement shall not apply to a Class B licensee,
95 or to any place now occupied by a beer licensee, so long
96 as it is continuously so occupied: *Provided, however*,
97 That the prohibition against locating any such place to
98 be occupied by an applicant within three hundred feet
99 of any school shall not apply to any college or university
100 that has notified the commissioner, in writing, that it
101 has no objection to the location of any such place within
102 three hundred feet of such college or university; or,

103 (c) That the license should not be issued for reason of
104 conduct declared to be unlawful by this article.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-5. Qualifications, appointment, initial grade and promotions of members.

1 Preference in making appointments shall be given
2 wherever possible to honorably discharged members of
3 the armed forces of the United States. Each applicant
4 for appointment shall be a person not less than eighteen
5 nor more than thirty years of age, of sound constitu-
6 tion, of good moral character, and shall be required
7 to pass such mental and physical examinations as may
8 be provided for by the rules and regulations promul-
9 gated by the retirement board provided for under section
10 twenty-seven of this article: *Provided*, That a former
11 member to whom, at or after termination of his previ-
12 ous service, there were not refunded moneys contributed

13 by him to the retirement fund, may, at the discretion
 14 of the superintendent, be again enlisted if upon sub-
 15 tracting the period of his former service from the age of
 16 such former member when he shall present himself to
 17 the superintendent to be again enlisted shall leave a re-
 18 mainder not exceeding thirty. The superintendent is au-
 19 thorized to pay at public expense all reasonable fees and
 20 costs incurred in the making of such examinations of ap-
 21 plicants. No person shall be barred from becoming a
 22 member of the department of public safety because of
 23 his religious or political convictions.

24 No person shall be appointed or enlisted to member-
 25 ship in the department at a grade or rank above the grade
 26 of trooper and no trooper shall be promoted to any other
 27 grade or rank until he shall have served at least two
 28 years as a member of the department at the grade of
 29 trooper.

CHAPTER 16. PUBLIC HEALTH.

Article

4B. Autopsies on Bodies of Deceased Persons.

5B. Hospitals and Similar Institutions.

9. Offenses Generally.

ARTICLE 4B. AUTOPSIES ON BODIES OF DECEASED PERSONS.

§16-4B-1. Autopsy on body of deceased persons in interest of
 medical science; who may perform; consent re-
 quired; who may give consent.

1 In case of the death of any person in the state of West
 2 Virginia, the attending physician, or if there be none, any
 3 physician, if he deems it advisable in the interest of
 4 medical science, may perform or cause to be performed
 5 an autopsy on the body of such deceased person without
 6 liability therefor, provided consent to such autopsy is first
 7 obtained in writing or by telephone, if the telephone au-
 8 thorization is verified by a second person, from (1) the
 9 surviving spouse of deceased; (2) if there be no surviving
 10 spouse, then any child of deceased over the age of eighteen
 11 years: *Provided*, That the child's permission shall not be
 12 valid, if any other child of the deceased over the age of
 13 eighteen years objects prior to said autopsy and the objec-
 14 tion shall be made known in writing to the physician who

15 is to perform the autopsy; (3) if there be no surviving
16 spouse, nor any child of deceased over the age of eighteen
17 years, then the mother or father of deceased; (4) if there
18 be no surviving spouse, nor any child over the age of eigh-
19 teen years, nor mother or father, then the duly appointed
20 and acting fiduciary of the estate of the deceased; or (5)
21 if there be no surviving spouse, nor any child over the age
22 of eighteen years, nor mother or father, nor duly appointed
23 and acting fiduciary of the estate of deceased, then the
24 person, firm, corporation or agency legally responsible for
25 the financial obligation incurred in disposing of the body
26 of deceased.

27 In the event the spouse, child or parent of deceased be
28 mentally incompetent then the person authorized to con-
29 sent to such autopsy shall be the next in the order of
30 priority hereinabove defined.

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-2. Hospitals and institutions to obtain license; qualifi- cations of applicant.

1 No person, partnership, association, corporation, or
2 any local governmental unit or any division, department,
3 board or agency thereof may continue to operate an ex-
4 isting hospital, sanatorium or extended care facility op-
5 erated in connection with a hospital, or open a hospital,
6 sanatorium, or extended care facility operated in con-
7 nection with a hospital after July one, one thousand nine
8 hundred sixty-seven, unless such operation shall have
9 been approved and regularly licensed by the state as
10 hereinafter provided.

11 Before a license shall be issued under this article, the
12 person applying, if an individual, shall submit evidence
13 satisfactory to the state department of health that he is
14 not less than eighteen years of age, of reputable and re-
15 sponsible character, and otherwise qualified. In the event
16 the applicant is an association, corporation or govern-
17 mental unit, like evidence shall be submitted as to the
18 members thereof and the persons in charge. Every ap-
19 plicant shall, in addition, submit satisfactory evidence of
20 his ability to comply with the minimum standards and

21 with all rules and regulations lawfully promulgated here-
22 under.

ARTICLE 9. OFFENSES GENERALLY.

§16-9-4. Sale or gift of cigarette, cigarette paper, pipe or tobacco to person under eighteen; penalty.

§16-9-5. Smoking or possession of cigarette or cigarette paper by person under eighteen; penalty; immunity.

§16-9-4. Sale or gift of cigarette, cigarette paper, pipe or tobacco to person under eighteen; penalty.

1 No person, firm or corporation shall sell, give or furnish,
2 or cause to be sold, given or furnished, to any person
3 under the age of eighteen years, any cigarette, cigarette
4 paper, or any other paper prepared to be filled with
5 smoking tobacco for cigarette use, cigar, pipe or tobacco
6 in any form. Any person, firm or corporation violating
7 any of the provisions of this section shall be guilty of a
8 misdemeanor, and, upon a conviction thereof, shall be
9 fined not less than ten nor more than twenty-five dollars
10 for the first offense, and for each subsequent offense not
11 less than twenty-five nor more than three hundred dollars.

§16-9-5. Smoking or possession of cigarette or cigarette paper by person under eighteen; penalty; immunity.

1 No person under the age of eighteen years shall smoke,
2 or have about his person or premises, any cigarette or
3 cigarette paper or any other form prepared to be filled
4 with smoking tobacco for cigarette use. Any person
5 violating the provisions of this section shall be punished
6 by a fine of not exceeding five dollars: *Provided*, That
7 if any such person shall fully, freely and truthfully dis-
8 close the name of the person, firm or corporation from
9 whom he obtained any such cigarette or cigarette paper,
10 he shall be immune from further prosecution or punish-
11 ment for said offense.

**CHAPTER 17B. MOTOR VEHICLE OPERATORS' AND
CHAUFFEURS' LICENSES.**

**ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RE-
NEWAL.**

§17B-2-4. Age limit for chauffeurs driving school buses and transporting persons or property for compensation; issuance of chauffeur's license to licensees under prior law.

§17B-2-7. Examination of applicants.

§17B-2-4. Age limit for chauffeurs driving school buses and transporting persons or property for compensation; issuance of chauffeur's license to licensees under prior law.

1 No person who is under the age of eighteen years shall
2 drive any school bus transporting school children or any
3 motor vehicle when in use for the transportation of per-
4 sons or property for compensation nor in either event
5 until he has been licensed as a chauffeur for either such
6 purpose and the license so indicates. The department
7 shall not issue a chauffeur's license for either such pur-
8 pose unless the applicant has had at least one year of driv-
9 ing experience prior thereto.

10 Notwithstanding the provisions of this section, a per-
11 son who qualifies under all provisions of this chapter ex-
12 cept this section, and who at the time of the enactment
13 of this chapter possesses a valid chauffeur's license issued
14 under a prior act of the Legislature, may be issued a chauf-
15 feur's license as provided in section twelve of this article.

§17B-2-7. Examination of applicants.

1 (a) Upon the exhibiting by the applicant under the
2 age of eighteen years, of his or her birth certificate, or a
3 certified copy thereof, as evidence that the applicant is of
4 lawful age, the department of public safety shall exam-
5 ine every applicant for an operator's or chauffeur's li-
6 cense, except as otherwise provided in this section. Such
7 examination shall include a test of the applicant's eye-
8 sight, his ability to read and understand highway signs
9 regulating, warning, and directing traffic, his knowledge
10 of the traffic laws of this state, and shall include an ac-
11 tual demonstration of ability to exercise ordinary and rea-
12 sonable control in the operation of a motor vehicle, and
13 such further physical and mental examination as the
14 department of motor vehicles deems necessary to deter-
15 mine the applicant's fitness to operate a motor vehicle
16 safely upon the highways.

17 (b) The commissioner shall adopt and promulgate
18 regulations concerning the examination of applicants for
19 operator's and chauffeur's licenses and the qualifications

20 required of such applicants, and the examination of such
21 applicants by the department of public safety shall be in
22 accordance with such regulations.

CHAPTER 18. EDUCATION.

Article

8. Compulsory School Attendance.

17. West Virginia Schools for the Deaf and the Blind.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-10. Compulsory education of deaf and blind; offenses; penalties; names of deaf and blind.

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

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

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

29 from his home to the school shall not be counted as time
30 absent from school.

31 Any person who induces or attempts to induce such
32 blind or deaf minor to absent himself from school, or who
33 employs or harbors such minor unlawfully, while said
34 school is in session, shall be guilty of a misdemeanor, and,
35 upon conviction thereof, shall be fined not less than twenty
36 nor more than fifty dollars for each offense.

37 It shall be the duty of school attendance directors and
38 assistants, prosecuting attorneys, and any special atten-
39 dance directors appointed by said school for the deaf and
40 the blind to enforce the provisions of this section.

41 The county superintendent of schools shall furnish to
42 the superintendents of the state-supported schools for the
43 deaf and/or blind and to the state superintendent of
44 schools the names of persons in his county between the
45 ages of six and eighteen reported to him to be deaf and
46 blind with the names and addresses of their parents or
47 guardians.

**ARTICLE 17. WEST VIRGINIA SCHOOLS FOR THE DEAF AND
THE BLIND.**

§18-17-4. Period of attendance; special admissions.

§18-17-6. Registration of deaf and blind by assessors.

§18-17-4. Period of attendance; special admissions.

1 The pupils of said schools may continue therein until
2 completion of the prescribed course of study, or a lesser
3 period of time which the condition and progress of the
4 pupil may justify, as determined by the state board of
5 education and the superintendent. After all applicants
6 between the prescribed ages of six and seventeen years,
7 inclusive, have been enrolled, if there are additional ac-
8 commodations, the superintendent may enroll other deaf
9 pupils and blind pupils who may be of suitable age to re-
10 ceive any advantage from the institution, and upon such
11 terms as the state board of education may prescribe; but
12 it shall be distinctly understood that such persons shall
13 withdraw from the institution in the order of their admis-
14 sion to make room for new applicants between the ages
15 prescribed.

§18-17-6. Registration of deaf and blind by assessors.

1 In addition to their other duties the county assessors
2 of the state are hereby required to register the names of
3 all deaf persons and blind persons under eighteen years
4 of age in their respective counties, with the degree and
5 cause of deafness and blindness in each case, as far as can
6 be ascertained from the heads of the families or from
7 other persons whom the county assessors may conveni-
8 ently consult, their ages, the names of their parents or
9 guardians, their post-office addresses, and such other facts
10 as may be useful in making the institution efficient in the
11 education of the deaf and of the blind. They shall com-
12 plete the registration on or before June one of each year
13 and forward their report to the state superintendent of
14 schools and to the superintendent of the West Virginia
15 schools for the deaf and the blind on or before July one
16 of each year. The superintendent shall immediately com-
17 municate with the parents or guardians of all the deaf
18 persons and the blind persons mentioned in the assessor's
19 report, with a view of their admission as pupils into said
20 schools.

CHAPTER 19. AGRICULTURE.**ARTICLE 23. HORSE RACING.****§19-23-9. Pari-mutuel system of wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.**

1 (a) The pari-mutuel system of wagering upon the
2 results of any horse race at any horse race meeting con-
3 ducted or held by any licensee is hereby authorized, if
4 and only if such pari-mutuel wagering is conducted by
5 such licensee within the confines of such licensee's horse
6 racetrack, and the provisions of section one, article ten,
7 chapter sixty-one of this code, relating to gaming, shall
8 not apply to the pari-mutuel system of wagering in man-
9 ner and form as provided for in this article at any horse
10 race meeting within this state where horse racing shall
11 be permitted for any purse by any licensee. A licensee
12 shall permit or conduct only the pari-mutuel system of

13 wagering within the confines of such licensee's horse race-
14 track at which any horse race meeting is conducted or
15 held.

16 (b) A licensee is hereby expressly authorized to de-
17 duct a commission from the pari-mutuel pools, as fol-
18 lows:

19 (1) The commission deducted by any licensee from
20 the pari-mutuel pools on thoroughbred racing shall not
21 exceed sixteen percent of the total of such pari-mutuel
22 pools for the day. Out of such commission, the licensee
23 shall pay the pari-mutuel pools tax provided for in sub-
24 section (b), section ten of this article, and shall deposit
25 one percent of such commission in a special fund to be
26 established by the licensee and to be used for the aug-
27 mentation of the regular purses offered by the licensee.
28 The remainder of the commission shall be retained by
29 the licensee.

30 (2) The commission deducted by any licensee from
31 the pari-mutuel pools on harness racing shall not exceed
32 seventeen percent of the total of such pari-mutuel pools
33 for the day. Out of such commission, the licensee shall
34 pay the pari-mutuel pools tax provided for in subsection
35 (c), section ten of this article. The remainder of the com-
36 mission shall be retained by the licensee.

37 (c) In addition to any such commission, a licensee
38 shall also be entitled to retain the legitimate breakage,
39 which shall be made and calculated to the dime.

40 (d) The director of audit, and any other auditors em-
41 ployed by the racing commission who shall also be cer-
42 tified public accountants or experienced public accoun-
43 tants, shall have free access to the space or enclosure
44 where the pari-mutuel system of wagering is conducted
45 or calculated at any horse race meeting for the purpose
46 of ascertaining whether or not the licensee is deducting
47 and retaining only a commission as provided in this sec-
48 tion and is otherwise complying with the provisions of
49 this section. They shall also, for the same purposes only,
50 have full and free access to all records and papers per-
51 taining to such pari-mutuel system of wagering, and shall
52 report to the racing commission in writing, under oath,
53 whether or not the licensee has deducted and retained

54 any commission in excess of that permitted under the
55 provisions of this section or has otherwise failed to com-
56 ply with the provisions of this section.

57 (e) No licensee shall permit or allow any individual
58 under the age of eighteen years to wager at any horse
59 racetrack, knowing or having reason to believe that such
60 individual is under the age of eighteen years.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 5A. WATER POLLUTION CONTROL ACT.

§20-5A-8a. Voluntary water quality monitors; appointment; duties; compensation.

1 The chief is hereby authorized to appoint voluntary
2 water quality monitors to serve at the will and pleasure
3 of the chief. All such monitors appointed pursuant hereto
4 shall be eighteen years of age or over and shall be bona
5 fide residents of this state.

6 Such monitors are authorized to take water samples of
7 the waters of this state at such times and at such places
8 as the chief shall direct and to forward such water samples
9 to the chief for analysis.

10 The chief is authorized to provide such monitors with
11 such sampling materials and equipment as he deems nec-
12 essary: *Provided*, That such equipment and materials shall
13 at all times remain the property of the state and shall be
14 immediately returned to the chief upon his direction.

15 Such monitors shall not be construed to be employees
16 of this state for any purpose except that the chief is
17 hereby authorized to pay such monitors a fee not to ex-
18 ceed fifty cents for each sample properly taken and for-
19 warded to him as hereinabove provided.

20 The chief shall conduct schools to instruct said moni-
21 tors in the methods and techniques of water sample tak-
22 ing and issue to said monitors an identification card or
23 certificate showing their appointment and training.

24 Upon a showing that any water sample as herein pro-
25 vided was taken in conformity with standard and recog-
26 nized procedures, such sample shall be admissible in any

27 court of this state for the purpose of enforcing the pro-
28 visions of this article.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 4. VOLUNTARY HOSPITALIZATION.

§27-4-1. Authority to receive voluntary patients.

§27-4-3. Right to release on application.

§27-4-1. Authority to receive voluntary patients.

1 The superintendent of a state hospital, subject to the
2 availability of suitable accommodations, and subject
3 further to the rules and regulations promulgated by the
4 director of mental health, shall admit for diagnosis, care
5 and treatment any individual:

6 (1) Over eighteen years of age who is mentally ill,
7 mentally retarded or who has symptoms of mental illness
8 or mental retardation and makes application for hospi-
9 talization; or

10 (2) Under eighteen years of age who is mentally ill
11 or mentally retarded or who has symptoms of mental
12 illness or mental retardation and there is application
13 therefor in his behalf (a) by the parents of such per-
14 son, or (b) if only one parent is living, then by
15 such parent, or (c) if the parents be living separate and
16 apart, by the one to whom was awarded the custody of
17 such person, or (d) if there is a guardian entitled to
18 the custody of such person, then by such guardian.

§27-4-3. Right to release on application.

1 A voluntary patient who requests his release or whose
2 release is requested in writing, by his parents, parent,
3 guardian, spouse, or adult next of kin shall be released
4 forthwith except that:

5 (1) If the patient was admitted on his own applica-
6 tion and the request for release is made by a person
7 other than the patient, release shall be conditioned upon
8 the agreement of the patient thereto;

9 (2) If the patient is under eighteen years of age, his
10 release prior to becoming eighteen years of age may be
11 conditioned upon the consent of the person or persons
12 who applied for his admission;

13 (3) If, within ninety-six hours of the receipt of the
 14 request, the superintendent of the state hospital in which
 15 the patient is confined files with the clerk of the county
 16 court of the county in which the patient is a resident,
 17 or the clerk of the county court of the county where the
 18 hospital is situated, an application for involuntary hos-
 19 pitalization as provided in section four, article five of
 20 this chapter, release may be postponed pending a de-
 21 cision on the application by the mental hygiene com-
 22 mission.

23 Notwithstanding any other provision of this chapter,
 24 legal proceedings for hospitalization shall not be com-
 25 menced with respect to a voluntary patient unless re-
 26 lease of the patient has been requested by him or the
 27 individual or individuals who applied for his admission.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

Article

2. Attorneys at Law.
4. Dentists, Dental Hygienists and Dental Corporations.
5. Pharmacists, Assistant Pharmacists and Drugstores.
6. Embalmers and Funeral Directors.
8. Optometrists.
9. Accountants.
10. Veterinarians.
11. Chiropodists-Podiatrists.
12. Architects.
- 13A. Land Surveyors.
14. Osteopathic Physicians and Surgeons.
15. Midwives.
16. Chiropractors.
17. Sanitarians.
20. Physical Therapists.
21. Psychologists.
22. Landscape Architects.

ARTICLE 2. ATTORNEYS AT LAW.

§30-2-1. Certificate of good moral character; examination of applicants for license; licenses; diploma privilege of graduates of West Virginia college of law.

1 Any person desiring to obtain a license to practice law
 2 in the courts of this state shall appear before the circuit
 3 court of the county in which he has resided for the last
 4 preceding year and prove to the satisfaction of such
 5 court, or to the satisfaction of a committee of three at-
 6 torneys practicing before such court, appointed by the
 7 court, that he is a person of good moral character, that

8 he is eighteen years of age, and that he has resided in
9 such county for one year next preceding the date of his
10 appearance; and upon the presentation of such proof, the
11 court shall enter an order on its record accordingly. The
12 supreme court of appeals shall prescribe and publish
13 rules and regulations for the examination of all appli-
14 cants for admission to practice law, which shall include
15 the period of study and degree of preparation required
16 of applicants previous to being admitted, as well as the
17 method of examinations, whether by the court or other-
18 wise. And the supreme court of appeals may, upon the
19 production of a duly certified copy of the order of the
20 circuit court, hereinbefore mentioned, and upon being
21 satisfied that the applicant has shown, upon an exami-
22 nation conducted in accordance with such rules and
23 regulations, that he is qualified to practice law in the
24 courts of this state, and upon being further satisfied that
25 such rules and regulations have been complied with in
26 all respects, grant such applicant a license to practice law
27 in the courts of this state, and such license shall show
28 upon its face that all the provisions of this section and
29 of the said rules have been complied with: *Provided,*
30 That any person who shall produce a duly certified copy
31 of such order of the circuit court, and also a diploma of
32 graduation from the college of law of West Virginia
33 University, shall, upon presentation thereof in any of
34 the courts of this state, be entitled to practice in any
35 and all courts of this state, and the order so admitting
36 him shall state the facts pertaining to the same.

ARTICLE 4. DENTISTS, DENTAL HYGIENISTS AND DENTAL CORPORATIONS.

§30-4-6. Qualifications of applicant for license; examinations; examination fee; licensing.

1 An applicant for a dental license shall be of good moral
2 character, a citizen of the United States or an individual
3 who has declared his intention to become and who shows
4 progress toward becoming a citizen of the United States,
5 at least eighteen years of age at the time of making
6 application, and be a graduate of, and possess an accep-
7 table dental diploma from the faculty of a dental school

8 approved by the board. The board may require the ap-
9 plication to be accompanied by sufficient evidence of these
10 qualifications.

11 The applicant shall transmit with his application an
12 examination fee of thirty-five dollars, which sum the board
13 is authorized to expend in an investigation of the appli-
14 cant's qualifications. No portion of this fee is refundable.

15 An applicant whose application has been accepted by the
16 board shall be given an examination on subjects selected
17 by the board from among those currently being taught
18 in approved dental schools which shall test the quali-
19 fications of the applicant to practice dentistry. The test-
20 ing body for such examinations shall be decided by the
21 board under rules and regulations promulgated by it.

22 The board may recognize a certificate granted by the
23 national board of dental examiners in lieu of the written
24 portion of the required examination.

25 An applicant obtaining a satisfactory grade on such
26 examination and otherwise fulfilling the requirements of
27 the board shall be granted a license by the board to prac-
28 tice dentistry, which license shall bear a serial number,
29 the full name of the licensee, the date of issuance of the
30 license, the seal of the board and the signatures of a
31 majority of the members of the board.

32 The board shall not issue a license to any person found
33 guilty of cheating, deception or fraud in the examination
34 or on any part of the application. All manuscripts used
35 in any examination and all applications for licensure shall
36 be filed for a period of two years by the secretary of the
37 board for the purpose of reference and inspection.

ARTICLE 5. PHARMACISTS, ASSISTANT PHARMACISTS AND DRUGSTORES.

§30-5-5. Qualifications for registration as pharmacist; certifi- cates of registration.

1 In order to be registered as a pharmacist within the
2 meaning of this article, a person shall be a citizen of the
3 United States, not less than eighteen years of age, shall
4 present to the board of pharmacy satisfactory evidence
5 that he is a graduate of a recognized school of pharmacy

6 as defined by the board of pharmacy, and in addition
7 thereto he shall have had at least one year of practical
8 experience in a pharmacy or drugstore under the in-
9 struction and supervision of a registered pharmacist and
10 shall pass satisfactorily an examination by or under the
11 direction of the board of pharmacy. Each application for
12 examination must be accompanied by a fee of fifty dollars
13 and the same forwarded to the secretary according to law.

14 Every applicant for registration as a pharmacist shall
15 present to the board of pharmacy satisfactory evidence
16 that he is a person of good moral character and not ad-
17 dicted to drunkenness or the use of narcotic drugs. The
18 board shall issue certificates of registration to all persons
19 who successfully pass the required examination and are
20 otherwise qualified, and to all those whose certificates or
21 licenses the board shall accept in lieu of an examination
22 as provided in the next succeeding section.

ARTICLE 6. EMBALMERS AND FUNERAL DIRECTORS.

§30-6-5. Embalmers and funeral directors to be licensed; quali- fications and requirements for license; advertising; renewal of license; registration as apprentice; cour- tesy cards.

1 No person shall engage in or hold himself out as en-
2 gaging in, or discharge any of the duties of the business
3 or profession of embalming, or preserving in any manner
4 dead human bodies in this state, whether for himself
5 or in the employ of another, unless he holds an embal-
6 mer's license issued to him by the board, and shall at
7 the date of its issuance have complied with the provisions
8 of this article.

9 No person shall engage in, or hold himself out as en-
10 gaging in, or discharge any of the duties of the business
11 or profession of funeral directing in this state, unless he
12 holds a funeral director's license issued to him by the
13 board, and shall at the date of its issuance have complied
14 with the provisions of this article, or conduct a funeral
15 unless he be a licensed funeral director.

16 No person shall be entitled to an embalmer's license
17 unless he:

- 18 (1) Is eighteen years of age or over;
- 19 (2) A citizen of the United States;
- 20 (3) Of good moral character and temperate habits;
- 21 (4) Holds a high school diploma or its equivalent;
- 22 (5) Has had not less than sixty hours' credit of edu-
23 cational training in an accredited university or college,
24 such credit shall be in such subjects only as are recog-
25 nized in the university or college where taken, as credit
26 toward a baccalaureate degree;
- 27 (6) Has completed a one-year course of apprenticeship
28 under the supervision of a licensed embalmer actively
29 and lawfully engaged in the practice of embalming in
30 this state, such apprenticeship to consist of diligent at-
31 tention to the work in the course of regular and steady
32 employment and not as a side issue to another employ-
33 ment, and under which said apprenticeship he shall have
34 taken an active part in the operation of embalming not
35 less than twenty-five dead human bodies, under the su-
36 pervision of a licensed embalmer;
- 37 (7) Possesses a diploma of graduation from a school
38 of embalming which requires as a prerequisite to gradua-
39 tion the completion of a course of study not less than
40 twelve months' duration, and which said school of em-
41 balming must be one duly approved by the board;
- 42 (8) Passes such examination as the board shall deem
43 necessary to ascertain his qualification and ability to
44 engage in the practice of embalming.

45 The board shall issue licenses separately to embalmers
46 and to funeral directors.

47 An applicant for a funeral director's license must fur-
48 nish satisfactory proof to the board that his business or
49 profession of funeral directing is to be conducted in a
50 fixed place or establishment equipped for the care and
51 preparation for burial or disposition of dead human
52 bodies. What shall be deemed "necessary equipment"
53 shall be defined in the rules and regulations of the board,
54 the same to be in compliance with the public health laws
55 of the state or the rules of the state board of health of
56 West Virginia. This shall not be so construed as to
57 deny an applicant for a funeral director's license such

58 a license because he is not the owner, or part owner, of
59 an establishment or proposed funeral business.

60 Licenses issued under the provisions of this article
61 shall not be transferable or assignable.

62 No person shall be eligible to receive a license as a
63 funeral director unless he:

64 (1) Holds an embalmer's license issued by this board;

65 (2) Has been duly registered with the board as an
66 apprentice;

67 (3) Has served not less than a one-year apprenticeship
68 under the personal supervision of a licensed funeral
69 director actively and lawfully engaged in the business or
70 profession of funeral directing in this state, such ap-
71 prenticeship to consist of diligent attention to the work
72 in the course of regular and steady employment and not
73 as a side issue to another employment.

74 All funeral homes or establishments or any other places
75 pertaining to funeral directing or the conducting of
76 funerals, shall display in all advertising the name of the
77 licensed funeral director who is actually in charge of
78 the establishment. All branch establishments must dis-
79 play the name of the funeral director who is actually in
80 charge. At least one licensed funeral director shall su-
81 pervise each main establishment and at least one licensed
82 funeral director shall directly supervise each branch es-
83 tablishment.

84 No licensed funeral director or licensed embalmer
85 shall be permitted to register or have registered more
86 than five apprentices under his license at the same time.

87 Any person now holding a license as an embalmer,
88 funeral director, or assistant funeral director, shall not
89 be required to make a new application, or submit to an
90 examination, but shall, upon the payment of the fee
91 therefor, be entitled to a renewal of his license upon the
92 terms and conditions herein provided for the renewal of
93 licenses of those who may be licensed after the effective
94 date of this article, but all such persons shall be sub-
95 ject to every provision of this article, and such rules and
96 regulations as the board may adopt in pursuance of this
97 article.

98 No person shall be registered as an apprentice funeral
99 director or apprentice embalmer unless he is eighteen
100 years of age, or over, a citizen of the United States, of
101 good moral character and temperate habits, and the holder
102 of a high school diploma or its equivalent.

103 The board may issue annual nonrenewable courtesy
104 cards to licensed funeral directors and licensed embal-
105 mers of the states bordering on West Virginia, upon ap-
106 plication for same made on form prescribed by the board.
107 The annual fee for such courtesy cards shall be twenty-
108 five dollars and said fee shall be paid at the time appli-
109 cation is made therefor. Applications for said courtesy
110 cards shall be approved by the board before the same
111 may be issued, and said courtesy cards shall be issued
112 under the following conditions: Holders of courtesy
113 cards shall not be permitted to open or operate a place
114 of business for the purpose of conducting funerals or
115 embalming bodies in the state of West Virginia, nor shall
116 they be permitted to maintain an office or agency in this
117 state. A violation of this section shall be sufficient cause
118 for the board to revoke or cancel the courtesy card of
119 the violator.

ARTICLE 8. OPTOMETRISTS.

§30-8-5. Qualifications of applicant for registration; examina- tion.

1 An applicant for registration shall present satisfactory
2 evidence that he is at least eighteen years of age, of good
3 moral character and temperate habits, and has graduated
4 from a high school or secondary school, or has completed
5 an equivalent course of study approved by the West
6 Virginia board of optometry, and has graduated from a
7 school or college of optometry approved by said board.
8 No school or college of optometry shall be approved by
9 the board unless it has a minimum requirement of a
10 course of study of two thousand clock hours, distributed
11 over two school years of eight months' duration each. The
12 examination shall cover such subjects as the anatomy of
13 the eyes, the use of the ophthalmoscope, retinoscope,
14 ophthalmometer, and trial lenses, the general laws of
15 optics and refraction, and such other subjects as the board

16 may deem proper. If the applicant successfully passes
17 such examination, and is otherwise qualified, the board
18 shall register him as a duly qualified optometrist, and
19 shall issue to him a certificate of registration authorizing
20 him to practice optometry in this state.

ARTICLE 9. ACCOUNTANTS.

§30-9-2. Certified public accountants; requirements for certification; use of title "certified public accountant"; applicability of article to previous holders of certificates.

§30-9-3. Public accountants; registration; use of title "public accountant."

§30-9-2. **Certified public accountants; requirements for certification; use of title "certified public accountant"; applicability of article to previous holders of certificates.**

1 The certificate of "certified public accountant" shall be
2 granted by the board to any person:

3 (1) Who is a citizen of the United States or who has
4 duly declared his intention of becoming such citizen, and
5 who is domiciled in the state of West Virginia, or has a
6 place of business therein at the time of making applica-
7 tion;

8 (2) Who is over the age of eighteen years;

9 (3) Who is of good moral character;

10 (4) Who is a graduate of a high school with a four-
11 year course, or who, in the opinion of the board, has had
12 equivalent education;

13 (5) Who shall have for at least two years preceding
14 the date of his application been engaged in practice as
15 a public accountant or shall have been employed as a
16 staff accountant of a practicing certified public account-
17 tant or public accountant; or who shall have been actively
18 employed for at least four years preceding the date of
19 his application by the United States treasury department
20 as an internal revenue agent; or who shall have been
21 actively employed for at least four years preceding the
22 date of his application by any federal or state super-
23 visory agency or instrumentality as an auditor or ex-
24 aminer, whose duties entail the audit or verification of
25 accounts and records and the preparation, based thereon,

26 of reports to such agency or instrumentality for the pur-
27 poses of supervision or regulation: *Provided*, That the
28 experience required in this subsection shall include the
29 preparation of balance sheets and operating statements
30 from general books, or who, in the opinion of the board,
31 has had experience equivalent to that required in the
32 foregoing, and the board shall recognize that the equival-
33 ent experience may be obtained independently of em-
34 ployment with a practicing certified public accountant,
35 public accountant, the United States treasury department,
36 or any federal or state supervisory agency or instrumen-
37 tality, as hereinabove set forth; and,

38 (6) Who has passed an examination in theory of ac-
39 counts, accounting practice, auditing, commercial law
40 and/or such other related subjects as the board may deem
41 advisable. All matters relating to the examination and
42 certification of applicants for the certificate of certified
43 public accountant shall be handled by only those mem-
44 bers of the state board of accountancy who are holders
45 of a certificate of certified public accountant.

46 No applicant shall be examined in the subjects stated
47 in subdivision (6) until the board shall have been satis-
48 fied in respect to the requirements stated in subdivisions
49 (1) to (5), inclusive, except, however, that any person
50 possessing the necessary qualifications, except the prac-
51 tical experience, who has completed an accountancy
52 course in a university or college of recognized standing,
53 or graduated from an accountancy school acceptable to
54 the board, may be examined in the subjects specified in
55 subdivision (6) and upon receiving a satisfactory grade
56 shall be granted the certificate of certified public accoun-
57 tant.

58 Five years after the enactment of this article the edu-
59 cational requirement for taking the examination for a
60 certificate shall be a degree or certificate conferred by a
61 college, university or other educational institution ap-
62 proved by the board, with a major in accounting, or what
63 the board determines to be the equivalent of the fore-
64 going, or with a nonaccounting major supplemented by
65 what the board determines to be the equivalent of an
66 accounting major, including related courses in all areas

67 of business administration: *Provided*, That this require-
68 ment shall not apply to persons duly registered as public
69 accountants before January first, one thousand nine hun-
70 dred sixty.

71 Any person who has received from the board a certifi-
72 cate as a certified public accountant shall be designated
73 and known as a certified public accountant; and every
74 person holding such certificate, and every copartnership
75 of accountants in which all members practicing in this
76 state hold such a certificate, may assume and use the title
77 of certified public accountant or the abbreviation thereof,
78 "C. P. A." Any certified public accountant may also be
79 known as a "public accountant."

80 Persons, who, on the effective date of this article, held
81 certified public accountants' certificates theretofore is-
82 sued by the board of this state shall not be required to
83 obtain additional certificates under this article, but shall
84 otherwise be subject to all provisions of this article; and
85 such certificates theretofore issued shall, for all purposes,
86 be considered certificates issued under this article and
87 subject to the provisions hereof.

§30-9-3. Public accountants; registration; use of title "public accountant."

1 A person shall be deemed to be in practice as a public
2 accountant within the meaning and intent of this article:

3 (a) Who holds himself out to the public in any man-
4 ner as one skilled in the knowledge, science and practice
5 of accounting, and as qualified and ready to render pro-
6 fessional service therein as a public accountant for
7 compensation; or

8 (b) Who maintains an office for the transaction of
9 business as a public accountant; or

10 (c) Who offers to the public to perform for com-
11 pensation, or who does perform for the public for com-
12 pensation, professional services that involve or require an
13 examination, verification, investigation or review of finan-
14 cial transactions and accounting records; or

15 (d) Who prepares reports on examinations of books
16 or records of account, balance sheets, and other financial,

17 accounting and related schedules, exhibits and state-
18 ments, or reports which are to be used for publication,
19 credit purposes or are to be filed with any governmental
20 agency; or

21 (e) Who, in general or as an incident to such work,
22 renders professional assistance to the public for com-
23 pensation in any or all matters relating to accounting
24 procedure and to the recording and presentation of
25 financial facts or data.

26 Any person who is a resident of this state, or has a
27 place of business therein, who has attained the age of
28 eighteen years, and who is of good moral character, and
29 who holds himself out within this state to be in practice
30 on the date this article is enacted as a public accountant
31 as heretofore defined, may register with the board as a
32 public accountant on or before January first, one
33 thousand nine hundred sixty.

34 After the date this article is enacted and until January
35 first, one thousand nine hundred sixty-seven, any person
36 possessing the necessary qualifications for taking the ex-
37 amination for a certificate of certified public accountant,
38 as provided in section two shall be registered by the
39 board as a public accountant.

40 Any person who has been duly registered by the board
41 as a public accountant shall be designated and known
42 as a public accountant; and every person so registered
43 and every copartnership of accountants in which all mem-
44 bers practicing in this state have been so registered, may
45 assume and use the title of public accountant or the
46 abbreviation thereof, "P. A."

ARTICLE 10. VETERINARIANS.

§30-10-6. Application for license; qualifications; determination as to qualifications of applicants and action to be taken.

1 Any resident of this state desiring a license to practice
2 veterinary medicine in this state shall make written ap-
3 plication therefor to the board. The application shall
4 show that the applicant is (1) either a graduate of a
5 school of veterinary medicine accredited by the American

6 veterinary medical association or a graduate of a foreign
7 veterinary school who holds a certificate of competence
8 issued by the educational commission for foreign veter-
9 inary graduates, (2) eighteen years of age or over, (3)
10 a citizen of the United States or an applicant for citizen-
11 ship, and (4) a person of good moral character, and shall
12 contain such other information and proof as the board
13 may require by reasonable rules and regulations pro-
14 mulgated as aforesaid. The application shall be accom-
15 panied by the appropriate fee specified in the fee schedule
16 established and published by the board.

17 If the board determines that an applicant possesses the
18 proper qualifications, it shall admit the applicant to the
19 next examination, or if the applicant is eligible for a li-
20 cense without examination under the provisions of section
21 eight of this article, the board may forthwith grant him
22 a license. If an applicant is found not qualified to take
23 the examination or for a license without examination,
24 the secretary-treasurer shall immediately notify the ap-
25 plicant in writing of such finding and the grounds there-
26 for. An applicant found not qualified may demand a
27 hearing on the question of his qualifications in accordance
28 with the provisions of section twelve of this article. The
29 application fee of any applicant found not qualified shall
30 be returned to such applicant.

ARTICLE 11. CHIROPODISTS-PODIATRISTS.

§30-11-3. Qualifications of applicant for license.

1 An applicant for license shall furnish to the medical
2 licensing board satisfactory proof that he is: (a)
3 Eighteen years of age or over; (b) of good moral char-
4 acter; (c) a graduate of a school of chiropody or podiatry
5 registered and approved by the West Virginia medical
6 licensing board or that he has taken and passed the ex-
7 amination in another state, territory or foreign country
8 having by law requirements of qualifications equal to the
9 requirements of this state, has been in the practice of
10 chiropody or podiatry for a period of at least five years
11 in such state, territory or foreign country and is at the
12 time of application and examination in good standing in
13 said state, territory or foreign country; (d) possessed of

14 a minimum high school education recognized by the state
15 department of education as being a proper standard and
16 at least two years of academic work of collegiate grade
17 in a standard college of arts and sciences, so recognized
18 as being a proper standard by the state department of
19 education: *Provided*, That the requirement of two years
20 of academic work of collegiate grade in a standard college
21 of arts and sciences shall not apply to applicants who on
22 or before June seventh, one thousand nine hundred fifty-
23 seven, had been accepted and entered into an approved,
24 accredited college of chiropody, podiatry, or chiropody-
25 podiatry, pursued his studies and after said date received
26 his degree.

ARTICLE 12. ARCHITECTS.

§30-12-3. Qualifications of applicant for registration.

1 Any citizen of the United States or any person who
2 has declared his intention of becoming a citizen, who is
3 at least eighteen years of age and of good moral character,
4 may apply for a certificate of registration or for such ex-
5 amination as shall be requisite for such certificate under
6 this article; but before receiving such certificate the ap-
7 plicant shall submit satisfactory evidence of having com-
8 pleted the course in a high school or the equivalent
9 thereof, and of having subsequently thereto completed
10 such course in mathematics, history and language as may
11 be prescribed by the board of examination and registra-
12 tion of architects. The examination for the above aca-
13 demic requirements shall be held by the board. In lieu
14 of such examination the board may accept satisfactory
15 diplomas or certificates, from institutions approved by the
16 board, covering the course or subject matter prescribed
17 for examination.

ARTICLE 13A. LAND SURVEYORS.

§30-13A-5. Qualifications of applicants for licenses; exceptions; applications; fees; examinations.

- 1 (a) To be eligible for a license to engage in the prac-
2 tice of land surveying, the applicant must:
 - 3 (1) Be at least eighteen years of age;
 - 4 (2) Be of good moral character;

5 (3) Have been a resident of the United States for one
6 year immediately preceding the date of application;

7 (4) Not have been convicted of a crime involving
8 moral turpitude;

9 (5) Have four years or more experience in the prac-
10 tice of land surveying under the supervision of a licensee,
11 or a person eligible for a license hereunder, or a person
12 authorized in another state or country to engage in the
13 practice of land surveying; and each year of satisfactory
14 study in an accredited surveying curriculum may be
15 substituted for one year of experience, but only two
16 years of such experience requirement may be fulfilled
17 by such study; and

18 (6) Have passed the examination prescribed by the
19 board, which examination shall cover the basic subject
20 matter of land surveying and land surveying skills and
21 techniques.

22 (b) The following persons shall be eligible for a li-
23 cense to engage in the practice of land surveying without
24 examination:

25 (1) Any applicant who is licensed, certificated or
26 registered to engage in the practice of land surveying
27 in any other state or country, if the requirements to
28 obtain a license or certificate or to become registered
29 in such other state or country are found by the board
30 to be at least as great as those prescribed in this article.

31 (2) Any applicant who is a graduate of an accredited
32 surveying curriculum and has at least two years of ex-
33 perience in the practice of land surveying under the su-
34 pervision of a licensee, or a person eligible for a license
35 hereunder, or a person authorized in another state or
36 country to engage in the practice of land surveying, if
37 such applicant meets the requirements of subdivisions
38 (1), (2), (3) and (4), subsection (a) of this section.

39 (3) Any applicant who has been engaged in the prac-
40 tice of land surveying in West Virginia for at least six
41 years prior to the filing of such application, if such ap-
42 plication for a license is made within three years after
43 the effective date of this article and if such person meets
44 the requirements of subdivisions (1), (2), (3) and (4),

45 subsection (a) of this section. Such applicant must also
46 furnish the names and addresses of ten persons who have
47 engaged such applicant as a land surveyor, together with
48 satisfactory records of such land surveying work.

49 (c) Any applicant for any such license shall submit
50 an application therefor on forms provided by the board.
51 Such applications shall be verified and shall contain a
52 statement of the applicant's education and experience,
53 the names of five persons for reference (at least three of
54 whom shall be licensees, or persons eligible for a license
55 hereunder, or persons authorized in another state or
56 country to engage in the practice of land surveying, who
57 have knowledge of his work) and such other information
58 as the board may from time to time by reasonable rule
59 and regulation prescribe.

60 (d) An applicant shall pay to the board with his ap-
61 plication a license fee of twenty dollars, which fee shall
62 be returned if he is denied a license.

63 (e) Examinations shall be held at least once each year
64 at such time and place as the board shall determine.
65 The scope of the examination and methods of procedure
66 shall be determined by the board. An applicant who
67 fails to pass an examination may reapply at any time and
68 shall furnish additional information as requested by the
69 board. Each such application shall be accompanied by
70 a license fee of twenty dollars, which fee shall be re-
71 turned if the applicant is again denied a license.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-4. Application for examination.

1 Each applicant for examination by the board shall sub-
2 mit an application therefor on forms prepared and fur-
3 nished by the board, accompanied by evidence verified
4 by oath and satisfactory to the board, establishing that
5 the applicant has satisfied the following requirements:
6 (a) That he is eighteen years of age or over; (b) that
7 he is of good moral character; (c) that he has graduated
8 from an approved osteopathic college; and (d) that he
9 has paid to the board a fee of fifty dollars for examination.

ARTICLE 15. MIDWIVES.

§30-15-2. Definition of midwife; limitation of article.

§30-15-3. License to practice midwifery; qualifications of applicants.

§30-15-2. Definition of midwife; limitation of article.

1 For the purposes of this article, a midwife shall be any
2 person at least eighteen years of age, other than a physi-
3 cian, who shall attend or agree to attend any woman at
4 or during childbirth, and who shall accept any compen-
5 sation or other remuneration for her services: *Provided,*
6 That nothing contained in this article shall prevent a
7 neighbor or friend from rendering assistance in such cases
8 in an emergency.

§30-15-3. License to practice midwifery; qualifications of applicants.

1 No person, other than a licensed physician, shall practice
2 midwifery in the state of West Virginia unless such per-
3 son shall be duly licensed to practice midwifery as here-
4 inafter provided.

5 Every person, other than a licensed physician, who
6 wishes to practice midwifery shall make written applica-
7 tion to the West Virginia board of health for a license to
8 practice midwifery. The application shall be sworn to
9 before a notary public and shall be accompanied by a
10 registration fee of one dollar. Every applicant for a li-
11 cense to practice midwifery shall possess the following
12 qualifications:

13 (a) She shall not be less than eighteen years of age;

14 (b) She shall be able to read and write;

15 (c) She shall be clean and constantly show evidence,
16 general appearance and in her home, of habits of cleanli-
17 ness;

18 (d) She shall either possess a diploma from a school
19 for midwives recognized by the state director of health,
20 or shall have attended, under the instruction of a duly
21 licensed and registered physician, not fewer than five
22 mothers and newborn infants during lying-in periods of
23 at least ten days each, and shall present a written state-
24 ment from said physician or physicians that she has re-
25 ceived such instruction in said five cases, with the name,
26 date and address of each case, and establishing the fact
27 that she is reasonably skillful and competent, to the sat-
28 isfaction of the state director of health;

29 (e) She shall present evidence satisfactory to the West
30 Virginia board of health that she is of good moral char-
31 acter, has good health, and is free from communicable
32 disease, in such form as the state director of health, or such
33 person designated by him, by rule or regulation may pre-
34 scribe.

ARTICLE 16. CHIROPRACTORS.

§30-16-4. Application for license; qualifications of applicant.

1 Any person wishing to practice chiropractic in this
2 state shall apply to the secretary of the board for a li-
3 cense so to practice. Each applicant shall establish the
4 fact to the board that he has satisfied the following re-
5 quirements: (a) That he is eighteen years of age or over;
6 (b) that he is of good moral character; (c) that he is a
7 graduate of an accredited high school giving a four-year
8 course or has an education equivalent to the same; (d)
9 that he has attended for at least two academic years an
10 academic college equal in standing to the West Virginia
11 University; (e) that he is a graduate of a chiropractic
12 school or college approved by the West Virginia board
13 of chiropractic examiners and accredited by the Amer-
14 ican chiropractic association or the international chiro-
15 practic association which requires for graduation a resi-
16 dent course of not less than four academic years of nine
17 months each, and active attendance at the same for a
18 minimum of four thousand hours of fifty minutes each
19 of classroom and laboratory instruction: *Provided*, That
20 this requirement shall not be construed to disqualify ap-
21 plicants that graduated from chiropractic schools or col-
22 leges before the passage of this article which taught a
23 resident course of at least three academic years of eight
24 months each or a minimum of two thousand hours of fifty
25 minutes each and required active attendance upon the
26 same. Attendance at the academic college as set forth in
27 requirement (d) shall be prior to completion of the chiro-
28 practic training as set forth in requirement (e): *Pro-*
29 *vided*, That this requirement of sequence of attendance
30 at an academic college and chiropractic school or college
31 shall not apply to those applicants who at the time of pas-
32 sage of this article have completed or are in the process

33 of fulfilling the requirements set forth in (e) above; nor
34 shall such requirement of sequence of attendance at aca-
35 demic college and chiropractic school or college apply
36 to such applicants who have, subsequent to the passage
37 of this article, commenced the fulfillment of requirement
38 (c) under the educational provisions of the federal ser-
39 vicemen's readjustment act now in force or as may here-
40 after be amended, or such federal act of similar effect,
41 benefit or purpose as may hereafter be enacted by Con-
42 gress.

ARTICLE 17. SANITARIANS.

§30-17-5. Eligibility and qualifications for registration.

1 The board shall accept for review the application of
2 any person eighteen years of age or more whose appli-
3 cation is submitted with the necessary fee.

4 The board shall issue a certificate of registration as a
5 professional sanitarian, together with a numbered iden-
6 tification card, to any applicant of good moral char-
7 acter:

8 (1) Who qualifies for and successfully passes a merit
9 system or civil service examination given under the au-
10 thority of this state, and who has satisfactorily completed
11 a six-month probationary period of employment as a san-
12 itarian prior to the date of his application; or

13 (2) Who is a graduate of a college or university, duly
14 accredited by the proper regional accrediting agency or
15 by the West Virginia state board of education, who has
16 credit for not less than thirty semester or forty-five
17 quarter hours of work in the physical, biological, social
18 and sanitary sciences; or

19 (3) Who has credit for not less than three full years
20 of academic work at a college or university, duly acce-
21 dited by the proper regional accrediting agency or by the
22 West Virginia state board of education, including credit
23 for not less than twenty semester or thirty quarter hours
24 of work in the physical, biological, social and sanitary
25 sciences, and who has satisfactorily completed a six-
26 month probationary period of employment as a sanitarian
27 prior to the date of his application; or

28 (4) Who has credit for not less than two full years of
29 academic work at a college or university, duly accredited
30 by the proper regional accrediting agency or by the West
31 Virginia state board of education, including credit for
32 not less than ten semester or fifteen quarter hours of work
33 in the physical, biological, social and sanitary sciences,
34 and who has satisfactorily completed a six-month proba-
35 tionary period of employment as a sanitarian prior to the
36 date of his application.

37 Any person who meets all qualifications for registra-
38 tion as a professional sanitarian, except the experience
39 requirements, may upon making application and paying
40 a total fee of ten dollars be granted a temporary certifi-
41 cate of registration as an apprentice sanitarian. Such
42 temporary registration shall, unless sooner revoked for
43 cause, remain in effect for a period not to exceed one year,
44 and upon payment of the required fee may be renewed
45 annually for a period not to exceed two additional years.

ARTICLE 20. PHYSICAL THERAPISTS.

§30-20-4. Qualifications of applicants for license; applications; fee.

1 To be eligible for license by the board as a physical
2 therapist, each applicant must:

3 (a) Be at least eighteen years old.

4 (b) Be of good moral character.

5 (c) Not be addicted to the intemperate use of alcohol
6 or narcotic drugs.

7 (d) Be a citizen of the United States or have obtained
8 a declaration of intention of becoming a citizen.

9 (e) Present evidence that he is a graduate of a school
10 of physical therapy approved by the American physical
11 therapy association and the board: *Provided*, That any
12 person who received his education in physical therapy
13 outside of the United States may qualify for a license by
14 fulfilling those requirements of the American physical
15 therapy association and the medical board, including
16 successful completion of a period of supervised clinical
17 experience and a written examination provided by the
18 board.

19 (f) Either (1) pass to the satisfaction of the board an
20 examination conducted by it to determine his fitness for
21 practice as a physical therapist; or (2) be entitled to be
22 licensed without examination as provided in section
23 seven of this article.

24 Unless entitled to be licensed under section seven of
25 this article, a person who desires to be licensed as a
26 physical therapist shall apply to the board, in writing, on
27 a blank furnished by the board. He shall embody in that
28 application evidence under oath, satisfactory to the board,
29 of his possessing the qualifications preliminary to exam-
30 ination required by this section. He shall pay to the board
31 a fee of fifty dollars at the time of filing his application,
32 no part of which shall be refunded.

ARTICLE 21. PSYCHOLOGISTS.

§30-21-7. Qualifications of applicants; exceptions; applications; fee.

1 (a) To be eligible for a license to engage in the prac-
2 tice of psychology, the applicant must:

3 (1) Be at least eighteen years of age;

4 (2) Be of good moral character;

5 (3) Be a holder of a doctor of philosophy degree or
6 its equivalent or a master's degree in psychology from
7 an accredited institution of higher learning, with ade-
8 quate course study at such institution in psychology, the
9 adequacy of any such course study to be determined
10 by the board;

11 (4) When the degree held is a doctor of philosophy
12 degree or its equivalent, have at least two years' experi-
13 ence subsequent to receiving said degree in the perfor-
14 mance of any of the psychological services described in
15 subdivision (e), section two of this article, including those
16 activities excluded from the definition of the term "prac-
17 tice of psychology" in said subdivision (e), and, when
18 the degree held is a master's degree, have at least
19 eight years' experience subsequent to receiving said de-
20 gree in the performance of any of the psychological
21 services described in said subdivision (e), including those

22 activities excluded from the definition of the term "prac-
23 tice of psychology" in said subdivision (e);

24 (5) Have passed the examination prescribed by the
25 board, which examination shall cover the basic subject
26 matter of psychology and psychological skills and tech-
27 niques;

28 (6) Not have been convicted of a felony or crime in-
29 volving moral turpitude; and

30 (7) Not, within the next preceding six months, have
31 taken and failed to pass the examination required by sub-
32 division (5), subsection (a) of this section.

33 (b) The following persons shall be eligible for a
34 license to engage in the practice of psychology without
35 examination:

36 (1) Any applicant who holds a doctor of philosophy
37 degree or its equivalent from an institution of higher
38 learning, with adequate course study at such institution
39 in psychology and who is a diplomate of the "American
40 Board of Examiners in Professional Psychology";
41 and

42 (2) Any person who holds a license or certificate to
43 engage in the practice of psychology issued by any other
44 state, the requirements for which license or certificate
45 are found by the board to be at least as great as those
46 provided in this article.

47 (c) Any person who is engaged in the practice of
48 psychology in this state, or is engaged in any of the ac-
49 tivities described in subdivision (e), (1), (2) or (3),
50 section two of this article, in this state, on the
51 effective date of this article and has been so engaged
52 for a period of two consecutive years immediately
53 prior thereto shall be eligible for a license to engage
54 in the practice of psychology without examination and
55 without meeting the requirements of subdivision (4),
56 subsection (a) of this section, if application for such
57 license is made within six months after the effective
58 date of this article and if such person meets the re-
59 quirements of subdivisions (1), (2), (3) and (6), sub-
60 section (a) of this section: *Provided*, That an equivalent

61 of a masters degree in psychology may be considered by
62 the board, only for the purpose of this subsection (c), as
63 meeting the requirements of subdivision (3) of subsec-
64 tion (a) of this section.

65 (d) Any applicant for any such license shall submit
66 an application therefor at such time (subject to the time
67 limitation set forth in subsection (c) of this section),
68 in such manner, on such forms and containing such in-
69 formation as the board may from time to time by rea-
70 sonable rule and regulation prescribe, and pay to the
71 board an application fee of fifty dollars, not refundable.

ARTICLE 22. LANDSCAPE ARCHITECTS.

§30-22-6. Qualifications of applicants; exceptions; applications; fee.

1 (a) To be eligible for a license as a landscape archi-
2 tect, the applicant must:

3 (1) Be at least eighteen years of age;

4 (2) Be of good moral character;

5 (3) Not, within the next preceding twelve months,
6 have had his application for a license or a certificate or
7 for registration to engage in the practice of landscape
8 architecture or as a landscape architect refused, sus-
9 pended or revoked in any state of the United States;

10 (4) Either (i) be a holder of an undergraduate degree
11 or graduate degree in landscape architecture from an
12 accredited institution of higher learning, with adequate
13 course study at such institution in landscape architecture,
14 the adequacy of any such course study to be determined
15 by the board; and when the degree held is an under-
16 graduate degree, have had at least two years' experience
17 subsequent to receiving such degree in the practice of
18 landscape architecture under the supervision of a land-
19 scape architect or a person having qualifications ac-
20 ceptable to the board and similar to the qualifications of
21 a landscape architect, and, when the degree held is a
22 graduate degree, have had at least one year's experience
23 subsequent to receiving such graduate degree in the prac-
24 tice of landscape architecture under the supervision of a
25 landscape architect or a person having qualifications ac-

26 ceptable to the board and similar to the qualifications of
27 a landscape architect; or (ii) have had at least ten years'
28 experience in the practice of landscape architecture, of
29 a grade and character to qualify him to assume respon-
30 sibility for the work involved in the practice of land-
31 scape architecture, at least six years of which shall have
32 been under the supervision of a landscape architect or a
33 person having qualifications acceptable to the board and
34 similar to the qualifications of a landscape architect; and

35 (5) Have passed the examination prescribed by the
36 board, which examination shall cover the theory and prac-
37 tice of landscape architecture.

38 (b) The following persons shall be eligible for a
39 license as a landscape architect without examination:

40 (1) Any person who was once licensed under the
41 provisions of this article, who temporarily abandoned
42 the practice of landscape architecture and did not renew
43 his license, provided he satisfies the board that he remains
44 qualified to engage in the practice of landscape archi-
45 tecture; and

46 (2) Any person who holds a license or certificate or
47 is registered to engage in the practice of landscape archi-
48 tecture issued by or effected in any other state, the re-
49 quirements for which license, certificate or registration
50 are found by the board to be at least as great as those
51 provided in this article.

52 (c) Any person meeting the qualifications set forth in
53 subdivisions (1), (2) and (3), subsection (a) of this sec-
54 tion, who submits evidence satisfactory to the board
55 that for at least one year prior to the effective date of
56 this article he regularly engaged in the practice of land-
57 scape architecture as a principal livelihood shall be en-
58 titled to be licensed under the provisions of this article,
59 without meeting the qualifications set forth in subdi-
60 visions (4) and (5), subsection (a) of this section, if he
61 files such application with the board within six months
62 from and after the effective date of this article.

63 (d) Any applicant for any such license shall submit
64 an application therefor at such time (subject to the time

65 limitation set forth in subsection (c) of this section),
66 in such manner, on such forms and containing such in-
67 formation as the board may from time to time by rea-
68 sonable rule and regulation prescribe, and pay to the
69 board a license fee of forty dollars, which fee shall be
70 returned to the applicant if he is denied a license.

**CHAPTER 32. SPECULATIVE SECURITIES AND
FRAUDULENT SALES; FACE-AMOUNT CERTIFICATES;
ISSUANCE AND SALE OF CHECKS, DRAFTS,
MONEY ORDERS, ETC.**

**ARTICLE 1. SECURITIES; DEFINITIONS; REGISTRATION; UN-
LAWFUL ACTS; PENALTIES; LIABILITIES.**

**§32-1-12. Registration of dealers and salesmen; requirements
and fees generally; consent to service of process;
register; renewals; examinations; responsibilities
as to bills, confirmations, etc.; exceptions.**

1 No dealer or salesman shall engage in business in this
2 state as such dealer or salesman or sell any securities, in-
3 cluding securities exempted in section three of this article,
4 or transact a brokerage or trading business or do a bus-
5 iness of buying or selling securities listed or traded in on
6 any stock exchange, except in transactions exempt under
7 section four of this article, unless he has been registered
8 as a dealer or salesman in the office of the commissioner
9 pursuant to the provisions of this section.

10 An application for registration as a dealer shall be
11 filed in writing with the commissioner, in such form as
12 he may prescribe, duly verified by oath, which shall
13 state the principal office of the applicant, wherever sit-
14 uated, and the location of the principal office and all
15 branch offices in this state, if any, the name or style of
16 doing business, the names, residences and business ad-
17 dresses of all persons interested in the business as prin-
18 cipals, copartners, officers and directors, specifying as
19 to each his capacity and title, the general plan and char-
20 acter of business and the length of time the dealer has
21 been engaged in business, a financial statement in detail
22 showing the actual conditions of the dealer, classification
23 and condition of all margin or installment accounts,

24 partner, officer and director accounts, a list of securities
25 sold in West Virginia during the preceding year and so
26 far as possible, a list of those to be sold or offered for
27 sale when the registration is completed, and such informa-
28 tion to be given in such detail as the commissioner may
29 require. The commissioner may also require such ad-
30 ditional information as to applicant's previous history,
31 record and association, as he may deem necessary to es-
32 tablish the good repute in business of the applicant. The
33 commissioner may require every applicant for registra-
34 tion as a salesman to pass a written examination as a re-
35 quirement for issuance of such license. Every applicant
36 for registration as a salesman must be eighteen years of
37 age, and shall not, at the time of examination, be em-
38 ployed by any securities dealer other than the one by
39 whom he was employed at the time of making applica-
40 tion.

41 Every dealer, at the time of filing his application, shall
42 file with the commissioner of securities his irrevocable
43 written consent to service of process as prescribed by
44 section nine of this article.

45 If the commissioner shall find that the applicant is of
46 good repute, has furnished sufficient proof of financial
47 responsibility, and has complied with the provisions of
48 this section including the payment of the fee hereinafter
49 provided, he may register such applicant as a dealer.

50 Upon written application of a registered dealer and pay-
51 ment of the proper fees, the commissioner may register
52 as salesmen of such dealer such natural persons as shall
53 appear to the commissioner to be qualified and of good
54 character.

55 The partners of a partnership and the executive officers
56 of a corporation or other association registered as a dealer
57 may act as salesmen during such time as such partnership,
58 corporation or association is so registered without further
59 registration as salesmen. The salesmen registered by a
60 dealer may sell any securities for which the dealer regis-
61 tering such salesmen is registered.

62 The names and addresses of all persons approved for
63 registration as dealers or salesmen and all orders with
64 respect thereto shall be recorded in a register of dealers

65 and salesmen, which shall be open to public inspection.
66 Every registration under this section shall expire on the
67 thirtieth day of June in each year, but new registrations
68 for the succeeding year shall be issued upon written ap-
69 plication and upon payment of the fee as hereinafter
70 provided, and by filing of further statements or furnish-
71 ing any further information specifically required by the
72 commissioner. Applications for renewals must be made
73 not less than thirty days before the first day of the en-
74 suing year, otherwise they shall be treated as original
75 applications. The fee for each dealer's registration and
76 for each dealer's annual renewal shall be one hundred
77 dollars. The fee for each salesman's registration shall be
78 twenty dollars, and the fee for each salesman's annual
79 renewal shall be ten dollars. When an application is
80 denied, the commissioner shall retain the registration or
81 renewal fee deposited.

82 Changes in registration occasioned by changes in per-
83 sonnel of a partnership or in the principals, copartners,
84 officers or directors of any dealer may be made from time
85 to time by written applications setting forth the facts
86 with respect to such change.

87 Every dealer registered under this section shall be sub-
88 ject to examination as to his financial condition or meth-
89 ods of business by the commissioner or by his duly autho-
90 rized representative at the time the commissioner may
91 deem it advisable. The expense of the examination shall
92 be paid by the applicant and the failure or refusal of
93 such applicant to pay such expense upon the demand of
94 the commissioner shall work a forfeiture of his right to
95 registration under this section.

96 Every dealer or salesman shall send a copy of all bills,
97 confirmations or orders on transactions with any em-
98 ployee or active official of any bank, trust company or
99 savings institution, to the president of the institution
100 by which the person is employed or in which the person
101 is an official, and a copy shall also be sent to the commis-
102 sioner of banking of the state of West Virginia. These
103 copies of bills, confirmations or orders shall be sent at
104 the same time as the original. Any dealer or salesman
105 willfully violating the provisions of this paragraph shall

106 have his registration revoked by the commissioner and
107 may be liable to such bank, trust company or savings
108 institution for any losses or damages incurred in any case
109 where such dealer or salesman failed to comply with this
110 provision.

111 This section shall not apply to a person or his agent
112 selling exclusively his own contracts, if such contracts
113 are exempt from this chapter by subdivision (g), section
114 three of this article.

115 This section shall not apply to an unincorporated per-
116 son selling exclusively undivided interest in oil, gas or
117 other mineral rights if such unincorporated person is the
118 bona fide owner of the lease, interest, royalty or prop-
119 erty in which he is selling interests.

CHAPTER 33. INSURANCE.

ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-2. Qualifications.

1 For the protection of the people of West Virginia, the
2 commissioner shall not issue, renew or permit to exist
3 any agent's, broker's or solicitor's license except to an in-
4 dividual who:

5 (a) Is eighteen years of age or more.

6 (b) Is a resident of West Virginia, except that a bro-
7 ker's license shall be issued only to nonresidents, and
8 except for nonresident life and accident and sickness
9 agents as provided in section eight of this article.

10 (c) Is, in the case of an agent applicant, appointed
11 as agent by a licensed insurer for the kind or kinds of
12 insurance for which application is made, subject to issu-
13 ance of license, or, in the case of a solicitor applicant,
14 appointed as solicitor by a licensed resident agent, sub-
15 ject to issuance of license.

16 (d) Does not intend to use the license principally for
17 the purpose, in the case of life or accident and sickness
18 insurance, of procuring insurance on himself, members
19 of his family or his relatives; or, as to insurance other
20 than life and accident and sickness, upon his property or
21 insurable interests of those of his family or his relatives

22 or those of his employer, employees or firm, or corpora-
23 tion in which he owns a substantial interest, or of the
24 employees of such firm or corporation, or on property or
25 insurable interests for which the applicant or any such
26 relative, employer, firm or corporation is the trustee,
27 bailee or receiver. For the purposes of this provision, a
28 vendor's or lender's interest in property sold or being sold
29 under contract or which is the security for any loan, shall
30 not be deemed to constitute property or an insurable in-
31 terest of such vendor or lender.

32 (e) Satisfies the commissioner that he is trustworthy
33 and competent. The commissioner may, at his discretion,
34 test the competency of an applicant for a license under
35 this section by examination. If such examination is re-
36 quired by the commissioner, each examinee shall pay a
37 five dollar examination fee for each examination. The
38 commissioner shall pay said examination fee into the state
39 treasury for the benefit of the state fund, general revenue.

CHAPTER 35. PROPERTY OF RELIGIOUS, EDUCATIONAL AND CHARITABLE ORGANIZATIONS.

ARTICLE 1. RELIGIOUS ORGANIZATIONS.

§35-1-9. Power of trustee to sell, convey and encumber property.

§35-1-11. Proceedings to prevent conveyances or creation of liens.

**§35-1-9. Power of trustee to sell, convey and encumber prop-
erty.**

1 The trustee or trustees of any church, religious sect,
2 society, or denomination within this state, whenever di-
3 rected by the ecclesiastical officer or the delegated or
4 select body to whom the authority to administer the
5 affairs of such church, religious sect, society, or denomina-
6 tion is committed by its rules and ecclesiastical polity,
7 or the trustee or trustees of any individual church, parish,
8 congregation or branch of any religious sect, society or
9 denomination within this state, whenever directed by a
10 majority of the members of such individual church, parish,
11 congregation or branch who are over eighteen years of
12 age, or by the ecclesiastical officer or the delegated or
13 select body to whom the authority to administer the
14 affairs of such church, parish, congregation or branch is

15 committed by the rules and ecclesiastical polity of such
16 church, religious sect, society or denomination, may sell
17 and convey any property, real or personal owned by such
18 church, religious sect, society or denomination, or by such
19 individual church, parish, congregation or branch, as the
20 case may be, or upon like direction, may borrow money
21 and execute a lien upon the church property to secure
22 the payment thereof; and all conveyances so made, or
23 liens so executed, by the persons who appear from the
24 records in the office of the county clerk to be the trustee
25 or trustees of the religious body making such conveyances
26 or executing such liens, shall be effective to pass from
27 such trustee or trustees such title or interest in the prop-
28 erty under his or their control as is purported to be con-
29 veyed or passed by such conveyances or instruments of
30 lien, and shall not be invalidated or affected by any defect
31 or informality in the proceedings for the selection or ap-
32 pointment of such person or persons as trustee or trustees,
33 or by any want of authority or lack of power in such
34 trustee or trustees.

§35-1-11. Proceedings to prevent conveyances or creation of liens.

1 When any conveyance of, or any lien upon, the real
2 estate of any church, religious sect, society, or denomina-
3 tion, or of any individual church, parish, congregation or
4 branch, is proposed to be made or created by the trustee or
5 trustees thereof, and such conveyance or the creation of
6 such lien will, it is believed, violate or be inconsistent
7 with the conditions or purposes of the trust under which
8 the real estate is held, or the proper authorities or the
9 requisite number of members do not desire, or have not
10 directed, that a conveyance be made of or a lien be
11 created upon such real estate, or the rights of other
12 parties will thereby be affected, or for any other cause
13 the making of such conveyance or the creation of such
14 lien is improper; one fourth or more of the total number
15 of members of the conference, synod, presbytery, con-
16 vention, association, consultors or other ecclesiastical body
17 representing any church, religious sect, society or de-
18 nomination, when the property involved is that of the
19 church, religious sect, society or denomination as a whole;

20 or one fourth or more of the total number of members
21 who are over eighteen years of age of any individual
22 church, parish, congregation or branch, when the prop-
23 erty involved is that of such individual church, parish,
24 congregation or branch, may, in the name of two or more
25 of them, on behalf of themselves and the others similarly
26 objecting, file their petition in the circuit court of the
27 county where such real estate is situated, or before the
28 judge of such court in vacation, against the trustee or
29 trustees, or the surviving or remaining trustee or trustees,
30 setting up the reasons why such conveyance should not be
31 made or such lien should not be created. The court or
32 judge, on the filing of such petition, shall fix a time and
33 place for the hearing of the same, and direct a copy of such
34 petition and a notice of the time and place of such hearing
35 to be served on such trustee or trustees a reasonable time
36 in advance thereof; and at the time and place so fixed
37 the court or judge shall proceed to hear the objections
38 to the making of such conveyance or creation of such
39 lien, and make such order in reference thereto as may
40 be right and proper.

CHAPTER 36. ESTATES IN PROPERTY.

ARTICLE 7. WEST VIRGINIA UNIFORM GIFTS TO MINORS ACT.

§36-7-1. Definitions.

§36-7-4. Duties and powers of custodian.

§36-7-7. Resignation, death or removal of custodian; bond; appointment of successor custodian.

§36-7-1. Definitions.

1 In this article, unless the context otherwise requires:

2 (a) An "adult" is a person who has attained the age of
3 eighteen years.

4 (b) A "bank" is a bank, trust company, national bank-
5 ing association, savings bank or industrial bank.

6 (c) A "broker" is a person lawfully engaged in the
7 business of effecting transactions in securities for the ac-
8 count of others. The term includes a bank which effects
9 such transactions. The term also includes a person law-
10 fully engaged in buying and selling securities for his own
11 account, through a broker or otherwise, as a part of a
12 regular business.

13 (d) "Court" means the circuit court.

14 (e) "The custodial property" includes:

15 (1) All securities, life insurance policies, annuity con-
16 tracts and money under the supervision of the same cus-
17 todian for the same minor as a consequence of a gift or
18 gifts made to the minor in a manner prescribed in this
19 article;

20 (2) The income from the custodial property; and

21 (3) The proceeds, immediate and remote, from the
22 sale, exchange, conversion, investment, reinvestment, sur-
23 render or other disposition of such securities, money, life
24 insurance policies, annuity contracts and income.

25 (f) A "custodian" is a person so designated in a man-
26 ner prescribed in this article; the term includes a suc-
27 cessor custodian.

28 (g) A "financial institution" is a bank, a building and
29 loan association, a federal savings and loan association, a
30 savings institution chartered and supervised as a savings
31 and loan or similar institution under federal law or the
32 laws of a state; an "insured financial institution" is one,
33 deposits (including a savings, share, certificate or deposit
34 account) in which are, in whole or in part, insured by the
35 federal deposit insurance corporation or by the federal
36 savings and loan insurance corporation.

37 (h) A "guardian" of a minor means the general guard-
38 ian, guardian, tutor or curator of his property or estate
39 appointed or qualified by a court of this state or another
40 state.

41 (i) An "issuer" is a person who places or authorizes
42 the placing of his name on a security (other than as a
43 transfer agent) to evidence that it represents a share,
44 participation or other interest in his property or in an
45 enterprise or to evidence his duty or undertaking to per-
46 form an obligation evidenced by the security, or who be-
47 comes responsible for or in place of any such person.

48 (j) A "legal representative" of a person is his executor
49 or the administrator, general guardian, guardian, com-
50 mittee, conservator, tutor or curator of his property or
51 estate.

52 (k) A "life insurance policy or annuity contract"
53 means a life insurance policy or annuity contract issued
54 by an insurance company authorized to do business in
55 this state on the life of a minor to whom a gift of the
56 policy or contract is made in the manner prescribed in
57 this article or on the life of a member of the minor's
58 family.

59 (l) A "member" of a "minor's family" means any of
60 the minor's parents, grandparents, brothers, sisters, uncles
61 and aunts, whether of the whole blood or the half blood,
62 or by or through legal adoption.

63 (m) A "minor" is a person who has not attained the
64 age of eighteen years.

65 (n) A "security" includes any note, stock, treasury
66 stock, bond, debenture, evidence of indebtedness, col-
67 lateral trust certificate, transferable share, voting trust
68 certificate or, in general, any interest or instrument com-
69 monly known as a security, or any certificate of interest
70 or participation in, any temporary or interim certificate,
71 receipt or certificate of deposit for, or any warrant or
72 right to subscribe to or purchase, any of the foregoing.
73 The term does not include a security of which the donor
74 is the issuer. A security is in "registered form" when it
75 specifies a person entitled to it or to the rights it evidences
76 and its transfer may be registered upon books maintained
77 for that purpose by or on behalf of the issuer.

78 (o) A "transfer agent" is a person who acts as au-
79 thenticating trustee, transfer agent, registrar or other
80 agent for an issuer in the registration of transfers of its
81 securities or in the issue of new securities or in the can-
82 cellation of surrendered securities.

83 (p) A "trust company" is a bank or corporation autho-
84 rized to exercise trust powers in this state.

§36-7-4. Duties and powers of custodian.

1 (a) The custodian shall collect, hold, manage, invest
2 and reinvest the custodial property.

3 (b) The custodian shall pay over to the minor for
4 expenditure by him, or expend for the minor's benefit,
5 so much of or all the custodial property as the custodian

6 deems advisable for the support, maintenance, education
7 and benefit of the minor in the manner, at the time or
8 times, and to the extent that the custodian in his discre-
9 tion deems suitable and proper, with or without court
10 order, with or without regard to the duty of himself or
11 of any other person to support the minor or his ability
12 to do so and with or without regard to any other income
13 or property of the minor which may be applicable or
14 available for any such purpose.

15 (c) The court, on the petition of a parent or guardian
16 of the minor or of the minor, if he has attained the age
17 of fourteen years, may order the custodian to pay over
18 to the minor for expenditure by him or to expend so much
19 of or all the custodial property as is necessary for the
20 minor's support, maintenance or education.

21 (d) To the extent that the custodial property is not
22 so expended, the custodian shall deliver or pay it over to
23 the minor on his attaining the age of eighteen years or,
24 if the minor dies before attaining the age of eighteen
25 years, he shall thereupon deliver or pay it over to the
26 estate of the minor: *Provided*, That the provisions of this
27 section shall not affect the terms and conditions of any
28 gift made pursuant to the West Virginia Uniform Gifts to
29 Minors Act as it appeared in this article prior to the
30 effective date of this section.

31 (e) The custodian, notwithstanding statutes restrict-
32 ing investments by fiduciaries, shall invest and reinvest
33 the custodial property as would a prudent man of dis-
34 cretion and intelligence who is seeking a reasonable in-
35 come and the preservation of his capital, except that he
36 may, in his discretion and without liability to the minor
37 or his estate, (i) retain a security given to the minor in a
38 manner prescribed in this article or (ii) hold money so
39 given in an account in the financial institution to which
40 it was paid or delivered by the donor.

41 (f) The custodian may sell, exchange, convert, sur-
42 render or otherwise dispose of custodial property in the
43 manner, at the time or times, for the price or prices and
44 upon the terms he deems advisable. He may vote in per-
45 son or by general or limited proxy a security which is

46 custodial property. He may consent, directly or through
47 a committee or other agent, to the reorganization, con-
48 solidation, merger, dissolution or liquidation of an issuer,
49 a security which is custodial property, and to the sale,
50 lease, pledge or mortgage of any property by or to such
51 an issuer, and to any other action by such an issuer. He
52 may execute and deliver any and all instruments in
53 writing which he deems advisable to carry out any of
54 his powers as custodian.

55 (g) The custodian shall register each security which
56 is custodial property and in registered form in the name
57 of the custodian, followed, in substance, by the words:
58 "as custodian for _____ under

59 (name of minor)

60 the West Virginia Uniform Gifts to Minors Act." Subject
61 to the provisions of subdivision (ii), subsection (e) of this
62 section, the custodian shall hold all money which is cus-
63 todial property in an account with a broker or in an in-
64 sured financial institution in the name of the custodian,
65 followed, in substance, by the words: "as custodian for
66 _____ under the West Virginia

67 (name of minor)

68 Uniform Gifts to Minors Act." The custodian shall keep
69 all other custodial property separate and distinct from
70 his own property in a manner to identify it clearly as
71 custodial property.

72 (h) The custodian shall keep records of all transac-
73 tions with respect to the custodial property and make
74 them available for inspection at reasonable intervals by
75 a parent or legal representative of the minor or by the
76 minor, if he has attained the age of fourteen years.

77 (i) A custodian has and holds as powers in trust, with
78 respect to the custodial property, in addition to the rights
79 and powers provided in this article, all the rights and
80 powers which a guardian has with respect to property
81 not held as custodial property.

82 (j) If the subject of the gift is a life insurance policy
83 or annuity contract, the custodian:

84 (1) In his capacity as custodian, has all the incidents
85 of ownership in the policy or contract to the same extent

86 as if he were the owner, except that the designated bene-
87 ficiary of any policy or contract on the life of the minor
88 shall be the minor's estate and the designated beneficiary
89 of any policy or contract on the life of a person other than
90 the minor shall be the custodian as custodian for the
91 minor for whom he is acting; and

92 (2) May pay premiums on the policy or contract out
93 of the custodial property.

**§36-7-7. Resignation, death or removal of custodian; bond; ap-
pointment of successor custodian.**

1 (a) Only an adult member of the minor's family, a
2 guardian of the minor or a trust company is eligible to
3 become successor custodian. A custodian may designate
4 his successor by executing and dating an instrument of
5 designation before a subscribing witness other than the
6 successor; the instrument of designation may but need
7 not contain the resignation of the custodian. If the
8 custodian does not so designate his successor before
9 he dies or becomes legally incapacitated, and the
10 minor has attained the age of fourteen years, the minor
11 may designate a successor custodian by executing an in-
12 strument of designation before a subscribing witness other
13 than the successor. A successor custodian has all the
14 rights, powers, duties and immunities of a custodian
15 designated in a manner prescribed by this article.

16 (b) The designation of a successor custodian as pro-
17 vided in subsection (a) takes effect as to each item of
18 the custodial property when the custodian resigns, dies
19 or becomes legally incapacitated and the custodian or
20 his legal representative:

21 (1) Causes the item, if it is a security in registered
22 form or a life insurance policy or annuity contract, to be
23 registered, with the issuing insurance company in the
24 case of a life insurance policy or annuity contract, in the
25 name of the successor custodian, followed, in substance, by
26 the words: "as custodian for....."

27 (name of minor)

28 under the West Virginia Uniform Gifts to Minors Act";
29 and

30 (2) Delivers or causes to be delivered to the successor
31 custodian any other item of the custodial property, to-
32 gether with the instrument of designation of the successor
33 custodian or a true copy thereof and any additional in-
34 struments required for the transfer thereof to the suc-
35 cessor custodian.

36 (c) A custodian who executes an instrument of desig-
37 nation of his successor containing the custodian's resigna-
38 tion as provided in subsection (a) shall promptly do all
39 things within his power to put each item of the custodial
40 property in the possession and control of the successor
41 custodian named in the instrument. The legal represen-
42 tative of a custodian who dies or becomes legally in-
43 capacitated shall promptly do all things within his power
44 to put each item of the custodial property in the posses-
45 sion and control of the successor custodian named in an
46 instrument of designation executed as provided in sub-
47 section (a) by the custodian or, if none, by the minor
48 if he has no guardian and has attained the age of four-
49 teen years, or in the possession and control of the guardian
50 of the minor if he has a guardian. If the custodian has
51 executed as provided in subsection (a) more than one
52 instrument of designation, his legal representative shall
53 treat the instrument dated on an earlier date as having
54 been revoked by the instrument dated on a later date.

55 (d) If a person designated as custodian or as successor
56 custodian by the custodian as provided in subsection (a)
57 is not eligible, dies or becomes legally incapacitated before
58 the minor attains the age of eighteen years and if the
59 minor has a guardian, the guardian of the minor shall
60 be successor custodian. If the minor has no guardian and
61 if no successor custodian who is eligible and has not died
62 or become legally incapacitated has been designated as
63 provided in subsection (a), a donor, his legal representa-
64 tive, the legal representative of the custodian or an adult
65 member of the minor's family may petition the court for
66 the designation of a successor custodian.

67 (e) A donor, the legal representative of a donor, a suc-
68 cessor custodian, an adult member of the minor's family,
69 a guardian of the minor or the minor, if he has attained
70 the age of fourteen years, may petition the court that, for

71 cause shown in the petition, the custodian be removed and
 72 a successor custodian be designated or, in the alternative,
 73 that the custodian be required to give bond for the per-
 74 formance of his duties.

75 (f) Upon the filing of a petition as provided in this sec-
 76 tion, the court shall grant an order, directed to the persons
 77 and returnable on such notice as the court may require, to
 78 show cause why the relief prayed for in the petition
 79 should not be granted and, in due course, grant such relief
 80 as the court finds to be in the best interests of the minor.

CHAPTER 41. WILLS.

Article

4. Provisions as to Pretermitted Children.

5. Production, Probate and Record of Wills.

ARTICLE 4. PROVISIONS AS TO PRETERMITTED CHILDREN.

§41-4-1. Where no child living when will made.

§41-4-2. Where child living when will made.

§41-4-1. Where no child living when will made.

1 If any person die leaving a child, or his wife with child,
 2 which shall be born alive, and leaving a will made when
 3 such person had no child living, wherein any child he
 4 might have is not provided for or mentioned, such child,
 5 or any descendant of his, shall succeed to such portion of
 6 the testator's estate as he would have been entitled to if
 7 the testator had died intestate; and towards raising such
 8 portion the devisees and legatees shall, out of what is de-
 9 vised and bequeathed to them, contribute ratably, either
 10 in kind or in money, as a court, in the particular case, may
 11 deem most proper. But if any such child, or descendant,
 12 die under the age of eighteen years, unmarried and with-
 13 out issue, his portion of the estate, or so much thereof
 14 as may remain unexpended in his support and education,
 15 shall revert to the person or persons to whom it was given
 16 by the will.

§41-4-2. Where child living when will made.

1 If a will be made when a testator has a child living,
 2 and a child be born afterwards, such after-born child or
 3 any descendant of his, if not provided for by any settle-
 4 ment, and neither provided for nor expressly excluded by

5 the will, but only pretermitted, shall succeed to such por-
6 tion of the testator's estate as he would have been entitled
7 to if the testator had died intestate, toward raising which
8 portion the devisees and legatees shall, out of what is de-
9 vised and bequeathed to them, contribute ratably, either
10 in kind or in money, as a court in the particular case,
11 may deem most proper. But if any such after-born
12 child or descendant die under the age of eighteen years,
13 unmarried and without issue, his portion of the estate, or
14 so much thereof as may remain unexpended in his sup-
15 port and education, shall revert to the person or persons
16 to whom it was given by the will.

ARTICLE 5. PRODUCTION, PROBATE AND RECORD OF WILLS.

§41-5-12. Impeachment or establishment in court—By person under disability or nonresident.

1 Notwithstanding the two preceding sections, any per-
2 son interested who, at the time of the judgment or order
3 is under the age of eighteen years, or is a convict or an
4 insane person, may file a complaint to impeach or es-
5 tablish the will, within one year after he becomes of age,
6 or other disability ceases; and any person interested who,
7 at that time, resided out of the state, or was proceeded
8 against by publication, may, unless he actually appeared as
9 a party or was personally summoned, file such complaint
10 within two years after the entry of such judgment or
11 order.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 10. GUARDIANS AND WARDS GENERALLY.

§44-10-7. Management of ward's estate; maintenance, educa- tion and custody; duration of guardianship; settle- ment.

1 Every guardian who is appointed as aforesaid, and gives
2 bond when it is required, shall have the possession, care
3 and management of his ward's estate, real and personal,
4 and out of the proceeds of such estate shall provide for
5 his maintenance and education; and shall have also, ex-
6 cept as otherwise provided in this article, the custody of

7 his ward. Unless the guardian shall die, be removed or
8 resign his trust (and the court before which he qualified
9 may allow him to resign), he shall continue in office until
10 his ward shall attain the age of eighteen years notwith-
11 standing the ward may marry before that time, or, in the
12 case of a testamentary guardianship, until the termina-
13 tion of the period limited therefor. At the expiration of
14 his trust, he shall deliver and pay all the estate and money
15 in his hands, or with which he is chargeable, to the person
16 or persons entitled thereto. But the father or mother of
17 any minor child or children shall be entitled to the cus-
18 tody of the person of such child or children, and to the
19 care of his or their education. If living together, the father
20 and mother shall be the joint guardians of the person of
21 their minor child or children, with equal powers, rights
22 and duties in respect to the custody, control, services,
23 earnings, and care of the education of such minor child or
24 children; and neither the father nor the mother shall have
25 any right paramount to that of the other in respect to such
26 custody, control, services or earnings, and care of the edu-
27 cation of such minor child or children. If the father and
28 mother be living apart, the court to which application is
29 made for the appointment of a guardian, or before which
30 any such matter comes in question, shall appoint, as guar-
31 dian of the person of the minor child or children of such
32 father and mother, that parent who is, in the court's opin-
33 ion, best suited for the trust, considering the welfare and
34 best interests of such minor child or children. No corpora-
35 tion or trust company shall as guardian of any minor
36 child or children be entitled to the custody, control, ser-
37 vices, earnings and care of the education of such minor
38 child or children, and when any corporation or trust com-
39 pany is guardian of the estate of any minor child or chil-
40 dren and neither of the parents of such child or children
41 is living, or is a suitable person to act as guardian of the
42 person of such child or children, then the court shall ap-
43 point a guardian of the person of such child or children
44 who shall be entitled to the custody, control, services,
45 earnings and care of the education of such minor child
46 or children. Any corporation or trust company appointed
47 as guardian of the estate of any minor child or children
48 shall, unless for such minor child or children a nonresi-

49 dent of this state may be appointed guardian, be a cor-
50 poration organized under the laws of this state and doing
51 business in this state.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 12. REAL ESTATE COMMISSION, BROKERS AND SALESMEN.

§47-12-4. Qualifications for licenses.

1 Licenses shall be granted only to persons who are
2 trustworthy, of good character and competent to transact
3 the business of a real estate broker or real estate sales-
4 man in such manner as to safeguard the interests of the
5 public. Every applicant for a license as a real estate bro-
6 ker shall be of the age of eighteen years or over, a citizen
7 of the United States and shall have served a bona fide
8 apprenticeship as a licensed real estate salesman for two
9 years or shall produce to the real estate commission sat-
10 isfactory evidence of real estate experience. No broker's
11 license shall be issued to a partnership, association or cor-
12 poration unless each member or officer thereof who will
13 actively engage in the real estate business be licensed as
14 a real estate salesman when and after said broker shall
15 have been granted a broker's license.

CHAPTER 48. DOMESTIC RELATIONS.

Article

1. Marriage.
4. Adoption.

ARTICLE 1. MARRIAGE.

§48-1-8. Consent of parents, parent or guardian.

§48-1-12. Persons authorized to celebrate marriages.

§48-1-12a. Qualifications of minister, priest or rabbi for celebrating marriages.

§48-1-8. Consent of parents, parent or guardian.

1 If any person intending to marry be under eighteen
2 years of age, and has not been previously married, the
3 consent of the parents of such person, or of the parent
4 living, or, if the parents be living separate and apart, of
5 the one to whom was awarded the custody of such
6 person, or, if there be a guardian entitled to the custody
7 of such person, then of such guardian, shall be given

8 either personally to the clerk of the county court or in
9 writing subscribed by such parents, parent or guardian,
10 as the case may be, and duly acknowledged before an
11 officer authorized to take the acknowledgment of deeds.

§48-1-12. Persons authorized to celebrate marriages.

1 Any minister, priest or rabbi, over the age of eighteen
2 years, who has complied with the provisions of section
3 twelve-a of this article, or a judge of any court of record
4 in this state, is authorized to celebrate the rites of mar-
5 riage in all the counties of the state. No person, other
6 than a minister, priest or rabbi, who has complied with
7 the provisions of section twelve-a of this article, or a
8 judge of any court of record in this state, shall hereafter
9 celebrate the rites of marriage in this state, anything in
10 any act of the Legislature or of any court to the contrary,
11 notwithstanding.

12 Wherever in this article the terms "minister," "priest"
13 or "rabbi" shall appear, the same shall be understood and
14 held in all respects to include, without being limited to,
15 a leader or representative of a generally recognized spiri-
16 tual assembly, church or religious organization which does
17 not formally designate or recognize persons as ministers,
18 priests or rabbis.

**§48-1-12a. Qualifications of minister, priest or rabbi for cele-
brating marriages.**

1 When any minister, priest or rabbi shall, before the
2 county court of any county in this state, or the clerk of
3 any such court in vacation, produce proof that he is over
4 the age of eighteen, duly licensed by, and being in reg-
5 ular communion with, the religious society of which he
6 is a member, and give bond in the penalty of fifteen hun-
7 dred dollars, with surety approved by such court or clerk
8 thereof in vacation, such court or clerk may make an
9 order authorizing him to celebrate the rites of marriage
10 in all the counties of the state: *Provided*, That any min-
11 ister, priest or rabbi who gives proof before the county
12 court of any county in this state, or the clerk of any such
13 court in vacation, of his ordination or authorization by
14 his respective church, denomination, synagogue or relig-

15 ious society, shall be exempted from the giving of such
16 bond.

ARTICLE 4. ADOPTION.

§48-4-7. Adoption of adults.

1 Any adult person who is a resident of West Virginia
2 may petition the circuit court or any other court of
3 record having jurisdiction of adoption proceedings for
4 permission to adopt one who has reached the age of
5 eighteen years or over, and, if desired, to change the
6 name of such person. The consent of the person to be
7 adopted shall be the only consent necessary. The order
8 of adoption shall create the same relationship between
9 the adopting parent or parents and the person adopted
10 and the same rights of inheritance as in the case of an
11 adopted minor child. If a change in name is desired, the
12 adoption order shall so state.

CHAPTER 49. CHILD WELFARE.

Article

2. State Responsibilities for the Protection and Care of Children.
3. Child Welfare Agencies.
5. Juvenile Courts.

ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION AND CARE OF CHILDREN.

§49-2-2. Duration of custody or guardianship of children committed to state department.

1 A child committed to the state department for guardian-
2 ship, after termination of parental rights, shall remain
3 in the care of the department until he attains the age of
4 eighteen years, or is married, or is adopted, or guardian-
5 ship is relinquished through the court.

6 A child committed to the state department for custody
7 shall remain in the care of the department until he attains
8 the age of eighteen years, or until he is discharged be-
9 cause he is no longer in need of care.

ARTICLE 3. CHILD WELFARE AGENCIES.

§49-3-1. Private and public child welfare agencies.

1 Whenever a child welfare agency licensed to place
2 children for adoption or the state department of wel-

3 fare shall have been given the permanent care, custody
4 and guardianship of any child and the rights of the
5 parents of such child shall have been terminated by
6 order of a court of competent jurisdiction or by a legally
7 executed relinquishment of parental rights, the child
8 welfare agency or department of welfare may consent
9 to the adoption of such child pursuant to the statutes
10 regulating adoption proceedings. The parents or the sur-
11 viving parent of a child or the mother of an illegitimate
12 child may relinquish the child to a child welfare agency
13 licensed to place children for adoption, or to the de-
14 partment of welfare, by a written statement acknowl-
15 edged as deeds are required to be acknowledged by law:
16 *Provided*, That if either of the parents of such child is
17 under eighteen years of age, such relinquishment shall
18 not be valid unless and until the same shall have been
19 approved in writing by a judge of a court having juris-
20 diction of adoption proceedings in the county in which
21 such parent may reside or in which such relinquishment
22 is made. Notwithstanding any other provision in this
23 article, no minor parent or parents shall be required to
24 go before any court in order to execute a consent to the
25 adoption of his, her, or their child by an individual or
26 individuals.

ARTICLE 5. JUVENILE COURTS.

§49-5-2. "Child" defined; continuing jurisdiction of court.

1 "Child" means a person under the age of eighteen years.
2 When jurisdiction shall have been obtained by any court
3 of competent jurisdiction in the case of any child, such
4 child shall continue under the jurisdiction of the court
5 until he becomes eighteen years of age unless discharged
6 prior thereto or is committed to a correctional or other
7 institution. A person subject to the jurisdiction of the
8 juvenile court may be brought before it by either of the
9 following means and no other:

10 (a) By petition praying that the person be adjudged
11 neglected or delinquent;

12 (b) Certification from any other court before which
13 such person is brought, charged with the commission of
14 a crime.

CHAPTER 50. JUSTICES AND CONSTABLES.**ARTICLE 4. PLEADING AND PRACTICE.**

§50-4-20. Appearing and conducting action or defense.

§50-4-23. Appointment of guardian for infant parties.

§50-4-20. Appearing and conducting action or defense.

1 Any party to a civil action, and the defendant in a
2 criminal prosecution, before a justice, unless he be under
3 the age of eighteen years, may appear and conduct his
4 action or defense in person, or by agent or attorney.

§50-4-23. Appointment of guardian for infant parties.

1 Where a party to the action is under the age of
2 eighteen years, a guardian for the suit must be appointed
3 for him by the justice as follows:

4 (a) If the infant be plaintiff, the appointment must
5 be made before the summons is issued, on the applica-
6 tion of the infant, if he be of the age of fourteen years
7 or upwards; if under that age, on the application of
8 some friend. The consent in writing of the guardian to
9 the appointment, and his agreement to be responsible
10 for costs if he fail in the action, must be filed with the
11 justice;

12 (b) If the infant be defendant, the guardian must be
13 appointed and consent to act as such before the trial.
14 It is the right of the infant defendant to nominate his
15 own guardian, if the infant be fourteen years of age or
16 over, and the proposed guardian be present and consent
17 to serve, otherwise the justice shall appoint some suitable
18 person who gives such consent. The guardian for the
19 defendant shall not be liable for any costs in the action.

CHAPTER 52. JURIES.**ARTICLE 1. PETIT JURIES.****§52-1-1. Persons liable to service.**

1 All persons, who are eighteen years of age and not over
2 sixty-five, and who are citizens of this state, shall be
3 liable to serve as jurors, except as hereinafter provided.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALES.

ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.

§55-2-7. Actions on bonds of personal representatives and fiduciaries.

1 The right of action upon the bond of an executor, ad-
2 ministrator, guardian, curator or committee, or of a
3 sheriff acting as such, shall be deemed to have first
4 accrued as follows: Upon a bond of a guardian or curator
5 of a ward, from the time of the ward's attaining the age
6 of eighteen years, or from the termination of the guardi-
7 an's or curator's office, whichever shall happen first; and
8 upon the bond of any personal representative of a de-
9 cedent or committee of an insane person, the right of
10 action of a person obtaining execution against such rep-
11 resentative or committee, or to whom payment or de-
12 livery of estate in the hands of such representative or
13 committee shall be ordered by a court acting upon his
14 account, shall be deemed to have first accrued from the
15 return day of such execution, or from the time of the
16 right to require payment or delivery upon such order,
17 whichever shall happen first. And as to any suit against
18 such fiduciary himself, or his representative, which could
19 have been maintained if he had given no bond, there
20 shall be no other limitation than would exist if the pre-
21 ceding section were not passed. Where any such fidu-
22 ciary, or any other fiduciary, has settled an account
23 under the provisions of article four, chapter forty-four
24 of this code, a suit to hold such fiduciary or his sureties
25 liable for any balance stated in such account to be in his
26 hands shall be brought within ten years after the account
27 has been confirmed. The right to recover money paid
28 under fraud or mistake shall be deemed to accrue, both
29 at law and in equity, at the time such fraud or mistake
30 is discovered, or by the exercise of due diligence ought
31 to have been discovered.

CHAPTER 58. APPEAL AND ERROR.

Article

1. Errors Not Reversible.
2. Review in Lower Court.

ARTICLE 1. ERRORS NOT REVERSIBLE.**§58-1-2. Harmless error.**

1 No judgment or decree shall be arrested or reversed
2 for the appearance of either party, being under the age
3 of eighteen years, by attorney, if the verdict (where
4 there is one), or the judgment or decree, be for him and
5 not to his prejudice; or because it does not appear that
6 an issue has been made up on matter alleged in any plead-
7 ing when, without objection by any party, the case has
8 been tried in the absence of such issue and it is apparent
9 from the record and the evidence (a) that the trial was
10 conducted as if an issue had been made upon such matter,
11 or (b) that no evidence pertaining to such matter was
12 offered and it is reasonably apparent that the parties have
13 treated such matter as waived or abandoned; or for any
14 informality in the entry of the judgment or decree by
15 the clerk; or for the omission of the name of any juror;
16 or because it may not appear that the verdict was ren-
17 dered by the number of jurors required by law; or for any
18 defect, imperfection, or omission in the pleadings, which
19 could not be properly regarded on any motion under
20 rule twelve of the West Virginia rules of civil procedure
21 for trial courts of record, or on a demurrer in any case
22 in which a demurrer is appropriate.

ARTICLE 2. REVIEW IN LOWER COURT.**§58-2-1. Reservation to infants of right to show cause against decree or order.**

1 It shall not be necessary to insert in any decree or
2 order a provision allowing an infant to show cause
3 against it within a certain time after he attains the age
4 of eighteen years. But in any case in which, but for this
5 section, such provision would have been proper, the in-
6 fant may, within eight months after attaining the age of
7 eighteen years, show such cause in like manner as if the
8 decree or order contained such provision. This right of
9 an infant shall not be affected by section seven, article
10 twelve, chapter fifty-five of this code.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

Article

3. Sales by Commissioner.

7. Licenses to Private Clubs.

ARTICLE 3. SALES BY COMMISSIONER.

§60-3-22. Sales to certain persons prohibited.

- 1 Alcoholic liquors shall not be sold to a person who is:
- 2 (1) Less than eighteen years of age;
 - 3 (2) An habitual drunkard;
 - 4 (3) Intoxicated;
 - 5 (4) Addicted to the use of narcotic drugs;
 - 6 (5) Mentally incompetent.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-12. Certain acts of licensee prohibited; penalties.

- 1 (a) It shall be unlawful for any licensee, or agent,
2 employee or member thereof, on such licensee's premises
3 to:
- 4 (1) Sell or offer for sale any alcoholic liquors other
5 than from the original package or container;
 - 6 (2) Authorize or permit any disturbance of the peace;
7 obscene, lewd, immoral or improper entertainment, con-
8 duct or practice; gambling or any slot machine, multiple
9 coin console machine, multiple coin console slot machine
10 or device in the nature of a slot machine;
 - 11 (3) Sell, give away, or permit the sale of, gift to, or
12 the procurement of any alcoholic liquors, for any minor,
13 mental incompetent, or person who is physically inca-
14 pacitated due to the consumption of alcoholic liquor, or
15 the use of drugs;
 - 16 (4) Sell, give or dispense alcoholic liquors in or on
17 any licensed premises or in any rooms directly con-
18 nected therewith, between the hours of three o'clock a.m.
19 and one o'clock p.m. on any Sunday;
 - 20 (5) Permit the consumption by, or serve to, on the
21 licensed premises any alcoholic liquors, covered by this
22 article, to any person under the age of eighteen years;

23 (6) With the intent to defraud, alter, change or mis-
24 represent the quality, quantity or brand name of any
25 alcoholic liquor;

26 (7) Sell or offer for sale any alcoholic liquor to any
27 person who is not a duly elected or approved dues pay-
28 ing member in good standing of said private club or a
29 guest of such member; or

30 (8) Violate any reasonable rule or regulation of the
31 commissioner.

32 (b) It shall further be unlawful for any licensee to
33 advertise in any news media or other means, outside of
34 the licensee's premises, the fact that alcoholic liquors
35 may be purchased thereat.

36 (c) Any person who violates any of the foregoing
37 provisions shall be guilty of a misdemeanor, and, upon
38 conviction thereof, shall be punished by a fine of not less
39 than one hundred dollars nor more than five hundred
40 dollars, or by imprisonment in the county jail for a
41 period not to exceed one year, or by both fine and im-
42 prisonment.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-2. License to carry weapons; how obtained.

1 Any person desiring to obtain a state license to carry
2 any such weapon as is mentioned in the first section of
3 this article, within one or more counties in this state, shall
4 first publish a notice setting forth his name, residence
5 and occupation, and that on a certain day he will apply
6 to the circuit court of his county for such state license.
7 Such notice shall be published as a Class I legal adver-
8 tisement in compliance with the provisions of article three,
9 chapter fifty-nine of this code, and the publication area
10 for such publication shall be the county in which such
11 person resides. Such notice shall be published at least
12 ten days before such application is made. After the pub-
13 lication of such notice and at the time stated in such
14 notice, upon application to such court, it may grant such

15 license to such person, in the following manner, to
16 wit:

17 The applicant shall file with such court his application
18 in writing, duly verified, which application shall show:

19 (a) That such applicant is a citizen of the United
20 States of America;

21 (b) That the applicant has been a bona fide resident of
22 this state for at least one year next prior to the date of
23 such application, and of the county sixty days next prior
24 thereto;

25 (c) That the applicant is over eighteen years of age;
26 that he is a person of good moral character, of temperate
27 habits, not addicted to intoxication, and has not been con-
28 victed of a felony or of any offense involving the use on
29 his part of such weapon in an unlawful manner, and shall
30 prove to the satisfaction of the court that he is gainfully
31 employed in a lawful occupation and has been so engaged
32 for a period of five years next preceding the date of his
33 application;

34 (d) The purpose or purposes for which the applicant
35 desires to carry such weapon, the necessity therefor, and
36 the county or counties in which such license is desired to
37 be effective.

38 Upon the hearing of such application the court shall
39 hear evidence upon all matters stated in such application
40 and upon any other matter deemed pertinent by the court,
41 and if such court be satisfied from the proof that there
42 is good reason and cause for such person to carry such
43 weapon, and all of the other conditions of this article be
44 complied with, the court, or the judge thereof in vacation,
45 may grant such license for such purposes, and no other,
46 as such court, or the judge in vacation, may set out in the
47 license (and the word "court" as used in this article shall
48 include the circuit judge thereof, acting either in term or
49 vacation); but, before such license shall be effective such
50 person shall pay to the sheriff, and the court shall so cer-
51 tify in its order granting the license, the sum of twenty
52 dollars, and shall also file a bond with the clerk of such
53 court, in the penalty of three thousand five hundred dol-

54 lars, with good security, signed by a responsible person
55 or persons, or by some surety company, authorized to do
56 business in this state, conditioned that such applicant will
57 not carry such weapon except in accordance with his ap-
58 plication and as authorized by the court, and that he will
59 pay all costs and damages accruing to any person by the
60 accidental discharge or improper, negligent or illegal use
61 of such weapon or weapons. Any such license granted
62 shall be good for one year, unless sooner revoked, as here-
63 inafter provided, and be coextensive with the county in
64 which granted, and such other county or counties as the
65 court shall designate in the order granting such license;
66 except that upon a proper showing the court granting
67 such license to any person regularly employed as a se-
68 curity guard may, in its discretion, in the order granting
69 such license extend the period of the validity of such
70 license for a period not to exceed four years, under such
71 terms and conditions as the court deems proper; except
72 that regularly appointed deputy sheriffs having license
73 shall be permitted to carry such revolver or other weapons
74 at any place, within the state, while in the performance
75 of their duties as such deputy sheriffs; and except that
76 any such license granted to regularly appointed railway
77 police shall be coextensive with the state. All license fees
78 collected hereunder shall be paid by the sheriff and ac-
79 counted for to the auditor as other license taxes are col-
80 lected and paid, and the state tax commissioner shall pre-
81 pare all suitable forms for licenses, bonds and certificates
82 showing that such license has been granted and shall do
83 anything else in the premises to protect the state and see
84 to the enforcement of this section.

85 The clerk of the circuit court shall, immediately after
86 license is granted as aforesaid, furnish the superintendent
87 of the department of public safety a certified copy of the
88 order of the court granting such license, for which service
89 the clerk shall be paid a fee of two dollars which shall be
90 taxed as cost in the proceeding. It shall be the duty of
91 the clerk of each circuit court to furnish to the superin-
92 tendent of the department of public safety, at any time so
93 required, a certified list of all such licenses issued in his
94 county.

CHAPTER 62

(House Bill No. 743—By Miss Crandall and Mr. Donley)

[Passed March 3, 1972; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to legal holidays and school holidays; changing the date of Veterans Day; and relating to the circumstances when the next secular day following a legal holiday is meant and intended.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. LEGAL HOLIDAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.

§2-2-1. Legal holidays; official acts or court proceedings.

1 The following days shall be regarded, treated and ob-
2 served as legal holidays, viz: The first day of January,
3 commonly called "New Year's Day"; the twelfth day of
4 February, commonly called "Lincoln's Birthday"; the
5 third Monday of February, commonly called "Washing-
6 ton's Birthday"; the last Monday of May, commonly
7 called "Memorial Day"; the twentieth day of June, com-
8 monly called "West Virginia Day"; the fourth day of July,
9 commonly called "Independence Day"; the first Monday
10 of September, commonly called "Labor Day"; the second
11 Monday of October, commonly called "Columbus Day";
12 the eleventh day of November, hereinafter referred
13 to as "Veterans Day"; the fourth Thursday of No-
14 vember, commonly called "Thanksgiving Day"; the
15 twenty-fifth day of December, commonly called "Christ-
16 mas Day"; any national, state or other election day
17 throughout the district or municipality wherein held;

18 and all days that may be appointed or recommended by
19 the governor of this state, or the president of the United
20 States, as days of thanksgiving, or for the general cessa-
21 tion of business; and when any of said days or dates falls
22 on Sunday, then it shall be lawful to observe the succeed-
23 ing Monday as such holiday. When the return day of any
24 summons or other court proceedings or any notice or
25 time fixed for holding any court or doing any official act
26 shall fall on any of said holidays, the ensuing secular
27 day shall be taken as meant and intended: *Provided*,
28 That nothing herein contained shall increase nor diminish
29 the legal school holidays provided for in section two,
30 article five, chapter eighteen-a.

CHAPTER 63

(House Bill No. 629—By Mr. Speaker, Mr. McManus,
and Mr. Albright)

[Passed February 8, 1972; In effect July 1, 1972. Approved by the Governor.]

AN ACT to amend chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six, relating to the formation of a commission to study and implement the development of Blennerhassett Island as an historical, cultural and recreational facility.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. BLENNERHASSETT HISTORICAL COMMISSION.

§4-6-1. Statement of legislative intent and purpose.

§4-6-2. Creation of commission; composition; appointment and terms of members.

§4-6-3. Powers and duties generally.

§4-6-4. Executive sessions; hearings; sessions away from capitol.

§4-6-5. Compensation and expenses of members; other expenses; how paid; joint committee approval.

§4-6-6. Duration of commission.

§4-6-1. Statement of legislative intent and purpose.

1 The Legislature, mindful of the historical significance
2 of the events known and believed to have occurred on
3 scenic Blennerhassett Island, situate in the Ohio river
4 near the city of Parkersburg, prior to, during and after
5 its ownership by Harmon Blennerhassett, and mindful
6 of the benefits likely to flow from a well-planned and
7 executed program for development of educational, cul-
8 tural and recreational attractions related to the famous
9 Blennerhassett events, does by the enactment of this
10 article seek to determine what, if any, assistance the
11 state of West Virginia should provide in the planning
12 and execution of such a program for development, what
13 other resources are available, and if the combined effect
14 thereof can produce a result commensurate with the
15 investment of such public and private resources as may
16 be available.

§4-6-2. Creation of commission; composition; appointment and terms of members.

1 There is hereby created as a statutory body a joint
2 committee of the Legislature to be known as "Blenner-
3 hassett Historical Commission." The commission shall be
4 composed of three members of the Senate, to be appointed
5 by the president thereof, no more than two of whom shall
6 be appointed from the same political party, and three
7 members of the House of Delegates, to be appointed
8 by the speaker thereof, no more than two of whom
9 shall be appointed from the same political party. The
10 commission shall be headed by two cochairmen, one
11 to be selected by and from the members appointed from
12 the Senate, and one to be selected by and from the
13 members appointed from the House of Delegates. All
14 members of the commission shall serve until their suc-
15 cessors shall have been appointed as heretofore provided,
16 except that no member's appointment shall extend be-
17 yond the time during which such member continues
18 as a member of the Legislature.

§4-6-3. Powers and duties generally.

1 During any session of the Legislature and in the in-
2 terim between sessions, the commission shall have the
3 power, duty and responsibility to:

4 (1) Conduct a comprehensive investigation to deter-
5 mine what, if any, educational, cultural and recreational
6 attractions should be developed in the state of West
7 Virginia concerning the historical events that have oc-
8 curred on Blennerhassett Island, the economic feasibility
9 of such attractions, needed capital investment, avail-
10 able or contemplated resources therefor, likely loca-
11 tions and accessibility thereto and such other related
12 matters as the commission deems pertinent.

13 (2) Make such written reports to the members of
14 the Legislature between sessions thereof as the com-
15 mission may deem advisable and on the first day of each
16 regular session of the Legislature make an annual report
17 to the Legislature containing the commission's findings
18 and recommendations. Included in such report should
19 be drafts of any proposed legislation which the com-
20 mission deems necessary to carry its recommendations
21 into effect.

22 The commission is also expressly empowered and au-
23 thorized to:

24 (1) Sit during any recess of the Senate and House
25 of Delegates;

26 (2) Employ such legal, technical, investigative, cler-
27 ical, stenographic, advisory and other personnel as it
28 deems needed and, within limits of available funds,
29 fix reasonable compensation of such persons and firms as
30 may be employed;

31 (3) Consult and confer with all persons and agencies
32 public (whether federal, state or local) and private, that
33 may have information and data pertinent to the duties
34 and responsibilities of the commission; and all state and
35 local governmental personnel and agencies shall coop-
36 erate to the fullest extent with the commission;

37 (4) Call upon any department or agency of state
38 or local government for such services, information and
39 assistance as it may deem advisable.

§4-6-4. Executive sessions; hearings; sessions away from capitol.

1 The commission shall have the power and authority
2 to hold executive sessions for the purpose of establishing
3 business, policy and an agenda.

4 The commission is hereby empowered and authorized
5 to hold such hearings as may be necessary in order for
6 it to effectuate its purposes, and all such hearings shall
7 be open to the public.

8 The commission shall ordinarily meet at the capitol but
9 shall have the power and authority upon the concurrence
10 of two thirds of its total membership to meet anywhere
11 in the state of West Virginia.

§4-6-5. Compensation and expenses of members; other expenses; how paid; joint committee approval.

1 The members of the commission shall receive no com-
2 pensation for their services except that provided for mem-
3 bers thereof who are members of the joint committee
4 on government and finance. The members of the com-
5 mission shall receive travel, interim and out-of-state
6 expenses, as authorized in sections six, eight and nine,
7 article two-a, chapter four of this code. Such expenses
8 and all other expenses including those incurred in the
9 employment of legal, technical, investigative, clerical,
10 stenographic, advisory and other personnel shall be paid
11 from an appropriation to be made expressly for the
12 Blennerhassett historical commission, but if no such ap-
13 propriation be made in any fiscal year such expenses
14 shall be paid from the appropriation under "Account No.
15 103 for Joint Expenses," but no expense of any kind
16 whatever payable under said "Account No. 103 for Joint
17 Expenses" shall be incurred unless the approval of the
18 joint committee on government and finance therefor
19 is first had and obtained by the commission.

§4-6-6. Duration of commission.

1 Unless sooner terminated by law and until and unless
2 extended, the Blennerhassett historical commission shall
3 cease to exist at the adjournment sine die of both houses
4 of the Legislature at the conclusion of its regular session
5 in the year one thousand nine hundred seventy-four.

CHAPTER 64

(Senate Bill No. 379—By Mr. Deem and Mr. Hylton)

[Passed March 8, 1972; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article seven, relating to creating a legislative building commission; its composition; appointment of commission members; filling of vacancies on commission; election of commission officers; compensation and expenses of commission members; powers and duties of commission generally; specifically authorizing commission to acquire land, construct, equip and furnish a state legislative building; commission granted power of eminent domain; funds and expenditures of commission; state building commission of West Virginia issuing revenue bonds to construct state legislative building; deposit and disbursement of funds of commission; security for deposits; audits; contracts with commission to be secured by bond; competitive bids required for contracts exceeding two thousand dollars; management and control of state legislative building; article not authority to create state debt; compliance with article and state constitution only restrictions on construction and management of state legislative building; and severability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. LEGISLATIVE BUILDING COMMISSION.

§4-7-1. Definitions.

§4-7-2. Legislative building commission created; its composition; appointment of members; vacancies; election of officers; compensation and expenses of members.

§4-7-3. Powers and duties of commission generally.

§4-7-4. Commission granted power of eminent domain.

- §4-7-5. Funds and expenditures of commission.
- §4-7-6. Deposit and disbursement of funds of commission; security for deposits; audits.
- §4-7-7. Contracts for construction of state legislative building, etc., to be secured by bond; competitive bids required for contracts exceeding two thousand dollars; procedure.
- §4-7-8. Management and control of state legislative building.
- §4-7-9. Article not authority to create state debt.
- §4-7-10. This article, article six, chapter five, and the state constitution are only restrictions on construction, etc., of building.
- §4-7-11. Severability.

§4-7-1. Definitions.

- 1 The following terms, wherever used or referred to in
 2 this article, shall have the following meanings, unless
 3 a different meaning clearly appears from the context:
- 4 (1) "Commission" means the legislative building com-
 5 mission of West Virginia or if said commission shall be
 6 abolished, any board or officer succeeding to the principal
 7 functions thereof, or to whom the powers given to said
 8 commission shall be given by law.
- 9 (2) "Bonds" means bonds issued by the state building
 10 commission of West Virginia pursuant to this article.
- 11 (3) "Project" means collectively the acquisition of
 12 land, the construction, equipping and furnishing of a state
 13 legislative building together with incidental approaches,
 14 structures and facilities to, adjacent or around it.
- 15 (4) "Cost of project" includes the cost of construction,
 16 the cost of equipping and furnishing same, the cost of all
 17 land, property, material and labor which are deemed
 18 essential thereto, the cost of improvements, financing
 19 charges, interest during construction, and all other ex-
 20 penses, including legal fees, trustees', engineers' and archi-
 21 tects' fees which are necessarily or properly incidental
 22 to the project.

§4-7-2. Legislative building commission created; its composition; appointment of members; vacancies; election of officers; compensation and expenses of members.

- 1 There is hereby created the legislative building commis-
 2 sion of West Virginia as a body corporate and agency of
 3 the state of West Virginia. The commission shall consist
 4 of seven members and shall be comprised of two persons

5 who have previously served in the Senate, who shall be
6 appointed by the president of the Senate; two persons who
7 have previously served in the House of Delegates, who
8 shall be appointed by the speaker of the House of Dele-
9 gates; and three persons who shall be appointed by the
10 governor. No member of the commission shall otherwise
11 be an officer, employee or member of the executive,
12 legislative or judicial branches of federal or state govern-
13 ment or any political subdivision thereof. Persons ap-
14 pointed to the commission shall be residents and citizens
15 of the state. All appointments made pursuant to the
16 provisions of this article shall be by and with the advice
17 and consent of the Senate.

18 All commission members shall be appointed no later
19 than the first day of July, one thousand nine hundred
20 seventy-two, and they shall continue to serve until the
21 completion of the duties assigned to the commission.

22 Any vacancy occurring in the membership of the com-
23 mission shall be filled by appointment in the same manner
24 as provided for the initial appointments.

25 The members of the commission annually shall elect
26 from their number a chairman, vice chairman and secre-
27 tary. Each commission member shall be paid compen-
28 sation of thirty-five dollars for each day or substantial
29 part thereof that he is engaged in the work of the com-
30 mission and shall, in addition thereto, be reimbursed for
31 all reasonable and necessary expenses actually incurred
32 in the performance of his duties as such commission
33 member.

§4-7-3. Powers and duties of commission generally.

1 The commission shall have the following powers and
2 duties:

3 (1) To sue and be sued, plead and be impleaded.

4 (2) To have a seal.

5 (3) To contract to acquire and to acquire, in the name
6 of the commission or of the state, by purchase, eminent
7 domain, or otherwise, a suitable site in the city of Charles-
8 ton, state of West Virginia, for a state legislative building,

9 related facilities and grounds, including real property,
10 rights and easements necessary for this purpose, or to use
11 any suitable site which may be owned by the state and
12 available and designated for this purpose and to construct
13 a state legislative building on such site and equip and
14 furnish said building.

15 (4) To contract to acquire and to acquire and hold, in
16 the name of the commission or of the state, services, ma-
17 terials, furnishings, and equipment required in connection
18 with the location, design, construction, furnishing and
19 equipping of the state legislative building.

20 (5) To make bylaws for the management and regula-
21 tion of its affairs.

22 (6) With the consent of the attorney general of the
23 state, to use the facilities of his office, assistants and em-
24 ployees in all legal matters relating to or pertaining to
25 the commission; or use legal services made available by
26 the Legislature and its staff; or if necessary employ at-
27 torneys-at-law.

28 (7) To employ architects to prepare plans for the state
29 legislative building, to assist and advise the architects in
30 the preparation of those plans and to approve on behalf
31 of the state all plans for the state legislative building.

32 (8) To make all contracts and execute all instruments
33 necessary or convenient to effectuate the intent of, and
34 to exercise the powers granted to it by the provisions of
35 this article.

36 (9) To accept and expend any gift, grant or contribu-
37 tion of money or any other thing to, or for the benefit of
38 the commission, from the state or any other source for
39 the purposes specified in this article.

40 (10) To supervise generally the location, construction,
41 furnishing and equipping of the state legislative building.

42 (11) To report to the Legislature at each regular ses-
43 sion thereof and at the same time report to the governor
44 concerning the action taken by the commission during the
45 previous year in carrying out the provisions of this article
46 and make such special reports as may be required by the
47 Legislature and governor.

§4-7-4. Commission granted power of eminent domain.

1 Whenever the commission finds it necessary to acquire
2 land, rights-of-way or easements in order to carry out the
3 purposes of this article, and the commission is unable to
4 purchase the same from the owners at an agreed price, or
5 is unable to obtain a good and sufficient title therefor by
6 purchase from the owners, then the commission may
7 exercise the right of eminent domain and acquire any
8 such lands, rights-of-way or easements necessary for the
9 aforesaid purpose by condemnation in the manner pre-
10 scribed in chapter fifty-four of this code.

§4-7-5. Funds and expenditures of commission.

1 To pay the compensation and expenses incurred by
2 its members, to build, furnish and equip the state legisla-
3 tive building, and to carry out the provisions of this
4 article, the commission may expend any general or special
5 revenues, profits, fees or charges designated and appro-
6 priated by act of the Legislature for such purposes and
7 proceeds of revenue bonds issued under authority of the
8 state building commission of West Virginia for such pur-
9 poses. Before any such revenue bonds are issued by the
10 state building commission of West Virginia, the Legisla-
11 ture, by its act, shall increase the aggregate amount of
12 all issues of bonds outstanding at one time for all projects
13 authorized under authority of said commission if such
14 action is necessary to permit issuance of revenue bonds
15 in the amount required to construct, equip and furnish
16 the state legislative building. Before any revenue bonds
17 or other obligations are issued or incurred by the state
18 building commission of West Virginia for said purpose,
19 the Legislature shall, by adoption of a concurrent resolu-
20 tion, approve the purpose and amount of the revenue
21 bonds or obligations. Revenue bonds issued as herein
22 provided shall be issued in accordance with the provisions
23 of article six, chapter five of this code.

**§4-7-6. Deposit and disbursement of funds of commission;
security for deposits; audits.**

1 All moneys of the commission from whatever source
2 derived shall be paid to the treasurer of the state of West

3 Virginia, who shall not commingle said moneys with any
4 other moneys, but shall deposit them in a separate bank
5 account or accounts. The moneys in said accounts shall
6 be impressed with and subject to the lien or liens thereon
7 in favor of the bondholders provided in the proceedings
8 for issuance of bonds pursuant to this article. The moneys
9 in said accounts shall be paid out on check of the trea-
10 surer on requisition of the chairman of the commission.
11 All deposits of such moneys shall, if required by the
12 treasurer or the commission, be secured by obligations
13 of the United States, of the state of West Virginia, or of
14 the commission, of a market value equal at all times to
15 the amount of the deposit, and all banking institutions
16 are authorized to give such security for such deposits.
17 The state auditor and his legally authorized representa-
18 tives are hereby authorized and empowered from time
19 to time to examine the accounts and books of the com-
20 mission, including its receipts, disbursements, contracts,
21 leases, sinking funds, investments and any other matters
22 relating to its financial standing.

**§4-7-7. Contracts for construction of state legislative building,
etc., to be secured by bond; competitive bids required
for contracts exceeding two thousand dollars; pro-
cedure.**

1 The commission shall construct the state legislative
2 building pursuant to a contract or contracts. Every such
3 contract shall be secured by a bond meeting the require-
4 ments of section thirty-nine, article two, chapter thirty-
5 eight of this code.

6 No contract or contracts for the construction of the
7 building or any approaches, structures or facilities inci-
8 dental thereto, or for the equipping and furnishing of the
9 building, when the anticipated expenditure therefor will
10 exceed the sum of two thousand dollars, shall be entered
11 into except upon the basis of competitive sealed bids.
12 Such bids shall be obtained by public notice soliciting
13 such bids published as a Class II legal advertisement in
14 compliance with the provisions of article three, chapter
15 fifty-nine of this code, and the publication area for such
16 publication shall be Kanawha county. The publication

17 shall be completed at least fourteen days prior to the final
18 date for the submission of bids. The commission may in
19 addition to such publication also solicit sealed bids by
20 sending requests by mail to prospective bidders. The con-
21 tract shall be awarded to the lowest responsible bidder,
22 unless any and all bids are rejected, in which event new
23 bids shall be sought by again publishing notice as afore-
24 said. Any bid, with the name of the bidder, shall be en-
25 tered on a record and each record, with the successful
26 bid indicated thereon, shall, after the award of any con-
27 tract, be open to public inspection.

§4-7-8. Management and control of state legislative building.

1 Notwithstanding the provisions of section eleven, ar-
2 ticle six, chapter five of this code, the commission shall
3 properly maintain, repair, manage, operate and control
4 the state legislative building; promulgate bylaws, rules
5 and regulations, in accordance with the provisions of
6 chapter twenty-nine-a, for the use and operation of the
7 building; and may make and enter into all contracts or
8 agreements necessary and incidental for the performance
9 of its duties and the execution of its powers under this
10 article, unless or until another agency, board or commis-
11 sion is designated by law to perform such duties and
12 assume such responsibilities.

§4-7-9. Article not authority to create state debt.

1 Nothing in this article contained shall be so construed
2 or interpreted as to authorize or permit the incurring of
3 state debt of any kind or nature as contemplated by the
4 provisions of the constitution of the state of West Virginia
5 in relation to state debt.

**§4-7-10. This article, article six, chapter five, and the state
constitution are only restrictions on construction,
etc., of building.**

1 It shall not be necessary to secure from any officer or
2 board not named in this article any approval or consent,
3 or any certificate or finding, or to hold an election, or to
4 take any proceedings whatever, either for the construction
5 of a state legislative building, or the improvement, mainte-

6 nance, operation or repair thereof, or for the issuance
7 of bonds hereunder, except such as are prescribed by this
8 article; article six, chapter five of this code; or the
9 constitution of the state.

§4-7-11. Severability.

1 If any provision or any part or clause of any provision
2 of this article, or the application thereof to any person
3 or circumstance, is held unconstitutional or invalid, such
4 unconstitutionality or invalidity shall not affect other
5 provisions, or other parts or other clauses of any pro-
6 vision, or applications of this article, and to this end
7 the provisions of this article are declared to be severable.

CHAPTER 65

(Senate Bill No. 121—By Mr. Gainer and Mr. Bowers)

[Passed March 11, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-a, relating to the entry of the state of West Virginia into an interstate library compact; prohibiting municipalities and counties from capital expenditure in certain situations; providing a definition of "state library agency"; permitting the state to enter into agreements for the exchange of library services and supplies with other states that are members of the compact; designating a compact administrator, and providing procedures for withdrawal from the compact.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. INTERSTATE LIBRARY COMPACT.

§10-1A-1. Enactment of compact.

§10-1A-2. Restrictions relating to outlay of public funds.

§10-1A-3. State library agency defined.

§10-1A-4. Interstate library districts; state and federal aid.

§10-1A-5. Compact administrator.

§10-1A-6. Withdrawal.

§10-1A-1. Enactment of compact.

1 The "Interstate Library Compact" is hereby enacted
2 into law and entered into by this state with all states
3 legally joining therein in the form substantially as fol-
4 lows:

INTERSTATE LIBRARY COMPACT**ARTICLE 1. POLICY AND PURPOSE.**

1 Because the desire for the services provided by libraries
2 transcends governmental boundaries and can most effec-
3 tively be satisfied by giving such services to communities
4 and people regardless of jurisdictional lines, it is the
5 policy of the states party to this compact to cooperate and
6 share their responsibilities; to authorize cooperation and
7 sharing with respect to those types of library facilities and
8 services which can be more economically or efficiently
9 developed and maintained on a cooperative basis; and to
10 authorize cooperation and sharing among localities, states
11 and others in providing joint or cooperative library ser-
12 vices in areas where the distribution of population or of
13 existing and potential library resources make the pro-
14 vision of library service on an interstate basis the most
15 effective way of providing adequate and efficient service.

ARTICLE II. DEFINITIONS.

1 As used in this compact:

2 (a) "Public library agency" means any unit or agency
3 of local or state government operating or having power to
4 operate a library.

5 (b) "Private library agency" means any nongovern-
6 mental entity which operates or assumes a legal obliga-
7 tion to operate a library.

8 (c) "Library agreement" means a contract establishing
9 an interstate library district pursuant to this compact or

10 providing for the joint or cooperative furnishing of library
11 services.

ARTICLE III. INTERSTATE LIBRARY DISTRICTS.

1 (a) Any one or more public library agencies in a party
2 state in cooperation with any public library agency or
3 agencies in one or more other party states may establish
4 and maintain an interstate library district. Subject to the
5 provisions of this compact and any other laws of the
6 party states which pursuant hereto remain applicable,
7 such district may establish, maintain and operate some
8 or all of the library facilities and services for the area
9 concerned in accordance with the terms of a library
10 agreement therefor. Any private library agency or
11 agencies within an interstate library district may cooper-
12 ate therewith, assume duties, responsibilities and obliga-
13 tions thereto, and receive benefits therefrom as provided
14 in any library agreement to which such agency or agen-
15 cies become party.

16 (b) Within an interstate library district, and as pro-
17 vided by a library agreement, the performance of library
18 functions may be undertaken on a joint or cooperative
19 basis or may be undertaken by means of one or more
20 arrangements between or among public or private library
21 agencies for the extension of library privileges or the
22 use of facilities or services operated or rendered by one
23 or more of the individual library agencies.

24 (c) If a library agreement provides for joint establish-
25 ment, maintenance or operation of library facilities or
26 services by an interstate library district, such district
27 shall have power to do any one or more of the following
28 in accordance with such library agreement:

29 (1) Undertake, administer and participate in pro-
30 grams or arrangements for securing, lending or servicing
31 of books and other publications, any other materials suit-
32 able to be kept or made available by libraries, library
33 equipment or for the dissemination of information about
34 libraries, the value and significance of particular items
35 therein and the use thereof;

36 (2) Accept for any of its purposes under this compact
37 any and all donations and grants of money, equipment,

38 supplies, materials and services (conditional or other-
39 wise), from any state or the United States or any sub-
40 division or agency thereof, or interstate agency or from
41 any institution, person, firm or corporation, and receive,
42 utilize and dispose of the same;

43 (3) Operate mobile library units or equipment for the
44 purpose of rendering bookmobile service within the dis-
45 trict;

46 (4) Employ professional, technical, clerical and other
47 personnel, and fix terms of employment, compensation
48 and other appropriate benefits; and where desirable, pro-
49 vide for the in-service training of such personnel;

50 (5) Sue and be sued in any court of competent juris-
51 diction;

52 (6) Acquire, hold and dispose of any real or personal
53 property or any interest or interests therein as may be
54 appropriate to the rendering of library service;

55 (7) Construct, maintain and operate a library, includ-
56 ing any appropriate branches thereof;

57 (8) Do such other things as may be incidental to or
58 appropriate for the carrying out of any of the foregoing
59 powers.

ARTICLE IV. INTERSTATE LIBRARY DISTRICTS, GOVERNING BOARD.

1 (a) An interstate library district which establishes,
2 maintains or operates any facilities or services in its
3 own right shall have a governing board which shall direct
4 the affairs of the district and act for it in all matters re-
5 lating to its business. Each participating public library
6 agency in the district shall be represented on the govern-
7 ing board which shall be organized and conduct its busi-
8 ness in accordance with provision therefor in the library
9 agreement. But in no event shall a governing board meet
10 less often than twice a year.

11 (b) Any private library agency or agencies party to a
12 library agreement establishing an interstate library dis-
13 trict may be represented on or advise with the governing

14 board of the district in such manner as the library agree-
15 ment may provide.

ARTICLE V. STATE LIBRARY AGENCY COOPERATION.

1 Any two or more state library agencies of two or more
2 of the party states may undertake and conduct joint or
3 cooperative library programs, render joint or cooperative
4 library services, and enter into and perform arrange-
5 ments for the cooperative or joint acquisition, use, housing
6 and disposition of items or collections of materials which,
7 by reason of expense, rarity, specialized nature or in-
8 frequency of demand therefor would be appropriate for
9 central collection and shared use. Any such programs,
10 services or arrangements may include provision for the
11 exercise on a cooperative or joint basis of any power
12 exercisable by an interstate library district and an agree-
13 ment embodying any such program, service or arrange-
14 ment shall contain provisions covering the subjects de-
15 tailed in Article VI of this compact for interstate library
16 agreements.

ARTICLE VI. LIBRARY AGREEMENTS.

1 (a) In order to provide for any joint or cooperative
2 undertaking pursuant to this compact, public and private
3 library agencies may enter into library agreements. Any
4 agreement executed pursuant to the provisions of this
5 compact shall, as among the parties to the agreement:
6 (1) Detail the specific nature of the services, programs,
7 facilities, arrangements or properties to which it is ap-
8 plicable;
9 (2) Provide for the allocation of costs and other finan-
10 cial responsibilities;
11 (3) Specify the respective rights, duties, obligations
12 and liabilities of the parties;
13 (4) Set forth the terms and conditions for duration,
14 renewal, termination, abrogation, disposal of joint or
15 common property, if any, and all other matters which
16 may be appropriate to the proper effectuation and per-
17 formance of the agreement.

18 (b) No public or private library agency shall undertake
19 to exercise itself, or jointly with any other library
20 agency, by means of a library agreement any power pro-
21 hibited to such agency by the constitution or statutes of
22 its state.

23 (c) No library agreement shall become effective until
24 filed with the compact administrator of each state in-
25 volved and approved in accordance with Article VII of
26 this compact.

ARTICLE VII. APPROVAL OF LIBRARY AGREEMENTS.

1 (a) Every library agreement made pursuant to this
2 compact shall, prior to and as a condition precedent to its
3 entry into force, be submitted to the attorney general of
4 each state in which a public library agency party thereto
5 is situated, who shall determine whether the agreement is
6 in proper form and compatible with the laws of his state.
7 The attorneys general shall approve any agreement sub-
8 mitted to them unless they shall find that it does not meet
9 the conditions set forth herein and shall detail in writing
10 addressed to the governing bodies of the public library
11 agencies concerned the specific respects in which the pro-
12 posed agreement fails to meet the requirements of law.
13 Failure to disapprove an agreement submitted hereunder
14 within ninety days of its submission shall constitute ap-
15 proval thereof.

16 (b) In the event that a library agreement made pur-
17 suant to this compact shall deal in whole or in part with
18 the provision of services or facilities with regard to which
19 an officer or agency of the state government has consti-
20 tutional or statutory powers of control, the agreement
21 shall, as a condition precedent to its entry into force, be
22 submitted to the state officer or agency having such power
23 of control and shall be approved or disapproved by him
24 or it as to all matters within his or its jurisdiction in the
25 same manner and subject to the same requirements gov-
26 erning the action of the attorneys general pursuant to
27 subsection (a) of this article. This requirement of sub-
28 mission and approval shall be in addition to and not in
29 substitution for the requirement of submission to and ap-
30 proval by the attorneys general.

ARTICLE VIII. OTHER LAWS APPLICABLE.

1 Nothing in this compact or in any library agreement
2 shall be construed to supersede, alter or otherwise impair
3 any obligation imposed on any library by otherwise ap-
4 plicable law, nor to authorize the transfer or disposition
5 of any property held in trust by a library agency in a
6 manner contrary to the terms of such trust.

ARTICLE IX. APPROPRIATIONS AND AID.

1 (a) Any public library agency party to a library
2 agreement may appropriate funds to the interstate library
3 district established thereby in the same manner and to
4 the same extent as to a library wholly maintained by it
5 and, subject to the laws of the state in which such public
6 library agency is situated, may pledge its credit in support
7 of an interstate library district established by the agree-
8 ment.

9 (b) Subject to the provisions of the library agreement
10 pursuant to which it functions and the laws of the states
11 in which such district is situated, an interstate library
12 district may claim and receive any state and federal aid
13 which may be available to library agencies.

ARTICLE X. COMPACT ADMINISTRATOR.

1 Each state shall designate a compact administrator with
2 whom copies of all library agreements to which his
3 state or any public library agency thereof is party shall
4 be filed. The administrator shall have such other powers
5 as may be conferred upon him by the laws of his state
6 and may consult and cooperate with the compact ad-
7 ministrators of other party states and take such steps as
8 may effectuate the purposes of this compact. If the laws
9 of a party state so provide, such state may designate
10 one or more deputy compact administrators in addition
11 to its compact administrator.

ARTICLE XI. ENTRY INTO FORCE AND WITHDRAWAL.

1 (a) This compact shall enter into force and effect
2 immediately upon its enactment into law by any two
3 states. Thereafter, it shall enter into force and effect as

4 to any other state upon the enactment thereof by such
5 state.

6 (b) This compact shall continue in force with respect
7 to a party state and remain binding upon such state until
8 six months after such state has given notice to each
9 other party state of the repeal thereof. Such withdrawal
10 shall not be construed to relieve any party to a library
11 agreement entered into pursuant to this compact from any
12 obligation of that agreement prior to the end of its dura-
13 tion as provided therein.

ARTICLE XII. CONSTRUCTION AND SEVERABILITY.

1 This compact shall be liberally construed so as to
2 effectuate the purposes thereof. The provisions of this
3 compact shall be severable and if any phrase, clause,
4 sentence or provision of this compact is declared to be
5 contrary to the constitution of any party state or of the
6 United States or the applicability thereof to any govern-
7 ment, agency, person or circumstance is held invalid, the
8 validity of the remainder of this compact and the applica-
9 bility thereof to any government, agency, person or cir-
10 cumstance shall not be affected thereby. If this compact
11 shall be held contrary to the constitution of any state
12 party thereto, the compact shall remain in full force and
13 effect as to the remaining states and in full force and
14 effect as to the state affected as to all severable matters.

§10-1A-2. Restrictions relating to outlay of public funds.

1 No county, municipality or other political subdivision
2 of this state shall be party to a library agreement which
3 provides for the construction or maintenance of a library
4 pursuant to Article III, subsection (c), subdivision (7) of
5 the compact, nor pledge its credit in support of such a
6 library or contribute to the capital financing thereof, ex-
7 cept after compliance with any laws applicable to such
8 counties, municipalities or other political subdivisions of
9 this state relating to or governing capital outlays and the
10 pledging of credit.

§10-1A-3. State library agency defined.

1 As used in the compact, "state library agency," with
2 reference to this state, means the West Virginia library

3 commission as designated in section twelve, article one of
4 this chapter.

§10-1A-4. Interstate library districts; state and federal aid.

1 An interstate library district lying partly within this
2 state may claim and be entitled to receive state aid in
3 support of any of its functions to the same extent and in
4 the same manner as such functions are eligible for sup-
5 port when carried on by entities wholly within this state.
6 For the purposes of computing and apportioning state aid
7 to an interstate library district, this state will consider
8 that portion of the area which lies within this state as an
9 independent entity for the performance of the aided
10 function or functions and compute and apportion the aid
11 accordingly. Subject to any applicable laws of this state,
12 such a district also may apply for and be entitled to re-
13 ceive any federal aid for which it may be eligible.

§10-1A-5. Compact administrator.

1 The governor shall appoint an officer or employee of
2 this state who shall be the compact administrator pur-
3 suant to Article X of the compact.

§10-1A-6. Withdrawal.

1 In the event of withdrawal from the compact, the gov-
2 ernor shall send and receive any notices required by
3 Article XI, subsection (b) of the compact.

CHAPTER 66

(Com. Sub. for Senate Bill No. 81—By Mr. Hubbard)

[Passed March 11, 1972; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend chapter twenty-seven by adding thereto a new article, designated article two-a, all relating to mental health

facilities, establishment of a new central mental health-mental retardation facility; development, operation, location; state hospitals, the Colin Anderson center, Guthrie center, Roney's Point center; continuation, management; mental health-mental retardation centers; comprehensive community regional mental health-mental retardation centers; establishment, operation and location.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. MENTAL HEALTH FACILITIES.

Article

2. Mental Health Facilities.

2A. Mental Health-Mental Retardation Centers.

§27-2-1. Establishment of a new central mental health-mental retardation facility; development, operation, location; state hospitals, the Colin Anderson center, Guthrie center, Roney's Point center; continuation, management.

1 In consultation with the governor, the director of
2 mental health is hereby authorized and directed to estab-
3 lish, develop, operate, and maintain a new central mental
4 health-mental retardation facility for the evaluation,
5 diagnosis, treatment, research and training and rehabilita-
6 tion of persons disabled by mental illness and/or mental
7 retardation and to include, but not to be limited to, alco-
8 holism and drug abuse facilities, specific residential facili-
9 ties designed for diagnosis, treatment, research and
10 training and rehabilitation of mentally ill children,
11 adolescents, and other specialized groups; such facility
12 to be located on a site selected in accordance with the
13 state comprehensive mental health and mental retarda-
14 tion plans, such facility shall also serve as a designated
15 component as one of the fourteen regional mental health
16 centers.

17 The state hospitals heretofore established at Weston,
18 Spencer, Huntington, Barboursville, Lakin, and St. Marys

19 shall be continued and known respectively as the Weston
20 hospital, Spencer hospital, Huntington hospital, Barbours-
21 ville hospital, Lakin hospital and the Colin Anderson
22 center. Said state hospitals shall be managed, directed
23 and controlled by the department of mental health. The
24 Guthrie center and the Roney's Point center shall be
25 managed, directed and controlled by the department of
26 mental health as treatment, and rehabilitation centers for
27 the mentally disabled, and shall be included in all refer-
28 ences to "state hospital" in this chapter.

29 The governor and the director of the department of
30 mental health are hereby authorized to bring said hos-
31 pitals into structural compliance with appropriate fire
32 and health standards.

33 All references in this code or elsewhere in law to the
34 "West Virginia Training School" shall be taken and con-
35 strued to mean and refer to the "Colin Anderson Center."

**ARTICLE 2A. MENTAL HEALTH-MENTAL RETARDATION CEN-
TERS.**

**§27-2A-1. Comprehensive community regional mental health-
mental retardation centers; establishment, opera-
tion and location.**

1 In consultation with the governor, the director of
2 mental health is authorized and directed to establish,
3 maintain and operate not more than fourteen compre-
4 hensive regional mental health centers and not more than
5 eight comprehensive mental retardation facilities, to be
6 located at such places within the state as may be de-
7 termined by the director in accordance with the compre-
8 hensive mental health plan for West Virginia and such
9 community facilities for the mentally retarded as may be
10 indicated in accordance with the state's comprehensive
11 mental retardation plan. Such facilities may be operated
12 directly by the department of mental health or by locally-
13 based nonprofit organizations under such rules and regu-
14 lations as may be promulgated by the director of mental
15 health.

16 The state's share of costs of operating such centers or
17 facilities may be provided from funds appropriated for

18 this purpose within the budget of the department of
19 mental health.

CHAPTER 67

(House Bill No. 558—By Mr. Seibert)

[Passed February 14, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact sections two and four, article five, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the transportation to and from state hospitals of persons involuntarily hospitalized.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-2. Hospitalization upon written application or medical certification—Emergency procedure; report; notice of admission to certain persons; duty of sheriff.

§27-5-4. Legal proceedings for involuntary hospitalization.

§27-5-2. **Hospitalization upon written application or medical certification—Emergency procedure; report; notice of admission to certain persons; duty of sheriff.**

1 Any individual may be admitted to a state hospital
2 upon:

3 (a) Written application to the state hospital by a
4 health officer or police officer stating his belief that the
5 individual, because of symptoms of mental illness, may
6 cause injury to himself or others if not immediately re-
7 strained, and the grounds for such belief, and

8 (b) A certification by at least one physician that he
9 has examined the individual and is of the opinion that

10 the individual is mentally ill, and because of his ill-
11 ness, may injure himself or others if not immediately
12 restrained.

13 Any individual with respect to whom such certifica-
14 tion has been issued may not be admitted on the basis
15 thereof at any time after the expiration of three days
16 from the date of such examination. The superintendent
17 of the state hospital admitting the individual shall
18 forthwith make a report thereof to the director of mental
19 health.

20 When an individual is admitted to a state hospital
21 pursuant to the provisions of this section, the superinten-
22 dent thereof shall immediately give notice of the indi-
23 vidual's admission to such hospital to the following
24 persons: His or her spouse and his or her parents or
25 parent or guardian, or if there be no such spouse, par-
26 ents, parent or guardian, to two of the individual's next
27 of kin. Such notice shall be in writing and shall be
28 transmitted to such person or persons at his, her or
29 their last-known address by registered or certified mail,
30 return receipt requested.

31 It shall be the duty of the sheriff to provide immedi-
32 ate transportation to and from the state hospital for
33 all persons hospitalized under the provisions of this sec-
34 tion or the preceding section.

§27-5-4. Legal proceedings for involuntary hospitalization.

1 Proceedings for the involuntary hospitalization of an
2 individual may be commenced by the filing of a written
3 application and the certificate or statement hereinafter
4 provided with the clerk of the county court of the county
5 of which the individual is a resident or where he may
6 be found, by his parents or parent, guardian, spouse,
7 adult next of kin or friend, or by a physician, a health
8 officer or public welfare caseworker familiar with the
9 case of the individual, or the head of any institution in
10 which such individual may be. Such applicant shall file
11 with his application the certificate of a physician stating
12 that in his opinion the individual is mentally ill or
13 mentally retarded and should be hospitalized or a

14 statement by the applicant that the individual has
15 refused to submit to examination by a physician.

16 Upon receipt of an application, the clerk shall give
17 notice thereof to the individual and to the individual's
18 spouse, parents or parent or guardian, or if the individ-
19 ual does not have a spouse, parents or parent or guar-
20 dian, to the individual's adult next of kin. Such notice
21 shall be given within fifteen days after receipt of the
22 application by the clerk and shall be transmitted to
23 such person or persons at his or their last-known ad-
24 dress by registered or certified mail, return receipt
25 requested.

26 As soon as practicable after notice of the commence-
27 ment of proceedings is given, the mental hygiene com-
28 mission shall appoint two physicians to examine the
29 individual and report to the mental hygiene commission
30 their findings as to the mental condition of the indi-
31 vidual and his need for custody, care or treatment in a
32 hospital.

33 If the designated physicians report to the mental
34 hygiene commission that the individual has refused to
35 submit to an examination, the mental hygiene com-
36 mission shall order him to submit to such examination.
37 Such an order may be enforced by the issuance of a
38 warrant ordering the individual to be taken into custody
39 pending examination by the designated physicians. All
40 such warrants shall be signed by the clerk on order of
41 the mental hygiene commission and directed to the
42 sheriff of the county or to any constable of any district
43 thereof, or to a special constable appointed for the pur-
44 pose and named therein.

45 If the report of one or both of the designated physi-
46 cians is to the effect that the individual is mentally ill
47 or mentally retarded, the mental hygiene commission
48 shall forthwith fix a date for and have the clerk of
49 the county court give notice of the hearing to the indi-
50 vidual, the applicant or applicants, and to the individual's
51 spouse, parents or parent or guardian, or if the individual
52 does not have a spouse, parents or parent or guardian,
53 to the individual's adult next of kin. Such notice shall
54 be transmitted to such person or persons at his or their

55 last-known address by registered or certified mail, re-
56 turn receipt requested, and shall be received by such
57 person or persons not less than five days prior to the date
58 of the hearing.

59 The individual, the applicant, and all persons entitled
60 to notice of such hearing, shall be afforded an oppor-
61 tunity to appear at the hearing, to testify, and to present
62 and cross-examine witnesses, and the mental hygiene
63 commission may in its discretion receive the testimony
64 of any other person. The individual shall not be re-
65 quired to be present, and all persons not necessary for
66 the conduct of the proceedings shall be excluded, except
67 that the mental hygiene commission shall admit and
68 hear persons having a legitimate interest in the pro-
69 ceedings. The hearings shall be conducted in as informal
70 a manner as may be consistent with orderly procedure.
71 The mental hygiene commission shall receive all relevant
72 and material evidence which may be offered and shall
73 not be bound by the rules of evidence. The mental
74 hygiene commission shall appoint a guardian ad litem
75 who shall be a competent attorney, for the individual
76 and said guardian shall be present at the hearing and
77 protect the interests of the individual. The mental hy-
78 giene commission may allow such guardian ad litem a
79 reasonable fee for his services which shall be paid by
80 the county court to the extent that funds are made avail-
81 able in the county budget.

82 If, upon completion of the hearing and consideration
83 of the record, the mental hygiene commission finds that
84 the individual is mentally ill or mentally retarded,
85 and:

86 (1) Because of his illness or retardation is likely to
87 injure himself or others if allowed to remain at liberty,
88 or

89 (2) Is in need of custody, care or treatment in a
90 hospital and, because of his illness or retardation lacks
91 sufficient insight or capacity to make responsible deci-
92 sions with respect to his hospitalization, and

93 (3) Is a resident of the county in which the hearing
94 is held, the mental hygiene commission may order his

95 hospitalization for an indeterminate period or for a
96 temporary observation period not exceeding six months.

97 If the order is for a temporary period the mental hy-
98 giene commission may at any time prior to the expira-
99 tion of such period, on the basis of report by the super-
100 intendent of the state hospital in which the patient is
101 confined and such further inquiry as may seem appro-
102 priate, order indeterminate hospitalization of the patient
103 or dismissal of the proceeding.

104 If the mental hygiene commission finds that the indi-
105 vidual is not mentally ill or mentally retarded, the
106 proceeding shall be dismissed. If the commission finds
107 that the individual is mentally ill or mentally retarded
108 but because of such illness or retardation is not likely
109 to injure himself or others if allowed to remain at liberty,
110 the proceedings shall be dismissed. If the commission
111 finds that the individual is mentally ill or mentally re-
112 tarded and that because of such illness or retardation is
113 not likely to injure himself or others if allowed to remain
114 at liberty and that such individual has sufficient insight
115 or capacity to make responsible decisions with respect
116 to his hospitalization, the proceeding shall be dis-
117 missed.

118 If the mental hygiene commission is satisfied that hos-
119 pitalization should be ordered but finds that the indi-
120 vidual is not a resident of the county in which the hearing
121 is held, a transcript of the evidence adduced at the
122 hearing of such person, properly certified by the clerk
123 of the county court, shall forthwith be forwarded to
124 the clerk of the county court of the county of which
125 such person is a resident, who shall immediately pre-
126 sent such transcript to the mental hygiene commission
127 of said county. If the mental hygiene commission of
128 the county of the residence of the individual is satisfied
129 from the evidence contained in such transcript that such
130 individual should be hospitalized as determined by the
131 standards set forth above, the mental hygiene commis-
132 sion shall order the appropriate hospitalization as though
133 the person had been brought before the mental hygiene
134 commission in the first instance. This order shall be
135 transmitted forthwith to the clerk of the county court

136 of the county in which the hearing was held, who shall
137 execute said order promptly.

138 In lieu of ordering the patient to a state hospital, the
139 mental hygiene commission may order him delivered to
140 some responsible person who will agree to take care of
141 him, and take from such responsible person a bond in
142 the penalty of at least five hundred dollars, with sufficient
143 security to be approved by the mental hygiene com-
144 mission, payable to the state of West Virginia, with
145 condition to restrain and take proper care of such person
146 until the further order of the court or judge. But if
147 the person found to be a mentally ill or mentally re-
148 tardated person is not dangerous to himself or to others,
149 or is found harmless, he may be delivered to any re-
150 sponsible person who will agree to take proper care
151 of him without such bond, if in the judgment of the
152 commission the same may be proper.

153 If the person found to be mentally ill or mentally
154 retarded by the mental hygiene commission is a resi-
155 dent of another state, this information shall be forthwith
156 given to the director of mental health, who shall make
157 appropriate arrangements for his transfer to the state
158 of his residence, except as qualified by the interstate
159 compact on mental health.

160 Any order necessitating the transportation of a patient
161 to or from a state hospital shall be carried out immedi-
162 ately by the sheriff of the county in which such order
163 is entered.

164 The superintendent of the state hospital admitting a
165 patient pursuant to proceedings under this section shall
166 forthwith make a report of such admission to the director
167 of mental health.

168 All expenses incurred in this proceeding, including
169 the fees of the designated physicians, shall be borne by
170 the county of which the patient is a resident.

171 The entry of an order ordering hospitalization for an
172 indeterminate period shall relieve the patient of legal
173 capacity.

174 The clerk of the county court in which an order direct-
175 ing hospitalization is entered shall immediately upon

176 entry thereof forward a certified copy of same to the
177 clerk of the county court of the county of which the
178 patient is a resident.

CHAPTER 68

(Com. Sub. for Senate Bill No. 21—By Mr. McCourt, Mr. President)

[Passed March 9, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact sections one-b, one-d and one-e, article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to eligibility requirements for deputy director of oil and gas; increasing salaries of inspectors and increasing traveling expenses; and increasing pay of board members.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. OIL AND GAS WELLS.

§22-4-1b. Deputy director for oil and gas—Eligibility.

§22-4-1d. Same—Eligibility for appointment; qualifications; salary; expenses; removal.

§22-4-1e. Oil and gas inspectors' examining board created; appointment, term and compensation of members; chairman; oaths of members; meetings; powers and duties generally.

§22-4-1b. Deputy director for oil and gas—Eligibility.

- 1 The deputy director for oil and gas shall be a citizen
- 2 of West Virginia, shall be a competent person of good
- 3 reputation and temperate habits and be a registered
- 4 professional engineer and shall have had at least ten
- 5 years' practical experience in the oil and gas industry.
- 6 A degree in geology or in mining or petroleum engineer-
- 7 ing shall be counted as two years' practical experience.

8 The deputy director for oil and gas shall devote all of
9 his time to his duties, and shall not be directly or indirect-
10 ly interested financially in any oil or gas production or
11 drilling or in any coal mine in this state.

**§22-4-1d. Same—Eligibility for appointment; qualifications;
salary; expenses; removal.**

1 (a) No person shall be eligible for appointment as an
2 oil and gas inspector or supervising inspector unless, at
3 the time of his probationary appointment he (1) is a
4 citizen of West Virginia, in good health, and of good
5 character, reputation and temperate habits; (2) has had
6 at least ten years' practical experience in the oil and
7 gas industry, at least five years of which, immediately
8 preceding his original appointment shall have been in
9 the oil and gas industry in this state: *Provided*, That a
10 diploma in geology or in mining or petroleum engineer-
11 ing shall be considered the equivalent of five years'
12 practical experience; and (3) has good theoretical and
13 practical knowledge of oil and gas drilling and produc-
14 tion methods, practices and techniques, sound safety
15 practices and applicable mining laws.

16 (b) In order to qualify for appointment as an oil and
17 gas inspector or supervising inspector, an eligible applicant
18 shall submit to a written and oral examination by the
19 oil and gas inspectors' examining board and shall furnish
20 such evidence of good health, character and other facts
21 establishing eligibility as such board may require. If
22 such board finds after investigation and examination that
23 an applicant (1) is eligible for appointment and (2) has
24 passed all written and oral examinations, the board shall
25 add such applicant's name and grade to the register of
26 qualified eligible candidates and certify its action to the
27 deputy director for oil and gas. No candidate's name
28 shall remain on the register for more than three years
29 without requalifying.

30 (c) The salary of the supervising inspector shall be not
31 less than twelve thousand dollars per annum and ten
32 cents per mile traveling expenses. Salaries of inspectors
33 shall be not less than ten thousand four hundred dollars

34 per annum and traveling expenses for personal car of
35 ten cents per mile. Within the limits provided by law,
36 the salary of each inspector and of the supervising in-
37 spector shall be fixed by the deputy director for oil and
38 gas, subject to the approval of the director of the depart-
39 ment of mines and oil and gas inspectors' examining
40 board. In fixing salaries of the oil and gas inspec-
41 tors and of the supervising inspector, the deputy
42 director for oil and gas shall consider ability, performance
43 of duty, and experience. No reimbursement for traveling
44 expenses shall be made except upon an itemized account
45 of such expenses submitted by the inspector or super-
46 vising inspector, as the case may be, who shall verify,
47 upon oath, that such expenses were actually incurred in
48 the discharge of his official duties.

49 (d) An inspector or the supervising inspector, after
50 having received a permanent appointment, shall be re-
51 moved from office only for physical or mental impair-
52 ment, incompetency, neglect of duty, drunkenness, mal-
53 feasance in office, or other good cause.

54 Proceedings for the removal of an oil and gas inspector
55 or the supervising inspector may be initiated by the
56 deputy director for oil and gas or the director of the
57 department of mines whenever either has reasonable
58 grounds to believe and does believe that adequate cause
59 exists warranting removal. Such a proceeding shall be
60 initiated by a verified petition, filed with the oil and
61 gas inspectors' examining board by the deputy director
62 for oil and gas or the director, setting forth with
63 particularity the facts alleged. Not less than twenty
64 reputable citizens engaged in oil or gas drilling and pro-
65 duction operations in the state may petition the deputy
66 director for oil and gas or the director of the depart-
67 ment of mines for the removal of an inspector or the
68 supervising inspector. If such petition is verified by at
69 least one of the petitioners, based on actual knowledge
70 of the affiant, and alleges facts which, if true, warrant
71 the removal of the inspector or supervising inspector,
72 the deputy director for oil and gas or the director of
73 the department of mines shall cause an investigation

74 of the facts to be made. If, after such investigation,
75 the deputy director for oil and gas or the director finds
76 that there is substantial evidence which, if true, warrants
77 removal of the inspector or supervising inspector, he shall
78 file a petition with the oil and gas inspectors' examining
79 board requesting removal of the inspector or supervising
80 inspector.

81 On receipt of a petition by the deputy director for
82 oil and gas or by the director of the department of
83 mines seeking removal of an inspector or the supervising
84 inspector, the oil and gas inspectors' examining board
85 shall promptly notify the inspector or supervising in-
86 spector, as the case may be, to appear before it at a time
87 and place designated in said notice, which time shall be
88 not less than fifteen days nor more than thirty days
89 thereafter. There shall be attached to the copy of the
90 notice served upon the inspector or supervising inspector
91 a copy of the petition filed with such board.

92 At the time and place designated in said notice, the oil
93 and gas inspectors' examining board shall hear all evi-
94 dence offered in support of the petition and on behalf of
95 the inspector or supervising inspector. Each witness shall
96 be sworn and a transcript shall be made of all evidence
97 taken and proceedings had at any such hearing. No con-
98 tinuance shall be granted except for good cause shown.

99 The chairman of the board, the deputy director for oil
100 and gas, and the director of the department of mines
101 shall have power to administer oaths and subpoena
102 witnesses.

103 Any inspector or supervising inspector who shall will-
104 fully refuse or fail to appear before such board, or having
105 appeared, shall refuse to answer under oath any relevant
106 question on the ground that his testimony or answer
107 might incriminate him, or shall refuse to accept a grant
108 of immunity from prosecution on account of any relevant
109 matter about which he may be asked to testify at such
110 hearing before such board, shall forfeit his position.

111 If, after hearing, the oil and gas inspectors' examining
112 board finds that the inspector or supervising inspector

113 should be removed, it shall enter an order to that effect.
114 The decision of the board shall be final and shall not be
115 subject to judicial review.

**§22-4-1e. Oil and gas inspectors' examining board created;
composition; appointment, term and compensation of members;
chairman; oaths of members;
meetings; powers and duties generally.**

1 There is hereby created an oil and gas inspectors' ex-
2 amining board consisting of five members who, except
3 for the public representative on such board, shall be ap-
4 pointed by the governor, by and with the advice and con-
5 sent of the Senate. Members may be removed only for
6 the same causes and like manner as elective state officers.
7 One member of the board, who shall be the representative
8 of the public, shall be the professor in charge of the
9 petroleum engineering department of the school of mines
10 at West Virginia University; two members shall be per-
11 sons who by reason of previous training and experience
12 may reasonably be said to represent the viewpoint of
13 independent oil and gas operators; and two members shall
14 be persons who by reason of previous training and ex-
15 perience may reasonably be said to represent the view-
16 point of major oil and gas producers.

17 The deputy director for oil and gas shall be an "ex
18 officio" member of the board, and shall serve as secre-
19 tary of the board without additional compensation, but
20 he shall have no right to vote with respect to any matter
21 before the board.

22 The members of the board, except the public repre-
23 sentative, shall be appointed for overlapping terms of
24 eight years, except that the original appointments shall be
25 for terms of two, four, six and eight years, respectively.
26 Any member whose term expires may be reappointed by
27 the governor.

28 Each member of the board shall receive fifty dollars
29 per diem while actually engaged in the performance of
30 the work of the board; and shall receive mileage at the
31 rate of ten cents for each mile actually traveled going
32 from the home of the member to the place of the meeting
33 of the board and returning therefrom, which shall be

34 paid out of the state treasury upon a requisition upon the
35 state auditor, properly certified by such members of the
36 board.

37 The public member shall serve as chairman of the
38 board.

39 Members of the board, before performing any duty shall
40 take and subscribe to the oath required by article four,
41 section five of the constitution of West Virginia.

42 The board shall meet at such times and places as shall
43 be designated by the chairman. It shall be the duty of the
44 chairman to call a meeting of the board on the written
45 request of two members, or on the written request of the
46 deputy director for oil and gas or the director of the de-
47 partment of mines. Notice of each meeting shall be given
48 in writing to each member by the secretary at least five
49 days in advance of the meeting. Three voting members
50 shall constitute a quorum for the transaction of business.

51 In addition to other powers and duties expressly set
52 forth elsewhere in this article, the board shall:

53 (1) Establish, and from time to time revise, forms of
54 application for employment as an oil and gas inspector
55 and supervising inspector and forms for written examina-
56 tions to test the qualifications of candidates, with such
57 distinctions, if any, in the forms for oil and gas inspector
58 and supervising inspector as the board may from time to
59 time deem necessary or advisable;

60 (2) Adopt and promulgate reasonable rules and regu-
61 lations relating to the examination, qualification and cer-
62 tification of candidates for appointment, and relating to
63 hearings for removal of inspectors or the supervising in-
64 spector, required to be held by this article. All of such
65 rules and regulations shall be printed and a copy thereof
66 furnished by the secretary of the board to any person
67 upon request;

68 (3) Conduct, after public notice of the time and place
69 thereof, examinations of candidates for appointment. By
70 unanimous agreement of all members of the board, one
71 or more members of the board or an employee of the
72 department of mines may be designated to give to a can-
73 didate the written portion of the examination;

74 (4) Prepare and certify to the deputy director for oil
75 and gas and the director of the department of mines a
76 register of qualified eligible candidates for appointment
77 as oil and gas inspectors or as supervising inspectors, with
78 such differentiation, if any, between the certification of
79 candidates for oil and gas inspectors and for supervising
80 inspector as the board may from time to time deem
81 necessary or advisable. The register shall list all quali-
82 fied eligible candidates in the order of their grades, the
83 candidate with the highest grade appearing at the top of
84 the list. After each meeting of the board held to examine
85 such candidates and at least annually, the board shall
86 prepare and submit to the deputy director for oil and gas
87 and the director of the department of mines a revised and
88 corrected register of qualified eligible candidates for ap-
89 pointment, deleting from such revised register all per-
90 sons (a) who are no longer residents of West Virginia,
91 (b) who have allowed a calendar year to expire without,
92 in writing, indicating their continued availability for such
93 appointment, (c) who have been passed over for appoint-
94 ment for three years, (d) who have become ineligible for
95 appointment since the board originally certified that such
96 persons were qualified and eligible for appointment, or
97 (e) who, in the judgment of at least three members of the
98 board, should be removed from the register for good
99 cause;

100 (5) Cause the secretary of the board to keep and pre-
101 serve the written examination papers, manuscripts, grad-
102 ing sheets and other papers of all applicants for appoint-
103 ment for such period of time as may be established by the
104 board. Specimens of the examinations given, together
105 with the correct solution of each question, shall be pre-
106 served permanently by the secretary of the board;

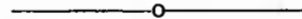
107 (6) Issue a letter or written notice of qualification to
108 each successful eligible candidate;

109 (7) Hear and determine proceedings for the removal of
110 inspectors or the supervising inspector in accordance with
111 the provisions of this article;

112 (8) Hear and determine appeals of inspectors or the
113 supervising inspector from suspension orders made by

114 the deputy director for oil and gas pursuant to the pro-
115 visions of section one-a of this article: *Provided*, That in
116 order to appeal from any order of suspension, an ag-
117 grieved inspector or supervising inspector shall file such
118 appeal in writing with the oil and gas inspectors' examin-
119 ing board not later than ten days after receipt of the
120 notice of suspension. On such appeal the board shall
121 affirm the action of the deputy director for oil and gas
122 unless it be satisfied from a clear preponderance of the
123 evidence that the deputy director for oil and gas has acted
124 arbitrarily; and

125 (9) Make an annual report to the governor concerning
126 the administration of oil and gas inspection personnel in
127 the state service; making such recommendations as the
128 board considers to be in the public interest.



CHAPTER 69

(Senate Bill No. 72—By Mr. Neeley and Mr. Bowers)



[Passed March 9, 1972; in effect from passage. Approved by the Governor.]



AN ACT to amend chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four-a, relating generally to the conservation of oil and gas; setting forth a declaration of public policy in this regard; making certain legislative findings with respect to deep oil or gas wells; providing certain definitions of terms; specifying the lands to which said article shall be applicable; providing certain exclusions; creating the West Virginia oil and gas conservation commission and providing for its authority and responsibility; authorizing the appointment of the oil and gas conservation commissioner and providing for his qualifications, compensation and expenses; relating to the membership of such commission, the qualifications and terms of its members, vacancies in such membership, meetings of the commission, the com-

compensation and expenses of its members and general powers and duties of the commissioner; authorizing the commissioner to issue subpoenas and subpoenas duces tecum; authorizing the promulgation by the commissioner of reasonable rules and regulations; specifying certain notice requirements; making applicable certain provisions of the West Virginia rules of civil procedure for trial courts of record; prohibiting the waste of oil or gas; requiring the establishment of drilling units and the pooling of interests in drilling units in connection with deep oil or gas wells; relating to the rights and duties of nonparticipating owners in the event of a pooled tract; relating to the recovery of oil and unit operations; validating unit agreements; establishing hearing procedures; authorizing the commissioner to hold hearings; providing a time and place for such hearings; expressly providing that the provisions of chapter twenty-nine-a of the code shall govern such hearings and otherwise be applicable; providing for judicial review of decisions of the commissioner entered following such hearings; providing for appeals to the supreme court of appeals; providing for legal counsel for the commissioner; providing for injunctive relief; authorizing injunctive relief without bond or other undertaking; providing for a special oil and gas conservation tax; establishing criminal penalties; providing for construction of article; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4A. OIL AND GAS CONSERVATION.

- §22-4A-1. Declaration of public policy; legislative findings.
- §22-4A-2. Definitions.
- §22-4A-3. Application of article; exclusions.
- §22-4A-4. Oil and gas conservation commissioner and commission; commission membership; qualifications of members; terms of members; vacancies on commission; meetings; compensation and expenses; appointment and qualifications of commissioner; general powers and duties.
- §22-4A-5. Rules and regulations; notice requirements.
- §22-4A-6. Waste of oil or gas prohibited.

- §22-4A-7. Drilling units and the pooling of interests in drilling units in connection with deep oil or gas wells.
- §22-4A-8. Secondary recovery of oil; unit operations.
- §22-4A-9. Validity of unit agreements.
- §22-4A-10. Hearing procedures.
- §22-4A-11. Judicial review; appeal to supreme court of appeals; legal representation for commissioner.
- §22-4A-12. Injunctive relief.
- §22-4A-13. Special oil and gas conservation tax.
- §22-4A-14. Penalties.
- §22-4A-15. Construction and severability.

§22-4A-1. Declaration of public policy; legislative findings.

1 (a) It is hereby declared to be the public policy of this
2 state and in the public interest to:

3 (1) Foster, encourage and promote exploration for and
4 development, production, utilization and conservation of
5 oil and gas resources;

6 (2) Prohibit waste of oil and gas resources and un-
7 necessary surface loss of oil and gas and their constituents;

8 (3) Encourage the maximum recovery of oil and gas;
9 and

10 (4) Safeguard, protect and enforce the correlative
11 rights of operators and royalty owners in a pool of oil or
12 gas to the end that each such operator and royalty owner
13 may obtain his just and equitable share of production
14 from such pool of oil or gas.

15 (b) The Legislature hereby determines and finds that
16 oil and natural gas found in West Virginia in shallow
17 sands or strata have been produced continuously for
18 more than one hundred years; that oil and gas deposits
19 in such shallow sands or strata have geological and other
20 characteristics different than those found in deeper for-
21 mations; and that in order to encourage the maximum
22 recovery of oil and gas from all productive formations in
23 this state, it is not in the public interest, with the excep-
24 tion of shallow wells utilized in a secondary recovery
25 program, to enact new statutory provisions relating to
26 the exploration for or production from oil and gas from
27 shallow wells, as defined in section two of this article,
28 but that it is in the public interest to enact new statutory
29 provisions establishing regulatory procedures and prin-

30 ciples to be applied to the exploration for or production
31 of oil and gas from deep wells, as defined in said section
32 two.

§22-4A-2. Definitions.

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

3 (1) "Commission" means the oil and gas conservation
4 commission and "commissioner" means the oil and gas
5 conservation commissioner as provided for in section four
6 of this article;

7 (2) "Director" means the director of the department of
8 mines as defined in section one, article one of this chapter;

9 (3) "Deputy director for oil and gas" means the dep-
10 uty director for oil and gas provided for in section one-a,
11 article four of this chapter;

12 (4) "Person" means any natural person, corporation,
13 partnership, receiver, trustee, executor, administrator,
14 guardian, fiduciary or other representative of any kind,
15 and includes any government or any political subdivision
16 or any agency thereof;

17 (5) "Operator" means any owner of the right to de-
18 velop, operate and produce oil and gas from a pool and
19 to appropriate the oil and gas produced therefrom, either
20 for himself or for himself and others; in the event that
21 there is no oil and gas lease in existence with respect
22 to the tract in question, the owner of the oil and gas
23 rights therein shall be considered as "operator" to the
24 extent of seven eighths of the oil and gas in that portion
25 of the pool underlying the tract owned by such owner,
26 and as "royalty owner" as to one-eighth interest in such
27 oil and gas; and in the event the oil is owned separately
28 from the gas, the owner of the substance being produced
29 or sought to be produced from the pool shall be considered
30 as "operator" as to such pool;

31 (6) "Royalty owner" means any owner of oil and gas
32 in place, or oil and gas rights, to the extent that such
33 owner is not an operator as defined in subdivision (5) of
34 this section;

35 (7) "Independent producer" means a person who is
36 actively engaged in the production of oil and gas in West
37 Virginia, but whose gross revenue from such production
38 in West Virginia does not exceed five hundred thousand
39 dollars per year.

40 (8) "Oil" means natural crude oil or petroleum and
41 other hydrocarbons, regardless of gravity, which are pro-
42 duced at the well in liquid form by ordinary production
43 methods and which are not the result of condensation of
44 gas after it leaves the underground reservoir;

45 (9) "Gas" means all natural gas and all other fluid
46 hydrocarbons not defined as oil in subdivision (8) of this
47 section;

48 (10) "Pool" means an underground accumulation of
49 petroleum in a single and separate natural reservoir
50 (ordinarily a porous sandstone or limestone). It is char-
51 acterized by a single natural-pressure system so that
52 production of petroleum from one part of the pool affects
53 the reservoir pressure throughout its extent. A pool is
54 bounded by geologic barriers in all directions, such as
55 geologic structural conditions, impermeable strata, and
56 water in the formations, so that it is effectively separated
57 from any other pools that may be present in the same
58 district or on the same geologic structure;

59 (11) "Well" means any shaft or hole sunk, drilled,
60 bored or dug into the earth or underground strata for
61 the extraction of oil or gas;

62 (12) "Shallow well" means any well drilled and com-
63 pleted in a formation above the top of the uppermost
64 member of the "Onondaga Group" or at a depth less than
65 six thousand feet, whichever is shallower;

66 (13) "Deep well" means any well drilled and com-
67 pleted in a formation at or below the top of the upper-
68 most member of the "Onondaga Group" or at a depth of
69 or greater than six thousand feet, whichever is shallower;

70 (14) "Drilling unit" means the acreage on which one
71 well may be drilled;

72 (15) "Waste" means and includes: (a) Physical waste,
73 as that term is generally understood in the oil and gas

74 industry; (b) the locating, drilling, equipping, operating
75 or producing of any oil or gas well in a manner that
76 causes, or tends to cause, a reduction in the quantity of
77 oil or gas ultimately recoverable from a pool under pru-
78 dent and proper operations, or that causes or tends to
79 cause unnecessary or excessive surface loss of oil or gas;
80 or (c) the drilling of more deep wells than are reasonably
81 required to recover efficiently and economically the maxi-
82 mum amount of oil and gas from a pool;

83 (16) "Correlative rights" means the reasonable oppor-
84 tunity of each person entitled thereto to recover and re-
85 ceive without waste the oil and gas in and under his tract
86 or tracts, or the equivalent thereof; and

87 (17) "Just and equitable share of production" means,
88 as to each person, an amount of oil or gas or both sub-
89 stantially equal to the amount of recoverable oil and gas
90 in that part of a pool underlying his tract or tracts.

91 (b) Unless the context clearly indicates otherwise, the
92 use of the word "and" and the word "or" shall be inter-
93 changeable, as, for example, "oil and gas" shall mean oil
94 or gas or both.

§22-4A-3. Application of article; exclusions.

1 (a) Except as provided in subsection (b) of this sec-
2 tion, the provisions of this article shall apply to all lands
3 located in this state, however owned, including any lands
4 owned or administered by any government or any
5 agency or subdivision thereof, over which the state has
6 jurisdiction under its police power. The provisions of
7 this article are in addition to and not in derogation of or
8 substitution for the provisions of article four of this
9 chapter.

10 (b) This article shall not apply to or affect:

11 (1) Shallow wells other than those utilized in secondary
12 recovery program as set forth in section eight of this
13 article;

14 (2) Any well commenced or completed prior to the
15 effective date of this article, unless such well is, after
16 completion (whether such completion is prior or subse-
17 quent to the effective date of this article), (i) deepened

18 subsequent to the effective date of this article to a forma-
19 tion at or below the top of the uppermost member of the
20 "Onondaga Group" or at a depth of or greater than
21 six thousand feet, whichever is shallower or (ii) in-
22 volved in secondary recovery operations for oil under
23 an order of the commissioner entered pursuant to section
24 eight of this article;

25 (3) Gas storage operations or any well employed to
26 inject gas into or withdraw gas from a gas storage reser-
27 voir or any well employed for storage observation; or

28 (4) Free gas rights.

29 (c) The provisions of this article shall not be con-
30 strued to grant to the commissioner authority or power to:

31 (1) Limit production or output, or prorate production
32 of any oil or gas well, except as provided in subdivision
33 (6), subsection (a), section seven of this article; or

34 (2) Fix prices of oil or gas.

**§22-4A-4. Oil and gas conservation commissioner and commis-
sion; commission membership; qualifications of
members; terms of members; vacancies on com-
mission; meetings; compensation and expenses;
appointment and qualifications of commissioner;
general powers and duties.**

1 (a) There is hereby created the "West Virginia Oil and
2 Gas Conservation Commission" which shall be composed
3 of five members. The director of the department of natural
4 resources and the deputy director for oil and gas shall
5 be members of the commission ex officio. The remaining
6 three members of the commission shall be appointed by
7 the governor, by and with the advice and consent of the
8 Senate. Of the three members appointed by the governor,
9 one shall be an independent producer and at least one
10 shall be a public member not engaged in full-time em-
11 ployment in an activity under the jurisdiction of the
12 public service commission or the federal power commis-
13 sion. As soon as practical after appointment of the mem-
14 bers of the commission, the governor shall call a meeting
15 of the commission to be convened at the state capitol for
16 the purpose of organizing and electing a chairman.

17 (b) The members of the commission appointed by
18 the governor shall be appointed for overlapping terms of
19 six years each, except that the original appointments shall
20 be for terms of two, four and six years, respectively. Each
21 member appointed by the governor shall serve until his
22 successor has been appointed and qualified. Members may
23 be appointed by the governor to serve any number of
24 terms. The members of the commission appointed by the
25 governor, before performing any duty hereunder, shall
26 take and subscribe to the oath required by section five,
27 article four of the constitution of West Virginia. Vacancies
28 in the membership appointed by the governor shall be
29 filled by appointment by him for the unexpired term of
30 the member whose office shall be vacant and such ap-
31 pointment shall be made by the governor within sixty
32 days of the occurrence of such vacancy. Any member
33 appointed by the governor may be removed by the gov-
34 ernor in case of incompetency, neglect of duty, gross im-
35 morality or malfeasance in office.

36 (c) The commission shall meet at such times and places
37 as shall be designated by the chairman. The chairman
38 may call a meeting of the commission at any time, and he
39 shall call a meeting of the commission upon the written
40 request of two members or upon the written request of
41 the oil and gas conservation commissioner. Notification of
42 each meeting shall be given in writing to each member by
43 the chairman at least five days in advance of the meeting.
44 Any three members, one of which may be the chairman,
45 shall constitute a quorum for the transaction of any
46 business as herein provided for. A majority of the com-
47 mission shall be required to determine any issue brought
48 before it.

49 (d) Each member of the commission appointed by the
50 governor shall receive thirty-five dollars per diem not
51 to exceed one hundred days per calendar year while
52 actually engaged in the performance of his duties as a
53 member of the commission. Each member of the com-
54 mission shall also be reimbursed for all reasonable and
55 necessary expenses actually incurred in the performance
56 of his duties as a member of the commission.

57 (e) The commission shall appoint the oil and gas
58 conservation commissioner, fix his salary within avail-
59 able funds, and advise him regarding his duties and
60 authority under this article and consult with him prior
61 to his reaching any final decisions and entering orders
62 hereunder. However, the commissioner has full and final
63 authority under this article with the commission serving
64 in an advisory capacity to him. The commissioner shall
65 possess a degree from an accredited college or university
66 in petroleum engineering or geology and must be a
67 registered professional engineer with particular knowl-
68 edge and experience in the oil and gas industry.

69 (f) The oil and gas commissioner is hereby empowered
70 and it shall be his duty to execute and carry out, ad-
71 minister and enforce the provisions of this article in the
72 manner provided herein. Subject to the provisions
73 of section three of this article, the commissioner shall
74 have jurisdiction and authority over all persons and
75 property necessary therefor. The commissioner is autho-
76 rized to make such investigation of records and facilities
77 as he deems proper. In the event of a conflict between
78 the duty to prevent waste and the duty to protect cor-
79 relative rights, the commissioner's duty to prevent waste
80 shall be paramount. He shall serve as secretary of the
81 oil and gas conservation commission.

82 (g) Without limiting his general authority, the com-
83 missioner shall have specific authority to:

84 (1) Regulate the spacing of deep wells;

85 (2) Make and enforce reasonable rules and regulations
86 and orders reasonably necessary to prevent waste, pro-
87 tect correlative rights, govern the practice and procedure
88 before the commissioner and otherwise administer the
89 provisions of this article;

90 (3) Issue subpoenas for the attendance of witnesses
91 and subpoenas duces tecum for the production of any
92 books, records, maps, charts, diagrams and other pertinent
93 documents, and administer oaths and affirmations to such
94 witnesses, whenever, in the judgment of the commissioner,
95 it is necessary to do so for the effective discharge of his
96 duties under the provisions of this article; and

97 (4) Serve as technical advisor regarding oil and gas
98 to the Legislature, its members and committees, to the
99 deputy director for oil and gas, to the department of
100 natural resources and to any other agency of state govern-
101 ment having responsibility related to the oil and gas
102 industry.

§22-4A-5. Rules and regulations; notice requirements.

1 (a) The commissioner may promulgate such reasonable
2 rules and regulations as he may deem necessary or desir-
3 able to implement and make effective the provisions of
4 this article and the powers and authority conferred and
5 the duties imposed upon him under the provisions of this
6 article and for securing uniformity of procedure in the
7 administration of the provisions of article three, chapter
8 twenty-nine-a of this code.

9 (b) Notwithstanding the provisions of section two, ar-
10 ticle seven, chapter twenty-nine-a of this code, any notice
11 required under the provisions of this article shall be given
12 at the direction of the commissioner by (1) personal or
13 substituted service and if such cannot be had then by (2)
14 certified United States mail, addressed, postage prepaid,
15 to the last-known mailing address, if any, of the person
16 being served, with the direction that the same be de-
17 livered to addressee only, return receipt requested, and
18 if there be no known mailing address or if the notice is
19 not so delivered then by (3) publication of such notice as
20 a Class II legal advertisement in compliance with the pro-
21 visions of article three, chapter fifty-nine of this code,
22 and the publication area for such publication shall be the
23 county or counties wherein any land which may be
24 affected by such order is situate. In addition, the com-
25 missioner shall mail a copy of such notice to all other per-
26 sons who have specified to the commissioner an address to
27 which all such notices may be mailed. The notice shall
28 issue in the name of the state, shall be signed by the com-
29 missioner, shall specify the style and number of the pro-
30 ceeding, the time and place of any hearing, and shall
31 briefly state the purpose of the proceeding. Personal or
32 substituted service and proof thereof may be made by an
33 officer authorized to serve process or by an agent of the

34 commissioner in the same manner as is now provided by
35 the "West Virginia Rules of Civil Procedure for Trial
36 Courts of Record" for service of process in civil actions
37 in the various courts of this state. A certified copy of any
38 pooling order entered under the provisions of this article
39 shall be presented by the commissioner to the clerk of the
40 county court of each county wherein all or any portion of
41 the pooled tract is located, for recordation in the record
42 book of such county in which oil and gas leases are nor-
43 mally recorded. Such recording of such order from the
44 time noted thereon by such clerk shall be notice of the
45 order to all persons.

§22-4A-6. Waste of oil or gas prohibited.

1 Waste of oil or gas is hereby prohibited.

**§22-4A-7. Drilling units and the pooling of interests in drill-
ing units in connection with deep oil or gas wells.**

1 (a) *Drilling units.*

2 (1) After one deep well has been drilled establishing
3 a pool, an application to establish drilling units may be
4 filed with the commissioner by the operator of such dis-
5 covery deep well or by the operator of any lands directly
6 and immediately affected by the drilling of such discovery
7 deep well, or subsequent deep wells in said pool, and the
8 commissioner shall promptly schedule a hearing on said
9 application. Each application shall contain such informa-
10 tion as the commissioner may prescribe by reasonable
11 rules and regulations promulgated by him in accordance
12 with the provisions of section five of this article.

13 (2) Upon the filing of an application to establish
14 drilling units, notice of the hearing shall be given by the
15 commissioner. Each notice shall specify the date, time and
16 place of hearing, describe the area for which a spacing
17 order is to be entered, and contain such other informa-
18 tion as is essential to the giving of proper notice.

19 (3) On the date specified in such notice, the commis-
20 sioner shall hold a public hearing to determine the area to
21 be included in his spacing order and the acreage to be
22 contained by each drilling unit, the shape thereof, and
23 the minimum distance from the outside boundary of the

24 unit at which a deep well may be drilled thereon. At
25 such hearing the commissioner shall consider:

26 (i) The surface topography and property lines of
27 the lands underlaid by the pool to be included in such
28 order;

29 (ii) The plan of deep well spacing then being em-
30 ployed or proposed in such pool for such lands;

31 (iii) The depth at which production from said pool
32 has been found;

33 (iv) The nature and character of the producing
34 formation or formations, and whether the substance pro-
35 duced or sought to be produced is gas or oil;

36 (v) The maximum area which may be drained
37 efficiently and economically by one deep well; and

38 (vi) Any other available geological or scientific data
39 pertaining to said pool which may be of probative value
40 to the commissioner in determining the proper deep well
41 drilling units therefor.

42 To carry out the purposes of this article, the commissioner
43 shall, upon proper application, notice and hearing as
44 herein provided, and if satisfied after such hearing that
45 drilling units should be established, enter an order estab-
46 lishing drilling units of a specified and approximately
47 uniform size and shape for each pool subject to the pro-
48 visions of this section.

49 (4) When it is determined that an oil or gas pool
50 underlies an area for which a spacing order is to be
51 entered, the commissioner shall include in his order all
52 lands determined or believed to be underlaid by such
53 pool and exclude all other lands.

54 (5) No drilling unit established by the commissioner
55 shall be smaller than the maximum area which can be
56 drained efficiently and economically by one deep well:
57 *Provided*, That if at the time of a hearing to establish
58 drilling units, there is not sufficient evidence from which
59 to determine the area which can be drained efficiently
60 and economically by one deep well, the commissioner may
61 enter an order establishing temporary drilling units for
62 the orderly development of the pool pending the obtain-

63 ing of information necessary to determine the ultimate
64 spacing for such pool.

65 (6) An order establishing drilling units shall specify
66 the minimum distance from the nearest outside boundary
67 of the drilling unit at which a deep well may be drilled.
68 The minimum distance provided shall be the same in all
69 drilling units established under said order with necessary
70 exceptions for deep wells drilled or being drilled at the
71 time of the filing of the application. If the commissioner
72 finds that a deep well to be drilled at or more than the
73 specified minimum distance from the boundary of a
74 drilling unit would not be likely to produce in paying
75 quantities or will encounter surface conditions which
76 would substantially add to the burden or hazard of
77 drilling such deep well, or that a location within the area
78 permitted by the order is prohibited by the lawful order
79 of any state agency or court, the commissioner is autho-
80 rized after notice and hearing to make an order permitting
81 the deep well to be drilled at a location within the mini-
82 mum distance prescribed by the spacing order. In grant-
83 ing exceptions to the spacing order, the commissioner may
84 restrict the production from any such deep well so that
85 each person entitled thereto in such drilling unit shall not
86 produce or receive more than his just and equitable share
87 of the production.

88 (7) An order establishing drilling units for a pool
89 shall cover all lands determined or believed to be under-
90 laid by such pool, and may be modified by the commis-
91 sioner, from time to time, to include additional lands de-
92 termined to be underlaid by such pool or to exclude
93 lands determined not to be underlaid by such pool. An
94 order establishing drilling units may be modified by the
95 commissioner to permit the drilling of additional deep
96 wells on a reasonably uniform pattern at a uniform mini-
97 mum distance from the nearest unit boundary as provided
98 above. Any order modifying a prior order shall be made
99 only after application by an interested operator and notice
100 and hearing as prescribed herein for the original order.
101 However, drilling units established by order shall not ex-
102 ceed one hundred sixty acres for an oil well or six hun-
103 dred forty acres for a gas well.

104 (8) After the date of the notice of hearing called to
105 establish drilling units, no additional deep well shall be
106 commenced for production from the pool until the order
107 establishing drilling units has been made, unless the
108 commencement of the deep well is authorized by order
109 of the commissioner.

110 (9) The commissioner shall, within forty-five days after
111 the filing of an application to establish drilling units for
112 a pool subject to the provisions of this section, either enter
113 an order establishing such drilling units or dismiss the
114 application.

115 (10) As part of the order establishing a drilling unit,
116 the commissioner shall prescribe just and reasonable
117 terms and conditions upon which the royalty interests in
118 the unit shall, in the absence of voluntary agreement, be
119 deemed to be integrated without the necessity of a sub-
120 sequent order integrating the royalty interests.

121 (b) *Pooling of interests in drilling units.*

122 (1) When two or more separately owned tracts are
123 embraced within a drilling unit, or when there are
124 separately owned interests in all or a part of a drilling
125 unit, the interested persons may pool their tracts or
126 interests for the development and operation of the drilling
127 unit. In the absence of voluntary pooling and upon
128 application of any operator having an interest in the
129 drilling unit, and after notice and hearing, the commis-
130 sioner shall enter an order pooling all tracts or interests
131 in the drilling unit for the development and operation
132 thereof and for sharing production therefrom. Each such
133 pooling order shall be upon terms and conditions which
134 are just and reasonable. In no event shall drilling be
135 initiated on the tract of an unleased royalty owner with-
136 out his written consent.

137 (2) All operations, including, but not limited to, the
138 commencement, drilling or operation of a deep well, upon
139 any portion of a drilling unit for which a pooling order
140 has been entered, shall be deemed for all purposes the
141 conduct of such operations upon each separately owned
142 tract in the drilling unit by the several owners thereof.
143 That portion of the production allocated to a separately

144 owned tract included in a drilling unit shall, when pro-
145 duced, be deemed for all purposes to have been actually
146 produced from such tract by a deep well drilled thereon.

147 (3) Any pooling order under the provisions of this
148 subsection (b) shall authorize the drilling and operation
149 of a deep well for the production of oil or gas from the
150 pooled acreage; shall designate the operator to drill and
151 operate such deep well; shall prescribe the time and
152 manner in which all owners of operating interests in the
153 pooled tracts or portions of tracts may elect to participate
154 therein; shall provide that all reasonable costs and ex-
155 penses of drilling, completing, equipping, operating,
156 plugging and abandoning such deep well shall be borne,
157 and all production therefrom shared, by all owners of
158 operating interests in proportion to the net oil or gas
159 acreage in the pooled tracts owned or under lease to
160 each owner; and shall make provisions for payment of all
161 reasonable costs thereof, including a reasonable charge
162 for supervision and for interest on past-due accounts, by
163 all those who elect to participate therein.

164 (4) No drilling or operation of a deep well for the
165 production of oil or gas shall be permitted upon or with-
166 in any tract of land unless the operator shall have first
167 obtained the written consent and easement therefor, duly
168 acknowledged and placed of record in the office of the
169 county clerk, for valuable consideration of all owners of
170 the surface of such tract of land, which consent shall
171 describe with reasonable certainty, the location upon such
172 tract, of the location of such proposed deep well, a certified
173 copy of which consent and easement shall be submitted
174 by the operator to the commission.

175 (5) Upon request, any such pooling order shall provide
176 just and equitable alternatives whereby an owner of an
177 operating interest who does not elect to participate in
178 the risk and cost of the drilling of a deep well may
179 elect:

180 (i) Option 1. To surrender his interest or a portion
181 thereof to the participating owners on a reasonable
182 basis and for a reasonable consideration, which, if not

183 agreed upon, shall be determined by the commissioner;
184 or

185 (ii) Option 2. To participate in the drilling of the
186 deep well on a limited or carried basis on terms and con-
187 ditions which, if not agreed upon, shall be determined by
188 the commissioner to be just and reasonable.

189 (6) In the event a nonparticipating owner elects
190 Option 2, and an owner of any operating interest in any
191 portion of the pooled tract shall drill and operate, or pay
192 the costs of drilling and operating, a deep well for the
193 benefit of such nonparticipating owner as provided in the
194 pooling order, then such operating owner shall be entitled
195 to the share of production from the tracts or portions
196 thereof pooled accruing to the interest of such nonparti-
197 cipating owner, exclusive of any royalty or overriding roy-
198 alty reserved in any leases, assignments thereof or agree-
199 ments relating thereto, of such tracts or portions thereof,
200 or exclusive of one eighth of the production attributable
201 to all unleased tracts or portions thereof, until the market
202 value of such nonparticipating owner's share of the pro-
203 duction, exclusive of such royalty, overriding royalty or
204 one eighth of production, equals double the share of such
205 costs payable by or charged to the interest of such non-
206 participating owner.

207 (7) If a dispute shall arise as to the costs of drilling
208 and operating a deep well, the commissioner shall deter-
209 mine and apportion the costs, within ninety days from
210 the date of written notification to the commissioner of the
211 existence of such dispute.

§22-4A-8. Secondary recovery of oil; unit operations.

1 Upon the application of any operator in a pool produc-
2 tive of oil and after notice and hearing, the commissioner
3 may enter an order requiring the unit operation of such
4 pool in connection with a program of secondary recovery
5 of oil, and providing for the unitization of separately
6 owned tracts and interests within such pool, but only after
7 finding that: (1) The order is reasonably necessary for the
8 prevention of waste and the drilling of unnecessary deep
9 wells; (2) the proposed plan of secondary recovery will

10 increase the ultimate recovery of oil from the pool to
11 such an extent that the proposed secondary recovery
12 operation will be economically feasible; (3) the produc-
13 tion of oil from the unitized pool can be allocated in such
14 a manner as to insure the recovery by all operators of
15 their just and equitable share of such production; and (4)
16 the operators of at least three fourths of the acreage (cal-
17 culating partial interests on a pro rata basis for operator
18 interests on any parcel owned in common) and the
19 royalty owners of at least three fourths of the acreage
20 (calculating partial interests on a pro rata basis for
21 royalty interests on any parcel owned in common) in
22 such pool have approved the plan and terms of unit opera-
23 tion to be specified by the commissioner in its order, such
24 approval to be evidenced by a written contract setting
25 forth the terms of the unit operation and executed by
26 said operators and said royalty owners, and filed with the
27 commissioner on or before the day set for hearing. The
28 order requiring such unit operation shall designate one
29 operator in the pool as unit operator and shall also make
30 provision for the proportionate allocation to all operators
31 of the costs and expenses of the unit operation, including
32 reasonable charges for supervision and interest on past-
33 due accounts, which allocation shall be in the same pro-
34 portion that the separately owned tracts share in the pro-
35 duction of oil from the unit. In the absence of an agree-
36 ment entered into by the operators and filed with the
37 commissioner providing for sharing the costs of capital
38 investment in wells and physical equipment, and intangi-
39 ble drilling costs, the commissioner shall provide by
40 order for the sharing of such costs in the same proportion
41 as the costs and expenses of the unit operation: *Provided,*
42 *That any operator who has not consented to the unitiza-*
43 *tion shall not be required to contribute to the costs or*
44 *expenses of the unit operation, or to the cost of capital*
45 *investment in wells and physical equipment, and intangi-*
46 *ble drilling costs, except out of the proceeds from the sale*
47 *of the production accruing to the interest of such opera-*
48 *tor: Provided, however, That no credit to the well costs*
49 *shall be adjusted on the basis of less than the average*
50 *well costs within the unitized area: Provided further,*

51 That no order entered under the provisions of this sec-
52 tion requiring unit operation shall vary or alter any of
53 the terms of any contract entered into by operators and
54 royalty owners under the provisions of this section.

§22-4A-9. Validity of unit agreements.

1 No agreement between or among operators, lessees or
2 other owners of oil or gas rights in oil and gas properties,
3 entered into pursuant to the provisions of this article or
4 with a view to or for the purpose of bringing about the
5 unitized development or operation of such properties,
6 shall be held to violate the statutory or common law of
7 this state prohibiting monopolies or acts, arrangements,
8 contracts, combinations or conspiracies in restraint of
9 trade or commerce.

§22-4A-10. Hearing procedures.

1 (a) Upon receipt of an application for an order of the
2 commissioner for which a hearing is required by the pro-
3 visions of this article, the commissioner shall set a time
4 and place for such hearing not less than ten and not more
5 than thirty days thereafter. Any scheduled hearing may
6 be continued by the commissioner upon his own motion or
7 for good cause shown by any party to the hearing. All
8 interested parties shall be entitled to be heard at any
9 hearing conducted under the provisions of this article.

10 (b) All of the pertinent provisions of article five, chap-
11 ter twenty-nine-a of this code shall apply to and govern
12 the hearing and the administrative procedures in con-
13 nection with and following such hearing, with like effect
14 as if the provisions of said article five were set forth in
15 extenso in this subsection.

16 (c) Any such hearing shall be conducted by the com-
17 missioner. For the purpose of conducting any such hear-
18 ing, the commissioner shall have the power and author-
19 ity to issue subpoenas and subpoenas duces tecum which
20 shall be issued and served within the time, for the
21 fees and shall be enforced, as specified in section one,
22 article five of said chapter twenty-nine-a, and all of the
23 said section one provisions dealing with subpoenas and
24 subpoenas duces tecum shall apply to subpoenas and

25 subpoenas duces tecum issued for the purpose of a hear-
26 ing hereunder.

27 (d) At any such hearing any interested person may
28 represent himself or be represented by an attorney at
29 law admitted to practice before any circuit court of this
30 state. Upon request by the commissioner, he shall be rep-
31 resented at such hearing by the attorney general or his
32 assistants without additional compensation. The com-
33 missioner, with the written approval of the attorney gen-
34 eral, may employ special counsel to represent the com-
35 missioner at any such hearing.

36 (e) After any such hearing and consideration of all of
37 the testimony, evidence and record in the case, the com-
38 missioner shall render his decision in writing. The written
39 decision of the commissioner shall be accompanied by
40 findings of fact and conclusions of law as specified in sec-
41 tion three, article five, chapter twenty-nine-a of this code,
42 and a copy of such decision and accompanying findings
43 and conclusions shall be served by certified mail, return
44 receipt requested, upon all interested persons and their
45 attorney of record, if any.

46 (f) The decision of the commissioner shall be final un-
47 less reversed, vacated or modified upon judicial review
48 thereof in accordance with the provisions of section eleven
49 of this article.

**§22-4A-11. Judicial review; appeal to supreme court of ap-
peals; legal representation for commissioner.**

1 (a) Any person adversely affected by a decision of the
2 commissioner rendered after a hearing held in accordance
3 with the provisions of section ten of this article shall be
4 entitled to judicial review thereof. All of the pertinent
5 provisions of section four, article five, chapter twenty-
6 nine-a of this code shall apply to and govern such judicial
7 review with like effect as if the provisions of said section
8 four were set forth in extenso in this section.

9 (b) The judgment of the circuit court shall be final un-
10 less reversed, vacated or modified on appeal to the su-
11 preme court of appeals in accordance with the provisions
12 of section one, article six, chapter twenty-nine-a of this

13 code, except that notwithstanding the provisions of said
14 section one the petition seeking such review must be filed
15 with said supreme court of appeals within thirty days
16 from the date of entry of the judgment of the circuit
17 court.

18 (c) Legal counsel and services for the commissioner in
19 all appeal proceedings in any circuit court and the su-
20 preme court of appeals shall be provided by the attorney
21 general or his assistants and in any circuit court by the
22 prosecuting attorney of the county as well, all without
23 additional compensation. The commissioner, with the
24 written approval of the attorney general, may employ
25 special counsel to represent the commissioner at any such
26 appeal proceedings.

§22-4A-12. Injunctive relief.

1 (a) Whenever it appears to the commissioner that any
2 person has been or is violating or is about to violate any
3 provision of this article, any reasonable rule and regula-
4 tion promulgated by the commissioner hereunder or any
5 order or final decision of the commissioner, the commis-
6 sioner may apply in the name of the state to the circuit
7 court of the county in which the violations or any part
8 thereof has occurred, is occurring or is about to occur, or
9 the judge thereof in vacation, for an injunction against
10 such person and any other persons who have been, are or
11 are about to be, involved in any practices, acts or omis-
12 sions, so in violation, enjoining such person or persons
13 from any such violation or violations. Such application
14 may be made and prosecuted to conclusion whether or not
15 any such violation or violations have resulted or shall
16 result in prosecution or conviction under the provisions
17 of section fourteen of this article.

18 (b) Upon application by the commissioner, the circuit
19 courts of this state may by mandatory or prohibitory in-
20 junction compel compliance with the provisions of this
21 article, the reasonable rules and regulations promulgated
22 by the commissioner hereunder and all orders and final
23 decisions of the commissioner. The court may issue a
24 temporary injunction in any case pending a decision on

25 the merits of any application filed. Any other section of
26 this code to the contrary notwithstanding, the state shall
27 not be required to furnish bond or other undertaking as
28 a prerequisite to obtaining mandatory, prohibitory or
29 temporary injunctive relief under the provisions of this
30 article.

31 (c) The judgment of the circuit court upon any appli-
32 cation permitted by the provisions of this section shall
33 be final unless reversed, vacated or modified on appeal to
34 the supreme court of appeals. Any such appeal shall be
35 sought in the manner and within the time provided by
36 law for appeals from circuit courts in other civil actions.

37 (d) The commissioner shall be represented in all such
38 proceedings by the attorney general or his assistants and
39 in such proceedings in the circuit courts by the prose-
40 cuting attorneys of the several counties as well, all
41 without additional compensation. The commissioner, with
42 the written approval of the attorney general, may employ
43 special counsel to represent the commissioner in any such
44 proceedings.

45 (e) If the commissioner shall refuse or fail to apply for
46 an injunction to enjoin a violation or threatened violation
47 of any provision of this article, any reasonable rule and
48 regulation promulgated by the commissioner hereunder or
49 any order or final decision of the commissioner, within ten
50 days after receipt of a written request to do so by any
51 person who is or will be adversely affected by such viola-
52 tion or threatened violation, the person making such re-
53 quest may apply in his own behalf for an injunction to
54 enjoin such violation or threatened violation in any court
55 in which the commissioner might have brought suit. The
56 commissioner shall be made a party defendant in such
57 application in addition to the person or persons viola-
58 ting or threatening to violate any provision of this article,
59 any reasonable rule and regulation promulgated by the
60 commissioner hereunder or any order or final decision of
61 the commissioner. The application shall proceed and in-
62 junctive relief may be granted without bond or other
63 undertaking in the same manner as if the application
64 had been made by the commissioner.

§22-4A-13. Special oil and gas conservation tax.

1 Owners of leases on oil or gas for the exploration, de-
2 velopment or production of oil or natural gas shall pay to
3 the commission a special oil and gas conservation tax of
4 three cents for each acre under lease, excluding from the
5 tax the first twenty-five thousand acres. The commission
6 shall deposit with the treasurer of the state of West Vir-
7 ginia, to the credit of the special oil and gas conservation
8 fund, all taxes collected hereunder. The special oil and
9 gas conservation fund shall be a special fund and shall
10 be administered by the commission for the sole purpose
11 of carrying out all costs necessary to carry out the pro-
12 visions of this article. This tax shall be paid as provided
13 herein annually on or before the first day of July, one
14 thousand nine hundred seventy-two, and on or before the
15 first day of July in each succeeding year.

§22-4A-14. Penalties.

1 (a) Any person who violates any provision of this ar-
2 ticle, any of the reasonable rules and regulations pro-
3 mulgated by the commissioner hereunder or any order or
4 any final decision of the commissioner, other than a viola-
5 tion covered by the provisions of subsection (b) of this
6 section, shall be guilty of a misdemeanor, and, upon con-
7 viction thereof, shall be fined not more than one thousand
8 dollars, and each day that a violation continues shall con-
9 stitute a new and separate violation.

10 (b) Any person who, for the purpose of evading any
11 provision of this article, any of the reasonable rules and
12 regulations promulgated by the commissioner hereunder
13 or any order or final decision of the commissioner, shall
14 make or cause to be made any false entry or statement in a
15 report required under the provisions of this article, any
16 of the reasonable rules and regulations promulgated by
17 the commissioner hereunder or any order or final decision
18 of the commissioner, or shall make or cause to be made
19 any false entry in any record, account or memorandum re-
20 quired under the provisions of this article, any of the
21 reasonable rules and regulations promulgated by the
22 commissioner hereunder or any order or any final decision
23 of the commissioner, or who shall omit, or cause to be

24 omitted, from any such record, account or memorandum,
25 full, true and correct entries, or shall remove from this
26 state or destroy, mutilate, alter or falsify any such record,
27 account or memorandum, shall be guilty of a misde-
28 meanor, and, upon conviction thereof, shall be fined not
29 more than five thousand dollars, or imprisoned in the
30 county jail not more than six months, or both fined and
31 imprisoned.

32 (c) Any person who knowingly aids or abets any other
33 person in the violation of any provision of this article,
34 any of the reasonable rules and regulations promulgated
35 by the commissioner hereunder or any order of final deci-
36 sion of the commissioner, shall be subject to the same pen-
37 alty as that prescribed in this article for the violation by
38 such other person.

§22-4A-15. Construction and severability.

1 Except as provided in subsection (c), section three of
2 this article, this article shall be liberally construed so as
3 to effectuate the declaration of public policy set forth in
4 section one of this article.

5 If any section, subsection, subdivision, subparagraph,
6 sentence or clause of this article is adjudged to be un-
7 constitutional or invalid, such invalidation shall not affect
8 the validity of the remaining portions of this article, and,
9 to this end, the provisions of this article are hereby de-
10 clared to be severable.

CHAPTER 70

(Senate Bill No. 163—By Mr. Palumbo)

[Passed March 9, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend chapter seventeen-b of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new article, designated

article one-a, relating to adopting the driver license compact.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. DRIVER LICENSE COMPACT.

§17B-1A-1. Authorization.

§17B-1A-2. Definitions; implementation of compact.

§17B-1A-1. Authorization.

1 Pursuant to authority granted by an act of the eighty-
2 fifth Congress of the United States, being public law six
3 hundred eighty-four, approved the twentieth day of
4 August, one thousand nine hundred fifty-eight, the gov-
5 ernor of this state is hereby authorized and directed to
6 execute a compact on behalf of the state of West Vir-
7 ginia with all other jurisdictions legally joining therein
8 in the form substantially as follows:

ARTICLE I. FINDINGS AND DECLARATION OF POLICY.

1 (a) The party states find that:

2 (1) The safety of their streets and highways is ma-
3 terially affected by the degree of compliance with state
4 laws and local ordinances relating to the operation of
5 motor vehicles.

6 (2) Violation of such a law or ordinance is evidence
7 that the violator engages in conduct which is likely to en-
8 danger the safety of persons and property.

9 (3) The continuance in force of a license to drive is
10 predicated upon compliance with laws and ordinances re-
11 lating to the operation of motor vehicles, in whichever
12 jurisdiction the vehicle is operated.

13 (b) It is the policy of each of the party states to:

14 (1) Promote compliance with the laws, ordinances and
15 administrative rules and regulations relating to the opera-
16 tion of motor vehicles by their operators in each of the
17 jurisdictions where such operators drive motor vehicles.

18 (2) Make the reciprocal recognition of licenses to drive
19 and eligibility therefor more just and equitable by con-
20 sidering the overall compliance with motor vehicle laws,
21 ordinances and administrative rules and regulations as a
22 condition precedent to the continuance or issuance of any
23 license by reason of which the licensee is authorized or
24 permitted to operate a motor vehicle in any of the party
25 states.

ARTICLE II. DEFINITIONS.

1 As used in this compact:

2 (a) "State" means a state, territory or possession of the
3 United States, the District of Columbia or the Common-
4 wealth of Puerto Rico.

5 (b) "Home state" means the state which has issued
6 and has the power to suspend or revoke the use of the
7 license or permit to operate a motor vehicle.

8 (c) "Conviction" means a conviction of any offense re-
9 lated to the use or operation of a motor vehicle which is
10 prohibited by state law, municipal ordinance or adminis-
11 trative rule or regulation, or a forfeiture of bail, bond or
12 other security deposited to secure appearance by a person
13 charged with having committed any such offense, and
14 which conviction or forfeiture is required to be reported
15 to the licensing authority.

ARTICLE III. REPORTS OF CONVICTION.

1 The licensing authority of a party state shall report
2 each conviction of a person from another party state
3 occurring within its jurisdiction to the licensing authority
4 of the home state of the licensee. Such report shall clear-
5 ly identify the person convicted; describe the violation
6 specifying the section of the statute, code or ordinance
7 violated; identify the court in which action was taken;
8 indicate whether a plea of guilty or not guilty was en-
9 tered, or the conviction was a result of the forfeiture of
10 bail, bond or other security; and shall include any special
11 findings made in connection therewith.

ARTICLE IV. EFFECT OF CONVICTION.

1 (a) The licensing authority in the home state, for the
2 purposes of suspension, revocation or limitation of the

3 license to operate a motor vehicle, shall give the same
4 effect to the conduct reported, pursuant to Article III of
5 this compact, as it would if such conduct had occurred in
6 the home state, in the case of convictions for:

7 (1) Manslaughter or negligent homicide resulting from
8 the operation of a motor vehicle;

9 (2) Driving a motor vehicle while under the influence
10 of intoxicating liquor or a narcotic drug, or under the
11 influence of any other drug to a degree which renders the
12 driver incapable of safely driving a motor vehicle;

13 (3) Any felony in the commission of which a motor
14 vehicle is used;

15 (4) Failure to stop and render aid in the event of a
16 motor vehicle accident resulting in the death or personal
17 injury to another.

18 (b) As to other convictions, reported pursuant to
19 Article III, the licensing authority in the home state shall
20 give such effect to the conduct as is provided by the laws
21 of the home state.

22 (c) If the laws of a party state do not provide for
23 offenses or violations denominated or described in pre-
24 cisely the words employed in subsection (a) of this
25 article, such party state shall construe the denominations
26 and descriptions appearing in subsection (a) hereof as
27 being applicable to and identifying those offenses or viola-
28 tions of a substantially similar nature and the laws of
29 such party state shall contain such provisions as may be
30 necessary to ensure that full force and effect is given to
31 this article.

ARTICLE V. APPLICATIONS FOR NEW LICENSES.

1 Upon application for a license to drive, the licensing
2 authority in a party state shall ascertain whether the ap-
3 plicant has ever held, or is the holder of a license to drive
4 issued by any other party state. The licensing authority
5 in the state where application is made shall not issue a
6 license to drive to the applicant if:

7 (1) The applicant has held such a license, but the same
8 has been suspended by reason, in whole or in part, of a

9 violation and if such suspension period has not termi-
10 nated.

11 (2) The applicant has held such a license, but the same
12 has been revoked by reason, in whole or in part, of a
13 violation and if such revocation has not terminated, ex-
14 cept that after the expiration of one year from the date
15 the license was revoked, such person may make applica-
16 tion for a new license if permitted by law. The licensing
17 authority may refuse to issue a license to any such ap-
18 plicant if, after investigation, the licensing authority
19 determines that it will not be safe to grant to such per-
20 son the privilege of driving a motor vehicle on the public
21 highways.

22 (3) The applicant is the holder of a license to drive
23 issued by another party state and currently in force un-
24 less the applicant surrender such license.

ARTICLE VI. APPLICABILITY OF OTHER LAWS.

1 Except as expressly required by provisions of this com-
2 pact, nothing contained herein shall be construed to
3 affect the right of any party state to apply any of its other
4 laws relating to licenses to drive to any person or cir-
5 cumstance, nor to invalidate or prevent any driver license
6 agreement or other cooperative arrangement between a
7 party state and a nonparty state.

ARTICLE VII. COMPACT ADMINISTRATOR AND INTERCHANGE OF INFORMATION.

1 (a) The head of the licensing authority of each party
2 state shall be the administrator of this compact for his
3 state. The administrators, acting jointly, shall have the
4 power to formulate all necessary and proper procedures
5 for the exchange of information under this compact.

6 (b) The administrator of each party state shall furnish
7 to the administrator of each other party state any in-
8 formation or documents reasonably necessary to facilitate
9 the administration of this compact.

ARTICLE VIII. ENTRY INTO FORCE AND WITHDRAWAL.

1 (a) This compact shall enter into force and become
2 effective as to any state when it has enacted the same
3 into law.

4 (b) Any party state may withdraw from this compact
5 by enacting a statute repealing the same, but no such
6 withdrawal shall take effect until six months after the
7 executive head of the withdrawing state has given notice
8 of the withdrawal to the executive heads of all other
9 party states. No withdrawal shall affect the validity or
10 applicability by the licensing authorities of states re-
11 maining party to the compact of any report of convic-
12 tion occurring prior to the withdrawal.

ARTICLE IX. CONSTRUCTION AND SEVERABILITY.

1 This compact shall be liberally construed so as to
2 effectuate the purposes thereof. The provisions of this
3 compact shall be severable and if any phrase, clause,
4 sentence or provision of this compact is declared to be
5 contrary to the constitution of any party state or of the
6 United States or the applicability thereof to any govern-
7 ment, agency, person or circumstance is held invalid,
8 the validity of the remainder of this compact and the
9 applicability thereof to any government, agency, person
10 compensation on account of his service as such admin-
11 istrator, but shall be entitled to be reimbursed for all
12 any state party thereto, the compact shall remain in full
13 force and effect as to the remaining states and in full
14 force and effect as to the state affected as to all severable
15 matters.

§17B-1A-2. Definitions; implementation of compact.

1 (1) As used in the compact, the term "licensing
2 authority", with reference to this state, shall mean the
3 department of motor vehicles. Said department shall
4 furnish to the appropriate authorities of any other party
5 state any information or documents reasonably necessary
6 to facilitate the administration of Articles III, IV and V
7 of the compact.

8 (2) The compact administrator provided for in Article
9 VII of the compact shall not be entitled to any additional
10 compensation on account of his service as such admini-
11 strator, but shall be entitled to be reimbursed for all
12 reasonable and necessary expenses actually incurred in
13 connection with his duties and responsibilities as such ad-

14 ministrator, in the same manner as for other such ex-
15 penses incurred in connection with any other duties or
16 responsibilities of his office or employment.

17 (3) As used in the compact, with reference to this
18 state, the term "executive head" shall mean the governor.

19 (4) To aid in the implementation of the compact,
20 records required to be forwarded to the department of
21 motor vehicles by the provisions of section four, article
22 three of this chapter shall be forwarded to such depart-
23 ment within the time and as otherwise specified in said
24 section four.

25 (5) The statutes which Article IV of the compact refers
26 to are sections one, five and six, article three, chapter
27 seventeen-b, section three, article three, chapter seven-
28 teen-d, and section five, article four, chapter seventeen-d
29 of the code of West Virginia.

CHAPTER 71

(House Bill No. 622—By Mr. White, of Cabell and Mr. Romine)

[Passed March 10, 1972; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one and three, article two, chapter seventeen-c of said code, all relating to motor vehicle operators' and chauffeurs' licenses and their issuance, expiration and renewal; traffic regulations and laws of the road, obedience to and effect of traffic laws, their application and enforcement; and penalties.

Be it enacted by the Legislature of West Virginia:

That section one, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one and three, article two, chapter seventeen-c of said code be amended and reenacted, all to read as follows:

Chapter**17B. Motor Vehicle Operators' and Chauffeurs' Licenses.****17C. Traffic Regulations and Laws of the Road.****CHAPTER 17B. MOTOR VEHICLE OPERATORS'
AND CHAUFFEURS' LICENSES.****ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RE-
NEWAL.**

§17B-2-1. Operators and chauffeurs must be licensed; chauffeur licensee need not procure operator's license; licensees need not obtain local government license.

1 No person, except those hereinafter expressly exempted,
2 shall drive any motor vehicle upon a street or highway
3 in this state or upon any subdivision street, as used in
4 article twenty-four, chapter eight of this code, when
5 the use of such subdivision street is generally used by
6 the public unless the person has a valid license as an
7 operator or chauffeur under the provisions of this chapter.

8 No person shall drive a motor vehicle as a chauffeur
9 unless he holds a valid chauffeur's license. No person
10 shall receive a chauffeur's license unless and until he
11 surrenders to the department any operator's license issued
12 to him or an affidavit that he does not possess an opera-
13 tor's license.

14 Any person holding a valid chauffeur's license here-
15 under need not procure an operator's license.

16 Any person licensed as an operator or chauffeur as
17 provided in this chapter may exercise the privilege
18 thereby granted as provided in this chapter and, except
19 as otherwise provided by law, shall not be required to
20 obtain any other license to exercise such privilege by any
21 county, municipality or local board, or body having au-
22 thority to adopt local police regulations.

**CHAPTER 17C. TRAFFIC REGULATIONS AND
LAWS OF THE ROAD.****ARTICLE 2. OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS.**

§17C-2-1. Provisions of chapter refer to vehicles upon streets and highways; exceptions.

§17C-2-3. Enforcement of chapter; designation and bond of special officers; failure to obey police officer.

§17C-2-1. Provisions of chapter refer to vehicles upon streets and highways; exceptions.

1 The provisions of this chapter relating to the opera-
2 tion of vehicles refer exclusively to the operation of
3 vehicles upon streets and highways except:

4 (1) Where a different place is specifically referred to
5 in a given section.

6 (2) The provisions of articles three, four, five, five-a,
7 six, seven, eight, nine, ten, eleven, twelve, thirteen, four-
8 teen, fifteen, sixteen, eighteen and nineteen shall apply
9 upon streets and highways as defined in section one,
10 article two, chapter seventeen-b of this code.

§17C-2-3. Enforcement of chapter; designation and bond of special officers; failure to obey police officer.

1 (a) It shall be the duty of the department of public
2 safety and its members to enforce the provisions of this
3 chapter and other laws of this state governing the opera-
4 tion of vehicles upon the streets and highways of this
5 state as defined in section one, article two, chapter seven-
6 teen-b of this code; and it shall be the duty of sheriffs and
7 their deputies and of the police of cities and towns to
8 render to the department of public safety such assistance
9 in the performance of said duties as the superintendent of
10 the department of public safety may require of them.

11 (b) The West Virginia commissioner of highways is
12 authorized to designate employees of the West Virginia
13 department of highways as special officers to enforce
14 the provisions of this chapter only when such special
15 officers are directing traffic upon bridges and the ap-
16 proaches to bridges which are a part of the state road
17 system when any such bridge needs special traffic direc-
18 tion and the superintendent of the department of public
19 safety has informed the West Virginia commissioner of
20 highways that he is unable to furnish personnel for such
21 traffic direction. The West Virginia commissioner of
22 highways shall provide a blanket bond in the amount of
23 five thousand dollars for any such employee so designated,
24 and for all employees designated as members of official
25 West Virginia department of highways weighing crews.

26 (c) No person shall willfully fail or refuse to comply
27 with any lawful order or direction of any police officer
28 invested by law with authority to direct, control or regu-
29 late traffic.

CHAPTER 72

(Com. Sub. for House Bill No. 709—By Mr. Farley and Mr. Albright)

[Passed March 11, 1972: in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section one, article five-a, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the implied consent law generally and specifically to the implied consent to a chemical test to determine the alcoholic content of the blood of the operator of a motor vehicle arrested for driving a motor vehicle while under the influence of intoxicating liquor and the designation and administration of such a chemical test; and specifying the law-enforcement officers involved in the administration of such implied consent law.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5A. IMPLIED CONSENT FOR CHEMICAL TEST FOR INTOXICATION.

§17C-5A-1. Implied consent to test; administration at direction of law-enforcement officer; designation of type of test; definition of law-enforcement officer.

1 Any person who drives a motor vehicle upon the public
2 streets or highways of this state shall be deemed to have
3 given his consent by the operation thereof, subject to the
4 provisions of this article, to a chemical test of either his

5 blood, breath or urine for the purpose of determining
6 the alcoholic content of his blood whenever he shall be
7 lawfully arrested by a law-enforcement officer as here-
8 inafter defined for the offense of driving a motor vehicle
9 upon the public streets or highways of this state while
10 under the influence of intoxicating liquor. The test shall
11 be incidental to a lawful arrest and shall be administered
12 at the direction of the arresting law-enforcement officer
13 having reasonable grounds to believe the person to have
14 been driving a motor vehicle upon the public streets or
15 highways while under the influence of intoxicating liquor.
16 The law-enforcement agency by which such law-enforce-
17 ment officer is employed shall designate which one of the
18 aforesaid tests shall be administered: *Provided*, That if
19 the test so designated is a blood test and the person so
20 arrested refuses to submit to such blood test, then the law-
21 enforcement officer making such arrest shall designate in
22 lieu thereof, either a breath or urine test be adminis-
23 tered, and notwithstanding the provisions of section three
24 of this article, such refusal to submit to a blood test only
25 shall not result in the suspension of the arrested person's
26 operator's or chauffeur's license, or junior or probationary
27 operator's license, or nonresident privilege to drive. The
28 person arrested shall be told that his refusal to submit to
29 the test finally designated as provided in this section, will
30 result in the suspension of his operator's or chauffeur's
31 license, or junior or probationary operator's license,
32 or nonresident privilege to drive for a period of six
33 months.

34 For the purposes of this article the term "law-enforce-
35 ment officer" shall mean and be limited to (1) any mem-
36 ber of the department of public safety of this state, (2)
37 any sheriff and any deputy sheriff of any county, and
38 (3) any member of a municipal police department in any
39 Class I, Class II or Class III city, as cities are classified
40 in section three, article one, chapter eight of this code. If
41 any Class I, Class II or Class III city does not have avail-
42 able to its law-enforcement officers the testing equipment
43 or facilities necessary to conduct any test which a law-
44 enforcement officer may administer under this article,

45 any member of the department of public safety, the
46 sheriff of the county wherein the arrest is made or any
47 deputy of such sheriff, may, upon the request of such
48 arresting law-enforcement officer and in his presence,
49 conduct such test and the results of such test may be
50 used in evidence to the same extent and in the same
51 manner as if such test had been conducted by such arrest-
52 ing law-enforcement officer. Only the person actually ad-
53 ministering or conducting such test shall be competent to
54 testify as to the results and the veracity of such test.

CHAPTER 73

(House Bill No. 769—By Mr. Neely and Mr. Bowman)

[Passed February 17, 1972; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-six, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to lamps or illuminating devices on motor vehicles and permitting red flashing warning lights on certain vehicles.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. EQUIPMENT.

§17C-15-26. Special restrictions on lamps.

- 1 (a) Any lighted lamp or illuminating device upon a
- 2 motor vehicle other than head lamps, spot lamps, auxil-
- 3 iary lamps or flashing front-direction signals which pro-
- 4 jects a beam of light of an intensity greater than three

5 hundred candlepower shall be so directed that no part
6 of the beam will strike the level of the roadway on which
7 the vehicle stands at a distance of more than seventy-five
8 feet from the vehicle.

9 (b) No person shall drive or move any vehicle or
10 equipment upon any highway with any lamp or device
11 thereon displaying other than a white or amber light vis-
12 ible from directly in front of the center thereof except
13 as authorized by subsection (d) of this section.

14 (c) Except as authorized in section nineteen, flashing
15 lights are prohibited on motor vehicles, except on an
16 authorized emergency vehicle, school bus, snow removal
17 equipment or on any vehicle as a means for indicating
18 right or left turn, on any vehicle as a means of indicating
19 the same is disabled or otherwise stopped for an emer-
20 gency.

21 (d) Notwithstanding any other provisions of this
22 chapter, the following color of flashing warning lights
23 are restricted for the use of the type of vehicle desig-
24 nated:

25 (1) Blue flashing warning lights are restricted to
26 police vehicles, except as authorized by section twenty-
27 seven of this article.

28 (2) Except as authorized by sections nineteen and
29 twenty-seven of this article, red flashing warning lights
30 are restricted to ambulances, fire fighting vehicles, school
31 buses, wreckers and the personal car or truck of those
32 volunteer firemen who are authorized by their fire chief
33 to have such lights.

34 (3) All other emergency vehicles authorized by this
35 chapter and by section twenty-seven of this article shall
36 be restricted to amber or yellow flashing warning lights.

37 It shall be unlawful for flashing warning lights of an un-
38 authorized color to be installed or used on a vehicle other
39 than as specified in this section, except that a police ve-
40 hicle may be equipped with either or both blue or red
41 warning lights.

CHAPTER 74

(Senate Bill No. 307—By Mr. Deem)

[Passed March 8, 1972; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-four, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to standards for vehicle mufflers to prevent noise, fumes and smoke.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. EQUIPMENT.

§17C-15-34. Mufflers; prevention of noise, fumes and smoke.

1 (a) Every motor vehicle shall at all times be equipped
2 with a muffler in good working order and in constant
3 operation to prevent excessive or unusual noise. Such
4 muffler shall be the muffler originally installed by the
5 manufacturer of the vehicle or, if a replacement, the
6 equivalent thereof. No person shall use a muffler cutout,
7 bypass, or similar device upon a motor vehicle on a
8 highway.

9 (b) The engine and power mechanism of every motor
10 vehicle shall be so equipped and adjusted as to prevent
11 the escape of excessive fumes or smoke.

CHAPTER 75

(Com. Sub. for House Bill No. 538—By Mr. Steptoe)

[Passed March 9, 1972; in effect July 1, 1972. Approved by the Governor.]

AN ACT to amend and reenact sections two and four, article three, chapter seventeen-d of the code of West Virginia,

one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section fifteen, relating to the motor vehicle safety responsibility law; relating to the security required following a vehicular accident; relating to the determination of reasonable possibility of judgment against driver or owner; authorizing hearing upon request within prescribed time; making state administrative procedures act applicable, with certain exceptions; relating to the conduct of any such hearing by the commissioner of motor vehicles or a hearing examiner; relating to scope of any such hearing and the procedures following such hearing; relating to the right of judicial review; relating to the staying of certain orders pending hearing and judicial review; and specifying that findings, actions and orders and outcome of judicial review shall not be referred to in any way or be any evidence of negligence or due care in the trial of any civil action to recover damages.

Be it enacted by the Legislature of West Virginia:

That sections two and four, article three, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section fifteen, all to read as follows:

ARTICLE 3. SECURITY FOLLOWING ACCIDENT.

§17D-3-2. Commissioner to determine amount of security required; notices; form of security.

§17D-3-4. Exceptions to requirement of security.

§17D-3-15. Right to hearing on security requirement; hearing procedures; judicial review.

§17D-3-2. Commissioner to determine amount of security required; notices; form of security.

- 1 (a) The commissioner within not less than thirty nor
- 2 more than ninety days after receipt of a report of an acci-
- 3 dent as described in section one of this article shall take
- 4 action as provided in this section. The commissioner shall
- 5 determine the amount of security which he deems suf-
- 6 ficient to satisfy any judgment or judgments against each
- 7 owner or driver, for damages which may reasonably re-
- 8 sult from such accident.

9 If the commissioner finds that there exists a reasonable
10 possibility that a judgment may be rendered against any
11 such driver or owner, he shall determine the amount of
12 security deposit upon the basis of the reports or other
13 evidence relative to such accident transmitted to him.
14 The commissioner shall thereupon give written notice by
15 certified mail to every such person that he is required to
16 deposit security in an amount and within the time speci-
17 fied in such notice, which time shall be not less than ten
18 days after the giving of such notice, or that upon the
19 expiration of said time an order of suspension as stated
20 therein will become effective unless the person receiving
21 said notice deposits such security or establishes his exemp-
22 tion under other provisions of this chapter. Such notice
23 shall also advise such person of his right to request a
24 hearing as provided by section fifteen of this article.

25 (b) The security required under this article shall be
26 in the form of money or its equivalent and in such amount
27 as the commissioner may require but, in no case, in ex-
28 cess of the limits specified in section five of this article
29 in reference to the acceptable limits of a policy or bond.

30 (c) The commissioner shall not take action as required
31 in this section in respect to drivers or owners who estab-
32 lish exemption under succeeding sections of this chapter
33 from the requirements as to security and suspension.

§17D-3-4. Exceptions to requirement of security.

1 (a) The requirements as to security and suspension
2 in this article shall not apply:

3 (1) To the driver or owner if the owner had in effect
4 at the time of the accident an automobile liability policy
5 or bond with respect to the driver or the vehicle involved
6 in the accident. Unless otherwise covered by insurance a
7 driver shall not be exempt from the requirements as to
8 security in the event it is established to the satisfaction of
9 the commissioner that at the time of the accident the
10 vehicle was being operated without the owner's permis-
11 sion, expressed or implied, or was parked by a driver who
12 had been operating such vehicle without such permis-
13 sion.

14 (2) To the driver, if not the owner of the vehicle in-
15 volved in the accident, if there was in effect at the time
16 of the accident, an automobile liability policy or bond
17 with respect to his driving of vehicles not owned by him.

18 (3) To a driver or owner whose liability for damages
19 resulting from the accident is, in the judgment of the
20 commissioner, covered by any other form of liability in-
21 surance policy or bond.

22 (4) To the owner or driver in the event that such lia-
23 bility as may arise from the driver's operation of the
24 vehicle involved in the accident is, in the judgment of
25 the commissioner, covered by some form of liability in-
26 surance or bond which complies with the requirements
27 set forth under section five of this article.

28 (5) To any person qualifying as a self-insurer under
29 section two, article six of this chapter, or to any person
30 operating a vehicle for such self-insurer.

31 (6) To any person under the jurisdiction of the public
32 service commission who has qualified as a self-insurer.

33 (7) To a driver or owner against whom there is no
34 reasonable possibility of judgment being rendered for
35 damages resulting from the accident, as determined by the
36 commissioner or any subsequent hearing or appeals upon
37 that issue.

38 (b) When erroneous information is given to the
39 commissioner with respect to the matters set forth in
40 subdivisions (1), (2), (3) or (4) of subsection (a) of
41 this section, he shall take appropriate action as herein-
42 before provided in sections two and three of this article
43 within fifty days after receipt by him of correct infor-
44 mation with respect to such matters.

§17D-3-15. Right to hearing on security requirement; hearing procedures; judicial review.

1 Upon the written request of a person from whom the
2 commissioner has required security following the occur-
3 rence of a vehicular accident, the commissioner shall af-
4 ford the person an opportunity to be heard concerning
5 such security requirement. Such written request must be

6 filed with the commissioner in person or by registered or
7 certified mail, return receipt requested, within ten days
8 after receipt of a copy of the order of suspension. The
9 hearing shall be before said commissioner or his au-
10 thorized hearing examiner. All of the pertinent pro-
11 visions of article five, chapter twenty-nine-a of this code
12 shall apply to and govern the hearing and the administra-
13 tive procedures in connection with and following such
14 hearing with like effect as if the provisions of said
15 article five were set forth in extenso in this section, except
16 that in the case of a resident of this state the hearing
17 shall be held in the county wherein the person resides
18 unless the commissioner or the hearing examiner and
19 such person agree that the hearing may be held in some
20 other county. Any such hearing shall be held within
21 twenty days after the date upon which the commissioner
22 received the timely written request therefor, unless there
23 is a postponement or continuance. The commissioner
24 or the hearing examiner may postpone or continue any
25 hearing on his own motion, or upon application of such
26 person for good cause shown. For the purpose of con-
27 ducting such hearing, the commissioner or the hearing
28 examiner shall have the power and authority to issue
29 subpoenas and subpoenas duces tecum in accordance
30 with the provisions of section one, article five, chapter
31 twenty-nine-a of this code. The person requesting a
32 hearing and the commissioner shall be the only parties
33 in interest at such hearing. No other persons or their
34 attorneys shall have the right to attend or be permitted
35 to examine parties or witnesses.

36 The scope of such hearing shall be whether there is a
37 reasonable possibility of judgment being rendered against
38 the person requesting the hearing as a result of the acci-
39 dent in question.

40 After such hearing and consideration of all of the testi-
41 mony, evidence and record in the case, the commissioner
42 or the hearing examiner shall make and enter an order
43 affirming, rescinding or modifying the earlier order of
44 the commissioner.

45 A copy of the order made and entered following the
46 hearing shall be served upon such person by registered

47 or certified mail, return receipt requested. During the
48 pendency of any such hearing, the suspension of the
49 operator's or chauffeur's license, or junior or probationary
50 operator's license, or nonresident privilege to drive of
51 such person, and of his vehicle registration, shall be
52 stayed, and if the commissioner has possession of such
53 person's operator's or chauffeur's license, or junior or
54 probationary operator's license, or his vehicle registra-
55 tion, the same shall be forthwith returned to him pend-
56 ing the outcome of such hearing or any judicial review
57 thereafter, as hereinafter provided.

58 If the commissioner or hearing examiner shall after
59 hearing make and enter an order by which the person re-
60 questing the hearing believes himself aggrieved, such per-
61 son shall be entitled to judicial review thereof. All of the
62 pertinent provisions of section four, article five, chapter
63 twenty-nine-a of this code shall apply to and govern such
64 review with like effect as if the provisions of said section
65 four were set forth in extenso in this section. The judg-
66 ment of the circuit court shall be final unless reversed on
67 appeal to the supreme court of appeals, in accordance with
68 the provisions of section one, article six, chapter twenty-
69 nine-a of this code, except that notwithstanding the pro-
70 visions of said section one, the petition seeking such review
71 must be filed with said supreme court of appeals within
72 thirty days from the date of entry of the judgment of the
73 circuit court. Notwithstanding any provisions in said
74 chapter twenty-nine-a to the contrary, during the pen-
75 dency of any appeal to the circuit court or supreme court
76 of appeals, no security shall be required of such person,
77 nor shall his operator's or chauffeur's license, or junior
78 or probationary operator's license, or nonresident privi-
79 lege to drive, or his vehicle registration, be suspended
80 pending the outcome of such judicial review.

81 Neither the findings, actions and orders of the commis-
82 sioner or hearing examiner resulting from any hearings
83 nor any of the evidence introduced or testimony taken
84 at such hearings nor the outcome of any judicial review
85 shall be referred to in any way, and shall not be any
86 evidence of the negligence or due care of either party,
87 at the trial of any civil action to recover damages.

CHAPTER 76

(Senate Bill No. 177—By Mr. McCourt, Mr. President)

[Passed March 9, 1972; in effect from passage. Approved by the Governor.]

AN ACT to amend article ten, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to municipalities and providing that notwithstanding any charter provision to the contrary the governing body of every municipality shall have plenary power and authority by ordinance to authorize the mayor to employ an attorney or firm of attorneys as special municipal counsel to represent the municipality in connection with any legal matter or matters; and providing that the ordinance authorizing such employment shall be consent on behalf of the municipality to such attorney or firm of attorneys to represent other clients in other legal matters involving such municipality, but requiring such attorney or firm of attorneys to file with the recorder as a public record a statement of disclosure identifying such other client and the nature of the matter in controversy directly involving such municipality.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

§8-10-1a. Authority to hire special counsel; consent to other representation.

1 Notwithstanding any charter provision to the contrary,
2 the governing body of every municipality shall have
3 plenary power and authority by ordinance to authorize
4 the mayor to employ within the limit of funds available
5 for such purpose, in lieu of or in addition to the municipal
6 attorney or municipal solicitor and any assistant municipi-

7 pal attorneys or assistant municipal solicitors, an attorney
8 or firm of attorneys as special municipal counsel to repre-
9 sent the municipality in connection with any legal matter
10 or matters. The ordinance authorizing such employment
11 shall be the consent on behalf of the municipality to such
12 attorney or firm of attorneys to represent other clients
13 in other legal matters involving such municipality, but
14 at the time of representation of any such other client in
15 any such other legal matter in controversy directly in-
16 volving such municipality, such attorney or firm of at-
17 torneys shall file with the recorder as a public record a
18 statement of disclosure identifying such other client and
19 the nature of the matter in controversy directly involving
20 such municipality.

CHAPTER 77

(Senate Bill No. 320—By Mr. Hubbard)

[Passed March 1, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section five, article twelve, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the general powers and authorities of every municipality and the governing body thereof; specifically authorizing any municipality and the governing body thereof to permit any person to construct and maintain a passageway, building or other structure overhanging or crossing the airspace above a public street, avenue, road, alley, way, sidewalk or crosswalk; and relating to criminal offenses and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

PART III. GENERAL POWERS OF MUNICIPALITIES AND GOVERNING BODIES.

§8-12-5. General powers of every municipality and the governing body thereof.

1 In addition to the powers and authority granted by (i)
2 the constitution of this state, (ii) other provisions of
3 this chapter, (iii) other general law, and (iv) any charter,
4 and to the extent not inconsistent or in conflict with
5 any of the foregoing except a special legislative charter,
6 every municipality and the governing body thereof shall
7 have plenary power and authority therein by ordinance
8 or resolution, as the case may require, and by appropriate
9 action based thereon:

10 (1) To lay off, establish, construct, open, alter, curb,
11 recurb, pave or repave and keep in good repair, or
12 vacate, discontinue and close, streets, avenues, roads,
13 alleys, ways, sidewalks, crosswalks, drains and gutters,
14 for the use of the public, and to improve and light the
15 same, and have them kept free from obstructions on or
16 over them which have not been authorized pursuant to the
17 succeeding provisions of this subdivision (1); and, subject
18 to such terms and conditions as the governing body shall
19 prescribe, to permit, without in any way limiting the pow-
20 er and authority granted by the provisions of article six-
21 teen of this chapter, any person to construct and maintain
22 a passageway, building or other structure overhanging or
23 crossing the airspace above a public street, avenue, road,
24 alley, way, sidewalk or crosswalk, but before any such
25 permission for any person to construct and maintain a
26 passageway, building or other structure overhanging or
27 crossing any such airspace is granted, a public hearing
28 thereon shall be held by the governing body after publi-
29 cation of a notice of the date, time, place and purpose of
30 such public hearing has been published as a Class I
31 legal advertisement in compliance with the provisions

32 of article three, chapter fifty-nine of this code, and
33 the publication area for such publication shall be the
34 municipality: *Provided, however,* That any such permit
35 so granted, shall automatically cease and terminate in
36 the event of abandonment and nonuse thereof for the
37 purposes intended for a period of ninety days, and all
38 rights therein or thereto shall revert to such municipi-
39 pality for its use and benefit;

40 (2) To provide for the opening and excavation of
41 streets, avenues, roads, alleys, ways, sidewalks, cross-
42 walks and public places belonging to the municipality
43 and regulate the conditions under which any such open-
44 ing may be made;

45 (3) To prevent by proper penalties the throwing,
46 depositing or permitting to remain on any street, avenue,
47 road, alley, way, sidewalk, square or other public place
48 any glass, scrap iron, nails, tacks, wire, other litter, or any
49 offensive matter or anything likely to injure the feet
50 of individuals or animals or the tires of vehicles;

51 (4) To regulate the use of streets, avenues, roads,
52 alleys, ways, sidewalks, crosswalks and public places
53 belonging to the municipality;

54 (5) To regulate the width of sidewalks on the streets,
55 avenues and roads, and, subject to the provisions of
56 article eighteen of this chapter, to order the sidewalks,
57 footways and crosswalks to be paved, repaved, curbed or
58 recurbed and kept in good order, free and clean, by the
59 owners or occupants thereof or of the real property next
60 adjacent thereto;

61 (6) To establish, construct, alter, operate and main-
62 tain, or discontinue, bridges, tunnels and ferries and ap-
63 proaches thereto;

64 (7) To provide for the construction and maintenance
65 of water drains, the drainage of swamps or marshlands
66 and drainage systems;

67 (8) To provide for the construction, maintenance and
68 covering over of watercourses;

69 (9) To control and administer the waterfront and
70 waterways of the municipality, and to acquire, establish,

71 construct, operate and maintain and regulate flood con-
72 trol works, wharves and public landings, warehouses
73 and all adjuncts and facilities for navigation and com-
74 merce and the utilization of the waterfront and waterways
75 and adjacent property;

76 (10) To prohibit the accumulation and require the dis-
77 posal of garbage, refuse, wastes, ashes, trash and other
78 similar matters;

79 (11) To construct, establish, acquire, equip, maintain
80 and operate incinerator plants and equipment and all
81 other facilities for the efficient removal and destruction
82 of garbage, refuse, wastes, ashes, trash and other similar
83 matters;

84 (12) To regulate or prohibit the purchase or sale of
85 articles intended for human use or consumption which
86 are unfit for such use or consumption, or which may be
87 contaminated or otherwise unsanitary;

88 (13) To prevent injury or annoyance to the public or
89 individuals from anything dangerous, offensive or un-
90 wholesome;

91 (14) To regulate the keeping of gunpowder and other
92 combustibles;

93 (15) To make regulations guarding against danger or
94 damage by fire;

95 (16) To arrest, convict and punish any individual for
96 carrying about his person any revolver or other pistol,
97 dirk, bowie knife, razor, slungshot, billy, metallic or other
98 false knuckles, or any other dangerous or other deadly
99 weapon of like kind or character;

100 (17) To arrest, convict and punish any person for
101 importing, printing, publishing, selling or distributing
102 any pornographic publications;

103 (18) To arrest, convict and punish any person for
104 keeping a house of ill fame, or for letting to another
105 person any house or other building for the purpose of
106 being used or kept as a house of ill fame, or for knowingly
107 permitting any house owned by him or under his con-
108 trol to be kept or used as a house of ill fame, or for

109 loafing, boarding or loitering in a house of ill fame, or
110 frequenting same;

111 (19) To prevent and suppress conduct and practices
112 which are immoral, disorderly, lewd, obscene and
113 indecent;

114 (20) To prevent the illegal sale of intoxicating liquors,
115 drinks, mixtures and preparations;

116 (21) To arrest, convict and punish any individual for
117 driving or operating a motor vehicle while intoxicated or
118 under the influence of liquor, drugs or narcotics;

119 (22) To arrest, convict and punish any person for
120 gambling or keeping any gaming tables, commonly called
121 "A, B, C," or "E, O," table or faro bank or keno table,
122 or table of like kind, under any denomination, whether
123 the gaming table be played with cards, dice or other-
124 wise, or any person who shall be a partner or concerned
125 in interest, in keeping or exhibiting such table or bank,
126 or keeping or maintaining any gaming house or place,
127 or betting or gambling for money or anything of value;

128 (23) To provide for the elimination of hazards to
129 public health and safety and to abate or cause to be
130 abated anything which in the opinion of a majority of
131 the governing body is a public nuisance;

132 (24) To license, or for good cause to refuse to license
133 in a particular case, or in its discretion to prohibit in
134 all cases, the operation of pool and billiard rooms and
135 the maintaining for hire of pool and billiard tables not-
136 withstanding the general law as to state licenses for any
137 such business and the provisions of section four, article
138 thirteen of this chapter; and when the municipality, in
139 the exercise of its discretion, shall have refused to grant
140 a license to operate a pool or billiard room, mandamus
141 shall not lie to compel such municipality to grant such
142 license unless it shall clearly appear that the refusal
143 of the municipality to grant such license is discriminatory
144 or arbitrary; and in the event that the municipality
145 determines to license any such business, the municipality
146 shall have plenary power and authority, and it shall be
147 the duty of its governing body, to make and enforce

- 148 reasonable ordinances regulating the licensing and opera-
149 tion of such businesses;
- 150 (25) To protect places of divine worship and to pre-
151 serve peace and order in and about the premises where
152 held;
- 153 (26) To regulate or prohibit the keeping of animals
154 or fowls and to provide for the impounding, sale or
155 destruction of animals or fowls kept contrary to law
156 or found running at large;
- 157 (27) To arrest, convict and punish any person for
158 cruelly, unnecessarily or needlessly beating, torturing,
159 mutilating, killing or overloading or overdriving, or
160 willfully depriving of necessary sustenance, any domestic
161 animal;
- 162 (28) To provide for the regular building of houses or
163 other structures, for the making of division fences by
164 the owners of adjacent premises and for the drainage
165 of lots by proper drains and ditches;
- 166 (29) To provide for the protection and conservation
167 of shade or ornamental trees, whether on public or pri-
168 vate property, and for the removal of trees or limbs of
169 trees in a dangerous condition;
- 170 (30) To prohibit with or without zoning the location
171 of occupied house trailers or mobile homes in certain
172 residential areas;
- 173 (31) To regulate the location and placing of signs, bill-
174 boards, posters and similar advertising;
- 175 (32) To erect, establish, construct, acquire, improve,
176 maintain and operate a gas system, an electric system,
177 a waterworks system, or sewer system and sewage
178 treatment and disposal system, or any combination of
179 the foregoing (subject to all of the pertinent provisions
180 of articles nineteen and twenty of this chapter and
181 particularly to the limitations or qualifications on the
182 right of eminent domain set forth in said articles nine-
183 teen and twenty), within or without the corporate
184 limits of the municipality, or partly within and partly
185 without the corporate limits of the municipality, except

186 that the municipality shall not erect any such system
187 partly without the corporate limits of the municipality
188 to serve persons already obtaining service from an exist-
189 ing system of the character proposed, and where such
190 system is by the municipality erected, or has hereto-
191 fore been so erected, partly within and partly without
192 the corporate limits of the municipality, the munici-
193 pality shall have the right to lay and collect charges
194 for service rendered to those served within and those
195 served without the corporate limits of the municipality,
196 and to prevent injury to such system or the pollution
197 of the water thereof and its maintenance in a health-
198 ful condition for public use within the corporate limits
199 of the municipality;

200 (33) To acquire watersheds, water and riparian rights,
201 plant sites, rights-of-way and any and all other property
202 and appurtenances necessary, appropriate, useful, con-
203 venient or incidental to any such system, waterworks
204 or sewage treatment and disposal works, as aforesaid,
205 subject to all of the pertinent provisions of articles nine-
206 teen and twenty of this chapter;

207 (34) To establish, construct, acquire, maintain and
208 operate and regulate markets, and prescribe the time of
209 holding the same;

210 (35) To regulate and provide for the weighing of
211 articles sold or for sale;

212 (36) To establish, construct, acquire, maintain and
213 operate public buildings, municipal buildings or city halls,
214 auditoriums, arenas, jails, juvenile detention centers or
215 homes, motor vehicle parking lots, or any other public
216 works;

217 (37) To establish, construct, acquire, provide, equip,
218 maintain and operate recreational parks, playgrounds and
219 other recreational facilities for public use, and in this
220 connection also to proceed in accordance with the pro-
221 visions of article two, chapter ten of this code;

222 (38) To establish, construct, acquire, maintain and
223 operate a public library or museum or both for public
224 use;

225 (39) To provide for the appointment and financial
226 support of a library board in accordance with the pro-
227 visions of article one, chapter ten of this code;

228 (40) To establish and maintain a public health unit
229 in accordance with the provisions of section two, article
230 two, chapter sixteen of this code, which unit shall exer-
231 cise its powers and perform its duties subject to the
232 supervision and control of the West Virginia board of
233 health and state department of health;

234 (41) To establish, construct, acquire, maintain and
235 operate hospitals, sanitarium and dispensaries;

236 (42) To acquire, by purchase, condemnation or other-
237 wise, land within or near the corporate limits of the
238 municipality for providing and maintaining proper places
239 for the burial of the dead and to maintain and operate
240 the same and regulate interments therein upon such
241 terms and conditions as to price and otherwise as may
242 be determined by the governing body, and, in order to
243 carry into effect such authority the governing body
244 may acquire any cemetery or cemeteries already
245 established;

246 (43) To exercise general police jurisdiction over any
247 territory without the corporate limits owned by the
248 municipality or over which it has a right-of-way;

249 (44) To protect and promote the public morals, safety,
250 health, welfare and good order;

251 (45) To adopt rules for the transaction of business
252 and the government and regulation of its governing
253 body;

254 (46) Except as otherwise provided, to require and
255 take such bonds from such officers, when deemed neces-
256 sary, payable to the municipality, in its corporate name,
257 with such sureties and in such penalty as the governing
258 body may see fit, conditioned upon the faithful discharge
259 of their duties;

260 (47) To require and take from such employees and
261 contractors such bonds in such penalty, with such sure-
262 ties and with such conditions, as the governing body
263 may see fit;

264 (48) To investigate and inquire into all matters of
265 concern to the municipality or its inhabitants;

266 (49) To establish, construct, require, maintain and
267 operate such instrumentalities, other than free public
268 schools, for the instruction, enlightenment, improvement,
269 entertainment, recreation and welfare of the munici-
270 pality's inhabitants as the governing body may deem
271 necessary or appropriate for the public interest;

272 (50) To create, maintain and operate a system for the
273 enumeration, identification and registration, or either, of
274 the inhabitants of the municipality and visitors thereto,
275 or such classes thereof as may be deemed advisable;

276 (51) To appropriate and expend not exceeding twenty-
277 five cents per capita per annum for advertising the
278 municipality and the entertainment of visitors;

279 (52) To conduct programs to improve community re-
280 lations and public relations generally and to expend
281 municipal revenue for such purposes;

282 (53) To reimburse applicants for employment by the
283 municipality for travel and other reasonable and neces-
284 sary expenses actually incurred by such applicants in
285 traveling to and from such municipality to be interviewed;

286 (54) To provide revenue for the municipality and
287 appropriate the same to its expenses; and

288 (55) To provide penalties for the offenses and viola-
289 tions of law mentioned in this section, subject to the pro-
290 visions of section one, article eleven of this chapter, and
291 such penalties shall not exceed any penalties provided
292 in this chapter, and chapter sixty-one of this code for
293 like offenses and violations.

CHAPTER 78

(House Bill No. 1018—By Mr. Speaker, Mr. McManus)

[Passed March 11, 1972; in effect ninety days from passage. Approved by the
Governor.]

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

nine hundred thirty-one, as amended, relating to the imposition of business and occupation tax or privilege tax by municipalities, and limitations thereon as to contractors and financial institutions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. TAXATION AND FINANCE.

§8-13-5. Business and occupation or privilege tax; limitations as to contractors and financial institutions.

1 Whenever any business or occupation, upon which the
2 state imposes an annual business and occupation or priv-
3 ilege tax under article thirteen, chapter eleven of this
4 code, is engaged in or carried on within the corporate
5 limits of any municipality, the governing body thereof
6 shall have plenary power and authority, unless prohibited
7 by general law, to impose a similar business and occupa-
8 tion or privilege tax thereon for the use of the municipal-
9 ity: *Provided*, That in no case shall the rate of such mu-
10 nicipal business and occupation or privilege tax on a par-
11 ticular activity exceed the rate imposed by the state, ex-
12 clusive of surtaxes, and the ordinance imposing such tax
13 shall conform with the provisions of said article thirteen
14 as to the waiver of penalties: *Provided, however*, That
15 no municipality shall impose a business and occupation
16 or privilege tax upon any businesses, occupations or priv-
17 ileges taxed under sections two-a, two-b, two-c, two-d,
18 two-e, two-g, two-h, two-i and two-j of said article thir-
19 teen, chapter eleven in excess of the rates in effect under
20 said article thirteen on January one, one thousand nine
21 hundred fifty-nine or in excess of one percent of gross
22 income under section two-k of said article thirteen.

23 Any taxes levied pursuant to the authority of this sec-
24 tion may be made operative as of the first day of the cur-
25 rent fiscal year and each year thereafter: *Provided fur-*
26 *ther*, That any new imposition of tax or any increase in
27 the rate of tax upon any business, occupations or priv-
28 ileges taxed under section two-e shall apply only to gross

41 when due the principal or redemption price, if applicable,
42 and interest due and to become due on said bonds on and
43 prior to the next redemption date thereof or, if said bonds
44 are not redeemable, on and prior to the maturity date
45 thereof.

46 The moneys and securities held by the state sinking
47 fund commission pursuant to this subsection (c) shall be
48 held by the sinking fund commission in trust for the pay-
49 ment of the principal or redemption price, if applicable,
50 of and interest on the bonds for the payment or redemp-
51 tion of which such provision is made: *Provided*, That
52 any cash received from principal or interest payments
53 on securities so held by the sinking fund commission, if
54 not then needed for such purpose, shall, to the extent
55 practicable, be reinvested in securities maturing at times
56 and in principal amounts sufficient to pay when due the
57 principal or redemption price, if applicable, of and in-
58 terest to become due on such bonds on and prior to the
59 redemption date or maturity date thereof, as the case
60 may be, and the interest earned from any such reinvest-
61 ments shall be paid over to the municipality which issued
62 such bonds, as received by the state sinking fund com-
63 mission, free and clear of any trust. Any moneys, and
64 the proceeds of any securities, held by the sinking fund
65 commission in trust for the redemption, if applicable, or
66 for the payment and discharge of any series of bonds,
67 which are in excess of the moneys required to fully pay
68 and discharge such bonds, by redemption, if applicable,
69 or upon maturity thereof, shall also be transferred to the
70 general fund of the municipality which issued such bonds
71 after such bonds are redeemed, if applicable, or after
72 such bonds are fully paid and discharged at maturity, as
73 the case may be.

74 (d) In any case where such funds are transferred from
75 sinking funds, or are remitted from the state sinking fund
76 commission, as hereinabove provided, no part of the
77 moneys so transferred or remitted shall be expended for
78 the payment of current expenses of the municipality,
79 but such funds shall be expended as the governing body
80 of such municipality shall elect for the liquidation of ex-
81 isting nonbonded indebtedness, if any, of such munici-

82 pality or for existing or planned capital improvements of
83 such municipality or for the liquidation of other bonded
84 indebtedness of such municipality or for any combination
85 of such uses.

CHAPTER 80

(House Bill No. 1057—By Mrs. Smirl and Mr. Richardson)

[Passed March 11, 1972; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the power and authority of any municipality to contract for the prevention and extinguishment of fires within three miles of its corporate limits; and relating to the annual payments to be made by property owners for such contract fire service.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-3. Municipalities empowered and authorized to contract for prevention and extinguishment of fires within three miles of corporate limits.

1 (a) Any municipality shall have plenary power and
2 authority to contract to render services in the prevention
3 and extinguishment of fires upon property located with-
4 in three miles of its corporate limits: *Provided*, That
5 no contract entered into under the authority of this
6 section shall operate to impose any greater or different

7 obligation or liability upon the municipality than that
8 with respect to property within its corporate limits:
9 *Provided, however,* That nothing contained in this sec-
10 tion shall be construed as requiring any municipality
11 to contract to render such services.

12 Any contract entered into under the authority of this
13 section, after the effective date of this article, on and after
14 such effective date shall require the property owner to
15 pay as consideration for said services an annual payment,
16 determined as provided in the remainder of this subsec-
17 tion. If the municipality does not impose a fire service fee
18 on the users of such service within the municipality as
19 authorized in section thirteen, article thirteen of this
20 chapter, the annual payment shall be equivalent to eighty
21 percent of the annual tax levied for current municipal
22 purposes upon property within said municipality of like
23 assessed valuation to the property under contract. If the
24 municipality does impose a fire service fee on the users of
25 such service within the municipality, as authorized in sec-
26 tion thirteen, article thirteen of this chapter, the annual
27 payment shall be equivalent to the amount of fire service
28 fee which would be imposed if the property under con-
29 tract were located within the municipality plus at least
30 fifty percent of the annual tax levied for current municipal
31 purposes upon property within said municipality of like
32 assessed valuation to the property under contract. No
33 contract entered into under the authority of this sec-
34 tion, and nothing herein contained, shall be construed
35 as requiring or permitting any municipality to install
36 or maintain any special additional apparatus or equip-
37 ment beyond that necessary for the protection of prop-
38 erty within its corporate limits.

39 (b) The annual payments due under any such con-
40 tract shall be payable on or before the first day of Octo-
41 ber of each calendar year in which such contract shall
42 remain in effect, or upon such day as may be hereafter
43 provided as the due date of the first installment of ad-
44 valorem taxes. If any annual payment shall be in de-
45 fault for a period of more than thirty days it shall bear
46 interest at the same rate as that provided for delinquent
47 property taxes, and shall be a lien upon the property

48 under contract, provided a notice of such lien is recorded
49 in the proper deed of trust book in the office of the
50 clerk of the county court of the county in which such
51 property or the major portion thereof is located. Such
52 lien shall be void at the expiration of two years after
53 such defaulted annual payment shall have become due,
54 unless within such two-year period a civil action seeking
55 equitable relief to enforce the same shall have been in-
56 stituted by said municipality. The municipality may by
57 civil action collect any annual payment and the interest
58 thereon at any time within five years after such pay-
59 ment shall have become due; and upon default in any
60 annual payment, the municipality may cancel the con-
61 tract involved.

62 (c) Any contract made under the authority of this
63 section shall inure to the benefit of and be binding upon
64 the successors in title of the person making the same;
65 and such person, upon conveying the property subject
66 to such contract, shall no longer be liable under such
67 contract, except as to annual payments due prior to said
68 conveyance and remaining unpaid.

69 (d) Any property owner may cancel any such con-
70 tract with respect to the property of such owner upon
71 giving a thirty-day written notice to the municipality,
72 if such owner is not in default with respect to any
73 annual payment due thereunder, except that if such no-
74 tice be given subsequent to July first of any calendar
75 year, the next succeeding annual payment shall be made
76 by said property owner as soon as the amount thereof
77 is ascertainable. Upon cancellation as aforesaid, the
78 municipality shall deliver to the property owner a re-
79 cordable release discharging such owner and such prop-
80 erty from any further lien or obligation with respect to
81 said annual payments. The annual payments due under
82 any such contract shall be made to such officials as the
83 municipality, in such contract, shall designate to receive
84 them, who shall likewise have authority to receive notice
85 of cancellation, and execute upon behalf of such mu-
86 nicipality the release for which provision is hereinbefore
87 made.

CHAPTER 81

(House Bill No. 625—By Mr. Goodwin and Mr. Hatfield)

[Passed March 8, 1972; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section forty-b, relating to issuance of a license permitting hunting with a revolver or pistol.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-40b. Class A-1 small arms hunting license.

1 Notwithstanding the provisions of section two, article
2 seven, chapter sixty-one of this code, a Class A-1 license
3 shall be a small arms hunting license. If a person is other-
4 wise qualified, a Class A-1 license may be issued by the
5 department, pursuant to rules and regulations promul-
6 gated by the director, to a person twenty-one years of age
7 or older who holds a valid Class A or Class AB license,
8 or to a person who is a resident and sixty-five years of
9 age or older, but a Class A-1 license shall never be is-
10 sued to a person who has been convicted of a misdemeanor
11 in any way associated with the use of firearms or danger-
12 ous weapons or who has been convicted of any felony nor
13 shall the clerk of the county court issue A-1 licenses as
14 provided in section thirty-two, article two of this chapter.

15 A Class A-1 license shall entitle the licensee to hunt,
16 as otherwise permitted by the provisions of this chapter,
17 but only during small game and big game season as es-
18 tablished annually by the director, with either a revolver
19 or pistol not to exceed .22 caliber and must have a barrel

20 at least four inches in length. A Class A-1 license shall
21 entitle the licensee to carry or have in his possession one,
22 and only one, revolver or pistol when going to and from
23 his home or residence and a place of hunting and while
24 hunting in the place: *Provided*, That such Class A-1 li-
25 cense shall not be valid unless the licensee have in his
26 possession a valid Class A or Class AB license or be a
27 resident and sixty-five years of age or older: *Provided*,
28 *however*, That at all times, when not actually hunting,
29 the revolver or pistol shall be unloaded.

30 While hunting, the licensee shall carry the revolver
31 or pistol outside of his person in an unconcealed and
32 easily visible place. At all other times the revolver or
33 pistol shall be cased or dismantled in a way to cause it
34 not to operate. When being transported in a vehicle it
35 shall be kept in a locked compartment of the vehicle which
36 shall not be accessible from the inside of such vehicle.

37 The fee shall be five dollars for a Class A-1 license.
38 All such fees collected shall be deposited in the state
39 treasury and credited to the law-enforcement division of
40 the department of natural resources. Such fees shall be
41 paid out of the state treasury on order of the director
42 and used solely for law-enforcement purposes.

CHAPTER 82

(House Bill No. 660—By Miss Crandall and Mr. Myles)

[Passed March 7, 1972; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-five, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reducing from ten to five dollars the license fee for nonresident six-day visitors.

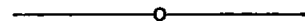
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.**§20-2-45. Class K nonresident six-day, statewide, fishing license.**

1 A Class K license shall be a nonresident fishing license
2 and shall entitle the licensee to fish for all fish except trout
3 in all counties of the state for a period not to exceed six
4 days. It shall be issued only to citizens of the United States,
5 and to unnaturalized persons possessing the permit re-
6 quired by section twenty-nine of this article, who are not
7 residents of this state. The fee therefor shall be five
8 dollars.

9 Trout fishing is not permitted with a Class K license
10 unless such license has affixed thereto an appropriate
11 trout stamp as prescribed by the department of natural
12 resources. The fee for a trout stamp shall be five dollars.
13 The trout stamp is in addition to a Class K license.

**CHAPTER 83**

(House Bill No. 548—By Mr. Butcher)

[Passed February 26, 1972; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to recovery of costs incurred in fighting fires.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. FORESTS AND WILDLIFE AREAS.**§20-3-11. Recovery of costs incurred in fighting fires.**

1 The director shall, in the name of the state, recover
2 from the persons, firms or corporations whose negligence
3 or whose violation of any provision of this article caused

4 any fire at any time on grass or forest land, the amount
5 expended by the state for the personal services of per-
6 sons especially employed under the provisions of section
7 four of this article to control, confine, extinguish or sup-
8 press such fire, and the costs associated therewith, but
9 such recovered amounts shall not include payment for
10 the personal services rendered by fulltime state law en-
11 forcement or forestry employees nor costs of state equip-
12 ment and costs related thereto in controlling, confining,
13 extinguishing or suppressing such fire. Such recovery
14 shall not bar an action for damages by any other person.

15 Any such fire which was caused by a trespasser or by
16 a person who was upon the property without the con-
17 sent of the owner shall not be deemed caused by the
18 negligence of the owner; but the owner shall use all
19 practical means to confine, extinguish or suppress any
20 such fire on his land even though it was caused by any
21 such person. If he fails to do so, after becoming aware
22 of such fire, the director shall, in the name of the state,
23 recover from him amounts expended by the state for the
24 personal services of persons especially employed under the
25 provisions of section four of this article to control, con-
26 fine, extinguish or suppress such fire and the costs asso-
27 ciated therewith, but such recovered amounts shall not
28 include payment for the personal services rendered by
29 fulltime state law enforcement or forestry employees nor
30 costs of state equipment used and costs related thereto in
31 controlling, confining, extinguishing or suppressing such
32 fire.

CHAPTER 84

(Com. Sub. for Senate Bill No. 154—Mr. Gainer and Mr. Hubbard)

[Passed March 11, 1972; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-c, pro-

viding for the adoption of the West Virginia water development authority act; setting forth a declaration of policy and responsibility in connection therewith; relating to the purposes of such act; setting forth certain legislative findings; defining terms; creating the West Virginia water development authority for the performance of essential governmental functions; creating the West Virginia water development board; relating to the organization and composition of such board; relating to the designation or appointment of board members, the terms of their office, their oaths and bonds and their compensation and expenses; relating to the qualification of board members, the removal thereof for cause and the functioning of such board; relating to officers of such board and the bond of the secretary-treasurer thereof; relating to the director of the authority; authorizing the authority to provide water development projects; relating to such projects generally; relating to the powers, duties and responsibilities of the authority; relating to venue of actions; authorizing the authority to exercise the right of eminent domain; relating to the expenditure of funds for the study and engineering of proposed water development projects; empowering the authority to issue water development revenue bonds and notes and refunding revenue bonds; specifying the requirements for the issuance of the same; relating generally to all such revenue bonds and notes and resolutions authorizing the same; relating to trust agreements to secure all such revenue bonds and notes; relating to legal remedies of bondholders and trustees; relating to the involvement of the authority and counties, municipalities and other political subdivisions in the establishment of water development projects and the maintenance and operation thereof; specifying that all such revenue bonds and notes shall not be a debt of this state, or any county, municipality or political subdivision in this state; relating to the use of moneys, properties and assets by the authority and restrictions on such use; relating to the investment of funds by the authority; relating to rentals and all other revenues from water development projects; relating generally to contracts and agreements with respect to such projects; authorizing governmental and other contributions to the authority; authorizing proceeds of other bond issues to be

used to aid the authority; relating to the maintenance, operation and repair of water development projects; relating to the taking, destroying and damaging of property; requiring reports by the authority; making water development revenue bonds lawful investments; providing broad exemption from taxation; relating to the acquisition by the authority of property interests; relating to the disturbing, taking, relocation or vacation of highways and property or facilities belonging to any public utility or common carrier and costs in connection therewith; prohibiting certain financial interests; creating criminal offenses; providing criminal penalties; requiring meetings and records of authority to be public; providing a rule of construction; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5C. WEST VIRGINIA WATER DEVELOPMENT AUTHORITY.

- §20-5C-1. Short title.
- §20-5C-2. Declaration of policy and responsibility; purpose and intent of article; findings.
- §20-5C-3. Definitions.
- §20-5C-4. West Virginia water development authority created; West Virginia water development board created; organization of authority and board; appointment of board members; their term of office, compensation and expenses; director of authority.
- §20-5C-5. Authority may construct, maintain, etc., water development projects.
- §20-5C-6. Powers, duties and responsibilities of authority generally.
- §20-5C-7. Expenditure of funds for study and engineering of proposed projects.
- §20-5C-8. Authority empowered to issue water development revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.
- §20-5C-9. Trustee for bondholders; contents of trust agreement.
- §20-5C-10. Legal remedies of bondholders and trustees.
- §20-5C-11. Bonds and notes not debt of state, county, municipality or of any political subdivision; expenses incurred pursuant to article.
- §20-5C-12. Use of funds by authority; restrictions thereon.
- §20-5C-13. Investment of funds by authority.
- §20-5C-14. Rentals and other revenues from water development projects; contracts and leases of authority; cooperation of other governmental agencies; bonds of such agencies.

- §20-5C-15. Maintenance, operation and repair of projects; reports by authority to governor and Legislature.
- §20-5C-16. Water development bonds lawful investments.
- §20-5C-17. Exemption from taxation.
- §20-5C-18. Acquisition of property by authority—Acquisition by purchase; governmental agencies authorized to convey, etc., property.
- §20-5C-19. Same—Acquisition under §20-5C-6, subdivision (10); property of public utilities and common carriers; relocation, restoration, etc., of highways and public utility facilities.
- §20-5C-20. Financial interest in contracts prohibited; penalty.
- §20-5C-21. Meetings and records of authority to be kept public.
- §20-5C-22. Liberal construction of article.
- §20-5C-23. Severability.

§20 5C-1. Short title.

- 1 This article shall be known and cited as the “West Vir-
2 ginia Water Development Authority Act.”

§20-5C-2. Declaration of policy and responsibility; purpose and intent of article; findings.

1 It is hereby declared to be the public policy of the
2 state of West Virginia and a responsibility of the state
3 of West Virginia, through the establishment, funding,
4 operation and maintenance of water development proj-
5 ects, to maintain, preserve, protect, conserve and in all
6 instances possible to improve the purity and quality of
7 water within the state in order to (1) protect and im-
8 prove public health; (2) assure the fullest use and enjoy-
9 ment of such water by the public; (3) provide suitable
10 environment for the propagation and protection of ani-
11 mal, bird, fish, aquatic and plant life, all of which are
12 essential to the health and well-being of the public; and
13 (4) provide water of the necessary quality and in the
14 amount needed for the development, maintenance and
15 expansion of, and to attract service industries and busi-
16 nesses, agriculture, mining, manufacturing and other
17 types of businesses and industries.

18 To assist in the preservation, protection, improvement
19 and management of the purity and quality of the waters
20 of this state, to prevent or abate pollution of water re-
21 sources and to promote the health and welfare of citizens
22 of this state, it is the purpose and intent of the Legisla-
23 ture in enacting this article to provide for the necessary,
24 dependable, effective and efficient purification of water;
25 the disposal of liquid and solid wastes harmful to the

26 public health and safety removed from such water; to
27 improve water and stream quality; and to assist and co-
28 operate with governmental agencies in achieving all of
29 the purposes set forth in this section.

30 The Legislature finds and hereby declares that the re-
31 sponsibility of the state as outlined above cannot be
32 effectively met without the establishment, funding, oper-
33 ation and maintenance of water development projects as
34 provided for in this article.

§20-5C-3. Definitions.

1 As used in this article unless the context clearly re-
2 quires a different meaning:

3 (1) "Authority" means the West Virginia water de-
4 velopment authority created in section four of this article,
5 the duties, powers, responsibilities and functions of
6 which are specified in this article.

7 (2) "Beneficial use" means a use of water by a person
8 or by the general public that is consistent with the public
9 interest, health and welfare in utilizing the water re-
10 sources of this states, including, but not limited to,
11 domestic, agricultural, irrigation, industrial, manufactur-
12 ing, mining, power, public, sanitary, fish and wildlife,
13 state, county, municipal, navigational, recreational, aesthe-
14 tic and scenic use.

15 (3) "Board" means the West Virginia water develop-
16 ment authority board created in section four of this
17 article, which shall manage and control the West Vir-
18 ginia water development authority.

19 (4) "Bond" or "water development revenue bond"
20 means a revenue bond or note issued by the West Vir-
21 ginia water development authority to effect the intents
22 and purposes of this article.

23 (5) "Construction" includes reconstruction, enlarge-
24 ment, improvement and providing furnishings or equip-
25 ment.

26 (6) "Cost" means, as applied to water development
27 projects, the cost of their acquisition and construction;
28 the cost of acquisition of all land, rights-of-way, property
29 rights, easements, franchise rights and interests required

30 by the authority for such acquisition and construction;
31 the cost of demolishing or removing any buildings
32 or structures on land so acquired, including the cost
33 of acquiring any lands to which such buildings or struc-
34 tures may be moved; the cost of acquiring or con-
35 structing and equipping a principal office and suboffices
36 of the authority; the cost of diverting highways, inter-
37 change of highways, access roads to private property,
38 including the cost of land or easements therefor; the cost
39 of all machinery, furnishings, and equipment; all financing
40 charges, and interest prior to and during construction
41 and for no more than eighteen months after completion
42 of construction; the cost of all engineering services and
43 all expenses of research and development with respect
44 to waste water facilities; the cost of all legal services and
45 expenses; the cost of all plans, specifications, surveys
46 and estimates of cost and revenues; all working capital
47 and other expenses necessary or incident to determining
48 the feasibility or practicability of acquiring or construc-
49 ting any such project; all administrative expenses and
50 such other expenses as may be necessary or incident to
51 the acquisition or construction of the project; the financing
52 of such acquisition or construction, including the amount
53 authorized in the resolution of the authority providing
54 for the issuance of water development revenue bonds
55 to be paid into any special funds from the proceeds of
56 such bonds; and the financing of the placing of any
57 such project in operation. Any obligation or expenses
58 incurred after the effective date of this section by any
59 governmental agency, with the approval of the authority,
60 for surveys, borings, preparation of plans and specifica-
61 tions and other engineering services in connection with
62 the acquisition or construction of a project shall be re-
63 garded as a part of the cost of such project and shall
64 be reimbursed out of the proceeds of water development
65 revenue bonds as authorized by the provisions of this
66 article.

67 (7) "Establishment" means an industrial establish-
68 ment, mill, factory, tannery, paper or pulp mill, mine,
69 colliery, breaker or mineral processing operation, quarry,

70 refinery, well, and each and every industry or plant or
71 works or activity in the operation or process of which
72 industrial wastes, or other wastes are produced.

73 (8) "Governmental agency" means the state govern-
74 ment or any agency, department, division or unit there-
75 of; counties; municipalities; watershed improvement
76 districts; soil conservation districts; sanitary districts;
77 public service districts; drainage districts; regional
78 governmental authorities and any other governmental
79 agency, entity, political subdivision, public corporation
80 or agency having the authority to acquire, construct
81 or operate waste water facilities; the United States
82 government or any agency, department, division or unit
83 thereof; and any agency, commission or authority estab-
84 lished pursuant to an interstate compact or agreement.

85 (9) "Industrial wastes" means any liquid, gaseous,
86 solid or other waste substance, or any combination
87 thereof, resulting from or incidental to any process of
88 industry, manufacturing, trade or business, or from or
89 incidental to the development, processing or recovery
90 of any natural resources; and the admixture with
91 such industrial wastes of sewage or other wastes, as
92 defined in this section, shall also be considered industrial
93 wastes.

94 (10) "Other wastes" means garbage, refuse, decayed
95 wood, sawdust, shavings, bark and other wood debris
96 and residues, sand, lime, cinders, ashes, offal, night soil,
97 silt, oil, tar, dyestuffs, acids, chemicals, and all other
98 materials or substances not sewage or industrial wastes
99 which may cause or might reasonably be expected to
100 cause or to contribute to the pollution of any of the
101 waters of this state.

102 (11) "Owner" includes all persons, copartnerships or
103 governmental agencies having any title or interest in
104 any property rights, easements and interests authorized
105 to be acquired by this article.

106 (12) "Person" means any public or private corporation,
107 institution, association, firm or company organized or
108 existing under the laws of this or any other state or
109 country; the United States or the state of West Virginia;

110 any federal or state governmental agency; political sub-
111 division; county court; municipality; industry; sanitary
112 district; public service district; drainage district; soil
113 conservation district; watershed improvement district;
114 partnership; trust; estate; person or individual; group
115 of persons or individuals acting individually or as a
116 group or any other legal entity whatever.

117 (13) "Pollution" means (a) the discharge, release,
118 escape, deposit or disposition, directly or indirectly, of
119 treated or untreated sewage, industrial wastes, or other
120 wastes, of whatever kind or character, in or near any
121 waters of the state, in such condition, manner or quantity,
122 as does, will, or is likely to (1) contaminate or sub-
123 stantially contribute to the contamination of any of
124 such waters, or (2) alter or substantially contribute to
125 the alteration of the physical, chemical or biological
126 properties of any of such waters, if such contamination
127 or alteration, or the resulting contamination or alteration
128 where a person only contributes thereto, is to such an
129 extent as to make any of such waters (i) directly or
130 indirectly harmful, detrimental or injurious to the public
131 health, safety and welfare, or (ii) directly or indirectly
132 detrimental to existing animal, bird, fish, aquatic or
133 plant life, or (iii) unsuitable for present or future domes-
134 tic, commercial, industrial, agricultural, recreational,
135 scenic or other legitimate uses; and also means (b) the
136 discharge, release, escape, deposit, or disposition, directly
137 or indirectly, of treated or untreated sewage, industrial
138 wastes or other wastes, of whatever kind or character,
139 in or near any waters of the state in such condition,
140 manner or quantity, as does, will, or is likely to reduce
141 the quality of the waters of the state below the standards
142 established therefor by the United States or any depart-
143 ment, agency, board or commission of this state authorized
144 to establish such standards.

145 (14) "Project" or "water development project" means
146 any waste water facility the acquisition or construction
147 of which is authorized by the West Virginia water
148 development authority or the acquisition or construction
149 of which is financed in whole or in part from funds

150 made available by grant or loan by, or through, the
151 authority as provided in this article, including all build-
152 ings and facilities which the authority deems necessary
153 for the operation of the project, together with all property,
154 rights, easements and interest which may be required
155 for the operation of the project, but excluding all build-
156 ings and facilities used to produce electricity other than
157 electricity for consumption by the authority in the
158 operation and maintenance of the project.

159 (15) "Public roads" mean all public highways, roads
160 and streets in this state, whether maintained by the
161 state, county, municipality or other political subdivision.

162 (16) "Public utility facilities" mean public utility
163 plants or installations and includes tracks, pipes, mains,
164 conduits, cables, wires, towers, poles and other equip-
165 ment and appliances of any public utility.

166 (17) "Revenue" means any money or thing of value
167 collected by, or paid to, the West Virginia water develop-
168 ment authority as rent, use or service fee or charge for
169 use of, or in connection with, any water development
170 project.

171 (18) "Sewage" means water-carried human or animal
172 wastes from residences, buildings, industrial establish-
173 ments or other places, together with such ground water
174 infiltration and surface waters as may be present.

175 (19) "Water resources," "water" or "waters" mean any
176 and all water on or beneath the surface of the ground,
177 whether percolating, standing, diffused or flowing, wholly
178 or partially within this state, or bordering this state and
179 within its jurisdiction, and shall include, without limiting
180 the generality of the foregoing, natural or artificial lakes,
181 rivers, streams, creeks, branches, brooks, ponds (ex-
182 cept farm ponds, industrial settling basins and ponds
183 and water treatment facilities), impounding reservoirs,
184 springs, wells and watercourses.

185 (20) "Waste water" means any water containing sew-
186 age, industrial wastes, other wastes or contaminants de-
187 rived from the prior use of such water, and shall include
188 without limiting the generality of the foregoing, surface

189 water of the type storm sewers are designed to collect and
190 dispose of.

191 (21) "Waste water facilities" mean facilities for the
192 purpose of treating, neutralizing, disposing of, stabilizing,
193 cooling, segregating or holding waste water, including
194 without limiting the generality of the foregoing, facilities
195 for the treatment and disposal of sewage, industrial
196 wastes, or other wastes, or waste water, and the residue
197 thereof; facilities for the temporary or permanent im-
198 poundment of waste water, both surface and underground;
199 and sanitary sewers or other collection systems, whether
200 on the surface or underground, designed to transport
201 waste water together with the equipment and furnishings
202 thereof and their appurtenances and systems, whether on
203 the surface or underground, including force mains and
204 pumping facilities therefor.

**§20-5C-4. West Virginia water development authority created;
West Virginia water development board created;
organization of authority and board; appointment
of board members; their term of office, compen-
sation and expenses; director of authority.**

1 There is hereby created the West Virginia water de-
2 velopment authority. The authority is a governmental
3 instrumentality of the state and a body corporate. The
4 exercise by the authority of the powers conferred by
5 this article and the carrying out of its purposes and duties
6 shall be deemed and held to be, and are hereby deter-
7 mined to be, essential governmental functions and for a
8 public purpose.

9 The authority shall be controlled, managed and oper-
10 ated by the five-member board known as the West Vir-
11 ginia water development board, which is hereby created.
12 The director of the department of natural resources and
13 the director of the department of health shall be mem-
14 bers ex officio of the board. The other three members of
15 the board shall be appointed by the governor, by and
16 with the advice and consent of the Senate, for terms of
17 two, four and six years, respectively. The successor of
18 each such appointed member shall be appointed for a
19 term of six years in the same manner the original ap-

20 pointments were made, except that any person appointed
21 to fill a vacancy occurring prior to the expiration of the
22 term for which his predecessor was appointed shall be
23 appointed only for the remainder of such term. Each
24 board member shall serve until the appointment and qual-
25 ification of his successor. No more than two of the ap-
26 pointed board members shall at any one time belong to
27 the same political party. Appointed board members may
28 be reappointed to serve additional terms.

29 All members of the board shall be citizens of the state.
30 Each appointed member of the board, before entering
31 upon his duties, shall comply with the requirements of
32 article one, chapter six of this code and give bond in the
33 sum of twenty-five thousand dollars in the manner pro-
34 vided in article two, chapter six of this code. The gov-
35 ernor may remove any board member for cause as pro-
36 vided in article six, chapter six of this code.

37 Annually the board shall elect one of its appointed mem-
38 bers as chairman and another as vice chairman, and shall
39 appoint a secretary-treasurer, who need not be a member
40 of the board. Four members of the board shall constitute a
41 quorum and the affirmative vote of four members shall
42 be necessary for any action taken by vote of the board.
43 No vacancy in the membership of the board shall impair
44 the rights of a quorum by such vote to exercise all the
45 rights and perform all the duties of the board and the
46 authority. The person appointed as secretary-treasurer,
47 including a board member if he is so appointed, shall
48 give bond in the sum of fifty thousand dollars in the
49 manner provided in article two, chapter six of this code.

50 The director of the department of natural resources
51 and the director of the department of health shall not
52 receive any compensation for serving as board members.
53 Each of the three appointed members of the board shall
54 receive an annual salary of five thousand dollars, payable
55 in monthly installments. Each of the five board mem-
56 bers shall be reimbursed for all reasonable and neces-
57 sary expenses actually incurred in the performance of
58 his duties as a member of such board. All such expenses
59 incurred by the board shall be payable solely from funds
60 of the authority or from funds appropriated for such pur-

61 pose by the Legislature and no liability or obligation
62 shall be incurred by the authority beyond the extent to
63 which moneys are available from funds of the authority
64 or from such appropriations.

65 There shall also be a director of the authority appointed
66 by the board.

§20-5C-5. Authority may construct, maintain, etc., water development projects.

1 To accomplish the public policies and purposes and to
2 meet the responsibility of the state as set forth in this
3 article, the West Virginia water development authority
4 may initiate, acquire, construct, maintain, repair and op-
5 erate water development projects or cause the same to
6 be operated pursuant to a lease, sublease or agreement
7 with any person or governmental agency; may make
8 loans and grants to governmental agencies for the acqui-
9 sition or construction of waste water facilities by such
10 governmental agencies; and may issue water develop-
11 ment revenue bonds of this state, payable solely from
12 revenues, to pay the cost of such projects. A water de-
13 velopment project shall not be undertaken unless it has
14 been determined by the authority to be consistent with
15 any applicable comprehensive plan of water management
16 approved by the director of the department of natural
17 resources or in the process of preparation by such di-
18 rector and to be consistent with the standards set by the
19 state water resources board, for the waters of the state
20 affected thereby. Any resolution of the authority pro-
21 viding for acquiring or constructing such projects or for
22 making a loan or grant for such projects shall include a
23 finding by the authority that such determinations have
24 been made.

§20-5C-6. Powers, duties and responsibilities of authority generally.

1 The West Virginia water development authority is
2 hereby granted, has and may exercise all powers neces-
3 sary or appropriate to carry out and effectuate its cor-
4 porate purpose. The authority shall have the power and
5 capacity to:

6 (1) Adopt, and from time to time, amend and repeal
7 bylaws necessary and proper for the regulation of its
8 affairs and the conduct of its business and rules and
9 regulations to implement and make effective its powers
10 and duties, such rules and regulations to be promulgated
11 in accordance with the provisions of chapter twenty-nine-
12 a of this code.

13 (2) Adopt an official seal.

14 (3) Maintain a principal office and, if necessary, re-
15 gional suboffices at locations properly designated or
16 provided.

17 (4) Sue and be sued in its own name and plead and
18 be impleaded in its own name, and particularly to en-
19 force the obligations and covenants made under sections
20 eight, nine and fourteen of this article. Any actions
21 against the authority shall be brought in the circuit
22 court of Kanawha county in which the principal office
23 of the authority shall be located.

24 (5) Make loans and grants to governmental agencies
25 for the acquisition or construction of water development
26 projects by any such governmental agency and, in ac-
27 cordance with chapter twenty-nine-a of this code, adopt
28 rules and procedures for making such loans and grants.

29 (6) Acquire, construct, reconstruct, enlarge, improve,
30 furnish, equip, maintain, repair, operate, lease or rent
31 to, or contract for operation by a governmental agency
32 or person, water development projects, and, in accordance
33 with chapter twenty-nine-a of this code, adopt rules and
34 regulations for the use of such projects.

35 (7) Make available the use or services of any water
36 development project to one or more persons, one or more
37 governmental agencies, or any combination thereof.

38 (8) Issue water development revenue bonds and notes
39 and water development revenue refunding bonds of the
40 state, payable solely from revenues as provided in sec-
41 tion eight of this article unless the bonds are refunded
42 by refunding bonds, for the purpose of paying any part
43 of the cost of one or more water development projects
44 or parts thereof.

45 (9) Acquire by gift or purchase, hold and dispose of real
46 and personal property in the exercise of its powers and the
47 performance of its duties as set forth in this article.

48 (10) Acquire in the name of the state, by purchase or
49 otherwise, on such terms and in such manner as it deems
50 proper, or by the exercise of the right of eminent domain
51 in the manner provided in chapter fifty-four of this code,
52 such public or private lands, or parts thereof or rights
53 therein, rights-of-way, property, rights, easements and in-
54 terests it deems necessary for carrying out the provisions
55 of this article, but excluding the acquisition by the exercise
56 of the right of eminent domain of any waste water facility
57 operated under permits issued pursuant to the provisions
58 of article five-a, chapter twenty of this code and owned by
59 any person or governmental agency, and compensation
60 shall be paid for public or private lands so taken.

61 (11) Make and enter into all contracts and agreements
62 and execute all instruments necessary or incidental to
63 the performance of its duties and the execution of its
64 powers. When the cost under any such contract or agree-
65 ment, other than compensation for personal services,
66 involves an expenditure of more than two thousand dol-
67 lars, the authority shall make a written contract with
68 the lowest responsible bidder after public notice pub-
69 lished as a Class II legal advertisement in compliance
70 with the provisions of article three, chapter fifty-nine
71 of this code, the publication area for such publication to
72 be the county wherein the work is to be performed or
73 which is affected by the contract, which notice shall
74 state the general character of the work and the general
75 character of the materials to be furnished, the place
76 where plans and specifications therefor may be examined
77 and the time and place of receiving bids, but a contract
78 or lease for the operation of a water development project
79 constructed and owned by the authority or an agree-
80 ment for cooperation in the acquisition or construction
81 of a water development project pursuant to section four-
82 teen of this article is not subject to the foregoing require-
83 ments and the authority may enter into such contract or
84 lease or such agreement pursuant to negotiation and

85 upon such terms and conditions and for such period as
86 it finds to be reasonable and proper under the circum-
87 stances and in the best interests of proper operation or of
88 efficient acquisition or construction of such project. The
89 authority may reject any and all bids. A bond with
90 good and sufficient surety, approved by the authority,
91 shall be required of all contractors in an amount equal
92 to at least fifty percent of the contract price, conditioned
93 upon the faithful performance of the contract.

94 (12) Employ managers, superintendents and other em-
95 ployees, who shall be covered by the state civil service
96 system, and retain or contract with consulting engineers,
97 financial consultants, accounting experts, architects, at-
98 torneys and such other consultants and independent con-
99 tractors as are necessary in its judgment to carry out
100 the provisions of this article, and fix the compensation
101 or fees thereof. All expenses thereof shall be payable
102 solely from the proceeds of water development revenue
103 bonds or notes issued by the authority, from reve-
104 nues and from funds appropriated for such purpose by
105 the Legislature.

106 (13) Receive and accept from any federal agency, sub-
107 ject to the approval of the governor, grants for or in aid
108 of the construction of any water development project or
109 for research and development with respect to waste
110 water facilities and receive and accept aid or contribu-
111 tions from any source of money, property, labor or other
112 things of value, to be held, used and applied only for
113 the purposes for which such grants and contributions
114 are made.

115 (14) Engage in research and development with respect
116 to waste water facilities.

117 (15) Purchase fire and extended coverage and liability
118 insurance for any water development project and for the
119 principal office and suboffices of the authority, insurance
120 protecting the authority and its officers and employees
121 against liability, if any, for damage to property or injury
122 to or death of persons arising from its operations and any
123 other insurance the authority may agree to provide under
124 any resolution authorizing the issuance of water develop-

125 ment revenue bonds or in any trust agreement securing
126 the same.

127 (16) Charge, alter and collect rentals and other charges
128 for the use or services of any water development project
129 as provided in this article.

150 (17) Do all acts necessary and proper to carry out the
151 powers expressly granted to the authority in this article.

§20-5C-7. Expenditure of funds for study and engineering of proposed projects.

1 With the approval and the consent of the board, either
2 the director of the department of natural resources or
3 the director of the department of health, or both of them,
4 shall expend, out of any funds available for the purpose,
5 such moneys as are necessary for the study of any pro-
6 posed water development project and may use its engi-
7 neering and other forces, including consulting engineers
8 and sanitary engineers, for the purpose of effecting such
9 study. All such expenses incurred by such directors or
10 either of them prior to the issuance of water develop-
11 ment revenue bonds or notes under this article shall be
12 paid by the director or respective directors incurring such
13 expenses and charged to the appropriate water develop-
14 ment project and the director or respective directors shall
15 keep proper records and accounts, showing the amounts
16 so charged. Upon the sale of water development revenue
17 bonds or notes for a water development project, the funds
18 so expended by the director or respective directors, with
19 the approval of the authority, in connection with such
20 project, shall be repaid to the department or departments
21 of such director or directors from the proceeds of such
22 bonds or notes.

§20-5C-8. Authority empowered to issue water development revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.

1 The authority is hereby empowered to raise the cost
2 of one or more water development projects or parts
3 thereof by the issuance from time to time of water
4 development revenue bonds and notes of the state in
5 such principal amount as the authority deems neces-

6 sary, but the aggregate amount of all issues of bonds
7 and notes outstanding at one time for all projects au-
8 thorized hereunder shall not exceed that amount capable
9 of being serviced by revenues received from such
10 projects.

11 The authority may, from time to time, issue renewal
12 notes, issue bonds to pay such notes and whenever it
13 deems refunding expedient, refund any bonds by the is-
14 suance of water development revenue refunding bonds of
15 the state, whether the bonds to be refunded have or have
16 not matured, and issue bonds partly to refund bonds then
17 outstanding and partly for any other authorized pur-
18 pose. The refunding bonds shall be sold and the pro-
19 ceeds applied to the purchase, redemption or payment of
20 the bonds to be refunded. Except as may otherwise be
21 expressly provided by the authority, every issue of its
22 bonds or notes shall be obligations of the authority pay-
23 able out of the revenues of the authority, which are
24 pledged for such payment, without preference or priority
25 of the first bonds issued, subject only to any agreements
26 with the holders of particular bonds or notes pledging any
27 particular revenues. Such pledge shall be valid and bind-
28 ing from the time the pledge is made and the revenue so
29 pledged and thereafter received by the authority shall
30 immediately be subject to the lien of such pledge without
31 any physical delivery thereof or further act and the lien
32 of any such pledge shall be valid and binding as against
33 all parties having claims of any kind in tort, contract or
34 otherwise against the authority irrespective of whether
35 such parties have notice thereof.

36 All such bonds and notes shall have and are hereby
37 declared to have all the qualities of negotiable instru-
38 ments.

39 The bonds and notes shall be authorized by resolution of
40 the authority, shall bear such date and shall mature at
41 such time, in the case of any such note or any renewals
42 thereof not exceeding five years from the date of issue of
43 such original note, and in the case of any such bond not
44 exceeding fifty years from the date of issue, as such reso-
45 lution may provide. The bonds and notes shall bear in-

46 terest at such rate, be in such denominations, be in such
47 form, either coupon or registered, carry such registration
48 privileges, be payable in such medium of payment, at
49 such place and be subject to such terms of redemption as
50 the authority may authorize. The bonds and notes of the
51 authority may be sold by the authority, at public or pri-
52 vate sale, at or not less than the price the authority de-
53 termines. The bonds and notes shall be executed by the
54 chairman and vice chairman of the authority, both of
55 whom may use facsimile signatures. The official seal of
56 the authority or a facsimile thereof shall be affixed there-
57 to or printed thereon and attested, manually or by fac-
58 simile signature, by the secretary-treasurer of the author-
59 ity, and any coupons attached thereto shall bear the
60 signature or facsimile signature of the chairman of the
61 authority. In case any officer whose signature, or a fac-
62 simile of whose signature, appears on any bonds, notes
63 or coupons ceases to be such officer before delivery of
64 such bonds or notes, such signature or facsimile is never-
65 theless sufficient for all purposes the same as if he had
66 remained in office until such delivery and in case the seal
67 of the authority has been changed after a facsimile has
68 been imprinted on such bonds or notes such facsimile seal
69 will continue to be sufficient for all purposes.

70 Any resolution authorizing any bonds or notes or any
71 issue thereof may contain provisions (subject to such
72 agreements with bondholders or noteholders as may then
73 exist, which provisions shall be a part of the contract
74 with the holders thereof) as to pledging all or any part
75 of the revenues of the authority to secure the payment of
76 the bonds or notes or of any issue thereof; the use and
77 disposition of revenues of the authority; a covenant to fix,
78 alter and collect rentals and other charges so that pledged
79 revenues will be sufficient to pay the costs of operation,
80 maintenance and repairs, pay principal of and interest on
81 bonds or notes secured by the pledge of such revenues and
82 provide such reserves as may be required by the ap-
83 plicable resolution or trust agreement; the setting aside
84 of reserve funds, sinking funds or replacement and im-
85 provement funds and the regulation and disposition there-
86 of; the crediting of the proceeds of the sale of bonds or

87 notes to and among the funds referred to or provided for
88 in the resolution authorizing the issuance of the bonds
89 or notes; the use, lease, sale or other disposition of any
90 water development project or any other assets of the
91 authority; limitations on the purpose to which the pro-
92 ceeds of sale of bonds or notes may be applied and pledg-
93 ing such proceeds to secure the payment of the bonds or
94 notes or of any issue thereof; notes issued in anticipation
95 of the issuance of bonds, the agreement of the authority
96 to do all things necessary for the authorization, issuance
97 and sale of such bonds in such amounts as may be neces-
98 sary for the timely retirement of such notes; limitations
99 on the issuance of additional bonds or notes; the terms
100 upon which additional bonds or notes may be issued and
101 secured; the refunding of outstanding bonds or notes;
102 the procedure, if any, by which the terms of any contract
103 with bondholders or noteholders may be amended or
104 abrogated, the amount of bonds or notes the holders of
105 which must consent thereto and the manner in which
106 such consent may be given; limitations on the amount
107 of moneys to be expended by the authority for operating,
108 administrative or other expenses of the authority; se-
109 curing any bonds or notes by a trust agreement; and any
110 other matters, of like or different character, which in any
111 way affect the security or protection of the bonds or notes.

112 Neither the members of the authority nor any person
113 executing the bonds or notes shall be liable personally on
114 the bonds or notes or be subject to any personal liability
115 or accountability by reason of the issuance thereof.

§20-5C-9. Trustee for bondholders; contents of trust agreement.

1 In the discretion of the authority, any water develop-
2 ment revenue bonds or notes or water development reve-
3 nue refunding bonds issued by the authority under this
4 article may be secured by a trust agreement between
5 the authority and a corporate trustee, which trustee may
6 be any trust company or banking institution having the
7 powers of a trust company within or without this state.

8 Any such trust agreement may pledge or assign reve-
9 nues of the authority to be received, but shall not convey
10 or mortgage any water development project or any part

11 thereof. Any such trust agreement or any resolution pro-
12 viding for the issuance of such bonds or notes may con-
13 tain such provisions for protecting and enforcing the
14 rights and remedies of the bondholders or noteholders as
15 are reasonable and proper and not in violation of law,
16 including covenants setting forth the duties of the au-
17 thority in relation to the acquisition of property, the con-
18 struction, improvement, maintenance, repair, operation
19 and insurance of the water development project in con-
20 nection with which such bonds or notes are authorized,
21 the rentals or other charges to be imposed for the use
22 or services of any water development project, the custody,
23 safeguarding, and application of all moneys and provisions
24 for the employment of consulting engineers in connec-
25 tion with the construction or operation of such water de-
26 velopment project. Any banking institution or trust
27 company incorporated under the laws of this state which
28 may act as depository of the proceeds of bonds or notes
29 or of revenues shall furnish such indemnifying bonds or
30 pledge such securities as are required by the authority.
31 Any such trust agreement may set forth the rights and
32 remedies of the bondholders and noteholders and of the
33 trustee and may restrict individual rights of action by
34 bondholders and noteholders as customarily provided in
35 trust agreements or trust indentures securing similar
36 bonds. Such trust agreement may contain such other pro-
37 visions as the authority deems reasonable and proper for
38 the security of the bondholders or noteholders. All ex-
39 penses incurred in carrying out the provisions of any such
40 trust agreement may be treated as a part of the cost of the
41 operation of the water development project. Any such
42 trust agreement or resolution authorizing the issuance of
43 water development revenue bonds may provide the
44 method whereby the general administrative overhead ex-
45 penses of the authority shall be allocated among the sev-
46 eral projects acquired or constructed by it as a factor of
47 the operating expenses of each such project.

§20-5C-10. Legal remedies of bondholders and trustees.

1 Any holder of water development revenue bonds issued
2 under the authority of this article or any of the coupons
3 appertaining thereto and the trustee under any trust

4 agreement, except to the extent the rights given by this
5 article may be restricted by the applicable resolution or
6 such trust agreement, may by civil action, mandamus or
7 other proceedings, protect and enforce any rights granted
8 under the laws of this state or granted under this article,
9 by the trust agreement or by the resolution authorizing
10 the issuance of such bonds, and may enforce and compel
11 the performance of all duties required by this article, or
12 by the trust agreement or resolution, to be performed
13 by the authority or any officer thereof, including the
14 fixing, charging and collecting of sufficient rentals or
15 other charges.

§20-5C-11. Bonds and notes not debt of state, county, municipality or of any political subdivision; expenses incurred pursuant to article.

1 Water development revenue bonds and notes and water
2 development revenue refunding bonds issued under au-
3 thority of this article and any coupons in connection
4 therewith shall not constitute a debt or a pledge of the
5 faith and credit or taxing power of this state or of any
6 county, municipality or any other political subdivision of
7 this state, and the holders or owners thereof shall have no
8 right to have taxes levied by the Legislature or taxing
9 authority of any county, municipality or any other politi-
10 cal subdivision of this state for the payment of the princi-
11 pal thereof or interest thereon, but such bonds and notes
12 shall be payable solely from the revenues and funds
13 pledged for their payment as authorized by this article
14 unless the notes are issued in anticipation of the issuance
15 of bonds or the bonds are refunded by refunding bonds
16 issued under authority of this article, which bonds or re-
17 funding bonds shall be payable solely from revenues and
18 funds pledged for their payment as authorized by this
19 article. All such bonds and notes shall contain on the
20 face thereof a statement to the effect that the bonds or
21 notes, as to both principal and interest, are not debts of
22 the state or any county, municipality or political sub-
23 division thereof, but are payable solely from revenues
24 and funds pledged for their payment.

25 All expenses incurred in carrying out the provisions of

26 this article shall be payable solely from funds provided
27 under authority of this article. Such article does not
28 authorize the authority to incur indebtedness or liability
29 on behalf of or payable by the state or any county, municipi-
30 pality or political subdivision thereof.

§20-5C-12. Use of funds by authority; restrictions thereon.

1 All moneys, properties and assets acquired by the
2 authority, whether as proceeds from the sale of water
3 development revenue bonds or as revenues or otherwise,
4 shall be held by it in trust for the purposes of carrying
5 out its powers and duties, and shall be used and reused in
6 accordance with the purposes and provisions of this article.
7 Such moneys shall at no time be commingled with other
8 public funds. Such moneys, except as otherwise provided
9 in any resolution authorizing the issuance of water de-
10 velopment revenue bonds or in any trust agreement secur-
11 ing the same, or except when invested pursuant to section
12 thirteen of this article, shall be kept in appropriate de-
13 positories and secured as provided and required by law.
14 The resolution authorizing the issuance of such bonds
15 of any issue or the trust agreement securing such bonds
16 shall provide that any officer to whom, or any banking
17 institution or trust company to which, such moneys are
18 paid shall act as trustee of such moneys and hold and
19 apply them for the purposes hereof, subject to the condi-
20 tions this article and such resolution or trust agreement
21 provide.

§20-5C-13. Investment of funds by authority.

1 Funds of the authority in excess of current needs,
2 except as otherwise provided in any resolution au-
3 thORIZING the issuance of its water development revenue
4 bonds or in any trust agreement securing the same,
5 may be invested by the authority in any security or
6 securities in which the "West Virginia State Board of
7 Investments" is authorized to invest under sections nine
8 and ten, article six, chapter twelve of this code, except
9 those securities specified in subdivisions (f) and (g) of
10 said section nine. Income from all such investments of
11 moneys in any fund shall be credited to such funds as
12 the authority determines, subject to the provisions of any

13 such resolution or trust agreement and such investments
14 may be sold at such times as the authority determines.

**§20-5C-14. Rentals and other revenues from water develop-
ment projects; contracts and leases of authority;
cooperation of other governmental agencies;
bonds of such agencies.**

1 The authority may charge, alter and collect rentals
2 or other charges for the use or services of any water
3 development project, and contract in the manner provided
4 by this section with one or more persons, one or more
5 governmental agencies, or any combination thereof, de-
6 siring the use or services thereof, and fix the terms,
7 conditions, rentals or other charges for such use or
8 services. Such rentals or other charges shall not be sub-
9 ject to supervision or regulation by any other authority,
10 department, commission, board, bureau or agency of the
11 state, and such contract may provide for acquisition by
12 such person or governmental agency of all or any part
13 of such water development project for such consideration
14 payable over the period of the contract or otherwise
15 as the authority in its sole discretion determines to be
16 appropriate, but subject to the provisions of any resolu-
17 tion authorizing the issuance of water development
18 revenue bonds or notes or water development revenue
19 refunding bonds of the authority or any trust agreement
20 securing the same. Any governmental agency which has
21 power to construct, operate and maintain waste water
22 facilities may enter into a contract or lease with the
23 authority whereby the use or services of any water de-
24 velopment project of the authority will be made available
25 to such governmental agency and pay for such use or
26 services such rentals or other charges as may be agreed
27 to by such governmental agency and the authority.

28 Any governmental agency or agencies or combination
29 thereof may cooperate with the authority in the acquisi-
30 tion or construction of a water development project and
31 shall enter into such agreements with the authority as
32 are necessary, with a view to effective cooperative action
33 and safeguarding of the respective interests of the parties
34 thereto, which agreements shall provide for such con-

35 tributions by the parties thereto in such proportion as
36 may be agreed upon and such other terms as may be
37 mutually satisfactory to the parties, including without
38 limitation the authorization of the construction of the
39 project by one of the parties acting as agent for all of
40 the parties and the ownership and control of the project
41 by the authority to the extent necessary or appropriate
42 for purposes of the issuance of water development revenue
43 bonds by the authority. Any governmental agency may
44 provide such contribution as is required under such
45 agreements by the appropriation of money or, if
46 authorized by a favorable vote of the electors to issue
47 bonds or notes or levy taxes or assessments and issue
48 notes or bonds in anticipation of the collection there-
49 of, by the issuance of bonds or notes or by the levying of
50 taxes or assessments and the issuance of bonds or notes in
51 anticipation of the collection thereof, and by the payment
52 of such appropriated money or the proceeds of such bonds
53 or notes to the authority pursuant to such agreements.

54 Any governmental agency, pursuant to a favorable vote
55 of the electors in an election held before or after the
56 effective date of this section for the purpose of issuing
57 bonds to provide funds to acquire, construct or equip,
58 or provide real estate and interests in real estate for
59 a waste water facility, whether or not the governmental
60 agency at the time of such election had the authority
61 to pay the proceeds from such bonds or notes issued in
62 anticipation thereof to the authority as provided in this
63 section, may issue such bonds or notes in anticipation of
64 the issuance thereof and pay the proceeds thereof to the
65 authority in accordance with an agreement between such
66 governmental agency and the authority: *Provided*, That
67 the legislative authority of the governmental agency finds
68 and determines that the water development project to
69 be acquired or constructed by the authority in coopera-
70 tion with such governmental agency will serve the same
71 public purpose and meet substantially the same public
72 need as the facility otherwise proposed to be acquired
73 or constructed by the governmental agency with the pro-
74 ceeds of such bonds or notes.

§20-5C-15. Maintenance, operation and repair of projects; reports by authority to governor and Legislature.

1 Each water development project, when constructed and
2 placed in operation, shall be maintained and kept in good
3 condition and repair by the authority or the authority
4 shall cause the same to be maintained and kept in good
5 condition and repair. Each such project shall be operated
6 by such operating employees as the authority employs or
7 pursuant to a contract or lease with a governmental
8 agency or person. All public or private property damaged
9 or destroyed in carrying out the provisions of this article
10 and in the exercise of the powers granted hereunder with
11 regard to any project shall be restored or repaired and
12 placed in its original condition, as nearly as practicable,
13 or adequate compensation made therefor out of funds
14 provided in accordance with the provisions of this article.

15 As soon as possible after the close of each fiscal year,
16 the authority shall make an annual report of its activities
17 for the preceding fiscal year to the governor and the
18 Legislature. Each such report shall set forth a complete
19 operating and financial statement covering the authority's
20 operations during the preceding fiscal year. The authority
21 shall cause an audit of its books and accounts to be made
22 at least once each fiscal year by certified public account-
23 tants and the cost thereof may be treated as a part of the
24 cost of construction or of operations of its projects.

§20-5C-16. Water development bonds lawful investments.

1 The provisions of sections nine and ten, article six,
2 chapter twelve of this code to the contrary notwithstand-
3 ing, all water development revenue bonds issued pur-
4 suant to this article shall be lawful investments for the
5 West Virginia state board of investments and shall also
6 be lawful investments for banking institutions, societies
7 for savings, building and loan associations, savings and
8 loan associations, deposit guarantee associations, trust
9 companies, insurance companies, including domestic for
10 life and domestic not for life insurance companies.

§20-5C-17. Exemption from taxation.

1 The exercise of the powers granted to the authority by
2 this article will be in all respects for the benefit of the

3 people of the state, for the improvement of their health,
4 safety, convenience and welfare and for the enhancement
5 of their residential, agricultural, recreational, economic,
6 commercial and industrial opportunities and is a public
7 purpose. As the operation and maintenance of water de-
8 velopment projects will constitute the performance of
9 essential governmental functions, the authority shall not
10 be required to pay any taxes or assessments upon any
11 water development project or upon any property acquired
12 or used by the authority or upon the income therefrom.
13 Such bonds and notes and all interest and income thereon
14 shall be exempt from all taxation by this state, or any
15 county, municipality, political subdivision or agency
16 thereof, except inheritance taxes.

**§20-5C-18. Acquisition of property by authority—Acquisition
by purchase; governmental agencies authorized
to convey, etc., property.**

1 The authority may acquire by purchase, whenever it
2 deems such purchase expedient, any land, property,
3 rights, rights-of-way, franchises, easements and other in-
4 terests in lands it deems necessary or convenient for the
5 construction and operation of any water development
6 project upon such terms and at such prices it considers
7 reasonable and can be agreed upon between the author-
8 ity and the owner thereof, and take title thereto in the
9 name of the state.

10 All governmental agencies, notwithstanding any con-
11 trary provision of law, may lease, lend, grant or convey
12 to the authority, at its request, upon such terms as the
13 proper authorities of such governmental agencies deem
14 reasonable and fair and without the necessity for an ad-
15 vertisement, auction, order of court or other action or
16 formality, other than the regular and formal action of
17 the governmental agency concerned, any real property or
18 interests therein, including improvements thereto or per-
19 sonal property which is necessary or convenient to the
20 effectuation of the authorized purposes of the authority,
21 including public roads and other real property or inter-
22 ests therein, including improvements thereto or personal
23 property already devoted to public use.

§20-5C-19. Same—Acquisition under §20-5C-6, subdivision (10); property of public utilities and common carriers; relocation, restoration, etc., of highways and public utility facilities.

1 The authority may acquire, pursuant to subdivision ten,
2 section six of this article, any land, rights, rights-of-way,
3 franchises, easements or other property necessary or
4 proper for the construction or the efficient operation of
5 any water development project.

6 This section does not authorize the authority to take
7 or disturb property or facilities belonging to any public
8 utility or to a common carrier, which property or facili-
9 ties are required for the proper and convenient operation
10 of such public utility or common carrier, unless provision
11 is made for the restoration, relocation or duplication of
12 such property or facilities elsewhere at the sole cost of
13 the authority.

14 When the authority finds it necessary to change the
15 location of any portion of any public road, state highway,
16 railroad or public utility facility in connection with the
17 construction of a water development project, it shall
18 cause the same to be reconstructed at such location as the
19 unit or division of government having jurisdiction over
20 such road, highway, railroad or public utility facility
21 deems most favorable. Such construction shall be of
22 substantially the same type and in as good condition as
23 the original road, highway, railroad or public utility
24 facility. The cost of such reconstruction, relocation or
25 removal and any damage incurred in changing the loca-
26 tion of any such road, highway, railroad or public utility
27 facility shall be paid by the authority as a part of the
28 cost of such water development project.

29 When the authority finds it necessary that any public
30 highway or portion thereof be vacated by reason of the
31 acquisition or construction of a water development proj-
32 ect, the authority shall request the West Virginia com-
33 missioner of highways, in writing, to vacate such highway
34 or portion thereof if the highway or portion thereof to
35 be vacated is part of the state road system, or, if the high-
36 way or portion thereof to be vacated is under the juris-
37 diction of a county or a municipality, the authority shall

38 request the governing body of such county or municipi-
39 pality to vacate such public road or portion thereof. The
40 authority shall pay to the West Virginia commissioner of
41 highways or to the county or municipality, as the case
42 may be, as part of the cost of such water development
43 project, any amounts required to be deposited with any
44 court in connection with proceedings for the determina-
45 tion of compensation and damages and all amounts of
46 compensation and damages finally determined to be pay-
47 able as a result of such vacation.

48 The authority may make reasonable rules and regula-
49 tions for the installation, construction, maintenance, re-
50 pair, renewal, relocation and removal of railroad or public
51 utility facilities in, on, over or under any water develop-
52 ment project. Whenever the authority determines that
53 it is necessary that any such facilities installed or con-
54 structed in, on, over or under property of the authority
55 pursuant to such rules and regulations be relocated, the
56 railroad or public utility owning or operating such facili-
57 ties shall relocate or remove them in accordance with the
58 order of the authority. The cost and expenses of such
59 relocation or removal, including the cost of installing
60 such facilities in a new location, the cost of any lands or
61 any rights or interests in lands and the cost of any other
62 rights acquired to accomplish such relocation or removal,
63 may be paid by the authority as a part of the cost of such
64 water development project. In case of any such relocation
65 or removal of facilities, the railroad or public utility
66 owning or operating them, and its successors or assigns,
67 may maintain and operate such facilities, with the neces-
68 sary appurtenances in the new location in, on, over or
69 under the property of the authority for as long a period
70 and upon the same terms as it had the right to maintain
71 and operate such facilities in their former location.

§20-5C-20. Financial interest in contracts prohibited; penalty.

1 No officer, member or employee of the authority shall
2 be financially interested, directly or indirectly, in any
3 contract of any person with the authority, or in the sale
4 of any property, real or personal, to or from the authority.
5 This section does not apply to contracts or purchases of
6 property, real or personal, between the authority and

7 any governmental agency. If any officer, member or
8 employee of the authority has such financial interest in
9 a contract or sale of property prohibited hereby, he shall
10 be guilty of a misdemeanor, and, upon conviction thereof,
11 shall be fined not more than one thousand dollars, or
12 imprisoned in the county jail not more than one year, or
13 both fined and imprisoned.

§20-5C-21. Meetings and records of authority to be kept public.

1 All meetings of the authority shall be open to the pub-
2 lic and the records of the authority shall be open to pub-
3 lic inspection at all reasonable times, except as otherwise
4 provided in this section. All final actions of the authority
5 shall be journalized and such journal shall also be open
6 to the inspection of the public at all reasonable times.
7 Any records or information relating to secret processes
8 or secret methods of manufacture or production which
9 may be obtained by the authority or other persons acting
10 under authority of this article are confidential and shall
11 not be disclosed.

§20-5C-22. Liberal construction of article.

1 The provisions of this article are hereby declared to be
2 remedial and shall be liberally construed to effectuate its
3 purposes and intents.

§20-5C-23. Severability.

1 If any section, part or provision of this article or the
2 application thereof to any person or circumstance is held
3 unconstitutional or invalid, such unconstitutionality or
4 invalidity shall not affect any other section, part or pro-
5 vision of this article or its application and to this end
6 the provisions of this article are declared to be severable.

o

CHAPTER 85

(House Bill No. 717—By Mr. Kopp and Mr. Buck)

[Passed March 10, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend chapter twenty of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, by

adding thereto a new article, designated article six-b, relating to the entry of the state of West Virginia into an interstate mining compact; findings and purposes in relation to said compact; definitions pertaining thereto; establishment and maintenance of state programs; creation and powers of the interstate mining commission; expenses of said commission; entry into and withdrawal from said compact; effect on other laws; construction and severability; creation, composition, compensation and terms of members of mining council; filing of bylaws and amendments thereto; and setting an effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6B. INTERSTATE MINING COMPACT.

§20-6B-1. Enactment of compact.

§20-6B-2. Mining council.

§20-6B-3. Bylaws of interstate mining commission.

§20-6B-4. Effective date.

§20-6B-1. Enactment of compact.

1 The "Interstate Mining Compact" is hereby enacted into
2 law and entered into with all other jurisdictions legally
3 joining therein in the form substantially as follows:

INTERSTATE MINING COMPACT

Article I. Findings and Purposes.

1 (a) The party states find that:

2 (1) Mining and the contributions thereof to the eco-
3 nomy and well-being of every state are of basic sig-
4 nificance.

5 (2) The effects of mining on the availability of land,
6 water and other resources for other uses present special
7 problems which properly can be approached only with
8 due consideration for the rights and interests of those
9 engaged in mining, those using or proposing to use these
10 resources for other purposes and the public.

11 (3) Measures for the reduction of the adverse effects
12 of mining on land, water and other resources may be

13 costly and the devising of means to deal with them are of
14 both public and private concern.

15 (4) Such variables as soil structure and composition,
16 physiography, climatic conditions and the needs of the
17 public make impracticable the application to all mining
18 areas of a single standard for the conservation, adaption
19 or restoration of mined land, or the development of
20 mineral and other natural resources, but justifiable re-
21 quirements of law and practice relating to the effects of
22 mining on land, water and other resources may be re-
23 duced in equity or effectiveness unless they pertain sim-
24 ilarly from state to state for all mining operations sim-
25 ilarly situated.

26 (5) The states are in a position and have the respon-
27 sibility to assure that mining shall be conducted in ac-
28 cordance with sound conservation principles, and with
29 due regard for local conditions.

30 (b) The purposes of this compact are to:

31 (1) Advance the protection and restoration of land,
32 water and other resources affected by mining.

33 (2) Assist in the reduction or elimination or counter-
34 acting of pollution or deterioration of land, water and air
35 attributable to mining.

36 (3) Encourage, with due recognition of relevant re-
37 gional, physical and other differences, programs in each
38 of the party states which will achieve comparable results
39 in protecting, conserving and improving the usefulness of
40 natural resources, to the end that the most desirable con-
41 duct of mining and related operations may be universally
42 facilitated.

43 (4) Assist the party states in their efforts to facilitate
44 the use of land and other resources affected by mining,
45 so that such use may be consistent with sound land use,
46 public health and public safety, and to this end to study
47 and recommend, wherever desirable, techniques for the
48 improvement, restoration or protection of such land and
49 other resources.

50 (5) Assist in achieving and maintaining an efficient
51 and productive mining industry and in increasing eco-
52 nomic and other benefits attributable to mining.

Article II. Definitions.

1 As used in this compact, the term:

2 (a) "Mining" means the breaking of the surface soil
3 in order to facilitate or accomplish the extraction or re-
4 moval of minerals, ores or other solid matter, any activity
5 or process constituting all or part of a process for the
6 extraction or removal of minerals, ores and other solid
7 matter from its original location, and the preparation,
8 washing, cleaning or other treatment of minerals, ores or
9 other solid matter so as to make them suitable for com-
10 mercial, industrial or construction use; but shall not in-
11 clude those aspects of deep mining not having significant
12 effect on the surface, and shall not include excavation or
13 grading when conducted solely in aid of on-site farming
14 or construction.

15 (b) "State" means a state of the United States, the
16 District of Columbia, the commonwealth of Puerto Rico
17 or a territory or possession of the United States.

Article III. State Programs.

1 Each party state agrees that within a reasonable time it
2 will formulate and establish an effective program for
3 the conservation and use of mined land, by the establish-
4 ment of standards, enactment of laws or the continuing
5 of the same in force, to accomplish:

6 (a) The protection of the public and the protection of
7 adjoining and other landowners from damage to their
8 lands and the structures and other property thereon re-
9 sulting from the conduct of mining operations or the
10 abandonment or neglect of land and property formerly
11 used in the conduct of such operations.

12 (b) The conduct of mining and the handling of refuse
13 and other mining wastes in ways that will reduce ad-
14 verse effects on the economic, residential, recreational or
15 aesthetic value and utility of land and water.

16 (c) The institution and maintenance of suitable pro-
17 grams for adaption, restoration and rehabilitation of
18 mined lands.

19 (d) The prevention, abatement and control of water,
20 air and soil pollution resulting from mining, present,
21 past and future.

Article IV. Powers.

1 In addition to any other powers conferred upon the
2 interstate mining commission, established by Article V
3 of this compact, such commission shall have power to:

4 (a) Study mining operations, processes and techniques
5 for the purpose of gaining knowledge concerning the
6 effects of such operations, processes and techniques on
7 land, soil, water, air, plant and animal life, recreation and
8 patterns of community or regional development or
9 change.

10 (b) Study the conservation, adaptation, improvement
11 and restoration of land and related resources affected by
12 mining.

13 (c) Make recommendations concerning any aspect or
14 aspects of law or practice and governmental administra-
15 tion dealing with matters within the purview of this com-
16 pact.

17 (d) Gather and disseminate information relating to
18 any of the matters within the purview of this compact.

19 (e) Cooperate with the federal government and any
20 public or private entities having interests in any subject
21 coming within the purview of this compact.

22 (f) Consult, upon the request of a party state and
23 within resources available therefor, with the officials of
24 such state in respect to any problem within the purview
25 of this compact.

26 (g) Study and make recommendations with respect to
27 any practice, process, technique or course of action that
28 may improve the efficiency of mining or the economic
29 yield from mining operations.

30 (h) Study and make recommendations relating to the
31 safeguarding of access to resources which are or may be-
32 come the subject of mining operations to the end that the
33 needs of the economy for the products of mining may
34 not be adversely affected by unplanned or inappropriate

35 use of land and other resources containing minerals or
36 otherwise connected with actual or potential mining sites.

Article V. The Commission.

1 (a) There is hereby created an agency of the party
2 states to be known as the "Interstate Mining Commission,"
3 hereinafter called "the commission." The commission
4 shall be composed of one commissioner from each party
5 state who shall be the governor thereof. Pursuant to the
6 laws of his party state, each governor shall have the as-
7 sistance of an advisory body (including membership from
8 mining industries, conservation interests and such other
9 public and private interests as may be appropriate) in
10 considering problems relating to mining and in discharg-
11 ing his responsibilities as the commissioner of his state
12 on the commission. In any instance where a governor is
13 unable to attend a meeting of the commission or perform
14 any other function in connection with the business of the
15 commission, he shall designate an alternate from among
16 the members of the advisory body required by this para-
17 graph, who shall represent him and act in his place and
18 stead. The designation of an alternate shall be communi-
19 cated by the governor to the commission in such manner
20 as its bylaws may provide.

21 (b) The commissioners shall be entitled to one vote
22 each on the commission. No action of the commission mak-
23 ing a recommendation pursuant to Articles IV (c), IV (g)
24 and IV (h) or requesting, accepting or disposing of funds,
25 services or other property pursuant to this paragraph,
26 Articles V (g), V (h), or VII shall be valid unless taken
27 at a meeting at which a majority of the total number
28 of votes on the commission is cast in favor thereof. All
29 other action shall be by a majority of those present and
30 voting: *Provided*, That action of the commission shall be
31 only at a meeting at which a majority of the commis-
32 sioners, or their alternates, is present. The commission
33 may establish and maintain such facilities as may be nec-
34 essary for the transacting of its business. The commission
35 may acquire, hold and convey real and personal property
36 and any interest therein.

37 (c) The commission shall have a seal.

38 (d) The commission shall elect annually, from among
39 its members, a chairman, a vice chairman, and a trea-
40 surer. The commission shall appoint an executive direc-
41 tor and fix his duties and compensation. Such executive
42 director shall serve at the pleasure of the commission.
43 The executive director, the treasurer and such other per-
44 sonnel as the commission shall designate shall be bonded.
45 The amount or amounts of such bond or bonds shall be
46 determined by the commission.

47 (e) Irrespective of the civil service, personnel or other
48 merit system laws of any of the party states, the execu-
49 tive director with the approval of the commission, shall
50 appoint, remove or discharge such personnel as may be
51 necessary for the performance of the commission's func-
52 tions, and shall fix the duties and compensation of such
53 personnel.

54 (f) The commission may establish and maintain, in-
55 dependently or in conjunction with a party state, a suit-
56 able retirement system for its employees. Employees of
57 the commission shall be eligible for social security cover-
58 age in respect of old age and survivor's insurance pro-
59 vided that the commission takes such steps as may be
60 necessary pursuant to the laws of the United States to
61 participate in such program of insurance as a governmen-
62 tal agency or unit. The commission may establish and
63 maintain or participate in such additional programs of
64 employee benefits as it may deem appropriate.

65 (g) The commission may borrow, accept or contract
66 for the services of personnel from any state, the United
67 States or any other governmental agency, or from any
68 person, firm, association or corporation.

69 (h) The commission may accept for any of its pur-
70 poses and functions under this compact any and all dona-
71 tions and grants of money, equipment, supplies, materials
72 and services, conditional or otherwise, from any state,
73 the United States or any other governmental agency, or
74 from any person, firm, association or corporation, and may
75 receive, utilize and dispose of the same. Any donation or
76 grant accepted by the commission pursuant to this para-

77 graph or services borrowed pursuant to paragraph (g)
78 of this article shall be reported in the annual report of
79 the commission. Such report shall include the nature,
80 amount and conditions, if any, of the donation, grant or
81 services borrowed and the identity of the donor or
82 lender.

83 (i) The commission shall adopt bylaws for the con-
84 duct of its business and shall have the power to amend
85 and rescind these bylaws. The commission shall publish
86 its bylaws in convenient form and shall file a copy thereof
87 and a copy of any amendment thereto with the appro-
88 priate agency or officer in each of the party states.

89 (j) The commission annually shall make to the gov-
90 ernor, Legislature and advisory body required by Article
91 V (a) of each party state a report covering the activities
92 of the commission for the preceding year, and embodying
93 such recommendations as may have been made by the
94 commission. The commission may make such additional
95 reports as it may deem desirable.

Article VI. Advisory, Technical and Regional Committees.

1 The commission shall establish such advisory, technical
2 and regional committees as it may deem necessary, mem-
3 bership on which shall include private persons and public
4 officials, and shall cooperate with and use the services
5 of any such committees and the organizations which the
6 members represent in furthering any of its activities.
7 Such committees may be formed to consider problems of
8 special interest to any party states, problems dealing with
9 particular commodities or types of mining operations,
10 problems related to reclamation, development or use of
11 mined land or any other matters of concern to the com-
12 mission.

Article VII. Finance.

1 (a) The commission shall submit to the governor or
2 designated officer or officers of each party state a budget
3 of its estimated expenditures for such period as may be
4 required by the laws of that party state for presentation
5 to the Legislature thereof.

6 (b) Each of the commission's budgets of estimated

7 expenditures shall contain specific recommendations of
8 the amount or amounts to be appropriated by each of the
9 party states. The total amount of appropriations request-
10 ed under any such budget shall be apportioned among
11 the party states in equal shares.

12 (c) The commission shall not pledge the credit of any
13 party state. The commission may meet any of its obli-
14 gations in whole or in part with funds available to it
15 under Article V (h) of this compact: *Provided*, That the
16 commission takes specific action setting aside such funds
17 prior to incurring any obligation to be met in whole or
18 in part in such manner. Except where the commission
19 makes use of funds available to it under Article V (h)
20 hereof, the commission shall not incur any obligation
21 prior to the allotment of funds by the party states
22 adequate to meet the same.

23 (d) The commission shall keep accurate accounts of
24 all receipts and disbursements. The receipts and disburse-
25 ments of the commission shall be subject to the audit
26 and accounting procedures established under its bylaws.
27 All receipts and disbursements of funds handled by the
28 commission shall be audited yearly by a qualified public
29 accountant and the report of the audit shall be included
30 in and become part of the annual report of the commis-
31 sion.

32 (e) The accounts of the commission shall be open at
33 any reasonable time for inspection by duly constituted
34 officers of the party states and by any persons authorized
35 by the commission.

36 (f) Nothing contained herein shall be construed to
37 prevent commission compliance with laws relating to
38 audit or inspection of accounts by or on behalf of any
39 government contributing to the support of the commis-
40 sion.

Article VIII. Entry Into Force and Withdrawal.

1 (a) This compact shall enter into force when enacted
2 into law by any four or more states. Thereafter, this
3 compact shall become effective as to any other state upon
4 its enactment thereof.

5 (b) Any party state may withdraw from this com-

6 pact by enacting a statute repealing the same, but no
7 such withdrawal shall take effect until one year after
8 the governor of the withdrawing state has given notice
9 in writing of the withdrawal to the governors of all
10 other party states. No withdrawal shall affect any
11 liability already incurred by or chargeable to a party
12 state prior to the time of such withdrawal.

Article IX. Effect On Other Laws.

1 Nothing in this compact shall be construed to limit,
2 repeal or supersede any other law of any party state.

Article X. Construction and Severability.

1 This compact shall be liberally construed so as to ef-
2 fectuate the purposes thereof. The provisions of this com-
3 pact shall be severable and if any phrase, clause, sen-
4 tence or provision of this compact is declared to be con-
5 trary to the constitution of any state or of the United
6 States or the applicability thereof to any government,
7 agency, person or circumstance is held invalid, the validity
8 of the remainder of this compact and the applicability
9 thereof to any government, agency, person or circum-
10 stance shall not be affected thereby. If this compact shall
11 be held contrary to the constitution of any state partici-
12 pating herein, the compact shall remain in full force and
13 effect as to the remaining party states and in full force
14 and effect as to the state affected as to all severable mat-
15 ters.

§20-6B-2. Mining council.

1 (a) The "Mining Council," hereinafter called "the
2 council," is hereby established in the office of the gov-
3 ernor. The council shall be the advisory body referred
4 to in Article V (a) of the interstate mining compact.
5 No member of the council shall receive any compensation
6 on account of his service thereon, but any such member
7 shall be entitled to reimbursement for expenses actually
8 incurred by him in connection with his service as the
9 governor's alternate on the interstate mining commis-
10 sion or in attending meetings of the council.

11 (b) The council shall be composed of seven members.
12 The governor shall appoint two members who shall be

13 representative of mining industries and three members
14 with a demonstrated and continuing interest in conser-
15 vation matters. Of the five members so appointed by the
16 governor, no more than three shall be of the same political
17 party. The director of the department of natural re-
18 sources and the dean of the West Virginia University
19 school of mines shall be the sixth and seventh members.
20 The council shall elect its own chairman from among
21 its members.

22 (c) Except for the director of the department of
23 natural resources and the dean of the West Virginia Uni-
24 versity school of mines, who shall serve ex officio, each
25 member shall serve for a term of five years. Of the five
26 members of the council first appointed, one shall be ap-
27 pointed for a term ending on the thirtieth day of June,
28 one thousand nine hundred seventy-three, and one each
29 for terms ending one, two, three and four years there-
30 after.

§20-6B-3. Bylaws of interstate mining commission.

1 In accordance with Article V (i) of the interstate min-
2 ing compact, the commission shall file copies of its bylaws
3 and any amendments thereto in the office of the secre-
4 tary of state of West Virginia.

§20-6B-4. Effective date.

1 This article shall be effective on the first day of July,
2 one thousand nine hundred seventy-two.

CHAPTER 86

(Com. Sub. for Senate Bill No. 404—Mr. McCourt, Mr. President,
and Mr. Wallace)

[Passed March 11, 1972; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter twenty of the code of West Vir-
ginia, one thousand nine hundred thirty-one, as amended,
by adding thereto a new article, designated article six-c,

relating to the Coal Refuse Disposal Control Act; definition of terms used in article; legislative findings concerning coal refuse disposal piles; duties of director; aerial and on-site inspection; findings and conclusions of director; remedial action by director in cases of imminent danger; recovery of cost; orders of director; injunctive relief; administrative hearing and appeal; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6C. COAL REFUSE DISPOSAL CONTROL ACT.

§20-6C-1. Short title.

§20-6C-2. Definitions.

§20-6C-3. Legislative findings.

§20-6C-4. Administrative findings respecting coal refuse disposal piles.

§20-6C-5. Remedial action respecting dangerous coal refuse disposal piles.

§20-6C-6. Orders of director; injunctive relief.

§20-6C-7. Hearing upon orders of director; costs and bond; judicial review; appeal; legal assistance for director.

§20-6C-8. Severability.

§20-6C-1. Short title.

- 1 This article may be known and cited as the "Coal
- 2 Refuse Disposal Control Act."

§20-6C-2. Definitions.

- 1 As used in this article:

- 2 (a) "Director" means the director of the department
- 3 of natural resources;

- 4 (b) "Coal refuse" means any waste coal, rock, shale,
- 5 slurry, culm, gob, boney, slate, clay and related
- 6 materials, associated with or near a coal seam, which are
- 7 either brought above ground or otherwise removed from
- 8 a coal mine in the process of mining coal, or which are
- 9 separated from coal during the cleaning or preparation
- 10 operations;

- 11 (c) "Coal refuse disposal pile" means any deposit of
- 12 coal refuse on or buried in the earth and intended as

- 13 permanent disposal or long-term storage of such material;
14 (d) "Operator" means any person operating any coal
15 refuse disposal pile, or part thereof; and
16 (e) "Operate" means to enter upon a coal refuse dis-
17 posal pile, or part thereof, for the purpose of disposing,
18 depositing or dumping coal refuse thereon, or to employ
19 a coal refuse disposal pile for retarding the flow of or the
20 impoundment of water.

§20-6C-3. Legislative findings.

- 1 The Legislature finds that in certain areas of the state
2 the disposition of materials displaced in the mining of
3 coal creates coal refuse disposal piles which have in the
4 past and may in the future:
- 5 (a) Endanger the lives and properties of persons resid-
6 ing in the hollows and valleys of the affected watersheds;
- 7 (b) Threaten streams, roads, schools and other public
8 properties and facilities; and
- 9 (c) Result in the creation of an emergency sit-
10 uation as to which there can be no delay in taking
11 remedial action to alleviate resulting perils to persons
12 and properties.

§20-6C-4. Administrative findings respecting coal refuse dis- posal piles.

- 1 Within sixty days of the effective date of this article, the
2 director shall complete or have completed an aerial in-
3 spection and photographs of all coal refuse disposal piles
4 and any associated water impoundments; and within
5 one hundred twenty days thereafter, the director shall
6 make findings, based on competent engineering evalua-
7 tions and opinions, concerning the stability and adequacy,
8 including but not limited to the heaviest rainfall condi-
9 tions based on a return frequency of fifty years, of coal
10 refuse disposal piles which cause water impoundments;
11 and within one year thereafter, the director shall make
12 findings, based on competent engineering evaluations and
13 opinions, concerning the stability and safety of coal refuse
14 disposal piles which may cause water impoundments or
15 otherwise pose a hazard to human life. The director shall

16 have the right to enter upon the land where any coal
17 refuse disposal piles are located in order to make such
18 inspections, tests and surveys as he shall deem necessary.

19 Each such set of findings shall be accompanied by a
20 priority listing of those coal refuse disposal piles which
21 constitute the greatest danger to persons and properties
22 by reason of potential instability, explosions, slippage,
23 shifting or sliding of the refuse deposited on such piles
24 or the discharge of a substantial quantity of water.

25 The director shall prepare a report, containing conclu-
26 sions and recommendations, on all findings which shall be
27 available to the public.

28 The authority, powers and duties of the director shall
29 not be limited by any time periods stated herein but shall
30 be on a continuing basis.

§20-6C-5. Remedial action respecting dangerous coal refuse disposal piles.

1 Whenever the director finds that a coal refuse disposal
2 pile constitutes imminent danger to human life, he may,
3 without the necessity of obtaining the permission of the
4 operator or the landowners involved, enter upon the
5 premises where any such coal refuse disposal pile exists
6 and take all remedial action as may be necessary or
7 expedient to secure such coal refuse disposal pile and to
8 abate the conditions which cause the danger to human
9 life.

10 The costs reasonably incurred in any remedial action
11 taken by the director under this section shall be paid for
12 initially by funds appropriated to the department of
13 natural resources for such purposes, and such sums so
14 expended shall be recovered from the operator by appro-
15 priate civil action to be initiated by the attorney general
16 upon request of the director.

§20-6C-6. Orders of director; injunctive relief.

1 When the director makes a finding of a dangerous
2 condition not imminently dangerous with respect to any
3 new coal refuse disposal pile created hereafter or any
4 part of an existing coal refuse disposal pile which is

5 presently being operated, then the director shall order
6 the operator to take all remedial action at his own ex-
7 pense, as may be necessary or expedient to prevent or
8 correct the condition, and it shall be the duty of such
9 operator to take such action. Any such order shall be
10 served by certified or registered mail, return receipt re-
11 quested, on the operator involved.

12 The director may apply to the circuit court of the
13 county in which any such coal refuse disposal pile so
14 operated is located for an injunction to enforce the orders
15 of the director.

**§20-6C-7. Hearing upon orders of director; costs and bond;
judicial review; appeal; legal assistance for
director.**

1 Any operator adversely affected by any order of the
2 director shall have a right to a hearing thereon before
3 the director, providing that demand in writing for such
4 hearing is served upon the director, within ten days
5 following the receipt by such applicant or licensee of a
6 certified copy of said order. The service of such demand
7 for a hearing upon the director shall operate to suspend
8 the execution of the order with respect to which a hearing
9 is being demanded. The person demanding a hearing
10 shall either establish sufficient financial responsibility or
11 give security for the cost of such hearing in such form
12 and amount as the director may reasonably require. If
13 the person demanding such hearing does not substantially
14 prevail in such hearing or upon judicial review thereof
15 as hereinafter provided, then the costs of such hearing
16 shall be assessed against him by the director and may be
17 collected by an action at law or other proper remedy.

18 The director shall immediately set a date for such hear-
19 ing and notify the person demanding such hearing thereof,
20 which hearing shall be held within thirty days after
21 receipt of said demand. At such hearing the director
22 shall hear evidence and thereafter make and enter an
23 order, supported by findings of facts, affirming, modifying
24 or vacating the order with respect to which such hearing
25 was held, which order shall be final unless vacated or
26 modified upon judicial review thereof.

27 Such hearing and the administrative procedure prior
28 to, during and following the same shall be governed by
29 and be in accordance with the provisions of article five,
30 chapter twenty-nine-a of this code in like manner as if
31 the provisions of article five were set forth in extenso in
32 this section.

33 Any person adversely affected by an order entered
34 following such hearing shall have the right of judicial
35 review thereof in accordance with the provisions of sec-
36 tion four, article five, chapter twenty-nine-a of this code
37 with like effect as if the provisions of said section four
38 were set forth in extenso herein.

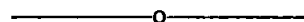
39 The judgment of a circuit court reviewing such order
40 of the director shall be final unless reversed, vacated or
41 modified on appeal to the supreme court of appeals in
42 accordance with the provisions of section one, article six,
43 chapter twenty-nine-a of this code.

44 Legal counsel and services for the director in all such
45 proceedings in any circuit court and the supreme court
46 of appeals shall be provided by the attorney general or
47 his assistants and in any proceedings in any circuit court
48 by the prosecuting attorney of that county as well, all
49 without additional compensation.

§20-6C-8. Severability.

1 If any article, section, subsection, provision, clause or
2 phrase of this article or the application thereof to any
3 person or circumstance is held unconstitutional or in-
4 valid, such unconstitutionality or invalidity shall not affect
5 other articles, sections, subsections, provisions, clauses or
6 phrases or applications of the chapter, and to this end
7 each and every article, section, subsection, provision,
8 clause and phrase of this chapter is declared to be sever-
9 able. The Legislature hereby declares that it would have
10 enacted the remaining articles, sections, subsections, pro-
11 visions, clauses and phrases of this chapter even if it had
12 known that any articles, sections, subsections, provisions,
13 clauses and phrases thereof would be declared to be
14 unconstitutional or invalid, and that it would have enacted
15 this chapter even if it had known that the application

16 thereof to any person or circumstance would be held to
17 be unconstitutional or invalid.



CHAPTER 87

(Senate Bill No. 280—By Mr. Hubbard)

[Passed March 10, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section two, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to qualifications, etc., of conservation officers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. LAW ENFORCEMENT, PROCEDURES AND PENALTIES; MOTORBOATING.

§20-7-2. Qualifications, etc., of conservation officers.

1 In addition to civil service qualifications and require-
2 ments, persons selected as conservation officers shall have
3 reached their eighteenth birthday and shall not have
4 reached their fortieth birthday at the time of appoint-
5 ment, be of height between five feet nine inches and six
6 feet six inches, with weight proportioned to height, in
7 good physical condition and of good moral character,
8 temperate in habits and without criminal record. When-
9 ever possible and practicable, preference in selection of
10 conservation officers shall be given honorably discharged
11 United States military personnel. Each conservation
12 officer, before entering upon the discharge of his duties,
13 shall take and subscribe to the oath of office prescribed
14 in article four, section five of the constitution of West
15 Virginia, which executed oath shall be filed with the di-
16 rector.

17 With the exception of the chief conservation officer,
18 each full-time, salaried conservation officer appointed un-
19 der the provisions of this chapter shall upon attaining the
20 age of sixty-five be required to accept a mandatory re-
21 tirement from the division of law enforcement. The di-
22 rector shall notify such officer in writing at least ninety
23 days prior to his sixty-fifth birthday of the effective date
24 of his retirement and all such benefits and privileges that
25 such officer has accrued. The provisions of this section
26 shall not be construed to mean that a conservation officer
27 cannot accept at his own request an earlier retirement, or
28 that he cannot continue to be employed by some other
29 division or department of state government.

30 The director shall prescribe the kind, style and material
31 of uniforms to be worn by conservation officers. Uniforms
32 and other equipment furnished to the conservation officers
33 shall be and remain the property of the state.

CHAPTER 88

(House Bill No. 936—By Mr. Daugherty and Mr. White, of Cabell)

[Passed March 9, 1972; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article two by adding thereto a new section, designated section five-a, prohibiting the practice of law and other specified activities or representations in connection with the practice of law or the rendering of legal services by corporations, other than legal corporations, or voluntary associations; providing for criminal offenses and criminal penalties; negating certain defenses; providing certain exceptions; providing for the organization of legal corporations for the practice of law; maintaining the attorney-client relationship and any liability arising therefrom; specifying that the creation of a legal corporation shall not

affect ethical standards of conduct; specifying that a legal corporation may issue its capital stock only to duly licensed attorneys; relating to authorization for legal corporations by the West Virginia State Bar; relating to fees; authorizing the West Virginia State Bar to adopt rules and regulations in connection with legal corporations; relating to issuance of certificate of incorporation for a legal corporation; establishing restrictions upon the transfer of shares of stock in a legal corporation; and relating to corporate names of legal corporations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. ATTORNEYS AT LAW.

§30-2-5. Practice by corporations or voluntary associations; penalties; limitations of section.

§30-2-5a. Legal corporations.

§30-2-5. Practice by corporations or voluntary associations; penalties; limitations of section.

1 Except as provided by section five-a of this article,
2 it shall be unlawful for any corporation or voluntary
3 association to practice or appear as an attorney at
4 law for any person in any court of this state or be-
5 fore any judicial body, or to hold itself out to the pub-
6 lic as being entitled to practice law, or to render or
7 furnish legal services or advice, or to furnish an attor-
8 ney or counsel to render legal services of any kind
9 in actions or proceedings of any nature, or in any
10 other manner to assume to be entitled to practice
11 law, or assume, use or advertise the title of lawyer in
12 such manner as to convey the impression that it is en-
13 titled to practice law or to furnish legal advice, services
14 or counsel, or to advertise that, either alone or together
15 with or by or through any person, whether a duly and
16 regularly admitted attorney at law or not, it has, owns,
17 conducts or maintains a law office for the practice of
18 law, or for furnishing legal advice, services or counsel.
19 It shall be unlawful further for any corporation or vol-

20 untary association to solicit, itself or by or through its
21 officers, agents or employees, any claim or demand for
22 the purpose of bringing an action thereon, or of settling
23 the estate of any insolvent debtor, or of representing
24 as attorney at law, or of furnishing legal advice, services
25 or counsel to, a person sued or about to be sued in any
26 action or proceeding, or against whom an action or pro-
27 ceeding has been or is about to be brought, or who may
28 be affected by any action or proceeding which has or may
29 be instituted in any court or before any judicial body,
30 or for the purpose of so representing any person in the
31 pursuit of any civil or criminal remedy. Any corpora-
32 tion or voluntary association violating the provisions of
33 this section, or any officer, trustee, director, agent or
34 employee of such corporation or voluntary association
35 who directly or indirectly engages in any of the acts
36 herein prohibited, or assists such corporation or voluntary
37 association to do such prohibited acts, shall be guilty of
38 a misdemeanor, and, upon conviction thereof, shall be
39 fined not more than one thousand dollars. The fact that
40 any such officer, trustee, director, agent or employee
41 shall be a duly and regularly admitted attorney at law
42 shall not be held to permit or allow any such corpora-
43 tion or voluntary association to do the acts prohibited
44 herein, nor shall such fact be a defense upon the trial
45 of any of the persons mentioned herein for a violation
46 of the provisions of this section.

47 This section shall not apply to a partnership composed
48 of licensed attorneys, or to a corporation or voluntary
49 association lawfully engaged in examining and insuring
50 the titles to real property, nor shall it prohibit a corpora-
51 tion or voluntary association from employing an attorney
52 or attorneys in and about its own immediate affairs or
53 in any litigation to which it is or may be a party, nor
54 shall it apply to organizations organized for benevolent
55 or charitable purposes, or for the purpose of assisting
56 persons without means in the pursuit of any civil remedy.

§30-2-5a. Legal corporations.

1 One or more individuals, each of whom is licensed to
2 practice law within this state, may organize and become

3 a shareholder or shareholders of a legal corporation.
4 Individuals who may be practicing law as an organization
5 created otherwise than pursuant to the provisions of this
6 section may incorporate under and pursuant to this sec-
7 tion. This section is not intended to amend the statutory
8 or common law as it relates to associations or partner-
9 ships, except to allow partnerships of lawyers to organize
10 as a legal corporation.

11 A legal corporation may render professional service
12 only through officers, employees and agents who are
13 themselves duly licensed to render legal service within
14 this state. The term "employee" or "agent" as used in
15 this section, does not include secretaries, clerks, typists,
16 paralegal personnel or other individuals who are not
17 usually and ordinarily considered by custom and practice
18 to be rendering legal services for which a license is re-
19 quired.

20 This section does not modify the law as it relates to the
21 relationship between a person furnishing legal services
22 and his client, nor does it modify the law as it relates to
23 liability arising out of such a professional service re-
24 lationship. Except for permitting legal corporations, this
25 section is not intended to modify any legal requirement or
26 court rule relating to ethical standards of conduct required
27 of persons providing legal service.

28 A legal corporation may issue its capital stock only to
29 persons who are duly licensed attorneys.

30 When not inconsistent with this section, the organiza-
31 tion and procedures of legal corporations shall conform
32 to the requirements of article one, chapter thirty-one of
33 this code.

34 The West Virginia State Bar may require that lawyers
35 under its licensing authority must obtain its prior autho-
36 rization before beginning to act as a legal corporation
37 and may require a fee of not more than fifty dollars for
38 each application for authorization to form a legal corpo-
39 ration. The state bar may adopt rules and regulations:
40 (1) To set reasonable standards for granting or refusing
41 prior approval, (2) to require appropriate information
42 therefor from a legal corporation applicant, and (3) to

43 notify the secretary of state that certain persons have been
44 given authorization by the state bar to form a legal
45 corporation.

46 Upon notification by the West Virginia State Bar of its
47 approval, the secretary of state, upon compliance by the
48 incorporators with this section and the applicable pro-
49 visions of chapter thirty-one of this code, may issue to
50 the incorporators a certificate of incorporation for the
51 legal corporation which then may engage in practice
52 through duly licensed or otherwise legally authorized
53 stockholders, employees and agents.

54 A shareholder of a legal corporation may sell or trans-
55 fer his shares of stock in such corporation only to another
56 individual who is duly licensed to practice law in this
57 state or back to the corporation.

58 The corporate name of a legal corporation shall contain
59 the last name or names of one or more of its shareholders:
60 *Provided*, That if the rules or regulations of the state bar
61 so permit the corporate name may contain or include
62 the name or names of former shareholders or of persons
63 who were associated with a predecessor partnership or
64 other organization. The corporate name shall also contain
65 the words "legal corporation" or the abbreviation "L. C."
66 The use of the word "company," "corporation," or "incor-
67 porated," or any other words or abbreviations in the
68 name of a corporation organized under this article which
69 indicates that such corporation is a corporation, other
70 than the words "legal corporation" or the abbreviation
71 "L. C." is specifically prohibited.

CHAPTER 89

(Senate Bill No. 281—By Mr. Wallace)

[Passed March 10, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact sections one and two, article
three, chapter thirty of the code of West Virginia, one

thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article three-b, all relating to the practice of medicine and surgery in the state of West Virginia, and mobile intensive care paramedics.

Be it enacted by the Legislature of West Virginia:

That sections one and two, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article three-b, all to read as follows:

Article

3. Physicians and Surgeons.

3B. Mobile Intensive Care Paramedics.

ARTICLE 3. PHYSICIANS AND SURGEONS.

§30-3-1. Evidence of qualification to practice; license required.

§30-3-2. Who deemed practitioner; limitations of article.

§30-3-1. Evidence of qualification to practice; license required.

1 Any person practicing or offering to practice medicine
2 and surgery in this state, with the exception of an assis-
3 tant to a licensed physician, licensed podiatrist or mobile
4 intensive care paramedic, shall be required to submit evi-
5 dence that he is qualified to practice and shall be licensed
6 as hereinafter provided.

§30-3-2. Who deemed practitioner; limitations of article.

1 The term "practice medicine and surgery", as used in
2 this article, shall be construed to mean the treatment of
3 any human ailment or infirmity by any method. To open
4 an office for such purpose or to announce to the public in
5 any way a readiness to treat the sick or afflicted shall be
6 deemed to engage in the practice of medicine and surgery
7 within the meaning of this article: *Provided*, That the
8 provisions of this article, with the exceptions of sections
9 eight and ten, shall not apply to dentists, dental hy-
10 gienists, nurses, optometrists, osteopathic physicians and
11 surgeons, midwives, or chiropractors, regularly licensed
12 or registered as such under the provisions of this chapter
13 applicable to such professions and occupations, in the

14 practice of their respective professions and occupations;
15 nor to assistants to physicians, podiatrists or mobile in-
16 tensive care paramedics; nor to physicians or surgeons
17 living in other states and duly qualified to practice medi-
18 cine therein who shall be called in consultation into this
19 state by a physician or surgeon legally entitled to practice
20 medicine and surgery in this state; nor to commissioned
21 officers of the United States army, navy or marine hos-
22 pital service when in the actual discharge of their duties
23 as such; nor to the practice of the religious tenets of any
24 church in the administration to the sick or suffering by
25 mental or spiritual means, whether gratuitously or for
26 compensation: *Provided, however,* That sanitary and
27 public health laws shall be complied with: *Provided*
28 *further,* That no practices shall be used which may be
29 dangerous or detrimental to life or health and that no
30 person shall be denied the benefits of accepted medical
31 and surgical practices.

ARTICLE 3B. MOBILE INTENSIVE CARE PARAMEDICS.

§30-3B-1. Programs for ambulance and rescue squad personnel.

§30-3B-2. Definition of mobile intensive care paramedics.

§30-3B-3. Services that may be performed.

§30-3B-4. Immunity from civil liability.

§30-3B-1. Programs for ambulance and rescue squad personnel.

1 Any company, partnership, individual or governmental
2 body operating an ambulance service or rescue squad may
3 conduct a program utilizing mobile intensive care para-
4 medics for the delivery of emergency care to the sick and
5 injured at the scene of an emergency and during transport
6 to a hospital, while in the hospital emergency quarters,
7 and until care responsibility is assumed by the hospital
8 staff.

§30-3B-2. Definition of mobile intensive care paramedics.

1 As used in this article, "mobile intensive care para-
2 medics" means personnel who have been specially trained
3 in emergency care in a training program certified and
4 supervised by the unit of emergency health services of
5 the West Virginia state department of health, and who
6 are certified by the West Virginia medical licensing board

7 as qualified to render the services enumerated in this
8 article.

§30-3B-3. Services that may be performed.

1 Notwithstanding any other provision of law, mobile
2 intensive care paramedics may do any of the fol-
3 lowing:

4 (1) Render rescue, first aid and resuscitation services;

5 (2) Perform cardiopulmonary resuscitation and de-
6 fibrillation in a pulseless patient; and

7 (3) Where voice contact is maintained with a physi-
8 cian or surgeon, may, upon order of such physician, ad-
9 minister parenteral or intravenous solutions and injec-
10 tions of any of the following drugs:

11 (a) Lidocaine,

12 (b) Atropine,

13 (c) Pentazocine,

14 (d) Any other drug or solution approved by the ap-
15 plicable bureaus or divisions of the state department of
16 health.

17 Each paramedic must be individually certified to ad-
18 minister each specific drug or solution.

§30-3B-4. Immunity from civil liability.

1 No physician or surgeon, who in good faith gives
2 emergency instructions to such paramedic, nor any such
3 paramedic who renders such emergency treatment as
4 provided for herein, shall be liable for any civil damages
5 resulting from such emergency treatment.

CHAPTER 90

(Senate Bill No. 190—By Mr. Poffenbarger)

[Passed March 4, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section four-b, article three,
chapter thirty of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to the number of physicians and surgeons necessary to form a medical corporation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PHYSICIANS AND SURGEONS.

§30-3-4b. Medical corporations—Application for registration; fee; notice to secretary of state of issuance of certificate; action by secretary of state.

1 When one or more physicians or surgeons duly licensed
2 to practice medicine in the state of West Virginia wish
3 to form a medical corporation, such physician or surgeon,
4 or physicians or surgeons, shall file a written application
5 with the medical licensing board, on a form prescribed
6 by the board, and shall furnish proof satisfactory to the
7 board that the signer, or all of the signers of such
8 application is or are a duly licensed physician or surgeon
9 or physicians or surgeons. A fee of twenty-five dollars
10 shall accompany each such application, no part of which
11 shall be returnable.

12 If the board finds that the signer or all of the signers of
13 such application are duly licensed, the board shall notify
14 the secretary of state that a certificate of authorization
15 has been issued to the individual or individuals signing
16 such application.

17 When the secretary of state receives notification from
18 the state medical licensing board that a certain person
19 or persons has or have been issued a certificate of
20 authorization, he shall attach such authorization to the
21 corporation application and upon compliance by the cor-
22 poration with chapter thirty-one of this code shall notify
23 the incorporators that such corporation, through a duly
24 licensed physician or surgeon or duly licensed physicians
25 and surgeons, may engage in the practice of medicine and
26 surgery.

CHAPTER 91

(Senate Bill No. 300—By Mr. Poffenbarger and Mr. Ward)

[Passed March 10, 1972; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, five, six, ten, thirteen, fourteen, fifteen, sixteen and seventeen-a, article four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to giving the dental board authority to prescribe rules or regulations to achieve more effective utilization of the services of dental hygienists and dental assistants, making all fees nonrefundable, and granting the board authority to select testing bodies.

Be it enacted by the Legislature of West Virginia:

That sections two, three, five, six, ten, thirteen, fourteen, fifteen, sixteen and seventeen-a, article four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 4. DENTISTS, DENTAL HYGIENISTS AND DENTAL CORPORATIONS.

- §30-4-2. Who deemed practitioner of dentistry; limitations of article.
- §30-4-3. Who deemed practitioner of dental hygiene; scope of practice.
- §30-4-5. License required as prerequisite to practice dentistry; exceptions; temporary and special permits.
- §30-4-6. Qualifications of applicant for license; examinations; examination fee; licensing.
- §30-4-10. Fees for licenses and certificates issued under §§30-4-8 and 30-4-9.
- §30-4-13. Dental hygienists; permitted operations; revocation of license.
- §30-4-14. Prerequisites to practice dental hygiene; examination fee; licensing.
- §30-4-15. Permitted intraoral tasks for dental hygienists and assistants.
- §30-4-16. Dental hygienists from other states who desire to practice in this state; qualifications.
- §30-4-17a. Specialties; qualifications; application for certificate; fee; limitation of practice.

§30-4-2. Who deemed practitioner of dentistry; limitations of article.

1 Any person shall be regarded as practicing dentistry
2 within the meaning of this article, who shall diagnose or
3 profess to diagnose or treat or profess to treat, any of the
4 diseases or malformations or lesions of the oral cavity,
5 teeth, gums, or maxillary bones, or shall prepare or fill
6 cavities in human teeth, correct malposition of teeth or
7 jaws or supply artificial teeth as substitutes for natural
8 teeth, or administer anesthetics, general or local, in con-
9 nection with any of said work, or shall make, produce,
10 reproduce, construct, repair, alter, or restore any pros-
11 thetic denture, crown, bridge, or other prosthetic appli-
12 ance to be used in, upon, in connection with, or as a
13 substitute for, any human tooth, or in, upon, or in con-
14 nection with the human jaw or associated structure or
15 tissue of the human mouth, or to be used in the treatment
16 of any condition thereof, or perform any other work in-
17 cluded in the curricular of recognized dental colleges.
18 To open an office for the practice of dentistry, or to an-
19 nounce to the public in any way a readiness to do any
20 act defined herein as the practice of dentistry, shall be
21 construed as engaging in the practice of dentistry, within
22 the meaning of this article: *Provided, however,* That
23 this section:

24 (1) Shall not apply to a duly licensed physician or
25 surgeon in the practice of his profession when rendering
26 dental relief in emergency cases, unless he undertakes to
27 reproduce or reproduces lost parts of the human teeth,
28 or to restore or replace lost or missing teeth in the
29 human mouth.

30 (2) Shall not apply to a dental laboratory in the per-
31 formance of dental technological work as that term is
32 defined in section two-a of this article so long as the
33 dental laboratory, in the performance of such work, con-
34 forms in all respects to the requirements of section two-a
35 of this article, and further shall not apply to persons per-
36 forming dental technological work, as so defined, under
37 the direct and personal supervision of a licensed dentist
38 or under the direct and personal supervision of a person

39 authorized under the authority of this article to perform
40 any of the acts in this article defined to constitute the
41 practice of dentistry so long as such work is performed
42 in connection with, and as a part of, the dental practice
43 of such licensed dentist or other authorized person and
44 for his dental patients.

45 (3) Shall not apply to students enrolled in and regu-
46 larly attending any dental college recognized by the state
47 board of dental examiners, provided their acts are done
48 in said dental college and under the direct and personal
49 supervision of their instructor.

50 (4) Shall not apply to licensed or registered dentists
51 of another state temporarily operating a clinic under
52 the auspices of a duly organized and reputable dental
53 college or reputable dental society, or to one lecturing
54 before a reputable society composed exclusively of
55 dentists.

56 (5) Shall not apply to licensed dental hygienists or
57 dental assistants in the performance of their duties as
58 otherwise provided by law.

59 (6) Shall not apply to the practice of dentistry by
60 dentists whose practice is confined exclusively to the
61 service of the United States army, the United States
62 navy, the United States public health service, or the
63 United States veteran's bureau, or any other authorized
64 United States government agency or bureau.

**§30-4-3. Who deemed practitioner of dental hygiene; scope
of practice.**

1 A person shall be deemed to be practicing dental hy-
2 giene within the meaning of this article, who, under the
3 supervision of a licensed dentist, removes deposits, ac-
4 cretions and stains from the surface of the teeth, makes
5 topical applications of drugs to the exposed surfaces of
6 the teeth, takes dental X rays and instructs patients in
7 the practice of dental hygiene procedures: *Provided,*
8 That the board of dental examiners may establish addi-
9 tional criteria by rules and regulations promulgated by it.

§30-4-5. License required as prerequisite to practice dentistry; exceptions; temporary and special permits.

1 Except as otherwise provided in this section, no person
2 shall practice or offer to practice dentistry or dental hy-
3 giene in this state until a license for such purpose shall
4 be issued to him by the board of dental examiners, nor
5 shall any person so practice after the first anniversary of
6 the issuance of such license until he shall have in his
7 possession a current renewal certificate issued by the
8 board.

9 The board of dental examiners under such regulations
10 as it may prescribe may issue a temporary permit to
11 practice dentistry or dental hygiene to graduates of
12 schools of dentistry or dental hygiene approved by the
13 board who are certified to the board of directors of dental
14 clinics established by law, by the chief executive of any
15 hospital or sanitarium licensed or operated by the state
16 or by the chief dental officer of the health department of
17 the state. Such permits shall expire thirty days after
18 the date of the next examination given by the board for
19 licenses in dentistry or dental hygiene and shall not be
20 subject to renewal. Such permits shall terminate when
21 the holder thereof ceases to be employed by the person
22 certifying him. A fee of five dollars shall be paid to the
23 board upon issuance of such permit by the person certifying
24 the applicant.

25 The board of dental examiners under such regulations
26 as it may prescribe may issue a dental intern or dental
27 residency permit to graduates of dental schools approved
28 by the board who are not licensed to practice dentistry
29 in this state and who have not failed an examination for
30 a license to practice dentistry in this state. Applicants for
31 such permits shall be certified to the board by the director
32 of a hospital operated or licensed by the state which main-
33 tains a dental intern or residency program. Such permits
34 shall authorize the holder thereof to serve as a dental
35 intern or a dental resident for a period of not more than
36 one year in any hospital licensed or operated by the state
37 which maintains an established dental department under
38 the supervision of a licensed dentist. The holder of such

39 a permit shall function under the supervision of the den-
40 tal staff of the hospital and shall limit his practice to
41 patients selected by the hospital. The holder of such a
42 permit shall not be entitled to receive any fee or other
43 compensation other than such salary as may be paid by
44 such hospital. Permits may be revoked by the board for
45 cause and shall expire at the end of one year or on the
46 date the dental internship or residency is discontinued,
47 whichever first occurs. A fee of five dollars shall be paid
48 to the board upon the issuance of such a permit by the
49 hospital nominating him.

50 The board of dental examiners under such regulations
51 as it may prescribe may issue teaching permits to persons
52 who are graduates of a school of dentistry or dental hy-
53 giene approved by the board where such persons are not
54 licensed to practice dentistry or dental hygiene in this
55 state. Such permits shall be issued only upon the cer-
56 tification of the dean of a dental school located in this
57 state that the applicant is a bona fide member of the staff
58 of that school. Such permits shall be valid for one year
59 and may be reissued by the board in its discretion. The
60 holder of such a permit shall be entitled to perform all
61 operations which a person licensed to practice dentistry
62 or dental hygiene in this state would be entitled to per-
63 form, but only within the facilities of the dental school
64 and as an adjunct to his teaching functions in such school.
65 A fee of five dollars shall be paid to the board on the is-
66 suance of a teaching permit or upon each renewal there-
67 of by the school nominating the applicant.

68 Nothing in this article shall be deemed to prohibit the
69 practice of dentistry or dental hygiene by persons li-
70 censed in another state who, at the request of an approved
71 dental school or any regularly organized dental society
72 may give a clinic at such school or at a scientific meeting
73 of such dental society for the purpose of advancing the
74 professional knowledge of members of the dental profes-
75 sion or members of the student body of a dental school.

76 An applicant for a permit under this section shall trans-
77 mit with his application a fee of thirty-five dollars which
78 sum the board is authorized to expend in an investigation

79 of the applicant's qualifications. No portion of this fee is
80 refundable.

**§30-4-6. Qualifications of applicant for license; examinations;
examination fee; licensing.**

1 An applicant for a dental license shall be of good moral
2 character, a citizen of the United States or an individual
3 who has declared his intention to become and who shows
4 progress toward becoming a citizen of the United States,
5 at least twenty-one years of age at the time of making
6 application, and be a graduate of, and possess an accept-
7 able dental diploma from the faculty of a dental school
8 approved by the board. The board may require the ap-
9 plication to be accompanied by sufficient evidence of
10 these qualifications.

11 The applicant shall transmit with his application an ex-
12 amination fee of thirty-five dollars, which sum the board
13 is authorized to expend in an investigation of the appli-
14 cant's qualifications. No portion of this fee is refundable.

15 An applicant whose application has been accepted by
16 the board shall be given an examination on subjects se-
17 lected by the board from among those currently being
18 taught in approved dental schools which shall test the
19 qualifications of the applicant to practice dentistry. The
20 testing body for such examinations shall be decided
21 by the board under rules and regulations promulgated
22 by it.

23 The board may recognize a certificate granted by the
24 national board of dental examiners in lieu of the written
25 portion of the required examination.

26 An applicant obtaining a satisfactory grade on such
27 examination and otherwise fulfilling the requirements of
28 the board shall be granted a license by the board to
29 practice dentistry, which license shall bear a serial num-
30 ber, the full name of the licensee, the date of issuance
31 of the license, the seal of the board and the signatures
32 of a majority of the members of the board.

33 The board shall not issue a license to any person found
34 guilty of cheating, deception or fraud in the examination
35 or on any part of the application. All manuscripts used
36 in any examination and all applications for licensure shall

37 be filed for a period of two years by the secretary of the
38 board for the purpose of reference and inspection.

§30-4-10. Fees for licenses and certificates issued under §§30-4-8 and 30-4-9.

1 The fee for issuing the license to a legal practitioner
2 from another state, as provided in section eight of this
3 article, shall be fifty dollars, and the fee for issuing a
4 certificate to a legal practitioner in this state, as provided
5 in section nine of this article, shall be five dollars, and
6 in each case the fee shall be paid before the license or
7 certificate, respectively, is issued. No portion of these
8 fees are refundable.

§30-4-13. Dental hygienists; permitted operations; revocation of license.

1 A licensed dentist, or the director of any industrial
2 clinic, school clinic or state industrial clinic, having a
3 dental program under the supervision of a licensed
4 dentist, may employ dental hygienists who shall practice
5 under the supervision of a licensed dentist.

6 Under such supervision, a dental hygienist may (1)
7 remove deposits, accretions and stains from the surfaces
8 of the teeth, (2) make topical application of drugs to
9 the exposed surface of the teeth, (3) take dental X rays,
10 and (4) instruct patients in the practice of dental hygiene
11 procedure: *Provided*, That the board of dental examiners
12 may establish additional criteria by rules and regulations
13 promulgated by it.

14 The state board of dental examiners may suspend or
15 revoke the license of any dental hygienist who shall per-
16 form any operation other than those permitted under the
17 provisions of this section, who shall violate any provision
18 of this article relating to dental hygienists or who shall
19 be found guilty of any of the acts enumerated in section
20 seven of this article.

§30-4-14. Prerequisites to practice dental hygiene; examination fee; licensing.

1 No person who has not been licensed as a dental
2 hygienist in this state on or before the first day of

3 September, one thousand nine hundred thirty-seven, shall
4 practice as a dental hygienist until he has first passed an
5 examination or examinations selected by the West Vir-
6 ginia board of dental examiners and otherwise qualifies
7 under such rules and regulations as the board may estab-
8 lish. Such examination or examinations shall be both
9 practical and theoretical. The fee for the examination
10 shall be twenty dollars and shall accompany the applica-
11 tion. An applicant failing to pass the first examination
12 shall be entitled to one reexamination at the next regular
13 meeting of the board without additional cost. The fee
14 for every reexamination after that shall be ten dollars.
15 No portion of these fees are refundable.

16 The board of dental examiners shall issue a license to
17 practice dental hygiene in this state to any person who
18 has passed such an examination and who has otherwise
19 qualified to practice dental hygiene under the rules and
20 regulations established by the board: *Provided, however,*
21 That no person shall be entitled to such dental hygiene
22 license unless he be: (a) At least eighteen years of age,
23 (b) of good moral character, (c) a graduate of a first
24 class high school of this state or its equivalent and (d) be
25 a graduate of, and possess an acceptable diploma in dental
26 hygiene from a school having a course in dental hygiene
27 approved by the board of dental examiners.

§30-4-15. Permitted intraoral tasks for dental hygienists and assistants.

1 Licensed dentists may assign to their employed dental
2 hygienists or assistants intraoral tasks that do not re-
3 quire the professional competence or skill of the employer-
4 dentist, subject to the following conditions:

5 (1) The performance of intraoral tasks by dental
6 hygienists or assistants shall be under the direct super-
7 vision of the employer-dentist.

8 (2) None of the following procedures may be assigned
9 to a dental hygienist or assistant or to any other person
10 not licensed to practice dentistry:

11 (a) Diagnosis, treatment planning and prescription
12 (including prescriptions for drugs and medicaments or
13 authorizations for restorative, prosthodontic or ortho-
14 dontic appliances).

15 (b) Surgical procedures on hard and soft tissues with-
16 in the oral cavity or any other intraoral procedure that
17 contributes to or results in an irremediable alteration of
18 the oral anatomy.

19 The board of dental examiners shall promulgate rules
20 or regulations specifying the tasks that licensed dentists
21 may, under the authority of this article assign to (1)
22 dental hygienists and (2) dental assistants: *Provided*,
23 That licensed dental hygienists may perform those tasks
24 provided for in this article.

25 The practice of dental hygiene shall consist of those
26 prophylactic, preventive and other procedures that licensed
27 dentists are authorized by this article and dental examin-
28 ing board rules or regulations to assign only to their em-
29 ployed licensed dental hygienists. The dental examining
30 board shall issue rules or regulations defining the proce-
31 dures that may be performed by licensed dental hygienists
32 engaged in school health activities or employed by public
33 agencies.

**§30-4-16. Dental hygienists from other states who desire to
practice in this state; qualifications.**

1 The board of dental examiners may, at its discretion,
2 without the examination herein provided, issue a license
3 to practice dental hygiene to any applicant therefor, who
4 shall furnish proof satisfactory to the board that he has
5 been duly licensed to practice as a dental hygienist in
6 another state after full compliance with the requirements
7 of its dental laws: *Provided, however*, That his profes-
8 sional and preliminary education shall not be less than
9 that required in this state, and that he shall have been
10 in active practice at least two years previous to his ap-
11 plication for a license. The fee for issuing a license to a
12 legal practitioner of dental hygiene from another state
13 shall be twenty-five dollars, which shall be paid before
14 the license is issued. No portion of this fee is refundable.

§30-4-17a. Specialties; qualifications; application for certificate; fee; limitation of practice.

1 No licensee shall announce or otherwise hold himself
2 out to the public as a specialist or as being specially
3 qualified in any particular branch of dentistry, or as
4 giving special attention to any branch of dentistry, or as
5 limiting his practice to any branch of dentistry, unless
6 he has first complied with the requirements established
7 by the board of dental examiners for such specialty and
8 has been issued a certificate of qualification authorizing
9 him so to do.

10 The board of dental examiners may establish higher
11 standards and additional requirements for any licensee
12 who desires to announce or otherwise hold himself out
13 to the public as being specially qualified in a branch or
14 specialty of dentistry recognized by the board. The board
15 may give such examinations and secure such assistance
16 as it may deem necessary in determining the qualifica-
17 tions of applicants.

18 The state board of dental examiners may appoint not
19 more than three specialists to examine the credentials
20 of applicants, and each specialist so appointed shall re-
21 ceive ten dollars for each day actually spent in examin-
22 ing the credentials of applicants and shall be entitled to
23 be reimbursed for all reasonable and necessary expenses
24 actually incurred in discharging such duties. The state
25 board of dental examiners may appoint not more than
26 three specialists to administer and grade the specialty
27 examination given to applicants, and each specialist so
28 appointed shall receive forty dollars for each day actually
29 spent in administering and grading such examinations.

30 Application to the board for a certificate of qualification
31 in a specialty of dentistry shall be upon such form and
32 contain such information as the board may require and
33 shall be accompanied by a fee of seventy-five dollars. No
34 portion of this fee is refundable. A licensee found by the
35 board to be qualified under the standards and other re-
36 quirements promulgated by the board in the specialty in-
37 dicated in his application shall be issued a certificate of
38 qualification authorizing the licensee to announce or
39 otherwise hold himself out to the public as specially

- 40 qualified in the indicated specialty under such terms and
41 in a manner approved by the board.

CHAPTER 92

(House Bill No. 1071—By Mr. Ours)

[Passed March 10, 1972; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article six, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the membership of the West Virginia board of embalmers and funeral directors; salaries; board organization; powers and duties; instruction and inspection.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. EMBALMERS AND FUNERAL DIRECTORS.

§30-6-3. Oath of members of board; officers; salary and expenses; bond of treasurer; meetings; powers and duties; notice; rules and regulations; school of instruction; inspection.

- 1 Members of said board, before entering upon their
- 2 duties, shall take and subscribe to the oath of office
- 3 prescribed by the secretary of state.
- 4 Said board shall select from its own members a presi-
- 5 dent, a secretary and a treasurer. Each member shall
- 6 be reimbursed for his traveling expenses, incident to his
- 7 attendance upon the business of the board, and in addi-
- 8 tion thereto, the sum of fifty dollars per day for each
- 9 day actually spent by such member upon the business
- 10 of the board; except that the state health director shall
- 11 receive only such compensation as he is entitled to receive
- 12 for his services as state health director, together with

13 actual and necessary traveling expenses while engaged
14 upon the business or in attendance of the board, with
15 such compensation and expenses to be payable from
16 the funds of the state health department. The secretary
17 shall receive an annual salary of not to exceed one
18 thousand dollars, the amount and payment of which shall
19 be fixed by said board, and in addition thereto shall
20 receive traveling and other incidental expenses incurred
21 in the performance of his duties.

22 The board may employ an executive secretary and such
23 clerks, inspectors and assistants as it shall deem neces-
24 sary to discharge the duties imposed by the provisions
25 of this article and the duly promulgated rules and regu-
26 lations of the board and to effect its purposes, and the
27 board shall determine the duties and fix the compensa-
28 tion of such executive secretary, clerks, inspectors and
29 assistants, subject to the general laws of the state. Any
30 inspector employed by the board shall have either a West
31 Virginia embalmer's license or a West Virginia funeral
32 director's license. Any inspection shall be conducted in
33 such a manner so as not to interfere with the conduct of
34 business within the funeral establishment, and the in-
35 spector shall be absolutely prohibited from examining
36 any books and records of the funeral establishment.

37 All such expenses, per diem and compensation shall be
38 paid out of the receipts of the board, except such ex-
39 penses and compensation as may be payable to the state
40 health director, but such allowances shall at no time
41 exceed the receipts of the board.

42 The treasurer of the board shall give bond to the State
43 of West Virginia in such sum as the board shall direct
44 with two or more sureties or a reliable surety company
45 approved by the board, and such bond shall be condi-
46 tioned for the faithful discharge of the duties of such
47 officer. Such bond, with approval of the board endorsed
48 thereon, shall be deposited with the treasurer of the
49 state of West Virginia.

50 The board shall hold not less than two meetings during
51 each calendar year, one during the month of April and
52 one during the month of November for the purpose of

53 examining applicants for licenses, such meeting or meet-
54 ings to be held at such time and place as the board shall
55 determine. The time and place of such meeting shall be
56 announced by publication in three daily newspapers of
57 general circulation in different locations in the state, and
58 publication to be once a week for two consecutive weeks
59 immediately preceding each such meeting.

60 The board may hold such other meetings as it may
61 deem necessary and may transact any business at any
62 such meeting. Three or more members shall comprise
63 a quorum authorizing the board to transact such busi-
64 ness as is prescribed under this article.

65 The board shall have power and it shall be its duty to
66 make and enforce all necessary rules and regulations,
67 not inconsistent with this article, for the examination
68 and licensing of funeral directors, and the general prac-
69 tice of funeral directing; the examination and licensing
70 of embalmers and the general practice of embalming
71 and the registration and regulation of apprentices; the
72 licensing of funeral establishments and the general opera-
73 tion of funeral establishments, except that no rules and
74 regulations issued by the board shall require that an
75 applicant for a license to operate a funeral establishment
76 shall be required to have either an embalmer's or funeral
77 director's license.

78 The board shall publish in its rules and regulations
79 the subjects to be covered in the said examinations and
80 the standards to be attained thereon. Changes in the
81 rules and regulations shall be published and shall be
82 given due publicity at least ninety days before becoming
83 effective.

84 The board shall conduct annually a school of instruc-
85 tions to apprise funeral directors and embalmers of the
86 most recent scientific knowledge and developments affect-
87 ing their profession. Qualified lecturers and demon-
88 strators may be employed by the board for this purpose.
89 The board shall give notice of the time and place at
90 which such school will be held for all licensed funeral
91 directors and embalmers, and it shall be the duty of
92 every licensed funeral director and embalmer to attend
93 at least one such school in every three years.

94 The board or any of its members or any duly authorized
95 employee of the board shall have the authority to enter
96 at all reasonable hours for the purpose of inspecting the
97 premises in which the business or profession of funeral
98 directing is conducted or practiced or where embalming
99 is practiced.

CHAPTER 93

(House Bill No. 978—By Mr. Myles and Mr. Seibert)

[Passed March 2, 1972; in effect from passage. Approved by the Governor]

AN ACT to amend sections three, six and eight, article seven, chapter thirty, of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to registered professional nurses; qualifications of a member of the board of examiners for registered professional nurses; fees for licensing and renewals of licenses of registered professional nurses.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-3. Board of examiners for registered professional nurses; appointment, term and qualifications of members; reappointment; vacancies; removal; compensation.

§30-7-6. Qualifications and examinations of persons seeking licensure; applications; practitioners licensed in another state; present practitioners; fees; temporary permits.

§30-7-8. Renewal of licenses; reinstatement; fees; penalties; inactive list.

§30-7-3. **Board of examiners for registered professional nurses; appointment, term and qualifications of members; reappointment; vacancies; removal; compensation.**

1 The governor shall appoint, by and with the advice
2 and consent of the Senate, a board consisting of five

3 members who shall constitute and be known as the West
4 Virginia board of examiners for registered professional
5 nurses.

6 Appointments hereunder shall be made by the gov-
7 ernor, by and with the advice and consent of the Senate,
8 from lists submitted to the governor by the West Vir-
9 ginia nurses' association. Such lists shall contain the
10 names of at least three persons eligible for membership
11 for each membership or vacancy to be filled and shall
12 be submitted to the governor on or before the first day
13 of June of each year and at such other time or times
14 as a vacancy on the board shall exist. Appointments under
15 the provisions of this article shall be for a term of five
16 years each or for the unexpired term, if any, of the
17 present members. Any member may be eligible for re-
18 appointment, but no member shall serve longer than
19 two successive terms. Vacancies shall be filled in the
20 same manner as is provided for appointment in the first
21 instance. The governor may remove any member for
22 neglect of duty, for incompetence, or for unprofessional
23 or dishonorable conduct.

24 Each member of the board hereafter appointed shall
25 (a) be a citizen of the United States and a resident of
26 this state, (b) be a graduate from an accredited educa-
27 tional program in this or any other state for the prepara-
28 tion of practitioners of registered professional nursing,
29 or be a graduate from an accredited college or univer-
30 sity with a major in the field of nursing, (c) be a grad-
31 uate from an accredited college or university, (d) be
32 a registered professional nurse licensed in this state or
33 eligible for licensure as such, (e) have had at least five
34 years of experience in teaching in an educational program
35 for the preparation of practitioners of registered pro-
36 fessional nursing, or in a combination of such teaching
37 and either nursing service administration or nursing
38 education administration, and (f) have been actually
39 engaged in registered professional nursing for at least
40 three within the past five years preceding his or her
41 appointment or reappointment.

42 Each member of the board shall receive twenty dollars
43 for each day actually spent in attending meetings of the

44 board, or of its committees, and shall also be reimbursed
45 for actual and necessary expenses.

**§30-7-6. Qualifications and examinations of persons seeking
licensure; applications; practitioners licensed in
another state; present practitioners; fees; temporary
permits.**

1 To obtain a license to practice registered professional
2 nursing, an applicant for such license shall submit to
3 the board written evidence, verified by oath, that he or
4 she (a) is of good moral character; (b) has completed
5 an approved four-year high school course of study or the
6 equivalent thereof, as determined by the appropriate edu-
7 cational agency; and (c) has completed an accredited
8 program of registered professional nursing education and
9 holds a diploma of a school accredited by the board.

10 The applicant shall also be required to pass a written
11 examination in such subjects as the board may determine.
12 Each written examination may be supplemented by an
13 oral examination. Upon successfully passing such ex-
14 amination or examinations, the board shall issue to the
15 applicant a license to practice registered professional
16 nursing. The board shall determine the times and places
17 for examinations. In the event an applicant shall have
18 failed to pass examinations on two occasions, the appli-
19 cant shall, in addition to the other requirements of this
20 section, present to the board such other evidence of his
21 or her qualifications as the board may prescribe.

22 The board may, upon application, issue a license to
23 practice registered professional nursing by endorsement
24 to an applicant who has been duly licensed as a regis-
25 tered professional nurse under the laws of another state,
26 territory or foreign country if in the opinion of the
27 board the applicant meets the qualifications required of
28 registered professional nurses at the time of graduation.

29 Any person holding a valid license designated as a
30 "waiver license" may submit an application to the board
31 for a license containing no reference to the fact that such
32 person has theretofore been issued such "waiver license."
33 The provisions of this section relating to examination

34 and fees and the provisions of all other sections of this
35 article shall apply to any application submitted to the
36 board pursuant to the provisions of this paragraph.

37 Any person applying for a license to practice registered
38 professional nursing under the provisions of this article
39 shall, with his or her application, pay to the board a fee
40 of forty dollars, except that the fee to be paid by any
41 person applying for a license by endorsement hereunder
42 shall be thirty dollars: *Provided*, That the board in its
43 discretion may, by rule or regulation, decrease either
44 or both said license fees. In the event it shall be neces-
45 sary for the board to reexamine any applicant for a
46 license, an additional fee of ten dollars shall be paid to
47 the board by the applicant for each subject in which
48 reexamination shall be necessary: *Provided, however*,
49 That the total of such additional fees shall in no case
50 exceed forty dollars for any one examination.

51 Any person holding a license heretofore issued by the
52 West Virginia state board of examiners for registered
53 nurses and which license is valid on the date this article
54 becomes effective shall be deemed to be duly licensed
55 under the provisions of this article for the remainder of
56 the period of any such license heretofore issued. Any
57 such license heretofore issued shall also, for all purposes,
58 be deemed to be a license issued under this article and
59 to be subject to the provisions hereof.

60 The board shall, upon receipt of a duly executed ap-
61 plication for licensure and of the accompanying fee of
62 forty dollars, issue a temporary permit to practice regis-
63 tered professional nursing to any applicant who has re-
64 ceived a diploma from a school of nursing approved by
65 the board pursuant to this article after the date the board
66 last scheduled a written examination for persons eligible
67 for licensure: *Provided*, That no such temporary
68 permit shall be renewable nor shall any such permit be
69 valid for any purpose subsequent to the date the board
70 has announced the results of the first written examination
71 given by the board following the issuance of such permit.

§30-7-8. Renewal of licenses; reinstatement; fees; penalties; inactive list.

1 The license of every person licensed and registered
2 under the provisions of this article shall be annually re-
3 newed except as hereinafter provided. At such time or
4 times as the board in its discretion may determine, the
5 board shall mail a renewal application to every person
6 whose license was renewed during the previous year and
7 every such person shall fill in such application blank and
8 return it to the board with a renewal fee of five dollars
9 within thirty days after receipt of said renewal applica-
10 tion: *Provided*, That the board in its discretion may in-
11 crease or decrease said renewal fee. In no event shall
12 said fee exceed ten dollars. Upon receipt of the application
13 and fee, the board shall verify the accuracy of the ap-
14 plication and, if the same be accurate, issue to the appli-
15 cant a certificate of renewal for the current year. Such
16 certificate of renewal shall entitle the holder thereof to
17 practice registered professional nursing for the period
18 stated on the certificate of renewal. Any licensee who
19 allows his or her license to lapse by failing to renew the
20 license as provided above may be reinstated by the board
21 on satisfactory explanation for such failure to renew his
22 or her license and on payment to the board of the re-
23 newal fee hereinabove provided and a reinstatement fee
24 of five dollars. Any person practicing registered profes-
25 sional nursing during the time his or her license has
26 lapsed shall be considered an illegal practitioner and shall
27 be subject to the penalties provided for violation of this
28 article. A person licensed under the provisions of this
29 article desiring to retire from practice temporarily shall
30 send a written notice of such desire to the board. Upon
31 receipt of such notice the board shall place the name of
32 such person upon the inactive list. While remaining on
33 this list the person shall not be subject to the payment of
34 any renewal fees and shall not practice registered pro-
35 fessional nursing in this state. When the person desires
36 to resume active practice, application for renewal of li-
37 cense and payment of the renewal fee for the current year
38 shall be made to the board.

CHAPTER 94

(Senate Bill No. 142—By Mr. Hubbard and Mr. Wallace)

[Passed March 10, 1972; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four and five, article fourteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article fourteen-a, all relating to the establishment of qualifications and certification of assistants to licensed osteopathic physicians and surgeons; definition of terms; fees.

Be it enacted by the Legislature of West Virginia:

That sections four and five, article fourteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article fourteen-a, all to read as follows:

Article

14. Osteopathic Physicians and Surgeons.

14A. Assistants to Osteopathic Physicians and Surgeons.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-4. Application for examination.

§30-14-5. Examination; certificate of license; certification and establishment of standards for employment of assistants; fee.

§30-14-4. Application for examination.

1 Each applicant for examination by the board, with the
2 exception of assistants to osteopathic physicians and sur-
3 geons, as hereinafter provided, shall submit an applica-
4 tion therefor on forms prepared and furnished by the
5 board, accompanied by evidence verified by oath and
6 satisfactory to the board, establishing that the applicant
7 has satisfied the following requirements: (a) That he is
8 twenty-one years of age or over; (b) that he is of good
9 moral character; (c) that he has graduated from an ap-
10 proved osteopathic college; and (d) that he has paid to
11 the board a fee of fifty dollars for examination.

§30-14-5. Examination; certificate of license; certification and establishment of standards for employment of assistants; fee.

1 The examination for a license to practice medicine and
2 surgery as an osteopathic physician and surgeon shall be
3 written and oral and shall cover all the essential branches
4 of medicine and surgery including anatomy, physiology,
5 chemistry, pharmacology, pathology, public health—pre-
6 ventive medicine, surgery, obstetrics and gynecology,
7 osteopathic medicine, materia medica principles and
8 practice of osteopathy; and this list of subjects may be
9 expanded or regrouped at the discretion of the board.

10 The board shall issue certificates of license to all appli-
11 cants who shall successfully pass the said examination
12 and shall present evidence showing that they have served
13 an internship in a hospital approved for intern training.

14 The board shall have the power to certify and establish
15 standards for employment of assistants to osteopathic
16 physicians and surgeons.

17 But no license shall be issued under the provisions of
18 this section until the person applying therefor shall have
19 paid to the board a fee of five dollars.

ARTICLE 14A. ASSISTANTS TO OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14A-1. Definition; supervision.

§30-14A-2. Approval and certification by board of osteopathy.

§30-14A-3. Fees.

§30-14A-4. Limitation on scope of duties.

§30-14A-1. Definition; supervision.

1 The term "assistant to an osteopathic physician and
2 surgeon," as used in this chapter, shall mean a person
3 employed in the office of an osteopathic physician and
4 surgeon, licensed hospital or any licensed health care in-
5 stitution who performs selected osteopathic medical tasks
6 and functions in accordance with an approved job de-
7 scription, and who possesses the qualifications which have
8 been established for the described job. The assistant to an
9 osteopathic physician and surgeon shall be under the
10 supervision of a permanently licensed osteopathic physi-
11 cian and surgeon in West Virginia.

§30-14A-2. Approval and certification by board of osteopathy.

1 Approval of a job description and establishment of
2 qualifications for employment as an assistant to an osteo-
3 pathic physician and surgeon must be obtained from the
4 board of osteopathy. The board of osteopathy shall certify
5 each qualified applicant for employment as an assistant
6 to an osteopathic physician and surgeon upon submission
7 of a job description, and shall provide for annual renewal
8 of certification. The board shall have the power to revoke
9 or suspend any certification of an assistant to an osteo-
10 pathic physician and surgeon, for cause, after having
11 given the person an opportunity to be heard in the man-
12 ner provided by sections eight and nine, article one of
13 this chapter.

§30-14A-3. Fees.

1 Each job description submitted by a permanently li-
2 censed osteopathic physician and surgeon shall be ac-
3 companied by a fee of fifty dollars. A fee of five dollars
4 shall be charged for each annual renewal of certification.

§30-14A-4. Limitation on scope of duties.

1 Assistants to osteopathic physicians and surgeons shall
2 not sign prescriptions or perform any service which his
3 employing osteopathic physician and surgeon is not quali-
4 fied to perform.

CHAPTER 95

(House Bill No. 576—By Mr. Speaker, Mr. McManus)

[Passed February 28, 1972; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven, eight and nine, article twenty-one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to qualifications of applicants; exceptions; applications; fees; issuance of license; renewal of license; renewal fee; display of license; and temporary permits of psychologists.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PSYCHOLOGISTS.

§30-21-7. Qualifications of applicants; exceptions; applications; fee.

§30-21-8. Issuance of license; renewal of license; renewal fee; display of license.

§30-21-9. Temporary permits.

§30-21-7. Qualifications of applicants; exceptions; applications; fee.

- 1 (a) To be eligible for a license to engage in the prac-
2 tice of psychology, the applicant must:
 - 3 (1) Be at least twenty-one years of age;
 - 4 (2) Be of good moral character;
 - 5 (3) Be a holder of a doctor of philosophy degree or
6 its equivalent or a master's degree in psychology from
7 an accredited institution of higher learning, with ade-
8 quate course study at such institution in psychology,
9 the adequacy of any such course study to be determined
10 by the board;
 - 11 (4) When the degree held is a doctor of philosophy
12 degree or its equivalent, have at least two years' experi-
13 ence subsequent to receiving said degree in the per-
14 formance of any of the psychological services described
15 in subdivision (e), section two of this article, including
16 those activities excluded from the definition of the term
17 "practice of psychology" in said subdivision (e), and,
18 when the degree held is a master's degree, have at least
19 eight years' experience subsequent to receiving said de-
20 gree in the performance of any of the psychological
21 services described in said subdivision (e), including those
22 activities excluded from the definition of the term "prac-
23 tice of psychology" in said subdivision (e);
 - 24 (5) Have passed the examination prescribed by the
25 board, which examination shall cover the basic subject
26 matter of psychology and psychological skills and tech-
27 niques;

28 (6) Not have been convicted of a felony or crime in-
29 volving moral turpitude; and

30 (7) Not, within the next preceding six months, have
31 taken and failed to pass the examination required by
32 subdivision (5), subsection (a) of this section.

33 (b) The following persons shall be eligible for a
34 license to engage in the practice of psychology without
35 examination:

36 (1) Any applicant who holds a doctor of philosophy
37 degree or its equivalent from an institution of higher
38 learning, with adequate course study at such institution
39 in psychology and who is a diplomate of the "American
40 Board of Examiners in Professional Psychology";
41 and

42 (2) Any person who holds a license or certificate to
43 engage in the practice of psychology issued by any
44 other state, the requirements for which license or cer-
45 tificate are found by the board to be at least as great
46 as those provided in this article.

47 (c) Any person who is engaged in the practice of
48 psychology in this state, or is engaged in any of the
49 activities described in subparagraphs (1), (2) or (3), sub-
50 division (e), section two of this article, in this state, on
51 the effective date of this article and has been so en-
52 gaged for a period of two consecutive years immediately
53 prior thereto shall be eligible for a license to engage
54 in the practice of psychology without examination and
55 without meeting the requirements of subdivision (4),
56 subsection (a) of this section, if application for such
57 license is made within six months after the effective
58 date of this article and if such person meets the re-
59 quirements of subdivisions (1), (2), (3) and (6), sub-
60 section (a) of this section: *Provided*, That an equivalent
61 of a masters degree in psychology may be considered by
62 the board, only for the purpose of this subsection (c), as
63 meeting the requirements of subdivision (3) of subsec-
64 tion (a) of this section.

65 (d) Any applicant for any such license shall submit
66 an application therefor at such time (subject to the time
67 limitation set forth in subsection (c) of this section),
68 in such manner, on such forms and containing such in-

69 formation as the board may from time to time by rea-
70 sonable rule and regulation prescribe, and pay to the
71 board an application fee of fifty dollars, not refundable.

**§30-21-8. Issuance of license; renewal of license; renewal fee;
display of license.**

1 Whenever the board finds that an applicant meets all
2 of the requirements of this article for a license to engage
3 in the practice of psychology, it shall forthwith issue to
4 him such license; and otherwise the board shall deny the
5 same. The license shall be valid for a period of two years
6 from the date issued and may be renewed for a period of
7 two years without examination upon application for
8 renewal on a form prescribed by the board and payment
9 to the board of a renewal fee of thirty dollars: *Provided*,
10 That the board may deny an application for renewal for
11 any reason which would justify the denial of an original
12 application for a license. The board shall prescribe the
13 form of licenses and each license shall be conspicuously
14 displayed by the licensee at his principal place of practice.

§30-21-9. Temporary permits.

1 (a) Upon proper application the board may issue,
2 without examination, a temporary permit to engage in
3 the practice of psychology in this state:

4 (1) Pending examination, to an applicant who meets
5 the qualifications of subdivisions (1), (2), (3), (4), (6)
6 and (7), subsection (a), section seven of this article,
7 which temporary permit shall expire thirty days after
8 the board gives written notice of the results of the exami-
9 nation held next following the issuance of such temporary
10 permit, and such permit may not be renewed nor another
11 thereof issued to the same person; and

12 (2) To a psychologist who is not a resident of this
13 state and who meets the requirements of subdivisions
14 (1), (2), (3), (4), (6) and (7), subsection (a), section
15 seven of this article, which temporary permit shall be
16 valid only for a period of ninety days in the calendar year
17 in which issued, and such permit may not be renewed
18 nor another thereof issued to the same person in the same
19 calendar year.

20 (b) The fee for any temporary permit shall be fifty
21 dollars.

CHAPTER 96

(House Bill No. 1115—By Mr. Seibert)

[Passed March 9, 1972; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the institutions under the authority of the commissioner of public institutions and the establishment of work and study release units as extensions and subsidiaries of public institutions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. SUPERVISION AND CONTROL OF STATE INSTITUTIONS.

§25-1-3. Institutions managed by commissioner of public institutions.

1 The state commissioner of public institutions shall man-
2 age, direct, control and govern the West Virginia Peni-
3 tentiary, Huttonsville Correctional Center, West Virginia
4 State Prison for Women, West Virginia Industrial Home
5 for Girls, West Virginia Industrial School for Boys, West
6 Virginia Forestry Camp for Boys at Davis, West Virginia
7 Forestry Camp for Boys at Leckie, Anthony Correctional
8 Center, Andrew S. Rowan Memorial Home, West Virginia
9 Children's Home, Denmar State Hospital, Hopemont State
10 Hospital, Pinecrest Hospital, Fairmont Emergency Hos-
11 pital, Welch Emergency Hospital and such other state in-
12 stitutions, other than mental or educational, as now are
13 or may hereafter be created by law.

14 The commissioner is hereby authorized to establish
15 work and study release units as extensions and subsidi-
16 aries of those state institutions under his control and au-
17 thority. Such work and study release units shall be man-
18 aged, directed and controlled as provided for in this ar-
19 ticle.

CHAPTER 97

(House Bill No. 689—By Mr. Burke and Mr. Shaffer)

[Passed March 9, 1972; in effect July 1, 1972. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article one, chapter twenty-five; section one, article five, section one, article six, section one, article eight, and section one, article nine, chapter twenty-six; section seven, article one, sections three, four and five, article one-a, and section two, article two, chapter twenty-seven, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the appointment of superintendents or wardens at the various state institutions; the qualifications of the superintendents at the various hospitals and benevolent institutions; the exemption of certain persons from complying with such qualification requirements; the separation of the fiscal, administrative and personnel functions from the clinical functions at such institutions; the appointment, qualifications, powers and duties of the director of the department of mental health; the creation of the office of deputy director for administration within the department of mental health; the appointment, qualifications, powers and duties of such deputy director; the separation of the fiscal, administrative and personnel functions within the department of mental health from the clinical functions; the qualifications of the superintendents of the various hospitals within the department of mental health; and providing for exemption of certain persons from complying with such qualification requirements.

Be it enacted by the Legislature of West Virginia:

That section eleven, article one, chapter twenty-five; section one, article five, section one, article six, section one, article eight, and section one, article nine, chapter twenty-six; section seven, article one, sections three, four and five, article one-a, and section two, article two, chapter twenty-seven, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Chapter

- 25. Commissioner of Public Institutions.**
- 26. State Benevolent Institutions.**
- 27. Mentally Ill Persons.**

CHAPTER 25. COMMISSIONER OF PUBLIC INSTITUTIONS.

ARTICLE 1. SUPERVISION AND CONTROL OF STATE INSTITU- TIONS.

§25-1-11. Officers and employees of certain state institutions.

1 The governor shall, by and with the advice and con-
2 sent of the Senate, appoint a superintendent for each
3 institution under the control of the commissioner of pub-
4 lic institutions.

5 The superintendent of each institution shall have the
6 power to appoint all assistants and employees required
7 for the management of the institution in his charge;
8 but the number of such assistants and employees,
9 and their compensation, shall first be fixed by the state
10 commissioner of public institutions. The superintendent
11 of any institution may, with the exception of any person
12 covered under the provisions of article six, chapter
13 twenty-nine of this code, at his pleasure, discharge any
14 other person employed in such institution. It shall be the
15 duty of the commissioner of public institutions to in-
16 vestigate any complaint made against the superin-
17 tendent of any institution, and also against any
18 other officer or employee thereof, if the same has not
19 been investigated. The commissioner shall have the
20 power to recommend to the governor the removal of
21 any such superintendent or other officer or employee,
22 setting forth in such recommendation the reasons for the
23 same.

24 The commissioner shall fix the salaries or compen-
25 sation of the officers and employees of the institutions
26 named in section three of this article. The salaries or
27 compensation of all officers and employees of the sev-
28 eral institutions under the control of the commissioner
29 of public institutions shall be paid monthly, to include
30 the last day of each month. The superintendents and
31 other officers and employees of each of such institutions
32 shall be paid salaries commensurate with their duties
33 and responsibilities, but no meals or other emoluments
34 of any kind shall be furnished, given or paid to such
35 superintendents, officers or employees as all or part of
36 their salary; however, such superintendents, officers and
37 employees may be provided meals, household facilities
38 and supplies as may be necessary for them to perform
39 their duties, if such superintendents, officers and em-
40 ployees agree to pay the reasonable cost thereof as
41 established by the commissioner of public institutions.

CHAPTER 26. STATE BENEVOLENT INSTITUTIONS.

Article

5. Pinecrest Hospital.
6. Denmar State Hospital.
8. Emergency Hospitals.
9. Hopemont State Hospital.

ARTICLE 5. PINECREST HOSPITAL.

§26-5-1. Continuation; management; superintendent; qualifi-
cations of superintendent; division of fiscal, admin-
istrative and clinical duties; certain persons ex-
empted from qualification requirements.

1 (a) The tuberculosis sanitarium heretofore estab-
2 lished at Beckley, for the care and treatment of persons
3 afflicted with tuberculosis, shall be continued and shall
4 be known as Pinecrest Hospital, and shall be managed,
5 directed and controlled as prescribed in article one, chap-
6 ter twenty-five and in section eight, article one, chap-
7 ter sixteen of this code. The chief executive officer of
8 such hospital shall be the superintendent, who shall
9 be a college graduate and have a minimum of two years'
10 experience in either hospital administration, health ser-
11 vices administration or business administration with

12 broad knowledge of accounting, purchasing and per-
13 sonnel practices as related to the rendition of health and
14 health related services.

15 (b) A superintendent is the person having the fiscal
16 responsibility of the hospital and the authority to man-
17 age and administer the financial, business and personnel
18 affairs of the hospital.

19 A clinical director is the person having the respon-
20 sibility for decisions involving clinical and medical treat-
21 ment of patients, and who shall be a duly qualified phy-
22 sician licensed to practice medicine in the state of West
23 Virginia.

24 (c) The provisions of this section relating to the
25 qualification of persons eligible to serve as superinten-
26 dent shall not apply to any person serving in the capac-
27 ity of business manager on the effective date hereof,
28 and who has served in such capacity for at least six con-
29 secutive months next preceding such effective date.

ARTICLE 6. DENMAR STATE HOSPITAL.

§26-6-1. Continuation; management; superintendent; qualifi- cations of superintendent; division of fiscal, admin- istrative and clinical duties; certain persons ex- empted from qualification requirements.

1 (a) Denmar State Hospital, heretofore established,
2 shall be continued as a hospital for the chronically ill
3 which shall be managed, directed and controlled as pre-
4 scribed in article one, chapter twenty-five of this code.
5 The chief executive officer thereof shall be the super-
6 intendent, who shall be a college graduate and have a
7 minimum of two years' experience in either hospital
8 administration, health services administration or bus-
9 iness administration with broad knowledge of account-
10 ing, purchasing and personnel practices as related to
11 the rendition of health and health related services.

12 (b) A superintendent is the person having the fiscal
13 responsibility of the hospital and the authority to man-
14 age and administer the financial, business and personnel
15 affairs of the hospital.

16 A clinical director is the person having the respon-
17 sibility for decisions involving clinical and medical treat-
18 ment of patients, and who shall be a duly qualified phy-
19 sician licensed to practice medicine in the state of West
20 Virginia.

21 (c) The provisions of this section relating to the
22 qualification of persons eligible to serve as superinten-
23 dent shall not apply to any person serving in the capacity
24 of business manager on the effective date hereof, and
25 who has served in such capacity for at least six con-
26 secutive months next preceding such effective date.

ARTICLE 8. EMERGENCY HOSPITALS.

§26-8-1. Continuation; management; superintendent; qualifi- cations of superintendent; division of fiscal, admin- istrative and clinical duties; certain persons ex- empted from qualification requirements.

1 (a) The hospitals heretofore established and known,
2 respectively, as Welch Emergency Hospital and Fair-
3 mont Emergency Hospital shall be continued and shall
4 be managed, directed and controlled as prescribed in
5 article one, chapter twenty-five of this code. The chief
6 executive officer of each of said hospitals shall be the
7 superintendent, who shall be a college graduate and
8 have a minimum of two years' experience in either
9 hospital administration, health services administration
10 or business administration with broad knowledge of
11 accounting, purchasing and personnel practices as re-
12 lated to the rendition of health and health related ser-
13 vices.

14 (b) A superintendent is the person having the fiscal
15 responsibility of the hospital and the authority to man-
16 age and administer the financial, business and personnel
17 affairs of the hospital.

18 A clinical director is the person having the respon-
19 sibility for decisions involving clinical and medical treat-
20 ment of patients, and who shall be a duly qualified phy-
21 sician licensed to practice medicine in the state of West
22 Virginia.

23 (c) The provisions of this section relating to the
24 qualification of persons eligible to serve as superinten-
25 dent shall not apply to any person serving in the capacity
26 of business manager on the effective date hereof, and
27 who has served in such capacity for at least six con-
28 secutive months next preceding such effective date.

ARTICLE 9. HOPEMONT STATE HOSPITAL.

§26-9-1. Establishment and continuation; name and location; management; superintendent; qualifications of superintendent; division of fiscal, administrative and clinical duties; certain persons exempted from qualification requirements.

1 (a) Hopemont State Hospital, heretofore established,
2 shall be continued as a hospital for both chronically ill
3 and infirm, which hospital shall be managed, directed
4 and controlled as prescribed in article one, chapter
5 twenty-five of this code. The chief executive officer there-
6 of shall be the superintendent, who shall be a college
7 graduate and have a minimum of two years' experience
8 in either hospital administration, health services admin-
9 istration or business administration with broad knowl-
10 edge of accounting, purchasing and personnel practices
11 as related to the rendition of health and health related
12 services.

13 (b) A superintendent is the person having the fiscal
14 responsibility of the hospital and the authority to man-
15 age and administer the financial, business and personnel
16 affairs of the hospital.

17 A clinical director is the person having the responsi-
18 bility for decisions involving clinical and medical treat-
19 ment of patients, and who shall be a duly qualified physi-
20 cian licensed to practice medicine in the state of West
21 Virginia.

22 (c) The provisions of this section relating to the
23 qualification of persons eligible to serve as superintendent
24 shall not apply to any person serving in the capacity of
25 business manager on the effective date hereof, and who
26 has served in such capacity for at least six consecutive
27 months next preceding such effective date.

CHAPTER 27. MENTALLY ILL PERSONS.

Article

1. Words and Phrases Defined.
- 1A. Department of Mental Health.
2. Mental Health Facilities.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§27-1-7. Superintendent and clinical director.

- 1 (a) A superintendent is the person having the fiscal
- 2 responsibility of a state institution and the authority to
- 3 manage and administer the financial, business and per-
- 4 sonnel affairs of the institution.
- 5 (b) A clinical director is the person having the re-
- 6 sponsibility for decisions involving clinical and medical
- 7 treatment of patients, and who shall be a duly qualified
- 8 physician licensed to practice medicine in the state of
- 9 West Virginia.

ARTICLE 1A. DEPARTMENT OF MENTAL HEALTH.

§27-1A-3. Appointment of director; qualifications; term; oath; bond; salary and expenses.

§27-1A-4. Powers and duties of the director; power of eminent domain.

§27-1A-5. Division of administration; deputy director; deputy director's qualifications, powers and duties.

§27-1A-3. Appointment of director; qualifications; term; oath; bond; salary and expenses.

1 The governor shall appoint the director of the depart-

2 ment of mental health by and with the consent of the

3 Senate; he shall be known as the director of mental

4 health. Before entering upon the duties of his office, the

5 director shall take and subscribe the oath of office pre-

6 scribed by section five, article four of the constitution of

7 this state, the certificate whereof shall be filed in the

8 office of the secretary of state, and he shall give bond in

9 the penalty of ten thousand dollars, conditioned as re-

10 quired by law. The director shall serve at the will and

11 pleasure of the governor. The salary of the director shall

12 be the salary specified in section two-a, article seven,

13 chapter six of the code and in addition thereto he shall

14 be reimbursed for all necessary travel and other expenses

15 incurred in the performance of his duties. The director

16 shall be a qualified psychiatrist with both clinical and

17 administrative experience.

§27-1A-4. Powers and duties of the director; power of eminent domain.

1 The director shall be the executive head of the depart-
2 ment, and as such shall have the following powers and
3 duties:

4 1. To develop and maintain a state plan which sets
5 forth needs of the state in the areas of mental health and
6 mental retardation; goals and objectives for meeting
7 those needs; plan of operation for achieving the stated
8 goals and objectives, including organizational structure;
9 and statement of requirements in personnel funds and
10 authority for achieving the goals and objectives.

11 2. To appoint deputies and assistants to supervise the
12 departmental programs, including hospital and residential
13 services, and such other assistants and employees as may
14 be necessary for the efficient operation of the department
15 and all its programs.

16 3. To promulgate rules and regulations clearly specify-
17 ing the respective duties and responsibilities of program
18 directors and fiscal administrators, making a clear dis-
19 tinction between the respective functions of these offi-
20 cials.

21 4. To delegate to any of his appointees, assistants or
22 employees all powers and duties vested in the director,
23 including the power to execute contracts and agreements
24 in the name of the department as provided in this ar-
25 ticle, but the director shall be responsible for the acts
26 of such appointees, assistants and employees.

27 5. To supervise and coordinate the operation of the
28 state hospitals named in article two of this chapter and
29 any other state hospitals, centers or institutions hereafter
30 created for the care and treatment of the mentally ill or
31 mentally retarded, or both.

32 6. To transfer a patient from any state hospital to any
33 other state hospital or clinic under his control and, by
34 agreement with the state commissioner of public institu-
35 tions, transfer a patient from a state hospital to an insti-
36 tution, other than correctional, under the supervision of
37 the state commissioner of public institutions.

38 7. To make periodic reports to the governor and to

39 the Legislature on the condition of the state hospitals, or
40 on other matters within his authority, which shall include
41 recommendations for improvement of the state hospitals
42 and any other matters affecting the mental health of the
43 people of the state.

44 The director of mental health shall have all of the au-
45 thority vested in the divisions of the department, as here-
46 inafter provided.

47 The director is hereby authorized and empowered to
48 accept and use for the benefit of a state hospital or hos-
49 pitals, or for any other mental health purpose specified
50 in this chapter, any gift or devise of any property or thing
51 which lawfully may be given. If such a gift or devise is
52 for a specific purpose or for a particular state hospital or
53 hospitals, it shall be used as specified. Any gift or devise
54 of any property or thing which lawfully may be given
55 and whatever profit may arise from its use or investment
56 shall be deposited in a special revenue fund with the
57 state treasurer, and shall be used only as specified by the
58 donor or donors.

59 Whenever it shall become necessary, the department of
60 mental health may condemn any interest, right, or priv-
61 ilege, land or improvement, which in its opinion may be
62 necessary, in the manner provided by law, for the ac-
63 quisition by this state of property for public purposes.

**§27-1A-5. Division of administration; deputy director; deputy
director's qualifications, powers and duties.**

1 There shall be a division of administration in the de-
2 partment of mental health. The chief executive of this
3 division shall be the deputy director for administration.
4 The deputy director shall be a college graduate with not
5 less than two years' experience in business administration,
6 health services administration or hospital administration,
7 with broad knowledge of accounting, purchasing and per-
8 sonnel practices as related to the rendition of health and
9 health related services. He shall have the following
10 duties:

- 11 1. To keep the records in the department.
- 12 2. To receive and disburse funds for the department
13 as the agent of the director of the department.

- 14 3. To assemble and analyze departmental budget esti-
15 mates, review requests for transfer of funds and main-
16 tain departmental appropriation and fiscal records.
- 17 4. To make rules and regulations governing the ad-
18 ministration and business management of the state hos-
19 pitals, formulate standard fiscal procedures, and make
20 recommendations for improvement; to make regulations
21 concerning any superintendent's trustee funds heretofore
22 established by authority of section three-a, article one,
23 chapter twenty-five of the code of West Virginia, one
24 thousand nine hundred thirty-one, as amended.
- 25 5. To have the responsibility for the maintenance of
26 the land, buildings and equipment of state hospitals.
- 27 6. To review requisitions for supplies and equipment,
28 and cooperate with the division of purchases in develop-
29 ment and drafting of specifications.
- 30 7. To handle the personnel records of the department
31 and to process payrolls.
- 32 8. To enter into contracts for the department consis-
33 tent with his assigned duties.
- 34 9. To develop job classifications and standards for em-
35 ployees of the department.
- 36 10. To perform any other duties assigned to the divi-
37 sion by the director of the department.

ARTICLE 2. MENTAL HEALTH FACILITIES.

§27-2-2. Superintendents; qualifications and exceptions there- from; salaries of superintendents and other officers and employees; furnishing of meals, household facilities, etc.

1 The superintendent of a state hospital shall be ap-
2 pointed for an indefinite period. He shall be a college
3 graduate and have a minimum of two years' experience in
4 business administration, health services administration
5 or hospital administration with broad knowledge of ac-
6 counting, purchasing and personnel practices as related
7 to the rendition of health and health related services.

8 The provisions of this section relating to the qualifica-
9 tion of persons eligible to serve as superintendent shall
10 not apply to any person serving in the capacity of business

11 manager on the effective date hereof, and who has served
 12 in such capacity for at least six consecutive months next
 13 preceding such effective date.

14 The superintendents and other officers and employees
 15 of each state hospital or center shall be paid salaries
 16 commensurate with their duties and responsibilities, but
 17 no meals or other emoluments of any kind shall be fur-
 18 nished, given or paid to such superintendents, officers
 19 or employees as all or part of their salary; however, such
 20 superintendents, officers and employees may be provided
 21 meals, household facilities and supplies as may be neces-
 22 sary for them to perform their duties, if such superinten-
 23 dents, officers and employees agree to pay the reason-
 24 able cost thereof as established by the director of the
 25 department of mental health.

CHAPTER 98

(House Bill No. 1109—By Mr. Seibert)

[Passed March 9, 1972; in effect ninety days from passage. Approved by the
 Governor.]

AN ACT to amend and reenact section sixteen, article one, chap-
 ter twenty-five of the code of West Virginia, one thousand
 nine hundred thirty-one, as amended, dealing with the
 transfer of inmates of state institutions or facilities.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 1. SUPERVISION AND CONTROL OF STATE INSTITU-
 TIONS.**

§25-1-16. Transfer of inmates of state institutions or facilities.

1 The state commissioner of public institutions shall have
 2 authority to cause the transfer of any patient or inmate
 3 from any state institution or facility to any other state or
 4 federal institution or facility which is better fitted for the
 5 care or treatment of such patient or inmate, or for other
 6 good cause or reason.

7 Whenever a convict in a state prison becomes mentally
8 ill, the warden shall proceed in accordance with section
9 thirty-one, article five, chapter twenty-eight of this code.

10 Whenever a convict in a state prison needs medical at-
11 tention, other than mental care, not available at said
12 prison, the warden or superintendent of said prison shall
13 immediately notify the commissioner of public institu-
14 tions, who, after proper investigation, shall cause the
15 transfer of said convict to a hospital within the state of
16 West Virginia properly equipped to render the medical
17 attention necessary. Such a convict, while receiving
18 treatment in said hospital, shall be under guard at all
19 times and shall forthwith be returned to prison upon his
20 recovery.

CHAPTER 99

(House Bill No. 1108—By Mr. Seibert)

[Passed March 9, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section six, article four, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to assignment of offenders to camp, period of camp confinement, return to court, sentence or probation, revocation of probation and transfer of inmates by commissioner of public institutions.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 4. FORESTRY CAMPS FOR HOUSING YOUTHFUL MALE
LAW OFFENDERS.**

§25-4-6. **Assignment of offenders to camp; period of camp confinement; return to court; sentence or probation; revocation of probation; transfer of inmates by commissioner of public institutions.**

1 The judge of any court with original criminal jurisdic-
2 tion may suspend the imposition of sentence of any male

3 youth convicted of or pleading guilty to a criminal offense,
4 other than an offense punishable by life imprisonment,
5 who has attained his sixteenth birthday but has not
6 reached his twenty-first birthday at the time of the com-
7 mission of the crime, and commit him to the custody of
8 the West Virginia commissioner of public institutions to
9 be assigned to a forestry camp. The period of confinement
10 in the forestry camp shall be for a period of one year, or
11 longer if it is deemed advisable by the camp superinten-
12 dent, but in any event such period of confinement shall
13 not exceed two years. If, in the opinion of the superin-
14 tendent, such male offender proves to be an unfit person
15 to remain in such a camp, he shall be returned to the
16 court which committed him to be dealt further with ac-
17 cording to law. In such event, the court may place him
18 on probation or sentence him for the crime for which he
19 has been convicted.

20 In his discretion, the judge may allow the defendant
21 credit on his sentence for time he has spent in the forestry
22 camp. When, in the opinion of the superintendent, any
23 boy has satisfactorily completed the camp training pro-
24 gram and the term for which he was assigned has ex-
25 pired, such male offender shall be returned to the juris-
26 diction of the court which originally committed him. He
27 shall be eligible for probation for the offense with which
28 he is charged, and the judge of the court shall immedi-
29 ately place him on probation. In the event his probation
30 is subsequently revoked by the judge, he shall be given
31 the sentence he would have originally received had he not
32 been committed to the camp and subsequently placed on
33 probation. The court shall, however, give the defendant
34 credit on his sentence for the time he spent in the camp.

35 Any male youth between the ages of ten and eighteen
36 committed by the judge of any juvenile or domestic re-
37 lations court of competent jurisdiction for any of the
38 causes, and in the manner prescribed in article five, chap-
39 ter forty-nine of this code, may, if such youth is or has
40 attained the age of sixteen, be placed in a forestry camp
41 or transferred from the industrial school or like facility
42 to a forestry camp and back to such facility by the com-

43 missioner of public institutions, if he deems it proper for
44 the youth's detention and rehabilitation.

CHAPTER 100

(Senate Bill No. 194—By Mr. Barnett)

[Passed March 11, 1972; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor carriers and exempting from the provisions of this chapter, motor vehicles used exclusively by commission agents and oil distributors.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PURPOSE, DEFINITIONS AND EXEMPTIONS.

§24A-1-3. Exemptions from chapter.

- 1 The provisions of this chapter, except where spe-
- 2 cifically otherwise provided, shall not apply to:
- 3 (1) Motor vehicles operated exclusively in the trans-
- 4 portation of United States mail or in the transportation of
- 5 newspapers;
- 6 (2) Motor vehicles owned and operated by the United
- 7 States of America, the state of West Virginia or any
- 8 county, municipality or county board of education, or by
- 9 any department thereof, and any motor vehicles operated
- 10 under a contract with a county board of education ex-
- 11 clusively for the transportation of children to and from
- 12 school or such other legitimate transportation for the
- 13 schools as the commission may specifically authorize;
- 14 (3) Motor vehicles used exclusively in the transporta-
- 15 tion of agricultural or horticultural products, livestock,

16 poultry and dairy products from the farm or orchard on
17 which they are raised or produced to markets, processing
18 plants, packing houses, canneries, railway shipping
19 points and cold storage plants, and in the transportation
20 of agricultural or horticultural supplies to such farms or
21 orchards to be used thereon;

22 (4) Motor vehicles used exclusively in the transporta-
23 tion of human or animal excreta;

24 (5) Motor vehicles used exclusively in ambulance
25 service;

26 (6) Motor vehicles used exclusively for volunteer fire
27 department service;

28 (7) Motor vehicles used exclusively in the transporta-
29 tion of coal from mining operations to loading facilities
30 for further shipment by rail or water carriers; and

31 (8) Motor vehicles used by petroleum commission
32 agents and oil distributors solely for the transportation
33 of petroleum products and related automotive products
34 when such transportation is incidental to the business of
35 selling said products: *Provided, however,* That the owner
36 of said vehicle or vehicles shall have in effect at all times
37 a public liability insurance policy with respect to said
38 vehicle or vehicles and the driver or drivers thereof in
39 an amount equal to or in excess of that required by the
40 public service commission of West Virginia for similar
41 vehicles under its jurisdiction, evidence of which insur-
42 ance shall be filed with the motor carrier division of said
43 public service commission. All such motor vehicles not
44 so insured shall be subject to the provisions of this
45 chapter.

CHAPTER 101

(Senate Bill No. 151—By Mr. McCourt, Mr. President,
and Mr. Deem)

[Passed March 9, 1972; in effect July 1, 1972. Approved by the Governor.]

AN ACT to amend and reenact sections one and two, article
four, chapter seventeen of the code of West Virginia, one

thousand nine hundred thirty-one, as amended; to amend and reenact section two, article three, chapter twenty of said code; and to amend and reenact section one, article four of said chapter twenty, all relating to transferring the responsibility for the construction and maintenance of roads on publicly owned lands within state parks and forests from the director of the department of natural resources to the commissioner of highways; and relating to the authority of the department of natural resources to cut and plant vegetation along rights-of-way of the roads in state parks, state forests and public hunting and fishing areas.

Be it enacted by the Legislature of West Virginia:

That sections one and two, article four, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section two, article three, chapter twenty of said code be amended and reenacted; and that section one, article four of said chapter twenty be amended and reenacted, all to read as follows:

Chapter

17. Roads and Highways.

20. Natural Resources.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 4. STATE ROAD SYSTEM.

§17-4-1. Classification of state roads; control over state roads; control by county courts of roads, bridges and landings; roads in state parks, forests and public hunting and fishing areas made part of state road system.

§17-4-2. Definitions of roads comprising state road system.

§17-4-1. **Classification of state roads; control over state roads; control by county courts of roads, bridges and landings; roads in state parks, forests and public hunting and fishing areas made part of state road system.**

- 1 The state road system shall consist of roads functionally
- 2 classified into five categories as follows: (1) Express-
- 3 way; (2) trunkline; (3) feeder; (4) state local service;
- 4 and (5) park and forest. The authority and control over

5 the state roads shall be vested in the commissioner of
6 highways.

7 The county courts shall retain the superintendence and
8 administration of roads, bridges and landings that remain
9 under their jurisdiction as provided in section one, article
10 ten of this chapter.

11 The commissioner of highways shall take control of
12 all existing roads which are publicly owned within the
13 state parks system and in the state forests including pub-
14 lic hunting and fishing areas, formerly the responsibility
15 of the director of the department of natural resources, on
16 the effective date of this section and shall assume control
17 of their further construction, reconstruction and main-
18 tenance as a part of the state road system. The commis-
19 sioner is responsible for construction, reconstruction and
20 maintenance as a part of the state road system of any new
21 roads for public usage that may be constructed with the
22 approval of the director of the department of natural re-
23 sources, in existing state parks, state forests, public hunt-
24 ing and fishing areas or any such roads for public usage
25 which may be established on publicly owned lands in any
26 future state park, state forest, public hunting or fishing
27 areas.

28 The director of the department of natural resources has
29 the authority and responsibility to do the necessary cut-
30 ting and planting of vegetation along road rights-of-way
31 in state parks, state forests and public hunting and fishing
32 areas.

§17-4-2. Definitions of roads comprising state road system.

1 The following meanings shall be ascribed to roads
2 comprising the state road system:

3 (a) "Expressway."—Serves major intrastate and inter-
4 state travel, including federal interstate routes.

5 (b) "Trunkline."—Serves major city to city travel.

6 (c) "Feeder."—Serves community to community travel
7 or collects and feeds traffic to the higher systems or both.

8 (d) "State local service."—Localized arterial and spur
9 roads which provide land access and socioeconomic bene-
10 fits to abutting properties.

- 11 (e) "Park and Forest."—Serves travel within state
12 parks, state forests and public hunting and fishing areas.

CHAPTER 20. NATURAL RESOURCES.

Article

3. Forests and Wildlife Areas.
4. Parks and Recreation.

ARTICLE 3. FORESTS AND WILDLIFE AREAS.

PART I. FORESTS AND WILDLIFE AREAS.

§20-3-2. Acquisition of suitable lands by director; maintenance thereof as state forests or wildlife areas; relinquishment of construction and maintenance of roads to the commissioner of highways.

1 The director may with the consent of the governor
2 purchase, in the name of the state, out of funds set aside
3 for the purpose, or out of any unused funds in his hands,
4 lands suitable for forest culture, state forests or wildlife
5 refuges. Such funds may also be used for the construction
6 of dams for fish refuges on lands so acquired. Purchase
7 may be made on terms requiring not less than one third
8 of the purchase price to be paid at the time of the con-
9 veyance with the residue to be paid in not less than one
10 or two years after date. Without the consent of the
11 governor, not more than twenty-five dollars per acre shall
12 be paid for lands to be used for the purpose of this article.
13 The director may also receive the gift of such lands by
14 deed or bequest. In all cases of transfers to the state,
15 the fee simple title shall pass to the state, except minerals
16 and mining rights to remove such minerals may be ex-
17 cepted or reserved.

18 The director shall protect, preserve and maintain lands
19 so acquired as state forests and wildlife areas for the
20 propagation and distribution of forest trees and for the
21 protection, management, propagation and distribution of
22 the fish, wild animals and birds thereon. He may pre-
23 scribe and enforce rules and regulations consistent with
24 the laws of the state to carry out that objective. The
25 director may prescribe and enforce rules prohibiting all
26 hunting and fishing, pursuing, catching, trapping, captur-
27 ing and killing of fish, wild animals and birds upon such

28 state forests and wildlife areas for such length of time
29 as he may deem proper.

30 The director may provide special regulations and open
31 seasons for the taking of any wild birds, wild animals or
32 fish on such lands in the manner provided in this chapter.

33 Except for the authority and responsibility to do the
34 necessary cutting and planting of vegetation along road
35 rights-of-way in state parks, state forests and public
36 hunting and fishing areas, the director of the department
37 of natural resources shall, upon the effective date of this
38 section, relinquish to the commissioner of highways his
39 authority over publicly owned roads in state parks, state
40 forests and public hunting and fishing areas, and shall
41 thereafter neither construct, reconstruct nor maintain
42 any road or vehicular bridge for public usage in such
43 areas except as is specifically authorized by this chapter.
44 This relinquishment shall not be construed to alter the
45 responsibilities assigned to the director of the department
46 of natural resources in section eleven, article four, chapter
47 twenty of the code of West Virginia.

ARTICLE 4. PARKS AND RECREATION.

§20-4-1. Duties and functions of division of parks and recreation.

1 The division of parks and recreation herein created and
2 established shall have within its jurisdiction and super-
3 vision:

4 (a) All state parks and state recreation areas, includ-
5 ing all lodges, cabins, swimming pools, motorboating and
6 all other recreational facilities therein, except the roads
7 therein which, by reason of section one, article four,
8 chapter seventeen, are transferred to the state road sys-
9 tem and to the responsibility of the commissioner of high-
10 ways with respect to the construction, reconstruction and
11 maintenance of the roads or any future roads for public
12 usage on publicly owned lands in future state parks, state
13 forests and public hunting and fishing areas;

14 (b) The authority and responsibility to do the neces-
15 sary cutting and planting of vegetation along road rights-
16 of-way in state parks and recreational areas;

17 (c) The functions and services of the following com-
18 missions which are hereby made activities of the de-
19 partment of natural resources:

20 (1) Point Pleasant battle monument commission, cre-
21 ated by Joint Resolution No. 24 adopted by the Legisla-
22 ture of West Virginia on the sixth day of December, one
23 thousand eight hundred seventy-five;

24 (2) The Prickett's Fort state park commission, created
25 by chapter forty-eight, acts of the Legislature of West
26 Virginia, regular session, one thousand nine hundred
27 twenty-seven;

28 (3) Droop Mountain battlefield commission, created by
29 House Joint Resolution No. 8 adopted by the Legislature
30 of West Virginia on the twenty-fifth day of January, one
31 thousand nine hundred twenty-seven;

32 (4) Philippi battlefield commission, created by House
33 Joint Resolution No. 15 adopted by the Legislature of
34 West Virginia on the thirtieth day of March, one thousand
35 nine hundred twenty-seven; and

36 (5) Carnifex Ferry battleground park commission, cre-
37 ated by chapter nine, acts of the Legislature of West
38 Virginia, regular session, one thousand nine hundred
39 thirty-one; and

40 (d) Administration of all laws and regulations relat-
41 ing to the establishment, development, protection, use and
42 enjoyment of all state parks and state recreational facili-
43 ties consistent with the provisions of this chapter.

44 Berkeley Springs sanitarium in Morgan county shall be
45 continued as a state recreational facility under the juris-
46 diction and supervision of the division of parks and rec-
47 reation and shall be managed, directed and controlled as
48 prescribed in articles one and four, chapter twenty of
49 the code.

50 The director shall have and is hereby granted all of
51 the powers and authority and shall perform all of the
52 functions and duties with regard to Berkeley Springs
53 sanitarium that were previously vested in and performed
54 by the state commissioner of public institutions, who
55 shall no longer have such power and authority and whose
56 power and authority with regard to Berkeley Springs

57 sanitarium is hereby abolished. The title to all property
58 consisting of or belonging to Berkeley Springs sanitarium
59 is hereby transferred to and shall be vested in the direc-
60 tor who shall be the custodian of all deeds and other
61 muniments of title to all of that property and shall cause
62 those deeds and muniments susceptible of recordation to
63 be recorded in the proper office.

64 The chief of the division shall be primarily responsible
65 for the execution and administration of the provisions of
66 this article as an integral part of the natural resources
67 program of the state and shall organize and staff his
68 division for the orderly, efficient and economical accom-
69 plishment of these ends.

CHAPTER 102

(House Bill No. 1032—By Mr. Speaker, Mr. McManus)

[Passed February 26, 1972; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, chapter one hundred forty, acts of the Legislature, regular session, one thousand nine hundred seventy-one, as last amended and reenacted by chapter fifteen, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-one, relating to the issuance and sale by the governor of bonds of the state of West Virginia, under authority of the Roads Development Amendment of 1968, in an amount not exceeding ninety million dollars during the fiscal year ending June thirtieth, one thousand nine hundred seventy-two, for the sole purpose of raising funds for the building and construction of free state roads and highways as provided for by the constitution and the laws enacted thereunder; specifying the powers of and limitations upon the governor in the issuance and sale of such bonds; the amount of bonds that may be issued at one time.

Be it enacted by the Legislature of West Virginia:

That section one, chapter one hundred forty, acts of the Legislature, regular session, one thousand nine hundred

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

ISSUANCE AND SALE OF ROAD BONDS.

§1. Road bonds; amount; when may issue.

1 Bonds of the state of West Virginia, under authority of
2 the Roads Development Amendment of 1968, of the par
3 value not to exceed ninety million dollars during the
4 fiscal year ending June thirty, one thousand nine hun-
5 dred seventy-two, are hereby authorized to be issued and
6 sold for the sole purpose of raising funds for the building
7 and construction of free state roads and highways as pro-
8 vided for by the constitution and the laws enacted there-
9 under. Such bonds may be issued by the governor in such
10 amounts, in coupons or registered form, in such denom-
11 inations, at such time, bearing such date or dates, as the
12 governor may determine, based upon an examination of
13 the West Virginia department of highways' yearly pro-
14 gram which justifies the issuance by the governor of said
15 bonds, and shall become due and payable serially, an-
16 nually or semiannually, in such amounts and mature in
17 such years as the governor may determine: *Provided,*
18 That such bonds shall mature within and not exceeding
19 twenty-five years from their date: *Provided, however,*
20 That the governor shall not offer for sale more than forty
21 million dollars of bonds at any one time: *Provided fur-*
22 *ther,* That the governor must offer said bonds for com-
23 petitive bids from recognized financial investment insti-
24 tutions before said bonds may be sold.

CHAPTER 103

(Com. Sub. for Senate Bill No. 74—By Mr. Hubbard)

[Passed March 9, 1972; in effect ninety days from passage. Approved by the Governor.]

AN ACT authorizing the issuance and sale by the governor of bonds of the state of West Virginia, under authority of the

Better Roads Amendment of 1964, in an amount not exceeding twenty million dollars during the fiscal year ending June thirtieth, one thousand nine hundred seventy-three, for the sole purpose of raising funds for the building and construction of state roads and highways as provided for by the constitution and the laws enacted thereunder; specifying the powers of and limitations upon the governor in the issuance and sale of such bonds; prescribing the duties of the auditor and treasurer with respect to such bonds; providing for transfer and registration fees with respect to registered bonds and the disposition of such fees; providing for places of payment of principal and interest on such bonds; exempting such bonds from taxation by the state, or by any county, district, or municipality thereof; setting forth the form of coupon and registered bonds and coupons; stating what moneys shall be paid into the state road sinking fund; providing for the disposition and investment of the state road sinking fund; providing a covenant between the state and the bondholders; providing that the proceeds from the sale of the bonds shall be paid into a separate and distinct account in the state road fund and for expenditures from such account; providing that the plates, etc., from which the bonds are produced or made shall be the property of the state; providing for interim certificates in lieu of permanent bonds; providing for the state treasurer to be financial advisor; providing for the attorney general or his duly appointed legal representative to serve as bond counsel; and providing that all necessary expenses, including legal expenses approved by the attorney general, incurred in the execution of this act shall be paid out of the state road fund on warrants of the auditor of the state drawn on the state treasurer.

Be it enacted by the Legislature of West Virginia:

ISSUANCE AND SALE OF ROAD BONDS.

- §1. Road bonds; amount; when may issue.
- §2. Transfer fee; registration fee; where payable; interest rate; tax exempt.
- §3. Form of bond.
- §4. Form of coupon.
- §5. Listing by auditor.
- §6. State road sinking fund sources used to pay bonds and interest; investment of remainder.

- §7. Covenants of state.
- §8. Sale by governor; minimum price.
- §9. Proceeds paid into separate account in state road fund; expenditures.
- §10. Plates, etc., property of state.
- §11. Auditor to be custodian of unsold bonds.
- §12. Interim certificates.
- §13. State treasurer to be financial advisor.
- §14. Attorney general or his duly appointed legal representative to serve as bond counsel.
- §15. Approval and payment of all necessary expenses.

§1. Road bonds; amount; when may issue.

1 Bonds of the state of West Virginia, under authority
2 of the Better Roads Amendment of 1964, of the par
3 value not to exceed twenty million dollars during the
4 fiscal year ending June thirty, one thousand nine hun-
5 dred seventy-three, are hereby authorized to be issued
6 and sold for the sole purpose of raising funds for the
7 building and construction of state roads and high-
8 ways as provided for by the constitution and the laws
9 enacted thereunder. Such bonds may be issued by the
10 governor in such denominations, at such time, bearing
11 such date or dates as the governor may determine,
12 based upon an examination of the West Virginia de-
13 partment of highways' yearly program which justifies
14 the issuance by the governor of said bonds, and shall
15 become due and payable serially, annually or semi-
16 annually, in such amounts and mature in such years as
17 the governor may determine: *Provided*, That such bonds
18 shall mature within and not exceeding twenty-five years
19 from their date: *Provided further*, That the governor
20 must offer said bonds for competitive bids from recog-
21 nized financial investment institutions before said bonds
22 may be sold.

§2. Transfer fee; registration fee; where payable; interest rate; tax exempt.

1 The auditor and the treasurer are hereby authorized
2 to arrange for the transfer of registered bonds and for
3 each such transfer a fee of fifty cents shall be charged
4 by and paid to the state of West Virginia, to the credit
5 of the state road sinking fund. Bonds taken in exchange
6 shall be cancelled by the auditor and treasurer and be

7 carefully preserved by the treasurer. The treasurer
8 shall make provisions for registering "payable to bearer"
9 bonds, and for each bond registered a fee of fifty cents,
10 shall likewise be charged by and paid to the state of
11 West Virginia, to the credit of the state road sinking
12 fund. All such bonds shall be payable at the office of
13 the treasurer of the state of West Virginia, or, at the
14 option of the holder, at a bank in the city of New York
15 to be designated by the governor, or, at the option
16 of the holder at such other bank or banks, within the state,
17 as may be designated or approved by the governor. The
18 bonds shall bear interest, payable semiannually, to bearer,
19 at the office of the treasurer of the state of West Virginia,
20 at the capitol of the state, or at the banks designated and
21 approved by the governor, upon presentation and surren-
22 der of interest coupons then due, in the case of coupon
23 bonds. For the payment of interest on registered bonds,
24 the treasurer of the state of West Virginia shall requisition
25 a warrant from the auditor of the state to be drawn on the
26 state treasurer, and shall mail such warrant to the regis-
27 tered owner at the address as shown by the record of regis-
28 tration. Both the principal and interest of the bonds shall
29 be made payable in lawful money of the United States
30 of America and the bonds shall be exempt from taxation
31 by the state of West Virginia, or by any county, dis-
32 trict, or municipality thereof, which facts shall appear
33 on the face of the bonds as part of the contract with
34 the holder thereof.

§3. Form of bond.

1 The bonds shall be executed on behalf of the state
2 of West Virginia, by the manual or facsimile signature of
3 the treasurer thereof, under the great seal of the state or
4 a facsimile thereof, and countersigned by the manual or
5 facsimile signature of the auditor of the state: *Provided*,
6 That one of said signatures on said bonds shall be a man-
7 ual signature and said bonds shall be in the following form
8 or to the following effect, as nearly as may be, namely:

9

Coupon Road Bond

10

(Or registered road bond, as the case may be)

11

OF THE

12

STATE OF WEST VIRGINIA

13 \$.....

No.

14 The state of West Virginia, under and by virtue of
15 authority of an amendment to the constitution, which
16 was proposed by House Joint Resolution No. 10, adopted
17 the seventh day of March, one thousand nine hundred
18 sixty-three, and was ratified by a vote of the people
19 at the general election on the third day of November,
20 one thousand nine hundred sixty-four, which is here-
21 by made a part hereof as fully as if set forth at length
22 herein, acknowledges itself to be indebted to and hereby
23 promises to pay to the bearer hereof (in case of a coupon
24 bond) or to or assigns (the owner
25 of record, in case of registered bonds) on the _____ day
26 of _____, 19____, in lawful money of the
27 United States of America at the office of the treasurer
28 of the state of West Virginia at the capitol of said state,
29 or, at bank in the city of
30 New York, or, at bank, at the
31 option of the holder, the sum of dollars,
32 with interest thereon at _____ per centum per annum
33 from the date, payable semiannually in like lawful money
34 of the United States of America at the treasurer's office
35 or banks aforesaid, on the first day of _____ and
36 the first day of _____ of each year (and in
37 the case of coupon bonds) according to the tenor of
38 the annexed coupons bearing the facsimile signature
39 of the treasurer of the state of West Virginia, upon sur-
40 render of such coupons. This bond (in case of a coupon
41 bond) may be exchanged for a registered bond of like
42 tenor upon application to the treasurer of the state of
43 West Virginia.

44 (Redemption provisions, if any, to be inserted here)

45 To secure the payment of the principal and interest
46 of this bond, the state of West Virginia covenants and
47 agrees with the holder as follows: (1) That this bond
48 shall constitute a direct and general obligation of the
49 state of West Virginia; (2) that the full faith and credit
50 of the state is pledged to secure the payment of the
51 principal and interest of this bond; (3) that an annual

52 state tax shall be collected in an amount sufficient to
 53 pay as it may accrue the interest on this bond and the
 54 principal thereof; and (4) that such tax shall be levied in
 55 any year only to the extent that the moneys in the
 56 state road fund irrevocably set aside and appropriated
 57 for and applied to the payment of the interest on and
 58 principal of this bond becoming due and payable in such
 59 year are insufficient therefor.

60 This bond is hereby made exempt from any taxa-
 61 tion by the state of West Virginia, or by any county,
 62 district, or municipal corporation thereof.

63 In testimony whereof, witness the manual or facsimile
 64 signature of the treasurer of the state of West Virginia,
 65 and the manual or facsimile countersignature of the
 66 auditor of the state, hereto affixed according to law,
 67 dated the day of, one thousand
 68 nine hundred, and the seal of the state of
 69 West Virginia or a facsimile thereof.

70

71 _____
 Treasurer of the State of West Virginia

72 (SEAL)

73 Countersigned:

74 _____

75 Auditor of the State of West Virginia

§4. Form of coupon.

1 The form of coupon shall be substantially as follows,
 2 to wit:

3

STATE OF WEST VIRGINIA

4 Bond No. Coupon No.

5 On the first day of, 19...., the state
 6 of West Virginia will pay to the bearer, in lawful money
 7 of the United States of America, at the office of the
 8 treasurer of the state, or, at bank
 9 in the city of New York, or, at, at the
 10 option of the holder, the sum of
 11 dollars, the same being semiannual interest on Road
 12 Bond No.

13

14 _____
 Treasurer of the State of West Virginia

15 The signature of the treasurer to such coupon shall
16 be by his facsimile signature and the coupons shall be
17 numbered in the order of their maturity, from number
18 one consecutively. The bonds and coupons may be
19 signed, as provided in this act, by the present treasurer
20 and auditor, or by any of their respective successors
21 in office, and the bonds signed by the persons now in
22 the office may be sold by the governor or his successor
23 in office without being signed by the successor in office
24 of the present treasurer or auditor.

§5. Listing by auditor.

1 All coupons and registered bonds issued under this
2 act shall be separately listed by the auditor of the state
3 in books provided for the purpose, in each case giving
4 the date, number, character and amount of obligations
5 issued, and in case of registered bonds, the name and
6 post-office address of the person, firm or corporation
7 registered as the owner thereof.

§6. State road sinking fund sources used to pay bonds and interest; investment of remainder.

1 Into the state road sinking fund there shall be paid
2 all money from any and all appropriations made by
3 the state from the state road fund for the purpose of
4 paying the interest on such bonds or paying off and
5 retiring the bonds, from transfer and registration fees
6 as herein provided, and from any other source what-
7 soever which is made liable by law for the payment
8 of the principal of such bonds or the interest thereon.

9 All such funds shall be kept by the treasurer in a
10 separate account, under the designation aforesaid, and
11 all money belonging to the fund shall be deposited in
12 the state treasury to the credit thereof.

13 Such fund shall be applied by the treasurer of the
14 state first to the payment of the semiannual interest
15 on such bonds as it shall become due as herein pro-
16 vided. The remainder of the fund shall be turned over
17 by the state treasurer to the state sinking fund com-
18 mission, whose duty it shall be to invest the same in

19 obligations of the government of the United States,
20 bonds of the state of West Virginia, or any political
21 subdivision thereof: *Provided*, That bonds or other obli-
22 gations so purchased by the state sinking fund commis-
23 sion shall mature so as to provide sufficient money to
24 pay off all bonds herein provided to be issued as they
25 become due; and the money so paid into the state road
26 sinking fund under the provisions of this act shall be
27 expended for the purpose of paying the interest and
28 principal of the bonds hereby provided for as they
29 severally become due and payable and for no other
30 purpose except that the fund may be invested until
31 needed, as herein provided.

§7. Covenants of state.

1 The state of West Virginia covenants and agrees with
2 the holders of the bonds issued pursuant hereto as fol-
3 lows: (1) That such bonds shall constitute a direct and
4 general obligation of the state of West Virginia; (2) that
5 the full faith and credit of the state is hereby pledged
6 to secure the payment of the principal and interest
7 of such bonds; (3) that an annual state tax shall be
8 collected in an amount sufficient to pay as it may accrue
9 the interest on such bonds and the principal thereof;
10 and (4) that such tax shall be levied in any year only
11 to the extent that the moneys in the state road fund
12 irrevocably set aside and appropriated for and applied
13 to the payment of the interest on and principal of said
14 bonds becoming due and payable in such year are in-
15 sufficient therefor.

§8. Sale by governor; minimum price.

1 The governor shall sell the bonds herein authorized
2 at such time or times as he may determine necessary
3 to provide funds for the building and construction of
4 state roads and highways, as herein provided, upon the
5 recommendation of the West Virginia commissioner of
6 highways, and after reviewing the program of the West
7 Virginia department of highways and subject to the limi-
8 tations contained in this act. All sales shall be at not less
9 than par and accrued interest. All interest coupons becom-
10 ing payable prior to the sale date shall be cancelled

11 by the treasurer and rendered ineffective, before the de-
12 livery of the bonds so sold.

§9. Proceeds paid into separate account in state road fund; expenditures.

1 The proceeds of all sales of bonds herein authorized
2 shall be paid into a separate and distinct account in
3 the state road fund and shall be used and appropriated
4 solely for the building and construction of state roads
5 and highways provided for by the state constitution and
6 the laws enacted thereunder. Except for such sums nec-
7 essary for current operating balances, such accounts shall
8 be invested and reinvested in short-term obligations of
9 the United States treasury: *Provided*, That no such in-
10 vestment or reinvestment shall adversely affect the cur-
11 rent operating balances of such account.

§10. Plates, etc., property of state.

1 The plates, casts, dies or other forms from which the
2 bonds authorized by this act are produced or made shall
3 be the property of the state of West Virginia.

§11. Auditor to be custodian of unsold bonds.

1 The state auditor shall be the custodian of all unsold
2 bonds issued pursuant to the provisions of this act.

§12. Interim certificates.

1 The governor may authorize the issuance of interim
2 certificates to be issued to the purchasers of such bonds
3 to be held by them in lieu of permanent bonds. When
4 interim certificates are so issued, they shall become full
5 and legal obligations of the state of West Virginia under
6 all of the provisions of this act just as fully and completely
7 as the permanent bonds.

§13. State treasurer to be financial advisor.

1 The state treasurer shall serve as financial advisor to
2 the governor for the issuance and sale of such bonds.

**§14. Attorney general or his duly appointed legal representa-
tive to serve as bond counsel.**

1 The attorney general, or his duly appointed legal rep-
2 resentative, shall serve as bond counsel and shall be re-

3 sponsible for the issuance of a final approving opinion
4 regarding the legality of the sale of such bonds.

§15. Approval and payment of all necessary expenses.

1 All necessary expenses, including legal expenses ap-
2 proved by the attorney general, incurred in the execu-
3 tion of this act shall be paid out of the state road fund on
4 warrants of the auditor of the state drawn on the state
5 treasurer.

CHAPTER 104

(House Bill No. 753—By Mr. Lohr and Mr. Ours)

[Passed March 11, 1972; in effect July 1, 1972. Approved by the Governor.]

AN ACT to repeal sections seventeen, eighteen, nineteen, nineteen-a, nineteen-b, twenty and twenty-one, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter eighteen of said code by adding thereto a new article, designated article six, relating to driver education; purposes and objectives of article; minimum course standards; rules and regulations; specifying who may enroll in driver education course; exemption from learner's permit requirement; expenditure of school funds for driver education courses; insurance coverage of vehicles used in driver education; to whom driver education shall be made available, when, exemption, and pupil's application for unrestricted operator's permit; licensing of commercial driver education schools and standards for them.

Be it enacted by the Legislature of West Virginia:

That sections seventeen, eighteen, nineteen, nineteen-a, nineteen-b, twenty and twenty-one, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that chapter eighteen of said code be amended by adding thereto a new article, designated article six, to read as follows:

ARTICLE 6. DRIVER EDUCATION.

- §18-6-1. Purpose and objectives of article.
- §18-6-2. Where provided; implementation deadlines; priorities for course availability.
- §18-6-3. State board to establish minimum course standards; students with mental or physical defects; minimum standards specified.
- §18-6-4. Rules and regulations.
- §18-6-5. Establishment and maintenance of driver education course; who may enroll; exemption from learner's permit requirement.
- §18-6-6. Expenditure of school funds for driver education courses; appropriations.
- §18-6-7. Automobile liability insurance covering vehicles used in driver education.
- §18-6-8. Driver education course to be made available to all secondary school pupils prior to their graduation; exemption; application by pupil for unrestricted operator's license.
- §18-6-9. Commercial driver education schools—Course of instruction; issuance and renewal of license; fee; application for license; inspections and revocation of license; lists of schools offering approved courses.
- §18-6-10. Same—Posting of licenses; assignment or transfer; certificates to persons completing course; maximum tuition fee.

§18-6-1. Purpose and objectives of article.

1 The purpose of this article is to ensure that every sec-
2 ondary school pupil has the opportunity, at or about the
3 time he reaches licensing age, to enroll in a course of
4 driver education designed to train him to drive skillfully
5 and safely under all traffic and roadway conditions and
6 circumstances; to make the driver education course avail-
7 able to out-of-school youths and to adults; and to ensure
8 that commercial driver education schools achieve and
9 maintain a level of driver education equal to the minimum
10 standards that are prescribed for secondary schools.

§18-6-2. Where provided; implementation deadlines; priorities for course availability.

1 No later than the first day of the public school term
2 beginning in the year one thousand nine hundred seventy-
3 three, there shall be offered in all public secondary
4 schools within the state an approved, comprehensive
5 course in driver education.

6 As the first priority, the driver education course shall
7 be made available at no cost to all secondary school pupils
8 at or about the time they reach licensing age.

9 As the second priority, the driver education course shall
10 be made available to all persons who do not attend sec-
11 ondary schools who have reached their sixteenth birth-
12 day and are under eighteen years of age. County boards
13 of education may require the persons described in this
14 paragraph who enroll in a public secondary school driver
15 education course to pay tuition not to exceed fifty dol-
16 lars.

17 As the third priority, the driver education course shall
18 be made available to all persons who do not attend sec-
19 ondary school who are eighteen years of age or older,
20 but first consideration for persons in this age group shall
21 be given to those who are applying for their first oper-
22 ator's license. County boards of education may require
23 the persons described in this paragraph who enroll in a
24 public secondary school driver education course to pay
25 tuition not to exceed seventy-five dollars.

26 In those counties where sufficient public secondary
27 school driver education courses are not available to meet
28 all requests for the course, county boards of education
29 shall, as quickly as possible, make sufficient courses avail-
30 able to fill those requests.

**§18-6-3. State board to establish minimum course standards;
students with mental or physical defects; minimum
standards specified.**

1 The state board of education shall establish minimum
2 standards for all driver education courses offered and
3 made available to persons within the state, regardless of
4 whether the courses are offered by public, private, paro-
5 chial, denominational or commercial schools, but no per-
6 son shall be permitted to enroll in any driver education
7 course who has a known mental or physical defect that
8 would prevent the person from qualifying for an oper-
9 ator's license, unless the mental or physical defect is
10 controlled or corrected so the person could so qualify.

11 The minimum standards shall provide at least that:

12 (a) All driver education courses offered within the
13 state are taught by instructors certified by the state
14 board as qualified for these purposes.

15 (b) Each person enrolled in a driver education course
16 shall receive practice driving and observation in a dual
17 control automobile and instruction in at least the follow-
18 ing:

19 (1) Basic and advanced driving techniques, including
20 techniques for handling emergencies.

21 (2) Traffic regulations and laws of the road as pro-
22 vided in chapter seventeen-c of this code, and other ap-
23 plicable state and local laws and ordinances.

24 (3) Critical mechanical parts of vehicles requiring
25 preventive maintenance for safety.

26 (4) The vehicle, highway and community features
27 that aid the driver in avoiding crashes; protect him and
28 his passengers in crashes; and maximize the salvage of
29 the injured.

30 (5) Signs, signals, highway markings and highway
31 design features which require understanding for safe
32 operation of motor vehicles.

33 (6) Differences in characteristics of urban and rural
34 driving, including safe use of modern expressways.

35 (7) Pedestrian safety.

36 In addition, in driver education courses participating
37 students shall be encouraged to acquire first aid skill.

§18-6-4. Rules and regulations.

1 In accordance with chapter twenty-nine-a of this code,
2 the state board shall, with the advice of the state super-
3 intendent and the superintendent of the department of
4 public safety, adopt rules and regulations governing the
5 establishment, conduct and scope of driver education for
6 use in the public, private, parochial and denominational
7 secondary schools located within this state, subject to the
8 requirements and exceptions set forth in this article.

§18-6-5. Establishment and maintenance of driver education course; who may enroll; exemption from learner's permit requirement.

1 The state superintendent shall promote and direct the
2 establishment and maintenance of courses of instruction
3 in driver education in secondary schools in accordance
4 with the provisions of this article and the rules and

5 regulations that the state board adopts pursuant to sec-
6 tion four of this article. Directors, trustees or other per-
7 sons having control or authority over private, parochial
8 or denominational secondary schools, who establish and
9 maintain such courses in the schools under their control
10 or supervision, shall comply with the rules and regula-
11 tions that the state board adopts pursuant to section four
12 of this article.

13 In the case of a pupil who will not reach his sixteenth
14 birthday before he completes the driver education course
15 in which he is enrolled, instruction shall be limited to the
16 classroom. Pupils who will reach their sixteenth birthday
17 before they complete the driver education course and
18 those who are sixteen years of age and older shall receive
19 instruction and practical training in the operation of
20 motor vehicles on the public streets and highways, and
21 the pupil need not have the learner's permit required
22 by section five, article two, chapter seventeen-b of this
23 code, if he is operating a dual control automobile and a
24 duly appointed instructor is actually occupying a seat
25 beside the pupil.

**§18-6-6. Expenditure of school funds for driver education
courses; appropriations.**

1 County boards of education, subject to the rules and
2 regulations of the state board, may expend school funds
3 to maintain and repair vehicles used for instructional pur-
4 poses, to purchase fuel, lubricants, parts and accessories
5 therefor, to pay the compensation of teachers or instruc-
6 tors and to procure automobile insurance, where the
7 expenditures are for the purpose of establishing or main-
8 taining driver education courses in public secondary
9 schools pursuant to this article. These expenditures, in-
10 cluding compensation of teachers or instructors, may be
11 made over a period of twelve months.

12 Each county board of education shall receive from funds
13 specially appropriated for the driver education courses
14 provided in public secondary schools a sum which shall
15 be proportionate to the total amount available for dis-
16 tribution for that purpose to all county boards in the state
17 in the ratio which the number of pupils who are enrolled
18 in driver education courses in public secondary schools

19 in the county bears to the total number of pupils who are
20 enrolled in driver education courses in all public second-
21 ary schools within the state, but the payment shall not
22 exceed the sum of thirty-five dollars for each such pupil
23 per school year.

**§18-6-7. Automobile liability insurance covering vehicles used
in driver education.**

1 County boards of education shall procure or require
2 automobile liability insurance in the amount the state
3 board shall prescribe covering motor vehicles owned or
4 operated for driver education courses. The board having
5 control of the financial and business affairs of any other
6 state educational institution which offers driver educa-
7 tion courses shall procure or require automobile liability
8 insurance in like amount covering motor vehicles owned
9 or operated for any driver education course. The insur-
10 ance shall be against any liability arising out of the use of
11 vehicles in connection with any driver education course.

**§18-6-8. Driver education course to be made available to all
secondary school pupils prior to their graduation;
exemption; application by pupil for unrestricted
operator's license.**

1 Before any pupil is graduated from a secondary school
2 after the first day of September, one thousand nine hun-
3 dred seventy-five, he shall first be provided an oppor-
4 tunity and encouraged to successfully complete a driver
5 education course approved by the state board in a public,
6 private, parochial or denominational secondary school
7 within the state. If a pupil has successfully completed a
8 similar course in a secondary school of another state and
9 the course is accepted by the state board as adequately
10 meeting and complying with the course standards es-
11 tablished by the state board, then the aforementioned re-
12 quirement shall be deemed fulfilled regarding that pupil.

13 Any secondary school pupil sixteen years of age or
14 older, but under eighteen years of age, who has success-
15 fully completed a driver education course approved by
16 the state board in a public, private, parochial or denomina-
17 tional secondary school within the state or a similar
18 course in a secondary school of another state and ac-

19 cepted by the state board as adequately meeting and com-
20 plying with the course standards established by the state
21 board, shall, upon proper application and successful com-
22 pletion of all examination and driving tests required by
23 law for issuance of an operator's license to a person
24 eighteen years of age or older, be issued an operator's
25 license without any restriction rather than the junior or
26 probationary operator's license provided for in section
27 three, article two, chapter seventeen-b of this code.

§18-6-9. Commercial driver education schools—Course of instruction; issuance and renewal of license; fee; application for license; inspections and revocation of license; lists of schools offering approved courses.

1 The state board shall prescribe a course of instruction
2 for commercial driver education schools in West Vir-
3 ginia. The requirements and quality of the course of
4 instruction prescribed for commercial driver education
5 schools shall be at least equal to the minimum standards
6 that are prescribed for secondary schools. The state su-
7 perintendent shall issue licenses to commercial driver
8 education schools which offer courses of instruction in
9 driver education which comply with the course of study
10 approved by the state board.

11 A fee of fifty dollars shall be charged by the state
12 superintendent for the issuance of any such license, which
13 may be renewed annually, for a fee of fifty dollars, so
14 long as the licensee complies with the requirements of
15 this article. Sums so received shall be deposited into the
16 state treasury and credited to an account of the depart-
17 ment of education for the administration of the provisions
18 of this article.

19 An application for a license to operate a licensed com-
20 mercial driver education school shall be made upon an
21 official form prescribed by the state superintendent, and
22 licenses shall be granted only when the state superin-
23 tendent is satisfied that the school offers a course of
24 driver education which complies with the requirements
25 approved by the state board.

26 The state superintendent shall periodically cause an
27 inspection to be made of all licensed schools. He shall

28 revoke and require the surrender of the license of any
29 school that fails to achieve and maintain the minimum
30 course standards prescribed therefor or that he finds is not
31 conducting a driver education course that is in conformity
32 with the requirements approved by the state board.

33 The state superintendent shall maintain, file and make
34 available at his office and at other places he selects lists
35 of all public and nonpublic schools offering approved
36 courses of driver education and all commercial schools
37 holding licenses and those whose licenses have been re-
38 voked. The state superintendent shall keep the list cur-
39 rent and shall furnish a copy of the list to the commis-
40 sioner of motor vehicles and to the commissioner of in-
41 surance.

**§18-6-10. Same—Posting of licenses; assignment or transfer;
certificates to persons completing course; maxi-
mum tuition fee.**

1 No license for a commercial driver education school
2 shall be assigned, transferred or used at any location
3 other than that therein designated, and every license shall
4 be posted in a conspicuous place at the school location
5 designated.

6 Persons operating a licensed school shall issue a cer-
7 tificate upon an official form prescribed by the state su-
8 perintendent to persons completing its driver education
9 course. A record shall be kept of every certificate so
10 issued.

11 Tuition of not more than one hundred dollars may be
12 charged by a licensed commercial driver education school
13 for each person enrolled therein.

CHAPTER 105

(Senate Bill No. 183—By Mr. McCourt, Mr. President,
and Mr. Palumbo)

[Passed March 11, 1972; in effect July 1, 1972. Approved by the Governor.]

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

as amended, by adding thereto a new section, designated section twenty-six, relating to the establishment of multi-county regional educational service agencies and the governing boards thereof.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-26. Establishment of multi-county regional educational service agencies.

1 In order to consolidate and more effectively administer
2 existing regional education programs and in order to
3 equalize and extend educational opportunities, the state
4 board of education is authorized and empowered to estab-
5 lish multi-county regional educational service agencies
6 for the purpose of providing educational services to the
7 county school systems, and to make such rules and regu-
8 lations as may be necessary for the effective administra-
9 tion and operation of such agencies.

10 A regional board shall be empowered to receive and
11 disperse funds from the federal government, member
12 counties, gifts and grants.

CHAPTER 106

(Senate Bill No. 201—By Mr. McCourt, Mr. President,
and Mr. Palumbo)

[Passed February 25, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact sections one, two, four, five and eight, article two-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to textbook adoption for public elementary schools.

Be it enacted by the Legislature of West Virginia:

That sections one, two, four, five and eight, article two-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and re-enacted to read as follows:

ARTICLE 2A. TEXTBOOK ADOPTION.

§18-2A-1. Classification of school subjects into adoption groups; adoption schedule.

§18-2A-2. Request for samples and bids; deposit by bidder; selection, approval and publication of multiple list.

§18-2A-4. Execution of contracts; bond.

§18-2A-5. Selection by county boards. -

§18-2A-8. Textbooks must be approved and listed; when changes of textbooks may be effected; rules and regulations.

§18-2A-1. Classification of school subjects into adoption groups; adoption schedule.

1 On or before July first, one thousand nine hundred
2 seventy-two, the state board of education shall classify
3 the elementary school subjects now required to be taught
4 in the schools of our state into five adoption groups. The
5 five adoption groups shall be grouped by related subject
6 fields as nearly as possible.

7 The schedule for the periods of adoption shall be as
8 follows:

9 (a) Adoptions in Group I shall be made in one thou-
10 sand nine hundred seventy-three for a period of five
11 years.

12 (b) Adoptions in Group II shall be made in one thou-
13 sand nine hundred seventy-four for a period of five years.

14 (c) Adoptions in Group III shall be made in one thou-
15 sand nine hundred seventy-five for a period of five years.

16 (d) Adoptions in Group IV shall be made in one thou-
17 sand nine hundred seventy-six for a period of five years.

18 (e) Adoptions in Group V shall be made in one thou-
19 sand nine hundred seventy-seven for a period of five
20 years.

21 Upon the expiration of the periods of adoption, as set
22 out in the aforesaid adoption schedule, the period of
23 adoption and contract of each adoption group in which

24 textbooks for all the subjects are adopted shall be for a
25 period of five years.

**§18-2A-2. Request for samples and bids; deposit by bidder;
selection, approval and publication of multiple
list.**

1 Prior to each adoption year after the one thousand nine
2 hundred seventy-two adoption, and not later than August
3 first, the state board by written request or otherwise shall
4 ask the various publishers of textbooks in the United
5 States to submit samples and prices on all textbooks re-
6 quired to be taught in the public elementary schools of
7 the state for the current adoption period.

8 All bids or proposals shall be under seal, and each bid-
9 der shall deposit in the state treasury such sum of money
10 as the state board may designate, such deposit to be not
11 less than one thousand dollars, and not more than three
12 thousand dollars; and such deposit shall be forfeited to
13 the general school fund if such bidder shall fail or refuse
14 to make and execute such contract and bond as are herein
15 required in case of acceptance of all or part of his bid,
16 and otherwise shall be returned to such bidder after the
17 contract has been made.

18 All bids shall be opened by the state board in public
19 session. After considering the subject matter, printing,
20 binding, general suitability, and prices of books sub-
21 mitted, the board shall, prior to March first of the year
22 in which the multiple adoptions are made by the state
23 board of education, establish a committee of teachers and
24 other educational specialists not to exceed fifteen mem-
25 bers and with the aid of said committee, shall on or before
26 December first, prior to county adoptions, select, approve
27 and publish a list of at least five books or series of books
28 in each subject and grade in the elementary subjects re-
29 quired to be taught. If less than five books or series of
30 books in any subject and grade are offered, the state
31 board may list fewer than five. The committee of teachers
32 and other educational specialists shall report their recom-
33 mendations to the state board on or before November first
34 of the year preceding the adoption by the county board.

§18-2A-4. Execution of contracts; bond.

1 When the selection and approval of the multiple list
2 have been properly made, it shall be the duty of the state
3 board to execute contracts for the selected books with the
4 publishers within thirty days of the approval and adop-
5 tion of the multiple list, prepare a list of the adopted
6 books on the multiple list and publish same, and send a
7 copy to each county superintendent not later than Janu-
8 ary first of the year of the county adoption. Such con-
9 tracts for adoption by the state board of education shall
10 run for five years.

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

23 Bonds required of successful publishers shall provide
24 that:

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

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

37 (c) All books sold in West Virginia will be identical
38 with the official samples filed with the state board of edu-
39 cation as regards size, paper, binding, print, illustrations,

40 subject matter, and other particulars which may affect
41 the value of the books. The state board of education may,
42 however, during the period of the contract approve re-
43 vised editions of an adopted book or series, which will
44 authorize a publisher to furnish such revisions.

§18-2A-5. Selection by county boards.

1 Textbook publishers, upon requests of county superin-
2 tendents, shall furnish to county boards of education the
3 requested sample copies of books that were selected and
4 placed on the state multiple list of textbooks by the state
5 board of education. The textbook publishers shall ship
6 and bill to the county boards of education at the lowest
7 wholesale prices with shipping charges prepaid. After
8 the counties have made their textbook adoptions and cer-
9 tified them to the state board of education, all sample
10 copies of books may be returned to the publishers from
11 whom obtained, shipping charges to be paid by the pub-
12 lisher. County boards may, if they elect to do so, retain
13 the sample books, but shall pay the publishers the lowest
14 wholesale prices for them.

15 The county board of education shall, upon recommenda-
16 tion of the county superintendent with the aid of a com-
17 mittee of teachers not to exceed five members and not
18 later than April first of the year following that in which
19 the multiple list for the group was made and approved,
20 have the option to select from the state multiple list one
21 or more book (s) or series of books for each subject and
22 grade to be used as exclusive basal textbooks in the
23 county for a period of five years.

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

**§18-2A-8. Textbooks must be approved and listed; when
changes of textbooks may be effected; rules and
regulations.**

1 No textbook shall be used in any public elementary

2 school in West Virginia as a basal textbook unless it has
3 been approved and listed on the state multiple list of
4 textbooks by the state board of education. Any changes
5 of textbooks made by the state board of education shall
6 not become effective until grades and classes of the re-
7 spective county school districts have completed work for
8 which the adopted book then in use was originally in-
9 tended. The state board of education may upon request
10 by a county board of education and upon justification of
11 that request, and subsequent to the adoption by a county
12 board of education, approve the adoption of additional
13 books to meet the needs of specific children which were
14 not provided for in the original adoption. Nothing in this
15 section shall apply to the supplementary books that are
16 needed from time to time.

17 The state board of education is authorized to make such
18 rules and regulations as it may deem necessary and
19 expedient to carry out the provisions of this article.

CHAPTER 107

(House Bill No. 878—By Mr. Hatfield and Mr. Goodwin)

[Passed February 21, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section nine, article four, chap-
ter eighteen of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to reim-
bursement of traveling expenses of county superintendents
of schools.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-9. Reimbursement for traveling expenses; voucher.

1 The board may reimburse the superintendent from
2 the current expense fund for all reasonable and necessary

3 travel expenses actually incurred in the performance of
4 his official duties. But no allowance shall be made except
5 upon sworn itemized statements.

CHAPTER 108

(House Bill No. 578—By Mr. Moats, of Taylor)

[Passed March 8, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section four, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compensation of members of county boards of education.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-4. Meetings; quorum; employment and assignment of teachers; compensation of members; affiliation with state and national associations; dues and traveling expenses.

1 The board shall meet on the first Monday in January,
2 and upon the dates provided by law for the laying of
3 levies, and at such other times as the board may fix upon
4 its records. At any meeting as authorized above and in
5 compliance with the provisions of article four of this
6 chapter, the board may employ such qualified teachers,
7 or those who will qualify by the time of entering upon
8 their duties, necessary to fill existing or anticipated va-
9 cancies for the current or next ensuing school year. At
10 a meeting of the board, on or before the first Monday in
11 May, the superintendent shall furnish in writing to the

12 board a list of those teachers to be considered for transfer
13 and subsequent assignment for the next ensuing school
14 year; all other teachers not so listed shall be considered
15 as reassigned to the positions held at the time of this
16 meeting. Such list of those recommended for transfer
17 shall be included in the minute record and the teachers
18 so listed shall be notified in writing, which notice shall
19 be delivered in writing, by certified mail, return receipt
20 requested, to such teachers' last-known addresses within
21 ten days following said board meeting, of their having
22 been so recommended for transfer and subsequent assign-
23 ment.

24 Special meetings may be called by the president or any
25 three members, but no business shall be transacted other
26 than that designated in the call.

27 A majority of the members shall constitute the quorum
28 necessary for the transaction of official business.

29 Board members may receive compensation at a rate
30 not to exceed forty dollars per meeting attended. But they
31 shall not receive pay for more than thirty-six meetings in
32 any one fiscal year.

33 Members shall also be paid, upon the presentation of
34 an itemized sworn statement, for all necessary traveling
35 expenses, including all authorized meetings, incurred on
36 official business, at the order of the board.

37 When, by a majority vote of its members, a county
38 board of education deems it a matter of public interest,
39 such board may join the West Virginia school board as-
40 sociation and the national school board association, and
41 may pay such dues as may be prescribed by said associa-
42 tions and approved by action of the respective county
43 boards. Membership dues and actual traveling expenses
44 of board members for attending meetings of the West
45 Virginia school board association may be paid by their
46 respective county boards of education out of funds avail-
47 able to meet actual expenses of the members, but no
48 allowance shall be made except upon sworn itemized
49 statements.

CHAPTER 109

(Senate Bill No. 118—By Mr. McKown and Mr. Hubbard)

[Passed February 8, 1972; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing transportation across county lines to children of school age.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-13. Authority of boards generally.

1 The boards, subject to the provisions of this chapter
2 and the rules and regulations of the state board, shall
3 have authority:

4 (1) To control and manage all of the schools and school
5 interests for all school activities and upon all school prop-
6 erty, whether owned or leased by the county, including
7 the authority to require that records be kept of all re-
8 ceipts and disbursements of all funds collected or re-
9 ceived by any principal, teacher, student or other person
10 in connection therewith, any programs, activities or other
11 endeavors of any nature operated or carried on by or in
12 the name of the school, or any organization or body di-
13 rectly connected with the school, to audit such records
14 and to conserve such funds, which shall be deemed quasi-
15 public moneys, including securing surety bonds by ex-
16 penditure of board moneys;

17 (2) To establish schools, from preschool through high
18 school, inclusive of vocational schools; and to establish
19 schools and programs, or both, for post high school in-

20 struction, subject to approval of the state board of educa-
21 tion;

22 (3) To close any school which is unnecessary and to
23 assign the pupils thereof to other schools: *Provided*, That
24 such closing shall be officially acted upon and teachers
25 and service personnel involved notified on or before the
26 first Monday in May, in the same manner as provided in
27 section four of this article, except in an emergency,
28 subject to the approval of the state superintendent, or
29 under subdivision (5);

30 (4) To consolidate schools;

31 (5) To close any elementary school whose average
32 daily attendance falls below twenty pupils for two
33 months in succession, and send the pupils to other schools
34 in the district or to schools in adjoining districts. If the
35 teachers in the schools so closed are not transferred or
36 reassigned to other schools, they shall receive one month's
37 salary;

38 (6) (a) To provide at public expense adequate means
39 of transportation, including transportation across county
40 lines, for all children of school age who live more than
41 two miles distance from school by the nearest available
42 road and to provide at public expense and according to
43 such regulations as the board may establish, adequate
44 means of transportation for school children participating
45 in board-approved curricular and extracurricular activ-
46 ities; and provide in addition thereto, by rules and regula-
47 tions and within the available revenues, transportation
48 for those within two miles distance: *Provided*, That in
49 all cases the buses or other transportation facilities owned
50 by the board of education shall be driven or operated
51 only by drivers regularly employed by the board of
52 education: *Provided, however*, That buses shall be used
53 for extracurricular activities as herein provided only
54 when the insurance provided for by this section shall have
55 been effected;

56 (b) To enter into agreements with one another to pro-
57 vide, on a cooperative basis, adequate means of trans-
58 portation across county lines for children of school age

59 subject to the conditions and restrictions of subdivisions
60 (6) and (7) of this section;

61 (7) To provide at public expense for insurance against
62 the negligence of the drivers of school buses, trucks or
63 other vehicles operated by the board; and if the trans-
64 portation of pupils be let out to contract, then the contract
65 therefor shall provide that the contractor shall carry
66 insurance against negligence in such an amount as the
67 board shall specify;

68 (8) To employ and to provide in-service training for
69 teacher aides, the training to be in accordance with rules
70 and regulations of the state board;

71 (9) To establish and conduct a self-supporting dormi-
72 tory for the accommodation of the pupils attending a
73 high school or participating in a post high school pro-
74 gram and of persons employed to teach therein;

75 (10) To employ legal counsel;

76 (11) To provide, at public expense, adequate public
77 liability insurance;

78 (12) No policy or contract of public liability insurance
79 providing coverage for public liability shall be purchased
80 as provided herein, unless it shall contain a provision or
81 endorsement whereby the company issuing such policy
82 waives, or agrees not to assert as a defense to any claim
83 covered by the terms of such policy, the defense of gov-
84 ernmental immunity. In any action against the board,
85 its officers, agents or employees, in which there is in
86 effect liability insurance coverage in an amount equal to
87 or greater than the amount sued for, the attorney for
88 such board, the attorney for such insurance carrier, or
89 any other attorney who may appear on behalf of the
90 board, its agents, officers or employees shall not set up
91 the defense of governmental immunity in any such action.

92 "Quasi-public funds" as used herein are defined as any
93 money received by any principal, teacher, student or
94 other person for the benefit of the school system as a
95 result of curricular or noncurricular activities.

96 The board of any district shall expend under such
97 regulations as it establishes for each child an amount

98 not to exceed the proportion of all school funds of the
99 district that each child would be entitled to receive if all
100 the funds were distributed equally among all the children
101 of school age in the district upon a per capita basis.

CHAPTER 110

(House Bill No. 540—By Mrs. Merritt)

[Passed February 23, 1972; in effect July 1, 1972. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to length of instructional term.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15. School term; employment term; instructional term; extension of terms; levies; ages of persons to whom schools are open.

1 The board shall provide a school term for its schools
2 which shall be comprised of (a) an employment term
3 for teachers, and (b) an instructional term for pupils.

4 The employment term for teachers shall be no less
5 than ten months, a month to be defined as twenty em-
6 ployment days exclusive of Saturdays and Sundays:
7 *Provided*, That the board may contract with all or part
8 of the personnel for a longer term. The employment
9 term shall be fixed within such beginning and closing
10 dates as established by the state board: *Provided, how-*
11 *ever*, That the time between the beginning and closing
12 dates does not exceed forty-three weeks.

13 Within the employment term there shall be an instruc-
14 tional term for pupils of not less than one hundred eighty
15 nor more than one hundred eighty-five instructional
16 days. Instructional and noninstructional activities may
17 be scheduled during the same employment day. The
18 instructional term shall commence no earlier than
19 the first Tuesday following Labor Day and shall
20 terminate no later than the eighth day of June and
21 shall not cover a period greater than two hundred
22 seventy-eight calendar days.

23 Noninstructional days in the employment term may
24 be used for curriculum development, preparation for
25 opening and closing of the instructional term, in-service
26 and professional training of teachers, teacher-pupil-parent
27 conferences, professional meetings and other related
28 activities.

29 Where the employment term overlaps a teacher's par-
30 ticipation in a summer institute or institution of higher
31 learning for the purpose of professional growth, the
32 teacher may substitute, with the approval of the county
33 superintendent, such participation for not more than
34 four of the noninstructional days of the employment
35 term.

36 The board may extend the instructional term beyond
37 one hundred eighty-five instructional days provided the
38 employment term is extended an equal number of days.
39 If the state revenues and regular levies, as provided
40 by law, are insufficient to enable the board of education
41 to provide for the school term, the board may at any
42 general or special election, if petitioned by at least five
43 percent of the qualified voters in the district, submit
44 the question of additional levies to the voters. If at
45 the election sixty percent of the qualified voters cast
46 their ballots in favor of the additional levy, the board
47 shall fix the term and lay a levy necessary to pay the
48 cost of the additional term. The additional levy fixed
49 by the election shall not continue longer than five years
50 without submission to the voters. The additional rate
51 shall not exceed by more than one hundred percent
52 the maximum school rate prescribed by article eight,
53 chapter eleven of the code, as amended.

54 The public schools shall be open for the full instruc-
55 tional term to all persons who have attained the entrance
56 age as stated in section five, article two and section
57 eighteen, article five, chapter eighteen of this code: *Pro-*
58 *vided*, That persons over the age of twenty-one may
59 enter only those programs or classes authorized by the
60 state board of education and deemed appropriate by the
61 county board of education conducting any such pro-
62 gram or class: *Provided, however*, That authoriza-
63 tion for such programs or classes shall in no way serve
64 to affect or eliminate programs or classes offered by
65 county boards of education at the adult level for which
66 fees are charged to support such programs or classes.

CHAPTER 111

(Senate Bill No. 303—By Mr. Palumbo)

[Passed March 11, 1972; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-six, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to computation of certain tax sheltered annuities under the state teachers retirement system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-26. Computation of annuities.

1 Annuitants whose annuities were approved by the re-
2 tirement board effective before July first, one thousand
3 nine hundred seventy, shall be paid the annuities
4 which were approved by the retirement board, subject to
5 the supplemental benefits authorized in this article.

6 Annuities approved by the board effective after June
7 thirty, one thousand nine hundred seventy, shall be com-
8 puted as provided herein.

9 Upon establishment of eligibility for a retirement al-
10 lowance, a member shall be granted an annuity which
11 shall be the sum of either Plan A or Plan B, whichever
12 provides the larger annuity.

13 Plan A shall be computed as follows:

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

17 (b) The actuarial equivalent of the contributions of
18 the employer up to the time of the member's retirement,
19 which shall equal the sum in subdivision (a) of Plan A
20 minus deposits with regular interest on such deposits;

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

25 (d) The actuarial equivalent of the amounts that would
26 have accumulated under subdivisions (a) and (b) of Plan
27 A, if the member had contributed to his individual ac-
28 count until he was fifty years old, at the annual rate of
29 his past actual contributions, but this subdivision shall
30 apply only as additional income to members who qualify
31 for disability retirement before they are fifty years old;

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

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

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

43 For the purpose of subdivision (c) in Plan A:

44 (1) An allowance for prior service shall in no case ex-
45 ceed three fifths of the member's average final salary;

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

49 Plan B shall be computed as follows:

50 (a) Two percent of the member's average salary mul-
51 tiplied by his total service credit as a teacher. In this
52 paragraph "average salary" shall mean the average of the
53 highest annual salaries received by the member during
54 any five years contained within his last fifteen years of
55 total service credit: *Provided*, That the highest annual
56 salary used in this calculation for members employed by
57 the West Virginia board of regents at institutions of
58 higher education under its control, shall be four thousand
59 eight hundred dollars;

60 (b) The actuarial equivalent of the deposits of the
61 member in his individual account up to the time of his
62 retirement, with regular interest.

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

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

72 Upon the death of an annuitant or the beneficiary of an
73 annuitant who had purchased a tax sheltered annuity
74 through the teachers retirement system, the estate of the
75 deceased or beneficiary designated for such purpose, shall
76 be paid the difference, if any, between the member's total
77 tax sheltered annuity deposits and the sum of tax
78 sheltered annuity payments under the option chosen at
79 retirement.

80 All annuities shall be paid in twelve monthly payments.
81 In computing such monthly payments, fractions of a cent

82 shall be deemed a cent. Such monthly payments shall
83 cease with the payment for the month within which the
84 beneficiary dies, and shall begin with the payment for
85 the month succeeding the month within which the annu-
86 itant became eligible under this article for the annuity
87 granted; in no case, however, shall an annuitant receive
88 more than four monthly payments which are retroactive
89 after the board receives his application for annuity.

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

95 Any person who has attained the age of sixty-five and
96 who has served at least twenty-five years as a teacher
97 prior to July one, one thousand nine hundred forty-one,
98 shall be eligible for prior service credit and for prior ser-
99 vice pensions as prescribed in this section.

CHAPTER 112

(House Bill No. 1048—By Mrs. Smirl and Mr. Ballouz)

[Passed March 11, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section eleven, article nine-a,
chapter eighteen of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to state-
wide appraisal of nonutility real property; computation of
the local share of the cost thereof; reimbursement to coun-
ties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**§18-9A-11. Computation of local share; appraisal and assessment of property.**

1 On the basis of the most recent survey of property
2 valuations in the state, completed as to all classes of prop-
3 erty in all counties determined by the tax commissioner
4 under present or former provisions of this article, the state
5 board shall for each county compute by application of
6 the levies for general current expense purposes, as de-
7 fined in section two of this article, the amount of revenue
8 which such levies would produce if levied upon one hun-
9 dred percent of the appraised value of each of the several
10 classes of property contained in the report or revised re-
11 port of such value, made to it by the tax commissioner
12 as follows: (1) The state board shall first take ninety-
13 seven and one-half percent of the amount ascertained by
14 applying these rates to the total assessed public util-
15 ity valuation in each classification of property in the
16 county. (2) The state board shall then apply these rates
17 to the appraised value of other property in each classi-
18 fication in the county as determined by the tax commis-
19 sioner and shall deduct therefrom five percent as an al-
20 lowance for the usual losses in collections due to discounts,
21 exonerations, delinquencies and the like. Fifty percent
22 of the amount so determined shall be added to the ninety-
23 seven and one-half percent of public utility taxes com-
24 puted as provided above and this total shall be the local
25 share of the particular county.

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

121 county, provide a sum of money equal to the difference
122 between the amount of revenue which will be produced
123 by application of the allowable school levy rates defined
124 in section two of this article upon the valuations for as-
125 sessment purposes of such property and the amount of
126 revenue which would be yielded by the application of
127 such levies to fifty percent of the total of appraised valu-
128 ations of such property. In the event the county court
129 shall fail or refuse to make the reallocation of levies as
130 provided for herein, the county board of education, the
131 tax commissioner, the state board, or any other interested
132 party, shall have the right to enforce the same by
133 writ of mandamus in any court of competent juris-
134 diction.

135 In conjunction with and as a result of the appraisal
136 herein set forth the tax commissioner shall have the
137 power, and it shall be his duty, to establish a permanent
138 records system for each county in the state, consisting of:

139 (1) Tax maps of the entire county drawn to scale or
140 aerial maps, which maps shall indicate all property and
141 lot lines, set forth dimensions or areas, indicate whether
142 the land is improved, and identify the respective parcels
143 or lots by a system of numbers or symbols and numbers,
144 whereby the ownership of such parcels and lots can be
145 ascertained by reference to the property record cards and
146 property owner's index;

147 (2) Property record cards arranged geographically
148 according to the location of property on the tax maps,
149 which cards shall set forth the location and description
150 thereof, the acreage or dimensions, description of im-
151 provements, if any, the owner's name, address and date
152 of acquisition, the purchase price, if any, set forth in the
153 deed of acquisition, the amount of tax stamps, if any, on
154 the deed, the assessed valuation, and the identifying
155 number or symbol and number, shown on the tax map;
156 and

157 (3) Property owner's index consisting of an alpha-
158 betical listing of all property owners, setting forth brief
159 descriptions of each parcel or lot owned and cross-in-
160 dexed with the property record cards and the tax
161 map.

162 The tax commissioner is hereby authorized and em-
163 powered to enter into such contracts as may be neces-
164 sary, and for which funds may be available, to establish
165 the permanent records system herein provided for, or
166 may through his staff and employees, prepare and com-
167 plete such system.

168 All microfilm photography and original copies of tax
169 maps created under the provisions of this section are the
170 property of the state of West Virginia and the reproduc-
171 tion, copying, distribution or sale of such microfilm,
172 photography or tax maps or any copies thereof without
173 the written permission of the state tax commissioner is
174 prohibited. Any person who shall violate the provisions
175 of this paragraph shall be guilty of a misdemeanor, and,
176 upon conviction thereof, shall be fined not less than fifty
177 dollars nor more than three hundred dollars, or impris-
178 oned in the county jail not less than thirty days nor more
179 than one year, or both fined and imprisoned. Justices
180 of the peace shall have concurrent jurisdiction with other
181 courts having jurisdiction for the trial of all misde-
182 meanors arising under this paragraph.

183 The tax commissioner shall by uniform regulations
184 establish a procedure for the sale of reproduction of mic-
185 rofilm, photography and maps and may pay for having
186 such reproductions made from the appropriation for
187 "property appraisal." Any funds received as a result of
188 the sale of such reproductions shall be deposited to the
189 appropriated account from which the payment for re-
190 production is made.

191 The cost of conducting the appraisal herein provided
192 for shall be borne jointly by the state and the several
193 counties in the following manner and terms: There shall
194 be appropriated from the general revenue fund annually
195 an amount sufficient to maintain the appraisal in all coun-
196 ties of the state. Each county shall furnish, through its
197 county court, not more than ten percent of the cost of
198 such appraisal or reappraisal and permanent records
199 system for each county. Such county costs may be paid
200 over a period of three years with the approval of the tax
201 commissioner. In those instances where the cost of the
202 appraisal, reappraisal or permanent records system re-

203 quired by this section has been paid by the tax commis-
204 sioner from funds appropriated for these purposes, the
205 share of such cost allocated to each county shall, upon
206 receipt thereof by the tax commissioner, be deposited to
207 the appropriated account from which such payments have
208 been made. In those instances where a county has hereto-
209 fore employed a professional appraisal firm to conduct
210 an appraisal or reappraisal of all or part of nonutility
211 property within the past seventeen years, and such ap-
212 praisal has been accepted by the tax commissioner, with
213 the county having borne in excess of ten percent of the
214 cost of such appraisal, reappraisal, and permanent records
215 system; monetary reimbursement of one third of such
216 excess costs shall be made by the tax commissioner from
217 funds appropriated for such purpose, to such county,
218 yearly, for a period of three years, in order to establish
219 the joint sharing of such costs as hereinbefore set forth.

220 The county assessor and the county court shall comply
221 with the provisions of chapter eleven of this code in de-
222 termining the true and actual value of property for
223 assessment purposes and shall not arbitrarily use a
224 direct percentage application to the appraisal valuations,
225 whether complete appraisal or spot survey, of any class
226 of property or property within a class for such purpose.

227 The provisions of this section shall not be construed to
228 alter or repeal in any manner the provisions of chapter
229 eleven of this code, but shall be construed in pari materia
230 therewith, and compliance with this section by the as-
231 sessor and county court shall be considered, pro tanto,
232 as compliance with said chapter eleven.

CHAPTER 113

(Senate Bill No. 367—By Mr. McCourt, Mr. President)

[Passed March 11, 1972; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article nine-b, chapter eighteen of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to submission and approval of county board of education budgets.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9B. STATE BOARD OF SCHOOL FINANCE.

§18-9B-6. Submission and approval of budget.

1 A county board of education shall, on or before the day
2 fixed by the budget calendar, submit its proposed budget
3 to the board of finance together with such supporting
4 schedules as the board may require.

5 A county board shall not finally adopt its budget until
6 after the written approval of the board of finance has
7 been received, and the levy estimate has been approved
8 by the tax commissioner as required by law. If the tax
9 commissioner finds that the levy estimate, based upon
10 the budget, does not conform to the requirements of law,
11 the board shall authorize and require such further revision
12 of the budget as may be necessary for the correction
13 of the levy estimate as required by the tax commissioner.

14 A county board of education shall submit a preliminary
15 budget upon requirement of the board of finance, which
16 approved budget shall be considered by the tax commissioner
17 when approving levy estimates.

CHAPTER 114

(House Bill No. 664—By Mr. Speaker, Mr. McManus)

[Passed February 24, 1972; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article twenty-two-b, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to

recipients and awards of scholarships established and authorized by said article twenty-two-b, and providing that scholarship awards shall be limited to the payment of tuition and academic fees and shall not exceed for an academic year the lesser of nine hundred dollars or the actual amount of tuition and academic fees payable by the scholarship recipient, which amount shall not exceed the tuition and academic fees generally charged by the institution to all resident undergraduate students.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22B. STATE SCHOLARSHIP PROGRAM.

§18-22B-6. Recipients and awards of scholarships.

1 The scholarship recipient shall be free to attend any
2 approved institution of higher education in this state.
3 The institution is not required to accept the scholarship
4 recipient for enrollment, but is free to exact compliance
5 with its own admission requirements, standards and
6 policies.

7 Scholarship grants shall be made to undergraduate
8 students only.

9 Each scholarship is renewable until the course of study
10 is completed, but not to exceed an additional three aca-
11 demic years beyond the first year of the award. These
12 may not necessarily be consecutive years and the scholar-
13 ship will be terminated if the student receives his de-
14 gree in a shorter period of time. Qualifications for re-
15 newal will include maintaining satisfactory academic
16 standing, making normal progress toward completion of
17 the course of study and continued eligibility, as deter-
18 mined by the commission.

19 Scholarship awards shall be made without regard to
20 the applicant's race, creed, color, sex, national origin or
21 ancestry; and in making scholarship awards, the com-
22 mission shall provide a fair and equitable geographical
23 distribution of the awards and shall treat all approved

24 institutions of higher education in a fair and equitable
25 manner.

26 Scholarship awards shall be limited to the payment
27 of tuition and academic fees and shall not exceed for an
28 academic year the lesser of nine hundred dollars or the
29 actual amount of tuition and academic fees payable by the
30 scholarship recipient, which amount shall not exceed the
31 tuition and academic fees generally charged by the institu-
32 tion to all resident undergraduate students.

33 Payments of scholarships shall be made directly to
34 the institution.

35 In the event that a scholarship recipient transfers from
36 one approved institution of higher education to another,
37 his scholarship shall be transferable only with the ap-
38 proval of the commission.

39 Should the recipient terminate his enrollment for any
40 reason during the academic year, the unused portion of
41 the scholarship shall be returned to the commission by the
42 institution according to the institution's own policy for
43 issuing refunds.

CHAPTER 115

(House Bill No. 618—By Mr. Seibert)

[Passed March 10, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen-c, relating to empowering the West Virginia board of regents to establish a new graduate college.

Be it enacted by the Legislature of West Virginia:

That article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

be amended by adding thereto a new section, designated section thirteen-c, to read as follows:

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-13c. Establishment and operation of graduate college; transfer of programs, etc., of Kanawha Valley Graduate Center of West Virginia University.

1 The board of regents is hereby authorized and empow-
2 ered to establish, effective July one, one thousand nine
3 hundred seventy-two, name, maintain and operate a grad-
4 uate college whose major administrative offices shall be
5 located in Kanawha county. The board of regents shall
6 employ a president and such staff and faculty as deter-
7 mined appropriate for the college, appoint an advisory
8 board consistent with section nine of this article and shall
9 exercise general determination, control, supervision and
10 management of the financial, business and educational
11 policies and affairs of the graduate college. The college
12 shall be authorized to offer, in their entirety or in coop-
13 eration with other institutions, such curricula, programs,
14 courses and services and confer such graduate degrees as
15 may be approved by the board of regents. The regents
16 shall fix tuition and establish and set other fees to be
17 charged students as it deems appropriate, including the
18 establishment of special fees for specific purposes. Spe-
19 cial fees shall be paid into special funds and used only
20 for the purposes for which collected. The board of regents
21 may allocate from the appropriations for the state system
22 of higher education for the operation and capital improve-
23 ment of the graduate college.

24 Effective with the establishment of the graduate college,
25 all programs, activities, operations, accounts, and re-
26 sources of the Kanawha Valley Graduate Center of West
27 Virginia University shall transfer to the graduate college.
28 The title to all property of the Kanawha Valley Graduate
29 Center of West Virginia University and the graduate col-
30 lege, shall be and remain vested in the board of regents.
31 The board of regents is authorized to enter into contracts
32 on behalf of the graduate college with public and private
33 educational institutions, agencies and boards; with gov-
34 ernmental agencies; and with corporations, partnerships

35 and individuals for the use of physical facilities, equip-
36 ment and for the performance of instructional or other
37 services.

CHAPTER 116

(Senate Bill No. 62—By Mr. Palumbo)

[Passed February 26, 1972; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article five-a, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section nine, article five-b of said chapter, requiring the payment over every ninety days during the life of any suggestee execution or renewal suggestee execution of any money payable, held or retained under such suggestee execution or renewal suggestee execution.

Be it enacted by the Legislature of West Virginia:

That section five, article five-a, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section nine, article five-b of said chapter be amended and reenacted, all to read as follows:

Article

5A. Suggestions of Salary and Wages of Persons Engaged in Private Employment.

5B. Suggestion of the State and Political Subdivisions; Garnishment and Suggestion of Public Officers.

ARTICLE 5A. SUGGESTIONS OF SALARY AND WAGES OF PERSONS ENGAGED IN PRIVATE EMPLOYMENT.

§38-5A-5. Service of suggestee execution upon suggestee; payments in satisfaction of execution; action for failure or refusal to pay; payments to be made every ninety days.

1 A suggestee execution issued under this article against
2 salary or wages shall be served upon the suggestee in the

3 same manner as a summons commencing an action is
4 served. It shall be the duty of any person upon whom
5 such an execution, bearing the notation required by sec-
6 tion four hereof, shall be served, and who shall at that
7 time be indebted or who shall thereafter become indebted
8 to the judgment debtor named in the execution for salary
9 or wages, and while the execution shall remain a lien
10 upon said indebtedness, to pay over to the officer serving
11 the same or to the judgment creditor such amount of said
12 indebtedness as is required by section three hereof during
13 the life of the execution until it shall be wholly satisfied.
14 The sums so paid shall be deducted from the amounts
15 payable to the judgment debtor and such payment shall
16 be a bar to any action by him therefor.

17 The suggestee upon whom the execution or any re-
18 newal execution is served shall once every ninety days
19 during the life of such execution and any renewal execu-
20 tion pay over to the officer who served the same or to
21 the judgment creditor the full amount of money held or
22 retained pursuant to such execution or renewal execu-
23 tion during the preceding ninety days.

24 If the suggestee upon whom the execution shall be
25 served, shall fail or refuse to pay over to the officer
26 serving the execution or to the judgment creditor the
27 required percentage of the indebtedness, as aforesaid, he
28 shall be liable to an action therefor by the judgment
29 creditor named in the execution and the amount re-
30 covered in the action shall be applied in satisfaction of
31 the execution.

**ARTICLE 5B. SUGGESTION OF THE STATE AND POLITICAL
SUBDIVISIONS; GARNISHMENT AND SUGGES-
TION OF PUBLIC OFFICERS.**

**§38-5B-9. Payments in satisfaction of execution; liability of
officer for payment or failure to pay; action
against political subdivision failing to pay; de-
claratory judgment as to right against state.**

1 It shall be the duty of the proper officer, after service
2 of an execution under this article, bearing the notation
3 required by section four hereof if directed against salary

4 or wages, to pay to the court or the clerk of the court
5 who issued the execution or to the officer presenting
6 the same such sums as may be or shall thereafter be-
7 come due to the judgment debtor from the suggestee,
8 or the amount thereof prescribed in section three of
9 this article in the case of salary or wages, during the
10 life of the execution until it shall be wholly satisfied.
11 The proper officer or suggestee upon whom the execu-
12 tion or any renewal execution is served shall once every
13 ninety days during the life of such execution and any
14 renewal execution pay over as aforesaid the full amount
15 of money payable, held or retained pursuant to such
16 execution or renewal execution during the preceding
17 ninety days.

18 A public officer who shall either pay over or fail or
19 refuse to pay over, in satisfaction of such execution,
20 money due the judgment debtor shall be personally
21 liable therefor only if he shall have acted in bad faith,
22 even though such payment or failure or refusal to pay
23 shall have been in violation of the rights of one or more
24 parties in interest.

25 If a political subdivision be the suggestee and shall fail
26 or refuse to pay over to the officer who served the execu-
27 tion the amount due the judgment debtor or the re-
28 quired percentage thereof in the case of salary or wages,
29 it shall be liable to an action therefor by the judgment
30 creditor named in the execution and the amount re-
31 covered in the action shall be applied toward the pay-
32 ment of the execution.

33 No judgment may be recovered against the state as
34 suggestee but a judgment creditor may bring an action
35 against the proper officer for a declaratory judgment
36 establishing his right to have sums due or to become
37 due to his judgment debtor or from the state or a state
38 agency applied in satisfaction of a suggestee execution
39 issued on his judgment pursuant to this article. Such
40 an action may be brought against the state auditor only
41 in the circuit court of Kanawha county. Costs shall be
42 in the discretion of the court.

CHAPTER 117

(Com. Sub. for Senate Bill No. 65—By Mr. Moreland)

[Passed March 6, 1972; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twelve, thirteen and fifteen, article three; sections one, five, fourteen, seventeen and twenty, article four; and section four, article five, all of chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article three by adding thereto a new section, designated section one-a, relating to assessments of real and personal property generally; setting forth certain legislative findings; defining terms; making provision for county courts to reject the provisions of said section one-a; relating to the assessment of corporate property and to verified reports to assessors by corporations; specifying the assessor to which such verified report is to be made in the event the corporation involved does not have a principal office or chief place of business in this state; relating to the assessment and entry of corporate property by assessor for taxation and to the county of assessment; relating to the assessment of capital used in trade or business by any individual or firm not incorporated and to verified reports with respect to such capital; relating to the assessment and entry of same by assessor for taxation; relating to land books and the composition thereof; eliminating references to independent school districts; relating to information to be obtained from land owners by assessors; relating to making corrections in land books; relating to the assessment of lands lying in more than one county and the payment of taxes with respect thereto; relating to the consolidation of contiguous tracts or other interests and the division of tracts for taxing purposes; relating to the assessment of ferries, the entry of the value thereof for taxing purposes and the district in which assessed; relating to the assessment of personal property and chattels real and the district in which assessed; changing references to magisterial district

or districts to tax district or districts; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections twelve, thirteen and fifteen, article three; sections one, five, fourteen, seventeen and twenty, article four; and section four, article five, all of chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article three be further amended by adding thereto a new section, designated section one-a, all to read as follows:

Article

- 3. Assessments Generally.
- 4. Assessment of Real Property.
- 5. Assessment of Personal Property.

ARTICLE 3. ASSESSMENTS GENERALLY.

- §11-3-1a. Magisterial districts as tax districts; legislative findings; terms defined; county court may reject section.
- §11-3-12. Assessment of corporate property; reports to assessor by corporations.
- §11-3-13. Entry of corporate property by assessor.
- §11-3-15. Assessment of capital used in trade or business by natural persons.
- §11-3-1a. **Magisterial districts as tax districts; legislative findings; terms defined; county court may reject section.**

1 The Legislature recognizes that several counties have
 2 redistricted their magisterial districts in order to achieve
 3 as nearly as practicable equal numbers of population
 4 within each such district; that if the land books and per-
 5 sonal property books of any such county must be changed
 6 following each such redistricting so as to reflect the
 7 newly established districts, very substantial costs to the
 8 counties would be occasioned thereby; that if the land
 9 books must be changed following each such redistricting
 10 so as to reflect the newly established districts, problems
 11 would arise in searching and abstracting titles to real
 12 property; and that there is no reason to require the land
 13 books and personal property books of a county for tax
 14 purposes to be on a magisterial district basis as such
 15 districts are established for voting purposes. Conse-
 16 quently, the terms "tax district" or "district," or the plural
 17 thereof, as used in this chapter, shall mean the magis-

18 terial district or districts and the subdivisions thereof as
19 the same existed in any county on January one, one
20 thousand nine hundred sixty-nine: *Provided*, That if a
21 county court prefers to arrange its land books and per-
22 sonal property books so that the boundaries of districts
23 for taxing purposes coincide with the boundaries of the
24 magisterial districts of such county at any given time
25 for voting purposes, such county court may by order
26 entered of record reject the provisions of this section and
27 the aforesaid terms shall mean so far as that particular
28 county is concerned the magisterial district or districts
29 and the subdivisions thereof as the same exist from time
30 to time for voting purposes in such county.

**§11-3-12. Assessment of corporate property; reports to assessor
by corporations.**

1 Each incorporated company, foreign or domestic, hav-
2 ing its principal office or chief place of business in this
3 state, or owning property subject to taxation in this
4 state, except railroad, telegraph and express companies,
5 telephone companies, pipeline, car line companies and
6 other public utility companies, banking institutions, na-
7 tional banking associations, building and loan associa-
8 tions, federal savings and loan associations and industrial
9 loan companies, shall annually, between the first day of
10 the assessment year and the first day of November, make
11 a written report, verified by the oath of the president or
12 chief accounting officer, to the assessor of the county in
13 which its principal office or chief place of business is
14 situated or in which such property subject to taxation
15 in this state is located if such corporation does not have
16 a principal office or chief place of business in this state,
17 showing the following items, viz: (a) The amount of
18 capital authorized to be employed by it; (b) the amount
19 of cash capital paid on each share of stock; (c) the amount
20 of credits and investments other than its own capital
21 stock held by it on said date, with their true and actual
22 value; (d) the quantity, location and true and actual
23 value of all of its real estate, and the tax district or dis-
24 tricts in which it is located; and (e) the kinds, quantity
25 and true and actual value of all its tangible property in
26 each tax district in which it is located.

27 The oath required for this section shall be substantially
28 as follows, viz:

29 State of West Virginia, County of _____, ss:

30 I, _____, president (treasurer or manager) of
31 (here insert name of corporation), do solemnly swear
32 (or affirm) that the foregoing is, to the best of my knowl-
33 edge and judgment, true in all respects; that it contains
34 a statement of all the real estate and personal property,
35 including credits and investments belonging to said cor-
36 poration; that the value affixed to such property is, in
37 my opinion, its true and actual value, by which I mean
38 the price at which it would sell if voluntarily offered for
39 sale on such terms as are usually employed in selling
40 such property, and not the price which might be realized
41 at a forced or auction sale; and said corporation has not,
42 to my knowledge, during the sixty-day period immedi-
43 ately prior to the first day of the assessment year con-
44 verted any of its assets into nontaxable securities or
45 notes or other evidence of indebtedness for the purpose
46 of evading the assessment of taxes thereon; so help me,
47 God.

48

49 The officer administering such oath shall append there-
50 to the following certificate, viz:

51 Subscribed and sworn to before me by _____
52 this the _____ day of _____, 19 _____.

53

§11-3-13. Entry of corporate property by assessor.

1 Upon receiving the verified report required by the pre-
2 ceding section, the assessor, if satisfied with the correct-
3 ness thereof, shall assess the value of all the property of
4 such corporation liable to taxation, and enter the same
5 as follows, viz: All property in item (d) shall be entered
6 with its valuation in the land books of the county and in
7 the tax district in which the real estate is situated; all
8 property mentioned in item (c) shall, together with its
9 valuation, be entered in the personal property book of
10 the county and in the tax district wherein is the principal
11 office or chief place of business of such corporation, under
12 the appropriate heads; and all property mentioned in

13 item (e) shall, together with its valuation, be entered in
14 the personal property book of the county and in the tax
15 district wherein such property is on the first day of the
16 assessment year; the property mentioned in items (c),
17 (d) and (e) shall constitute all the property on which
18 any such corporation shall be liable to pay taxes. If a
19 company has branches, each branch shall be assessed
20 separately in the county and tax district where its prin-
21 cipal office for transacting its financial concerns is lo-
22 cated; or, if there be no such office, then in the tax district
23 where its operations are carried on. All locks and dams
24 of navigation companies shall be assessed and taxed as
25 real estate in the county and tax district wherein they
26 are situated; and in case such locks and dams are lo-
27 cated on any creek or river which is the dividing line
28 between counties, or the dividing line between tax dis-
29 tricts of the same county, one half of the value thereof
30 shall be assessed in each of such counties or tax districts,
31 as the case may be, and when the property of an incorpo-
32 rated company is assessed as aforesaid, no individual
33 shareholder therein shall be required to list or be assessed
34 with his share, portion or interest in the capital stock of
35 such corporation.

**§11-3-15. Assessment of capital used in trade or business by
natural persons.**

1 The value of the capital used by any individual or firm
2 not incorporated, in any trade or business taxable by law,
3 shall be ascertained in the following manner: The owner,
4 agent, or chief accountant of every such trade or business,
5 except the business of agriculture, carried on in any
6 county of the state, shall, annually, between the first day
7 of the assessment year and the first day of November of
8 the current year, make a written report as of the first day
9 of the assessment year, to the assessor, verified by his
10 affidavit, showing the following matters and things, viz:
11 (a) The amount, the true and actual value and classifica-
12 tion of all tangible personal property used in connection
13 with such trade or business, otherwise than such as is
14 regularly kept for sale therein, including chattels real;
15 (b) the true and actual value and classification of all

16 goods and property kept for sale and remaining unsold;
17 (c) the amount in value of all credits arising out of any
18 such business and remaining unpaid on that date, whether
19 due or not, and whether in or out of the state; (d) the
20 amount and true and actual value of all notes, bonds,
21 bills, accounts receivable, stocks and other intangible
22 property made by such person or firm whether in or out
23 of the state, other than those hereinbefore specified; (e)
24 the location, quantity, the true and actual value and
25 classification of all real estate owned by such individuals
26 or firm and used in such trade or business. The assessor
27 shall, upon the receipt of such report, properly verified,
28 if he is satisfied with the correctness thereof, enter the
29 real estate in the land book of the county in the tax dis-
30 trict wherein the same is situated, and assess the same
31 with taxes, if not otherwise assessed, to the owner there-
32 of; the personal property mentioned in such report he
33 shall enter in the personal property book of his county for
34 assessment with taxes as follows, viz: Items (a) and (b)
35 shall be entered in the tax districts where they are for
36 the greater part of the year kept or located; and items
37 (c), (d) and (e) shall be entered under their appropriate
38 headings, in the municipality or tax district wherein the
39 principal place of business of such individual or firm is;
40 and if the assessor is not satisfied with the correctness of
41 such report, he may proceed to ascertain a correct list of
42 the property on which such individual or firm is liable
43 to be assessed with taxes, and to value the same as in
44 other cases. The person making such report shall take
45 and subscribe an oath in substantially the following form:

46 I, _____, do solemnly swear (or affirm)
47 that the foregoing list is true and correct to the best of
48 my knowledge; that the value affixed to the property
49 therein listed I believe to be the true and actual value
50 thereof; that none of the assets belonging to (here state
51 the name of individual or firm) and used in the business
52 of (here describe the business) have to my knowledge,
53 since the first day of the assessment year, been converted
54 into nontaxable securities for the purpose of evading the
55 assessment of taxes thereon; so help me, God.

57 The officer administering said oath shall append thereto
58 the following certificate, viz:

59 Subscribed and sworn to before me by (here insert
60 affiant's name) this _____ day of _____, 19_____.

61 _____

ARTICLE 4. ASSESSMENT OF REAL PROPERTY.

§11-4-1. Land books to contain separate lists; entry of town lots; entry separately for districts.

§11-4-5. Information to be obtained from landowners by assessor; corrections in land book of previous year.

§11-4-14. Assessment of lands lying in more than one county.

§11-4-17. Consolidation of contiguous tracts or mineral or timber interests.

§11-4-20. Ferries.

§11-4-1. Land books to contain separate lists; entry of town lots; entry separately for districts.

1 The assessor shall make out the land books, including
2 all extensions, in such form as the tax commissioner may
3 prescribe. Such land books shall contain separate lists
4 for the different tax districts and separate lists for the
5 municipalities of the county. There shall, for the purpose
6 of taxation, be entered on the land books the town lots
7 in the alphabetical order of the names of the owners
8 thereof in the list arranged for them, and the assessor
9 shall designate such list as "town (or city) lots of the
10 town (or city) of _____". There shall also be
11 entered in like alphabetical order in the separate lists
12 for the tax districts, the tracts of land, the whole or
13 greater part of which is situated therein; but no tract or
14 lot of land shall be entered in more than one of such
15 lists, and no part of any tract or lot of land which does
16 not lie within the incorporated limits of a town shall be
17 entered in the list or charged with municipal taxes for
18 such town.

§11-4-5. Information to be obtained from landowners by assessor; corrections in land book of previous year.

1 The assessor and his deputies shall annually, when
2 listing and assessing personal and real property, make
3 diligent inquiry of every resident landowner, and of the
4 resident agents of any nonresident landowner, as to the

5 number of acres of land owned by them, the number of
6 acres in each tract, and the number of town lots owned
7 by them, and the value per acre of each tract and the local
8 description thereof, and the value and location of the
9 town lots.

10 They shall determine the nature and extent of the
11 interest of the owner, whether in fee and undivided or
12 otherwise, and the character of use to which the property
13 is put, whether exclusively residential or agricultural or
14 otherwise. They shall also inquire of such owners or
15 agents whether the entries charged against them in the
16 land books of the previous year are correct, whether any
17 part thereof ought to be transferred to any other person,
18 and if so to whom, and the nature of the evidence to
19 authorize such transfer; also, whether any other land
20 in the county ought to be charged to such resident or
21 nonresident, and whether the description given to any
22 tract of land or town lot in the book of the previous year
23 is incorrectly given. It shall be the duty of such owners
24 and agents to answer all of such inquiries on oath. The
25 assessor shall provide for himself, and for each one of
26 his deputies, a copy of so much of the land book of the
27 previous year as contains a list of the land in the tax
28 districts severally apportioned to them, and shall note
29 in such copies such changes and corrections as ought to
30 be made in the land book of the previous year, according
31 to the information obtained. The deputy assessor shall
32 report any such changes and corrections, as appear to
33 them should be made, to the assessor at some of the
34 stated meetings provided for. The assessor shall make
35 such use of the information so obtained as he can prop-
36 erly make, consistent with the other provisions of this
37 chapter, in making out the land book of the county for
38 the current year.

§11-4-14. Assessment of lands lying in more than one county.

1 Every tract of land of one thousand acres or less, lying
2 in more than one county, may be entered for taxation on
3 the land book of the county where the greater part
4 thereof in value lies, but the entry thereof and payment
5 of taxes thereon, in any county where any part thereof

6 is situated, shall, for the time during which the same
7 is so entered and paid, be a discharge of the whole of the
8 taxes and levies charged and chargeable thereon. Every
9 tract of land of more than one thousand acres, lying in
10 two or more counties, shall, for the purpose of taxation,
11 be entered and charged with all taxes in each tax district
12 of the several counties in which any part of it is, to the
13 extent, as near as may be, that the same lies in such
14 district. When any such tract of more than one thousand
15 acres is thus assessed, partly in one county and partly in
16 another, the several officers of such counties whose duty
17 it is to make out the land books of the respective counties
18 shall value the part lying in his county without regard
19 to the value of the whole tract, and he shall ascertain its
20 value, as in other cases, according to the rule prescribed
21 in this chapter.

§11-4-17. Consolidation of contiguous tracts or mineral or timber interests.

1 Any owner of two or more contiguous tracts of land, or
2 the surface of land, or of any estate in the coal, oil, gas,
3 ore, limestone, fireclay, or other minerals or mineral
4 substances, in and under the same, or of the timber
5 thereon, situated in whole or in part in the same tax dis-
6 trict of any county, may upon application to the county
7 court of such county and duly showing the relative loca-
8 tion of such tracts, their ownership and present descrip-
9 tion on the land book, have the same, by order of such
10 court, consolidated with other like tracts or parts of tracts,
11 and charged by aggregating the quantities thereof, so
12 far as lying in the same tax district, as one tract upon the
13 land book of such county for the succeeding year and
14 thereafter: *Provided*, That for the purpose of consolida-
15 tion of lands or the surface of lands or any estate in the
16 coal, oil, gas, ore, limestone, fireclay, or other minerals
17 or mineral substances in and under the same, or of the
18 timber thereon, on the land books, any tract heretofore
19 charged separately thereon, whether as fee (by which
20 is meant not only the estate of the owner therein, but also
21 the entire body of the land); or as one or more mineral
22 interests, or other interests herein specified, or surface, or

23 timber only, may be divided, and the divisions thereof
24 be charged separately or be consolidated with other like
25 tracts or parts of tracts.

26 In every case of consolidation the order directing the
27 consolidation to be made shall so describe the several
28 properties consolidated as to enable the same to be there-
29 in identified as separate parcels or to be so identified by
30 reference therein made to a recorded instrument, or
31 recorded instruments, or both by description and refer-
32 ence to such instrument or instruments.

33 The officer whose duty it is to make out the land books,
34 upon presentation to him of a certified copy of such order
35 showing the consolidation or designation of such several
36 tracts or parts of tracts of land, surface or timber, or
37 estates in the coal, oil, gas, ore, limestone, fireclay, or
38 other minerals or mineral substances herein mentioned,
39 shall enter the same as one upon the land book for the
40 year next ensuing, and make a proper note opposite the
41 last entry of each of such several tracts so consolidated
42 or designated in whole or in part, referring to such order,
43 and a like note opposite the entry of the tract so consoli-
44 dated or designated. He shall value such tract at its
45 proper value according to the rule prescribed in this
46 chapter. Any such officer, failing to comply promptly
47 with any of the several duties imposed by this section,
48 shall be deemed guilty of a misdemeanor, and, upon con-
49 viction thereof, shall be fined not less than twenty-five
50 nor more than fifty dollars: *Provided, however,* That this
51 section shall not apply to any undivided interest in any
52 estate in any land, coal, oil, gas, ore, limestone, fireclay, or
53 other mineral substances in or under lands or of the tim-
54 ber on land.

§11-4-20. Ferries.

1 The assessor shall, upon the best information he can
2 obtain, ascertain for the purpose of taxation, the annual
3 value of all ferries upon which a toll or fare is charged,
4 located in his county, except such as are by law exempt
5 from taxation; he shall value each of such ferries each
6 year at ten times its annual value, and enter the same in
7 the land book in the name of the owner in the tax dis-

8 trict wherein the same is located; and if such ferry is on
9 a line dividing two counties, or two districts in the same
10 county, one half of the value so ascertained shall be as-
11 sessed in each county or district as the case may be.

ARTICLE 5. ASSESSMENT OF PERSONAL PROPERTY.

§11-5-4. In what district personalty assessed.

1 Every person required by law to list personal property
2 for taxation shall list the tangible personal property in
3 the tax district wherein it is on the first day of the assess-
4 ment year, and chattels real in the tax district wherein
5 the land to which they relate is located; and he shall list
6 for taxation in the tax district in which he resides the
7 notes, bonds, bills, and accounts receivable, stocks and
8 other intangible personal property subject to taxation
9 belonging to himself or under his charge or control,
10 whether the same, or the evidence thereof be in or out
11 of the state; but capital, and intangible property (except
12 real estate and chattels real) employed in any trade or
13 business (other than agriculture) belonging to a com-
14 pany whether it is incorporated or not, or to an individual,
15 shall be assessed for taxation in the tax district wherein
16 the principal office for the transaction of the financial
17 concerns pertaining to such trade or business is located;
18 or, if there be no such office, then in the district where
19 the operations are carried on. Goods and chattels and
20 other tangible personal property not exempt from taxa-
21 tion which may not be assessed for taxation in the tax
22 district where the same were on the first day of the
23 assessment year, but which have been removed there-
24 from, shall be assessed in the tax district where the same
25 were on the first day of the assessment year; but the
26 assessment and payment of taxes in any county or district
27 in any year shall exonerate the owner of such property
28 in any other county or district for such year: *Provided,*
29 That in cases of the assessment of leasehold estates a sum
30 equal to the valuations placed upon such leasehold estates
31 shall be deducted from the total value of the estate, to
32 the end that the valuation of such leasehold estate and
33 the remainder shall aggregate the true and actual value
34 of the estate.

CHAPTER 118

(House Bill No. 605—By Mr. Terry)

[Passed March 11, 1972; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twenty-eight, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the imposition of an estate tax.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. INHERITANCE AND TRANSFER TAXES.

§1. Repeal of section relating to the imposition of an estate tax.

- 1 Section twenty-eight, article eleven, chapter eleven of
 - 2 the code of West Virginia, one thousand nine hundred
 - 3 thirty-one, as amended, is hereby repealed.
-

CHAPTER 119

(Com. Sub. for House Bill No. 687—By Mr. Speaker, Mr. McManus,
and Mr. Seibert)

[Passed March 10, 1972; in effect July 1, 1972. Approved by the Governor.]

AN ACT to amend and reenact sections one and three, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, removing credit unions from the definition of the term "banking business" or "financial organization," and providing an exemption therefor.

Be it enacted by the Legislature of West Virginia:

That sections one and three, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-

one, as amended, be amended and reenacted to read as follows:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-1. Definitions.

§11-13-3. Exemptions.

§11-13-1. Definitions.

1 When used in this article, the term "person" or the
2 term "company," herein used interchangeably, includes
3 any individual, firm, copartnership, joint adventure, associ-
4 ation, corporation, trust or any other group or combina-
5 tion acting as a unit, and the plural as well as the sin-
6 gular number, unless the intention to give a more limited
7 meaning is disclosed by the context.

8 "Tax year" or "taxable year" means either the calendar
9 year or the taxpayer's fiscal year when permission is
10 obtained from the tax commissioner to use same as the
11 tax period in lieu of the calendar year.

12 "Sale," "sales" or "selling" includes any transfer of the
13 ownership of or title to property, whether for money
14 or in exchange for other property.

15 "Taxpayer" means any person liable for any tax here-
16 under.

17 "Gross income" means the gross receipts of the tax-
18 payer, other than a banking or financial business, re-
19 ceived as compensation for personal services and the
20 gross receipts of the taxpayer derived from trade, busi-
21 ness, commerce or sales and the value proceeding or
22 accruing from the sale of tangible property (real or per-
23 sonal), or service, or both, and all receipts by reason of
24 the investment of the capital of the business engaged in,
25 including rentals, royalties, fees, reimbursed costs or
26 expenses or other emoluments however designated and
27 including all interest, carrying charges, fees or other like
28 income, however denominated, derived by the taxpayer
29 from repetitive carrying of accounts, in the regular course
30 and conduct of his business, and extension of credit in
31 connection with the sale of any tangible personal property
32 or service, and without any deductions on account of the
33 cost of property sold, the cost of materials used, labor

34 costs, taxes, royalties paid in cash or in kind or other-
35 wise, interest or discount paid or any other expenses
36 whatsoever. "Gross income" of a banking or financial
37 business is specified in section two-k of this article.

38 "Gross proceeds of sales" means the value, whether in
39 money or other property, actually proceeding from the
40 sale of tangible property without any deduction on ac-
41 count of the cost of property sold or expenses of any
42 kind.

43 The terms "gross income" and "gross proceeds of sales"
44 shall not be construed to include (1) cash discounts al-
45 lowed and taken on sales; (2) the proceeds of sale of
46 goods, wares or merchandise returned by customers when
47 the sale price is refunded either in cash or by credit;
48 (3) the amount allowed as "trade-in value" for any
49 article accepted as part payment for any article sold;
50 (4) excise taxes imposed by this state; or (5) money or
51 other property received or held by a professional person
52 for the sole use and benefit of a client or another person
53 or money received by the taxpayer on behalf of a bank
54 or other financial institution for the repayment of a debt
55 of another.

56 "Business" shall include all activities engaged in or
57 caused to be engaged in with the object of gain or eco-
58 nomic benefit, either direct or indirect. "Business" shall
59 not include a casual sale by a person who is not en-
60 gaged in the business of selling the type of property in-
61 volved in such casual sale. "Business" shall include the
62 production of natural resources or manufactured products
63 which are used or consumed by the producer or manu-
64 facturer and shall include the activities of a banking
65 business or financial organization.

66 The term "banking business" or "financial organiza-
67 tion" shall mean any bank, banking association, trust
68 company, industrial loan company, small loan company
69 or licensee, building and loan association, savings and
70 loan association, finance company, investment company,
71 investment broker or dealer, and any other similar busi-
72 ness organization at least ninety per centum of the assets
73 of which consists of intangible personal property and at

74 least ninety per centum of the gross receipts of which
75 consists of dividends, interest and other charges derived
76 from the use of money or credit.

77 "Service business or calling" shall include all activities
78 engaged in by a person for other persons for a considera-
79 tion, which involve the rendering of a service as dis-
80 tinguished from the sale of tangible property, but shall
81 not include the services rendered by an employee to his
82 employer. This term shall include, but not be limited to:

83 (a) Persons engaged in manufacturing, compounding
84 or preparing for sale, profit or commercial use, articles,
85 substances or commodities which are owned by another
86 or others;

87 (b) Persons engaged as independent contractors in
88 producing natural resource products which are owned
89 by another or others, as personal property, immediately
90 after the same are severed, extracted, reduced to posses-
91 sion and produced;

92 (c) The repetitive carrying of accounts, in the regular
93 course and conduct of business, and extension of credit
94 in connection with the sale of any tangible personal prop-
95 erty or service, except as to persons taxed pursuant to
96 the provisions of section two-k of this article.

97 "Selling at wholesale" or "wholesale sales" shall mean
98 and include: (1) Sales of any tangible personal property
99 for the purpose of resale in the form of tangible personal
100 property; (2) sales of machinery, supplies or materials
101 which are to be directly consumed or used by the pur-
102 chaser in the conduct of any business or activity which is
103 subject to the tax imposed by this article or by article
104 twelve-a of this chapter; and (3) sales of any tangible
105 personal property to the United States of America, its
106 agencies and instrumentalities or to the state of West
107 Virginia, its institutions or political subdivisions.

108 "Contracting" shall include the furnishing of work, or
109 both materials and work, in the fulfillment of a contract
110 for the construction, alteration, repair, decoration or im-
111 provement of a new or existing building or structure,

112 or any part thereof, or for the alteration, improvement or
113 development of real property.

§11-13-3. Exemptions.

1 There shall be an exemption in every case of fifty dol-
2 lars in amount of tax computed under the provisions of
3 this article. A person exercising a privilege taxable here-
4 under for a fractional part of a tax year shall be entitled
5 to an exemption of the sum bearing the proportion to
6 fifty dollars that the period of time the privilege is exer-
7 cised bears to a whole year. Only one exemption shall be
8 allowed to any one person, whether he exercises one or
9 more privileges taxable hereunder.

10 The provisions of the article shall not apply to: (a) In-
11 surance companies which pay the state of West Virginia
12 a tax upon premiums: *Provided*, That said exemption
13 shall not extend to that part of the gross income of in-
14 surance companies which is received for the use of real
15 property, other than property in which any such company
16 maintains its office or offices, in this state, whether such
17 income be in the form of rentals or royalties; (b) non-
18 profit cemetery companies organized and operated for
19 the exclusive benefit of their members; (c) fraternal so-
20 cieties, organizations and associations organized and oper-
21 ated for the exclusive benefit of their members and not
22 for profit: *Provided, however*, That said exemption shall
23 not extend to that part of the gross income arising from
24 the sale of alcoholic liquor, food and related services, of
25 such fraternal societies, organizations and associations
26 which are licensed as private clubs under the provisions
27 of article seven, chapter sixty of this code; (d) corpora-
28 tions, associations and societies organized and operated
29 exclusively for religious or charitable purposes; (e) pro-
30 duction credit association, organized under the provisions
31 of the federal "Farm Credit Act of 1933"; (f) any credit
32 union organized under the provisions of chapter thirty-
33 one, or any other chapter of this code: *Provided, further*,
34 That the exemptions of this section shall not apply to
35 corporations or cooperative associations organized under
36 the provisions of article four, chapter nineteen of this
37 code.

CHAPTER 120

(Senate Bill No. 113—Mr. McCourt, Mr. President, and Mr. Hubbard)

[Passed March 11, 1972; in effect July 1, 1972. Approved by the Governor.]

AN ACT to amend and reenact article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, providing a gasoline and special fuel excise tax act; defining terms; levying a gasoline and special fuel excise tax; providing for the computation of such tax; providing exemptions from such tax; relating to such tax and gasoline or special fuel exported or in interstate commerce; requiring reports and records and specifying requirements with respect thereto and subpoena thereof; specifying the due date of such tax; establishing criminal offenses; providing criminal penalties; relating to refunds because of erroneous or illegal collections, casualty or other losses, exportation or a decrease in the rate of tax, and specifying procedures and the time for filing of petitions for such refunds; relating to refunds of such tax because of certain nonhighway uses of gas or special fuel and specifying procedures and the time for filing of petitions for such refunds; relating to partial refund of tax on tax-paid gallonage consumed in certain buses and procedures in connection therewith; relating to taxpayer surety bonds or pledges of property in lieu thereof; relating to the enforcement powers of the tax commissioner and his agents and employees and bonds of such agents and employees; authorizing deductions from such tax for the cost of administration and enforcement; providing for the uses to be made of the tax collected; authorizing certain prepaid tax adjustments; providing for assessment and collection of taxes, interest, and penalties; providing for hearings and appeals; providing for injunctions; providing for sales or discontinuance of business; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

- §11-14-1. Short title; arrangement of sections or portions of article.
- §11-14-2. Definitions.
- §11-14-3. Imposition of tax.
- §11-14-4. Computation of tax.
- §11-14-5. Exemptions from tax.
- §11-14-6. Gasoline or special fuel exported or in interstate commerce; distributors or producers may pay tax shipments into state.
- §11-14-7. Due date of reports; reports required; records to be kept; examination of records; subpoena powers; examination of witnesses.
- §11-14-8. Tax due.
- §11-14-9. False statements; penalty.
- §11-14-10. Refund of taxes illegally collected, etc.; refund for gallonage exported or lost; change of rate; petition for refund.
- §11-14-11. Refund of tax because of certain nonhighway uses.
- §11-14-12. Partial refund of tax on tax-paid gallonage consumed in buses.
- §11-14-13. Surety bonds required; release of surety; new bond.
- §11-14-14. Enforcement powers.
- §11-14-15. Amounts allowed for administration and enforcement; disposition of tax collected.
- §11-14-16. Prepaid tax adjustment.
- §11-14-17. Assessment of tax when insufficiently returned.
- §11-14-18. Jeopardy assessments.
- §11-14-19. Interest; additions to tax; penalties; fraudulent returns; willful failure to file.
- §11-14-20. Notice of assessment; petition for reassessment.
- §11-14-21. Hearings; appeals.
- §11-14-22. Sale or discontinuance of business of taxpayer.
- §11-14-23. Notice from commissioner a prerequisite to issuance of certificate of dissolution or withdrawal of corporation.
- §11-14-24. Collection by distraint; report of collection.
- §11-14-25. Collection by action or suit; injunction.
- §11-14-26. Forms; rules and regulations.
- §11-14-27. Secrecy of returns and reciprocal exchange of information.
- §11-14-28. Tax a debt; lien of unpaid tax; recordation of lien.
- §11-14-29. Severability.

§11-14-1. Short title; arrangement of sections or portions of article.

- 1 This article shall be known and may be cited as the
- 2 "Gasoline and Special Fuel Excise Tax Act." No in-

3 ference, implication or presumption of legislative con-
4 struction shall be drawn or made by reason of the location
5 or grouping of any particular section or portion of this
6 article.

§11-14-2. Definitions.

1 For purposes of this article:

2 (1) "Actual metered gallons" means, in addition to
3 amounts computed by mechanical devices which measure
4 and record directly in digital terms, all amounts computed
5 by other methods of computing quantities commonly em-
6 ployed by persons engaged in the sale of petroleum prod-
7 ucts, including, but not limited to, tank or barge strappings
8 and other graduated lineal devices.

9 (2) "Aircraft fuel" means gasoline and special fuel
10 suitable for use in any aircraft engine.

11 (3) "Commissioner" or "tax commissioner" means the
12 tax commissioner of the state of West Virginia or his
13 duly authorized agent.

14 (4) "Distributor" or "producer" means and includes
15 every person:

16 (a) Who produces, manufactures, processes or other-
17 wise alters gasoline or special fuel in this state for use or
18 for sale; or

19 (b) Who engages in this state in the sale of gasoline
20 or special fuel for the purpose of resale or for distribu-
21 tion; or

22 (c) Who receives gasoline or special fuel into the
23 cargo tank of a tank wagon in this state for use or sale by
24 such person.

25 (5) "Gallon" means two hundred thirty-one cubic
26 inches of liquid measurement, by volume: *Provided*, That
27 the commissioner may by rule and regulation prescribe
28 other measurement or definition of gallon.

29 (6) "Gasoline" means any product commonly or com-
30 mercially known as gasoline, regardless of classification,
31 suitable for use as fuel in an internal combustion engine,
32 except special fuel as hereinafter defined.

33 (7) "Highway" means every way or place of whatever
34 nature open to the use of the public as a matter of right

35 for the purpose of vehicular travel, which is maintained
36 by this state or some taxing subdivision or unit thereof
37 or the federal government or any of its agencies.

38 (8) "Importer" means every person, resident or non-
39 resident, other than a distributor, who receives gasoline or
40 special fuel outside this state for use, sale or consumption
41 within this state, but shall not include the fuel in the
42 supply tank of a motor vehicle, or a person paying the
43 motor carrier road tax as provided for in article fourteen-a
44 of this chapter.

45 (9) "Motor carrier" means any passenger vehicle
46 which has seats for more than nine passengers in addition
47 to the driver, or any road tractor, or any tractor truck,
48 or any truck having more than two axles which is oper-
49 ated or caused to be operated by any person on any high-
50 way in this state.

51 (10) "Motor vehicle" means automobiles, motor
52 carriers, motor trucks, motorcycles and all other vehicles
53 or equipment, engines or machines which are operated or
54 propelled by combustion of gasoline or special fuel.

55 (11) "Person" means and includes any individual, firm,
56 partnership, limited partnership, joint adventure, asso-
57 ciation, company, corporation, organization, syndicate,
58 receiver, trust, or any other group or combination acting
59 as a unit, in the plural as well as the singular number,
60 and means and includes the officers, directors, trustees, or
61 members of any firm, partnership, limited partnership,
62 joint adventure, association, company, corporation, or-
63 ganization, syndicate, receiver, trust, or any other group
64 or combination acting as a unit, in the plural as well as
65 the singular number, unless the intention to give a more
66 limited meaning is disclosed by the context.

67 (12) "Petroleum carrier" means any person who hauls
68 or transports gasoline or special fuel within this state
69 or on any navigable rivers which are within the jurisdic-
70 tion of this state.

71 (13) "Purchase" means and includes any acquisition
72 of ownership of property or of a security interest for a
73 consideration.

74 (14) "Receive" means any acquisition of ownership or
75 possession of gasoline or special fuel.

76 (15) "Retail dealer" means any person not a distribu-
77 tor or producer who sells gasoline or special fuel from a
78 fixed location in this state to users.

79 (16) "Sale" means any transfer, exchange, gift, barter,
80 or other disposition of any property or security interest
81 for a consideration.

82 (17) "Special fuel" means any gas or liquid, other
83 than gasoline, used or suitable for use as fuel in an in-
84 ternal combustion engine. The term "special fuel" shall
85 include products commonly known as natural or casing-
86 head gasoline, but shall not include any petroleum prod-
87 uct or chemical compound such as alcohol, industrial
88 solvent, heavy furnace oil, lubricant, etc., not commonly
89 used nor practicably suited for use as fuel in an internal
90 combustion engine.

91 (18) "Supply tank" means any receptacle on a motor
92 vehicle from which gasoline or special fuel is supplied
93 for the propulsion of the vehicle or equipment located
94 thereon, exclusive of a cargo tank. A supply tank includes
95 a separate compartment of a cargo tank used as a supply
96 tank, and any auxiliary tank or receptacle of any kind
97 from which gasoline or special fuel is supplied for the
98 propulsion of the vehicle, whether or not such tank or
99 receptacle is directly connected to the fuel supply line
100 of the vehicle.

101 (19) "Tank wagon" means and includes any motor
102 vehicle or vessel with a cargo tank or cargo tanks ordi-
103 narily used for making deliveries of gasoline or special
104 fuel or both for sale or use.

105 (20) "Tax" includes, within its meaning, interest, addi-
106 tions to tax and penalties, unless the intention to give it
107 a more limited meaning is disclosed by the context.

108 (21) "Taxpayer" means any person liable for any tax,
109 interest, additions to tax or penalty under the provisions
110 of this article.

111 (22) "User" means any person who purchases gasoline
112 or special fuel for use as fuel and uses such fuel in an

113 internal combustion engine owned or operated by such
114 person.

§11-14-3. Imposition of tax.

1 There is hereby levied an excise tax of eight and
2 one-half cents per gallon on all gasoline or special fuel,
3 which tax shall be computed in accordance with the
4 appropriate measure of tax as hereinafter prescribed in
5 this article.

§11-14-4. Computation of tax.

1 A distributor or producer shall use as the measure of
2 tax all actual metered gallons of gasoline, withdrawn
3 from storage within this state for sale to any other per-
4 son, or for delivery to any retail service station owned
5 or operated by such distributor or producer, or used as
6 fuel in an internal combustion engine.

7 A distributor or producer shall use as the measure of
8 tax all actual metered gallons of special fuel, withdrawn
9 from storage within this state for use, or sold for use, as
10 fuel in an internal combustion engine, or sold, trans-
11 ferred or delivered to its company operated retail storage
12 or any other retail station or user wherein said special
13 fuel storage is for use or for the sale for use as fuel in
14 an internal combustion engine.

15 A retail dealer, or importer, or user shall use as the
16 measure of tax all actual metered gallons of gasoline,
17 not previously included in the measure of tax, received
18 into his storage within this state or used by him as fuel
19 in an internal combustion engine.

20 A retail dealer, or importer, or user shall use as the
21 measure of tax all actual metered gallons of special fuel,
22 not previously included in the measure of tax, received
23 into his storage within this state wherein said special
24 fuel storage is for use or for the sale for use as fuel
25 in an internal combustion engine, or used by him as fuel
26 in an internal combustion engine.

27 A person not a distributor or producer, retail dealer,
28 importer, or user shall use as the measure of tax all
29 actual metered gallons of gasoline or special fuel subject

30 to tax under this article and not previously included in
31 the measure of tax by him or any other person.

32 This article shall not be construed to require the in-
33 clusion in the measure of tax of any gasoline or special
34 fuel previously included in the measure of tax upon
35 which the tax has been previously paid.

36 The tax imposed by this article shall be in addition
37 to all other taxes of whatever character imposed by any
38 other provisions of law.

§11-14-5. Exemptions from tax.

1 There shall be exempted from the excise tax on gasoline
2 or special fuel imposed by this article the following:

3 (1) All gallons of gasoline or special fuel exported
4 from this state to any other state or nation.

5 (2) All gallons of gasoline or special fuel sold to and
6 purchased by the United States or any agency thereof
7 when delivered in bulk quantities of five hundred gallons
8 or more.

9 (3) All gallons of gasoline or special fuel sold pur-
10 suant to a government contract, in bulk quantities of
11 five hundred gallons or more, for use in conjunction
12 with any municipal, county, state or federal civil defense
13 program, or to any person on whom is imposed a re-
14 quirement to maintain an inventory of gasoline or special
15 fuel for the purpose of any such program: *Provided,*
16 That fueling facilities used for these purposes are not
17 capable of fueling motor vehicles, and the person in charge
18 of such program has in his possession a letter of authority
19 from the tax commissioner certifying his right to such
20 exemption.

21 (4) All gallons of gasoline or special fuel imported
22 into this state in the fuel supply tank or tanks of a
23 motor vehicle, other than in the fuel supply tank of a
24 vehicle being hauled. This exemption does not relieve
25 a person owning or operating as a motor carrier of any
26 taxes imposed by article fourteen-a of this chapter.

27 (5) All gallons of gasoline and special fuel used and
28 consumed in stationary off-highway turbine engines.

29 (6) All gallons of special fuel for heating any public
30 or private dwelling, building or other premises.

31 (7) All gallons of special fuel for boilers.

32 (8) All gallons of gasoline or special fuel used as a
33 dry cleaning solvent or commercial or industrial solvent.

34 (9) All gallons of gasoline or special fuel used as
35 lubricants, ingredients, or components of any manu-
36 factured product or compound.

37 (10) All gallons of gasoline or special fuel sold to any
38 municipality or agency thereof for use in vehicles or
39 equipment owned and operated by such municipality or
40 agency thereof and when purchased for delivery in bulk
41 quantities of five hundred gallons or more.

42 (11) All gallons of gasoline or special fuel sold to any
43 urban mass transportation authority, created pursuant
44 to the provisions of article twenty-seven, chapter eight
45 of this code, for use in an urban mass transportation
46 system.

47 (12) All gallons of gasoline or special fuel sold for use
48 as aircraft fuel.

49 (13) All gallons of gasoline or special fuel sold for
50 use or used as a fuel for commercial watercraft.

51 (14) All gallons of special fuel sold for use or con-
52 sumed in railroad diesel locomotives.

§11-14-6. Gasoline or special fuel exported or in interstate commerce; distributors or producers may pay tax shipments into state.

1 This article shall not be construed to require the in-
2 clusion in the computation of tax of a distributor or pro-
3 ducer, retail dealer, or importer, of any gasoline or special
4 fuel when the same is exported by a person from this
5 state to another state or nation or territories or possessions
6 thereof, nor to require the inclusion in the computation
7 of tax of any gasoline or special fuel shipped in inter-
8 state commerce while the same is in transportation; but
9 the gallonage of gasoline or special fuel shipped from
10 another state shall be included in the computation of

11 tax as required by this article after the same shall have
12 been divested of its interstate character: *Provided*, That
13 distributors making shipments of gasoline or special fuel
14 into this state may, as a matter of convenience to pur-
15 chasers located in this state, assume and pay the tax
16 imposed by this article when written permission so to
17 do is first obtained from the commissioner.

§11-14-7. Due date of reports; reports required; records to be kept; examination of records; subpoena powers; examination of witnesses.

1 Every taxpayer subject to the tax imposed by this
2 article shall make, on or before the last day of each month,
3 to the commissioner a report of its operations during the
4 preceding month as the commissioner may require and
5 such other reports from time to time as the commissioner
6 may deem necessary. The reports prescribed herein are
7 required although a tax might not be due, or no business
8 transacted, for the period covered by the report. For good
9 cause shown, the commissioner may extend the time for
10 filing said reports for a period not exceeding thirty days.

11 The reports and taxes due, as imposed by this act, shall
12 be deemed as having been timely filed for the purpose
13 of avoiding interest, additions to tax and penalties only
14 if the postmark date thereon is clearly within the said
15 last day of the calendar month, or is received within such
16 period. If the last day falls on a Saturday or Sunday, or
17 a day which is a legal holiday in the state of West Vir-
18 ginia, filing will be considered timely if it is done on the
19 next succeeding day which is not a Saturday, Sunday or
20 legal holiday.

21 A taxpayer shall keep such records necessary to verify
22 the reports and returns required by this article, including
23 inventories, receipts, disbursements, and any other records
24 which the commissioner by regulation may prescribe, for
25 a period of time not less than three years.

26 Unless otherwise permitted, in writing, by the com-
27 missioner, each delivery ticket or invoice for each pur-
28 chase or sale of gasoline or special fuel shall be recorded
29 upon a serially numbered invoice showing the name and

30 address of the seller and the purchaser, point of delivery,
31 the date, number of gallons, kind of fuel and the price of
32 said fuel. The amount of tax shall be indicated separately
33 or the invoice shall indicate whether or not the tax im-
34 posed by this article is included in the total price and
35 such other information as the commissioner may require:
36 *Provided*, That these invoicing requirements shall not
37 apply to cash sales, and a person making such sales shall
38 maintain such records as may be necessary to verify his
39 return.

40 The commissioner may inspect or examine the records,
41 books, papers, storage tanks, meters and any equipment
42 records of a taxpayer or any other person to verify the
43 truth and accuracy of any report or return to ascertain
44 whether the tax imposed by this article has been properly
45 paid.

46 As a further means of obtaining the records, books and
47 papers of a taxpayer or any other person and ascertaining
48 the amount of taxes and the reports due under this article,
49 the commissioner shall have the power to examine wit-
50 nesses under oath; and if any witness shall fail or refuse
51 at the request of the commissioner to grant access to the
52 books, records and papers, the commissioner shall certify
53 the facts and the names to the circuit court of the county
54 having jurisdiction of the party and such court shall
55 thereupon issue a subpoena duces tecum to such party
56 to appear before the commissioner, at a place designated
57 within the jurisdiction of such court, on a day fixed.

§11-14-8. Tax due.

1 The tax imposed by this article shall be paid by
2 each taxpayer on or before the last day of each calendar
3 month by check, bank draft, certified check or money
4 order, payable to the commissioner, for the amount of
5 tax due, if any, for the preceding month.

§11-14-9. False statements; penalty.

1 Any person who willfully and knowingly makes a false
2 statement orally or in writing in reference to the pur-
3 chase or sale of gasoline or special fuel for the purpose
4 of obtaining or attempting to obtain or to assist any other

5 person to obtain or attempt to obtain a credit, refund or
6 reduction of liability for taxes under the provisions of
7 this article, shall be guilty of a misdemeanor, and, upon
8 conviction thereof, shall be fined not less than fifty nor
9 more than one thousand dollars or imprisoned for not
10 more than six months or both fined and imprisoned.

**§11-14-10. Refund of taxes illegally collected, etc.; refund for
gallage exported or lost; change of rate; peti-
tion for refund.**

1 The commissioner is hereby authorized to refund from
2 the funds collected under the provisions of this article
3 any tax, interest, additions to tax or penalties which have
4 been erroneously or illegally collected from any person.

5 If any distributor or producer, retail dealer or importer,
6 while he shall be the owner thereof, loses any gallons of
7 gasoline or special fuel through fire, lightning, breakage,
8 flood, or other casualty, which gallons have been previ-
9 ously included in the tax by or for such person, he shall be
10 refunded a sum equal to the amount of the tax paid upon
11 such gallons so lost.

12 Any distributor or producer, retail dealer or importer
13 or other person who purchases or receives gasoline or
14 special fuel in this state upon which the tax imposed by
15 this article has been paid and who subsequently exports
16 the same from this state (except in a supply tank), shall
17 be entitled to a refund for the amount of tax paid.

18 Every distributor or producer, retail dealer or importer
19 shall be entitled to a refund from this state of the amount
20 resulting from a change of rate decreasing the tax under
21 the provisions of this article on gasoline and special fuel
22 on hand and in inventory on the effective date of such
23 rate change, which gasoline and special fuel shall have
24 been included in any previous computation by which the
25 tax imposed by this article has been paid by him.

26 No refund shall be made under this section unless a
27 written petition therefor sets forth the circumstances upon
28 which such refund is claimed. The claim shall be in such
29 form and with such supporting records as the commis-
30 sioner prescribes and shall be made under the penalty of
31 perjury. Petitions for such refund shall be filed with the

32 commissioner within three years from the end of the
33 month in which the tax was erroneously or illegally paid
34 or the gallons were exported or lost by casualty or from
35 change of rate, as provided in this section.

§11-14-11. Refund of tax because of certain nonhighway uses.

1 The tax imposed by this article shall be refunded to
2 any person who shall buy in quantities of twenty-five
3 gallons or more, at any one time, tax-paid gasoline or
4 special fuel, when consumed for the following purposes:

5 (1) As a special fuel for internal combustion engines
6 not operated upon highways of this state, or

7 (2) Gasoline consumed to operate tractors and gas en-
8 gines or threshing machines for agricultural purposes,
9 when such operation is not, in whole or in part, upon the
10 highways of this state, or

11 (3) Gasoline used by any railway company, subject to
12 regulation by the public service commission of West Vir-
13 ginia, for any purpose other than upon the highways of
14 this state, or

15 (4) Gasoline consumed in the business of manufactur-
16 ing or producing natural resources or in mining or drill-
17 ing therefor, or in the transportation of natural resources
18 solely by means of unlicensed vehicles or vehicles li-
19 censed under the motor vehicle laws of this state, either as
20 a motor fuel or for any other purpose and which gasoline
21 is not in any part used upon the highways of this state, or

22 (5) Gasoline consumed in motor boats or other water-
23 craft operated upon the navigable waters of this state.

24 Such tax shall be refunded upon presentation to the
25 commissioner of an affidavit accompanied by the origi-
26 nal or top copy sales slips or invoices, or certified copies
27 thereof, from the distributor or producer or retail dealer,
28 showing such purchases, together with evidence of pay-
29 ment thereof, which affidavit shall set forth the total
30 amount of such gasoline or special fuel purchased and con-
31 sumed by such user, other than upon any highways of
32 this state, and how used; and the commissioner upon the
33 receipt of such affidavit and such paid sales slips or in-

34 voices shall cause to be refunded such tax paid on gaso-
35 line or special fuel purchased and consumed as aforesaid.

36 The right to receive any refund under the provisions
37 of this section shall not be assignable and any assignment
38 thereof shall be void and of no effect, nor shall any pay-
39 ment be made to any person other than the original
40 person entitled thereto using gasoline or special fuel as
41 hereinbefore in this section set forth. The commissioner
42 shall cause a refund to be made under the authority of
43 this section only when the application for such refund is
44 filed with the commissioner, upon forms prescribed by
45 the commissioner, within four months from the month of
46 purchase or delivery of the gasoline or special fuel. Any
47 claim for a refund not timely filed shall not be construed
48 to be or constitute a moral obligation of the state of West
49 Virginia for payment.

**§11-14-12. Partial refund of tax on tax-paid gallonage con-
sumed in buses.**

1 Any person regularly operating any vehicle under a
2 certificate of public convenience and necessity or under
3 a contract carrier permit for transportation of persons,
4 when such person purchases tax-paid gasoline or tax-
5 paid special fuel, as required by this article, in an amount
6 of twenty-five gallons or more, and complies with all the
7 requirements of section eleven, with the exception of
8 off-highway use, may be refunded an amount equal to
9 four and one-half cents per gallon under authority of
10 this section: *Provided*, That said gallons of gasoline or
11 special fuel shall have been consumed in the operation of
12 urban and suburban bus lines, and the majority of
13 passengers use the bus for traveling a distance not exceed-
14 ing forty miles, measured one way, on the same day
15 between their places of abode and their places of work,
16 shopping areas or schools. There shall be presented to
17 the commissioner an affidavit accompanied by proof of
18 such purchase and payment as required by section eleven
19 of this article. The right to a refund under this section
20 shall not be assignable, and any assignment so made shall
21 be void.

§11-14-13. Surety bonds required; release of surety; new bond.

1 The commissioner may require a taxpayer to file a
2 continuous surety bond in an amount to be fixed by the
3 commissioner, except that the amount shall not be less
4 than one thousand dollars. Upon completion of the filing
5 of such surety bond an annual notice of renewal, only,
6 shall be required thereafter. The surety must be autho-
7 rized to engage in business within this state. The bond
8 shall be conditioned upon faithful compliance with the
9 provisions of this article, including the filing of the re-
10 turns and payment of all tax prescribed by this article.
11 Such bond shall be approved by the commissioner as to
12 sufficiency and by the attorney general as to form, and
13 shall indemnify the state against any loss arising from
14 the failure of the taxpayer to pay any tax imposed by
15 this article for any cause whatever.

16 Any surety on a bond furnished hereunder shall be
17 relieved, released and discharged from all liability ac-
18 cruing on such bond after the expiration of sixty days
19 from the date the surety shall have lodged, by certified
20 mail, with the commissioner a written request to be dis-
21 charged. This shall not relieve, release or discharge the
22 surety from liability already accrued, or which shall
23 accrue before the expiration of the sixty-day period.
24 Whenever any surety shall seek discharge as herein
25 provided, it shall be the duty of the principal of such
26 bond to supply the commissioner with another bond, or
27 pledge of property equal in value to the original bond,
28 such pledge to be in the form of a tax lien on the property
29 pledged and said lien shall be duly perfected in the
30 office of the clerk of the county court of the county
31 wherein such property is situated and shall be submitted
32 to the commissioner along with a certified appraisal
33 statement as to the value of the property pledged prior
34 to the expiration of the original bond.

§11-14-14. Enforcement powers.

1 (1) Any employee or agent of the commissioner so
2 authorized by the commissioner shall have all the law-
3 ful powers delegated to members of the department of

4 public safety to enforce the provisions of this article,
5 when bonded as hereinafter provided in this section.

6 (2) Each employee or agent so authorized by the com-
7 missioner shall execute a bond with security in the sum
8 of thirty-five hundred dollars, payable to the state of
9 West Virginia, and conditioned for the faithful perform-
10 ance of his duties, as such, and such bond shall be ap-
11 proved as to form by the attorney general, and the same
12 shall be filed with the secretary of state and preserved in
13 his office.

**§11-14-15. Amounts allowed for administration and enforce-
ment; disposition of tax collected.**

1 The commissioner, for the administration and enforce-
2 ment of this article, shall be allowed to expend out of
3 the tax collected thereunder, a sum not to exceed one
4 percent of the tax collected pursuant to the provisions
5 of this article.

6 All tax collected under the provisions of this article,
7 after deducting the costs of administration and enforce-
8 ment as aforesaid, shall be paid into the state treasury
9 and shall be used only for the purpose of construction,
10 reconstruction, maintenance and repair of highways, and
11 payment of the interest and sinking fund obligations on
12 state bonds issued for highway purposes.

13 Unless necessary for such bond requirements, five
14 fourteenths of the tax collected under the provisions of
15 this article shall be used for feeder and state local service
16 highway purposes.

§11-14-16. Prepaid tax adjustment.

1 A distributor or producer may file a claim with the
2 commissioner on forms provided by the commissioner
3 for eight and one-half cents per gallon on the total gal-
4 lons of gasoline held in storage by the distributor and
5 upon which the tax imposed by the former provisions of
6 this article had been paid at the first moment of the
7 effective date of this act. The claim of the distributor or
8 producer will be processed as a tax credit on succeeding
9 monthly tax returns filed by the distributor with the
10 commissioner for the amount of one forty-eighth of the

11 total amount of tax filed as a claim with the commissioner
12 for the tax-paid gasoline in storage on the effective date
13 of this act.

§11-14-17. Assessment of tax when insufficiently returned.

1 If the commissioner believes that the tax imposed by
2 this article is insufficiently returned by a taxpayer, either
3 because the taxpayer has failed to properly remit the tax
4 or has failed to make a return, or has made a return
5 which is incomplete, deficient or otherwise erroneous, he
6 may proceed to investigate and determine or estimate the
7 tax liability of the taxpayer and make an assessment
8 therefor.

§11-14-18. Jeopardy assessments.

1 If the commissioner believes that the collection of any
2 tax which he is required to administer will be jeopardized
3 by delay, he shall thereupon make an assessment of tax,
4 noting that fact upon the assessment. The amount assessed
5 shall be immediately due and payable. Unless the tax-
6 payer against whom a jeopardy assessment is made peti-
7 tions for reassessment within twenty days after service
8 of notice of the jeopardy assessment, such an assessment
9 becomes final. A petition for reassessment by a person
10 against whom a jeopardy assessment has been made must
11 be accompanied by such security as the commissioner
12 may deem necessary to insure compliance with this
13 article.

**§11-14-19. Interest; additions to tax; penalties; fraudulent re-
turns; willful failure to file.**

1 (1) *Interest.*—Taxes imposed by this article, if not paid
2 when due, shall bear interest at the rate of six percent
3 per annum from the due date of the return. Each assess-
4 ment or deficiency notice made by the commissioner shall
5 bear interest at the rate of six percent per annum. In all
6 cases of delinquency or extensions of time, interest shall
7 be assessed and collected.

8 (2) *Additions to tax; penalty.*—In the case of any
9 failure to make or file a return or whenever the full
10 amount of the tax or any portion or deficiency thereof

11 has not been paid, as required by this article, unless it
12 be shown that such failure is due to reasonable cause
13 and not due to willful neglect, there may be added to the
14 tax five per centum if a failure is for not more than
15 thirty days, with an additional five per centum for each
16 additional thirty days or fraction thereof during which
17 failure shall continue, not to exceed twenty-five per cen-
18 tum in the aggregate. If no tax is due, the penalty shall
19 be twenty-five dollars per month or fraction thereof for
20 failure to file a tax return.

21 (3) *Fraudulent returns; willful failure to file.*—In the
22 case of the filing of any false or fraudulent return with
23 intent to evade the tax imposed by this article, or in the
24 case of a willful failure to file a return with intent to
25 evade the tax, or the filing of a false claim for credit or
26 refund, there shall be added to the tax due a penalty in
27 an amount equal to one hundred per centum of the tax
28 due. The burden of proving fraud, willfulness, or intent
29 to evade tax shall be upon the commissioner.

§11-14-20. Notice of assessment; petition for reassessment.

1 The commissioner shall give to the taxpayer written
2 notice of any assessment made pursuant to this article.
3 Unless the taxpayer to whom a notice of assessment is
4 directed shall, within thirty days after service thereof
5 (twenty days in the case of jeopardy assessments), either
6 personally or by certified mail, file with the commissioner
7 a petition in writing, verified under oath by said tax-
8 payer or his duly authorized agent having knowledge
9 of the facts, setting forth with particularity the items of
10 the assessment objected to, together with the reasons for
11 objections, said assessment shall become final and con-
12 clusive, not subject to administrative or judicial review,
13 and the amount thereof shall be payable at the end of
14 the thirty-day period (twenty days in the case of a
15 jeopardy assessment). A petition for reassessment shall
16 be deemed to be timely filed if the postmark date thereon
17 is clearly within said thirty days (twenty days in case
18 of jeopardy assessment) of receipt of said assessment by
19 the taxpayer or is received within such period. If the

20 thirtieth day (twentieth day in case of a jeopardy as-
21 sessment) falls on a Saturday or Sunday, filing will be con-
22 sidered timely if it is done on the next succeeding day
23 which is not a legal holiday.

§11-14-21. Hearings; appeals.

1 In every case where a petition for reassessment as
2 above described is filed, the commissioner shall assign a
3 time and place for the hearing of same and shall notify
4 the petitioner of such hearing by written notice at least
5 twenty days in advance thereof, and such hearing shall
6 be held within sixty days from the filing of the petition
7 for reassessment unless continued by agreement or by
8 the commissioner for good cause. The hearing shall be
9 informal and may be conducted by an examiner desig-
10 nated by the commissioner. At such hearing the assess-
11 ment shall constitute prima facie evidence of the claim of
12 the state and the burden of proof shall be upon the tax-
13 payer assessed to show that the assessment is incorrect
14 and contrary to law. In every case where a petition or
15 request for refund as above described is filed and the
16 commissioner has refused to allow said refund in whole
17 or in part, the petitioner may file within thirty days after
18 receipt of the commissioner's decision a written request
19 for hearing. In every case where a request for hearing is
20 filed, the commissioner shall proceed to assign and hold
21 such hearing in accordance with the methods herein pre-
22 scribed for a petition for reassessment. After any such
23 hearing, the commissioner shall, within a reasonable time,
24 give notice in writing of the decision. Unless an appeal
25 is taken within thirty days from service of this notice, the
26 commissioner's decision shall be final.

27 Every assessment made by the commissioner under this
28 article which becomes final and conclusive shall constitute
29 a judgment and may be collected as judgments are col-
30 lected.

31 An appeal may be taken by the taxpayer to the circuit
32 court of the county in which the activity taxed was
33 engaged, or in which the taxpayer resides, or in the circuit
34 court of Kanawha county, within thirty days after he

35 shall have received notice from the commissioner of his
36 determination as provided in this section.

37 The appeal shall be taken by written notice to the com-
38 missioner and served as an original notice. When said
39 notice is so served it shall, with the return thereon, be
40 filed in the office of the clerk of the circuit court and
41 docketed as other cases with the taxpayer as plaintiff and
42 the commissioner as defendant. Before the appeal is
43 heard, the plaintiff shall file with such clerk a bond for
44 the use of the defendant, with sureties approved by said
45 clerk, the penalty of the bond to be not less than the total
46 amount of the tax, interest, additions to tax and penalties
47 appealed from, and conditioned that the plaintiff shall
48 perform the orders of the court.

49 The court shall hear the appeal and determine anew
50 all questions submitted to it on appeal from the determina-
51 tion of the commissioner. In such appeal a certified copy
52 of the commissioner's assessment shall be admissible and
53 shall constitute prima facie evidence of the tax due under
54 the provisions of this article. The court shall render its
55 decree thereon and a certified copy of said decree shall
56 be filed by the clerk of said court with the commissioner
57 who shall then correct the assessment in accordance with
58 said decree. An appeal may be taken by the taxpayer or
59 the commissioner to the supreme court of appeals of this
60 state.

§11-14-22. Sale or discontinuance of business of taxpayer.

1 Whenever any person liable for the tax imposed by
2 this article, by reason of sale or discontinuance, ceases
3 business at any location, the taxes, interest, additions to
4 tax and penalties imposed by this article shall become due
5 and payable immediately and such person shall make a
6 final return within fifteen days after the date of sale or
7 discontinuance. The taxes, interest, additions to tax and
8 penalties shall be a lien upon the property of such person.
9 In the event of sale, the person purchasing said business
10 shall withhold sufficient of the purchase money to cover
11 the amount of such taxes, interest, additions to tax and
12 penalties due and unpaid until such time as the former
13 owner shall produce a receipt from the commissioner

14 showing that the taxes, interest, additions to tax and
15 penalties have been paid, or a certificate indicating no
16 taxes are due. If the purchaser of the business fails to
17 withhold purchase money, as above provided, he shall be
18 personally liable for the payment of the taxes, interest,
19 additions to tax and penalties accrued and unpaid and
20 the same shall be recoverable by the commissioner by
21 action or suit as provided by this article.

§11-14-23. Notice from commissioner a prerequisite to issuance of certificate of dissolution or withdrawal of corporation.

1 The secretary of state shall withhold the issuance of
2 any certificate of dissolution or withdrawal in the case
3 of any corporation organized under the laws of this state
4 or organized under the laws of another state and ad-
5 mitted to do business in this state, until the receipt of a
6 notice from the commissioner to the effect that the tax
7 levied under this article against any such corporation has
8 been paid or provided for, if any such corporation is a
9 taxpayer under this article, or until he shall be notified
10 by the commissioner that the applicant is not subject to
11 pay a tax hereunder.

§11-14-24. Collection by distraint; report of collection.

1 The commissioner may distraint upon any goods, chattels
2 or intangibles represented by negotiable evidences of
3 indebtedness, of any taxpayer delinquent under this article
4 for the amount of all taxes, interest, additions to tax and
5 penalties accrued and unpaid hereunder. The commis-
6 sioner may require the assistance of the sheriff of any
7 county of the state in levying such distress in the county
8 of which such sheriff is an officer. A sheriff so collecting
9 taxes due hereunder shall be entitled to compensation in
10 the amount of all additions to tax collected over and
11 above the principal amount of the tax due, but in no case
12 shall such compensation exceed twenty-five dollars. All
13 taxes, interest, additions to tax and penalties so collected
14 shall be reported within ten days after collection to the
15 commissioner, who shall prescribe by general regulation
16 the manner of remittance of such funds and of allowing

17 the collecting officer the compensation due him under
18 this section.

19 The sheriff shall within five days after receipt of the
20 warrant file with the clerk of the county court a copy
21 thereof and thereupon the clerk shall enter in the judg-
22 ment docket the name of the taxpayer mentioned in the
23 warrant and the amount of the tax, interest, additions to
24 tax and penalties for which the warrant is issued and the
25 date when such copy is filed, and thereupon the amount
26 so docketed shall become a lien upon the title to an
27 interest in real property or chattels real of the person
28 against whom it is issued, in the same manner as a
29 judgment duly docketed in the office of such clerk. The
30 said sheriff shall thereupon proceed upon the same in
31 all respects, with like effect, and in the same manner pre-
32 scribed by law in respect to executions issued against
33 property upon judgment of a court of record. If a warrant
34 be returned not satisfied in full, the commissioner shall
35 have the same remedies to enforce the claim for the taxes
36 against the taxpayer as if the state had recovered judg-
37 ment against the taxpayer for the amount of the tax.

§11-14-25. Collection by action or suit; injunction.

1 The commissioner may collect any tax, interest, addi-
2 tions to tax and penalties due and unpaid under the pro-
3 visions of this article by appropriate legal proceedings in
4 the county in which the activity taxed was engaged or
5 the taxpayer resides, or by a suit to enforce the lien
6 therefor in any county in which property of the taxpayer
7 may be found; or, if the tax due and unpaid under this
8 article is three hundred dollars or less, by suit in the
9 court of any justice having jurisdiction of the taxpayer or
10 his property. If the failure of any taxpayer to comply
11 with the provisions of this article shall have continued
12 sixty days, the commissioner may proceed to obtain an
13 injunction restraining the taxpayer from doing business
14 in this state until he fully complies with the provisions
15 of this article. In any proceeding under this section upon
16 judgment or decree for the plaintiff he shall be awarded
17 his costs.

18 In the event that a business of a person subject to
19 the tax imposed by this article shall be operated in con-
20 nection with a receivership or insolvency proceeding, the
21 court under whose direction such business is operated or
22 was caused to be operated shall, by entry of a proper
23 order in the cause, make provisions for the regular
24 payment of such taxes as the same become due.

§11-14-26. Forms; rules and regulations.

1 The commissioner is hereby invested with full power
2 and authority and it is hereby made his duty to prescribe
3 the necessary forms and to promulgate rules and regula-
4 tions necessary to ascertain, assess and collect the taxes
5 imposed by this article and to enforce the provisions
6 thereof.

**§11-14-27. Secrecy of returns and reciprocal exchange of in-
formation.**

1 (1) Except when required in an official investigation,
2 administrative tax hearing or proceedings in court in-
3 volving taxes payable under this article, and except as
4 provided in subsection two of this section, it shall be
5 unlawful for any officer or employee of the state to divulge
6 or make known in any manner the amount of income or
7 any particulars set forth or disclosed in any report, state-
8 ment, or return required to be filed with the commissioner
9 by this article or any regulation of the commissioner
10 issued hereunder.

11 (2) The commissioner or his duly authorized agent
12 may upon request permit the proper officer or representa-
13 tive of the United States or any state, territory or political
14 subdivision of the United States, to inspect reports, state-
15 ments, or returns filed with the commissioner or may
16 furnish to such officer or representative a copy of any such
17 document, provided such other jurisdiction grants sub-
18 stantially similar privileges to the commissioner of this
19 state. Subsection one of this section shall not be construed
20 to prohibit the publication of statistics so classified as to
21 prevent the identification of particular reports, state-
22 ments, and returns and the items therein.

23 (3) Any taxpayer under this article may, in writing,
24 waive the secrecy rules provided in subsection one of
25 this section for such purpose and such period as he shall
26 therein state, and the commissioner, if he so determines,
27 may thereupon release to designated recipient(s) said
28 taxpayer's tax return or other particulars filed under the
29 provisions of this article.

§11-14-28. Tax a debt; lien of unpaid tax; recordation of lien.

1 A tax due and unpaid under this article shall be a debt
2 due the state. It shall be a personal obligation of the tax-
3 payer and shall be a lien upon the property of the tax-
4 payer: *Provided*, That such lien shall be subject to the
5 restrictions and conditions embodied in article ten-c,
6 chapter thirty-eight of the code of West Virginia, one
7 thousand nine hundred thirty-one, and any amendment
8 made or which may hereafter be made thereto.

§11-14-29. Severability.

1 If any provision of this article or the application thereof
2 to any person or circumstance is held unconstitutional or
3 invalid, such unconstitutionality or invalidity shall not
4 affect, impair or invalidate other provisions or applica-
5 tions of the article, and to this end the provisions of this
6 article are declared to be severable.

CHAPTER 121

(Com. Sub. for Senate Bill No. 112—By Mr. McCourt, Mr. President,
and Mr. Hubbard)

[Passed March 11, 1972; in effect July 1, 1972. Approved by the Governor.]

AN ACT to amend and reenact article fourteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, providing a motor carrier road tax act; defining terms; levying a motor carrier road tax; providing for the computation of such tax; requiring reports and records and specifying requirements with respect thereto and subpoena thereof; authorizing joint

reports; specifying the due date of such tax; relating to registration cards and identification markers for motor carriers and fees therefor; providing exceptions as to such cards and markers in the event of an emergency; establishing criminal offenses; providing criminal penalties; providing exemptions from such tax; relating to credits against such tax; relating to refunds of such tax and specifying procedures and the time for filing of petitions for such refunds; relating to taxpayer surety bonds or pledges of property in lieu thereof; relating to the enforcement powers of the tax commissioner and his agents and employees and bonds of such agents and employees; authorizing deductions from such tax for the cost of administration and enforcement; providing for the uses to be made of the tax collected; providing for assessment and collection of taxes, interest, and penalties; providing for hearings and appeals; providing for injunctions; providing for sales or discontinuances of business; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14A. MOTOR CARRIER ROAD TAX.

- §11-14A-1. Short title; arrangement of sections or portions of article.
- §11-14A-2. Definitions.
- §11-14A-3. Imposition of tax; amount; tax in addition to all other taxes.
- §11-14A-4. Computation of tax.
- §11-14A-5. Reports of carriers; joint reports; records; examination of records; subpoenas and witnesses.
- §11-14A-6. Payment of tax.
- §11-14A-7. Registration cards; identification markers; fees; emergency permits; penalty for violation of section.
- §11-14A-8. Exemptions.
- §11-14A-9. Credits against tax.
- §11-14A-10. False statements; penalty.
- §11-14A-11. Refunds authorized; petition for refund and procedure thereon; surety bonds.
- §11-14A-12. Enforcement powers.
- §11-14A-13. Disposition of tax collected; amounts allowed for administration and enforcement.
- §11-14A-14. Assessment of tax when insufficiently returned.
- §11-14A-15. Jeopardy assessments.

- §11-14A-16. Interest; additions to tax; penalties; fraudulent returns; willful failure to file.
- §11-14A-17. Notice of assessment; petition for reassessment.
- §11-14A-18. Hearing; appeals.
- §11-14A-19. Sale or discontinuance of business.
- §11-14A-20. Notice from commissioner a prerequisite to issuance of certificate of dissolution or withdrawal of corporation.
- §11-14A-21. Collection by distraint; report of collection.
- §11-14A-22. Collection by action or suit; injunction.
- §11-14A-23. Forms; rules and regulations.
- §11-14A-24. Secrecy of returns and reciprocal exchange of information.
- §11-14A-25. Tax a debt; lien of unpaid tax; recordation of lien.
- §11-14A-26. Severability.

§11-14A-1. Short title; arrangement of sections or portions of article.

- 1 This article shall be known and may be cited as the
- 2 "Motor Carrier Road Tax Act." No inference, implication
- 3 or presumption of legislative construction shall be drawn
- 4 or made by reason of the location or grouping of any par-
- 5 ticular section or portion of this article.

§11-14A-2. Definitions.

- 1 For purposes of this article:
- 2 (1) "Commissioner" or "tax commissioner" means the
- 3 tax commissioner of the state of West Virginia or his duly
- 4 authorized agent.
- 5 (2) "Gallon" means two hundred thirty-one cubic
- 6 inches of liquid measurement, by volume: *Provided,*
- 7 That the commissioner may by rule and regulation pre-
- 8 scribe other measurement or definition of gallon.
- 9 (3) "Gasoline" means any product commonly or com-
- 10 mercially known as gasoline, regardless of classification,
- 11 suitable for use as fuel in an internal combustion engine,
- 12 except special fuel as hereinafter defined.
- 13 (4) "Highway" means every way or place of whatever
- 14 nature open to the use of the public as a matter of right
- 15 for the purpose of vehicular travel, which is maintained
- 16 by this state or some taxing subdivision or unit thereof
- 17 or the federal government or any of its agencies.
- 18 (5) "Identification marker" means the decal issued by
- 19 the commissioner for display upon a particular motor
- 20 carrier.

21 (6) "Lease" means any oral or written contract for
22 valuable consideration granting the use of a motor car-
23 rier.

24 (7) "Motor carrier" means any passenger vehicle which
25 has seats for more than nine passengers in addition to the
26 driver, or any road tractor, or any tractor truck, or any
27 truck having more than two axles which is operated or
28 caused to be operated by any person on any highway in
29 this state.

30 (8) "Operation" means any operation of any motor
31 carrier, whether loaded or empty, whether for compensa-
32 tion or not, and whether owned by or leased to the per-
33 son who operates or causes to be operated such motor
34 carrier.

35 (9) "Person" means and includes any individual, firm,
36 partnership, limited partnership, joint adventure, associa-
37 tion, company, corporation, organization, syndicate, re-
38 ceiver, trust, or any other group or combination acting as
39 a unit, in the plural as well as the singular number, and
40 means and includes the officers, directors, trustees, or
41 members of any firm, partnership, limited partnership,
42 joint adventure, association, company, corporation, or-
43 ganization, syndicate, receiver, trust, or any other group
44 or combination acting as a unit, in the plural as well as
45 the singular number, unless the intention to give a more
46 limited meaning is disclosed by the context.

47 (10) "Pool operation" means any operation whereby
48 two or more taxpayers combine to operate or cause to be
49 operated a motor carrier or motor carriers upon any high-
50 way in this state.

51 (11) "Purchase" means and includes any acquisition of
52 ownership of property or of a security interest for a con-
53 sideration.

54 (12) "Registration card" means the card issued by the
55 commissioner and authorizing a person to operate or cause
56 to be operated a motor carrier upon any highway in this
57 state.

58 (13) "Road tractor" means every motor carrier de-
59 signed and used for drawing other vehicles and not so
60 constructed as to carry any load thereon either inde-

61 pendently or any part of the weight of a vehicle or load
62 so drawn.

63 (14) "Sale" means any transfer, exchange, gift, barter,
64 or other disposition of any property or security interest
65 for a consideration.

66 (15) "Special fuel" means any gas or liquid, other than
67 gasoline, used or suitable for use as fuel in an internal
68 combustion engine. The term "special fuel" shall include
69 products commonly known as natural or casinghead gaso-
70 line, but shall not include any petroleum product or
71 chemical compound such as alcohol, industrial solvent,
72 heavy furnace oil, lubricant, etc., not commonly used nor
73 practicably suited for use as fuel in an internal combus-
74 tion engine.

75 (16) "Tax" includes, within its meaning, interest, addi-
76 tions to tax and penalties, unless the intention to give it
77 a more limited meaning is disclosed by the context.

78 (17) "Taxpayer" means any person liable for any tax,
79 interest, additions to tax or penalty under the provisions
80 of this article.

81 (18) "Tractor truck" means every motor carrier de-
82 signed and used primarily for drawing other vehicles and
83 not so constructed as to carry a load other than a part of
84 the weight of the vehicle and load so drawn.

85 (19) "Truck" means every motor carrier designed, used
86 or maintained primarily for the transportation of property
87 and having more than two axles.

**§11-14A-3. Imposition of tax; amount; tax in addition to all
other taxes.**

1 Every person who operates or causes to be operated on
2 any highway in this state any motor carrier shall pay a
3 road tax on each motor carrier equivalent to the amount of
4 tax per gallon of gasoline or special fuel imposed by
5 article fourteen of this chapter, calculated on each gallon
6 of gasoline or special fuel used as fuel in each motor
7 carrier's operations in this state.

8 The tax imposed by this article shall be in addition to
9 all other taxes of whatever character imposed upon such
10 person by any other provisions of law.

§11-14A-4. Computation of tax.

1 Computation of the tax is based upon the amount of
2 gallons of gasoline or special fuel used in the operation of
3 any motor carrier within this state and shall be in such
4 proportion of the total amount of such gasoline or special
5 fuel used in any person's operations within and without
6 this state as the total number of gallons bears to the
7 total number of highway miles traveled within and with-
8 out this state.

§11-14A-5. Reports of carriers; joint reports; records; examination of records; subpoenas and witnesses.

1 Every taxpayer subject to the tax imposed by this
2 article shall on or before the last day of January, April,
3 July and October of every calendar year make to the
4 commissioner such reports of its operations during the
5 quarter ending the last day of the preceding month as the
6 commissioner may require and such other reports from
7 time to time as the commissioner may deem necessary.
8 For good cause shown, the commissioner may extend the
9 time for filing said reports for a period not exceeding
10 thirty days.

11 Two or more taxpayers regularly engaged in the trans-
12 portation of passengers on through buses on through
13 tickets in pool operation may, at their option and upon
14 proper notice to the commissioner, make joint reports of
15 their entire operations in this state. The taxes imposed
16 shall be calculated on the basis of such joint reports as
17 though such taxpayers were a single taxpayer; and the tax-
18 payers making such reports shall be jointly and severally
19 liable for the taxes. Such joint reports shall show the
20 total number of highway miles traveled in this state and
21 the total number of gallons of gasoline or special fuel
22 purchased in this state by the reporting taxpayers.
23 Credits to which the taxpayers making a joint return are
24 entitled shall not be allowed as credits to any other tax-
25 payer; but taxpayers filing joint reports shall permit all
26 taxpayers engaged in this state in pool operations with
27 them to join in filing joint reports.

28 A taxpayer shall keep such records necessary to verify
29 the highway miles traveled within and without the state

30 of West Virginia, the number of gallons of gasoline and
31 special fuel used and purchased within and without West
32 Virginia and any other records the commissioner by regu-
33 lation may prescribe.

34 The commissioner may inspect or examine the records,
35 books, papers, storage tanks, meters and any equipment
36 records or records of highway miles traveled within and
37 without West Virginia and the records of any other person
38 to verify the truth and accuracy of any statement or re-
39 port to ascertain whether the tax imposed by this article
40 has been properly paid.

41 As a further means of obtaining the records, books and
42 papers of a taxpayer or any other person and ascertaining
43 the amount of taxes and reports due under this article,
44 the commissioner shall have the power to examine wit-
45 nesses under oath; and if any witness shall fail or refuse
46 at the request of the commissioner to grant access to the
47 books, records and papers, the commissioner shall certify
48 the facts and names to the circuit court of the county
49 having jurisdiction of the party and such court shall there-
50 upon issue a subpoena duces tecum to such party to ap-
51 pear before the commissioner, at a place designated within
52 the jurisdiction of such court, on a day fixed.

§11-14A-6. Payment of tax.

1 The tax hereby imposed by this article shall be paid
2 by each taxpayer quarterly to the commissioner on or be-
3 fore the last day of January, April, July and October of
4 each calendar year, and calculated upon the amount of
5 gasoline or special fuel used as fuel in the operation of
6 each motor carrier operated or caused to be operated by
7 said taxpayer during the quarter ending with the last
8 day of the preceding month.

§11-14A-7. Registration cards; identification markers; fees; emergency permits; penalty for violation of section.

1 No person shall operate or cause to be operated in this
2 state any motor carrier subject to this article without
3 first securing from the commissioner a registration card

4 and an identification marker for each such motor car-
5 rier. The registration card shall be of such form, design
6 and color as the commissioner shall prescribe. The
7 registration card shall be carried in the motor carrier
8 for which it was issued at all times when the motor
9 carrier is within this state. Each identification marker
10 for a particular motor carrier shall bear a number, which
11 number shall be the same as that appearing on the regi-
12 stration card for that particular motor carrier. The identi-
13 fication marker shall be displayed on the motor carrier
14 as required by the commissioner. The registration cards
15 and identification markers herein provided for shall be
16 valid for the period of one year, ending June thirty of
17 each year. A fee of one dollar shall be paid to the com-
18 missioner for issuing each registration card and identifica-
19 cation marker: *Provided*, That all tax or reports due
20 under this article shall be paid or reports filed before the
21 issuance of a new registration card and identification
22 marker. Failure by a taxpayer to file the returns or pay
23 the taxes imposed by this article shall give cause to the
24 commissioner to revoke or refuse to renew the registration
25 card and identification marker previously issued.

26 In an emergency, the commissioner upon request may
27 authorize, in writing, a motor carrier to be operated with-
28 out a registration card or an identification marker for
29 not more than ten days.

30 Upon conviction for failure to obtain, carry and display
31 the registration card and identification marker in or on
32 each motor carrier, the person which operates or causes
33 to be operated said motor carrier shall be fined not less
34 than twenty nor more than one hundred dollars per day;
35 and each day of such failure shall constitute a separate
36 offense.

§11-14A-8. Exemptions.

1 Nothing in this article shall apply to any motor car-
2 rier operated or caused to be operated by or on behalf
3 of any department, board, bureau, commission or other
4 agency of the federal government or of this or any other
5 state or any political subdivision thereof, nor shall the

6 provisions of this article apply to any school bus operated
7 or caused to be operated by or on behalf of this state
8 or any political subdivision thereof or any private or
9 privately operated school or schools.

§11-14A-9. Credits against tax.

1 Every taxpayer subject to the road tax herein imposed
2 shall be entitled to a credit on such tax equivalent to the
3 amount of tax per gallon of gasoline or special fuel im-
4 posed by article fourteen of this chapter on all gasoline
5 or special fuel purchased by said taxpayer for fuel in
6 each motor carrier which it operates or causes to be
7 operated within this state, and upon which gasoline or
8 special fuel the tax imposed by the laws of this state has
9 been paid: *Provided*, That such credit shall not be
10 allowed for any gasoline or special fuel taxes for which
11 any taxpayer has applied or received a refund of gaso-
12 line or special fuel tax under article fourteen of this
13 chapter. Evidence of the payment of such tax in such
14 form as may be required by the commissioner shall be
15 furnished by the taxpayer claiming the credit herein
16 allowed. When the amount of the credit herein provided
17 for exceeds the amount of the tax for which the tax-
18 payer is liable in the same quarter, such excess shall,
19 upon written request by the taxpayer, be allowed as a
20 credit on the tax for which the taxpayer would be other-
21 wise liable for any of the four succeeding quarters.

§11-14A-10. False statements; penalty.

1 Any person who willfully and knowingly makes a
2 false statement orally or in writing in reference to the
3 purchase or sale of gasoline, special fuel or highway miles
4 traveled for the purpose of obtaining or attempting to
5 obtain or to assist any other person to obtain or attempt
6 to obtain a credit, refund or reduction of liability for
7 taxes under the provisions of this article, shall be guilty
8 of a misdemeanor, and, upon conviction thereof, shall
9 be fined not less than fifty nor more than one thousand
10 dollars or imprisoned for not more than six months or
11 both fined and imprisoned.

§11-14A-11. Refunds authorized; petition for refund and procedure thereon; surety bonds.

1 The commissioner is hereby authorized to refund from
2 the funds collected under the provisions of this article
3 and article fourteen of this chapter, the amount of the
4 credit accrued for gallons of gasoline or special fuel
5 purchased in this state but consumed outside of this state,
6 if the taxpayer by duly filed petition requests the com-
7 missioner to issue a refund and if the commissioner is
8 satisfied that said taxpayer is entitled to said refund
9 and that said taxpayer has not applied for a refund of the
10 tax imposed by article fourteen of this chapter: *Provided*,
11 That the commissioner shall not approve a petition for
12 refund when such petition for such refund is filed after
13 thirteen months from the close of the quarter in which
14 the tax was paid or the credit, as provided for in section
15 nine of this article, was allowed: *Provided, however*,
16 That such refund shall not be made until after audit of
17 the petitioner's records by the commissioner or until after
18 a surety bond has been furnished by the petitioner, as
19 hereinafter provided, in an amount fixed by the com-
20 missioner, conditioned to pay all road taxes due here-
21 under: *Provided further*, That said credit or refund shall
22 in no case be allowed to reduce the amount of tax to be
23 paid by a taxpayer below the amount due as tax on
24 gasoline or special fuel used as fuel in this state as pro-
25 vided by article fourteen of this chapter. The right to
26 receive any refund under the provisions of this article
27 shall not be assignable and any attempt at assignment
28 thereof shall be void and of no effect.

29 A taxpayer may furnish a continuous surety bond in
30 an amount fixed by the commissioner, but such amount
31 shall not be less than the total refunds due or to be
32 paid within one year. Upon completion of the filing of
33 such surety bond an annual notice of renewal, only,
34 shall be required thereafter.

35 The surety must be authorized to engage in business
36 within this state. The bond shall be conditioned upon
37 faithful compliance with the provisions of this article,
38 including the filing of the returns and payment of all

39 tax prescribed by this article. Such bond shall be ap-
40 proved by the commissioner as to sufficiency and by
41 the attorney general as to form, and shall indemnify the
42 state against any loss arising from the failure of the tax-
43 payer to pay for any cause whatever the motor carrier
44 road tax imposed by this article.

45 So long as the bond remains in force the commissioner
46 may order refunds to the taxpayer in the amounts ap-
47 pearing to be due on petitions duly filed by the tax-
48 payer under the provisions of this article without first
49 auditing the records of the carrier.

50 Any surety on a bond furnished hereunder shall be re-
51 lieved, released and discharged from all liability accruing
52 on such bond after the expiration of sixty days from the
53 date the surety shall have lodged, by certified mail, with
54 the commissioner a written request to be discharged.
55 This shall not relieve, release or discharge the surety
56 from liability already accrued, or which shall accrue be-
57 fore the expiration of the sixty-day period. Whenever
58 any surety shall seek discharge as herein provided, it
59 shall be the duty of the principal of such bond to supply
60 the commissioner with another bond, or pledge of prop-
61 erty equal in value to the original bond, such pledge to
62 be in the form of a tax lien on the property pledged and
63 said lien shall be duly perfected in the office of the clerk
64 of the county court of the county wherein such property
65 is situated and shall be submitted to the commissioner
66 along with a certified appraisal statement as to the
67 value of the property pledged prior to the expiration of
68 the original bond. Failure to provide such bond or pledge
69 may result in the commissioner cancelling any registration
70 card and identification marker previously issued to said
71 person.

§11-14A-12. Enforcement powers.

1 (1) Any employee or agent of the commissioner so
2 authorized by the commissioner shall have all the lawful
3 powers delegated to members of the department of public
4 safety to enforce the provisions of this article, when
5 bonded as hereinafter provided in this section.

6 (2) Such employee or agent so authorized by the com-
7 missioner shall execute a bond with security in the sum
8 of thirty-five hundred dollars, payable to the state of
9 West Virginia, conditioned for the faithful performance
10 of his duties, as such, and such bond shall be approved
11 as to form by the attorney general, and the same shall be
12 filed with the secretary of state and preserved in his
13 office.

**§11-14A-13. Disposition of tax collected; amounts allowed for
administration and enforcement.**

1 All tax collected under the provisions of this article
2 shall be paid into the state treasury and shall be used only
3 for the purpose of construction, reconstruction, main-
4 tenance and repair of highways, payment of the interest
5 and sinking fund obligations on state bonds issued for
6 highway purposes and the cost of administration and en-
7 forcement of this article (and article fourteen of this
8 chapter) by the commissioner, which costs of administra-
9 tion and enforcement shall not exceed one percent of the
10 total tax collected during each fiscal year.

11 Unless necessary for such bond requirements, five
12 fourteenths of the tax collected under the provisions of
13 this article shall be used for feeder and state local service
14 highway purposes.

§11-14A-14. Assessment of tax when insufficiently returned.

1 If the commissioner believes that the tax imposed by
2 this article is insufficiently returned by a taxpayer, either
3 because the taxpayer has failed to properly remit the tax
4 or has failed to make a return, or has made a return which
5 is incomplete, deficient or otherwise erroneous, he may
6 proceed to investigate and determine or estimate the tax
7 liability of the taxpayer and make an assessment therefor.

§11-14A-15. Jeopardy assessments.

1 If the commissioner believes that the collection of any
2 tax which he is required to administer will be jeopardized
3 by delay, he shall thereupon make an assessment of tax,
4 noting that fact upon the assessment. The amount assessed
5 shall be immediately due and payable. Unless the tax-

6 payer against whom a jeopardy assessment is made peti-
7 tions for reassessment within twenty days after service of
8 notice of the jeopardy assessment such an assessment
9 becomes final. A petition for reassessment by a person
10 against whom a jeopardy assessment has been made must
11 be accompanied by such security as the commissioner
12 may deem necessary to insure compliance with this article.

§11-14A-16. Interest; additions to tax; penalties; fraudulent returns; willful failure to file.

1 (1) *Interest.*—Taxes imposed by this article, if not paid
2 when due, shall bear interest at the rate of six percent
3 per annum from the due date of the return. Each assess-
4 ment or deficiency notice made by the commissioner shall
5 bear interest at the rate of six percent per annum. In all
6 cases of delinquency or extensions of time, interest shall
7 be assessed and collected.

8 (2) *Additions to tax; penalty.*—In the case of any
9 failure to make or file a return or whenever the full
10 amount of the tax or any portion or deficiency thereof
11 has not been paid, as required by this article, unless it be
12 shown that such failure is due to reasonable cause and not
13 due to willful neglect, there shall be added to the tax five
14 per centum if a failure is for not more than thirty days,
15 with an additional five per centum for each additional
16 thirty days or fraction thereof during which failure shall
17 continue, not to exceed twenty-five per centum in the
18 aggregate. If no tax is due, the penalty will be twenty-
19 five dollars per month or fraction thereof for failure to
20 file a tax return.

21 (3) *Fraudulent returns; willful failure to file.*—In the
22 case of the filing of any false or fraudulent return with
23 intent to evade the tax imposed by this article, or in the
24 case of a willful failure to file a return with intent to
25 evade the tax, or the filing of a false claim for credit or
26 refund, there shall be added to the tax due a penalty in
27 an amount equal to one hundred per centum of the tax
28 due. The burden of proving fraud, willfulness, or intent
29 to evade tax shall be upon the commissioner.

§11-14A-17. Notice of assessment; petition for reassessment.

1 The commissioner shall give to the taxpayer written
2 notice of any assessment made pursuant to this article.
3 Unless the taxpayer to whom a notice of assessment is
4 directed shall, within thirty days after service thereof
5 (twenty days in the case of jeopardy assessments), either
6 personally or by certified mail, file with the commissioner
7 a petition in writing, verified under oath by said taxpayer
8 or his duly authorized agent having knowledge of the
9 facts, setting forth with particularity the items of the
10 assessment objected to, together with the reasons for ob-
11 jections, said assessment shall become final and con-
12 clusive, not subject to administrative or judicial review,
13 and the amount thereof shall be payable at the end of the
14 thirty-day period (twenty days in the case of jeopardy as-
15 sessments). A petition for reassessment shall be deemed
16 to be timely filed if the postmark date thereon is clearly
17 within said thirty days (twenty days in case of a jeopardy
18 assessment) of receipt of said assessment by the taxpayer
19 or is received within such period. If the thirtieth day
20 (twentieth day in case of a jeopardy assessment) falls on
21 a Saturday or Sunday, filing will be considered timely if
22 it is done on the next succeeding day which is not a
23 legal holiday.

§11-14A-18. Hearing; appeals.

1 In every case where a petition for reassessment as above
2 described is filed, the commissioner shall assign a time
3 and place for the hearing of same and shall notify the
4 petitioner of such hearing by written notice at least twenty
5 days in advance thereof, and such hearing shall be held
6 within sixty days from the filing of the petition for re-
7 assessment unless continued by agreement or by the
8 commissioner for good cause. The hearing shall be in-
9 formal and may be conducted by an examiner designated
10 by the commissioner. At such hearing the assessment
11 shall constitute prima facie evidence of the claim of the
12 state and the burden of proof shall be upon the taxpayer
13 assessed to show that the assessment is incorrect and
14 contrary to law. In every case where a petition for refund

15 as above described is filed and the commissioner has re-
16 fused to allow said refund in whole or in part, the peti-
17 tioner may file within thirty days after receipt of the
18 commissioner's decision a written request for a hearing.
19 In every case where a request for hearing is filed, the com-
20 missioner shall proceed to assign and hold such hearing in
21 accordance with the methods herein prescribed for a peti-
22 tion for reassessment. After any such hearing the com-
23 missioner shall, within a reasonable time, give notice in
24 writing of the decision. Unless an appeal is taken within
25 thirty days from service of this notice, the commissioner's
26 decision shall be final.

27 Every assessment made by the commissioner under
28 this article which becomes final and conclusive shall con-
29 stitute a judgment and may be collected as judgments are
30 collected.

31 An appeal may be taken by the taxpayer to the circuit
32 court of the county in which the activity taxed was
33 engaged, or in which the taxpayer resides, or in the
34 circuit court of Kanawha county, within thirty days after
35 he shall have received notice from the commissioner of
36 his determination as provided in this section.

37 The appeal shall be taken by written notice to the
38 commissioner and served as an original notice. When said
39 notice is so served it shall, with the return thereon, be
40 filed in the office of the clerk of the circuit court and
41 docketed as other cases with the taxpayer as plaintiff and
42 the commissioner as defendant. Before the appeal is heard,
43 the plaintiff shall file with such clerk a bond for the use
44 of the defendant, with sureties approved by said clerk,
45 the penalty of the bond to be not less than the total
46 amount of the tax, interest, additions to tax and penalties
47 appealed from, and conditioned that the plaintiff shall
48 perform the orders of the court.

49 The court shall hear the appeal and determine anew all
50 questions submitted to it on appeal from the determina-
51 tion of the commissioner. In such appeal a certified copy
52 of the commissioner's assessment shall be admissible and
53 shall constitute prima facie evidence of the tax due under

54 the provisions of this article. The court shall render its
55 decree thereon and a certified copy of said decree shall
56 be filed by the clerk of said court with the commissioner
57 who shall then correct the assessment in accordance with
58 said decree. An appeal may be taken by the taxpayer or
59 the commissioner to the supreme court of appeals of this
60 state.

§11-14A-19. Sale or discontinuance of business.

1 Whenever any person liable for the tax imposed by this
2 article, by reason of sale or discontinuance, ceases busi-
3 ness at any location, the taxes, interest, additions to tax
4 and penalties imposed by this article shall become due
5 and payable immediately and such person shall make a
6 final return within fifteen days after the date of sale
7 or discontinuance. The taxes, interest, additions to tax
8 and penalties shall be a lien upon the property of such
9 person. In the event of sale, the person purchasing said
10 business shall withhold sufficient of the purchase money
11 to cover the amount of such taxes, interest, additions to
12 tax and penalties due and unpaid until such time as the
13 former owner shall produce a receipt from the commis-
14 sioner showing that the taxes, interest, additions to tax
15 and penalties have been paid, or a certificate indicating
16 no taxes are due. If the purchaser of the business fails to
17 withhold purchase money, as above provided, he shall be
18 personally liable for the payment of the taxes, interest,
19 additions to tax and penalties accrued and unpaid and the
20 same shall be recoverable by the commissioner by action
21 or suit as provided by this article.

§11-14A-20. Notice from commissioner a prerequisite to issuance of certificate of dissolution or withdrawal of corporation.

1 The secretary of state shall withhold the issuance of
2 any certificate of dissolution or withdrawal in the case
3 of any corporation organized under the laws of this state,
4 or organized under the laws of another state and admitted
5 to do business in this state, until the receipt of a notice
6 from the commissioner to the effect that the tax levied
7 under this article against any such corporation has been

8 paid or provided for, if any such corporation is a taxpayer
9 under this article, or until he shall be notified by the
10 commissioner that the applicant is not subject to pay a
11 tax hereunder.

§11-14A-21. Collection by distraint; report of collection.

1 The commissioner may distraint upon any goods, chattels
2 or intangibles represented by negotiable evidences of
3 indebtedness, of any taxpayer delinquent under this arti-
4 cle for the amount of all taxes, interest, additions to tax
5 and penalties accrued and unpaid hereunder. The com-
6 missioner may require the assistance of the sheriff of any
7 county of the state in levying such distress in the county
8 of which such sheriff is an officer. A sheriff so collecting
9 taxes due hereunder shall be entitled to compensation in
10 the amount of all additions to tax collected over and
11 above the principal amount of the tax due, but in no
12 case shall such compensation exceed twenty-five dollars.
13 All taxes, interest, additions to tax and penalties so
14 collected shall be reported within ten days after collection
15 to the commissioner, who shall prescribe by general regu-
16 lation the manner of remittance of such fund and of allow-
17 ing the collecting officer the compensation due him under
18 this section.

19 The sheriff shall within five days after receipt of the
20 warrant file with the clerk of the county court a copy
21 thereof and thereupon the clerk shall enter in the judg-
22 ment docket the name of the taxpayer mentioned in the
23 warrant and the amount of the tax, interest, additions to
24 tax and penalties for which the warrant is issued and
25 the date when such copy is filed and thereupon the amount
26 so docketed shall become a lien upon the title to and
27 interest in real property or chattels real of the person
28 against whom it is issued, in the same manner as a judg-
29 ment duly docketed in the office of such clerk. The said
30 sheriff shall thereupon proceed upon the same in all
31 respects, with like effect, and in the same manner pre-
32 scribed by law in respect to executions issued against
33 property upon judgment of a court of record. If a warrant
34 be returned not satisfied in full, the commissioner shall
35 have the same remedies to enforce the claim for the taxes

36 against the taxpayer as if the state had recovered judg-
37 ment against the taxpayer for the amount of the tax.

§11-14A-22. Collection by action or suit; injunction.

1 The commissioner may collect any tax, interest, addi-
2 tions to tax and penalties due and unpaid under the pro-
3 visions of this article by appropriate legal proceedings in
4 the county in which (a) the activity taxed was engaged
5 or (b) the taxpayer resides; or by a suit to enforce the
6 lien therefor in any county in which property of the tax-
7 payer may be found; or if the tax due and unpaid under
8 this article is three hundred dollars or less, by suit in the
9 court of any justice having jurisdiction of the taxpayer
10 or his property. If the failure of any taxpayer to comply
11 with the provisions of this article shall have continued
12 sixty days, the commissioner may proceed to obtain an
13 injunction restraining the taxpayer from doing business
14 in this state until he fully complies with the provisions of
15 this article. In any proceeding under this section upon
16 judgment or decree for the plaintiff he shall be awarded
17 his costs.

18 In the event that motor carriers of a person subject to
19 the tax imposed by this article shall be operated in con-
20 nection with a receivership or insolvency proceeding, the
21 court under whose direction such motor carriers are
22 operated or were caused to be operated shall, by entry of
23 a proper order in the cause, make provisions for the
24 regular payment of such taxes as the same become due.

§11-14A-23. Forms; rules and regulations.

1 The commissioner is hereby invested with full power
2 and authority and it is hereby made his duty to prescribe
3 the necessary forms and to promulgate rules and regula-
4 tions necessary to ascertain, assess and collect the taxes
5 imposed by this article and to enforce the provisions
6 thereof.

**§11-14A-24. Secrecy of returns and reciprocal exchange of in-
formation.**

1 (1) Except when required in an official investigation,
2 administrative tax hearing or proceedings in court in-
3 volving taxes payable under this article, and except as

4 provided in subsection two of this section, it shall be
5 unlawful for any officer or employee of the state to divulge
6 or make known in any manner the amount of income or
7 any particulars set forth or disclose in any report, state-
8 ment, or return required to be filed with the commissioner
9 by this article or any regulation of the commissioner is-
10 sued hereunder.

11 (2) The commissioner or his duly authorized agent
12 may upon request permit the proper officer or representa-
13 tive of the United States or any state, territory or politi-
14 cal subdivision of the United States, to inspect reports,
15 statements, or returns filed with the commissioner or
16 may furnish to such officer or representative a copy of
17 any such document, provided such other jurisdiction
18 grants substantially similar privileges to the commissioner
19 of this state. Subsection one of this section shall not be
20 construed to prohibit the publication of statistics so classi-
21 fied as to prevent the identification of particular reports,
22 statements, and returns and the items therein.

23 (3) Any taxpayer under this article may, in writing,
24 waive the secret rules provided in subsection one of this
25 section for such purpose and such period as he shall
26 therein state, and the commissioner, if he so determines
27 may thereupon release to designated recipient(s) said
28 taxpayer's tax return or other particulars filed under the
29 provisions of this article.

§11-14A-25. Tax a debt; lien of unpaid tax; recordation of lien.

1 A tax due and unpaid under this article shall be a debt
2 due the state. It shall be a personal obligation of the tax-
3 payer and shall be a lien upon the property of the tax-
4 payer: *Provided*, That such lien shall be subject to the
5 restrictions and conditions embodied in article ten-c,
6 chapter thirty-eight of the code of West Virginia, one
7 thousand nine hundred thirty-one, and any amendment
8 made or which may hereafter be made thereto.

§11-14A-26. Severability.

1 If any provision of this article or the application thereof
2 to any person or circumstance is held unconstitutional or

3 invalid, such unconstitutionality or invalidity shall not
4 affect, impair or invalidate other provisions or applica-
5 tions of the article, and to this end the provisions of this
6 article are declared to be severable.

CHAPTER 122

(House Bill No. 575—By Mrs. Merritt)

[Passed March 3, 1972; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to meaning of terms.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

1 Any term used in this article shall have the same mean-
2 ing as when used in a comparable context in the laws of
3 the United States relating to income taxes, unless a dif-
4 ferent meaning is clearly required. Any reference in this
5 article to the laws of the United States shall mean the
6 provisions of the Internal Revenue Code of 1954, as
7 amended, and such other provisions of the laws of the
8 United States as relate to the determination of income
9 for federal income tax purposes. All amendments made
10 to the laws of the United States prior to the first day of
11 January, one thousand nine hundred seventy-two, shall
12 be given effect in determining the taxes imposed by this
13 article for the tax period beginning the first day of Jan-
14 uary, one thousand nine hundred seventy-two, and there-
15 after, but no amendment to the laws of the United States
16 made on or after the first day of January, one thousand
17 nine hundred seventy-two, shall be given effect.

CHAPTER 123

(House Bill No. 1214—Originating in the House Committee on Finance)

[Passed March 11, 1972; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, five and six, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article by adding thereto a new section, designated section thirteen-a, all relating to meaning of terms, capital gain treatment for corporation income tax purposes, filing of information returns by corporations electing to be taxed under subchapter S of the Internal Revenue Code of one thousand nine hundred fifty-four, as amended, and penalties for nonfiling of such information returns.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms.

§11-24-5. Corporations exempt from tax.

§11-24-6. Adjustments in determining West Virginia taxable income.

§11-24-13a. Information return for corporations electing to be taxed under subchapter S.

§11-24-3. Meaning of terms.

1 (a) *General.*—Any term used in this article shall have
2 the same meaning as when used in a comparable context
3 in the laws of the United States relating to federal in-
4 come taxes, unless a different meaning is clearly required
5 by the context or by definition in this article. Any ref-
6 erence in this article to the laws of the United States or
7 to the Internal Revenue Code or to the federal income

8 tax law shall mean the provisions of the laws of the
9 United States as relate to the determination of income for
10 federal income tax purposes. All amendments made to
11 the laws of the United States prior to the first day of Jan-
12 uary, one thousand nine hundred seventy-two, shall be
13 given effect in determining the taxes imposed by this
14 article for the tax period beginning the first day of July,
15 one thousand nine hundred seventy-two, and thereafter,
16 but no amendment to laws of the United States made on
17 or after the first day of January, one thousand nine hun-
18 dred seventy-two, shall be given effect.

19 (b) *Certain terms defined.*—For purposes of this ar-
20 ticle:

21 (1) The term “tax commissioner” means the tax
22 commissioner of the state of West Virginia or his dele-
23 gate.

24 (2) The term “corporation” means and includes
25 a joint-stock company or any association which is taxable
26 as a corporation under the federal income tax law.

27 (3) The term “domestic corporation” means any
28 corporation organized under the laws of West Virginia.

29 (4) The term “foreign corporation” means any
30 corporation other than a domestic corporation.

31 (5) The term “state” means any state of the
32 United States, the District of Columbia, the Common-
33 wealth of Puerto Rico, any territory or possession of the
34 United States and any foreign country or political sub-
35 division thereof.

36 (6) The term “taxable year” means the taxable
37 year for which the taxable income of the taxpayer is
38 computed under the federal income tax law.

39 (7) The term “taxpayer” means a corporation
40 subject to the tax imposed by this article.

41 (8) The term “tax” includes, within its meaning,
42 interest and penalties unless the intention to give it a
43 more limited meaning is disclosed by the context.

44 (9) The term “commercial domicile” means the
45 principal place from which the trade or business of the
46 taxpayer is directed or managed.

47 (10) The term "compensation" means wages, sal-
48 aries, commissions and any form of remuneration paid to
49 employees for personal services.

50 (11) The term "West Virginia taxable income"
51 means the taxable income of a corporation as defined by
52 the laws of the United States for federal income tax
53 purposes, adjusted as provided in section six: *Provided,*
54 That in the case of a corporation having income from
55 business activity which is taxable without this state,
56 its "West Virginia taxable income" shall be such portion
57 of its taxable income as so defined and adjusted as is
58 allocated or apportioned to this state under the pro-
59 visions of section seven.

60 (12) The term "business income" means in-
61 come arising from transactions and activity in the reg-
62 ular course of the taxpayer's trade or business and in-
63 cludes income from tangible and intangible property if
64 the acquisition and disposition of the property constitute
65 integral parts of the taxpayer's regular trade or business
66 operations.

67 (13) "Nonbusiness income" means all income
68 other than business income.

69 (14) The term "public utility" means any busi-
70 ness activity to which the jurisdiction of the public ser-
71 vice commission of West Virginia extends under section
72 one, article two, chapter twenty-four of the code of West
73 Virginia.

74 (15) The term "this code" means the code of
75 West Virginia, one thousand nine hundred thirty-one, as
76 amended.

77 (16) The term "this state" means the state of
78 West Virginia.

§11-24-5. Corporations exempt from tax.

1 The following corporations shall be exempt from the
2 tax imposed by this article to the extent provided in this
3 section:

4 (a) Corporations which by reason of their purposes
5 or activities are exempt from federal income tax: *Pro-*
6 *vided,* That this exemption shall not apply to the unre-

7 lated business income, as defined in the Internal Rev-
8 enue Code, of any such corporation if such income is
9 subject to federal income tax.

10 (b) Banks, banking associations, trust companies,
11 building and loan associations, and savings and loan
12 associations.

13 (c) Insurance companies which pay this state a tax
14 upon premiums.

15 (d) Production credit associations organized under
16 the provisions of the federal "Farm Credit Act of 1933":
17 *Provided*, That this exemption shall not apply to cor-
18 porations or associations organized under the provisions
19 of article four, chapter nineteen of this code.

20 (e) Corporations electing to be taxed under subchap-
21 ter S of the Internal Revenue Code of one thousand nine
22 hundred fifty-four, as amended: *Provided*, That said
23 corporations shall file the information return required
24 by section thirteen-a of this article.

25 (f) Trusts established pursuant to section one hun-
26 dred eighty-six, chapter seven, title twenty-nine of the
27 code of the laws of the United States (enacted as sec-
28 tion three hundred two (c) of the Labor Management
29 Relations Act, one thousand nine hundred forty-seven),
30 as amended prior to the first day of January, one thou-
31 sand nine hundred sixty-seven.

§11-24-6. Adjustments in determining West Virginia taxable income.

1 (a) *General*.—In determining the West Virginia tax-
2 able income of a corporation, its taxable income as de-
3 fined for federal income tax purposes shall be adjusted
4 by the items specified in this section.

5 (b) *Adjustments increasing federal taxable income*.—
6 There shall be added to federal taxable income (unless
7 already included in the computation of federal taxable
8 income):

9 (1) Interests or dividends on obligations or se-
10 curities of any state or of a political subdivision or au-
11 thority thereof (other than this state and its political sub-
12 divisions and authorities), unless made exempt by com-
13 pact or agreement to which this state is a party;

14 (2) Interest or dividend income on obligations or
15 securities of any authority, commission or instrumental-
16 ity of the United States which the laws of the United
17 States exempt from federal income tax but not from
18 state income taxes;

19 (3) Income taxes imposed by this state or any
20 other taxing jurisdiction, to the extent deductible in de-
21 termining federal taxable income and not credited against
22 federal income tax, and the taxes imposed by this state
23 for which credit against the taxes imposed by section
24 four is allowed by section nine; and

25 (4) Interest on indebtedness incurred or con-
26 tinued to purchase or carry obligations or securities the
27 income from which is exempt from tax under this article,
28 to the extent deductible in determining federal taxable
29 income.

30 (c) *Adjustments decreasing federal taxable income.*—
31 There shall be subtracted from federal taxable income:

32 (1) Interest income on obligations of the United
33 States and its possessions to the extent includable in
34 gross income for federal income tax purposes;

35 (2) Interest or dividend income on obligations
36 or securities of any authority, commission or instrumen-
37 tality of the United States to the extent includable in
38 gross income for federal income tax purposes, but exempt
39 from state income taxes under the laws of the United
40 States;

41 (3) Any gain from the sale or other disposition
42 of property having a higher fair market value on the
43 first day of July, one thousand nine hundred sixty-seven,
44 than the adjusted basis at said date for federal income
45 tax purposes: *Provided*, That the amount of this adjust-
46 ment is limited to that portion of any such gain which
47 does not exceed the difference between such fair market
48 value and such adjusted basis;

49 (4) The amount of any refund or credit for
50 overpayment of income taxes imposed by this state or
51 any other taxing jurisdiction, to the extent properly
52 included in gross income for federal income tax
53 purposes;

54 (5) The amount of dividends received, to the
55 extent included in federal taxable income; and

56 (6) Thirty-seven and one-half percent of the ex-
57 cess of net long-term capital gain over net short-term
58 capital loss as defined in the laws of the United States.

59 (d) *Adjustment resulting from recomputation of*
60 *net operating loss deduction.*—In determining the West
61 Virginia taxable income of a corporation entitled to a net
62 operating loss deduction for the taxable year for federal
63 income tax purposes, there shall be added to or sub-
64 tracted from the federal taxable income the amount of
65 an adjustment reflecting a recomputation of such net
66 operating loss deduction in which the adjustments re-
67 quired by subsections (b) and (c) are made for each
68 taxable year involved in the computation of such net
69 operating loss deduction.

70 (e) Special adjustments for expenditures for water
71 and air pollution control facilities.

72 (1) If the taxpayer so elects under subdivision
73 (2) of this subsection, there shall be—

74 (A) subtracted from federal taxable income
75 the total of the amounts paid or incurred during the tax-
76 able year for the acquisition, construction or develop-
77 ment within this state of water pollution control facil-
78 ities and air pollution control facilities as defined in
79 section 48 (h) (12) (B) and (C) of the Internal Rev-
80 enue Code, and

81 (B) added to federal taxable income the
82 total of the amounts of any allowances for depreciation
83 and amortization of such water pollution control facilities
84 and air pollution control facilities, as so defined, to the
85 extent deductible in determining federal taxable in-
86 come.

87 (2) The election referred to in subdivision (1)
88 of this subsection shall be made in the return filed within
89 the time prescribed by law (including extensions thereof)
90 for the taxable year in which such amounts were paid
91 or incurred. Such election shall be made in such manner,

92 and the scope and application of such election shall be
93 defined, as the tax commissioner may by regulations
94 prescribe, and shall be irrevocable when made as to all
95 amounts paid or incurred for any particular water pol-
96 lution control facility or air pollution control facility.

97 (3) Notwithstanding any other provisions of this
98 subsection or of section seven to the contrary, if the tax-
99 payer's federal taxable income is subject to allocation
100 and apportionment under section seven, the adjustments
101 prescribed in paragraphs (A) and (B) of subdivision
102 (1) of this subsection shall (instead of being made to
103 the taxpayer's federal taxable income before allocation
104 and apportionment thereof as provided in section seven)
105 be made to the portion of the taxpayer's net income,
106 computed without regard to such adjustments, allocated
107 and apportioned to this state in accordance with section
108 seven.

**§11-24-13a. Information return for corporations electing to be
taxed under subchapter S.**

1 Every corporation electing to be taxed under sub-
2 chapter S of the Internal Revenue Code of one thousand
3 nine hundred fifty-four, as amended, shall on or before
4 the fifteenth day of the third month following the close
5 of a taxable year file an information return for each tax
6 year, stating specifically the items of its gross income
7 and the deductions allowable, the names and addresses
8 of all persons owning stock in the corporation at any
9 time during the tax year, the number of shares of stock
10 owned by each shareholder at all times during the tax
11 year, the amount of money and other property distributed
12 by the corporation during the tax year to each share-
13 holder, the date of each such distribution, and such other
14 information as the tax commissioner may prescribe. Cor-
15 porations failing to file information returns by the due
16 date as prescribed in this section shall be subject to a
17 penalty of fifty dollars for each failure to file, with such
18 penalty being collected as other penalties are collected
19 by the tax commissioner. This section shall take effect
20 for tax years beginning on or after the first day of July,
21 one thousand nine hundred seventy-two.

CHAPTER 124

(House Bill No. 751—By Mr. Speaker, Mr. McManus, and Mr. Seibert)

[Passed March 11, 1972; in effect July 1, 1972. Approved by the Governor.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-five, providing, as a public purpose, general relief for low income citizens who are sixty-five years of age or over to aid them in providing or maintaining a homestead, by authorizing a claim for relief to be filed with the state tax commissioner and payment thereof from state funds, the amount of relief to be measured in part by the real property taxes or that portion of rent attributable to real property taxes paid by any such citizen; providing a rule of construction; defining terms; providing for computation of the amount of such claims for relief; providing limitations with respect thereto; authorizing tables for such claims for relief; relating to forms and instructions in connection with such claims for relief; relating to maximum participation under said article twenty-five; relating to proof of claims for relief; requiring cooperation of landlord; providing there may only be one claimant for a homestead for a particular calendar year; establishing filing date for any such claim for relief; providing for waiver of claims in the event of late claims therefor; authorizing extension of filing date and amended claims for relief; providing for disbursement from state funds to pay claims for relief; providing that any such claim for relief is personal; relating to payment of any claim for relief to legal guardian, committee, executor or administrator or other persons or the escheat thereof to the state; providing for offsets against any such claim for relief; relating to the denial of any such claim for relief and the grounds therefor; providing for criminal offenses; providing criminal penalties; authorizing disallowance of portion of any such claim which is excessive; relating to recovery of improper payments and interest thereon; relating to hearings and appeals; incorporating

certain provisions of article thirteen of said chapter eleven; providing a severability clause; and providing effective date of said article twenty-five.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 25. TAX RELIEF FOR ELDERLY HOMEOWNERS AND RENTERS.

- §11-25-1. Declaration of purpose; rule of construction.
- §11-25-2. Definitions.
- §11-25-3. Computation of relief; limits; table.
- §11-25-4. Forms and instructions; maximum participation.
- §11-25-5. Proof of claim; landlord's cooperation required; relief limited to one claimant per homestead per year.
- §11-25-6. Filing date.
- §11-25-7. Claim as disbursement from state funds; claim is personal; offset.
- §11-25-8. Denial of claim; violation and penalties.
- §11-25-9. Hearings and appeals.
- §11-25-10. Severability.
- §11-25-11. Effective date.

§11-25-1. Declaration of purpose; rule of construction.

1 This article is enacted to provide general relief for low
 2 income citizens who are sixty-five years of age or over
 3 to aid them in providing or maintaining a homestead, by
 4 authorizing a claim for relief to be filed with the state tax
 5 commissioner and payment thereof from state funds, the
 6 amount of relief to be measured in part by the real prop-
 7 erty taxes or that portion of rent attributable to real
 8 property taxes paid by any such citizen, and the provid-
 9 ing of such general relief is hereby declared to be a public
 10 purpose. This article shall, therefore, be liberally con-
 11 strued.

§11-25-2. Definitions.

1 When used in this article, unless the context clearly
 2 requires a different meaning:
 3 (1) "Claimant" means a person sixty-five years of
 4 age or older who was domiciled in this state during any

5 portion of the calendar year preceding the year in which
6 the claimant is eligible to file a claim for relief under
7 this article and who had a gross household income of
8 not more than five thousand dollars during the calendar
9 year preceding the year in which he is eligible to file a
10 claim for relief under this article. If two or more in-
11 dividuals, who otherwise qualify as claimants under this
12 article, occupy a single homestead, such individuals may
13 determine between themselves as to which individual
14 shall be the claimant; however, if such individuals are
15 unable to agree, the matters shall be referred to the state
16 tax commissioner for determination and his decision shall
17 be final.

18 (2) "Claimant's spouse" means the spouse of the claim-
19 ant if such spouse resides in the homestead during any
20 portion of the calendar year preceding the year in
21 which the claimant is eligible to file a claim for relief
22 under this article.

23 (3) "Gross household income" means all actual income
24 received by a claimant and the claimant's spouse during
25 the calendar year preceding the year in which he is
26 eligible to file a claim for relief under this article and
27 such actual income shall be computed by adding to the
28 West Virginia adjusted gross income (as that term is
29 defined in section twelve, article twenty-one of this
30 chapter) of such claimant and the claimant's spouse all
31 of the following actually received by the claimant and
32 claimant's spouse during such calendar year:

33 (a) Amount of capital gains excluded from West
34 Virginia adjusted gross income;

35 (b) Support money;

36 (c) Nontaxable strike benefits;

37 (d) Cash public assistance, welfare and relief but
38 not any relief under this article;

39 (e) Gross amount of any pension or annuity, including
40 railroad retirement benefits;

41 (f) Social security benefits;

42 (g) Unemployment compensation benefits;

43 (h) Veterans disability pensions;

44 (i) Workmen's compensation benefits; and

45 (j) Private disability insurance benefits.

46 Gross household income does not include gifts from non-
47 governmental sources, or surplus foods or other relief in
48 kind supplied by a governmental agency.

49 (4) "Gross rent" means the total amount of money
50 or its equivalent actually paid by a claimant during a
51 particular calendar year to his landlord in a bona fide
52 manner solely for the right of occupancy of a homestead,
53 exclusive of any charges for utilities, services, furniture,
54 furnishings or electrical or other appliances furnished
55 by such landlord to such claimant; and if the state tax
56 commissioner determines that the rent charged was ex-
57 cessive for the purposes of this article, he may adjust the
58 same, for the purposes of this article, to a reasonable
59 amount.

60 (5) "Homestead" means a single family residential
61 house and the land surrounding such structure; or a part
62 of a multi-dwelling, multi-purpose building or apartment
63 house; or a mobile home which is used as a permanent
64 residence and the land upon which such mobile home is
65 situate; and it is immaterial for the purposes of this
66 article whether the foregoing are being purchased, are
67 owned or are rented.

68 (6) "Household" means a claimant, a claimant and the
69 claimant's spouse or a claimant and any other person or
70 persons, who resides or reside in a homestead.

71 (7) "Property taxes" means the amount of the real
72 property taxes, exclusive of any interest or charges for
73 delinquency thereof, paid by a claimant on his homestead
74 beginning with the calendar year one thousand nine hun-
75 dred seventy-two, and for any particular calendar year
76 thereafter: *Provided*, That if a homestead is owned by
77 a claimant and a persons or persons (other than the
78 claimant's spouse) as joint tenants or as tenants in com-
79 mon, and such person or persons owning such interest
80 in such homestead do not reside in such homestead, then
81 for the purposes of this article, the property taxes paid
82 by the claimant shall be prorated according to such

83 claimant's percentage of ownership of such homestead:
84 *Provided, however,* That if the claimant's homestead is
85 a single unit within any multi-dwelling building, multi-
86 purpose building or apartment house, and such claimant
87 owns the entirety of any such structure, the property
88 taxes paid by the claimant, for the purposes of this article
89 shall be prorated so as to reflect the percentage of value
90 which the claimant's homestead is to the value of the
91 entire structure which is assessed in a single assessment
92 based upon the entire property.

93 (8) "Rent constituting property taxes" means twelve
94 percent of the gross rent paid by a claimant for the right
95 of occupancy of his homestead beginning with the
96 calendar year one thousand nine hundred seventy-two,
97 and for any particular calendar year thereafter.

§11-25-3. Computation of relief; limits; table.

1 (a) The amount of any claim for relief pursuant to
2 this article shall be limited as follows:

3 (1) If the gross household income of the claimant or
4 of the claimant and the claimant's spouse was five hun-
5 dred dollars or less during the calendar year to which
6 the claim relates, the claim shall be limited to seventy-
7 five percent of the amount of the property taxes, or rent
8 constituting property taxes, or both, in such year on or
9 with respect to the claimant's homestead.

10 (2) If the gross household income of the claimant or
11 of the claimant and the claimant's spouse was more than
12 five hundred dollars but not in excess of one thousand
13 dollars during the calendar year to which the claim re-
14 lates, the claim shall be limited to seventy-five percent
15 of the amount by which the property taxes, or rent consti-
16 tuting property taxes, or both, in such year on or with
17 respect to the claimant's homestead are in excess of one
18 half of one percent of that portion of gross household
19 income in excess of five hundred dollars but not in excess
20 of one thousand dollars.

21 (3) If the gross household income of the claimant or
22 of the claimant and the claimant's spouse was more than

23 one thousand dollars but not in excess of two thousand
24 dollars during the calendar year to which the claim re-
25 lates, the claim shall be limited to sixty percent of the
26 amount by which the property taxes, or rent constituting
27 property taxes, or both, in such year on or with respect
28 to the claimant's homestead are in excess of (i) one half
29 of one percent of that portion of gross household income
30 in excess of five hundred dollars but not in excess of one
31 thousand dollars, (ii) one percent of that portion of gross
32 household income in excess of one thousand dollars but
33 not in excess of one thousand five hundred dollars and
34 (iii) one and one-half percent of that portion of gross
35 household income in excess of one thousand five hundred
36 dollars but not in excess of two thousand dollars.

37 (4) If the gross household income of the claimant or
38 of the claimant and the claimant's spouse was more than
39 two thousand dollars but not in excess of three thousand
40 dollars during the calendar year to which the claim re-
41 lates, the claim shall be limited to forty-five percent of
42 the amount by which the property taxes, or rent consti-
43 tuting property taxes, or both, in such year on or with
44 respect to the claimant's homestead are in excess of
45 (i) one half of one percent of that portion of gross house-
46 hold income in excess of five hundred dollars but not in
47 excess of one thousand dollars, (ii) one percent of that
48 portion of gross household income in excess of one thou-
49 sand dollars but not in excess of one thousand five hun-
50 dred dollars, (iii) one and one-half percent of that portion
51 of gross household income in excess of one thousand five
52 hundred dollars but not in excess of two thousand dollars,
53 (iv) two percent of that portion of gross household in-
54 come in excess of two thousand dollars but not in excess
55 of two thousand five hundred dollars and (v) two and one-
56 half percent of that portion of gross household income in
57 excess of two thousand five hundred dollars but not in
58 excess of three thousand dollars.

59 (5) If the gross household income of the claimant or
60 of the claimant and the claimant's spouse was more than
61 three thousand dollars but not in excess of four thousand
62 dollars during the calendar year to which the claim

63 relates, the claim shall be limited to thirty percent of the
64 amount by which the property taxes, or rent constituting
65 property taxes, or both, in such year on or with respect
66 to the claimant's homestead are in excess of (i) one half
67 of one percent of that portion of gross household income
68 in excess of five hundred dollars but not in excess of one
69 thousand dollars, (ii) one percent of that portion of gross
70 household income in excess of one thousand dollars but
71 not in excess of one thousand five hundred dollars, (iii)
72 one and one-half percent of that portion of gross house-
73 hold income in excess of one thousand five hundred dol-
74 lars but not in excess of two thousand dollars, (iv) two
75 percent of that portion of gross household income in
76 excess of two thousand dollars but not in excess of two
77 thousand five hundred dollars, (v) two and one-half per-
78 cent of that portion of gross household income in excess
79 of two thousand five hundred dollars but not in excess
80 of three thousand dollars, (vi) three percent of that
81 portion of gross household income in excess of three
82 thousand dollars but not in excess of three thousand five
83 hundred dollars and (vii) three and one-half percent of
84 that portion of gross household income in excess of three
85 thousand five hundred dollars but not in excess of four
86 thousand dollars.

87 (6) If the gross household income of the claimant or
88 of the claimant and the claimant's spouse was more than
89 four thousand dollars but not in excess of five thousand
90 dollars during the calendar year to which the claim
91 relates, the claim shall be limited to thirty percent of the
92 amount by which the property taxes, or rent constituting
93 property taxes, or both, in such year on or with respect
94 to the claimant's homestead are in excess of (i) one half
95 of one percent of that portion of gross household income
96 in excess of five hundred dollars but not in excess of one
97 thousand dollars, (ii) one percent of that portion of gross
98 household income in excess of one thousand dollars but
99 not in excess of one thousand five hundred dollars, (iii)
100 one and one-half percent of that portion of gross house-
101 hold income in excess of one thousand five hundred
102 dollars but not in excess of two thousand dollars, (iv) two

103 percent of that portion of gross household income in
104 excess of two thousand dollars but not in excess of two
105 thousand five hundred dollars, (v) two and one-half per-
106 cent of that portion of gross household income in excess
107 of two thousand five hundred dollars but not in excess
108 of three thousand dollars, (vi) three percent of that
109 portion of gross household income in excess of three
110 thousand dollars but not in excess of three thousand five
111 hundred dollars, (vii) three and one-half percent of that
112 portion of gross household income in excess of three
113 thousand five hundred dollars but not in excess of four
114 thousand dollars, (viii) four percent of that portion of
115 gross household income in excess of four thousand dollars
116 but not in excess of four thousand five hundred dollars
117 and (ix) four and one-half percent of that portion of
118 gross household income in excess of four thousand five
119 hundred dollars but not in excess of five thousand dollars.

120 (b) In any case in which the property taxes, or rent
121 constituting property taxes, or both, during any one
122 calendar year on or with respect to any homestead exceed
123 one hundred twenty-five dollars, the amount thereof shall,
124 for purposes of this article, be deemed to have been one
125 hundred twenty-five dollars.

126 (c) The state tax commissioner shall prepare a table
127 under which claims under this article shall be determined.
128 The table shall be published in the department's official
129 rules and regulations and shall be printed on the appro-
130 priate claim forms. The amount of relief as shown in the
131 table for each bracket shall be computed only to the
132 nearest ten cents.

§11-25-4. Forms and instructions; maximum participation.

1 The state tax commissioner shall prescribe and make
2 available claim forms with instructions for claimants,
3 and every assessor and sheriff shall comply with all
4 reasonable requests and rules and regulations of the
5 state tax commissioner in order to encourage maximum
6 participation of claimants eligible for relief under the
7 provisions of this article.

§11-25-5. Proof of claim; landlord's cooperation required; relief limited to one claimant per homestead per year.

1 Every claimant who is a homestead owner shall supply
2 to the state tax commissioner, in support of his claim,
3 reasonable proof of property taxes paid, information as
4 to the size and nature of the property claimed as the
5 homestead and a statement that the real property taxes
6 thereon have been paid by him and that there are no
7 delinquent real property taxes on the homestead.

8 Every claimant who is a homestead renter shall supply
9 to the state tax commissioner, in support of his claim,
10 reasonable proof, as required by the state tax commis-
11 sioner, of rent paid and the name and address of the
12 owner or managing agent of the property rented. The
13 claimant's landlord shall at the claimant's request sign
14 a statement setting forth the gross rent paid by the
15 claimant for the particular calendar year. Any landlord
16 who willfully furnishes a false or fraudulent statement,
17 or who willfully fails to furnish a statement in the man-
18 ner, at the time, and showing the information required
19 by the claimant in order to file a timely claim, shall for
20 each such violation be guilty of a misdemeanor, and,
21 upon conviction thereof, shall be fined an amount not
22 exceeding fifty dollars.

23 Only one claimant for a homestead for a calendar year
24 shall be entitled to relief under this article.

§11-25-6. Filing date.

1 No claim for relief shall be paid or allowed unless such
2 claim for relief is actually filed with and in the possession
3 of the state tax commissioner between and including the
4 respective dates of July one and September thirty fol-
5 lowing the calendar year with respect to which the claim
6 for relief under the provisions of this article is based.
7 Persons not filing claims for relief as provided by this
8 article within the appropriate ninety-day filing period
9 are deemed to have waived all claims for relief for that
10 particular calendar year. A claimant filing a timely claim
11 for relief may submit an amended claim for relief within

12 two years following the close of the appropriate filing
13 period.

14 In case of sickness, absence or other disability of the
15 claimant or if, in the state tax commissioner's judgment
16 good cause exists, the state tax commissioner may extend
17 the time for filing a claim for relief for a period not to
18 exceed six months.

§11-25-7. Claim as disbursement from state funds; claim is personal; offset.

1 Upon the state tax commissioner's determination that
2 a claimant is entitled to relief under the provisions of this
3 article, and after audit and certification of his claim for
4 relief, such relief shall be paid upon a state warrant
5 drawn upon the state treasury from balances retained for
6 general purposes. The right to file a claim for relief under
7 this article is personal to the claimant and shall not sur-
8 vive his death except that the spouse of such decedent
9 shall be entitled to file such claim if decedent had not
10 filed the same. In the event the claimant is incompetent
11 or insane, his claim may be filed by his duly appointed
12 and qualified legal guardian or committee. If a claimant
13 dies after having filed a timely claim for relief under the
14 provisions of this article, and the state tax commissioner
15 determines that such relief or any portion thereof is
16 proper, then such relief or portion thereof shall be paid
17 to such claimant's executor or administrator: *Provided,*
18 That if an executor or administrator has not been ap-
19 pointed and qualified within a reasonable time after the
20 claimant's death, the state tax commissioner may in his
21 discretion pay such relief to any other person residing in
22 the claimant's homestead if there be such person and if
23 there be no such other person residing in such home-
24 stead, the amount of such relief shall escheat to the state.

25 The amount of any claim for relief otherwise payable
26 under this article may be applied by the state tax com-
27 missioner against any liability outstanding on the books
28 of the commissioner against the claimant.

§11-25-8. Denial of claim; violation and penalties.

1 If it is determined that a claim for relief was filed by

2 a claimant who was the recipient of public funds for the
3 payment of his real property taxes or rent during the
4 period for which the claim for relief was filed, or that
5 such claimant received title to his homestead primarily
6 for the purpose of receiving relief under this article, or
7 that a claim for relief was filed with fraudulent intent,
8 such claim for relief shall be disallowed in full, and, if
9 any such claim for relief has been paid, the amount paid
10 may be recovered by assessment in the same manner as
11 taxes are assessed under article thirteen of this chapter
12 and the assessment shall bear interest from the date of
13 payment of the claim for relief, until refunded to the state
14 tax commissioner, at the rate of one percent per month.
15 Any claimant willfully and knowingly filing a fraudulent
16 claim for relief, and any person who assisted in the prep-
17 aration or filing of such fraudulent claim for relief or
18 supplied information upon which such fraudulent claim
19 for relief was prepared, with knowledge of such fraudu-
20 lent intent of the claimant, shall be guilty of a misde-
21 meanor, and, upon conviction thereof, shall be fined not
22 less than fifty nor more than one hundred dollars, or im-
23 prisoned in the county jail not more than six months, or
24 both fined and imprisoned. If it is determined that a
25 claim for relief is excessive and was through negligence
26 incorrectly prepared, ten percent of the corrected claim
27 for relief shall be disallowed, and if the claim for relief
28 has been paid, the excessive portion of any amount paid
29 and the ten percent disallowed shall be similarly recov-
30 ered by assessment in the same manner as taxes are as-
31 sessed under article thirteen of this chapter and the assess-
32 ment shall bear interest from the date of payment of
33 the claim for relief until refunded to the state tax com-
34 missioner at the rate of one percent per month.

§11-25-9. Hearings and appeals.

1 Any claimant aggrieved by the denial in whole or in
2 part of his claim for relief, except when the denial is
3 based upon the late filing of a claim for relief, may de-
4 mand a hearing within thirty days after such denial by
5 filing with the state tax commissioner a verified petition
6 for hearing, which petition shall set forth with definite-

7 ness and particularity the reasons for objecting to such
8 denial. In every case where a petition is filed, the state
9 tax commissioner shall assign a time and place for a
10 hearing upon the same and shall proceed in accordance
11 with the provisions of article thirteen of this chapter and
12 all of the applicable provisions of said article thirteen shall
13 be applicable with like effect as if the petition were a
14 petition for reassessment as provided in said article thir-
15 teen. In connection with holding any such hearing, the
16 state tax commissioner shall have all of the relevant
17 powers and authority set forth in said article thirteen.
18 An appeal from a final decision of the state tax commis-
19 sioner made after any such hearing may be taken by the
20 claimant in accordance with the provisions of said article
21 thirteen of this chapter, and such appeal shall be pro-
22 cessed and determined with like effect as if said claimant
23 were a "taxpayer" as that term is used in said article
24 thirteen.

§11-25-10. Severability.

1 If any provision of this article or the application thereof
2 to any person or circumstance is held unconstitutional or
3 invalid, such unconstitutionality or invalidity shall not
4 affect, impair or invalidate other provisions or applica-
5 tions of the article, and to this end the provisions of this
6 article are declared to be severable.

§11-25-11. Effective date.

1 The provisions of this article shall take effect on the
2 first day of January, one thousand nine hundred seventy-
3 two.

○

CHAPTER 125

(Com. Sub. for House Bill No. 1076—By Mr. Seibert)

[Passed March 11, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact sections three, four, seven, nine,
ten and eleven, article seven, chapter twenty-one-a of the

code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article seven by adding thereto a new section, designated section seven-a, all relating to unemployment compensation generally; claims procedure thereunder; the appointment of deputies to hear certain claims; the investigation and hearing procedures for such claims; the initial determination by such deputies; the establishment of appeal tribunals and the hearings and determinations of such appeal tribunals; appeal from the decisions of such tribunals; providing for review by the board of review; and payment of benefits pending such appeal.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. CLAIM PROCEDURE.

§21A-7-3. Deputies.

§21A-7-4. Investigation by deputy; notice and hearing before deputy; referral of labor dispute claims for hearing and determination by appeal tribunal; initial determination of other claims by deputy; notice of findings and decisions.

§21A-7-7. Appeal tribunals.

§21A-7-7a. Hearings and determinations by appeal tribunal in labor dispute cases.

§21A-7-9. Appeal from appeal tribunal's decision; finality of decision.

§21A-7-10. Review by board.

§21A-7-11. Benefits pending appeal.

§21A-7-3. Deputies.

1 The commissioner shall appoint deputies to investigate
2 all claims, and to hear and initially determine all claims
3 for benefits excepting claims relating to labor disputes
4 or disqualification under subdivision four of section three,
5 article six of this chapter.

§21A-7-4. Investigation by deputy; notice and hearing before deputy; referral of labor dispute claims for hearing and determination by appeal tribunal; initial deter-

mination of other claims by deputy; notice of findings and decision.

1 (a) A deputy shall promptly investigate all claims.

2 (b) Upon the filing of any claim for benefits, notice
3 thereof shall promptly be given by the commissioner or
4 his designee to the employer concerned, in writing.
5 The employer shall have a period of four calendar days
6 from the receipt of such notice within which to fur-
7 nish to the deputy or his local office initial information
8 respecting the claim and the facts and circumstances
9 pertaining to the claimant's unemployment. If, within
10 said four-day period, any party shall request a hear-
11 ing before the deputy, such hearing shall be held, upon
12 notice to all parties by the commissioner or his de-
13 signee, either by delivery in person or by registered
14 or certified mail, return receipt requested, within five
15 calendar days of receipt of such request. Such hear-
16 ing shall be informal in nature, but shall afford the
17 parties reasonable opportunity to present, in person, in-
18 formation relevant to the eligibility and disqualification
19 of the claimant.

20 (c) If it appears from the deputy's investigation and
21 from all of the information before him, that a claim re-
22 lates to a labor dispute or to a disqualification under subdi-
23 vision four of section three, article six of this chapter,
24 the claim shall be transferred to the board for full hear-
25 ing and initial determination by an appeal tribunal.

26 (d) If it appears from the deputy's investigation, and
27 from all of the information before him, that a claim does
28 not relate to a labor dispute or to a disqualification under
29 subdivision four of section three, article six of this chap-
30 ter, the deputy shall determine whether or not such claim
31 is valid, and, if valid, shall determine:

32 (1) The week with respect to which benefits will
33 commence;

34 (2) The amount of benefit;

35 (3) The maximum duration of benefits.

36 (e) After any finding or determination by a deputy,
37 the deputy shall promptly notify the claimant and the
38 employer of his findings and decision.

§21A-7-7. Appeal tribunals.

1 The board shall determine the manner of hearing
2 cases transferred or appealed from a decision of a deputy.
3 All cases relating to labor disputes or to disqualification
4 under subdivision (4), section three, article six of this
5 chapter, and transferred to an appeal tribunal for initial
6 determination, shall be heard by an appeal tribunal com-
7 posed either of three examiners assigned by the board,
8 or the board itself, as the board may direct in particular
9 cases or in particular areas. All other appeals from the
10 decision of a deputy shall be heard by an appeal tribunal
11 composed, as the board may direct in particular cases or
12 in particular areas, of a single examiner; a tribunal of
13 three examiners assigned by the board; a member of the
14 board; or the board itself.

§21A-7-7a. Hearings and determinations by appeal tribunal in labor dispute cases.

1 Upon transfer to the board of a case relating to a labor
2 dispute or to a disqualification under subdivision four,
3 section three, article six of this chapter, for hearing and
4 initial determination by an appeal tribunal, the parties
5 shall be entitled to a full and complete hearing and op-
6 portunity to present evidence before an appeal tribunal
7 as provided in section seven of this article. Within eight
8 days after the transfer or referral of such a case to the
9 board, the board shall fix the time and place for hearing
10 such case, and notify the claimant, last employer, and the
11 commissioner, ten days in advance of the date set for
12 hearing. All such cases shall be heard and determined as
13 expeditiously as possible and shall be given priority over
14 all other cases. Upon consideration of all evidence the
15 appeal tribunal shall make a decision with respect to all
16 questions fairly raised by the record, within fourteen
17 days after the date of the hearing, and shall notify the
18 claimant, last employer, and the commissioner of its find-
19 ings and decisions.

§21A-7-9. Appeal from appeal tribunal's decision; finality of decision.

1 A claimant, last employer, or other interested party
2 may file an appeal to the board from the decision of an

3 appeal tribunal within eight calendar days after notice
4 of the decision has been delivered or mailed to the
5 claimant and last employer. The commissioner shall be
6 deemed an interested party. The decision of the appeal
7 tribunal shall be final unless an appeal is filed within
8 such time.

§21A-7-10. Review by board.

1 The board may, on its own motion, after notice to the
2 claimant, last employer, and the commissioner, eight days
3 in advance of the date set for hearing, affirm, modify,
4 or reverse and set aside a decision of an appeal tribunal.
5 Any appeal from a decision of an appeal tribunal allow-
6 ing benefits in a case relating to a labor dispute or to a
7 disqualification under subdivision four, section three,
8 article six of this chapter, shall be heard as expeditiously
9 as possible and given priority over all other cases and
10 shall be decided by the board within ten days after the
11 hearing before the board.

§21A-7-11. Benefits pending appeal.

1 Benefits found payable by decision of a deputy, appeal
2 tribunal, the board or court shall be immediately paid in
3 accordance therewith up to the week in which a subse-
4 quent appellate body renders a decision, by order, finding
5 that benefits were not or are not payable. If, at any
6 appeal stage, benefits are found to be payable which
7 were found before such appeal stage to be not payable,
8 the commissioner shall immediately reinstate the pay-
9 ment benefits. If the final decision in any case deter-
10 mines that a claimant was not lawfully entitled to bene-
11 fits paid to him pursuant to a prior decision, such amount
12 of benefits so paid shall be deemed overpaid. The com-
13 missioner shall recover such amount by civil action or
14 in any manner provided in this code for the collection
15 of past due payment and shall withhold, in whole or in
16 part, as determined by the commissioner, any future bene-
17 fits payable to the individual and credit such amount
18 against the overpayment until it is repaid in full. If
19 the final decision in any case determines that the claimant
20 was not lawfully entitled to the benefits paid to him
21 pursuant to a prior order, any benefits so paid pursuant

22 to such prior order, shall not be chargeable to the em-
23 ployer's account.

CHAPTER 126

(House Bill No. 735—By Mr. Edgar and Mr. Shaffer)

[Passed March 10, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section five, article one, chapter nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the payments to the members of the veterans' council.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF VETERANS' AFFAIRS.

§9A-1-5. Compensation of director, deputies, assistants and employees; payment to veterans' council members; traveling expenses; meetings of veterans' council.

1 The director shall receive a salary of twelve thousand
2 dollars per annum, payable in monthly installments, and,
3 in addition, the necessary traveling expenses incident
4 to the performance of his duties. The salaries of the
5 deputy directors, assistants and employees shall be fixed
6 by the veterans' council. The members of the veterans'
7 council shall receive no salary, but each member shall
8 receive twenty-five dollars for each day actually in at-
9 tendance at a meeting and his actual expenses and travel-
10 ing expenses incurred in the performance of his duties
11 under this article. The requisition for such expenses and
12 traveling expenses shall be accompanied by a sworn and
13 itemized statement, which shall be filed with the auditor
14 and permanently preserved as a public record. The

15 veterans' council shall hold its initial meeting on the call
16 of the governor, and thereafter shall meet on the call
17 of its chairman, except as otherwise provided. With the
18 exception of the first three meetings of the veterans'
19 council, none of which shall be of a duration longer than
20 two weeks each, for organizational purposes, the vet-
21 erans' council shall meet not more than once every two
22 months at such times as may be determined by and
23 upon the call of the chairman for a period of not more
24 than two days, unless there should be an emergency
25 requiring a special meeting or for a longer period and
26 so declared and called by the governor or by the chair-
27 man with the approval of the governor. A majority of
28 the members of the veterans' council shall constitute a
29 quorum for the conduct of official business.

CHAPTER 127

(House Bill No. 604—By Mr. Queen and Mr. Fantasia)

[Passed February 23, 1972; in effect July 1, 1972. Approved by the Governor.]

AN ACT to amend and reenact section two, article one; sections two and four, article four; section ten, article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the definition of "state assistance," "medical services fund," the abolition of the special fund known as the "General Relief Fund of _____ County" with the assumption by the state of total fiscal responsibility for general relief and authorizing county courts to make voluntary contributions to the state department of welfare.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **Legislative Purpose and Definitions.**
4. **State Advisory Board; Medical Services Fund; Advisory Council; General Relief Fund.**
5. **Miscellaneous Provisions.**

ARTICLE 1. LEGISLATIVE PURPOSE AND DEFINITIONS.**§9-1-2. Definitions.**

1 The following words and terms when used in this chap-
2 ter shall have the meaning hereafter ascribed to them
3 unless the context clearly indicates a different meaning:

4 (a) The term "department" shall mean the state de-
5 partment of welfare.

6 (b) The term "commissioner" shall mean the commis-
7 sioner of welfare.

8 (c) The term "federal-state assistance" shall mean and
9 include (1) all forms of aid, care, assistance and services
10 to or on behalf of persons, which are authorized by, and
11 who are authorized to receive the same under and by
12 virtue of, subchapters one, four, five, ten, fourteen, six-
13 teen, eighteen and nineteen, chapter seven, Title 42,
14 United States Code, as those subchapters have heretofore
15 been and may hereafter be amended, supplemented and
16 revised by acts of Congress, and as those subchapters so
17 amended, supplemented and revised have heretofore been
18 and may hereafter be supplemented by valid rules and
19 regulations promulgated by authorized federal agents
20 and agencies, and as those subchapters so amended, sup-
21 plemented and revised have heretofore been and may
22 hereafter be supplemented by rules and regulations pro-
23 mulgated by the state department of welfare, which de-
24 partment rules and regulations shall be consistent with
25 federal laws, rules and regulations, but not inconsistent
26 with state law, and (2) all forms of aid, care, assistance
27 and services to persons, which are authorized by, and who
28 are authorized to receive the same under and by virtue of,
29 any act of Congress, other than the federal Social Security
30 Act, as amended, for distribution through the state de-
31 partment of welfare to recipients of any form of aid, care,
32 assistance and services to persons designated or referred
33 to in (1) of this definition and to recipients of state assis-
34 tance, including by way of illustration, surplus food and

35 food stamps, which Congress has authorized the secre-
36 tary of agriculture of the United States to distribute to
37 needy persons.

38 (d) The term "federal assistance" shall mean and in-
39 clude all forms of aid, care, assistance and services to or
40 on behalf of persons, which are authorized by, and who
41 are authorized to receive the same under and by virtue
42 of, any act of Congress for distribution through the state
43 department of welfare, the cost of which is paid entirely
44 out of federal appropriations.

45 (e) The term "state assistance" shall mean and include
46 all forms of aid, care, assistance, services and general re-
47 lief made possible solely out of state, county and private
48 appropriations to or on behalf of indigent persons, which
49 are authorized by, and who are authorized to receive the
50 same under and by virtue of, department rules and reg-
51 ulations.

52 (f) The term "welfare assistance" shall mean the
53 three classes of assistance administered by the depart-
54 ment, namely: Federal-state assistance, federal assistance
55 and state assistance.

56 (g) The term "indigent person" shall mean any per-
57 son who is domiciled in this state and who is actually in
58 need as defined by department rules and regulations and
59 has not sufficient income or other resources to provide
60 for such need as determined by the department.

61 (h) The term "domiciled in this state" shall mean be-
62 ing physically present in West Virginia accompanied by
63 an intention to remain in West Virginia for an indefinite
64 period of time, and to make West Virginia his or her per-
65 manent home. The department may by rules and regu-
66 lations supplement the foregoing definition of the term
67 "domiciled in this state," but not in such a manner as
68 would be inconsistent with federal laws, rules, and regu-
69 lations applicable to and governing federal-state assis-
70 tance.

71 (i) The term "medical services" means medical, sur-
72 gical, dental and nursing services, and other remedial
73 services recognized by law, in the home, office, hospital,
74 clinic and any other suitable place, provided or prescribed
75 by persons permitted or authorized by law to give such

76 services; such services to include drugs and medical sup-
77 plies, appliances, laboratory, diagnostic and therapeutic
78 services, nursing home and convalescent care and such
79 other medical services and supplies as may be prescribed
80 by such persons.

81 (j) The term "general relief" shall mean cash or its
82 equivalent in services or commodities expended for care
83 and assistance to an indigent person other than for care
84 in a county infirmary, child shelter, or similar institution.

**ARTICLE 4. STATE ADVISORY BOARD; MEDICAL SERVICES
FUND; ADVISORY COUNCIL; GENERAL RELIEF
FUND.**

§9-4-2. Medical services fund.

§9-4-4. State general relief fund.

§9-4-2. Medical services fund.

1 The special fund known as the state of West Virginia
2 public assistance medical services fund established by
3 chapter one hundred forty-three, acts of the Legislature,
4 regular session, one thousand nine hundred fifty-three,
5 as amended by chapter two, acts of the Legislature, first
6 extraordinary session, one thousand nine hundred sixty,
7 and chapter forty-nine, acts of the Legislature, regular
8 session, one thousand nine hundred sixty-six, shall be
9 continued in accordance with the provisions of this sec-
10 tion so long as the same may be required by federal
11 laws, rules and regulations applicable to federal-state
12 assistance and thereafter so long as the commissioner
13 shall deem such fund to be otherwise necessary or desir-
14 able, and henceforth such special fund shall be known
15 as the department of welfare medical services fund, here-
16 inafter referred to as the fund.

17 The fund shall consist of payments made into the fund
18 out of state appropriations for medical services to re-
19 cipients of specified classes of welfare assistance and such
20 federal grants-in-aid as are made available for specified
21 classes of welfare assistance. Any balance in the fund
22 at the end of any fiscal year shall remain in the fund
23 and shall not expire or revert. Payments shall be made
24 out of the fund upon requisition of the commissioner by
25 means of a warrant signed by the auditor and treasurer.

26. Recipients of those classes of welfare assistance as are
27 specified by the department, consistent with applicable
28 federal laws, rules and regulations, shall be entitled to
29 have costs of necessary medical services paid out of the
30 fund, in the manner and amounts, to the extent, and
31 for the period determined from time to time to be fea-
32 sible by the commissioner pursuant to rules, regulations
33 and standards established by him. Such rules, regula-
34 tions and standards shall comply with requirements of
35 applicable federal laws, rules and regulations and shall
36 be established on the basis of money available for the
37 purpose, the number of recipients, the experience with
38 respect to the incidence of illness, disease, accidents, and
39 other causes among such recipients causing them to re-
40 quire medical services and the costs thereof, the amounts
41 which recipients require otherwise in order to maintain
42 a subsistence compatible with decency and health, and
43 any other factor considered relevant and proper by the
44 commissioner.

§9-4-4. State general relief fund.

1 The special fund known as the "General Relief Fund of
2 _____ County," established by chapter
3 one, acts of the Legislature, first extraordinary session,
4 one thousand nine hundred thirty-six, shall be abolished
5 as of June thirty, one thousand nine hundred seventy-
6 two.

7 The state general relief fund, established by chapter
8 one, acts of the Legislature, first extraordinary session,
9 one thousand nine hundred thirty-six, shall be continued
10 and the fiscal responsibility for said fund shall be the
11 responsibility of the state on and after July one, one
12 thousand nine hundred seventy-two as provided by this
13 section and rules and regulations promulgated by the
14 commissioner.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-10. Continuation of present aid; contributions by counties.

1 Except as otherwise provided in this chapter, aid or
2 assistance rendered under existing law shall not be
3 deemed to be discontinued.

4 County courts may contribute in-kind services or money
5 into a special fund of the state department of welfare
6 to expand the general welfare programs for citizens of
7 its county. No part of this fund shall revert to the general
8 revenue of the state.

CHAPTER 128

(Senate Bill No. 399—By Mr. McCourt, Mr. President,
and Mr. Hubbard)

[Passed March 11, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section five, article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to responsibility and powers of the department of welfare; providing that each department, agency, commission or board of state government shall make available to the department of welfare such information and data as each such department, agency, commission or board may collect about any applicant for or recipient of any type of federal or state assistance upon such terms as may be prescribed by the governor; and specifying the use to be made of such information or data.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF WELFARE AND OFFICE OF COMMISSIONER OF WELFARE; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-5. Responsibility and powers of department; information and data to be supplied by other agencies.

1 The department is charged with the responsibility of
2 administering for the state the welfare assistance pro-
3 grams, for which responsibility it shall have (1) all
4 powers, not inconsistent with state law, as may be neces-
5 sary for this state to obtain maximum federal funds made

6 available for federal-state assistance within whatever
7 limits or restrictions may be imposed by, or may exist
8 by reason of the amount of state funds appropriated for
9 such assistance under, the state's budget act and supple-
10 mentary appropriation acts and (2) all powers, not in-
11 consistent with state law, as may be necessary for the
12 disbursement and distribution of welfare assistance to
13 those persons qualified therefor in as prompt, fair, orderly,
14 efficient and economical manner as possible.

15 Notwithstanding any other provision of this code to the
16 contrary, each department, agency, commission or board
17 of state government shall make available to the depart-
18 ment of welfare such information and data as each such
19 department, agency, commission or board may collect
20 about any applicant for or recipient of any type of federal
21 or state assistance upon such terms as may be prescribed
22 by the governor, if such information and data would be
23 relevant in determining whether such applicant or
24 recipient is qualified or eligible for any such assistance,
25 and after such information and data have been obtained
26 by the department of welfare, the same shall be used only
27 by such department of welfare in carrying out and dis-
28 charging its powers, duties and responsibilities.

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CHAPTER 129

(Senate Bill No. 401—By Mr. McCourt, Mr. President,
and Mr. Hubbard)

[Passed March 11, 1972; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section four, article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to criminal offenses for obtaining or attempting to obtain or aiding or abetting another in obtaining or attempting to obtain welfare assistance by a willfully false statement or misrepresentation or by impersonation or any other fraudulent device; and providing criminal penalties therefor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-4. Penalties for false statements, etc.

1 Any person who obtains or attempts to obtain, or aids
2 or abets an applicant or recipient in obtaining or attempt-
3 ing to obtain, by means of a willfully false statement or
4 misrepresentation or by impersonation of any other fraud-
5 ulent device:

6 (1) Any class of welfare assistance to which the ap-
7 plicant or recipient is not entitled; or

8 (2) Any class of welfare assistance in excess of that to
9 which the applicant or recipient is justly entitled; shall
10 upon conviction be punished as follows:

11 (a) If the aggregate value of all funds or other bene-
12 fits obtained or attempted to be obtained shall be
13 five hundred dollars or less, the person so convicted shall
14 be guilty of a misdemeanor and shall be fined not more
15 than one thousand dollars or confined in jail not exceeding
16 one year; or

17 (b) If the aggregate value of all funds or other bene-
18 fits obtained or attempted to be obtained shall exceed five
19 hundred dollars, the person so convicted shall be guilty
20 of a felony and shall be fined not more than five thousand
21 dollars or confined in the penitentiary not less than one
22 year nor more than five years.

○

CHAPTER 130

(House Bill No. 839—By Mr. Perry and Mr. Cookman)

[Passed March 10, 1972; In effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact sections ten and fifteen-a, article four, chapter twenty-three of the code of West Virginia,

one thousand nine hundred thirty-one, as amended, relating to awarding workmen's compensation benefits to nonresident beneficiaries.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-10. Classification of death benefits; "dependent" defined.

§23-4-15a. Nonresident alien beneficiaries.

§23-4-10. Classification of death benefits; "dependent" defined.

1 In case a personal injury other than occupational pneu-
2 moconiosis or other occupational disease, suffered by an
3 employee in the course of and resulting from his employ-
4 ment, causes death within the period of ten years and dis-
5 ability is continuous from date of such injury until date
6 of death, or if death results from occupational pneu-
7 moconiosis or from any other occupational disease within
8 ten years from the date of the last exposure to the haz-
9 ards of occupational pneumoconiosis or to the other par-
10 ticular occupational hazard involved, as the case may be,
11 the benefits shall be in the amounts and to the persons as
12 follows:

13 (a) If there be no dependents, the disbursements shall
14 be limited to the expense provided for in sections three
15 and four of this article.

16 (b) If the deceased employee leaves a dependent
17 widow or invalid widower, the payment shall be one
18 hundred sixty dollars a month until death or remarriage
19 of such widow or widower, and in addition fifty dollars
20 a month for each child under eighteen years of age, to
21 be paid until such child reaches such age, or where such
22 child after reaching eighteen years of age continues as
23 a full-time student in an accredited high school, college,
24 university, business or trade school, to be paid until such
25 child reaches the age of twenty-two years, or if an in-
26 valid child, fifty dollars a month, to continue as long as
27 such child remains an invalid to be increased to one hun-

28 dred sixty dollars per month upon the death of the sur-
29 viving dependent parent: *Provided*, That if such widow
30 or invalid widower shall remarry within ten years from
31 the date of the death of such employee, such widow or
32 widower shall be paid at the time of remarriage twenty
33 percent of the amount that would be due for the period
34 remaining between the date of such remarriage and the
35 end of ten years from the date of death of such employee,
36 and such widow or widower shall be advised in writing
37 by the commissioner of his or her rights under this proviso
38 at the time of making the original award: *Provided, how-*
39 *ever*, That if upon investigation and hearing, as provided
40 in article five of this chapter, it shall be ascertained that
41 such widow or widower is living with a man or woman,
42 as the case may be, as man and wife and not married, or
43 that the widow is living a life of prostitution, the com-
44 missioner shall stop payment of the benefits herein pro-
45 vided to such widow or widower.

46 If the deceased employee be a widow or widower and
47 leaves a child or children under the age of eighteen years,
48 the payments shall be one hundred dollars a month to
49 each child until he or she reaches the age of eighteen
50 years, or where such child after reaching eighteen years
51 of age continues as a full-time student in an accredited
52 high school, college, university, business or trade school
53 to be paid until such child reaches the age of twenty-two
54 years.

55 In all awards of compensation to children, unless other-
56 wise provided herein, the award shall be until they reach
57 the age of eighteen years or until their death prior there-
58 to.

59 (c) If the deceased employee leaves no dependent
60 widow or widower and leaves a wholly dependent father
61 or mother, he or she shall be paid the sum of eighty dol-
62 lars a month, payments to continue until death, and if
63 there be no widow or widower and both the father and
64 mother are wholly dependent, then a joint award shall
65 be made to the father and mother in the sum of eighty
66 dollars a month until death.

67 Upon the death of either the father or mother in any
68 case in which a joint award has been made to them, the

69 full award of eighty dollars a month shall be paid to the
70 survivor until his or her death.

71 (d) If the deceased employee leaves no dependent
72 widow or widower or wholly dependent father or mother
73 but there are other wholly dependent persons, as defined
74 in subdivision (f) of this section, the payment shall be
75 sixty-five dollars a month, to continue for six years after
76 the death of the deceased, except as otherwise provided
77 herein.

78 (e) If the deceased employee leaves no dependent
79 widow or widower, child under eighteen years of age,
80 or wholly dependent person, but there are partially de-
81 pendent persons at the time of death, the payment shall
82 be thirty-five dollars a month, to continue for such por-
83 tion of the period of six years after the death, as the com-
84 missioner may determine, but no such partially depen-
85 dent person shall receive compensation payments as a re-
86 sult of the death of more than one employee.

87 Compensation under subdivisions (b), (c), (d) and (e)
88 hereof shall, except as may be specifically provided to
89 the contrary therein, cease upon the death of the depen-
90 dent, and the right thereto shall not vest in his or her
91 estate.

92 (f) Dependent, as used in this chapter, shall mean a
93 widow, invalid widower, child under eighteen years of
94 age, or under twenty-two years of age when a full-time
95 student as provided herein, invalid child or posthumous
96 child, who, at the time of the injury causing death, is de-
97 pendent in whole or in part for his or her support upon
98 the earnings of the employee, stepchild under eighteen
99 years of age, or under twenty-two years of age when a
100 full-time student as provided herein, child under eighteen
101 years of age legally adopted prior to the injury causing
102 death, or under twenty-two years of age when a full-time
103 student as provided herein, father, mother, grandfather
104 or grandmother, who at the time of the injury causing
105 death, is dependent in whole or in part for his or her sup-
106 port upon the earnings of the employee; and invalid
107 brother or sister wholly dependent for his or her support
108 upon the earnings of the employee at the time of the in-
109 jury causing death.

§23-4-15a. Nonresident alien beneficiaries.

1 Notwithstanding any other provisions of this chapter,
2 nonresident alien beneficiaries shall be entitled to the
3 same benefits as citizens of the United States: *Provided,*
4 *however,* That the commissioner in his discretion may
5 make, and such beneficiary shall be required to accept,
6 commutation of such benefits into a lump sum settlement
7 and payment. Nonresident alien beneficiaries within the
8 meaning hereof shall mean persons not citizens of the
9 United States residing outside of the territorial limits of
10 the United States at the time of the injury with respect to
11 which benefits are awarded.

CHAPTER 131

(House Bill No. 835—By Mr. Griffith and Mr. Wilson)

[Passed February 18, 1972; in effect from passage. Approved by the Governor.]

AN ACT to authorize the expenditure of surplus funds by the
Hancock county court for prepayment to the city of New
Cumberland for water and sewage services.

Be it enacted by the Legislature of West Virginia:

HANCOCK COUNTY.**§1. County court authorized to advance funds to the city of
New Cumberland for additions to water system of said
city.**

1 The county court of Hancock county, is hereby autho-
2 rized and empowered to advance any unexpended sums
3 and surpluses in the general fund or in any special fund,
4 but not to exceed eight thousand dollars, to the city of
5 New Cumberland for the purpose of implementing and
6 facilitating additions to the water system of the city of
7 New Cumberland: *Provided,* That the city of New Cum-
8 berland, in consideration for such advancement, shall
9 agree in writing to provide water and sewage services,
10 to the Hancock county court for use by county court

11 operated facilities, equivalent in value to the amount of
12 such advanced funds.

CHAPTER 132

(House Bill No. 746—By Mr. White, of Cabell)

[Passed March 11, 1972; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, chapter twenty-six, acts of the Legislature, regular session, one thousand nine hundred twenty-five (municipal charters), relating to the board of park commissioners of the city of Huntington and the location of its meetings.

Be it enacted by the Legislature of West Virginia:

That section twelve, chapter twenty-six, acts of the Legislature, regular session, one thousand nine hundred twenty-five (municipal charters), be amended and reenacted to read as follows:

HUNTINGTON PARK COMMISSION.

§12. Title to property; meetings.

1 Upon the passage of this act, the title to all parks,
2 parkways, playgrounds, athletic fields, cemeteries and
3 boulevards which is vested in the city of Huntington,
4 but under the provision of this act, pass to the juris-
5 diction of the board of park commissioners, shall be
6 vested in the board of park commissioners of the said
7 city and held as herein set out: *Provided*, That there may
8 be no confusion of the streets which are parts of the
9 park boulevard systems, and what are boulevards. The
10 board of commissioners of the city of Huntington shall,
11 within four weeks after the passage of this act, adopt
12 an ordinance setting out what parks, parkways, play-
13 grounds, athletic fields, cemeteries, boulevards and
14 streets, which are part of the boulevard system are em-
15 braced in said system, and upon the passage of said

16 ordinance, the jurisdiction of all parks, parkways, play-
17 grounds, cemeteries, athletic fields, boulevards and streets
18 mentioned therein shall pass to the control of the board
19 of park commissioners.

20 The board of park commissioners shall have and main-
21 tain its offices in the city hall of the said city of Hunting-
22 ton.

23 The board shall have the power to designate, by ma-
24 jority vote, the place of its meetings, but, unless some
25 other location is so designated, its meetings shall be
26 held at its offices and all such meetings shall be open to
27 the public.

CHAPTER 133

(House Bill No. 926—By Mr. Perry)

[Passed February 26, 1972; in effect from passage. Approved by the Governor.]

AN ACT to authorize the county court of Jefferson county to transfer and convey a 48.5104 acre tract of county owned land to the Jefferson County Volunteer Fireman's Association, Inc., reserving certain reversionary rights.

Be it enacted by the Legislature of West Virginia:

JEFFERSON COUNTY.

§1. County court authorized to convey land to Jefferson County Fireman's Association, Inc.

1 The Legislature hereby recognizes that innovative train-
2 ing methods and adequate training areas are necessary
3 for the proper education and training of fire and police
4 personnel in order to provide for the protection and safety
5 of the public. Accordingly, the Legislature hereby finds
6 and declares that transfers of any property, real or per-
7 sonal, made by county courts to any person, organization
8 or corporation for the furtherance of such training pro-
9 motes the general safety and welfare of the public and,
10 therefore, is a public purpose.

11 The county court of Jefferson county is hereby autho-
12 rized and empowered to transfer and convey into the
13 Jefferson County Fireman's Association, Inc., all that
14 certain parcel of land situated within the Middleway
15 magisterial district of Jefferson county, West Virginia,
16 east of Leetown on the north side of West Virginia State
17 Secondary Route 15, approximately 1720 feet west of
18 the intersection of West Virginia State Secondary Route
19 15 with West Virginia State Secondary Route 8.

20 More particularly described in accordance with the
21 "Plat Showing Jefferson County Farm Release Parcel,"
22 dated the first day of December, one thousand nine
23 hundred seventy-one, prepared under the direction of
24 John Stroud Kusner, Jefferson county surveyor of lands,
25 and of record at the office of the clerk of Jefferson coun-
26 ty, Plat Book 2, Page 273.

27 All bearings refer to a meridian scaled from U. S.
28 Geological Survey Map of Middleway Quadrangle, 7.5
29 minute series, N 3915-W7752.5/7.5, 1955. All distances are
30 expressed in feet and decimal parts.

31 Beginning at Corner 1, a point on the center line of
32 West Virginia State Secondary Route 15 approximately
33 1720 feet NW of the intersection of said Route 15 with
34 West Virginia State Secondary Route 8, N 59° 25' 00"
35 W 510.35 feet along the center line of said Route 15 to
36 Corner 2, a point on the center line; thence crossing
37 the north margin of Route 15 N 21° 00' 10" E 17.0 feet
38 to a corner fence post found, continuing 1369.44 feet
39 along a fenced line of division with the residue of the
40 Jefferson county farm to a fence post found at Corner
41 3, a total distance of 1386.44 feet; thence N 73° 05' 39" W
42 41.85 feet on a fenced line of division with said county
43 farm to an iron pin set at Corner 4; thence N 22° 35' 39"
44 E 15.24 feet across the entrance of a lane on said county
45 farm, continuing 1108.02 feet, a total of 1123.26 feet to a
46 deflection fence post found at Corner 5; thence N 28°
47 22' 36" E 736.57 feet on a fenced line of division with said
48 county farm to a fence post found at Corner 6; thence S
49 49° 51' 32" E 770.99 feet on a fenced line of division with
50 the lands of Z. T. Fleming, Deed Book 122, Page 286, to
51 a fence post found at Corner 7; thence S 26° 45' 17"

52 W 3068.46 feet along a fenced line of division with the
53 lands of the Nannie G. Coyle Heirs, Will Book "G" Page
54 221, to a stone pier found, continuing 16.00 feet and
55 crossing the north margin of Route 15 to a point on the
56 center line of said Route 15, a total distance of 3084.46
57 feet to the point of beginning.

58 Containing 2,113,113 square feet or 48.5104 acres, com-
59 puted horizontal distance.

60 Any proper conveyance made by the county court of
61 Jefferson county transferring ownership of the above
62 described parcel into the Jefferson County Fireman's
63 Association, Inc., shall contain a provision that ownership
64 of such property shall revert to the county court should
65 the land cease to be used as a fire or police training fa-
66 cility.

CHAPTER 134

(House Bill No. 1153—By Mr. Harman)

[Passed March 6, 1972; in effect from passage. Approved by the Governor.]

AN ACT to authorize the county court of Mineral county to enter into intergovernmental agreements with Allegany county, Maryland, the city of Cumberland, Maryland or the state of Maryland pertaining to the operation of the Cumberland municipal airport situated in Mineral county, West Virginia.

Be it enacted by the Legislature of West Virginia:

MINERAL COUNTY.

§1. County court authorized and empowered to enter into intergovernmental agreements with Allegany county, city of Cumberland; and state of Maryland regarding the Cumberland municipal airport.

1 The county court of Mineral county is hereby autho-
2 rized and empowered to enter into intergovernmental
3 agreements with Allegany county, Maryland, the city of

4 Cumberland, Maryland, or the state of Maryland regard-
5 ing the operation and use of the Cumberland municipal
6 airport, situated in Mineral county, West Virginia. Said
7 agreements shall be reciprocal in nature and may include
8 but shall not be limited to conditions governing the opera-
9 tion, use, maintenance of said airport facilities, taxation
10 of aircraft owned by Maryland residents and user fees.

CHAPTER 135

(House Bill No. 699—By Mr. Steptoe and Mr. Terry)

[Passed February 15, 1972; in effect from passage. Approved by the Governor.]

AN ACT to authorize the purchase and financing of certain real estate in the town of Bath (Berkeley Springs) for public county office purposes by the county court of Morgan county.

Be it enacted by the Legislature of West Virginia:

MORGAN COUNTY.

§1. Authorized to purchase certain real property for use by the county.

1 The county court of Morgan county is hereby authorized
2 to make provisions in its budget and to expend county
3 funds to purchase that certain lot, improved by a two
4 story building, known as the Miller property, adjoining
5 its courthouse property on the east, situate on the north
6 side of Fairfax street in the town of Bath (Berkeley
7 Springs) for the sum of ten thousand dollars, said real
8 estate to be used for public purposes and housing county
9 government operations. The county court of Morgan
10 county is further authorized to finance the purchase of
11 said real estate, not to exceed the principal amount of
12 ten thousand dollars, payable over a period not to exceed
13 ten years.

RESOLUTIONS

COMMITTEE SUBSTITUTE

FOR

HOUSE CONCURRENT RESOLUTION NO. 56

(By Mr. Cookman)

[Adopted March 7, 1972]

Designating the apple as the official fruit of the State of West Virginia.

WHEREAS, The apple has played a significant role in the economy of the State of West Virginia since the earliest days of the State, and continues to represent an important segment of the State's agrarian production; and

WHEREAS, The State of West Virginia has been the scene of events of historical significance in the evolution and development of the apple industry, including the discoveries of the Golden Delicious variety of apple in Clay County, the Grimes Golden variety of apple in Brooke County and the establishment by the Legislature of the first Demonstration Community Packing School in the United States at Inwood in Berkeley County in 1917; and

WHEREAS, The scenic apple orchards on our highlands, and the richness and beauty of our apple crops are symbolic of the good and full life which West Virginians enjoy; and

WHEREAS, The State of West Virginia has never designated an official State fruit; therefore, be it

Resolved by the Legislature of West Virginia:

That the apple is hereby recognized and hereafter shall be recognized and designated as the official fruit of the State of West Virginia.

SENATE CONCURRENT RESOLUTION NO. 9

(By Mr. McCourt, Mr. President)

[Adopted March 11, 1972]

Creating a Corporation Law Study Committee to conduct a comprehensive interim study on West Virginia's corporation laws and to provide for overall recodification thereof.

WHEREAS, Overall recodification of West Virginia's corporation laws will serve the best interests of the public at large and those organizations and individuals who are directly affected; and

WHEREAS, The statutory procedures under which corporations must function would be improved immeasurably by an overall recodification of corporation laws; and

WHEREAS, Specific areas of corporation laws, such as dissolution, and merger, liability of a corporation for acts of its officers and agents, doing business with foreign corporations and multiplicity of fees and charges, present problems which clearly demonstrate the need for overall recodification; and

WHEREAS, The Legislature should continue its own good example, the recent recodification of municipal laws, by improving another area of major importance in the West Virginia Code, corporation laws; therefore, be it

Resolved by the Legislature of West Virginia:

That a special interim legislative committee to be known as the "Corporation Law Study Committee" is hereby created to conduct a comprehensive and detailed interim study to recodify West Virginia's corporation laws, and shall submit its report, findings and recommendations to the Legislature at its regular session, one thousand nine hundred seventy-three. It shall consist of two members of opposite political parties from each House of the Legislature, to be appointed from their respective Houses by the President of the Senate and the Speaker of the House of Delegates, and six private citizens who are attorneys from outside the Legislature, three of whom are to be appointed by the President and three by the Speaker; and, be it

Further Resolved, That citizen members of the Committee shall serve without compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties; and, be it

Further Resolved, That the Committee may employ and fix the compensation of such knowledgeable consultants and technical assistants as it considers necessary, and may, with the concurrence of the Joint Committee on Government and Finance, be provided professional and clerical assistance from the staff of that committee; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report and to draft proposed legislation be approved in advance by the Joint Committee on Government and Finance, and be paid from legislative appropriations to the Joint Committee on Government and Finance.

Authorizing and Continuing Studies by the Joint Committee on Government and Finance

(Since these resolutions take the same general form, they are listed herein by subject only. They may be found in the House and Senate Journals of the session, and are indexed under tabular indices of House and Senate Concurrent Resolutions.)

House Concurrent

14. **Continuing studies of the following: Civil Procedure, Employer-Employee Relations in Public Employment, Environmental Agency Consolidation, Highway Safety, Institutions of Higher Education, State Tax Structure and Surface Mining.**
15. **Problems Relating to the Aged.**
16. **Juveniles.**
23. **Data Processing.**
25. **Financial Support of Public Schools.**
33. **Modification of Mortality Tables in the Code.**
34. **Revision of Criminal Laws.**
68. **No-fault Insurance.**
71. **Federal Occupational Safety Act of 1970.**
74. **Methods of Accounting for County Funds and the Use of Such Funds.**

Senate Concurrent

18. **Revenue Structure for Financing Local Governmental Functions.**
20. **Awarding West Virginia Veterans of the Vietnam War.**

21. **Manufacturing Employment.**
23. **Disposal of Coal Mine Wastes.**
35. **Utilization of Staff Members and Facilities at Pinecrest Hospital.**

HOUSE JOINT RESOLUTION NO. 18

(By Mr. Speaker, Mr. McManus)

[Adopted March 11, 1972]

Proposing an amendment to the Constitution of the State, amending article ten thereof by adding thereto a new section, designated section six-a, authorizing the Legislature to appropriate state funds for use in matching or maximizing grants-in-aid for public purposes to any county, municipality or other political subdivision of the State and to impose a state tax or taxes or dedicate a state tax or taxes or any portion thereof for the benefit of and use by counties, municipalities or other political subdivisions of the State for public purposes, all to be under such circumstances and subject to such terms, conditions and restrictions as the Legislature may prescribe by law; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of all the members elected to each House agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred seventy-two, which proposed amendment is that article ten thereof be amended by adding thereto a new section, designated section six-a, to read as follows:

ARTICLE X. TAXATION AND FINANCE.

§6a. Appropriations and taxation for the benefit of counties, municipalities or other political subdivisions of the State.

Notwithstanding the provisions of section six of this article, (1) the Legislature may appropriate state funds for use in matching or maximizing grants-in-aid for public purposes from

the United States or any department, bureau, commission or agency thereof, or any other source, to any county, municipality or other political subdivision of the State, under such circumstances and subject to such terms, conditions and restrictions as the Legislature may prescribe by law, and (2) the Legislature may impose a state tax or taxes or dedicate a state tax or taxes or any portion thereof for the benefit of and use by counties, municipalities or other political subdivisions of the State for public purposes, the proceeds of any such imposed or dedicated tax or taxes or portion thereof to be distributed to such counties, municipalities or other political subdivisions of the State under such circumstances and subject to such terms, conditions and restrictions as the Legislature may prescribe by law.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered "Amendment No. 5" and designated as the "Federal Grants and County and Municipal Aid Amendment," and the purpose of the proposed amendment is summarized as follows: "To amend the State Constitution to permit the Legislature to appropriate state funds for use in matching or maximizing grants-in-aid from the Federal Government or others to any county, municipality or other political subdivision of the State and to impose or dedicate a state tax or taxes for the aid of counties, municipalities or other political subdivisions of the State."

SENATE JOINT RESOLUTION NO. 4

(By Mr. McCourt, Mr. President, and Mr. Hubbard)

[Adopted March 9, 1972]

Proposing an amendment to the Constitution of the State of West Virginia, authorizing the issuing and selling of additional state bonds in an amount not exceeding two hundred million dollars and the distribution of the pro-

ceeds thereof to county boards of education for the construction, renovation or remodeling of elementary or secondary public school buildings or facilities, the equipping of the same in connection with any such construction, renovation or remodeling and the acquisition and preparation of sites for elementary or secondary public school buildings or facilities; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of all the members elected to each House agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia shall be submitted to the voters of the State at the general election to be held in the year one thousand nine hundred seventy-two, which proposed amendment is as follows:

The Legislature shall have power to authorize the issuing and selling of state bonds, not exceeding in the aggregate two hundred million dollars, which shall be addition to all other state bonds heretofore authorized. The proceeds of the bonds hereby authorized to be issued and sold shall, notwithstanding the provisions of section six, article ten of this Constitution or any other provision of this Constitution to the contrary, be distributed to such county boards of education as qualify therefor by meeting such conditions, qualifications and requirements as shall be prescribed by general law and used and appropriated by such county boards of education solely for the construction, renovation or remodeling of elementary or secondary public school buildings or facilities, the equipping of the same in connection with any such construction, renovation or remodeling and the acquisition and preparation of sites for elementary or secondary public school buildings or facilities. Such bonds may be issued and sold at such time or times and in such amount or amounts as the Legislature shall authorize. When a bond issue as aforesaid is authorized, the Legislature shall at the same time provide for the collection of an annual state tax sufficient to pay as it may accrue the interest on such bonds and the principal thereof within and not exceeding thirty-four years, and all such taxes so levied shall be irrevoca-

bly dedicated for the payment of principal of and interest on such bonds until such principal of and interest on such bonds are finally paid and discharged, and any of the covenants, agreements or provisions in the acts of the Legislature levying such taxes shall be enforceable in any court of competent jurisdiction by any of the holders of the bonds.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered "Amendment No. 3" and designated as the "Better School Buildings Amendment," and the purpose of the proposed amendment is summarized as follows: "To authorize the Legislature to issue and sell state bonds in an amount not exceeding two hundred million dollars for distribution to county boards of education for use by such boards for the construction, renovation, remodeling and equipping of elementary and secondary school buildings and facilities and for acquisition and preparation of sites therefor."

SENATE JOINT RESOLUTION NO. 11

(By Mr. McCourt, Mr. President)

[Adopted March 9, 1972]

Proposing an amendment to the Constitution of the State, amending section one-a, article ten thereof, extending the ad valorem property taxation exemption from bank deposits and money so as to include household goods and personal effects if such household goods and personal effects are not held or used for profit; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of all the members elected to each House agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be

submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred seventy-two, which proposed amendment is that section one-a, article ten thereof be amended to read as follows:

ARTICLE X. TAXATION AND FINANCE.

§1a. Bank deposits, money, and household goods and personal effects exempt from ad valorem property taxation.

Notwithstanding the provisions of the preceding section, bank deposits, money, and household goods and personal effects if such household goods and personal effects are not held or used for profit, shall be exempt from ad valorem property taxation.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered "Amendment No. 2" and designated as the "Removing Tax on Household Goods and Personal Effects Amendment," and the purpose of the proposed amendment is summarized as follows: "To remove the personal property tax on household goods and personal effects."

ACTS OF 1971

SECOND EXTRAORDINARY SESSION (October 26-November 4, 1971)

CHAPTER 1

(Com. Sub. for House Bill No. 2—Originating in the
House Committee on the Judiciary)

[Passed November 3, 1971; in effect from passage. Approved by the Governor,
November 16, 1971.]

AN ACT to amend chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-nine-a, authorizing the county court of a county to create an airport authority and relating to the membership and purposes of the authority; the appointment and removal of members of the authority; the acquisition by the authority of real estate and personal property; the acquisition, construction, improvement, maintenance and operation of a public airport, including the development of an industrial park and a waterworks or sewer system, or a combined waterworks and sewer system; corporate existence of the authority; the issuance of revenue bonds, debentures, notes and securities, and the giving of security for the payment thereof; the authority to exercise the power of eminent domain; tax exemption for the property, funds and obligations of the authority; acquisition by the authority of any

present county airport and the improvement and operation thereof; authorization to lease the airport; contributions to the funds of the authority by the county court and others; keeping of the funds and accounts of the authority; disposition of any surplus funds; making full-time employees of the authority public employees; dissolution of the authority; and a rule of construction.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29A. COUNTY AIRPORT AUTHORITIES.

- §8-29A-1. County airport authorities authorized as public agencies.
- §8-29A-2. Authorities authorized and empowered to acquire, operate, etc., airports; facilities may include industrial parks, water and sewerage systems.
- §8-29A-3. Management of authority vested in members; appointment and terms of members.
- §8-29A-4. Removal of members; hearing.
- §8-29A-5. Substitution of members.
- §8-29A-6. Qualifications of members.
- §8-29A-7. Members to be paid expenses; members not to be personally interested in contracts or property controlled by board.
- §8-29A-8. Authority to be a public corporation.
- §8-29A-9. Powers of authorities generally.
- §8-29A-10. Authorities may incur indebtedness; county not liable for indebtedness.
- §8-29A-11. Agreements in connection with obtaining funds.
- §8-29A-12. Acquisition of lands, buildings, etc.; right of eminent domain.
- §8-29A-13. Property, bonds and obligations of authority exempt from taxation.
- §8-29A-14. County court authorized to convey present airport properties and facilities to the authority.
- §8-29A-15. Authority may lease airport and facilities.
- §8-29A-16. Disposition of surplus of authority.
- §8-29A-17. Duty of county assessor; appraisal of industrial park property; contribution in lieu of taxes.
- §8-29A-18. Contributions to authority by county court and others; funds and accounts of authority; reports; publication of annual report; audit.
- §8-29A-19. Full-time employees of authority to be public employees.
- §8-29A-20. Procedure for dissolution of authority; publication of notice; recordation of certificate of dissolution.
- §8-29A-21. Purpose of article; liberal construction; article cumulative.

§8-29A-1. County airport authorities authorized as public agencies.

1 The county court of a county is hereby authorized to
2 create and establish as a public agency a county airport
3 authority to be known as the "_____County
4 Airport Authority" for the purposes and in the manner
5 hereinafter set forth.

§8-29A-2. Authorities authorized and empowered to acquire, operate, etc., airports; facilities may include industrial parks, water and sewerage systems.

1 The authority is hereby authorized and empowered to
2 acquire, equip, construct, improve, maintain and operate
3 a public airport within the county, with all usual and
4 convenient appurtenances and facilities pertaining there-
5 to, including, but not limited to, an industrial park and a
6 waterworks or sewerage system or a combined water-
7 works and sewerage system, and said airport shall be for
8 the convenience and accommodation of the inhabitants of
9 the county and the public generally.

§8-29A-3. Management of authority vested in members; appointment and terms of members.

1 The management and control of the county airport
2 authority, its property, operations, business and affairs,
3 shall be lodged in a board of five persons who shall be
4 known as "Members of the Authority," each of whom
5 shall be appointed for a term of five years, except that as
6 to the first four appointed to the first board appointed, the
7 term of one member shall expire on the first day of July
8 next ensuing and the term of the next member shall ex-
9 pire on the first day of July two years thereafter, the term
10 of another member shall expire on the first day of July
11 three years thereafter and the term of the remaining mem-
12 ber shall expire on the first day of July four years there-
13 after: *Provided*, That the county commissioner appointed
14 to serve as a member of the authority, as hereinafter pro-
15 vided, shall not serve for a term as member of the author-
16 ity which is longer than his term of office as a member of
17 the county court.

18 All members shall be appointed by the county court:
19 *Provided, however*, That one member of the authority shall

20 be a member of the county court: *Provided further*, That
21 of the remaining four members of the authority no more
22 than two shall be members of the same political party.

§8-29A-4. Removal of members; hearing.

1 The county court shall have the power to remove any
2 member of the authority for consistent violations of any
3 provisions of this article, for reasonable cause which shall
4 include but not be limited to a continued failure to attend
5 meetings of the authority, failure to diligently pursue the
6 objectives for which the authority was created or failure
7 to perform any other duty prescribed by law, or for any
8 misconduct in office: *Provided*, That if the county court
9 desires to remove a member of the authority it shall notify
10 said member in writing, stating the reasons for the county
11 court desiring said removal. Within ten days of the receipt
12 by the member of the authority of the written notice of re-
13 moval, said member, if he so desires, may request a hear-
14 ing before the county court, and any such hearing shall be
15 held within ten days of the member's request for said
16 hearing.

§8-29A-5. Substitution of members.

1 If any member of the authority shall die, resign or be
2 removed, or for any other reason cease to be a member of
3 the authority, the county court shall within thirty days
4 appoint another person to fill the unexpired portion of the
5 term of such member.

§8-29A-6. Qualifications of members.

1 All members of the board of the authority shall be cit-
2 izens of West Virginia and residents of the county.

§8-29A-7. Members to be paid expenses; members not to be personally interested in contracts or property controlled by board.

1 The members of said board shall receive no compensa-
2 tion for their services but they shall be entitled to reim-
3 bursement for all reasonable and necessary expenses
4 actually incurred in the performance of their duties as
5 members of said board. They shall not be personally in-
6 terested, directly or indirectly, in any contract entered

7 into by said board, or hold any remunerative position in
8 connection with the establishment, construction, improve-
9 ment, extension, development, maintenance or operation
10 of any of the property under their control as members of
11 said board.

§8-29A-8. Authority to be a public corporation.

1 The authority when created, and the members thereof,
2 shall constitute and be a public corporation under the
3 name of ".....County Airport Authority,"
4 and as such shall have perpetual succession, may contract
5 and be contracted with, sue and be sued, plead and be im-
6 pleaded, and have and use a common seal.

§8-29A-9. Powers of authorities generally.

1 A county airport authority is hereby given power and
2 authority as follows:

3 (1) To make and adopt all necessary bylaws, rules and
4 regulations for its organization and operations not incon-
5 sistent with law;

6 (2) To elect its own officers, to appoint committees and
7 to employ and fix the compensation for personnel neces-
8 sary for its operation;

9 (3) To enter into contracts with any person, govern-
10 mental department, firm or corporation, and generally to
11 do any and all things necessary or convenient for the pur-
12 pose of acquiring, equipping, constructing, maintaining,
13 improving, extending, financing and operating a public
14 airport, including the development of an industrial park
15 in the same general area;

16 (4) To delegate any authority given to it by law to any
17 of its officers, committees, agents or employees;

18 (5) To apply for, receive and use grants-in-aid, dona-
19 tions and contributions from any source or sources, in-
20 cluding but not limited to the federal government and any
21 agency thereof, and the state of West Virginia, and to
22 accept and use bequests, devises, gifts and donations from
23 any person, firm or corporation;

24 (6) To acquire lands and hold title thereto in its own
25 name;

26 (7) To purchase, own, hold, sell and dispose of personal

27 property and to sell, lease or otherwise dispose of any
28 real estate which it may own;

29 (8) To borrow money and execute and deliver ne-
30 gotiable notes, revenue bonds, debentures and other evi-
31 dences of indebtedness therefor, and give such security
32 therefor as shall be requisite, including giving a mortgage
33 or deed of trust on its airport properties and facilities in
34 connection with the issuance of bonds;

35 (9) To raise funds by the issuance and sale of revenue
36 bonds or refunding bonds in the manner provided by the
37 applicable provisions of article sixteen of this chapter, it
38 being hereby expressly provided that, for that purpose, a
39 county airport authority shall be treated as a municipality
40 or board as those terms are used in said article sixteen;

41 (10) To acquire, construct, establish, equip, maintain
42 and operate, within a reasonable distance of the airport,
43 a waterworks, a sewerage system or a combined water-
44 works and sewerage system for its own use and for the
45 use of any person, and to finance the same by the issuance
46 of revenue bonds as provided in this article: *Provided,*
47 *however,* That no existing waterworks or sewage system,
48 or any part thereof, may be acquired without the prior
49 consent and approval of the public service commission;

50 (11) To establish, charge and collect reasonable fees
51 and charges for services or for the use of any part of its
52 property or facilities, or for both services and such use;
53 and

54 (12) To expend its funds in the execution of the
55 powers and authority herein given.

**§8-29A-10. Authorities may incur indebtedness; county not
liable for indebtedness.**

1 The authority may incur any proper indebtedness and
2 issue any obligations and give any security therefor which
3 it may deem necessary or advisable in connection with
4 carrying out its purposes as hereinbefore mentioned. No
5 statutory limitation with respect to the nature or amount
6 of indebtedness which may be incurred by municipalities
7 or other bodies shall apply to indebtedness of the au-
8 thority. No indebtedness of any nature of the authority

9 shall constitute an indebtedness of the county court, nor
10 of the county, or a charge against any property of the
11 county. No obligation incurred by the authority shall give
12 any right against any member of the county court or any
13 member of the board of the authority. The rights of
14 creditors of the authority shall be solely against the au-
15 thority as a corporate body and shall be satisfied only out
16 of property held by it in its corporate capacity.

§8-29A-11. Agreements in connection with obtaining funds.

1 The authority may, in connection with obtaining funds
2 for its purposes, enter into any agreement with any per-
3 son, including the federal or state government, or any
4 agency or subdivision thereof, containing such provisions,
5 covenants, terms and conditions as the authority may
6 deem advisable.

§8-29A-12. Acquisition of lands, buildings, etc.; right of eminent domain.

1 Whenever it shall be deemed necessary by the authority
2 in connection with the exercise of its powers herein con-
3 ferred, to take or acquire any lands, structures or build-
4 ings or other rights, either in fee or as easements, for the
5 purposes herein set forth, the authority may purchase the
6 same directly or through its agents from the owner or
7 owners thereof or the authority may exercise the power
8 of eminent domain in the manner provided for condem-
9 nation proceedings in chapter fifty-four of this code, and
10 such purposes are hereby declared to be public uses for
11 which private property may be taken or damaged: *Pro-*
12 *vided*, That such right of eminent domain shall not apply
13 to the development of an industrial park.

§8-29A-13. Property, bonds and obligations of authority exempt from taxation.

1 The authority shall be exempt from the payment of any
2 taxes or fees to the state or any subdivisions thereof or
3 any municipalities or to any officer or employee of the
4 state or of any subdivision thereof or of any municipalities.
5 The property of the authority shall be exempt from all
6 local and municipal taxes. Bonds, notes, debentures and
7 other evidence of indebtedness of the authority are de-

8 clared to be issued for a public purpose and to be public
9 instrumentalities, and, together with interest thereon,
10 shall be exempt from taxes.

§8-29A-14. County court authorized to convey present airport properties and facilities to the authority.

1 Notwithstanding any other provision of law to the con-
2 trary, the county court of a county is hereby authorized
3 to convey to the authority, the present airport property
4 owned by the county, if any, situate in the county, to-
5 gether with all the appurtenances and facilities therewith,
6 such conveyance to be without consideration or for such
7 price and upon such terms and conditions as the county
8 court shall deem proper.

§8-29A-15. Authority may lease airport and facilities.

1 Each authority may lease its airport and all or any
2 part of the appurtenances and facilities therewith to any
3 available lessee, subject to all constitutional and statutory
4 limitations with respect thereto, at such rental and upon
5 such terms and conditions as the authority shall deem
6 proper. Such leases shall be for some purpose associated
7 with airport activities, and shall be subordinate to any
8 mortgage or deed of trust executed by the authority.

§8-29A-16. Disposition of surplus of authority.

1 If the authority should realize a surplus, whether from
2 operating the airport or leasing it for operation, over and
3 above the amount required for the maintenance, improve-
4 ment and operation of the airport and for meeting all re-
5 quired payments on its obligations, it shall set aside such
6 reserve for future operations, improvements and con-
7 tingencies as it shall deem proper and shall then apply
8 the residue of such surplus, if any, to the payment of any
9 recognized and established obligations not then due; and
10 after all such recognized and established obligations have
11 been paid off and discharged in full, the authority shall,
12 at the end of each fiscal year, set aside the reserve for
13 future operations, improvements and contingencies, as
14 aforesaid, and then pay the residue of such surplus, if
15 any, to the county court, to be used by the county court
16 for general county purposes.

§8-29A-17. Duty of county assessor; appraisal of industrial park property; contribution in lieu of taxes.

1 It shall be the duty of the county assessor on the first
2 day of July of each year to ascertain what portion of the
3 real and personal property of the authority, if any, is de-
4 voted to use as an industrial park and to appraise such
5 property as if taxable. The assessor shall likewise deter-
6 mine the tax which would be levied upon such property
7 if it were taxable. On the first day of August of the year
8 following such determination and the first day of Feb-
9 ruary thereafter, the authority shall pay unto the sheriff
10 of the county a sum of money equal to that which would
11 have been due if the property were taxable, which sums
12 shall be distributed by the sheriff as if such sums were
13 tax receipts.

§8-29A-18. Contributions to authority by county court and others; funds and accounts of authority; reports; publication of annual report; audit.

1 Contributions may be made to the authority from time
2 to time by the county court and by any persons that shall
3 desire so to do. All such funds and all other funds re-
4 ceived by the authority shall be deposited in such bank
5 or banks as the authority may direct and shall be with-
6 drawn therefrom in such manner as the authority may
7 direct. The authority shall keep strict account of all its
8 receipts and expenditures and shall each quarter make a
9 quarterly report to the county court containing an
10 itemized account of its receipts and disbursements during
11 the preceding quarter. Such report shall be made within
12 sixty days after the termination of the quarter. Within
13 sixty days after the end of each fiscal year, the authority
14 shall make an annual report containing an itemized
15 statement of its receipts and disbursements for the pre-
16 ceding year, and such annual report shall be published
17 as a Class II-0 legal advertisement in compliance with
18 the provisions of article three, chapter fifty-nine of this
19 code, and the publication area for such publication shall
20 be the county. The books, records and accounts of the
21 authority shall be subject to audit and examination by
22 the office of the state tax commissioner of West Virginia

23 and by any other proper public official or body in the
24 manner provided by law.

§8-29A-19. Full-time employees of authority to be public employees.

1 Any person who serves regularly as an employee, full
2 time, on a salary basis, whose tenure is not restricted as to
3 temporary or provisional appointment, in the service of,
4 and whose compensation is payable in whole or in part
5 by the authority, shall be deemed to be a public employee
6 and shall be subject to any and all applicable provisions
7 of law relating thereto, including but not limited to the
8 workmen's compensation act and the West Virginia pub-
9 lic employees insurance act.

§8-29A-20. Procedure for dissolution of authority; publication of notice; recordation of certificate of dissolution.

1 The authority may at any time pay off and discharge
2 in full all of its indebtedness, obligations and liabilities,
3 convey the airport properties, appurtenances and facilities,
4 to the county court and be dissolved. Before making such
5 conveyance of its properties, the authority shall give
6 notice of its intention to do so and of its intention to be
7 dissolved, and said notice shall be published as a Class
8 I-0 legal advertisement in compliance with the provisions
9 of article three, chapter fifty-nine of this code, and the
10 publication area for such publication shall be the county.
11 Affidavits from the publishers of the newspapers showing
12 such publication shall be filed with the county court
13 before the deed conveying said properties is delivered.
14 Any funds remaining in the hands of the authority at the
15 time of the conveyance of said properties shall be by the
16 authority paid over to the county court to be used by
17 it for purposes in connection with said airport. Upon
18 the payment of its indebtedness, obligations and liabilities,
19 the publishing of the notices aforesaid, the conveyance of
20 its properties, and the paying over to the county court
21 of any funds remaining in its hands, the authority shall
22 cause a certificate showing its dissolution to be executed
23 under its name and seal and to be recorded in the office
24 of the clerk of the county court and thereupon its dissolu-
25 tion shall be complete.

§8-29A-21. Purpose of article; liberal construction; article cumulative.

1 It is the purpose of this article to provide for the
2 acquisition, construction, improvement, extension, main-
3 tenance and operation of a public airport and related
4 facilities in a prudent and economical manner, and this
5 article shall be liberally construed as giving to the au-
6 thority full and complete power reasonably required to
7 give effect to the purposes hereof. The provisions of this
8 article are in addition to and not in derogation of any
9 power existing in the county court of a county under any
10 constitutional or statutory provisions which it may now
11 have, or may hereafter acquire.

CHAPTER 2

(House Bill No. 4—By Mr. Speaker, Mr. McManus and Mr. Seibert)

[Passed October 28, 1971; in effect from passage. Approved by the Governor,
November 5, 1971.]

AN ACT making a supplementary appropriation of public money out of the treasury for replacement of boilers and other equipment at Huntington State Hospital.

WHEREAS, By Executive Message No. 16, dated March fifteen, one thousand nine hundred seventy-one, the governor transmitted to the Legislature a revised statement of the state fund, general revenue, for fiscal year 1970-71, revised as of March fifteen, one thousand nine hundred seventy-one, in which it is stated that the estimated revenue in the state fund, general revenue, for fiscal year 1970-71, will be \$302,458,234.00; and

WHEREAS, As of the 30th day of July, 1971, there exists in the treasury the sum of \$10,608,854.23 which is unappropriated, unencumbered and is surplus revenue in excess of the governor's stated amount of estimated revenue set forth above, a part of which surplus revenue is hereby appropriated for expenditure in the fiscal year 1971-72, pursuant to the terms of this supplementary appropriation bill.

Be it enacted by the Legislature of West Virginia:

That Account No. 422, chapter six, acts of the Legislature, regular session, one thousand nine hundred seventy-one, known as the Budget Bill, be supplemented by adding thereto the following sum and a new line item as follows:

55—*Huntington State Hospital*

Acct. No. 422

6	Boiler Plant—Replacement of existing boilers and other	
7	equipment	\$420,000.00
8	Total supplementary appropriation	\$420,000.00
9	Any unexpended balance remaining in this appropriation at	
10	the close of the fiscal year 1971-72 is here reappropriated	
11	for expenditure during the fiscal year 1972-73.	

CHAPTER 3

(House Bill No. 5—By Mr. Speaker, Mr. McManus and Mr. Seibert)

[Passed October 28, 1971; in effect from passage. Approved by the Governor, November 5, 1971.]

AN ACT to authorize the West Virginia labor-management relations board to expend the amount of thirty-eight thousand dollars during the fiscal year 1971-72, said amount having heretofore been appropriated to the bureau of labor and department of weights and measures, Account No. 450, chapter six, acts of the Legislature, regular session, one thousand nine hundred seventy-one, known as the "Budget Bill."

WHEREAS, By the enactment of chapter eighty-two, acts of the Legislature, regular session, one thousand nine hundred seventy-one, the Legislature created the West Virginia labor-management relations board and set forth the various duties and responsibilities of said board; and

WHEREAS, The Legislature appropriated by line item "W. Va. Labor-Management Relations Board \$38,000.00" to the bureau of labor and department of weights and measures, Account No. 450, chapter six, acts of the Legislature, regular ses-

sion, one thousand nine hundred seventy-one, known as the "Budget Bill,"; and

WHEREAS, To implement and effectuate the mandate of the Legislature, it is necessary to give the said board the sole authority to expend said sum of thirty-eight thousand dollars pursuant to the provisions of said chapter eighty-two; therefore

Be it enacted by the Legislature of West Virginia:

§1. Expenditure of funds by the West Virginia labor-management relations board.

1 Pursuant to the provisions of chapter eighty-two, acts of
2 the Legislature, regular session, one thousand nine hun-
3 dred seventy-one, the West Virginia labor-management
4 relations board shall have the sole authority to expend
5 the sum of thirty-eight thousand dollars during the fiscal
6 year 1971-72, which sum of money was heretofore appro-
7 priated by line item to the bureau of labor and department
8 of weights and measures, Account No. 450, chapter six, acts
9 of the Legislature, regular session, one thousand nine
10 hundred seventy-one, known as the "Budget Bill."

CHAPTER 4

(Com. Sub. for House Bill No. 1—Originating in the
House Committee on Redistricting)

[Passed November 4, 1971; in effect from passage. Approved by the Governor,
November 22, 1971.]

AN ACT to amend and reenact section two, article two, chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section two-a, all relating to the composition of the House of Delegates and legislative findings.

Be it enacted by the Legislature of West Virginia:

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

amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section two-a, all to read as follows:

ARTICLE 2. APPORTIONMENT OF REPRESENTATION.

§1-2-2. Apportionment of membership of House of Delegates.

§1-2-2a. Legislative findings.

§1-2-2. Apportionment of membership of House of Delegates.

- 1 The House of Delegates shall consist of one hundred
- 2 members, who shall be apportioned as follows:
- 3 The counties of Berkeley and Morgan shall form the
- 4 first delegate district and elect three delegates.
- 5 The counties of Grant and Tucker shall form the second
- 6 delegate district and elect one delegate.
- 7 The counties of Hardy and Pendleton shall form the
- 8 third delegate district and elect one delegate.
- 9 The counties of Pocahontas and Greenbrier shall form
- 10 the fourth delegate district and elect two delegates.
- 11 The counties of Pleasants and Tyler shall form the
- 12 fifth delegate district and elect one delegate.
- 13 The counties of Doddridge and Ritchie shall form the
- 14 sixth delegate district and elect one delegate.
- 15 The counties of Calhoun, Gilmer and Wirt shall form
- 16 the seventh delegate district and elect one delegate.
- 17 The counties of Clay and Nicholas shall form the eighth
- 18 delegate district and elect two delegates.
- 19 The counties of Randolph and Webster shall form the
- 20 ninth delegate district and elect two delegates.
- 21 The counties of Barbour, Boone, Braxton, Hampshire,
- 22 Jackson, Jefferson, Lewis, Lincoln, Mason, Mineral, Mon-
- 23 roe, Preston, Roane, Summers, Taylor, Upshur and Wetzel
- 24 shall have one delegate each.
- 25 The counties of Brooke, Hancock, Marshall, Mingo,
- 26 Putnam, Wayne and Wyoming shall have two delegates
- 27 each.
- 28 The counties of Fayette, Logan, Marion, McDowell and
- 29 Monongalia shall have three delegates each.
- 30 The counties of Harrison, Mercer, Ohio and Raleigh
- 31 shall have four delegates each.

- 32 The county of Wood shall have five delegates.
33 The county of Cabell shall have six delegates.
34 The county of Kanawha shall have thirteen delegates.

§1-2-2a. Legislative findings.

1 The Legislature of West Virginia hereby finds and de-
2 clares that:

3 (1) The words "population, to be ascertained by the
4 census of the United States," as used and referred to in
5 the constitution of West Virginia in regard to apportion-
6 ment of the House of Delegates, include only bona fide
7 residents of the state of West Virginia, counted at their
8 places of residence; the term does not include mere in-
9 habitants of the state, temporarily located therein.

10 (2) The population census taken by the United States
11 bureau of the census for the year one thousand nine hun-
12 dred seventy counted mere inhabitants of the state as if
13 they were bona fide residents, and thus did not conform
14 to the provisions of the constitution of the state of West
15 Virginia in regard to apportionment of the House of Dele-
16 gates. Therefore, the one thousand nine hundred seventy
17 census of population was taken, in part, in a form not
18 contemplated by the pertinent provisions of the consti-
19 tution of West Virginia.

20 (3) For purposes of apportionment of the House of
21 Delegates, accurate population counts for the year one
22 thousand nine hundred seventy for the state and coun-
23 ties of West Virginia, based on official United States
24 census statistics, but excluding persons counted in this
25 state who were not bona fide residents of this state and
26 who were merely physically present in this state on the
27 first day of April, one thousand nine hundred seventy,
28 and including those bona fide residents of West Virginia
29 who were temporarily absent from this state on the first
30 day of April, one thousand nine hundred seventy, and
31 reallocating to their resident counties those bona fide
32 residents of West Virginia who were present in the state
33 of West Virginia on the first day of April, one thousand
34 nine hundred seventy, but were not counted by the United
35 States bureau of census as residents of their resident
36 counties, are as follows:

37 The county of Barbour, 13,339; the county of Berkeley,
38 37,042; the county of Boone, 25,428; the county of Braxton,
39 12,874; the county of Brooke, 29,394; the county of Cabell,
40 103,520; the county of Calhoun, 7,155; the county of Clay,
41 9,421; the county of Doddridge, 6,477; the county of Fay-
42 ette, 48,127; the county of Gilmer, 6,405; the county of
43 Grant, 8,766; the county of Greenbrier, 32,697; the county
44 of Hampshire, 11,895; the county of Hancock, 40,319; the
45 county of Hardy, 8,996; the county of Harrison, 73,334; the
46 county of Jackson, 21,310; the county of Jefferson, 20,207;
47 the county of Kanawha, 232,091; the county of Lewis,
48 18,147; the county of Lincoln, 19,094; the county of Logan,
49 46,885; the county of McDowell, 51,462; the county of
50 Marion, 59,943; the county of Marshall, 38,276; the county
51 of Mason, 24,587; the county of Mercer, 62,069; the county
52 of Mineral, 22,926; the county of Mingo, 33,171; the county
53 of Monongalia, 51,888; the county of Monroe, 11,448; the
54 county of Morgan, 8,693; the county of Nicholas, 22,931;
55 the county of Ohio, 62,493; the county of Pendleton, 7,159;
56 the county of Pleasants, 7,426; the county of Pocahontas,
57 9,031; the county of Preston, 25,864; the county of Putnam,
58 28,104; the county of Raleigh, 70,435; the county of Ran-
59 dolph, 24,310; the county of Ritchie, 10,277; the county of
60 Roane, 14,301; the county of Summers, 13,428; the county
61 of Taylor, 14,080; the county of Tucker, 7,552; the county of
62 Tyler, 10,085; the county of Upshur, 17,749; the county of
63 Wayne, 38,199; the county of Webster, 9,954; the county of
64 Wetzel, 20,732; the county of Wirt, 4,206; the county of
65 Wood, 88,063; and the county of Wyoming, 30,617; the total
66 population of the state of West Virginia, 1,734,382.

CHAPTER 5

(Com. Sub. for House Bill No. 3—Originating in the
House Committee on the Judiciary)

[Passed November 3, 1971; in effect from passage. Approved by the Governor.
November 17, 1971.]

AN ACT to amend and reenact article twenty-five, chapter eight of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to planning and development; the powers and duties of the governor with respect thereto; the delineation of regions and publication, hearing and certification requirements with respect thereto; the establishment of regional councils for planning and development purposes; the meetings, membership, organization, powers and duties of such regional councils; the receipt, expenditure and appropriation of funds by such regional councils; review functions; the establishment of executive committees of, advisory committees for, and citizens' participation in, such regional councils; preparation, submission and approval of the annual budget of such regional councils; effect on existing organizations and pending applications for funds or grants; and a rule of construction.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 25. INTERGOVERNMENTAL RELATIONS—REGIONAL PLANNING AND DEVELOPMENT.

- §8-25-1. Legislative findings and purposes.
- §8-25-2. Definitions.
- §8-25-3. Powers and duties of governor generally.
- §8-25-4. Delineation of regions and recommendations of governor thereon; publication of statement fixing regional boundaries; public hearings; certification of regional boundaries; change in boundaries.
- §8-25-5. Formation of regional councils; purpose; receipt of funds and assistance; effect on interstate planning commissions and other existing organizations.
- §8-25-6. Membership, organization, etc., of regional council; executive committee; officers and personnel.
- §8-25-7. Contracts for services, materials, etc.; publication of notice for bids.
- §8-25-8. Powers and duties of regional councils generally.
- §8-25-9. Review of applications for loans or grants.
- §8-25-10. Cooperation of regional council and other planning or development agencies, governmental units and officials.
- §8-25-11. Appointment of citizens' advisory committees.
- §8-25-12. Annual budget of regional council; contributions by governmental units; deposits and disbursements.
- §8-25-13. Annual report of regional council.
- §8-25-14. Effect of article upon pending projects and applications.
- §8-25-15. Construction of article.

§8-25-1. Legislative findings and purposes.

1 The Legislature hereby finds and declares that as a
2 result of changes in the economy, population shifts, new
3 transportation demands and increasing demands for
4 public services, and as a result of increasing complexity
5 in government programs and added demands on public
6 revenues, there is a need to plan comprehensively for
7 the future development of West Virginia and to provide
8 for the efficient management of limited public revenues
9 for the purpose of promoting the orderly development
10 of the state and harmonizing the development of the
11 state's governmental, social, economic, environmental
12 and physical resources, while maintaining acceptable
13 levels of public services and facilities toward the end of
14 promoting the general health, safety and welfare of all
15 its citizens. The Legislature further finds that the
16 responsibility for planning and development rests with
17 the governor of the state, as the state's chief planning
18 officer. The Legislature hereby further finds and de-
19 clares that problems of growth and development so
20 transcend the boundary lines of governmental units that
21 no single unit can plan for the solution of these problems
22 without affecting other units of government; that inter-
23 governmental cooperation on a regional basis is an effec-
24 tive method to approach common planning and develop-
25 ment problems and to seek more efficient and economical
26 solutions to common problems of local government; and
27 that assistance of the state is needed to make the most
28 effective use of local, state, federal and private resources
29 and funding in serving the citizens of all the state and
30 of such regions; and the Legislature further finds that
31 any assistance provided by the state for the purpose of
32 this article is for the benefit of all its citizens and for a
33 public purpose.

34 It is, therefore, the purpose of this article to delegate
35 to the governor, the responsibility for planning and
36 development in order to (1) achieve the objectives and
37 policies necessary for the orderly growth and develop-
38 ment of the state; (2) facilitate intergovernmental co-
39 operation; and (3) designate regions and provide for the
40 creation of regional planning and development councils;
41 all being hereby declared to be public purposes.

§8-25-2. Definitions.

1 The following terms, wherever used or referred to in
2 this article, shall have the following meanings unless
3 a different meaning clearly appears from the con-
4 text:

5 (a) "Comprehensive planning" shall mean the pro-
6 cess of (1) assessing, within a geographic area, the needs
7 and resources of the area; (2) formulating goals, ob-
8 jectives, policies and standards to guide its long-range
9 governmental, social, economic, environmental and
10 physical development; and (3) preparing plans and pro-
11 grams therefor which (a) identify alternative courses
12 of action and the spatial and functional relationships
13 among the activities to be carried out thereunder; (b)
14 specify the appropriate ordering in time of such activi-
15 ties; (c) take into account other relevant factors affecting
16 the achievement of the desired development of the area;
17 and (d) provide an overall framework and guide for
18 the preparation of functional and project development
19 plans.

20 (b) "Development" shall mean the process of imple-
21 menting, carrying out, effectuating, administering or
22 otherwise performing the activities, processes, steps or
23 operations as necessary to meet the comprehensive plan-
24 ning goals, objectives, programs and plans formulated,
25 accepted, adopted or approved as a result of compre-
26 hensive planning.

27 (c) "Region" shall mean a specific geographic area
28 consisting of at least one county or two or more contiguous
29 counties in which a regional council may exercise au-
30 thority and powers in accordance with the provisions
31 of this article.

32 (d) "Regional council" shall mean a regional plan-
33 ning and development council established pursuant to
34 the provisions of this article.

§8-25-3. Powers and duties of governor generally.

1 The governor, as chief executive officer of the state,
2 shall be responsible for planning and development of
3 the state's governmental, social, health, economic, en-

4 vironmental and physical resources. In executing this
5 responsibility, the governor shall:

6 (1) Prepare, revise and update state development
7 plans which he shall, at least annually, submit to the
8 Legislature. Such plans shall identify and stress state-
9 wide goals, objectives and opportunities, giving appro-
10 priate consideration to regional council and local govern-
11 mental plans; and shall include, but not be limited to,
12 population and economic analysis; appraisals of the
13 state's natural resources; general land use policies; policies
14 for housing and urban development; transportation poli-
15 cies; policies for health services; manpower programs;
16 employment opportunities; education; law enforcement;
17 environmental protection and other programs; projection
18 of needs for public facilities, recreation and open space;
19 and policies for intergovernmental relations and govern-
20 mental organization: *Provided*, That once a regional plan
21 is submitted to the governor by a regional council for his
22 consideration in preparing, revising or updating a state
23 plan, the governor shall have a period of sixty days
24 from the date such regional plan is received by him
25 within which to specify in writing to the regional council
26 his objection or objections to such regional plan, and if
27 no such objection or objections are so specified, then
28 such regional plan shall become a part of the state plan
29 being prepared, revised or updated; and if any such
30 objection or objections are so specified, the regional
31 council shall have a period of sixty days from the date
32 of receipt of such specification within which to modify
33 its regional plan or otherwise respond to such objection
34 or objections, and, thereafter, the governor shall, in
35 preparing, revising or updating a state plan, give such
36 consideration to such original regional plan, modified
37 regional plan or other response of the regional council,
38 as the case may be, as he deems appropriate;

39 (2) Advise and consult with regional councils and
40 regional and local planning agencies in developing state
41 development plans and studies;

42 (3) Facilitate the coordination of planning and de-
43 velopment activities of all state departments, agencies
44 and institutions; local governments; regional councils;

45 and other public and private agencies within the
46 state;

47 (4) Review local, areawide and state applications for
48 planning and development assistance;

49 (5) Review and appraise the progress of state govern-
50 ment in achieving the goals and objectives set forth in the
51 state development plans;

52 (6) Monitor and coordinate the state's participation
53 in federal and state aid programs and be responsible
54 for liaison with the appropriate federal and state agen-
55 cies; and be responsible for all federal programs which
56 require the designation of responsible state agencies, if
57 no other state agency has heretofore been legally desig-
58 nated;

59 (7) Assist local governments, regional councils and
60 other public bodies in obtaining federal, state or other
61 available funds and services;

62 (8) Facilitate state and local capital improvement
63 projects to meet the requirements of industrial and socio-
64 economic development in various governmental units
65 within the state;

66 (9) Provide professional and technical assistance and
67 make information available to regional councils and
68 local governments within the state; and be responsible
69 for receiving and disseminating information regarding
70 federal grant assistance within the state; and

71 (10) Apply for and accept advances, grants, contri-
72 butions and other forms of assistance from the state
73 or federal government or from any private or public
74 agencies or foundations, to carry out the provisions of
75 this article.

**§8-25-4. Delineation of regions and recommendations of gov-
ernor thereon; publication of statement fixing
regional boundaries; public hearings; certification of
regional boundaries; change in boundaries.**

1 (a) Within sixty days after the effective date of
2 this article, the governor shall define and recommend
3 for the purposes of this article regional boundaries em-
4 bracing each municipality and county within the
5 state.

6 (b) In delineating boundaries of the regions, the gov-
7 ernor shall consider such factors as the units of local
8 government shall express by proper resolution, including
9 community interest and homogeneity; geographic fea-
10 tures and natural boundaries; patterns of communication
11 and transportation; patterns of urban development; uni-
12 formity of social and economic problems; special prob-
13 lems, boundaries of existing metropolitan and other sub-
14 state planning and administrative areas; and utility of
15 the proposed boundaries for efficient provision of govern-
16 mental services. Municipalities shall not be divided when
17 forming a region, except insofar as it is necessary to
18 keep multi-county municipalities within a region.

19 (c) The governor shall, within six months after the
20 effective date of this article, certify to the secretary of
21 state the boundaries of each region.

22 (d) Not less than sixty days prior to the certification
23 of the boundaries of any region, the governor shall cause
24 a statement setting forth the counties to be included
25 within the boundary of the proposed region to be pub-
26 lished as a Class I-0 legal advertisement in compliance
27 with the provisions of article three, chapter fifty-nine of
28 this code, and the publication area for such publication
29 shall be the proposed region. The governor shall forward
30 a copy of the statement to the principal executive officer
31 or officers of each municipality and county located within
32 the proposed region.

33 (e) Prior to the time that the governor shall certify
34 the boundaries of a region, he or his designee shall con-
35 duct at least one public hearing at a convenient place
36 within the proposed region. The governor shall advertise
37 the meeting by means of a Class I-0 legal advertisement
38 in compliance with the provisions of said article three,
39 and the publication area for such advertisement shall
40 be the proposed region. All public and private organ-
41 izations located in, and all individuals residing in, mu-
42 nicipalities or counties within or adjacent to the proposed
43 region shall be permitted to appear and testify on matters
44 pertaining to its boundaries.

45 (f) At any time following the certification of the
46 boundaries of any region, the governor may change such

47 boundaries, pursuant to the criteria and procedures set
48 forth in subsections (b), (c), (d) and (e) of this section.

§8-25-5. Formation of regional councils; purpose; receipt of funds and assistance; effect on interstate planning commissions and other existing organizations.

1 (a) The governor shall provide for an organizational
2 meeting of each of the regional councils within sixty days
3 after his certification pursuant to section four of this
4 article. He shall notify the president of each county court
5 and the mayor of each municipality of the region of the
6 time and place of such meeting. The official so noti-
7 fied shall attend this meeting or shall designate a repre-
8 sentative. In the case of the county court, another mem-
9 ber of the court shall be the designee or, in the case
10 of a municipality, a member of the governing body of
11 such municipality shall be the designee. Those present
12 shall constitute a quorum and shall select a temporary
13 chairman and secretary and shall provide for a sub-
14 sequent meeting or meetings at which time the members
15 provided for in section six of this article shall be nom-
16 inated and elected and the permanent organization and
17 bylaws established.

18 (b) Each regional council formed pursuant to this
19 article shall fulfill the purposes of development regions
20 and shall be eligible to receive state funds and technical
21 assistance in accordance with the provisions of this
22 article.

23 (c) (1) Nothing herein contained shall in any way
24 limit or restrict the powers, duties and responsibilities of
25 planning bodies organized under article twenty-six of
26 this chapter relating to interstate planning commis-
27 sions.

28 (2) Interstate planning commissions in existence on
29 the effective date of this article are hereby designated
30 as the planning and development councils for the region,
31 insofar as the West Virginia member counties of such
32 interstate planning commissions are concerned, and such
33 commissions shall be empowered to act as the planning
34 and development councils for such regions insofar as
35 the West Virginia member counties are concerned.

36 (3) When additional West Virginia counties are added,
37 under the provisions of this article, to such interstate
38 planning commissions, their membership in such com-
39 missions shall comply, insofar as the West Virginia coun-
40 ties are concerned, with the council membership require-
41 ments of this article.

42 (4) Regional councils or commissions established
43 under this article and article twenty-six of this chapter
44 may, at the option of the county courts of the partici-
45 pating West Virginia counties, continue to have all the
46 powers, duties and responsibilities permitted and re-
47 quired under said article twenty-six, in addition to the
48 powers, duties and responsibilities provided herein for
49 regional councils.

50 (5) State regional councils or commissions and their
51 corresponding boundaries in existence on the effective
52 date of this article, which were established under the
53 former provisions of this article, and any nonprofit cor-
54 poration in existence on the effective date of this article,
55 which was established under chapter thirty-one of this
56 code and pursuant to section eighteen, article five, chap-
57 ter seven of this code and which has had in its employ
58 a full-time paid executive staff for a period of no less
59 than six months immediately prior to the effective date
60 of this article, may be designated by the governor as
61 planning and development regions and regional councils.
62 Such designation shall be made within sixty days after
63 the effective date of this article. Regional councils so
64 designated shall have a period of six months from the
65 date of designation to comply with the membership
66 structure required by this article. Nothing herein con-
67 tained shall be construed to deprive such existing state
68 regional councils of their legal authority prior to the
69 expiration of the aforementioned six-month period.

**§8-25-6. Membership, organization, etc., of regional council;
executive committee; officers and personnel.**

1 (a) All municipalities and all counties within the
2 region shall be represented on the regional council. The
3 county representative shall be the president of the county
4 court or a member of the county court designated by
5 him. The municipal representative shall be the mayor

6 or a member of the governing body designated by him.
7 The number of members of the regional council by virtue
8 of this subsection shall comprise not less than fifty-one
9 percent of the total number of members.

10 (b) Regional council members serving by virtue of
11 subsection (a) of this section shall select additional
12 members to serve on the council to represent principal
13 community or regional interests, including, but not lim-
14 ited to, commerce, industry, labor, agriculture, educa-
15 tion, health and any such interests as may be required
16 by federal law or regulations. The selection of such
17 members shall also provide for reasonable representation
18 of geographic, economic and ethnic groups without ex-
19 clusion of significant minority groups. Subsequent
20 changes in the designation of representatives shall be
21 determined by the regional council. The number of
22 members serving by virtue of this subsection shall not
23 exceed forty-nine percent of the total number of mem-
24 bers.

25 (c) Each regional council shall select from its mem-
26 bership a chairman, who shall preside at each council
27 meeting, and an executive committee, which shall be
28 comprised of one representative from each county court
29 and one representative from the largest municipality
30 within each county in the region and such other mem-
31 bers as the aforesaid representatives may select, but
32 such other members so selected shall not constitute more
33 than forty-nine percent of the total membership of the
34 executive committee. The executive committee shall
35 perform such administrative duties as are prescribed by
36 the regional council in its bylaws and shall exercise the
37 review function provided for in section nine of this
38 article. Each regional council may further provide for
39 such other officers as it shall deem necessary and may
40 establish other committees which may include citizens
41 who are not regional council members.

42 (d) Each regional council shall establish personnel
43 rules and shall appoint a director who shall be qualified
44 by reason of training and experience. The director shall
45 be empowered to appoint and remove other employees
46 in accordance with the regional council's personnel rules.

47 He may, with the approval of the executive committee,
48 enter into agreements with governmental agencies within
49 the region for the use of personnel, equipment and
50 facilities.

§8-25-7. Contracts for services, materials, etc.; publication of notice for bids.

1 Each regional council is empowered and authorized
2 to contract for services of consultants to perform plan-
3 ning, development, engineering, legal or other services
4 of a professional, specialized or technical nature; and
5 such consultants shall be persons appropriately qualified
6 under state statutes dealing with the applicable profession
7 or occupation. Each such contract must have the ex-
8 press approval of the regional council or the executive
9 committee. Such contracts shall not be subject to any
10 law relating to public bidding: *Provided*, That every
11 contract of the council for the purchase of merchandise,
12 materials or supplies in the amount of one thousand
13 dollars or more shall be let to the lowest responsible
14 bidder after notice requesting such bids has been pub-
15 lished as a Class I-0 legal advertisement in compliance
16 with the provisions of article three, chapter fifty-nine
17 of this code, and the publication area for this publication
18 shall be the region in question.

§8-25-8. Powers and duties of regional councils generally.

1 Each regional council may:
2 (a) Continuously engage in comprehensive planning
3 and development processes and prepare, and from time
4 to time revise, amend, extend or add to, a plan or plans
5 for the development of the region consistent with any
6 state comprehensive planning and development objec-
7 tives and reflecting plans and programs of the partici-
8 pating governmental units. Any such plan or plans shall
9 be based on studies of governmental, social, economic,
10 environmental and physical conditions and trends, and
11 shall aim at the coordinated development of the region
12 in order to promote the general health, welfare, con-
13 venience and prosperity of its people. Such plan or plans,
14 or parts thereof, shall be prepared by persons appro-
15 priately qualified under state statutes dealing with the

16 applicable profession or occupation. Such plan or plans
17 shall be submitted for review to the appropriate agencies
18 in accordance with the provisions of this article. The
19 plan or plans shall embody the policy recommendations
20 of the regional council, and may include, but shall not
21 be limited to: (1) A statement of goals, objectives, stan-
22 dards and principles sought to be expressed in the plan
23 or plans to guide economic, social, environmental and
24 human resource development; (2) recommendations for
25 transportation networks in the region, including land,
26 water and air transportation, and for communication
27 facilities; (3) recommendations concerning the need for
28 and proposed general location of public and private works
29 and facilities, which by reason of their function, size,
30 extent or for any other cause are of a regional, as dis-
31 tinguished from a purely local concern; and (4) recom-
32 mendations for the long-range programming and financing
33 of capital projects and facilities.

34 (b) Prepare and from time to time revise, amend,
35 extend or add to a regional development program to
36 implement the policies contained in the comprehensive
37 development plan for the region. The program shall
38 contain a listing of development projects and programs,
39 priorities for the financing of these projects and pro-
40 grams and recommended methods for project and pro-
41 gram financing.

42 (c) Prepare and recommend ordinances, rules and
43 regulations which would implement regional and local
44 plans.

45 (d) Prepare and publish studies of the region's re-
46 sources, both natural and human, with respect to exist-
47 ing and emerging problems of industry, commerce, trans-
48 portation, population, housing, agriculture, environment,
49 health, education, welfare, public service, local govern-
50 ments and any other matters which are relevant to re-
51 gional planning.

52 (e) Collect, process and analyze the social and eco-
53 nomic statistics for the region which are necessary to
54 planning studies and make the results of such collection,
55 processing and analysis available to the general public.

56 (f) Participate with other governmental agencies,

57 educational institutions and private organizations in the
58 coordination of the regional research and educational
59 activities described in subdivisions (d), (e) and (h) of
60 this section.

61 (g) Cooperate with, and provide, upon request, plan-
62 ning and technical assistance to municipalities, counties
63 and planning and development agencies within the re-
64 gion, and coordinate regional planning with the plan-
65 ning activities and plans of the state and of the mu-
66 nicipalities and counties within the region, as well as
67 neighboring areas, including those in adjoining states,
68 and the programs of federal departments and agencies.

69 (h) Provide information to officials, departments,
70 agencies and instrumentalities of the federal, state and
71 local governments and to the public at large, in order to
72 foster public awareness and understanding of the ob-
73 jectives of the regional plans and the functions of the
74 regional and local planning and development councils,
75 and to stimulate public interest and participation in the
76 orderly, integrated development of the region.

77 (i) Apply for, accept and expend funds and grants
78 provided for the purposes hereof by the government of
79 the United States or its departments or agencies; by
80 departments and agencies of the state or any other state;
81 by one or more municipalities, counties or other political
82 subdivisions of this state or of any other state; or by
83 any other agency, public or private; or from any indi-
84 vidual whose interests are in harmony with the purposes
85 hereof, including planning councils and commissions, all in
86 accordance with any federal requirements and subject
87 to any conditions or limitations of the constitution or
88 laws of this state.

89 (j) Perform development on a regional basis as neces-
90 sary to undertake, complete or accomplish the goals and
91 purposes of comprehensive planning in the region by
92 intergovernmental contract or joint enterprises, or both,
93 with local governmental units or combinations of such
94 units pursuant to article twenty-three of this chapter.

95 (k) Exercise powers jointly or in cooperation with
96 agencies or political subdivisions of the state of West
97 Virginia or any other state, or with agencies of the

- 98 United States, subject to constitutional and statutory pro-
99 visions applicable to interjurisdictional agreements.
- 100 (l) Adopt bylaws and such other rules and regula-
101 tions as may be necessary to effectuate the purposes of
102 this article.
- 103 (m) Exercise all other powers and authority neces-
104 sary and proper for the discharge of its duties.

§8-25-9. Review of applications for loans or grants.

1 Each regional council shall review all applications of
2 governmental units or independent agencies within the
3 region for loans or grants from the federal government
4 or any of its agencies or the state of West Virginia or
5 any of its agencies. All recommendations and comments
6 on applications for the aforementioned funding programs
7 shall be forwarded to the governor. Each council shall
8 establish and maintain a clearinghouse for the purpose
9 of establishing required review procedures in compliance
10 with the "Intergovernmental Cooperation Act of 1968
11 (Public Law 90-557)," and the "Demonstration Cities
12 and Metropolitan Development Act of 1966 (Public Law
13 87-754)," and the rules and regulations pertaining thereto,
14 as promulgated by the United States office of management
15 and budget. The state review agency designated by the
16 governor shall inform regional councils of state review
17 findings relating to applications submitted from within
18 the jurisdiction of each council.

**§8-25-10. Cooperation of regional council and other planning
or development agencies, governmental units and
officials.**

1 To effectuate the purposes of this article, regional
2 councils shall cooperate with planning agencies or devel-
3 opment agencies within the region or within other re-
4 gions, with the governing bodies and administrative offi-
5 cials of any municipality, county or any other political
6 subdivision, including those in other states, or with any
7 other entity, private or public, whose interests are in
8 harmony with the purposes of this article, in order to
9 coordinate and harmonize planning and development for
10 the cooperating units. All state departments and agencies
11 shall cooperate with regional councils established under

12 this article and shall make available for the studies con-
13 ducted by such councils, reports, data and other infor-
14 mational and technical assistance within financial and
15 personnel limitations. Each regional council may appoint
16 such committees and may adopt such rules and regula-
17 tions as may be proper to effect such coordination and
18 integration. The governing bodies and administrative
19 officials of municipalities, counties and other political
20 subdivisions within this state are hereby empowered and
21 authorized to cooperate with such planning and develop-
22 ment agencies and with the governing bodies and ad-
23 ministrative officials of political subdivisions and plan-
24 ning and development agencies in other states for the
25 purpose of such coordination and integration in accordance
26 with the provisions of this article.

§8-25-11. Appointment of citizens' advisory committees.

1 Each regional council may appoint advisory committees
2 of interested and affected citizens to assist in the review
3 of plans, programs and other purposes of this article re-
4 ferred for review by the regional council. Whenever a
5 special advisory committee is required by any federal or
6 state regional program, the regional council chairman
7 shall, with approval of the executive committee, appoint
8 such committees as advisory groups to the regional
9 council.

§8-25-12. Annual budget of regional council; contributions by governmental units; deposits and disbursements.

1 Each regional council shall adopt an annual budget, to
2 be submitted to the participating governmental units
3 which shall each contribute to the financing of the council
4 according to a formula adopted by the council and ap-
5 proved by a majority of the counties and a majority of
6 the municipalities participating in the regional council.
7 All such contributions shall be fair and equitable and shall
8 be based on the population of each participating govern-
9 mental unit as determined on the basis of the latest
10 decennial census, or such other criteria as may be deter-
11 mined by each respective regional council. Each partici-
12 pating county and municipality is hereby directed and
13 empowered to pay over and contribute to the operation

14 of said councils in accordance with the formula adopted
15 as hereinbefore provided. Such sums, as are appropriated
16 hereunder, may be transferred to the regional councils
17 for deposit and disbursement as the regional councils may
18 designate and direct. By such transfer, the governing body
19 designates the regional council as its disbursing agent.

§8-25-13. Annual report of regional council.

1 On or before July thirty-first of each year, each regional
2 council shall prepare an annual report. The regional
3 council shall submit copies of the report to the participat-
4 ing governmental units and to the governor. The report
5 shall include the following:

6 (a) A consolidated statement of the regional council's
7 receipts and expenditures by category since the preceding
8 report.

9 (b) A consolidated, detailed regional council budget
10 for the year in which the report is filed and the following
11 year including an outline of its program for such period.

12 (c) A description of any comprehensive plan adopted
13 in whole or in part for the region.

14 (d) Summaries of any studies and development pro-
15 gress and the recommendations resulting therefrom made
16 for the region.

17 (e) A listing of all applications for federal grants or
18 loans submitted by the governmental units within the
19 region together with the action taken by the regional
20 council in relation thereto.

21 (f) A listing of plans of local governmental units sub-
22 mitted to the region and actions taken in relation thereto.

23 (g) Recommendations of the regional council regard-
24 ing federal and state programs, cooperation, funding and
25 legislative needs.

**§8-25-14. Effect of article upon pending projects and appli-
cations.**

1 Any of the provisions of this article to the contrary not-
2 withstanding, no pending application for federal or state
3 grants, loans, mortgages or other types of funding nor any
4 application for grants, loans, mortgages or other types of

5 funding intended to supplement a pending project shall be
6 required to be approved by any such regional council nor
7 shall any such pending application be delayed or disap-
8 proved by reason of the provisions of this article.

§8-25-15. Construction of article.

1 The provisions of this article shall be liberally construed
2 to accomplish its objectives and purposes.

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column the chapter assigned to it.

Regular Session, 1972

HOUSE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
503	60	709	72	978	93
506	2	717	85	979	28
508	3	730	58	1001	57
509	47	735	126	1016	53
516	13	737	22	1018	78
517	28	743	62	1032	102
538	75	746	132	1038	38
540	110	751	124	1045	37
548	83	753	104	1048	112
558	67	759	31	1050	1
570	51	760	59	1057	80
575	122	762	30	1071	92
576	95	769	73	1076	125
578	108	775	8	1088	17
594	4	792	55	1108	99
604	127	793	49	1109	98
605	118	811	50	1115	96
618	115	835	131	1121	23
622	71	839	130	1149	6
625	81	878	107	1153	134
629	63	894	44	1159	25
631	5	900	56	1170	16
660	82	926	133	1189	35
664	114	936	88	1202	21
667	61	956	36	1209	9
687	119	967	24	1214	123
689	97	970	41	1244	19
699	135				

SENATE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
21	68	123	46	281	89
41	18	125	52	300	91
44	7	142	94	303	111
61	43	151	101	306	32
62	116	154	84	307	74
65	117	163	70	308	27
72	69	170	45	312	10
73	40	177	76	320	77
74	103	183	105	342	11
81	66	189	29	351	20
82	48	190	90	361	113
91	14	194	100	379	64
112	121	201	106	382	79
113	120	207	12	390	15
114	39	238	33	399	128
116	64	239	34	401	129
118	109	268	42	404	86
121	65	280	87		

DISPOSITION OF BILLS ENACTED

Second Extraordinary Session, 1971

HOUSE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
1	4	3	5	5	3
2	1	4	2		

INDEX

A

ACTIONS:	Ch.	Page
Enforcement of liens on real estate	1	1

ACTS AMENDED:

Acts	Sess.	Ch.	Sec.		Page
1907	Reg.	29		Intermediate Court of Raleigh County	225
1909	Reg.	27		Criminal Court of Harrison County	204
1925	Reg.	28	12	Huntington Park Commission	726
1970	Reg.	33	2, 24	Cabell County Common Pleas Court	198
1970	Reg.	34	4	Salary, judge of Cabell County Domestic Relations Court	203
1970	Reg.	36	10	Salary, judges of Kanawha County Common Pleas Court	218
1970	Reg.	37	4	Salary, judge of Kanawha County Domestic Relations Court	219
1970	Reg.	39	4	Salary, judge of Marion County Criminal Court	220
1970	Reg.	40	2, 5	Jurisdiction of Marshall County Common Pleas Court and salary of judge	221
1971	Reg.	6		Appropriation for Department of Veterans Affairs	104
1971	Reg.	6		Flood relief appropriation	104
1971	Reg.	6		Transferring line items of appropriations	106
1971	Reg.	6		Transferring line items of appropriations	107
1971	Reg.	34	2	Jurisdiction, Cabell County Domestic Relations Court	200
1971	Reg.	36	3	Term, etc., judge of McDowell County Intermediate Court	224
1971	1st Ex.	15	1	Sale of road bonds	585

ADMINISTRATION OF ESTATES:

Order in which debts of decedent to be paid	2	3
---	---	---

ADMINISTRATORS:

Limitation of actions on bond of	61	382
--	----	-----

ADOPTION:

Adoption of adults	61	379
Child welfare agencies	61	379

AGRICULTURE:

Insect pests, plant diseases and noxious weeds	4	6
See Plant Pest Act.		

AIRPORTS:

County airport authorities		
See Counties.		

	Ch.	Page
ALCOHOLIC LIQUORS:		
See Intoxicating Liquors.		
APPEAL AND ERROR:		
Courts of Limited Jurisdiction		
Notice of intent to file petition for appeal in criminal cases to be filed with clerk stating grounds	6	18
Time for appeal or writ of error	6	18
Time for presenting record and giving bond	6	18
Harmless error	61	383
Review in lower court		
Reservation to infants of right to show cause against decree or order	61	383
APPLE:		
Designated the official state fruit (HCR 56)		731
APPROPRIATIONS:		
Budget Bill, making general appropriations for fiscal year 1973	7	19
Index to, by accounts	7	21
Supplementary		
Flood disaster relief	9	105
Huntington State Hospital	2	749
Transferring items of appropriations for fiscal year 1972		
Alcohol Beverage Control	10, 11	107, 109
Attorney General	11	108
Denmar State Hospital	11	109
Department of Commerce	11	109
Department of Motor Vehicles	10	107
Department of Veterans Affairs	8	104
Forestry Camp (Leckie)	11	108
Hopemont State Hospital	11	109
Huttonsville Correctional Center	11	108
Public Service Commission—Motor Carrier Division	11	109
State Tax Department	10, 11	106, 109
Welch Emergency Hospital	11	109
West Virginia Children's Home	11	108
West Virginia Penitentiary	11	108
West Virginia Labor-Management Relations Board	3	750
ARCHITECTS:		
Registration		
Application		
Qualifications of applicant	61	350
ARCHIVES AND HISTORY:		
Department		
Advisory commissions	12	117
Created	12	114
Organization	12	117
Historian and archivist		
Appointed by the Governor	12	114
Official books, records and documents not in current use		
Certified copies as evidence	12	118
Delivery to historian	12	117
Powers and duties generally	12	114
Term of office	12	114
Legislative findings	12	113
Short title	12	113

ASSESSORS:	Ch.	Page
Assistants, deputies and employees		
Annual reports of expenditures for	21	170
Appointment	21	163
Compensation	21	184
Affidavit acknowledging receipt of	21	167
Payment	21	166
Discharge	21	185
In-service training programs	21	159
Payment of expenses	21	159
Mileage allowance	21	170
Budget statement	21	164
Compensation	21	161
Affidavit acknowledging receipt of	21	167
Classification of counties for purpose of determining	21	160
Fixed by county court	21	166
Payment	21	166
Sharing that of deputy, etc., prohibited	21	168
Penalty	21	168
Expenditures		
Report to county court	21	170
In-service training programs	21	159
Mileage allowance	21	170
Penalties for failure to perform certain acts	21	171
Request for appropriation of funds	21	164
Training programs	21	159
Payment of expenses	21	159
ATTORNEY GENERAL:		
Counsel for state	13	118
Defense of national guardsmen	13	119
Duties and powers as to prosecuting attorneys	13	119
Duties generally	13	118
Establishment of in-service training programs for prosecuting attorneys	21	159
ATTORNEYS AT LAW:		
Corporations		
Legal corporations	88	532
Practice by corporations prohibited	88	531
Limitations of section	88	531
Penalty	88	532
License to practice law		
Application		
Age, character and residence	61	338
Appearance of applicant before circuit court or committee	61	338
Certificate of circuit court	61	339
Contents	61	339
Examination		
Rules and regulations by supreme court	61	339
Issuance		
By supreme court	61	339
West Virginia University law graduate	61	339
AUTOPSY:		
Mentally ill		
Who may give consent	61	329
Performed in interest of medical science	61	328
Consent required	61	328
Who may give consent	61	328
Who may perform	61	328

B

	Ch.	Page
BANKING INSTITUTIONS:		
Bank stock		
Limitation on purchase	14	121
Branch banks forbidden	14	120
Off-premises banking facility		
One limited facility permitted	14	120
Penalties for violation of section	14	121
BLANNERHASSETT HISTORICAL COMMISSION:		
Composition	63	390
Created	63	390
Duties	63	391
Legislative intent and purpose	63	390
Meetings	63	392
Members		
Appointment and term	63	390
Compensation and expenses	63	392
Powers generally	63	391
Termination	63	392
BOARD OF REGENTS:		
See Universities and Colleges.		
BOARDS OF EDUCATION:		
County boards of education		
Affiliation with state and national associations	108	609
Budgets		
Submission to state board of school finance	113	625
Compensation	108	608
Control of schools	109	610
Expenses		
Dues and traveling expenses	108	608
Legal counsel		
Employment	109	612
Levies	110	614
Meetings	108	608
Powers generally	109	610
Quorum	108	608
School terms		
Employment term	110	613
Instructional term for pupils	110	613
Minimum school term	110	613
Teachers		
Employment	108	608
Textbooks		
Selection	108	608
BOMBS:		
Makeshift incendiary bomb (molotov cocktail)		
Unlawful to make, carry, possess, use, etc.	39	235
Penalty	39	235
BROKERS:		
Real Estate Commission, brokers and salesmen		
Licenses for brokers and salesmen		
Qualifications for licenses	61	377
BUDGET BILL:		
Making general appropriations for fiscal year 1973	7	19
Index to, by accounts	7	21

INDEX

777

	Ch.	Page
BUILDING AND LOAN ASSOCIATIONS:		
Federal savings and loan associations		
Certain associations may make loans and investments		
Permitted to be made by federal associations doing business in State	18	131
Mortgage or deed of trust		
Conditions on which association may take	18	130
BUSINESS AND OCCUPATION TAX:		
Definitions	119	644
Exemptions	119	647
BUSINESS DEVELOPMENT CORPORATIONS:		
Taxation		
Exemption from payment of business and occupation tax	19	133
Taxed as banking institutions	19	133
C		
CABELL COUNTY:		
Common Pleas Court	30	188
Domestic Relations Court	31	200
See Courts.		
CERTIFIED PUBLIC ACCOUNTANTS:		
Certificates		
Applicability to previous holders of certificate	61	347
Qualifications	61	345
Requirements for certification	61	345
Public accountants		
Defined	61	347
Registration	61	348
Title		
Use of title certified public accountant	61	347
Use of title public accountant	61	348
CHILD WELFARE:		
Child welfare agencies		
Adoption		
Consent to adoption	61	379
Procedures	61	379
Department of Welfare		
Duration of custody or guardianship of children committed to	61	379
CHIROPODISTS—PODIATRISTS:		
Licenses		
Application		
Qualifications of applicant	61	349
CHIROPRACTORS:		
Licenses		
Application		
General provisions	61	354
Qualifications of applicant	61	354
CIGARETTES:		
Fines and penalties		
Sale or gift of cigarette, cigarette paper, pipe or tobacco to person under eighteen	61	330
Penalty	61	330
Smoking or possession of cigarette or cigarette paper by person under eighteen	61	330

	Ch.	Page
CIGARETTES—(Continued):		
Fines and Penalties (Cont'd.)		
Smoking or possession of cigarette or cigarette paper by person under eighteen—(Cont'd.)		
Immunity	61	330
Penalty	61	330
Possession of cigarettes or cigarette paper by person under twenty-one		
Repeal of statute	57	303
CIRCUIT COURTS:		
Judges		
Salaries	27	190
Computation	27	190
Limitation	27	191
CIVIL SERVICE:		
Deputy sheriffs		
Age requirements	26, 61	184, 320
Exceptions	26, 61	184, 320
As to deputy serving on effective date of act	26	186
No person may serve as deputy after age sixty-five	26	189
Application	26, 61	183, 320
Form of application	26, 61	184, 320
Discharge generally	26	186
Eligible list		
Posting	26	185
Examinations		
Character of competitive examination	26	185
Exceptions as to deputies serving on effective date of act	26	186
Medical examinations	26	186
Notice	26	185
Prescribed by state civil service commission	26	185
Press representatives	26	185
Qualifications of applicants	26	185
Reduction in number of deputies	26	189
Reduction in rank or pay	26	187
Appeal	26	188
Removal	26	187
Suspension	26	187
Training		
Training of deputies serving on effective date of act	26	186
CLAIMS AGAINST THE STATE:		
Payment of, against certain state departments and agencies	16	123
Payment of, against the Department of Mental Health	15	121
CLERKS OF CIRCUIT COURTS:		
Assistants, deputies and employees		
Annual reports of expenditures for	21	170
Appointment	21	163
Compensation	21	164
Affidavit acknowledging receipt of	21	167
Payment	21	166
Discharge	21	165
In-service training programs	21	159
Payment of expenses	21	159
Mileage allowance	21	170
Budget statement	21	164
Compensation	21	161
Additional	21	163
Affidavit acknowledging receipt of	21	167

CLERKS OF CIRCUIT COURTS—(Continued):		Ch.	Page
Compensation—(Cont'd.)			
Classification of counties for purpose of determining	21		160
Legislative findings	21		158
Payment	21		166
Sharing that of deputy, etc., prohibited	21		166
Penalty	21		168
Expenditures			
Report to county court	21		170
In-service training programs	21		159
Mileage allowance	21		170
Penalties for failure to perform certain acts	21		171
Request for appropriation of funds	21		164
Training programs	21		159
Payment of expenses	21		159
CLERKS OF COUNTY COURTS:			
Assistants, deputies and employees			
Appointment	21		163
Compensation	21		164
Affidavit acknowledging receipt of	21		167
Payment	21		166
Discharge	21		165
In-service training programs	21		159
Payment of expenses	21		159
Mileage allowance	21		170
Budget statement	21		164
Compensation	21		161
Additional	21		162
Affidavit acknowledging receipt of	21		167
Classification of counties for purpose of determining	21		160
Legislative findings	21		158
Payment	21		166
Sharing that of deputy, etc., prohibited	21		168
Penalty	21		168
Expenditures			
Report to county court	21		170
Illegal orders for compensation of county officials, employees, etc.	21		168
In-service training programs	21		159
Mileage allowance	21		170
Penalties for failure to perform certain acts	21		171
Request for appropriation of funds	21		164
Training programs	21		159
Payment of expenses	21		159

COAL:

See Mines and Minerals.

CODE AMENDED:

Ch.	Art.	Sec.		Page
1	2	2; 2a*	Apportioning membership of House of Delegates and legislative findings	753
2	2	1	Legal holidays	388
2	2	10	Rules for construction of statutes	315
2	3*	1	Legal capacity	319
3	1	44	Compensation and expenses of elec- tion officials	280
3	1	46*	Training film for election officials	282
3	5	8, 13	Filing fees and form and content of primary election ballot	283

(*) Indicates new article or section.

CODE AMENDED—(continued):

Ch.	Art.	Sec.	Page
3	11*	1-6	Submitting amendments to State Constitution to voters 287
4	6*	1-6	Blennerhassett Historical Commission 389
4	7*	1-11	Legislative Building Commission 393
5	3	2	Duties of Attorney General 118
5A	1	2, 5	Department of Finance and Administration 244
5A	3	4, 10, 12, 13, 14, 14a	Division of purchases, Department of Finance and Administration 246
6	7	4	Salaries of judges of circuit courts... 190
6B	1	1	Disclosure statements to be filed by certain officers and employees 127
7	1	3p*	Permits for mobile homes or house trailers 173
7	1	3q*	County commissions on intergovernmental relations 150
7	1	3r*	County commissions on crime, delinquency and correction 151
7	1	4*	Compensation of county commissioners for services in court 152
7	1	5	Duties of county commissioners 153
7	1	5a*	Salaries of county commissioners 156
7	5	20	Group insurance programs for county officers and employees 174
7	6	5	Deposit of county funds 175
7	7	1-21	Compensation of county officials, assistants, employees, deputies, and training programs for county employees, etc. 157
7	11	2	County parks and recreation commissions 178
7	12	7, 8	County development authorities 180
7	14	8	Age requirements for deputy sheriffs 320
7	14	8, 9, 17	Civil service for deputy sheriffs 183
8	10	1a*	Employment of special counsel by municipalities 465
8	12	5	Powers of municipalities respecting construction of passageways, buildings, etc., overhanging or crossing airspace above street, road, etc. 467
8	13	5	Municipal business and occupation tax 475
8	13	20	Transfer of sinking funds 476
8	14	12	Age and residency requirements for municipal policemen 321
8	15	3	Fire protection outside municipal limits 479
8	15	17	Age and residency requirements for municipal firemen 323
8	25	1-15	Intergovernmental relations—Regional planning and development 755
8	29A*	1-21	County Airport Authority 740
9	1	2	Department of Welfare—Definitions... 715
9	2	5	Information to be supplied Department of Welfare by other state agencies 719
9	4	2, 4	Medical services and general relief funds 717

(*) Indicates new article or section.

CODE AMENDED—(continued):

Ch.	Art.	Sec.		Page
9	5	4	Penalties for obtaining public assistance through fraud, etc. _____	721
9	5	10	Welfare aid continued; counties may contribute _____	718
9A	1	5	Per diem of members of veterans' council, etc. _____	713
10	1A*	1-6	Interstate Library Compact _____	401
10	5	3	Powers of Educational Broadcasting Authority _____	278
11	3	1a*; 12, 13, 15	Tax districts, assessment of property, etc. _____	633
11	4	1, 5, 14, 17, 20	Assessment of real property _____	638
11	5	4	Assessment of personal property _____	642
11	13	1, 3	Business and occupation tax _____	644
11	14	1-29	Gasoline and special fuel excise tax _____	649
11	14A	1-26	Motor carrier road tax _____	671
11	16	12	Age requirement for nonintoxicating beer license _____	324
11	21	9	Personal income tax—Meaning of terms _____	689
11	24	3, 5, 6; 13a*	Corporation net income tax _____	690
11	25*	1-11	Tax relief for elderly homeowners and renters _____	698
15	2	5	Age, qualifications, etc., of members of Department of Public Safety _____	327
15	2	28, 28f, 28h	Retirement awards and benefits, Department of Public Safety _____	254
15	2	29	Criminal identification bureau, reports by courts, etc. _____	258
16	2B	2	Dissemination of information about sterilization procedures by local boards of health _____	300
16	3	4a	Compulsory testing of school children and school personnel for tuberculosis _____	301
16	4B	1	Autopsy on body of deceased person _____	328
16	5B	2	Age requirement to obtain license to operate hospital _____	329
16	9	4, 5	Lawful age to purchase cigarettes and cigarette paper _____	330
17	4	1, 2	Roads in state parks, forests and public hunting grounds transferred to Department of Highways _____	579
17B	1A*	1, 2	Driver License Compact _____	447
17B	2	1	Streets used by public subject to general road law _____	453
17B	2	4, 7	Eighteen-year-olds may drive school buses, transport persons and property, etc. _____	331
17C	2	1, 3	Enforcement of road laws on all streets used by the general public _____	453
17C	5A	1	Implied consent for chemical test for intoxication _____	455
17C	15	26	Flashing warning lights on certain vehicles _____	457
17C	15	34	Standards for vehicle mufflers _____	459
17D	3	2, 4; 15*	Security requirements following vehicle accident _____	460

(*) Indicates new article or section.

CODE AMENDED—(continued):

Ch.	Art.	Sec.	Page
18	2	26	Multi - county regional educational service agencies ----- 602
18	2A	1, 2, 4, 5, 8	Textbook adoption for public elementary schools ----- 603
18	4	9	Traveling expenses of county superintendent of schools ----- 607
18	5	4	County board of education, compensation, etc., of members ----- 608
18	5	13	General authority of county boards of education ----- 610
18	5	15	Instructional school term ----- 613
18	6*	1-10	Driver education ----- 595
18	7A	28	Computation of teachers retirement annuities ----- 615
18	8	10	Compulsory education of deaf and blind ----- 332
18	9A	11	Public school support ----- 619
18	9B	6	Approval of county school budgets ----- 625
18	17	4, 8	Admission, period of attendance in schools for deaf and blind, and registration of deaf and blind ----- 333
18	22B	6	Scholarship grants ----- 626
18	26	13c*	Establishment of graduate college ----- 628
19	12	2, 3, 4, 5, 7, 8, 10, 13, 14	Insect pests, plant diseases and noxious weeds ----- 5
19	23	9	Wagering on horse racing by eighteen-year-olds ----- 334
20	1	15	Public Land Corporation ----- 110
20	2	40b*	Small arms hunting license ----- 482
20	2	45	Nonresident six-day, statewide fishing license ----- 484
20	3	2	Forests and wildlife areas ----- 581
20	3	11	Recovery of fire fighting costs ----- 484
20	4	1	Duties of Division of Parks and Recreation ----- 582
20	5A	8a	Age of voluntary water quality monitors ----- 338
20	5C*	1-23	West Virginia Water Development Authority ----- 487
20	6B*	1-4	Interstate Mining Compact ----- 514
20	6C*	1-8	Coal Refuse Disposal Control Act ----- 524
20	7	2	Qualifications of conservation officers ----- 529
21A	7	3, 4, 7; 7a*; 9, 10, 11	Unemployment compensation claim procedure ----- 709
22	4	1b, 1d, 1e	Salaries and expenses of deputy director of oil and gas, oil and gas inspectors and examining board ----- 417
22	4A*	1-15	Oil and gas conservation ----- 425
23	4	10, 15a	Workmen's Compensation disability and death benefits ----- 722
24A	1	3	Exempting certain vehicles from control by Public Service Commission ----- 577
25	1	3	Institutions managed by the Commissioner of Public Institutions ----- 563
25	1	11	Officers and employees of state institutions ----- 565
25	1	16	Transfer of inmates of state institutions by Commissioner of Public Institutions ----- 574

(*) Indicates new article or section.

CODE AMENDED—(continued):

Ch.	Art.	Sec.	Page
25	4	6	Transfer of youths in forestry camps 575
26	5	1	Pinecrest Hospital 566
26	6	1	Denmar State Hospital 567
26	8	1	Emergency hospitals 568
26	9	1	Hopemont State Hospital 569
27	1	7	Superintendent and clinical director of mental institutions 570
27	1A	3, 4, 5	Qualifications, powers, etc., of Director of Mental Health, and Division of Administration 570
27	2	1	Mental health facilities 409
27	2	2	Qualifications of superintendents of mental health facilities 573
27	2A*	1	Mental health - mental retardation centers 410
27	4	1, 3	Age for admission to and release from mental hospitals 337
27	5	2, 4	Hospitalization of mentally ill 411
29	1	1-7	Department of Archives and History 113
29	3A*	1-5	Authority of local fire departments 297
30	2	1	Age for license to practice law 338
30	2	5; 5a*	Professional legal corporations 531
30	3	1, 2	Use of mobile intensive care paramedics 535
30	3	4b	Formation of medical corporations 538
30	3B*	1-4	Mobile intensive care paramedics 536
30	4	2, 3, 5, 6, 10, 13, 14, 15, 16, 17a	Dentists, dental hygienists and dental assistants 539
30	4	6	Age of applicant for dental license 339
30	5	5	Minimum age for registration as pharmacist 340
30	6	3	Board of Embalmers and Funeral Directors 549
30	6	5	Required age for embalmers and funeral directors license 341
30	7	3, 6, 8	Board of examiners for registered professional nurses, registration and other fees 552
30	8	5	Age qualification for registration as optometrist 344
30	9	2, 3	Required age for certification of certified public accountants and public accountants 345
30	10	6	Age for licensing as veterinarian 348
30	11	3	Age for licensing chiropodists-podiatrists 349
30	12	3	Eighteen-year-old may be licensed as architect 350
30	13A	5	Age for licensing land surveyors 350
30	14	4	Age qualification of applicant for examination as osteopathic physician 352
30	14	4, 5	Examination and licensing of osteopathic physicians 557
30	14A*	1-4	Assistants to osteopathic physicians 558
30	15	2, 3	Qualifications for licensing midwives 353
30	16	4	Age requirement for chiropractor license 354
30	17	5	Registration of sanitarians 355

(*) Indicates new article or section.

CODE AMENDED—(continued):

Ch.	Art.	Sec.	Page
30	20	4	Eligibility for license as physical therapist _____ 356
30	21	7, 8, 9	Qualifications and licensing of psychologists _____ 357, 560
30	22	6	Qualifications of applicant for license as landscape architect _____ 359
31	6	21, 43	Building and loan associations _____ 130
31	14	13	West Virginia business development corporations _____ 133
31	18	2, 3, 6, 19, 21	West Virginia Housing Development Fund _____ 134
31A	8	12	Off-premises banking facilities _____ 120
32	1	12	Registration of security dealers and salesmen _____ 361
33	6	31	Contents of motor vehicle insurance policy _____ 303
33	8	18	Investments in revenue bonds by insurer _____ 308
33	12	2	Qualifications of insurance agents, brokers, salesmen, etc. _____ 364
35	1	9, 11	Trustees of religious organizations _____ 365
36	7	1, 4, 7	Gifts to minors _____ 367
38	5A	5	Suggestion of salary and wages of private employees _____ 629
38	5B	9	Suggestion of salary and wages of public employees _____ 630
41	4	1, 2	Wills _____ 374
41	5	12	Impeachment or establishment in court of judgments or orders by person under disability or non-resident _____ 375
43	1	6	Release of dower _____ 277
44	2	21	Order in which debts of decedent to be paid _____ 3
44	10	7	Management of ward's estate, etc. _____ 375
44	14	1	Substitution of trustees _____ 4
47	11	7	Governmental purchases exempt from Fair Trade Act _____ 253
47	12	4	Qualifications of real estate brokers and salesmen _____ 377
48	1	8, 12, 12a	Marriage: When consent of parents required, who may celebrate rites of, and qualifications of minister, etc., celebrating _____ 377
48	4	7	Adoption of adults _____ 379
48	9	1-42	Uniform Reciprocal Enforcement of Support Act _____ 262
49	2	2	Duration of custody or guardianship of children _____ 379
49	3	1	Child welfare agencies _____ 379
49	5	2	Definition of child _____ 380
49	5A*	1-6	Juvenile court referee system _____ 192
50	4	20, 23	Appearing and conducting action or defense before a justice and appointment of guardian for infant parties _____ 381
50	17	11	Fees of justices in criminal cases _____ 309
51	9	6, 7, 8	Judges retirement system _____ 195
52	1	1	Persons liable for petit jury service _____ 381

(*) Indicates new article or section.

CODE AMENDED—(continued):

Ch.	Art.	Sec.		Page
54	3*	1-5	Uniform relocation assistance and real property acquisition policies	293
55	2	5	Enforcement of certain liens	1
55	2	7	Actions on bonds of personal representatives and fiduciaries	382
58	1	2	Harmless error in judgment because of age, etc.	383
58	2	1	Reservation of infant's right to show cause against decree or order	383
58	4	4, 14	Appeals from courts of limited jurisdiction	18
60	3	22	Sale of alcoholic liquors to eighteen-year-olds	384
60	7	4, 6, 7, 10, 11, 12; 13a*	Licensing private clubs to sell alcoholic liquors	13
60	7	12	Age of persons who may be served alcoholic liquors by private clubs	384
61	3	8*	Molotov cocktails; penalty for use, etc.	235
61	7	2	Age requirement for license to carry weapons	385
62	11A*	1	Release of prisoners for work, etc.	236
62	12	3; 7a*	Probation and presentence diagnosis	239
62	12	5	Probation officers	241

CODE REPEALED:

3	6	13	Title and summary of proposed constitutional amendments	287
7	1	5(1)-5(54)	Salaries of county commissioners	148
11	2	5, 5(1)-5(55)	Salaries of assessors	148
11	11	28	Estate tax	643
16	9	6	Possession of cigarettes or cigarette paper	302
18	2	17, 18, 19, 19a, 19b, 20, 21	Driver education and training	594
60	7	8	Additional sales tax on alcoholic liquors purchased by private clubs	12

COMPACTS:

	Ch.	Page
Driver License Compact	70	447
Interstate Library Compact	65	400
Interstate Mining Compact	85	514

CONFLICT OF INTEREST:

Statements filed by members of the Legislature and certain officers and employees	17	127
Exceptions	17	129
Suspension for noncompliance	17	129

CONSTITUTION OF WEST VIRGINIA:

Amendments		
Effective date of amendments ratified	53	292
Election on ratification or rejection		
Ballot		
Form of ballot	52	289
Position on ballot	52	289
Title and summary of amendment	52	288
Canvass of vote	52	290
Certification of vote	52	290

(*) Indicates new article or section.

CONSTITUTION OF WEST VIRGINIA—(Continued):	Ch.	Page
Amendments—(Cont'd.)		
Election on ratification or rejection—(Cont'd.)		
Conduct of election	52	289
Designation	52	289
Proclamation of result of election by Secretary of State.....	52	292
Proposing by Legislature	52	288
Title and summary	52	288
Withdrawal	52	288
Secretary of State		
Proclamation of result of election on amendments	52	292
Publication of proposed amendments	52	289
 CONSTITUTION, STATE:		
Joint Resolutions proposing amendments to State Constitution		
Better School Buildings Amendment (SJR 4)		735
Federal Grants and County and Municipal Aid Amendment		
(HJR 18)		734
Removing Tax on Household Goods and Personal Effects		
Amendment (SJR 11)		737
 CORPORATIONS:		
Building and loan associations		
See Building and Loan Associations.		
Business development corporations		
See Business Development Corporations.		
Housing Development Fund		
See Housing Development Fund.		
 COUNTIES:		
Commissions on crime, delinquency and correction created.....	21	152
Circuit clerk to be executive secretary	21	152
Composition	21	152
Duties	21	152
Commissions on Intergovernmental Relations created	21	150
Composition	21	150
County clerk to be executive secretary	21	151
Duties	21	150
County airport authorities		
Accounts and accounting	1	747
Acquisition of lands, buildings, etc.	1	741
Powers of authority generally	1	743
Right of eminent domain	1	745
Agreements in connection with obtaining funds	1	745
Appointment of members	1	741
Article cumulative	1	749
Audit	1	747
Authority to be public corporation	1	743
Authorized and empowered to acquire, operate, etc., airports	1	741
Facilities may include industrial parks, water and sewer-		
age systems	1	741
Authorized as public agency	1	741
Conflict of interest		
Members not to be personally interested in contracts or		
property controlled by board	1	742
Creation, authority of county court	1	741
Dissolution		
Procedure	1	748
Publication of notice	1	748
Recordation of certificate of dissolution	1	748
Eminent domain, right of	1	745

COUNTIES—(Continued):	Ch.	Page
County airport authorities—(Cont'd.)		
Employees		
Full-time employees to be public employees	1	748
Powers of authority generally	1	743
Establishment	1	741
Expenses of members	1	742
Funds		
Agreements in connection with obtaining funds	1	745
Audit	1	747
Contributions by county courts and others	1	747
General provisions	1	747
Powers of authority generally	1	743
Surplus, disposition	1	746
Indebtedness		
Authorities may incur	1	744
County not liable for indebtedness	1	744
Powers of authority generally	1	743
Industrial parks		
Appraisal of property	1	747
Contributions in lieu of taxes	1	747
Duty of county assessor	1	747
Facilities may include	1	741
Leasing airport and facilities	1	746
Liberal construction of article	1	749
Management of authority	1	741
Members		
Appointment	1	741
Qualifications	1	742
Removal	1	742
Hearing	1	742
Substitution	1	742
Terms	1	741
Vacancies, filling	1	742
Name	1	743
Perpetual succession	1	743
Powers generally	1	743
Present airport properties and facilities		
County court authorized to convey	1	746
Public agency	1	741
Public corporation	1	743
Purpose of article	1	749
Reports	1	747
Publication of annual	1	747
Rules and regulations	1	743
Seal	1	743
Sewerage systems		
Facilities may include	1	741
Surplus, disposition of	1	746
Taxation		
Appraisal of industrial park property	1	747
Contribution in lieu of taxes	1	747
Duty of county assessor	1	747
Property, bonds and obligations of authority exempt from taxation	1	745
Water and sewerage systems		
Facilities may include	1	741
County courts		
See County Courts.		
County development authorities.		
See County Development Authorities.		

COUNTIES—(Continued):	Ch.	Page
County officials		
Assistants, deputies and employees	21	163
Appointment, compensation, etc.	21	163
Classification of counties for purpose of determining compensation of elected county officials	21	160
Compensation of elected county officials for each class of county	21	161
Depositories		
Treasurer may deposit excess funds in interest-bearing accounts	24	175
Development		
See Planning and Zoning.		
Officials and employees		
In-service training programs established	21	159
Parks and Recreation Commissions		
Agreements for obtaining moneys and property	25	180
Body corporate	25	178
Indebtedness	25	179
Name	25	178
Perpetual existence	25	178
Powers generally	25	178
Tax exemption	25	180
COUNTY COURTS:		
Board of parks and recreation commissions	25	178
See Counties.		
Commissioners		
Compensation for services in court	21	152
Compensation for services other than services in court	21	154
Legislative findings	21	157
Duties generally	21	153
In-service training programs	21	159
Payment of expenses	21	159
Salaries for services other than services in court	21	156
County officers and employees		
Compensation		
Compliance with Economic Stabilization Act of 1970	21	171
Insurance		
Power to provide group insurance programs for county officers and employees	23	174
Mobile homes or house trailers		
Authority to require permits for	22	173
COUNTY DEVELOPMENT AUTHORITIES:		
Indebtedness		
Incurring indebtedness	25	182
Powers generally	25	180
Rights of creditors	25	182
COURTS:		
Circuit Courts		
See Circuit Courts.		
Courts of Limited Jurisdiction		
Appeals from	6	18
Common Pleas Court of Cabell County		
Jurisdiction	31	199
Salary of judge	31	199
Common Pleas Court of Kanawha County		
Salary of judges	33	218
Payment	33	218

COURTS—(Continued):	Ch.	Page
Courts of limited jurisdiction—(Cont'd.)		
Common Pleas Court of Marshall County		
Jurisdiction	36	221
Salary of judge	36	223
Compensation paid by county	21	171
Criminal Court of Marion County		
Salary of judge	35	220
Domestic Relations Court of Cabell County		
Jurisdiction	32	200
Salary of judge	32	203
Domestic Relations Court of Kanawha County		
Salary of judge	34	219
Intermediate Court of Harrison County		
Appeals		
Allowed from justices, etc.	32	212
Circuit court		
Cases in which appeal may be allowed	32	213
Docketed in circuit court	32	214
Proceedings in	32	214
Applicability of Chapters Fifty-one and Sixty-two of Code	32	216
Attachments		
Issued by clerk under same regulations as in circuit court	32	218
Certification of cases to circuit court	32	212
Clerk	32	210
Contempt		
Power to punish for	32	209
Costs		
Taxation	32	217
County court to provide supplies	32	212
Established	32	205
Grand juries	32	209
Not to be impaneled in circuit court	32	216
Habeas corpus		
Power to grant	32	215
Indictments		
Certification from circuit court	32	211
Jail		
Inspection	32	215
Jailer to attend court, receive prisoners, etc.	32	215
Judge		
Election	32	208
Contested election	32	226
Filling vacancy in office of	32	216
Powers in vacation	32	209
Salary	32	209
Special judge	32	212
Qualifications	32	208
Removal from office	32	216
Term	32	208
Judgments		
Satisfaction	32	217
Juries	32	209
Jurisdiction	32	206
Presumption of	32	209
Legislature		
Acts to be furnished judge	32	217
Name	32	205
Petit juries	32	211
Powers and jurisdiction conferred	32	209
Process		
Execution	32	210

COURTS—(continued):	Ch.	Page
Courts of limited jurisdiction—(Cont'd.)		
Intermediate Court of Harrison County—(Cont'd.)		
Prosecuting attorney		
Compensation	32	215
Duties	32	215
To attend terms of court	32	215
Recognizance	32	211
Rules		
Filed in clerk's office	32	217
Sheriff		
Execution of process	32	210
Stenographers		
Appointment	32	216
Compensation	32	216
Supplies		
County court to provide	32	212
Venue, change of	32	211
West Virginia Reports		
To be furnished judge	32	217
Intermediate Court of McDowell County		
Judge		
Election	37	224
Filling vacancy	37	224
Qualifications	37	224
Removal from office	37	224
Terms of office	37	224
Intermediate Court of Raleigh County		
Appeals	38	234
Time limitation	38	234
Circuit court		
Transfer of divorce and other proceedings to Intermediate Court	38	230
Clerk		
Powers, duties and compensation	38	230
Contempt		
Power to punish	38	234
County court		
Duty to provide supplies, quarters and finances	38	233
Court defined	38	228
Courtroom	38	233
Created	38	225
Criminal court abolished	38	225
Effective date of act	38	234
Judge		
Election	38	229
Filling vacancy	38	229
Qualifications	38	229
Salary	38	229
Term of office	38	229
Jurisdiction	38	228
Maturity of causes	38	231
Probation staff		
Appointment and salaries	38	233
Procedure	38	232
Seal	38	233
Secretarial assistants		
Appointment and salaries	38	233
Severability of provisions of act	38	234
Sheriff		
Duties	38	230

COURTS—(continued):	Ch.	Page
Courts of limited jurisdiction—(Cont'd.)		
Intermediate Court of Raleigh County—(Cont'd.)		
Supplies	38	233
Terms of court	38	231
Judges		
Limitation on amount of salary	27	191
Juvenile Courts		
See Juvenile Courts.		
COURTS OF LIMITED JURISDICTION:		
See Courts		
CREDIT UNIONS:		
Exempt from business and occupation tax	119	647
CRIMES AND OFFENSES:		
Crimes against property		
Makeshift incendiary bomb (molotov cocktail)		
Unlawful to make, carry, possess, use, etc.	39	235
Penalty	39	235
CRIMINAL IDENTIFICATION BUREAU:		
See Public Safety.		
CRIMINAL PROCEDURE:		
Prisoners		
Release of jail inmate for work or other purposes	40	236
Probation and parole		
See Probation and Parole.		
D		
DECEDENTS:		
Payment of debts	2	3
DENMAR STATE HOSPITAL:		
Clinical director defined	97	568
Continuation	97	567
Management	97	567
Superintendent		
Chief executive officer	97	567
Defined	97	567
Qualifications	97	567
Exceptions	97	568
DENTISTS AND DENTAL HYGIENISTS:		
Assistants		
Permitted intraoral tasks for dental hygienists and assistants	91	546
Rules and regulations of the board	91	543
Prohibited procedures	91	546
Board of dental examiners		
Issuance of licenses and permits	91	542
Dental hygienists		
License to practice dental hygiene		
Examination	91	545
Fee	91	546
Nonresidents	91	547
Qualifications	91	547
Practitioners from other states	91	547
Qualifications	91	547
Reciprocity	91	547
Prerequisites	91	545
Revocation or suspension	91	545
Grounds	91	545

DENTISTS AND DENTAL HYGIENISTS—(Continued):	Ch.	Page
Dental hygienists—(Cont'd.)		
Permitted operations	91	545
Intraoral tasks	91	546
Practice of, defined	91	547
Prerequisites for practice	91	545
Prohibited procedures	91	546
Scope of practice	91	546
Who deemed practitioner	91	541
License to practice dentistry		
Applicant		
Qualifications	61, 91	339, 544
Examination		
Character	61, 91	340, 544
Fee	61, 91	340, 544
Fees	91	545
Issuance by board	61, 91	340, 544
Permits, temporary and special	91	542
Prerequisite to practice	91	542
Exceptions	91	542
Required	91	542
Practice of dentistry		
Who deemed practitioner	91	540
Limitations of article	91	540
Specialties		
Application for certificate	91	548
Fee	91	548
Limitation of practice	91	548
Qualifications	91	548

DEPARTMENTS:

Agriculture	
See Agriculture.	
Alcohol Beverage Control Commissioner	
See Intoxicating Liquors.	
Archives and History	
See Archives and History.	
Commissioner of Public Institutions	
See State Institutions.	
Employment Security	
See Unemployment Compensation.	
Finance and Administration	
See Finance and Administration.	
Health	
See Health.	
Highways	
See Roads and Highways.	
Mental Health	
See Mentally Ill.	
Mines	
See Mines and Minerals.	
Motor Vehicles	
See Motor Vehicles.	
Natural Resources	
See Natural Resources.	
Public Safety	
See Public Safety.	
Public Service Commission	
See Public Service Commission.	
Tax	
See Taxation.	

DEPARTMENTS—(Continued):	Ch.	Page
Welfare		
See Public Welfare.		
Workmen's Compensation		
See Workmen's Compensation.		
Veterans Affairs		
See Veterans.		
DEPENDENCY LAW:		
Article		
Application where obligor and obligee are in different		
counties of this state	46	274
Construction	46	276
Provisions severable	46	276
Short title	46	276
Attorney General		
Office designated state information agency	46	268
Court		
Clerk to maintain registry of foreign support orders	46	275
Costs and fees	46	268
Duty of initiating court	46	267
Definitions	46	263
Duty of support		
Extent of duties of support	46	265
How duties of support enforced	46	266
Order of support	46	271
What duties are enforceable	46	266
Evidence		
Husband and wife	46	271
Extradition		
Interstate rendition	46	285
Conditions	46	265
Hearing	46	269
Continuance	46	270
Notice to obligor	46	269
Rules of evidence	46	271
Husband and wife		
Evidence	46	271
Information agency		
Office of attorney general designated as	46	266
Initiating state		
Defined	46	263
Duties of initiating court	46	267
Additional duties	46	272
Jurisdiction	46	266
Jurisdiction by arrest	46	268
Paternity		
Adjudication of issue	46	272
Petition		
Contents	46	266
Petition for a minor	46	267
Venue	46	266
Proceedings		
Effect of participation in	46	273
Not to be staged because of pending or prior action, etc.	46	273
Prosecuting attorney		
To enforce foreign support order	46	275
To represent obligee	46	267, 275
Purpose	46	263
Remedies		
State or subdivision furnishing support	46	266

DEPENDENCY LAW—(Continued):

Responding state		
Duties of court and officials of this state as responding state ..	46	269
Additional duties of responding court	46	272
Defined	46	264
Further duties	46	270
Powers of responding court	46	272
Support order		
Appeal	46	274
Effect of support order made under another law or by court		
of another state	46	273
Enforcement of foreign support order	46	274, 275
Registration of foreign support order	46	274
Effect of registration	46	275
Procedures	46	275
Registry of foreign support orders	46	275

DEPOSITORIES:

County		
Time deposit accounts	24	175

DISABILITY:

Under disability includes persons under age of eighteen years...	61	317
--	----	-----

DOMESTIC RELATIONS:

Adoption		
See Adoption.		
Marriage		
See Marriage.		
Support and maintenance		
Reciprocal enforcement of support act	46	262
See Dependency Law.		

DOWER:

Release of dower		
Contract to sell real estate		
Proceedings for release of dower when spouse refuses to		
sign	47	277

E**EDUCATIONAL BROADCASTING AUTHORITY:**

Powers	48	278
--------------	----	-----

EIGHTEEN-YEAR-OLDS:

Do not lack legal capacity by reason of age	61	319
---	----	-----

ELECTIONS:

Amendments to State Constitution		
See Constitution of West Virginia.		
Ballot commissioners		
Compensation	49	280
Election commissioners and clerks		
Compensation	49	280
Motion picture film		
Training film for election officials	50	282
Primary election		
Ballots		
Contents	51	285
Form	51	285
Filing fees	51	283
Disposition	51	285

	Ch.	Page
EMBALMERS AND FUNERAL DIRECTORS:		
Advertising	61	343
Board of embalmers and funeral directors		
Duties generally	92	551
Employees	92	550
Expenses	92	550
Inspections	92	550
Licenses		
Examination	92	550
Meetings	92	550
Oath	92	549
Officers	92	549
Powers generally	92	551
Rules and regulations	92	551
Salary	92	549
School instruction	92	551
Secretary, executive	92	550
Treasurer, bond	92	550
License		
Apprentices	61	344
Courtesy cards	61	344
Fee	61	344
Qualifications for license	61	341
Renewal	61	343
Required	61	341
EMINENT DOMAIN:		
See Uniform Relocation and Real Property Assistance Act.....	53	293
EXECUTORS AND ADMINISTRATORS:		
Bonds, surety		
Limitation of actions on	61	382
Debts and claims		
Order in which debts of decedent to be paid	2	3
F		
FAIR TRADE:		
Act not applicable to certain contracts and sales to state, political subdivisions, etc.	43	253
FAIRMONT EMERGENCY HOSPITAL:		
Clinical director defined	97	568
Continued	97	568
Management	97	568
Superintendent		
Chief executive officer	97	568
Defined	97	568
Qualifications	97	568
Exceptions	97	569
FAMILY PLANNING AND CHILD SPACING:		
Abortion		
Procedure not approved	55	301
Clinics		
Establishment by local boards of health	55	300
Purposes	55	300
When programs to have approval of State Board of Health.....	55	301
FIDUCIARIES:		
Bonds, surety		
Limitation of actions on	61	382

FINANCE AND ADMINISTRATION:	Ch.	Page
Commissioner		
Appointment	43	245
Bond	43	245
Oath	43	245
Divisions	43	245
Bonds of directors	43	246
Director appointed by commissioner	43	245
Fair Trade Act		
Not applicable to sale to or contract to purchase by state, political subdivisions, etc.	43	253
Purchasing division		
Competitive bids		
Alteration or withdrawal of bids	43	250
Awards to lowest responsible bidder	43	250
Open market		
Purchases in open market on competitive bids	43	250
Publication of solicitation for sealed bids	43	249
Record of bids	43	251
Standard specifications	43	250
Bids based on	43	250
Uniform bids	43	250
Director		
Appointed by commissioner	43	245
Bond	43	246
Qualifications	43	245
Rules and regulations	43	247
Salary	43	245
Examination of purchases	43	249
Testing of purchases	43	249
Report	43	249
Vendors		
Affidavit		
Penalty		
False affidavit and information	43	253
Prequalification disclosure by vendors	43	251
Form and content	43	251
Register of vendors	43	253
Workshops		
Purchase of products	43	250
 FIRE DEPARTMENT:		
Civil service		
Examinations		
Application		
Age requirements	61	323
Exceptions	61	324
Form of application	61	323
 FIRES:		
Local fire departments		
Authority to enter building and adjoining premises	54	297
Chief or fireman in control		
Authority generally	54	298
Investigation to determine cause of fire	54	299
Power to take and preserve certain property	54	298
Procedure for return of property	54	298
Offenses		
Attacking, hindering or obstructing firemen or equipment	54	299
Penalties	54	300
 FISHING:		
See Game and Fish.		

	Ch.	Page
FORESTS AND WILDLIFE AREAS:		
Fires		
Recovery of costs incurred in fighting fires	83	484
Lands		
Acquisition of suitable lands by director	101	581
Maintenance	101	581
Roads and highways		
Authority of commissioner of highways	101	580, 582
FORESTRY CAMPS FOR MALE OFFENDERS:		
Assignment of offenders to camp	99	575
Confinement, period of	99	575
Return of offenders to court	99	575
Transfer of offenders from one facility to another	99	575
G		
GAME AND FISH:		
Licenses and permits		
Class A-1 small arms hunting license	81	482
Class K nonresident six-day, statewide, fishing license	82	484
Fee	82	484
GASOLINE:		
Gasoline and special fuel excise tax		
See Taxation.		
GIFTS TO MINORS ACT:		
See Infants.		
GUARDIAN:		
Bond, surety		
Limitation of actions on	61	382
Custody of ward	61	375
Duration of guardianship	61	376
Education of ward	61	375
Management of ward's estate	61	376
Settlement of ward's estate	61	376
H		
HANCOCK COUNTY:		
County court authorized to advance funds to the City of New Cumberland for additions to its water system	131	725
HARMLESS ERROR:		
Specific instances	61	383
HARRISON COUNTY:		
Intermediate Court	32	204
See Courts.		
HEALTH:		
Family planning and child spacing	55	300
See Family Planning and Child Spacing.		
Tuberculosis		
Compulsory testing of school children and school personnel ...	56	301
HOLIDAYS:		
See Sundays and Holidays.		
HOPEMONT STATE HOSPITAL:		
Clinical director defined	97	569

	Ch.	Page
HOPEMONT STATE HOSPITAL—(Continued):		
Continued	97	569
Management	97	569
Superintendent		
Chief executive officer	97	569
Defined	97	569
Qualifications	97	569
Exceptions	97	569
HORSE RACING:		
Pari-mutuel wagering		
Auditing	61	335
Authorized	61	334
Breakage		
Licensee entitled to legitimate	61	335
Deduction of commission from pari-mutuel pools	61	335
Minors wagering prohibited	61	336
HOSPITALS:		
License		
Qualifications of applicant	61	329
Required	61	329
HOUSE OF DELEGATES:		
See Legislature.		
HOUSING DEVELOPMENT FUND:		
Corporate powers generally	20	140
Definitions	20	137
Legislative findings and purposes	20	134
Loans		
Operating	20	146
Prohibition on funds inuring to benefit of directors, officers or private persons	20	148
Operating loan fund	20	146
HUNTING:		
See Game and Fish.		
HUNTINGTON:		
Park commission		
Meetings to be public	132	726
Place of meetings	132	726
Title to property	132	726
I		
INCOME TAX:		
Corporations		
Adjustments in determining taxable income	123	693
Deductions, loss deductions	123	695
Exemptions, corporations exempt from tax	123	692
Federal taxable income	123	694
Returns		
Information return for corporations electing to be taxed under subchapter S of Internal Revenue Code	123	696
Meaning of terms (Personal income tax)	122	689
INFANTS:		
Gifts to Minors Act		
Custodian		
Effect of death, resignation or removal	61	373
Duties and powers generally	61	369

	Ch.	Page
INFANTS—(Continued):		
Gifts to minors act—(Cont'd.)		
Custodian—(Cont'd.)		
Resignation, death or removal	61	372
Successor, appointment	61	372
Bond	61	374
Definitions	61	368
Guardian	61	375
See Guardian.		
INHERITANCE AND TRANSFER TAXES:		
Additional tax on net estate of resident or nonresident dying after enactment of section		
Repealed	118	643
INSTITUTIONS:		
See State Institutions.		
INSURANCE:		
Agents, brokers and solicitors		
License		
Qualifications	61	364
County courts authorized to provide group plans for county officers and employees	23	174
Investments by insurers		
Revenue bonds	58	308
Motor Vehicles		
Motor vehicle policy to include an omnibus clause and un- insured motorist coverage	58	303
Conditions for recovery under endorsement	58	307
Rights and obligations of insurer	58	305
INTOXICATING LIQUORS:		
Private clubs		
Commissioner		
Duties and powers generally	5	15
To report violations of law to prosecuting attorneys	5	17
License		
Annual fee	5	14
Application for	5	13
Accompanied by fee	5	14
Contents	5	13
Information required	5	13
Verification	5	13
College fraternity or sorority ineligible for license	5	14
Licensee		
Certain acts of licensee prohibited	5, 61	16, 384
Penalties for violations	5, 61	16, 384
Municipal fee	5	15
Not to be issued to persons who discriminate against per- sons because of race or color	5	14
Purchases		
Licensee must purchase through commissioner	5	16
Sales by commissioner		
Prohibited sales	61	384
J		
JEFFERSON COUNTY:		
County court authorized to convey lands to Jefferson County Fireman's Association, Inc.	133	727

	Ch.	Page
JUDGES:		
Circuit Courts		
See Circuit Courts.		
Retirement System for Judges of Courts of Record		
Benefits		
Disability		
Retirement upon disability	29	197
Eligibility	29	195
Ineligibility to receive benefits	29	196
Payment	29	195
JURY:		
Persons liable to serve as jurors	61	381
JUSTICES OF THE PEACE:		
Fees in criminal cases	60	309
Pleading and practice		
Conducting action	61	381
Defendant		
Making own defense	61	381
Guardian		
Appointment of guardian for infant parties	61	381
JUVENILE COURTS:		
Child defined	61	380
Jurisdiction continuing	61	380
Referee system		
Child		
Defined	28	192
Taken into custody		
Detention hearings	28	193
Release	28	193
Detention of child		
Department of Welfare		
Assistance	28	194
Hearings	28	193
Order of judge or referee following	28	193
Finality	28	193
Force and effect	28	193
Review	28	193
In other counties	28	194
Referee		
Appointment	28	192
Authority	28	192
Compensation	28	192
Qualifications	28	192
K		
KANAWHA COUNTY:		
Court of Common Pleas	33	218
Domestic Relations Court	34	219
See Courts.		
L		
LAND SURVEYORS:		
Licenses		
Application	61	352
Examination	61	351
Exceptions	61	351
Fees	61	352
Qualifications	61	350

	Ch.	Page
LANDSCAPE ARCHITECTS:		
License		
Applicants		
Qualifications	61	359
Applications	61	359
Fee	61	361
Without examination	61	360
LEGAL CAPACITY:		
Persons eighteen years of age shall not lack legal capacity by reason of age	61	319
LEGAL HOLIDAYS:		
Enumeration	62	388
LEGISLATIVE BUILDING COMMISSION:		
Composition	64	394
Contracts for construction of building	64	398
Bond	64	398
Competitive bids required	64	398
Restrictions on	64	399
Created	64	394
Debt		
Creation of state debt not authorized	64	399
Definitions	64	394
Eminent domain, power of granted	64	397
Funds	64	397
Audits	64	398
Deposit and disbursement	64	397
Expenditure	64	397
Security for deposits	64	398
Members		
Appointment	64	395
Compensation and expenses	64	395
Officers	64	395
Powers and duties generally	64	395
Provisions of article severable	64	400
State legislative building		
Management and control	64	399
Vacancies	64	395
LEGISLATURE:		
Blennerhassett Historical Commission		
See Blennerhassett Historical Commission.		
House of Delegates		
Apportionment of membership	4	752
Legislative findings	4	753
Composition	4	752
Number of delegates	4	752
Joint Committee on Government and Finance		
Resolutions authorizing and continuing various studies by...		733
Legislative Building Commission		
See Legislative Building Commission.		
Special Corporation Law Study Committee created (SCR 9)...		732
LIBRARIES:		
Historic Preservation Act		
See Archives and History.		
Interstate Library Compact		
Administrator generally	65	408
Contents	65	401

LIBRARIES—(Continued):	Ch.	Page
Interstate library compact—(Cont'd.)		
Definitions		
State library agency defined	65	407
Districts, interstate library	65	408
Enacted	65	401
Federal and state aid	65	401
Funds		
Restrictions relating to outlay of public funds	65	407
State and federal aid	65	408
State library agency defined	65	407
Withdrawal from compact	65	408
 LIENS:		
Enforcement of certain liens on real property	1	1
 LIMITATION OF ACTIONS:		
Enforcement of liens on real estate	1	1
 M		
 MARION COUNTY:		
Criminal Court	35	220
See Courts.		
 MARRIAGE:		
Celebration		
Who may celebrate rite of marriage	61	378
Qualifications of minister, priest or rabbi for celebrating marriages	61	378
Parent and child		
Consent of parents, parent or guardian	61	377
 MARSHALL COUNTY:		
Common Pleas Court	36	221
See Courts.		
 MCDOWELL COUNTY:		
Intermediate Court	37	224
See Courts.		
 MENTALLY ILL:		
Department of Mental Health		
Director of Mental Health		
Appointment	97	570
Bond	97	570
Duties generally	97	571
Expenses	97	570
Oath	97	570
Powers generally	97	571
Qualifications	97	570
Salary	97	570
Term	97	570
Division of administration		
Created	97	572
Deputy director		
Chief executive officer	97	572
Powers and duties generally	97	572
Qualifications	97	572
Eminent domain		
Power of department	97	572

MENTALLY ILL—(Continued):	Ch.	Page
Hospitalization		
Involuntary hospitalization		
Legal proceedings _____	67	412
Upon written request or medical certification _____	67	411
Duty of sheriff as to transportation _____	67	412
Emergency procedure _____	67	411
Notice of admission to certain persons _____	67	412
Hospitals		
State		
Clinical director defined _____	97	570
Superintendent defined _____	97	570
Voluntary patients		
Authority to receive _____	61	337
Authority to release _____	61	337
Mental health facilities		
Central mental health-mental retardation facility _____	66	409
Establishment, location, operation, etc. _____	66	409
Colin Anderson Center _____	66	410
Community mental health-mental retardation centers		
Establishment, operation, location, etc. _____	66	410
Guthrie Center _____	66	410
Hospitals		
Continued _____	66	409
Management and control _____	66	410
Officers and employees _____	97	573
Superintendents		
Appointment for indefinite term _____	97	573
Qualifications _____	97	573
Exceptions _____	97	573
Salaries _____	97	573
Roney's Point Center _____	66	410
 MIDWIVES:		
Definitions _____	61	353
Licenses		
Qualifications of applicant _____	61	353
 MINERAL COUNTY:		
County court authorized to enter into intergovernmental agreements regarding Cumberland Municipal Airport _____	134	729
 MINES AND MINERALS:		
Coal Refuse Disposal Act		
Coal refuse disposal piles		
Dangerous, remedial action _____	86	526
Defined _____	86	524
Injunctive relief _____	86	526
Orders of director _____	86	526
Constitutionality _____	86	526
Definitions _____	86	524
Director		
Administrative findings and report _____	86	525
Director of Department of Mines _____	86	524
Hearings		
Appeals _____	86	527
Costs and bond _____	86	527
Orders of director _____	86	527
Legal assistance for director _____	86	527
Orders of director _____	86	526
Findings, legislative _____	86	525

MINES AND MINERALS—(Continued):	Ch.	Page
Coal refuse disposal act—(Cont'd.)		
Severability	86	528
Short title	86	524
Interstate Mining Compact		
Compact enacted	85	514
Effective date of article	85	523
Interstate Mining Commission	85	523
Bylaws	85	523
Mining council established	85	522
MOBILE HOMES:		
Authority of county court to require permits for	22	173
MOBILE INTENSIVE CARE PARAMEDICS:		
See Physicians and Surgeons.		
MOLOTOV COCKTAIL:		
Unlawful to make, carry, possess, use, etc.	39	235
Penalty	39	235
MORGAN COUNTY:		
County court authorized to purchase certain real property for county office purposes	135	730
MORTGAGES:		
Enforcement of liens on real estate created by	1	1
MOTOR CARRIER ROAD TAX:		
Additions to tax	121	682
Administration and enforcement		
Allowance for	121	681
Enforcement powers of employees and agents of commis- sioner	121	680
Amount of tax	121	674
Appeals, assessments	121	683
Arrangement of article		
No inference, implication or presumption of legislative construction	121	672
Assessments		
Appeals	121	683
Hearing	121	683
Insufficient return of taxes	121	681
Jeopardy assessments	121	681
Notice	121	683
Petition for reassessment	121	683
Reassessment	121	683
Appeals	121	683
Hearing	121	683
Petition for	121	683
Bonds		
Employees and agents of commissioner	121	681
General provisions	121	679
Citation, short title	121	672
Collection of tax	121	686
By action or suit	121	687
Computation of tax	121	675
Construction and interpretation of article	121	672
Credits against tax	121	678
Debt, tax a debt	121	688
Definitions	121	672
Discontinuance or sale of business	121	685
Corporations, notice from commissioner required	121	685

	Ch.	Page
MOTOR CARRIER ROAD TAX—(continued):		
Disposition of tax collected	121	681
Distress, collection by distraint	121	686
Lien	121	686
Report of collections	121	686
Emergencies		
Emergency permits	121	676
Exemptions from tax	121	677
False statements, penalty	121	678
Fees, registration cards and identification markers	121	676
Fines, penalties and forfeitures		
Additions to tax	121	682
Failure to obtain, carry and display registration cards and identification markers	121	676
False statements	121	678
Fraudulent returns	121	682
Forms, power of commissioner to prescribe	121	687
Identification markers	121	676
Imposition of tax	121	674
In addition to all other taxes	121	674
Injunctions, collection of tax	121	687
Interest on unpaid taxes	121	682
Jeopardy assessments	121	681
Liens		
Collection by distraint	121	686
Recordation	121	686
Unpaid tax	121	688
Willful failure to file returns	121	682
Payment of tax	121	676
Permits, emergency	121	676
Reciprocity, exchange of information	121	687
Records and papers generally	121	675
Examination of	121	675
Refunds	121	679
Registration	121	676
Penalty for failure to obtain, etc.	121	676
Registration cards	121	676
Reports		
Carriers' reports	121	675
Collections by distraint	121	686
Fraudulent returns	121	682
Joint reports	121	675
Reciprocal exchange of information	121	687
Secrecy of returns	121	687
Willful failure to file	121	675
Rules and regulations	121	687
Sale or discontinuance of business	121	685
Severability of article	121	688
Short title	121	672
Subpoena powers of commissioners	121	675
MOTOR CARRIERS:		
Exemptions from chapter	100	577
MOTOR VEHICLES:		
Carriers		
Exemptions from chapter	100	577
Equipment		
Lamps, special restrictions on	73	457
Mufflers, prevention of noise, fumes and smoke	74	459
Intoxicating liquors		
Implied consent for chemical test for intoxication	72	455
Administered at direction of law-enforcement officer	72	456

MOTOR VEHICLES—(Continued):	Ch.	Page
Intoxicating liquors—(Cont'd.)		
Implied consent for chemical test for intoxication—(Cont'd.)		
Law-enforcement officer defined	72	456
Testimony as to result of test	72	457
Test incidental to lawful arrest	72	456
Operators and chauffeurs licenses		
Chauffeurs		
Age limit for chauffeurs driving school buses and transporting persons or property for hire	61	331
Issuance of license under prior law	61	331
Licensee need not procure operator's license	71	453
Surrender of operator's license required	71	453
Driver License Compact	70	447
Authorization	70	447
Definitions	70	451
Implementation of compact	70	452
Examination of applicants	61	331
Necessary to drive upon streets or highways	70	452
School buses		
Age limit for chauffeurs driving school buses	61	331
Safety responsibility		
Security following accident		
Commissioner to determine amount	75	460
Form of security	75	461
Hearing procedures	75	462
Judicial review	75	464
Notices	75	461
Exceptions to requirement of security	75	461
Traffic regulations and laws of the road		
Enforcement of chapter	71	454
Police		
Bond of special officers	71	454
Designation of special officers	71	454
Failure to obey police officer	71	454
Provisions refer to vehicles upon streets and highways	71	454
Exceptions	71	454
MUNICIPALITIES:		
Attorney at law		
Authority to hire special counsel	76	465
Consent to other representation	76	466
Civil Service System		
Fire departments		
See Fire Department.		
Police		
See Police.		
Development		
See Planning and Zoning.		
Fire fighting		
Powers to contract for prevention and extinguishment within three miles of corporate limits	80	479
Funds		
Balances in sinking fund may be transferred or remitted to general fund where bonded indebtedness has been paid, etc.	79	476
Governing body		
General powers	77	467
Powers of municipalities and governing bodies generally	77	467
Streets and alleys		
Powers of municipalities	77	467
Taxation		
Business and occupation or privilege tax	78	475
Limitations as to contractors and financial institutions.....	78	475

N

	Ch.	Page
NATIONAL GUARD:		
Defense of guardsmen by Attorney General	13	119
NATURAL RESOURCES:		
Conservation officers		
Oath	87	529
Qualifications	87	529
Retirement	87	530
Uniforms	87	530
Forests and wildlife areas		
Acquisition of suitable lands by director	101	581
Fires		
Recovery of costs incurred in fighting	83	484
Maintenance	101	581
Roads and highways		
Authority of Commissioner of Highways	101	580, 582
Game and fish		
Class A-1 small arms hunting license	81	482
See Game and Fish.		
Mines and minerals		
Interstate Mining Compact	85	514
See Mines and Minerals.		
Public Land Corporation of West Virginia		
See Public Land Corporation.		
Water Development Authority		
See Water Development Authority.		
NEW CUMBERLAND:		
County Court of Hancock County authorized to advance funds for addition to water system	131	725
NONINTOXICATING BEER:		
License		
Age requirement	61	325
Application		
Form	61	324
Bond, surety	61	324
Fee	61	324
Refusal		
Procedure	61	327
NURSES:		
Board of examiners		
Appointment and reappointment	93	552
Compensation	93	553
Composition	93	553
Permits, temporary	93	555
Qualifications	93	553
Removal	93	553
Terms of office	93	553
Vacancies, filling	93	553
Inactive list	93	556
Licenses		
Applications		
Examination	93	554
Qualifications of applicant	93	554
Fees	93	555
Reinstatement	93	556
Renewal	93	556
Inactive list	93	556

NURSES—(Continued):	Ch.	Page
Licenses—(Cont'd.)		
Nonresidents licensed in another state	93	554
Penalties for practicing without license	93	556
Reinstatement	93	556
Renewal	93	556
Retiring temporarily, procedure	93	556
Waiver licenses	93	554
O		
OIL AND GAS:		
Deputy director for oil and gas		
Eligibility	68	417
Drilling units		
Pooling interest in deep wells	69	437
Secondary recovery of oil	69	469
Unit operation	69	439
Validity of unit agreements	69	441
Examining board		
Appointment	68	421
Chairman	68	422
Compensation	68	421
Composition	68	421
Created	68	421
Duties generally	68	422
Meetings	68	422
Oath of members	68	422
Secretary	68	421
Term of office	68	421
Powers generally	68	422
Report to governor	68	424
Inspectors		
Appointment	68	418
Eligibility	68	418
Expenses	68	419
Qualifications	68	418
Removal	68	419
Salaries	68	418
Oil and gas conservation		
Application of article	69	429
Exclusions	69	429
Conservation commission created	69	430
Appointed by governor	69	430
Commissioner		
Appointment	69	432
Hearing procedures	69	441
Injunctive relief	69	443
Judicial review of decisions	69	442
Appeals to Supreme Court of Appeals	69	442
Legal representation	69	443
Powers and duties generally	69	432
Qualifications	69	432
Rules and regulations	69	433
Notice requirements	69	433
Compensation	69	431
Composition	69	430
Expenses	69	431
Meetings	69	431
Qualifications of members	69	430
Terms of office	69	431
Vacancies on commission filled by governor	69	431
Construction of article	69	446

OIL AND GAS—(Continued):	Ch.	Page
Oil and gas conservation—(Cont'd.)		
Declaration of public policy	69	426
Definitions	69	426
Legislative findings	69	427
Penalties	69	445
Severability of provisions of article	69	446
Taxation		
Special oil and gas conservation tax	69	146
Waste prohibited	69	434

OPTOMETRISTS:

Registration		
Examination	61	344
Qualifications for registration	61	344

OSTEOPATHIC PHYSICIANS AND SURGEONS:

Assistants

Certification		
Approval and certification by board of osteopathy	94	559
Defined	94	559
Fees	94	559
Limitation on scope of duty	94	559
Qualifications	94	559
Standards for employment	94	558
Supervision	94	558

License

Certificate of license issued by board	94	558
Examination		
Application	61, 94	352, 557
Character of examination	94	558
Requirements	61, 94	352, 557
Fee	94	558

P

PARKS AND RECREATION:

County parks and recreation commissions		
See Counties.		
Division of Parks and Recreation		
Duties generally of chief of division	101	582
Functions and services of various commissions transferred to		
Department of Natural Resources	101	583
Supervision of state parks and recreation areas	101	582
Roads		
Control by Commissioner of Highways	101	580, 582

PHARMACISTS:

Registration		
Certificate of registration	61	340
Fee	61	341
Qualifications for registration	61	340

PHYSICAL THERAPISTS:

Licenses		
Application generally	61	356
Qualifications of applicant	61	356

PHYSICIANS AND SURGEONS:

License to practice		
Evidence of qualification	89	535
Limitations of article	89	535
Required	89	535

PHYSICIANS AND SURGEONS—(Continued):	Ch.	Page
Medical corporations		
Certificate of authorization	90	538
Issuance by secretary of state	90	538
Notice to secretary of state of application	90	538
Registration		
Application	90	538
Fee	90	538
Mobile intensive care paramedics		
Ambulance and rescue squad personnel programs	89	536
Definitions	89	536
Immunity from civil liability	89	537
Services that may be performed	89	537
Osteopathic physicians and surgeons		
See Osteopathic Physicians and Surgeons.		
Practice of medicine and surgery		
Nonresident practitioners called into consultation	89	536
Who deemed practitioner	89	535
Qualifications		
Practice of medicine and surgery defined	89	536
PINECREST HOSPITAL:		
Clinical director defined	97	567
Continuation	97	566
Established at Beckley	97	566
Management	97	566
Superintendent		
Chief executive officer	97	566
Defined	97	567
Qualifications	97	566
Exceptions	97	567
PLANNING AND ZONING:		
Regional planning and development		
Bids		
Contracts for services, materials, etc.	5	764
Publication of notice for bids	5	764
Citizens' advisory committees		
Appointment	5	768
Comprehensive planning		
Defined	5	757
Powers and duties of regional councils	5	764
Construction of article	5	770
Contracts for services, materials, etc.	5	764
Publication of notice for bids	5	764
Cooperation		
Regional councils and other planning or development agencies, governmental units, etc.	5	767
Definitions	5	757
Development, defined	5	757
Effect of article		
Upon pending projects and applications	5	769
Funds		
Effect of article upon pending projects and applications	5	769
Powers and duties of regional councils	5	764
Review of applications for loans or grants	5	767
Governor		
Delineation of regions and recommendation of Governor thereon	5	759
Powers and duties generally	5	757
Hearings		
Public hearings on regional boundaries	5	759

PLANNING AND ZONING—(Continued):	Ch.	Page
Regional planning and development—(Cont'd.)		
Legislative findings and intent	5	756
Liberal construction of article	5	770
Loans or grants, review of applications for	5	767
Pending projects and applications, effect of article	5	769
Publication		
Notice for bids	5	764
Statement fixing regional boundaries	5	759
Purpose of article	5	756
Regional councils		
Annual budget	5	768
Annual report	5	769
Budget	5	768
Chairman	5	763
Temporary chairman	5	761
Citizens' advisory committee, appointment	5	768
Composition	5	762
Contracts for services, materials, etc.	5	764
Contributions by governmental units	5	768
Cooperation with other planning or development agencies, governmental units, etc.	5	767
Defined	5	757
Deposits and disbursements	5	768
Duties generally	5	764
Effect on interstate planning commissions and other existing organizations	5	761
Executive committee	5	762
Formation	5	761
Funds		
Annual budget	5	768
Contributions by governmental units	5	768
Deposits and disbursements	5	768
Membership	5	762
Officers	5	762
Organization, etc.	5	762
Organizational meetings	5	761
Personnel	5	763
Powers and duties		
Contracts for services, materials, etc.	5	764
Generally	5	764
Purpose	5	761
Quorum	5	761
Receipt of funds and assistance	5	761
Report, annual	5	769
Representation on council	5	762
Review of application for loans or grants	5	767
Selection of certain members	5	762
Regions		
Boundaries, certification	5	759
Change in boundaries	5	759
Publication of statement fixing	5	759
Public hearings	5	759
Defined	5	757
Delineation of regions and recommendations of Governor thereon	5	759
Reports, annual report of regional councils	5	769
Rules and regulations	5	765
PLANT PEST ACT:		
Commissioner of Agriculture	4	9
Enforcement of law	4	9

PLANT PEST ACT—(Continued):	Ch.	Page
Commissioner of agriculture—(Cont'd.)		
Powers generally	4	9
Right of entry on premises	4	10
Definitions	4	6
Detection and abundance surveys	4	9
Eradication or control of infestation	4	9
Orders of commissioner	4	10
Injunctions for violations of law, rules and regulations	4	9
Nursery, inspection of	4	10
Nursery stock		
Seizure of infested or infected	4	10
When inspection certificate required	4	10
Permit required to sell, transport, etc., plant pests	4	11
Request for inspection	4	11
Certificate stating results of inspection	4	11
Rules and regulations for eradication, etc., plant pests	4	9
Suppression	4	9
Transportation		
Permit required to transport plant pests	4	11
POLICE:		
Civil service		
Examinations		
Application		
Age requirements	61	322
Exceptions	61	321
Form of application	61	321
PRISONERS:		
Release of jail inmates for work and other purposes	40	236
PRIVATE CLUBS:		
See Intoxicating Liquors.		
PROBATION AND PAROLE:		
Officers		
Appointment by judge	42	241
Assistants	42	241
Salary	42	241
Salary	42	241
Presentence diagnosis and classification	41	239
Custody of convicted person	41	239
Penalty for escape	41	240
Power of court	41	239
Release on probation	41	239
Suspension of sentence	41	239
PROFESSIONS AND OCCUPATIONS:		
See under heading of particular profession or occupation.		
PROSECUTING ATTORNEY:		
Assistants, deputies and employees		
Annual reports of expenditures for	21	170
Appointment	21	163, 165
Compensation	21	164, 166
Affidavit acknowledging receipt of	21	167
Payment	21	166
Discharge	21	166
In-service training programs	21	159
Payment of expenses	21	159
Mileage allowance	21	170
Removal of assistants	21	165

PROSECUTING ATTORNEY—(Continued):	Ch.	Page
Budget statement	21	164
Duties		
Additional in counties in excess of 200,000 population	21	159
Compensation	21	161
Affidavit acknowledging receipt of	21	167
Classification of counties for purpose of determining	21	160
Payment	21	166
Sharing that of deputy, etc., prohibited	21	168
Penalty	21	168
Expenditures		
Report to county court	21	170
Expenses, allowance for	21	170
Mileage allowance	21	170
Penalties for failure to perform certain acts	21	171
Request for appropriation of funds	21	164
Training programs	21	159
Payment of expenses	21	159
PSYCHOLOGISTS:		
Licenses		
Applicant		
Qualifications	61, 95	357, 560
Fees	61, 95	359, 562
Renewal	95	562
Renewal	95	562
Without examination	61, 95	358, 561
Permits		
Temporary permits	95	562
Fee	95	563
PUBLIC ACCOUNTANTS:		
See Certified Public Accountants.		
PUBLIC LAND CORPORATION:		
Authority generally	12	112
Composition	12	111
Continued	12	110
Cooperation with Blennerhassett Historical Commission	12	112
Cooperation with federal government	12	112
Governor chairman of board	12	111
May sue and be sued	12	111
Powers generally	12	111
Reports	12	112
Secretary	12	111
Use of income	12	111
Vested with title to public lands	12	111
PUBLIC SAFETY:		
Criminal Investigation Bureau		
Duties generally	45	258
Establishment by superintendent	45	258
Fingerprinting of persons arrested	45	260
Offenses and penalties	45	261
Officer in charge	45	258
Photographs, records and other information	45	259
Reports by courts, prosecuting attorneys and law-enforcement officers	45	260
Death, disability and retirement fund		
Awards		
Death after retirement or after serving twenty years	44	257
Death in performance of duty	44	256
Retirement	44	255

	Ch.	Page
PUBLIC SAFETY—(Continued):		
Death disability and retirement fund—(Cont'd.)		
Benefits		
Retirement benefits	44	255
Death of member		
After retirement or after serving twenty years	44	257
In performance of duty	44	256
Dependents		
Awards and benefits to dependents	44	256
When member dies after retirement or after serving twenty years	44	257
When member dies in performance of duty	44	256
Retirement		
Awards and benefits	44	255
Grounds for	44	254
Members of department		
Appointment		
Age requirement	61	327
Initial grade	61	328
Preference for veterans	61	327
Promotions generally	61	328
Qualifications	61	327
Retirement		
Awards and benefits	44	255
Grounds for	44	254
PUBLIC SERVICE COMMISSION:		
Certain vehicles exempt from regulation by	100	577
PUBLIC WELFARE:		
Assistance		
Application		
Penalties for false statements	129	721
Continuation of present aid	127	718
Contributions by counties	127	718
Medical services		
Paid from medical services fund	127	717
Commissioner defined	127	715
Counties		
Contributions to special welfare fund	127	718
Definitions	127	715
Department		
Defined	127	715
Information and data to be supplied by other agencies	128	719
Powers generally	128	719
Responsibility	128	719
False pretenses and statements		
Penalties	129	721
Funds		
Medical service fund	127	717
State general relief fund	127	718
R		
RALEIGH COUNTY:		
Intermediate Court	38	225
See Courts.		
REAL PROPERTY:		
Enforcement of certain liens	1	1
See Uniform Relocation and Real Property Assistance Act	53	293

	Ch.	Page
REGULATION OF TRADE:		
Real Estate Commission		
Brokers and salesmen		
Qualifications for licenses	61	377
RELIGIOUS ORGANIZATIONS:		
Actions		
Proceedings to prevent conveyance or creation of liens ..	61	366
Trustees		
Power of trustee to sell and encumber property	61	365
RETIREMENT SYSTEM:		
Judges of courts of record		
See Judges.		
Department of Public Safety		
See Public Safety.		
Teachers		
See Teachers Retirement System.		
ROADS AND HIGHWAYS:		
Bond issues		
Better Roads Amendment of 1964		
Sale of \$20 million of bonds authorized	103	587
Roads Development Amendment of 1968		
Limitation on amount of sale at any one time	102	585
Commissioner		
Control of state road system	101	579
County courts		
Control of bridges, roads and landings	101	580
Forests and wildlife areas		
See Forests and Wildlife Areas.		
Relocation assistance to persons displaced from property	53	293
State road system		
Classification of state roads	101	579
Control by commissioner	101	579
Definitions of roads comprising system	101	580
5		
SANITARIANS:		
Registration		
Eligibility and qualifications of applicant	61	355
SCHOLARSHIPS:		
Recipients and awards of scholarships	114	628
SCHOOLS:		
Age		
Adult education classes	110	615
Pupil's age for school attendance	110	615
Commercial driver education schools		
Certificate issued by school	104	601
Record of certificates issued	104	601
Courses prescribed by state board of education	104	600
Inspection by state superintendent of schools	104	600
Licenses		
Application	104	600
Assignment prohibited	104	601
Display	104	601
Fee	104	600
Issuance	104	600
Nontransferable	104	601
Renewal	104	600
Fee	104	600

SCHOOLS—(Continued):	Ch.	Page
Commercial driver education school—(Cont'd.)		
Lists of approved schools	104	601
Tuition fee	104	601
County board of education		
See Boards of Education.		
County superintendent		
Travel expenses		
Reimbursement	107	607
Voucher	107	607
Deaf and blind		
Compulsory education	61	332
Offenses and penalties	61	332
Enumeration	61	333
West Virginia schools for deaf and blind	61	333
Age of pupils	61	333
Registration by assessors	61	334
Special admissions	61	333
Motor vehicles		
Driver education and training		
Appropriations	104	598
Course of study		
Available to all secondary school pupils	104	599
Application by pupil for unrestricted operator's license	104	599
Exemption	104	599
Establishment and maintenance	104	597
Successful completion of course qualifies pupil for un- restricted operator's license	104	599
Enrollment		
Who may enroll	104	597
Exemption from learner's permit requirement	104	597
Funds		
Expenditure of school funds for courses	104	598
Implementation deadlines	104	595
Insurance		
Automobile liability insurance covering vehicles used	104	599
Learner's permit		
Exemption from requirements	104	597
Priorities for course availability	104	595
Purpose and objectives of article	104	595
Rules and regulations	104	597
Standards		
Minimum standards specified	104	596
State board to establish minimum course standards	104	596
Students with mental or physical defects	104	596
Where provided	104	595
Who may enroll	104	597
Public school support		
Appraisal and assessment of property	112	619
Computation of local share	112	619
Regional educational service agencies		
Establishment of multi-county agencies	105	602
Scholarships		
Recipients and awards	114	615
State board of school finance		
Approval of budgets of county boards of education	113	625
Teachers retirement system		
See Teachers Retirement System.		
Textbooks		
Adoption		
Approval by state board of education	106	606

SCHOOLS—(Continued):	Ch.	Page
Textbooks—(Cont'd.)		
Adoption—(Cont'd.)		
Bids		
Deposit by bidder	106	604
Procedure	106	604
Request for bids	106	604
Changes		
When changes may be affected	106	606
Classification of school subjects into adoption groups	106	603
Contracts	106	605
Bond	106	605
County boards of education		
Selection by	106	606
Lists of approved books		
Selection, approval and publication	106	604
Rules and regulations	106	607
Samples, request for	106	604
Schedules for period of adoption	106	603
Selection by county boards of education	106	606
Tuberculosis		
Compulsory testing of school children and school personnel...	56	301
SECURITIES:		
See Speculative Securities and Fraudulent Sales.		
SHERIFF:		
Assistants, deputies and employees		
Annual reports of expenditures for	21	170
Appointment	21	163
Compensation	21	164
Affidavit acknowledging receipt of	21	167
Payment	21	166
Discharge	21	165
Mileage allowance	21	170
Budget statement	21	164
Compensation	21	161
Affidavit acknowledging receipt of	21	167
Classification of counties for purpose of determining	21	160
Payment	21	166
Sharing that of deputy, etc., prohibited	21	168
Penalty	21	168
County depositories		
Treasurer may deposit excess funds in interest-bearing accounts	24	175
Deputies		
Civil service system for appointment, etc.		
See Civil Service.		
In-service training programs	21	159
Payment of expense	21	159
Expenditures		
Report to county court	21	170
Expenses	21	168
In-service training programs	21	159
Mileage allowance	21	170
Penalties for failure to perform certain acts	21	171
Request for appropriation of funds	21	164
Training programs	21	169
Payment of expenses	21	169
SPECULATIVE SECURITIES AND FRAUDULENT SALES:		
Dealers		
Consent to service of process	61	362

SPECULATIVE SECURITIES AND FRAUDULENT SALES—(Continued):

Dealers—(Cont'd.)	Ch.	Page
Registration of dealers	61	361
Expiration	61	363
Fees	61	363
Procedure	61	361
Renewal	61	363
Responsibility as to bills, confirmations, etc.	61	363
Fees		
Registration of dealers and salesmen	61	363
Salesmen		
Registration	61	361
Expiration	61	363
Fee	61	363
Qualifications	61	362
Renewal	61	363
STATE:		
Claims against		
Payment of, against certain state departments and agencies	16	123
Payment of, against the Department of Mental Health	15	121
STATE INSTITUTIONS:		
Commissioner of Public Institutions		
Forestry camps for male offenders		
See Forestry Camps for Male Offenders.		
Institutions managed by	96	563
Transfer of inmates		
Powers of commissioner	98	574
Officers and employees		
Appointment	96	565
Certain officers appointed by Governor	96	565
Removal	96	565
Salaries	96	566
See under name of particular institution.		
STATUTES:		
Rule for construction of statutes	61	315
SUGGESTION OF SALARY AND WAGES:		
Action for failure or refusal to pay	116	630
Payment		
In satisfaction of execution	116	630
Payments to be made every ninety days	116	630
Service of suggestee execution	116	629
Suggestion of state and political subdivisions		
Actions against political subdivision failing to pay	116	631
Auditor		
Declaratory judgment as to rights against State	116	631
Payments in satisfaction of execution	116	630
Liability of officer for payment or failure to pay	116	631
When payment	116	631
SUNDAYS AND HOLIDAYS:		
Legal holidays		
Enumeration	63	388
When time fixed for official acts or court proceedings falls on		
Sunday or holiday	63	389
T		
TAX COMMISSIONER:		
Establishment of in-service training programs for county		
officers and employees	21	159

TAXATION:	Ch.	Page
Assessment and valuation of property		
Capital used in business of natural persons	117	636
Corporations		
Capital stock	117	634
Entry of corporate property by assessor	117	635
Items included in return	117	634
Reports to assessor	117	634
Ferries		
Assessment for taxation	117	641
Land books		
Consolidation of contiguous tracts or mineral or timber interests	117	640
Ferries	117	641
To contain separate lists	117	638
Personal property		
In what district assessed	117	642
Assessors		
Information to be obtained from landowners by assessor ..	117	638
Business and occupation tax		
See Business and Occupation Tax.		
Corporation net income tax		
See Income Tax.		
Gasoline and special fuel excise tax		
Actions		
Collection by action or suit	120	667
Distrain	120	668
Injunctions	120	668
Additions to tax	120	663
Adjustment, prepaid tax	120	662
Administration and enforcement	120	662
Amounts allowed	120	662
Enforcement powers of employees or agents of com- missioner	120	661
Amount of tax	120	653
Appeals, assessment of tax	120	665
Assessment		
Jeopardy assessment	120	663
Notice of assessment	120	664
Petition for reassessment	120	664
Reassessment		
Appeals	120	665
Hearings	120	665
Petition for	120	664
When tax insufficiently returned	120	663
Bonds, surety		
Agents and employees of commissioner	120	662
New bond	120	661
Release of surety	120	661
Required	120	661
Citation of article	120	649
Collection by action or suit	120	668
By distrain	120	667
Report of collection	120	667
Commissioner		
Defined	120	650
Forms	120	669
Notice from commissioner a prerequisite to issuance of certificate of dissolution or withdrawal of corporation ..	120	667
Rules and regulations	120	669
Computation	120	653
Construction and interpretation of article	120	649

TAXATION—(continued):	Ch.	Page
Gasoline and special fuel excise tax—(Cont'd.)		
Corporations, dissolution or withdrawal	120	667
Debt, tax a debt	120	670
Definitions	120	650
Discontinuance or sale of business of taxpayer	120	666
Disposition of tax collected	120	662
Distributors, payment of tax	120	655
Exemptions from tax	120	654
False statements	120	657
Penalty	120	657
Forms, prescribed by commissioner	120	669
Fraudulent returns	120	663
How payable	120	657
Imposition of tax	120	653
Injunction	120	668
Interest	120	668
Interstate shipments		
Export shipments not taxable	120	655
Jeopardy assessments	120	663
Levy of tax	120	653
Lien		
Recordation of lien	120	670
Unpaid tax	120	670
Measure of tax	120	653
Penalties	120	663
Prepaid tax adjustment	120	662
Reciprocal exchange of information	120	669
Records		
Examination	120	656
To be kept	120	656
Refund of taxes		
Because of certain nonhighway uses	120	659
Change of rate	120	658
False statements	120	657
Gallonage exported or lost	120	658
General provisions	120	658
Illegally collected	120	658
Nonhighway uses	120	659
Partial refund of tax on tax paid gallonage consumed in buses	120	660
Petition for refund	120	658
Reports		
Due date	120	656
False statements	120	657
Reciprocal exchange of information	120	669
Required	120	656
Secrecy of returns and reciprocal exchange of information	120	669
Roads and highways, tax to be used for	120	662
Rules and regulations	120	669
Sale or discontinuance of business	120	666
Secrecy of returns	120	669
Severability of article	120	670
Short title	120	649
Subpoena powers of commissioner	120	656
Tax due	120	656
Willful failure to file	120	663
Witnesses, examination of	120	658
Inheritance and transfer taxes		
See Inheritance and Transfer Taxes.		

TAXATION—(continued):	Ch.	Page
Magisterial districts		
Tax districts		
Assessment of land lying in more than one county	117	639
County court may reject section	117	633
Land books to contain separate lists	117	638
Entry separately for tax districts	117	638
Legislative findings	117	633
Personal property, in what district assessed	117	642
Terms defined	117	633
Motor carriers		
Motor carrier road tax		
See Motor Carrier Road Tax.		
Municipalities		
Land books to contain separate lists	117	638
Entry of town lots	117	638
Personal income tax		
Tax relief for elderly homeowners and renters		
Appeals generally	124	707
Article liberally construed	124	698
Claimant		
Appeals	124	707
Definitions	124	698
Hearings	124	707
Instructions	124	704
Maximum participation	124	704
Relief limited to one claimant per homestead per year	124	705
Claims		
Appeals	124	707
Computation of relief	124	701
Denial of claim	124	706
Hearing appeals	124	707
Disbursement from state funds	124	706
Filing date	124	705
Forms	124	704
Hearings	124	707
Instructions	124	704
Landlord's cooperation required	124	705
Limits	124	701
Maximum participation	124	704
Offset	124	706
Penalties	124	706
Personal	124	706
Proof of claim	124	705
Table	124	701
Violations and penalties	124	706
Computation of relief	124	701
Construction of article	124	698
Declaration of purpose	124	698
Definitions	124	698
Effective date of article	124	708
Forms, claim	124	704
Hearings	124	707
Instructions for claimants	124	704
Landlord's cooperation required	124	705
Maximum participation	124	704
Penalties for violations	124	706
Severability of article	124	708
Tables	124	701

	Ch.	Page
TEACHERS RETIREMENT SYSTEM:		
Annuitties		
Computation	114	615
TOBACCO:		
See Cigarettes.	57	302
TRUST DEEDS:		
Extension of time for enforcement of lien	1	1
TRUSTS AND TRUSTEES:		
Religious organizations		
Sale and encumbrance of property by trustee	61	385
Proceedings to prevent	61	366
Substitution of trustee by circuit court	3	4
TUBERCULOSIS:		
School children and school personnel		
Compulsory testing	56	301
Suspension from school or employment of pupils and personnel having tuberculosis in communicable state	56	302
X rays required for reactors	56	302
U		
UNEMPLOYMENT COMPENSATION:		
Benefits		
Benefits pending appeal	125	709
Claim procedure		
Appeal and error		
Appeal from tribunal's decision	125	711
Benefits pending appeal	125	709
Finality of decision of appeal tribunal	125	711
Hearing and determination in labor dispute cases	125	711
Notice of decision of appeal tribunal	125	711
Review by board of review	125	712
Board of review		
Appeal tribunals	125	711
Hearings, scope of	125	712
Labor dispute cases	125	711
Notice to claimant, last employer and the commissioner ..	125	712
Commissioner of employment security		
Appointment of deputies	125	709
Deemed an interested party	125	712
Deputies		
Appointment by commissioner	125	709
Hearings	125	709
Initial determination	125	709
Investigation of claims for benefits	125	709
Labor dispute claims, referral	125	709
Notice and hearing before deputy	125	709
Examiner		
Appeal tribunal	125	711
UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACT:		
Construction of article	53	295
Definitions	53	293
Dislocation assistance	53	295
Implementation of federal act	53	294
Payments		
Not considered income for certain purposes	53	295
Powers of state agencies	53	294
Purposes	53	204
Severability of provisions of article	53	296

UNIVERSITIES AND COLLEGES:

	Ch.	Page
Board of Regents		
Graduate college		
Establishment and operation	115	628
Transfer of programs, etc., of Kanawha Valley Graduate Center	115	628

V**VETERANS:**

Department of Veterans' Affairs

Director		
Compensation	126	713
Deputies, assistants and employees	126	713
Traveling expenses	126	713
Veterans' Council		
Compensation of council members	126	713
Fixing salaries of employees of department	126	713
Meetings	126	713
Quorum	126	713
Traveling expenses	126	713

VETERINARIANS:

Licenses

Application	61	348
Actions to be taken	61	349
Contents	61	348
Fee	61	349
Qualifications of applicant	61	348

W**WAGES:**

See Suggestion of Salary and Wages.

WATER DEVELOPMENT AUTHORITY:

Agencies		
Authorized to convey property	84	510
Cooperation of other governmental agencies	84	507
Board		
Appointment of board members	84	494
Compensation and expenses	84	495
Created	84	494
Organization	84	495
Terms of office	84	494
Bondholders		
Legal remedies	84	512
Bond issues		
Lawful investments	84	509
No liability of state, county, municipality or political subdivision	84	505
Requirements and manner of issuance	84	500
State agencies	84	507
Trust agreement	84	503
Trustees for bondholders	84	503
Construction and interpretation of article	84	513
Contracts		
Cooperation of other governmental agencies	84	507
Financial interest in contracts prohibited	84	512
Penalty	84	512
Created	84	494
Declaration of policy and responsibility	84	488
Definitions	84	489
Director of authority	84	496

WATER DEVELOPMENT AUTHORITY—(Continued):		
	Ch.	Page
Duties generally	84	496
Expenses incurred no liability of state, county, municipality or political subdivision	84	505
Findings	84	488
Funds		
Expenditure of funds	84	500
Investment of funds by authority	84	506
Use of funds by authority	84	506
Restrictions	84	506
Leases	84	507
Meetings		
Public meeting required	84	513
Organization	84	494
Powers generally	84	496
Projects		
Maintenance, operation and repair	84	509
Rents and revenues	84	507
Property		
Acquisition of property by authority	84	510, 511
Acquisition of property of common carriers and public utilities	84	511
Purpose	84	488
Records to be kept public	84	513
Rentals	84	507
Reports to governor and legislature	84	509
Responsibilities generally	84	496
Severability of article	84	513
Taxation		
Exemption from taxation	84	509
Title	84	488
Trusts and trustees		
Legal remedies of bondholders and trustees	84	504
Water development projects		
Powers of authority	84	496
 WATER POLLUTION CONTROL ACT:		
Voluntary water quality monitors		
Age requirement	61	336
Appointment	61	336
Compensation	61	336
Duties	61	336
 WEAPONS:		
Dangerous weapons		
License for carriage	61	385
How obtained	61	385
 WEEDS:		
Noxious, defined	4	9
See Plant Pest Act.		
 WELCH EMERGENCY HOSPITAL:		
Clinical director defined	97	568
Continued	97	568
Management	97	568
Superintendent		
Chief executive officer	97	568
Defined	97	568
Qualifications	97	568
Exceptions	97	568

INDEX

825

	Ch.	Page
WELFARE:		
See Public Welfare.		
WILLS:		
Impeachment or establishment	61	375
Time within which to institute suit	61	375
Pretermitted children		
Where child living when will made	61	374
Where no child living when will made	61	374
WORKMEN'S COMPENSATION:		
Disability and death benefits		
Death benefits		
Amount	130	722
Classification	130	722
Disbursement	130	722
Nonresident alien beneficiaries		
Definition	130	725
Entitled to benefits	130	725