WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1988

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ENROLLED

COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 331

(By Senators Jackson and Tucker)

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PASSED MARCH 12, 1988

In Effect JULY 1, 1988
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 331
(SENATORS JACKSON AND TUCKER, original sponsors)

[Passed March 18, 1988; to take effect July 1, 1988]

AN ACT to amend and reenact section five-d, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article one, chapter fifty-one of said code by adding thereto a new section, designated section twenty; to amend and reenact sections three, five, six, seven, eight, fifteen and sixteen, article one, chapter fifty-two of said code; to further amend said article one, chapter fifty-two by adding thereto two new sections, designated sections five-a and seven-a; and to amend and reenact sections three and four, article two of said chapter fifty-two, all relating to jury selection generally; creating an exception to the confidentiality of tax returns and requiring the tax commissioner to provide lists of individuals filing state personal income tax returns for purposes of jury selection; providing for a feasibility study by the supreme court of appeals of a one day, one trial jury selection system; defining certain terms to be used in the selection of jurors; providing for the compiling of a master list of residents of the county from which prospective jurors are to be chosen; describing the lists of names to be used in compiling the master list; requiring persons on the master list to complete a juror qualification form and describing the contents thereof; defining penalties for willfully
misrepresenting a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror; mandating the maintenance of a jury box or jury wheel; prescribing a formula for determining the minimum number of names to be included in a jury box or jury wheel; providing for the random selection of names to be placed in the jury box or jury wheel; providing for the random drawing of names from the jury box or jury wheel of panels for juries; defining a civil penalty for prospective jurors who fail to appear or fail to show good cause for failure to appear; authorizing the optional use of computerized selection; describing the circumstances under which a prospective juror is disqualified from jury service; providing the filing of motions which allege a substantial failure to comply with applicable procedures for selecting a jury; establishing limitations on the preservation of records; requiring reports by the jury commissioners to the supreme court of appeals and the Legislature; prescribing the method for selecting grand jurors and alternate grand jurors; and establishing the number of grand jurors attending a session of the grand jury necessary for a quorum.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 11. TAXATION.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-5d. Confidentiality and disclosure of returns and return information.

1 (a) General rule.—Except when required in an official investigation by the tax commissioner into the amount of
tax due under any article administered under this article or in any proceeding in which the tax commissioner is a party before a court of competent jurisdiction to collect or ascertain the amount of such tax and except as provided in subsections (d) through (n) of this section, it shall be unlawful for any officer or employee of this state to divulge or make known in any manner the tax return, or any part thereof, of any person or disclose information concerning the personal affairs of any individual or the business of any single firm or corporation, or disclose the amount of income, or any particulars set forth or disclosed in any report, declaration or return required to be filed with the tax commissioner by any article of this chapter imposing any tax administered under this article or by any rule or regulation of the tax commissioner issued thereunder, or disclosed in any audit or investigation conducted under this article.

(b) Definitions.—For purposes of this section:

(1) Background file document.—The term "background file document," with respect to a written determination, includes the request for that written determination, any written material submitted in support of the request and any communication (written or otherwise) between the state tax department and any person outside the state tax department in connection with the written determination received before issuance of the written determination.

(2) Disclosure.—The term "disclosure" means the making known to any person in any manner whatsoever a return or return information.

(3) Inspection.—The terms "inspection" and "inspected" mean any examination of a return or return information.

(4) Return.—The term "return" means any tax or information return or report, declaration of estimated tax, claim or petition for refund or credit, or petition for reassessment that is required by, or provided for, or permitted, under the provisions of this article (or any article of this chapter administered under this article) which is filed with the tax commissioner by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments or
(5) *Return information.*—The term "return information" means:

(A) A taxpayer's identity; the nature, source or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data received by, recorded by, prepared by, furnished to or collected by the tax commissioner with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) or by any person under the provisions of this article (or any article of this chapter administered under this article) for any tax, additions to tax, penalty, interest, fine, forfeiture, or other imposition or offense; and

(B) Any part of any written determination or any background file document relating to such written determination. "Return information" does not include, however, data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. Nothing in the preceding sentence, or in any other provision of this code, shall be construed to require the disclosure of standards used or to be used for the selection of returns for examination, or data used or to be used for determining such standards.

(6) *Tax administration.*—The term "tax administration" means:

(A) The administration, management, conduct, direction and supervision of the execution and application of the tax laws or related statutes of this state, and the development and formulation of state tax policy relating to existing or proposed state tax laws, and related statutes of this state, and

(B) Includes assessment, collection, enforcement, litigation, publication and statistical gathering functions under the laws of this state.

(7) *Taxpayer identity.*—The term "taxpayer identity" means the name of a person with respect to whom a return is
filed, his mailing address, his taxpayer identifying number
or a combination thereof.

(8) **Taxpayer return information.**—The term "taxpayer
return information" means return information as defined in
subdivision (5) of this subsection (b) which is filed with, or
furnished to, the tax commissioner by or on behalf of the
taxpayer to whom such return information relates.

(9) **Written determination.**—The term "written
determination" means a ruling, determination letter,
technical advice memorandum or letter or administrative
decision issued by the tax commissioner.

(c) **Criminal penalty.**—Any officer or employee (or
former officer or employee) of this state who violates this
section shall be guilty of a misdemeanor, and, upon
conviction thereof, shall be fined not more than one
thousand dollars or imprisoned for not more than one year,
or both, together with costs of prosecution.

(d) **Disclosure to designee of taxpayer.**—Any person
protected by the provisions of this article may, in writing,
waive the secrecy provisions of this section for such purpose
and such period as he shall therein state. The tax
commissioner may, subject to such requirements and
conditions as he may prescribe, thereupon release to
designated recipients such taxpayer's return or other
particulars filed under the provisions of the tax articles
administered under the provisions of this article, but only to
the extent necessary to comply with a request for
information or assistance made by the taxpayer to such
other person. However, return information shall not be
disclosed to such person or persons if the tax commissioner
determines that such disclosure would seriously impair
administration of this state's tax laws.

(e) **Disclosure of returns and return information for use
in criminal investigations.**

(1) **In general.**—Except as provided in subdivision (3) of
this subsection, any return or return information with
respect to any specified taxable period or periods shall,
pursuant to and upon the grant of an ex parte order by a
federal district court judge, federal magistrate or circuit
court judge of this state, under subdivision (2) of this
subsection, be open (but only to the extent necessary as
provided in such order) to inspection by, or disclosure to,
officers and employees of any federal agency, or of any agency of this state, who personally and directly engaged in:

(A) Preparation for any judicial or administrative proceeding pertaining to the enforcement of a specifically designated state or federal criminal statute to which this state, the United States or such agency is or may be a party;

(B) Any investigation which may result in such a proceeding; or

(C) Any state or federal grand jury proceeding pertaining to enforcement of such a criminal statute to which this state, the United States or such agency is or may be a party.

Such inspection or disclosure shall be solely for the use of such officers and employees in such preparation, investigation, or grand jury proceeding.

(2) Application of order.—Any United States attorney, any special prosecutor appointed under Section 593 of Title 28, United States Code, or any attorney in charge of a United States justice department criminal division organized crime strike force established pursuant to Section 510 of Title 28, United States Code, may authorize an application to a circuit court judge or magistrate, as appropriate, for the order referred to in subdivision (1) of this subsection. Any prosecuting attorney of this state may authorize an application to a circuit court judge of this state for the order referred to in subdivision (1) of this subsection. Upon such application, such judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that:

(A) There is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed;

(B) There is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of such act; and

(C) The return or return information is sought exclusively for use in a state or federal criminal investigation or proceeding concerning such act, and the information sought to be disclosed cannot reasonably be obtained, under the circumstances, from another source.

(3) The tax commissioner shall not disclose any return
or return information under subdivision (1) of this subsection if he determines and certifies to the court that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

(f) Disclosure to person having a material interest.—The tax commissioner may, pursuant to legislative regulations promulgated by him, and upon such terms as he may require, disclose a return or return information to a person having a material interest therein: Provided, That such disclosure shall only be made if the tax commissioner determines, in his discretion, that such disclosure would not seriously impair administration of this state's tax laws.

(g) Statistical use.—This section shall not be construed to prohibit the publication or release of statistics so classified as to prevent the identification of particular returns and the items thereof.

(h) Disclosure of amount of outstanding lien.—If notice of lien has been recorded pursuant to section twelve of this article, the amount of the outstanding obligation secured by such lien may be disclosed to any person who furnishes written evidence satisfactory to the tax commissioner that such person has a right in the property subject to such lien or intends to obtain a right in such property.

(i) Reciprocal exchange.—The tax commissioner may, pursuant to written agreement, permit the proper officer of the United States, or the District of Columbia or any other state, or any political subdivision of this state, or his authorized representative, who is charged by law with responsibility for administration of a similar tax, to inspect reports, declarations or returns filed with the tax commissioner or may furnish to such officer or representative a copy of any such document, provided such other jurisdiction grants substantially similar privileges to the tax commissioner or to the attorney general of this state. Such disclosure shall be only for the purpose of, and only to the extent necessary in, the administration of tax laws: Provided, That such information shall not be disclosed to the extent that the tax commissioner determines that such disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation.

(j) Inspection of business and occupation tax returns by
municipalities.—The tax commissioner shall, upon the written request of the mayor of any West Virginia municipality having a business and occupation tax or privilege tax, allow the duly authorized agent of such municipality to inspect and make copies of the state business and occupation tax return filed by taxpayers of such municipality. Such inspection or copying shall only be for the purposes of securing information for municipal tax purposes and shall only be allowed if such municipality allows the tax commissioner the right to inspect or make copies of the municipal business and occupation tax returns of such municipality.

(k) Release of administrative decisions.—The tax commissioner shall release to the public his administrative decisions, or a summary thereof: Provided, That unless the taxpayer appeals the administrative decision to circuit court or waives in writing his rights to confidentiality, any identifying characteristics or facts about the taxpayer shall be omitted or modified to such an extent so as not to disclose the name or identity of the taxpayer.

(l) Release of taxpayer information.

(A) Who have a current business registration certificate.

(B) Who are licensed employment agencies.

(C) Who are licensed collection agencies.

(D) Who are licensed to sell drug paraphernalia.

(E) Who are distributors of gasoline or special fuel.

(F) Who are contractors.

(G) Who are transient vendors.

(H) Who are authorized by law to issue a sales or use tax exemption certificate.

(I) Who are required by law to collect sales or use taxes.

(J) Who are foreign vendors authorized to collect use tax.

(K) Whose business registration certificate has been suspended or canceled or not renewed by the tax commissioner.

(L) Against whom a tax lien has been recorded under
section twelve of this article (including any particulars stated in the recorded lien).
(M) Against whom criminal warrants have been issued for a criminal violation of this state's tax laws.
(N) Who have been convicted of a criminal violation of this state's tax laws.
(m) Disclosure of return information to office of child advocate.
  (1) State return information.—The tax commissioner may, upon written request, disclose to the director of the office of child advocate created by article two, chapter forty-eight-a of this code:
    (A) Available return information from the master files of the tax department relating to the social security account number address, filing status, amounts and nature of income, and the number of dependents reported on any return filed by or with respect to, any individual with respect to whom child support obligations are sought to be enforced, and
    (B) Available state return information reflected on any state return filed by, or with respect to any individual described in paragraph (A) of this subdivision (1) relating to the amount of such individual's gross income, but only if such information is not reasonably available from any other source.
  (2) Restrictions on disclosure.—The tax commissioner shall disclose return information under subdivision (1) of this subsection only for purposes of, and to the extent necessary in, collecting child support obligations from, and locating individuals owing such obligations.
(n) Disclosure of names and addresses for purposes of jury selection.
The tax commissioner shall, at the written request of a circuit court or the chief judge thereof, provide to the circuit court within thirty calendar days a list of the names and addresses of individuals residing in the county or counties comprising the circuit who have filed a state personal income tax return for the preceding tax year. The list provided shall set forth names and addresses only. The request shall be limited to counties within the jurisdiction of the requesting court.
The court, upon receiving the list or lists, shall direct the
The supreme court of appeals shall conduct a study to determine the feasibility of a system of jury selection for petit juries in West Virginia wherein those prospective jurors who are called for jury duty are required to report for duty for not more than one day or until the completion of one trial for which they are chosen on that day. The supreme court shall designate a judicial circuit within this state and direct the court of that circuit to order the jury commission of each county within the circuit to employ this a jury selection system in whole, or in part, from the first day of July, one thousand nine hundred eighty-eight, to the thirtieth day of June, one thousand nine hundred eighty-nine. Before the first day of September, one thousand nine hundred eighty-nine, the jury commission shall prepare and deliver a report to the supreme court of appeals relating the cost, efficiency, effectiveness and general acceptance of the system. The supreme court of appeals shall report to the Legislature on the feasibility of the system before the first day of January, one thousand nine hundred ninety. The supreme court of appeals shall fund those expenses necessary to conduct this study out of the budget of the court.

CHAPTER 52. JURIES.

ARTICLE 1. PETIT JURIES.

§52-1-3. Definitions.

As used in this article:
1. **The court** means the circuit and magistrate courts of this state, and includes, when the context requires, any judge of the court;
2. **Clerk** means clerk of the circuit court and includes any deputy circuit clerk;
3. **Master list** means the master list of residents of the county from which prospective jurors are to be chosen, and which is compiled in accordance with the provisions of section five of this article;
4. **Persons who are registered to vote** means persons whose names appear on the official records of the clerk of the county commission as persons registered to vote in the most recent general election;
5. **Drivers' license lists** means the official records of persons licensed by the state to operate motor vehicles and who reside within the county and have applied for a driver's license or renewal of a driver's license within the preceding two years. The department of motor vehicles shall furnish such a list upon request of the clerk of the circuit court;
6. **Jury wheel** means any electronic system in which are placed names or identifying numbers of prospective jurors taken from the master list and from which names are drawn at random for jury panels;
7. **Jury box** means any physical, nonelectronic device in which are placed names or identifying numbers of prospective jurors taken from the master list and from which names are drawn at random for jury panels.

§52-1-5. **Master list; method for compilation; additional freeholder list; lists to be available to public.**

1. (a) In each county, the jury commission shall compile and maintain a master list of residents of the county from which prospective jurors are to be chosen. The master list shall be a list of individuals compiled by whatever random key number system the commission may choose from not less than two of the following source lists:
2. (1) Persons who have filed a state personal income tax return for the preceding tax year;
3. (2) Persons who are registered to vote in the county;
4. (3) Persons who hold a valid motor vehicle operator's or chauffeur's license as determined from the drivers' license lists provided by the department of motor vehicles.
The jury commission shall take randomly a sample of names from each source used. The same percentage of names must be selected from each list. One source list shall be designated a primary source, and the names selected from that source shall be compared with the list of names from the second source. Duplicate names shall be removed from the second source sample, and the remaining names shall be combined with the sample of names selected from the primary source to form the master list. If more than two source lists are used, this process shall be repeated, using the previously combined list for comparison with the third source list, and so on.

(b) In addition to the master list required to be compiled under the provisions of subsection (a) of this section, the jury commission shall compile a list of persons who pay real property taxes to compile and maintain a list of freeholders to be used as jurors in condemnation cases.

(c) Any public officer of an agency, department or political subdivision of this state having custody, possession or control of any of the source lists designated to be used in compiling the master list, shall make the source list available to the jury commission for inspection, reproduction and copying at all reasonable times: Provided, That the tax commissioner shall be exempt from this requirement. The master list and the freeholder list shall be open to the public for examination.

§52-1-5a. Jury qualification form; contents; procedure for use; penalties.

(a) Not less than twenty days before the date for which persons are to report for jury duty, the clerk may, if directed by the court, serve by first class mail, upon each person listed on the master list, a juror qualification form accompanied by instructions necessary for its completion: Provided, That the clerk may, if directed by the court, mail the juror qualification form to only those prospective jurors drawn for jury service under the provisions of section seven of this article. Each prospective juror shall be directed to complete the form and return it by mail to the clerk within ten days after its receipt. The juror qualification form is subject to approval by the circuit court as to matters of form.
and shall elicit the following information concerning the prospective juror:

1. The juror's name, sex, race, age and marital status;
2. The juror’s level of educational attainment, occupation and place of employment;
3. If married, the name of the juror’s spouse, and the occupation and place of employment of the spouse;
4. The juror's residence address and the juror's mailing address if different from the residence address;
5. The number of children which the juror has and their ages;
6. Whether the juror is a citizen of the United States and a resident of the county;
7. Whether the juror is able to read, speak and understand the English language;
8. Whether the juror has any physical or mental disability substantially impairing the capacity to render satisfactory jury service;
9. Whether the juror has, within the preceding two years, been summoned to serve as a petit juror, grand juror or magistrate court juror, and has actually attended sessions of the magistrate or circuit court and been compensated as a juror;
10. Whether the juror has lost the right to vote because of a criminal conviction; and
11. Whether the juror has been convicted of perjury, false swearing or other infamous offense.

The juror qualification form may also request information concerning the prospective juror's religious preferences and organizational affiliations, except that the form and the accompanying instructions shall clearly inform the juror that this information need not be provided if the juror declines to answer such inquiries.

(b) The juror qualification form shall contain the prospective juror's declaration that the responses are true to the best of the prospective juror's knowledge and an acknowledgment that a willful misrepresentation of a material fact may be punished by a fine of not more than five hundred dollars or imprisonment for not more than thirty days, or both fine and imprisonment. Notarization of the juror qualification form shall not be required. If the prospective juror is unable to fill out the form, another
person may assist the prospective juror in the preparation of the form and indicate that such person has done so and the reason therefor. If an omission, ambiguity or error appear in a returned form, the clerk shall again send the form with instructions to the prospective juror to make the necessary addition, clarification or correction and to return the form to the clerk within ten days after its second receipt.

(c) Any prospective juror who fails to return a completed juror qualification form as instructed shall be directed by the jury commission to appear forthwith before the clerk to fill out the juror qualification form. At the time of the prospective juror's appearance for jury service, or at the time of any interview before the court or clerk, any prospective juror may be required to fill out another juror qualification form in the presence of the court or clerk. At that time the prospective juror may be questioned, with regard to the responses to questions contained on the form and the grounds for the prospective juror's excuse or disqualification. Any information thus acquired by the court or clerk shall be noted on the juror qualification form.

(d) Any person who willfully misrepresents a material fact on a juror qualification form or during any interview described in subsection (c) of this section, for the purpose of avoiding or securing service as a juror, is guilty of a misdemeanor, and, upon conviction, shall be fined not more than five hundred dollars or imprisoned not more than thirty days, or both fined and imprisoned.

§52-1-6. Jury wheel or jury box; random selection of names from master list for jury wheel or jury box.

(a) At the direction of the circuit court, the jury commission for each county shall maintain a jury wheel or jury box, into which the commission shall place the names or identifying numbers of prospective jurors taken from the master list. The choice of employing a jury wheel or jury box shall be at the discretion of the circuit court or the chief judge thereof.

(b) In counties having a population of less than fifteen thousand persons according to the last available census, the jury wheel or jury box shall include at least two hundred names; in counties having a population of at least fifteen thousand but less than fifty thousand, at least four hundred names; a population of at least fifty thousand but less than
ninety thousand, at least eight hundred names; and a population of ninety thousand or more, at least one thousand six hundred names. From time to time a larger or additional number may be determined by the jury commission or ordered by the circuit court to be placed in the jury wheel or jury box. The jury commission shall take measures to ensure that a sufficient number of additional jurors are drawn from time to time so that the jury wheel or jury box is refilled and additional jurors may be drawn therefrom. In October of each even-numbered year, or at such other time as the court may direct, the jury commission shall remove from the jury box or jury wheel the names of all persons who have, within the preceding two years, been summoned to serve as petit jurors, grand jurors or magistrate court jurors, and who have actually attended sessions of the magistrate or circuit court and been compensated as jurors pursuant to the provisions of section twenty-one of this article, section thirteen, article two of this chapter, or under any applicable rule or regulation of the supreme court of appeals promulgated pursuant to the provisions of section eight, article five, chapter fifty of this code.

(c) The names or identifying numbers of prospective jurors to be placed in the jury wheel or jury box shall be selected by the jury commission at random from the master list in the following manner: The total number of names on the master list shall be divided by the number of names to be placed in or added to the jury wheel or jury box and the whole number next greater than the quotient shall be the "key number," except that the key number shall never be less than two. A "starting number" for making the selection shall then be determined by a random method from the numbers from one to the key number, both inclusive. The required number of names shall then be selected from the master list by taking in order the first name on the master list corresponding to the starting number and then successively the names appearing in the master list at intervals equal to the key number, recommencing if necessary at the start of the list until the required number of names has been selected. Upon recommencing at the start of the list, or if additional names are subsequently to be selected for the jury wheel or jury box, names previously
selected from the master list shall be disregarded in selecting the additional names. The jury commission is not required to, but may, use an electronic or mechanical system or device in carrying out its duties. (For example, assume a county with a master list of eight thousand nine hundred and eighty names, a population of less than fifteen thousand, and a desired jury box or wheel containing two hundred names. Eight thousand nine hundred and eighty names divided by two hundred is forty-four and nine-tenths percent. The next whole number is forty-five. The commission would take every forty-fifth name on the list, using a random starting number between one and forty-five.)

§52-1-7. Drawings from the jury wheel or jury box; notice of jury duty; penalties.

(a) The chief judge of the circuit, or the judge in a single judge circuit, shall provide by order rules relating to the random drawing by the jury commission of panels from the jury wheel or jury box for juries in the circuit and magistrate courts. The rules may allow for the drawing of panels at any time. Upon receipt of the direction and in the manner prescribed by the court, the jury commission shall publicly draw at random from the jury wheel or jury box the number of jurors specified.

(b) If a jury is ordered to be drawn, the clerk thereafter shall cause each person drawn for jury service to be notified not less than twenty days before the date for which the persons are to report for jury duty with a summons and juror qualification form, if such form has not already been completed, by personal service or first class mail addressed to the person at his or her usual residence, business or post office address, requiring him or her to report for jury service at a specified time and place.

(c) A prospective juror who fails to appear as directed by the summons issued pursuant to subsection (b) of this section shall be ordered by the court to appear and show cause for failure to appear as directed. If the prospective juror fails to appear pursuant to the court's order or fails to show good cause for failure to appear as directed by the summons, he or she is guilty of civil contempt and shall be fined not more than one thousand dollars.
§52-1-7a. **Alternate procedure for selection of jury by electronic data processing methods.**

Notwithstanding any provision of this article to the contrary, the court may, after conferring with the clerk and the jury commissioners, direct the use of electronic data processing methods, or a combination of manual and machine methods, for any combination of the following tasks:

(a) Recording in machine readable form names that are initially selected manually from source lists authorized by this article.

(b) Copying of names from source lists authorized by this article, from any counties or other sources that maintain those lists in machine readable form such as punched cards, magnetic tapes or magnetic discs.

(c) Selecting names from source lists for inclusion in the jury list.

(d) Selecting names from the jury list for the list of jurors summoned to attend at any term of court.

(e) Sorting or alphabetizing lists of names, deleting duplicate selections of names and deleting names of persons exempt, disqualified or excused from jury service.

(f) Selecting and copying names for the creation of any papers, records or correspondence necessary to recruit, select and pay jurors and for other clerical tasks.

If the court elects to use electronic machine methods for any tasks described above, the selection system shall be planned and programmed in order to ensure that any group of names chosen will represent all segments of source files from which drawn and that the mathematical odds of any single name being picked are substantially equal.

When machine methods for jury selection are employed, both the jury list and the jury list as recorded in machine readable form shall be safely kept in a secure location with the office of the clerk of the circuit court. Any selection of jurors from a source list or jury list shall be made in the presence of the jury commissioners.

§52-1-8. **Disqualification from jury service.**

(a) The court, upon request of the jury commission or a prospective juror or on its own initiative, shall determine on the basis of information provided on the juror qualification
form or interview with the prospective juror or other competent evidence whether the prospective juror is disqualified for jury service. The clerk shall enter this determination in the space provided on the juror qualification form and on the alphabetical lists of names drawn from the jury wheel or jury box.

(b) A prospective juror is disqualified to serve on a jury if the prospective juror:

(1) Is not a citizen of the United States, at least eighteen years old and a resident of the county;

(2) Is unable to read, speak and understand the English language;

(3) Is incapable, by reason of substantial physical or mental disability, of rendering satisfactory jury service; but a person claiming this disqualification may be required to submit a physician's certificate as to the disability and the certifying physician is subject to inquiry by the court at its discretion;

(4) Has, within the preceding two years, been summoned to serve as a petit juror, grand juror or magistrate court juror, and has actually attended sessions of the magistrate or circuit court and been compensated as a juror pursuant to the provisions of section twenty-one of this article, section thirteen, article two of this chapter, or pursuant to an applicable rule or regulation of the supreme court of appeals promulgated pursuant to the provisions of section eight, article five, chapter fifty of this code;

(5) Has lost the right to vote because of a criminal conviction; or

(6) Has been convicted of perjury, false swearing or other infamous offense.

(c) A prospective juror sixty-five years of age or older is not disqualified from serving, but shall be excused from service by the court upon the juror's request.

(d) A prospective grand juror is disqualified to serve on a grand jury if the prospective grand juror is an officeholder under the laws of the United States or of this state except that the term "officeholder" does not include notaries public.


(a) Within seven days after the moving party discovers, or by the exercise of due diligence could have discovered,
the grounds therefor, and in any event before the petit jury is sworn to try the case, a party may move to stay the proceedings, quash the indictment or move for other relief as may be appropriate under the circumstances or the nature of the case. The motion shall set forth the facts which support the party's contention that there has been a substantial failure to comply with this article in selecting the jury.

(b) Upon motion filed under subsection (a) of this section containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with this article, the moving party is entitled to present, in support of the motion, the testimony of the jury commissioners or the clerk, any relevant records and papers not public or otherwise available used by the jury commissioners or the clerk, and any other relevant evidence. The clerk or the jury commissioners may identify the lists utilized in compiling the master list, but may not be required to divulge the contents of such lists. If the court determines that in selecting a jury there has been a substantial failure to comply with this article, the court shall stay the proceedings pending the selection of the jury in conformity with this article, quash an indictment or grant such other relief as the court may deem appropriate.

(c) In the absence of fraud, the procedures prescribed by this section are the exclusive means by which a person accused of a crime, the state or a party in a civil case, may challenge a jury on the ground that the jury was not selected in conformity with this article.

§52-1-16. Preservation of records.

All records and papers compiled and maintained by the jury commissioners or the clerk in connection with selection and service of jurors from the master list, the jury box or the jury wheel shall be preserved by the clerk for at least four years after such jurors were selected, or for any longer period ordered by the court.

The jury commission of each county shall make an annual report no later than the first day of March of each year to the supreme court of appeals setting forth the following information: Whether the commission employed a jury box or jury wheel for the year reported, and the age, race, and
gender of each person for whom a juror qualification form has been received. The supreme court of appeals shall provide this information to the president of the Senate and the speaker of the House on an annual basis, no later than the first day of April of each year.

ARTICLE 2. GRAND JURIES.


The jury commissioners of any court requiring a grand jury shall, at least thirty days before the term of court, draw and assign persons for the grand jury, but the court, or judge thereof, may require the jury commissioners to appear forthwith, or at any specified time and draw and assign grand jurors for either a regular, special or adjourned term of court. On the day appointed, the jury commissioners shall appear and draw the names of sixteen persons from the jury wheel or jury box, and the persons so drawn shall constitute the grand jury, and, at the same time the jury commissioners shall draw the names of such additional numbers of persons from the jury wheel or jury box, as the chief judge of the circuit, or the judge in a single judge circuit shall by prior order direct, and the persons so drawn shall constitute alternate jurors for the grand jury and the judge may replace any absent members of the grand jury from among the alternate grand jurors in the order in which the alternate jurors were drawn. The jury commissioners shall enter the names of all persons so drawn in a book kept for that purpose, and they shall issue summonses to the persons so drawn in the same manner as that provided for petit jurors in subsection (b), section seven, article one of this chapter.

§52-2-4. Quorum.

Of the sixteen grand jurors chosen from the grand jurors and alternate grand jurors summoned, fifteen or more of the grand jurors attending shall be a competent grand jury.
The Joint Committee on Enrolled Bills hereby certifies that the
foregoing bill is correctly enrolled.

Bruce O. Allen
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1988.

Jeff A. Willis
Clerk of the Senate

Donald A. Kopp
Clerk of the House of Delegates

Don Thomas
President of the Senate

Malcolm C. Smith
Speaker House of Delegates

The within bill was approved by the
30th day of March 1988.

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