

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2009
First Extraordinary Session, 2009
Second Extraordinary Session, 2009
Third Extraordinary Session, 2009

Volume II
Chapters 121-224
Chapters 1 - 15
Chapters 1 - 6
Chapters 1 - 2

WEST VIRGINIA HOUSE OF DELEGATES
HONORABLE RICHARD THOMPSON
SPEAKER OF THE HOUSE

COMPILED AND PUBLISHED
UNDER THE DIRECTION
OF
GREGORY M. GRAY
CLERK OF THE HOUSE



OFFICE OF THE CLERK OF THE HOUSE
212 MAIN UNIT
STATE CAPITOL
CHARLESTON, WEST VIRGINIA

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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 2009

OFFICERS

Speaker-- Richard Thompson, Wayne
Clerk--Gregory M. Gray, Charleston
Sergeant at Arms--Oce Smith, Fairmont
Doorkeeper--John Roberts, Hedgesville

District	Name	Address	Legislative Service
First	Pat McGeehan (D)	Chester	79 th
	Randy Swartzmiller (D)	Chester	75 th - 79 th
Second	Timothy R. Ennis (D)	Wellsburg	72 nd - 79 th
	Roy E. Givens (D)	Wellsburg	64 th - 69 th ; 72 nd - 75 th ; 79 th
Third	Tal Hutchins (D)	Wheeling	72 nd - 74 th ; 78 th - 79 th
	Orphy Klempa (D)	Wheeling	78 th - 79 th
Fourth	Michael T. Ferro (D)	McMechen	79 th
	Scott G. Varner (D)	Moundsville	71 st - 79 th
Fifth	Dave Pethel (D)	Hundred	69 th - 71 st ; 74 th - 79 th
Sixth	William Roger Romine (R)	Sistersville	75 th - 79 th
Seventh	Lynwood "Woody" Ireland (R)	Pullman	78 th - 79 th
Eighth	Everette W. Anderson, Jr. (R)	Williamstown	71 st - 79 th
Ninth	Larry W. Border (R)	Davisville	70 th - 79 th
Tenth	Tom Azinger (R)	Vienna	72 nd - 79 th
	John Ellem (R)	Parkersburg	75 th - 79 th
	Daniel Poling (D)	Parkersburg	Appt. 1/07, 78 th ; 79 th
Eleventh	Bob Ashley (R)	Spencer	67 th - 73 rd ; 75 th - 79 th
Twelfth	Mitch Carmichael (R)	Ripley	75 th - 79 th
Thirteenth	Dale Martin (D)	Poca	75 th - 79 th
	Brady Paxton (D)	Liberty	71 st ; Appt. 4/22/99, 74 th ; 75 th - 79 th
Fourteenth	Troy Andes (R)	Hurricane	78 th - 79 th
	Patti Eagloski Schoen (R)	Scott Depot	76 th - 79 th
Fifteenth	Kevin J. Craig (D)	Huntington	75 th - 79 th
	Carol Miller (R)	Huntington	78 th - 79 th
	Jim Morgan (D)	Huntington	Appt. 201, 75 th ; 76 th - 79 th
Sixteenth	Doug Reynolds (D)	Huntington	78 th - 79 th
	Kelli Sobonya (R)	Huntington	76 th - 79 th
	Dale Stephens (D)	Huntington	75 th ; 77 th - 79 th
Seventeenth	Don C. Perdue (D)	Prichard	74 th - 79 th
	Richard Thompson (D)	Lavelette	65 th ; Resigned 6/81; 76 th - 79 th
Eighteenth	Larry W. Barker (D)	Madison	77 th - 79 th
Nineteenth	Greg Butcher (D)	Chapmanville	73 rd - 77 th ; 79 th
	Jeff Eldridge (D)	Harts	77 th - 79 th
	Ralph Rodighiero (D)	Logan	78 th - 79 th
	Josh Stowers (D)	Alum Creek	79 th
Twentieth	K. Steven Kominar (D)	Kermit	72 nd - 79 th
Twenty-first	Harry Keith White (D)	Gilbert	Appt. 9/11/92, 70 th ; 71 st - 79 th
	Daniel J. Hall (D)	Oceana	79 th
Twenty-second	Linda Goode Phillips (D)	Pineville	79 th
	Clif Moore (D)	Thorpe	77 th - 79 th
Twenty-third	John H. Shott (R)	Bluefield	79 th
Twenty-fourth	John R. Frazier (D)	Princeton	65 th ; 79 th
	Thomas Mike Porter (R)	Princeton	77 th - 79 th
Twenty-fifth	Gerald Crosier (D)	Union	76 th - 79 th
Twenty-sixth	Virginia Mahan (D)	Green Sulphur Springs	73 rd - 79 th
	Ricky Moye (D)	Crab Orchard	78 th - 79 th
Twenty-seventh	Linda Sumner (R)	Beckley	76 th - 79 th
	Sally Susman (D)	Beckley	74 th - 77 th ; 79 th
	William R. Wooton (D)	Beckley	63 rd - 67 th ; 69 th ; (Senate 70 th - 75 th); 79 th

MEMBERS OF THE HOUSE OF DELEGATES, Continued

District	Name	Address	Legislative Service
Twenty-eighth	Thomas W. Campbell (D)	Lewisburg	73 rd - 79 th
	Ray Canterbury (R)	Ronceverte	75 th - 79 th
Twenty-ninth	Tom Louisos (D)	Oak Hill	67 th - 68 th ; 70 th - 77 th ; 79 th
	David G. Perry (D)	Oak Hill	75 th - 79 th
	Margaret Anne Staggers (D)	Fayetteville	78 th - 79 th
Thirtieth	Bonnie Brown (D)	South Charleston	66 th - 68 th ; 70 th ; 75 th - 79 th
	Nancy Peoples Guthrie (D)	Charleston	78 th - 79 th
	Barbara Burruss Hatfield (D)	South Charleston	67 th - 69 th ; 74 th - 79 th
	Mark Hunt (D)	Charleston	72 nd - 74 th ; 77 th ; 79 th
	Doug Skaff (D)	South Charleston	79 th
	Sharon Spencer (D)	Charleston	66 th ; 68 th - 71 st ; 73 rd - 79 th
	Danny Wells	Charleston	77 th - 79 th
	Carrie Webster (D)	Charleston	75 th - 79 th
	Tim Armstead (R)	Elkview	Appt. 9/5/98, 73 rd ; 74 th - 79 th
Thirty-first	Patrick Lane (R)	Cross Lanes	77 th - 79 th
	Ron Walters (R)	Cross Lanes	71 st - 73 rd ; 75 th - 79 th
Thirty-third	David Walker (D)	Procious	79 th
Thirty-fourth	Brent Boggs (D)	Gassaway	73 rd - 79 th
Thirty-fifth	Sam J. Argento (D)	Mt. Nebo	77 th - 79 th
Thirty-sixth	Joe Talbott (D)	Webster Springs	71 st - 72 nd ; 76 th - 79 th
Thirty-seventh	William G. Hartman (D)	Elkins	76 th - 79 th
	Mike Ross (D)	Coalton	(Senate 71 st - 76 th); 79 th
Thirty-eighth	Margaret (Peggy) D. Smith (D)	Weston	79 th
Thirty-ninth	Bill Hamilton (R)	Buckhannon	76 th - 79 th
Fortieth	Mary M. Poling (D)	Moatsville	75 th - 79 th
Forty-first	Samuel J. Cann (D)	Clarksburg	72 nd - 79 th
	Ron Fragale (D)	Clarksburg	70 th - 73 rd ; 75 th - 79 th
	Richard J. Iaquina (D)	Clarksburg	76 th - 79 th
Forty-second	Tim Miley (D)	Bridgeport	77 th - 79 th
	Mike Manypenny (D)	Grafton	79 th
Forty-third	Michael Caputo (D)	Fairmont	73 rd - 79 th
	Linda Longstreth (D)	Fairmont	77 th - 79 th
	Tim Manchin (D)	Fairmont	76 th - 79 th
Forty-fourth	Robert D. Beach (D)	Morgantown	Appt. 5/98, 73 rd ; 74 th - 79 th
	Barbara Evans Fleischauer (D)	Morgantown	72 nd - 75 th ; 78 th - 79 th
	Charlene Marshall (D)	Morgantown	74 th - 79 th
	Alex J. Shook (D)	Morgantown	78 th - 79 th
Forty-fifth	Larry A. Williams (D)	Tunnelton	Appt. 10/8/93, 71 st ; 72 nd - 79 th
	Stan Shaver (D)	Tunnelton	74 th - 75 th ; 78 th - 79 th
Forty-seventh	Harold K. Michael (D)	Moorefield	69 th - 79 th
Forty-eighth	Allen V. Evans (R)	Dorcas	70 th - 79 th
Forty-ninth	Robert A. Schadler (R)	Keyser	69 th - 70 th ; 74 th - 79 th
Fiftieth	Ruth Rowan (R)	Points	77 th - 79 th
Fifty-first	Daryl E. Cowles (R)	Berkeley Springs	78 th - 79 th
Fifty-second	Craig P. Blair (R)	Martinsburg	76 th - 79 th
Fifty-third	Jonathan Miller (R)	Bunker Hill	78 th - 79 th
Fifty-fourth	Walter E. Duke (R)	Martinsburg	76 th - 79 th
Fifty-fifth	John Overington (R)	Martinsburg	67 th - 79 th
Fifty-sixth	Robert C. Tabb (D)	Kearneysville	76 th - 79 th
Fifty-seventh	John Doyle (D)	Shepherdstown	66 th ; 71 st - 79 th
Fifty-eighth	Tiffany Lawrence (D)	Ranson	79 th

1 Appointed January 9, 2009, to fill the vacancy created by the death of the Honorable Bill Proudfoot.

(D) Democrats	71
(R) Republicans	29
TOTAL	100

MEMBERS OF THE SENATE

REGULAR SESSION, 2009

OFFICERS

President— Earl Ray Tomblin, Chapmanville
Clerk—Darrell E. Holmes, Charleston
Sergeant at Arms—Howard Wellman, Bluefield
Doorkeeper— Billy L. Bevino, Charleston

District	Name	Address	Legislative Service
First	Edwin J. Bowman (D)	Weirton	72 nd - 79 th
	Jack Yost (D)	Wellsburg	(House 76 th - 78 th); 79 th
Second	Larry J. Edgell (D)	New Martinsburg	74 th - 79 th
	Jeffrey V. Kessler (D)	Glen Dale	Appt. 11/97,73 rd ; 74 th - 79 th
Third	Donna J. Boley (R)	St. Marys	Appt. 5/14/85, 67 th ; 68 th - 79 th
	J. Frank Deem (R)	Vienna	(House 52 nd -56 th); 57 th - 62 nd ; 64 th - 65 th ; (House 69 th); 72 nd - 79 th
Fourth	Karen L. Facemyer (R)	Ripley	(House 71 st - 74 th); 75 th - 79 th
	Mike Hall (R)	Hurricane	(House 72 nd - 77 th); 78 th - 79 th
Fifth	Evan H. Jenkins (D)	Huntington	(House 72 nd - 74 th); 76 th - 79 th
	Robert H. Plymale (D)	Ceredo	71 st - 79 th
Sixth	H. Truman Chafin (D)	Williamson	66 th - 79 th
	John Pat Fanning (D)	Jaeger	58 th - 64 th ; 67 th - 68 th ; 73 rd - 79 th
Seventh	Ron Stollings (D)	Madison	78 th - 79 th
	Earl Ray Tomblin (D)	Chapmanville	(House 62 nd - 64 th); 65 th - 79 th
Eighth	Corey J. Palumbo (D)	Charleston	(House 76 th - 78 th); 79 th
	Erik P. Wells (D)	Charleston	78 th - 79 th
Ninth	D. Richard Browning (D)	Oceana	(House 69 th - 72 nd ; 75 th - 78 th); 79 th
	Mike Green (D)	Daniels	78 th - 79 th
Tenth	Donald T. Caruth (R)	Mercer	(House 76 th) 77 th - 79 th
	Jesse O. Guills (R)	Lewisburg	76 th - 79 th
Eleventh	William R. Laird, IV (D)	Oak Hill	(House 74 th); 79 th
	C. Randy White (D)	Webster Springs	(House 73 rd - 75 th); 76 th - 79 th
Twelfth	Douglas Eugene Facemire (D)	Sutton	79 th
	Joseph M. Minard (D)	Clarksburg	(House Appt. 1/83, 66 th ; 67 th -69 th); 70 th - 71 st ; 75 th - 79 th
Thirteenth	Michael A. Oliverio, II (D)	Morgantown	(House 71 st); 72 nd - 79 th
	Roman W. Prezioso, Jr. (D)	Fairmont	(House 69 th - 72 nd); 73 rd - 79 th
Fourteenth	Dave Syplot (R)	Kingwood	78 th - 79 th
	Bob Williams (D)	Grafton	79 th
Fifteenth	Clark Barnes (R)	Randolph	77 th - 79 th
	Walt Helmick (D)	Marlinton	(House 1 yr., 69 th); Appt. 9/89, 69 th ; 70 th - 79 th
Sixteenth	Herb Snyder (D)	Shenandoah Junction	73 rd - 76 th ; 79 th
	John R. Unger II (D)	Martinsburg	74 th - 79 th
Seventeenth	Dan Foster (D)	Charleston	(House 76 th); 77 th - 79 th
	Brooks F. McCabe, Jr. (D)	Charleston	74 th - 79 th

(D) Democrats 26
(R) Republicans 8

TOTAL 34

COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2009

STANDING

AGRICULTURE

Argento (*Chair*), Tabb (*Vice Chair*), Beach, Boggs, Campbell, Caputo, Eldridge, Guthrie, Hall, Manypenny, Martin, Morgan, Moye, M. Poling, Rodighiero, Swartzmiller, Wells, Williams, Evans (*Minority Chair*), Canterbury (*Minority Vice Chair*), Anderson, Border, Ireland, C. Miller and Romine.

BANKING AND INSURANCE

Moore (*Chair of Banking*), Reynolds (*Vice Chair of Banking*), Perry (*Chair of Insurance*), Shook (*Vice Chair of Insurance*), Frazier, Hartman, Hunt, Hutchins, Iaquina, Louisos, Mahan, Manchin, Michael, Miley, Shaver, Skaff, Williams, Wooton, Azinger (*Minority Chair of Banking*), Schoen (*Minority Vice Chair of Banking*), Ashley (*Minority Chair of Insurance*), Walters (*Minority Vice Chair of Insurance*), Andes, Carmichael and J. Miller.

CONSTITUTIONAL REVISION

Fleischauer (*Chair*), Hutchins (*Vice Chair*), Brown, Caputo, Doyle, Ferro, Frazier, Guthrie, Hatfield, Hunt, Kominar, Marshall, Moore, Morgan, Staggers, Varner, Wells, Webster, Overington (*Minority Chair*), Romine (*Minority Vice Chair*), Blair, Ellem, Lane, McGeehan and Sobonya.

EDUCATION

M. Poling (*Chair*), Paxton (*Vice Chair*), Beach, Crosier, Ennis, Fragale, Lawrence, Louisos, Moye, Perry, Pethtel, Rodighiero,

HOUSE OF DELEGATES COMMITTEES

Shaver, Smith, Stowers, Walker, Williams, Duke (*Minority Chair*), Sumner (*Minority Vice Chair*), Andes, Canterbury, Ireland, Romine, Rowan and Shott.

ENERGY, INDUSTRY AND LABOR, ECONOMIC DEVELOPMENT AND SMALL BUSINESS

Barker (*Chair of Energy, Industry and Labor*), Shaver (*Vice Chair of Energy, Industry and Labor*), Kominar (*Chair of Economic Development and Small Business*), Craig (*Vice Chair of Economic Development and Small Business*), Brown, Butcher, Caputo, Fleischauer, Guthrie, Klempa, Mahan, Manypenny, Martin, Marshall, Paxton, Skaff, Walker, Sobonya (*Minority Chair of Energy, Industry and Labor*), C. Miller (*Minority Vice Chair of Energy, Industry and Labor*), Blair (*Minority Chair of Economic Development and Small Business*), Andes (*Minority Vice Chair of Economic Development and Small Business*), Hamilton, McGeehan, Schoen and Shott.

FINANCE

White (*Chair*), Campbell (*Vice Chair*), Craig, Doyle, Eldridge, Guthrie, Iaquinta, Klempa, Kominar, Mahan, Manchin, Marshall, Perdue, Phillips, M. Poling, Reynolds, Spencer, Varner, Anderson (*Minority Chair*), Carmichael (*Minority Vice Chair*), Ashley, Blair, Border, Evans and Walters.

GOVERNMENT ORGANIZATION

Morgan (*Chair*), Stephens (*Vice Chair*), Argento, Boggs, Butcher, Cann, Givens, Hall, Hartman, Hatfield, Manypenny, Martin, D. Poling, Skaff, Staggers, Swartzmiller, Talbott, Ross, C. Miller (*Minority Chair*), Porter (*Minority Vice Chair*), Azinger, Cowles, Rowan, McGeehan and J. Miller.

HOUSE OF DELEGATES COMMITTEES

HEALTH AND HUMAN RESOURCES

Perdue (*Chair*), Hatfield (*Vice Chair*), Campbell, Eldridge, Fleischauer, Lawrence, Manypenny, Marshall, Moore, Moye, Perry, Phillips, D. Poling, Rodighiero, Spencer, Staggers, Susman, Wooton, Border (*Minority Chair*), J. Miller (*Minority Vice Chair*), Andes, Carmichael, Lane, C. Miller and Rowan.

JUDICIARY

Webster (*Chair*), Miley (*Vice Chair*), Barker, Brown, Caputo, Ferro, Fleischauer, Frazier, Hunt, Hutchins, Longstreth, Michael, Moore, Shook, Susman, Tabb, Wells, Wooton, Ellem (*Minority Chair*), Lane (*Minority Vice Chair*), Hamilton, Overington, Schoen, Schadler and Sobonya.

NATURAL RESOURCES

Talbott (*Chair*), Crosier (*Vice Chair*), Argento, Beach, Caputo, Craig, Eldridge, Fragale, Guthrie, Hall, Manypenny, Martin, Moye, Phillips, Rodighiero, Shaver, Swartzmiller, Varner, Hamilton (*Minority Chair*), Anderson (*Minority Vice Chair*), Duke, Ellem, Evans, Ireland and Romine.

PENSIONS AND RETIREMENT

Spencer (*Chair*), Pethel (*Vice Chair*), Givens, Reynolds, Williams, Canterbury and Duke.

POLITICAL SUBDIVISIONS

Manchin (*Chair*), Beach (*Vice Chair*), Cann, Doyle, Fragale, Hartman, Lawrence, Longstreth, Louisos, Miley, D. Poling, Ross, Susman, Tabb, Varner, Williams, Sumner (*Minority Chair*), Cowles

HOUSE OF DELEGATES COMMITTEES

(Minority Vice Chair) Anderson, Duke, Ellem, J. Miller, Schadler and Shott.

ROADS AND TRANSPORTATION

Martin *(Chair)*, Klempa *(Vice Chair)*, Argento, Barker, Butcher, Craig, Crosier, Ennis, Ferro, Hall, Kominar, Michael, Shook, Smith, Stephens, Stowers, Walker, Wells, Schadler *(Minority Chair)*, Canterbury *(Minority Vice Chair)*, Armstead, Cowles, Evans, Porter and Rowan.

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RULES

Thompson *(Chair)*, Boggs, Caputo, Fragale, Hatfield, Marshall, Morgan, Paxton, M. Poling, Talbott, Varner, Webster, White, Anderson, Armstead, Border, Carmichael and Overington.

VETERANS' AFFAIRS AND HOMELAND SECURITY

Iaquinta *(Chair of Veterans' Affairs)*, Longstreth, *(Vice Chair of Veterans' Affairs)*, Swartzmiller *(Chair of Homeland Security)*, Moye *(Vice Chair of Homeland Security)*, Cann, Ennis, Ferro, Fleischauer, Givens, Hatfield, Hutchins, Paxton, Pethtel, Spencer, Staggars, Smith, Stephens, Stowers, Azinger *(Minority Chair of Veterans' Affairs)*, Porter *(Minority Vice Chair Veterans' Affairs)*, Ireland *(Minority Chair of Homeland Security)*, Ashley *(Minority Vice Chair of Homeland Security)*, Armstead, Sumner and Walters.

HOUSE OF DELEGATES COMMITTEES

JOINT COMMITTEES

ENROLLED BILLS

Wells (*Cochair*), Fragale, Staggers and Overington.

GOVERNMENT AND FINANCE

Thompson (*Cochair*), Boggs, Caputo, Webster, White, Armstead and Border.

GOVERNMENT OPERATIONS

Morgan (*Cochair*), Argento, Stephens, Rowan and Schoen.

LEGISLATIVE RULE-MAKING REVIEW

Brown (*Cochair*), D. Poling (*Vice Cochair*), Miley, Talbott, Overington, Sobonya, Thompson (*ex officio*).

PENSIONS AND RETIREMENT

Spencer (*Cochair*), Pethtel (*Vice Cochair*), Givens, Reynolds, Stephens, Canterbury and Duke.

STATUTORY LEGISLATIVE COMMITTEES

COMMISSION ON ECONOMIC DEVELOPMENT

Kominar (*Cochair*), Barker (*Vice Cochair*), Campbell, Craig, Klempa, D. Poling, M. Poling, Webster, White, Blair, Carmichael and Hamilton.

HOUSE OF DELEGATES COMMITTEES

COMMISSION ON INTERSTATE COOPERATION

Doyle (*Cochair*), Guthrie (*Vice Cochair*).

COMMISSION ON SPECIAL INVESTIGATIONS

Thompson (*Cochair*), Boggs, White, Ellem and Lane.

FOREST MANAGEMENT REVIEW COMMISSION

Michael (*Cochair*), Hartman, Williams and Romine.

**LEGISLATIVE OVERSIGHT COMMISSION ON
EDUCATION ACCOUNTABILITY**

M. Poling (*Cochair*), Doyle, Fragale, Paxton, Perry and Sumner.

**LEGISLATIVE OVERSIGHT COMMISSION ON HEALTH
AND HUMAN RESOURCES ACCOUNTABILITY**

Perdue (*Cochair*), Hatfield, Moore, Moye, Staggers, Border, Thompson (*ex officio*).

**LEGISLATIVE OVERSIGHT COMMISSION ON
STATE WATER RESOURCES**

Manchin (*Cochair*), Mahan, Miley, Perdue and Schadler.

**LEGISLATIVE OVERSIGHT COMMISSION ON
WORKFORCE INVESTMENT FOR ECONOMIC
DEVELOPMENT**

Kominar (*Cochair*), Barker, Klempa and Hamilton.

HOUSE OF DELEGATES COMMITTEES

**LEGISLATIVE OVERSIGHT COMMITTEE ON THE
REGIONAL JAIL AND CORRECTIONAL FACILITY
AUTHORITY**

Perry (*Cochair*), Boggs, Morgan, Ross and Ellem.

COMMITTEES OF THE SENATE
Regular Session, 2009

STANDING

AGRICULTURE

Senators White (*Chair*), Williams (*Vice Chair*), Helmick, Laird, Minard, Palumbo, Snyder, Unger, K. Facemyer, Guills and Sypolt.

BANKING AND INSURANCE

Senators Minard (*Chair*), Jenkins (*Vice Chair*), Chafin, Fanning, Green, Helmick, Kessler, McCabe, Palumbo, Prezioso, Deem, K. Facemyer and Hall.

CONFIRMATIONS

Senators Stollings (*Chair*), Chafin (*Vice Chair*), Bowman, Green, Minard, Plymale, Prezioso, Hall and Sypolt.

ECONOMIC DEVELOPMENT

Senators Browning (*Chair*), Unger (*Vice Chair*), D. Facemire, Helmick, Kessler, McCabe, Oliverio, Snyder, Stollings, Wells, Williams, Caruth, K. Facemyer and Hall.

EDUCATION

Senators Plymale (*Chair*), Wells (*Vice Chair*), Browning, Edgell, Foster, Green, Laird, Oliverio, Stollings, Unger, White, Barnes, Boley and Guills.

ENERGY, INDUSTRY AND MINING

Senators Green (*Chair*), D. Facemire (*Vice Chair*), Fanning, Helmick, Jenkins, Kessler, Minard, Stollings, Williams, Yost, Deem, Guills and Sypolt.

SENATE COMMITTEES

FINANCE

Senators Helmick (*Chair*), McCabe (*Vice Chair*), Bowman, Chafin, Edgell, D. Facemire, Fanning, Green, Plymale, Prezioso, Unger, Wells, White, Boley, K. Facemyer, Guills and Sypolt.

GOVERNMENT ORGANIZATION

Senators Bowman (*Chair*), Snyder (*Vice Chair*), Browning, Foster, Kessler, McCabe, Minard, Palumbo, White, Williams, Yost, Boley, Caruth and Sypolt.

HEALTH AND HUMAN RESOURCES

Senators Prezioso (*Chair*), Stollings (*Vice Chair*), Browning, Foster, Jenkins, Laird, Palumbo, Snyder, Unger, Yost, Boley, Guills and Hall.

INTERSTATE COOPERATION

Senators Jenkins (*Chair*), Snyder (*Vice Chair*), Browning, Palumbo, Wells, Caruth and Sypolt.

JUDICIARY

Senators Kessler (*Chair*), Oliverio (*Vice Chair*), Browning, Chafin, Foster, Jenkins, Laird, Minard, Palumbo, Snyder, Stollings, Williams, Yost, Barnes, Caruth, Deem and Hall.

LABOR

Senators Oliverio (*Chair*), Williams (*Vice Chair*), Bowman, Foster, Green, Snyder, White, Yost, Barnes, Deem and Guills.

SENATE COMMITTEES

MILITARY

Senators Wells (*Chair*), Yost (*Vice Chair*), Edgell, D. Facemire, Laird, Oliverio, Williams, Boley and Sypolt.

NATURAL RESOURCES

Senators Fanning (*Chair*), Laird (*Vice Chair*), Bowman, Edgell, D. Facemire, Helmick, McCabe, Prezioso, Unger, White, Barnes, Deem and K. Facemyer.

PENSIONS

Senators Foster (*Chair*), Edgell (*Vice Chair*), McCabe, Oliverio, Plymale, Deem and Hall.

RULES

Senators Tomblin (*Chair*), Bowman, Chafin, Fanning, Helmick, Kessler, Plymale, Prezioso, Boley and Caruth.

TRANSPORTATION AND INFRASTRUCTURE

Senators Unger (*Chair*), Jenkins (*Vice Chair*), D. Facemire, Fanning, Plymale, Stollings, White, Barnes and K. Facemyer.

JOINT COMMITTEES

ENROLLED BILLS

Senators Palumbo (*Cochair*), D. Facemire, Laird, Wells and Barnes.

SENATE COMMITTEES

GOVERNMENT AND FINANCE

Senators Tomblin (*Cochair*), Chafin, Helmick, Kessler, Plymale, Caruth and Deem.

GOVERNMENT OPERATIONS

Senators Bowman (*Cochair*), Helmick, McCabe, Snyder and Barnes.

LEGISLATIVE RULE-MAKING REVIEW

Senators Minard (*Cochair*), Snyder (*Vice Cochair*), Prezioso, Unger, Boley, K. Facemyer and Tomblin (*ex officio*).

PENSIONS AND RETIREMENT

Senators Foster (*Cochair*), McCabe (*Vice Cochair*), Edgell, Oliverio, Plymale, Deem and Hall.

RULES

Senators Tomblin (*Cochair*), Chafin and Caruth.

STATUTORY LEGISLATIVE COMMISSIONS

COMMISSION ON ECONOMIC DEVELOPMENT

Senators Browning (*Cochair*), Helmick, Kessler, McCabe, Oliverio, Plymale, Prezioso, Stollings, Unger, Barnes, Caruth and K. Facemyer.

COMMISSION ON INTERSTATE COOPERATION

Senators Jenkins (*Cochair*), Foster (*Vice Cochair*), Minard, Stollings, Wells, Caruth, Sypolt and Tomblin (*ex officio*).

SENATE COMMITTEES

COMMISSION ON SPECIAL INVESTIGATIONS

Senators Tomblin (*Cochair*), Chafin, Helmick, Boley and Caruth.

FOREST MANAGEMENT REVIEW COMMISSION

Senators Helmick (*Cochair*), Bowman, D. Facemire, Williams and K. Facemyer.

**LEGISLATIVE OVERSIGHT COMMISSION
ON EDUCATION ACCOUNTABILITY**

Senators Plymale (*Cochair*), Wells, Edgell, Green, Unger and Boley.

**LEGISLATIVE OVERSIGHT COMMISSION
ON HEALTH AND HUMAN RESOURCES
ACCOUNTABILITY**

Senators Prezioso (*Cochair*), Foster, Jenkins, Stollings, Unger, Boley, Caruth and Tomblin (*ex officio*).

**LEGISLATIVE OVERSIGHT COMMISSION ON
STATE WATER RESOURCES**

Senators Unger (*Cochair*), Green (*Vice Cochair*), Fanning, Helmick and Hall.

**LEGISLATIVE OVERSIGHT COMMISSION
ON WORKFORCE INVESTMENT FOR ECONOMIC
DEVELOPMENT**

Senators McCabe (*Cochair*), Kessler, Stollings and Deem.

SENATE COMMITTEES

**LEGISLATIVE OVERSIGHT COMMITTEE ON THE
REGIONAL JAIL AND CORRECTIONAL FACILITY
AUTHORITY**

Senators White (*Cochair*), Green, Laird, Yost and Barnes.

CHAPTER 121

(S.B. 595 - By Senators Prezioso, Deem, Plymale and Kessler)

[Passed April 9, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §9-3-4 of the Code of West Virginia, 1931, as amended, relating to the assignment of child support; and replacing antiquated language.

Be it enacted by the Legislature of West Virginia:

That §9-3-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. APPLICATION FOR AND GRANTING OF ASSISTANCE.

§9-3-4. Assignment of support obligations.

1 Any recipient of financial assistance under the program
2 of state and federal assistance established by Title IV of the
3 federal Social Security Act of 1965, as amended, or any
4 successor act thereto, shall, as a condition of receiving
5 assistance funded under this part, assign to the Department of
6 Health and Human Resources any right the family member
7 may have (on behalf of the family member or of any other
8 person for whom the family member has applied for or is
9 receiving such assistance) to support from any other person,
10 not exceeding the total amount of assistance so paid to the

11 family, which accrues during the period that the family
12 receives assistance under the program.

13 Each applicant for assistance subject to the assignment
14 established in this section shall (during the application
15 process) be informed in writing of the nature of the
16 assignment.

17 Any payment of federal and state assistance made to or
18 for the benefit of any child or children or the caretaker of a
19 child or children creates a debt due and owing to the
20 Department of Health and Human Resources by the person
21 or persons responsible for the support and maintenance of the
22 child, children or caretaker in an amount equal to the amount
23 of assistance money paid: *Provided*, That the debt is limited
24 by the amount established in any court order or final decree
25 of divorce if the amount in the order or decree is less than the
26 amount of assistance paid.

27 The assignment under this section shall subrogate the
28 Department of Health and Human Resources to the rights of
29 the child, children or caretaker to the prosecution or
30 maintenance of any action or procedure existing under law
31 providing a remedy whereby the Department of Health and
32 Human Resources may be reimbursed for moneys expended
33 on behalf of the child, children or caretaker. The Department
34 of Health and Human Resources shall further be subrogated
35 to the debt created by any order or decree awarding support
36 and maintenance to or for the benefit of any child, children
37 or caretaker included within the assignment under this
38 section and shall be empowered to receive money judgments
39 and endorse any check, draft, note or other negotiable
40 document in payment thereof.

41 The assignment created under this section shall be
42 released upon closure of the assistance case and the
43 termination of assistance payments except for support and
44 maintenance obligations accrued and owing at the time of

45 closure which are necessary to reimburse the department for
46 any balance of assistance payments made.

47 The Department of Health and Human Resources may, at
48 the election of the recipient, continue to receive support and
49 maintenance moneys on behalf of the recipient following
50 closure of the assistance case and shall distribute the moneys
51 to the caretaker, child or children.

CHAPTER 122

(S.B. 322 - By Senators Oliverio and Chafin)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §9-5-11 of the Code of West Virginia, 1931, as amended, relating to exempting the first \$25,000 of the death benefit of a life insurance policy from assignment by Medicaid recipients to the Department of Health and Human Resources.

Be it enacted by the Legislature of West Virginia:

That §9-5-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-11. Assignment of rights; right of subrogation by Department of Health and Human Resources to the rights of recipients of medical assistance; rules as to effect of subrogation.

1 (a) Submission of an application to the Department of
2 Health and Human Resources for medical assistance is, as a
3 matter of law, an assignment of the right of the applicant or
4 legal representative thereof to recovery from personal
5 insurance or other sources, including, but not limited to,
6 liable third parties, to the extent of the cost of medical
7 services paid for by the Medicaid program. This assignment
8 of rights does not extend to Medicare benefits: *Provided,*
9 That the first \$25,000 of the death benefit of a life insurance
10 policy is exempt from assignment under the provisions of
11 this section.

12 At the time the application is made, the department shall
13 include a statement along with such application that explains
14 that the applicant has assigned all such rights and the legal
15 implications of making such assignment as provided in this
16 section.

17 If medical assistance is paid or will be paid to a provider
18 of medical care on behalf of a recipient of medical assistance
19 because of any sickness, injury, disease or disability, and
20 another person is legally liable for such expense, either
21 pursuant to contract, negligence or otherwise, the Department
22 of Health and Human Resources shall have a right to recover
23 full reimbursement from any award or settlement for such
24 medical assistance from such other person or from the
25 recipient of such assistance if he or she has been reimbursed
26 by the other person. The department shall be legally assigned
27 the rights of the recipient against the person so liable, but
28 only to the extent of the reasonable value of the medical
29 assistance paid and attributable to the sickness, injury,
30 disease or disability for which the recipient has received
31 damages. When an action or claim is brought by a medical
32 assistance recipient or by someone on his or her behalf
33 against a third party who may be liable for the injury, disease,
34 disability or death of a medical assistance recipient, any
35 settlement, judgment or award obtained is subject to the
36 claim of the Department of Health and Human Resources for
37 reimbursement of an amount sufficient to reimburse the

38 department the full amount of benefits paid on behalf of the
39 recipient under the medical assistance program for the injury,
40 disease, disability or death of the medical assistance
41 recipient. The claim of the Department of Health and Human
42 Resources assigned by such recipient shall not exceed the
43 amount of medical expenses for the injury, disease, disability
44 or death of the recipient paid by the department on behalf of
45 the recipient. The right of subrogation created in this section
46 includes all portions of the cause of action, by either
47 settlement, compromise, judgment or award, notwithstanding
48 any settlement allocation or apportionment that purports to
49 dispose of portions of the cause of action not subject to the
50 subrogation. Any settlement, compromise, judgment or
51 award that excludes or limits the cost of medical services or
52 care shall not preclude the Department of Health and Human
53 Resources from enforcing its rights under this section. The
54 secretary may compromise, settle and execute a release of
55 any such claim, in whole or in part.

56 (b) Nothing in this section shall be construed so as to
57 prevent the recipient of medical assistance from maintaining
58 an action for injuries received by him or her against any other
59 person and from including therein, as part of the
60 compensatory damages sought to be recovered, the amount
61 or amounts of his or her medical expenses, even though such
62 person received medical assistance in the payment of such
63 medical expenses, in whole or in part.

64 If the action be tried by a jury, the jury shall not be
65 informed as to the interest of the Department of Health and
66 Human Resources, if any, and such fact shall not be disclosed
67 to the jury at any time. The trial judge shall, upon the entry
68 of judgment on the verdict, direct that an amount equal to the
69 amount of medical assistance given be withheld and paid
70 over to the Department of Health and Human Resources.
71 Irrespective of whether the case be terminated by judgment
72 or by settlement without trial, from the amount required to be
73 paid to the Department of Health and Human Resources there
74 shall be deducted the attorney fees attributable to such

75 amount in accordance with and in proportion to the fee
76 arrangement made between the recipient and his or her
77 attorney of record so that the department shall bear the pro
78 rata portion of such attorney fees. Nothing in this section
79 shall preclude any person who has received medical
80 assistance from settling any cause of action which he or she
81 may have against another person and delivering to the
82 Department of Health and Human Resources, from the
83 proceeds of such settlement, the sums received by him or her
84 from the department or paid by the department for his or her
85 medical assistance. If such other person is aware of or has
86 been informed of the interest of the Department of Health
87 and Human Resources in the matter, it shall be the duty of the
88 person to whose benefit the release inures to withhold so
89 much of the settlement as may be necessary to reimburse the
90 department to the extent of its interest in the settlement. No
91 judgment, award of or settlement in any action or claim by a
92 medical assistance recipient to recover damages for injuries,
93 disease or disability, in which the Department of Health and
94 Human Resources has interest, shall be satisfied without first
95 giving the department notice and reasonable opportunity to
96 establish its interest. The department shall have sixty days
97 from receipt of such written notice to advise the recipient or
98 his or her representative in writing of the department's desire
99 to establish its interest through the assignment. If no such
100 written intent is received within the sixty-day period, then the
101 recipient may proceed and in the event of full recovery
102 forward to the department the portion of the recovery
103 proceeds less the department's share of attorney's fees and
104 costs expended in the matter. In the event of less than full
105 recovery the recipient and the department shall agree as to
106 the amount to be paid to the department for its claim. If there
107 is no recovery, the department shall under no circumstances
108 be liable for any costs or attorney's fees expended in the
109 matter. If, after being notified in writing of a subrogation
110 claim and possible liability of the recipient, guardian,
111 attorney or personal representative for failure to subrogate
112 the department, a recipient, his or her guardian, attorney or

113 personal representative disposes of the funds representing the
114 judgment, settlement or award, without the written approval
115 of the department, that person shall be liable to the
116 department for any amount that, as a result of the disposition
117 of the funds, is not recoverable by the department. In the
118 event that a controversy arises concerning the subrogation
119 claims by the department, an attorney shall interplead,
120 pursuant to rule twenty-two of the Rules of Civil Procedure,
121 the portion of the recipient's settlement that will satisfy the
122 department exclusive of attorney's fees and costs regardless
123 of any contractual arrangement between the client and the
124 attorney.

125 (c) Nothing contained herein shall authorize the
126 Department of Health and Human Resources to institute a
127 class action or multiple plaintiff action against any
128 manufacturer, distributor or vendor of any product to recover
129 medical care expenditures paid for by the Medicaid program.

CHAPTER 123

(S.B. 632 - By Senator Prezioso)

[Passed April 8, 2009; in effect ninety days from passage.]

[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §9-5-11b of the Code of West Virginia, 1931, as amended, relating to requiring insurers to share information with the Bureau for Medical Services with regard to services provided to an individual during a period of coverage with another insurer.

Be it enacted by the Legislature of West Virginia:

That §9-5-11b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-11b. Release of information.

1 (a) All recipients of medical assistance under the
2 Medicaid program are considered to have authorized all third
3 parties, including, but not limited to, insurance companies
4 and providers of medical care, to release to the Department
5 of Health and Human Resources information needed by the
6 department to secure or enforce its rights as assignee under
7 this chapter.

8 (b) As a condition of doing business in the state, health
9 insurers, including self-insured plans, group health plans as
10 defined in §6074(a) of the Employee Retirement Income
11 Security Act of 1974, service benefit plans, third-party
12 administrators, managed care organizations, pharmacy
13 benefit managers or other parties that are by statute, contract
14 or agreement, legally responsible for payment of a claim for
15 a health care item or service are required to comply with the
16 following:

17 (1) Upon the request of the Bureau for Medical Services,
18 or its contractor, provide information to determine the period
19 that the service recipients, their spouse or dependents may be
20 or may have been covered by the health insurer, including the
21 nature of the coverage that is or was provided by the health
22 insurer, the name, address, date of birth, Social Security
23 number, group number, identifying number of the plan, and
24 effective and termination dates. The information shall be
25 provided in a format suitable for electronic data matches,

26 conducted under the direction of the Department of Health
27 and Human Resources, no less than monthly or as prescribed
28 by the secretary. The health insurer must respond within sixty
29 working days after receipt of a written request for enrollment
30 data from the department or its contractor;

31 (2) Accept the right of the Bureau for Medical Services
32 of recovery and the assignment to the state of any right of an
33 individual or other entity to payment from the party for an
34 item or service for which payment has been made by the
35 Bureau for Medical Services;

36 (3) Respond to any inquiry by the Bureau for Medical
37 Services regarding a claim for payment for any health care
38 item or service that is submitted not later than three years
39 after the date of the provision of the health care item or
40 service; and

41 (4) Accept a claim submitted by the Bureau for Medical
42 Services regardless of the date of submission of the claim, the
43 type or format of the claim form, lack of preauthorization or
44 the failure to present proper documentation at the point-of-
45 sale that is the basis of the claim: *Provided*, That the claim
46 is submitted by the Bureau for Medical Services within the
47 three-year period beginning on the date on which the item or
48 service was furnished and any action by the Bureau for
49 Medical Services to enforce its right with respect to the claim
50 is commenced within six years of the Bureau for Medical
51 Services' submission of the claim.

CHAPTER 124**(Com. Sub. for H.B. 3063 - By Delegates Talbott, Argento
and Shaver)**

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 6, 2009.]

AN ACT to amend and reenact §20-2-22a of the Code of West Virginia, 1931, as amended, relating to hunting, tagging and reporting bear; changing and clarifying lawful weight limits; clarifying that it is unlawful to shoot at or kill any bear while it is accompanied by a cub; making it unlawful to shoot at or kill a cub regardless of its weight, if it is accompanied by another bear; and penalties.

Be it enacted by the Legislature of West Virginia:

That §20-2-22a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.**§20-2-22a. Hunting, tagging and reporting bear; procedures applicable to property destruction by bear; penalties.**

- 1 (a) A person in any county of this state may not hunt,
- 2 capture, or kill any bear, or have in his or her possession any
- 3 bear or bear parts, except during the hunting season for bear
- 4 and in the manner designated by rules promulgated by the
- 5 Division of Natural Resources and as provided in this

6 section. For the purposes of this section, bear parts include,
7 but are not limited to, the pelt, gallbladder, skull and claws of
8 bear.

9 (b) A person who kills a bear shall, within twenty-four
10 hours after the killing, deliver the bear or fresh skin to a
11 conservation officer or checking station for tagging. A
12 Division of Natural Resources tag shall be affixed to it before
13 any part of the bear may be transported more than
14 seventy-five miles from the point of kill. The Division of
15 Natural Resources tag shall remain on the skin until it is
16 tanned or mounted. Any bear or bear parts not properly
17 tagged shall be forfeited to the state for disposal to a
18 charitable institution, school or as otherwise designated by
19 the Division of Natural Resources.

20 (c) It is unlawful:

21 (1) To hunt bear without a bear damage stamp as
22 prescribed in section forty-four-b of this article, in addition
23 to a hunting license as prescribed in this article;

24 (2) To hunt a bear with:

25 (A) A shotgun using ammunition loaded with more than
26 one solid ball;

27 (B) A rifle of less than twenty-five caliber using rimfire
28 ammunition; or,

29 (C) A crossbow;

30 (3) To kill or attempt to kill any bear through the use of
31 poison, explosives, snares, steel traps or deadfalls other than
32 as authorized in this section;

33 (4) To shoot at or kill:

34 (A) A bear weighing less than seventy-five pounds live
35 weight or fifty pounds field dressed weight, after removal of
36 all internal organs;

37 (B) Any bear accompanied by a cub; or

38 (C) Any bear cub so accompanied, regardless of its
39 weight;

40 (5) To possess any part of a bear not tagged in
41 accordance with the provisions of this section;

42 (6) To enter a state game refuge with firearms for the
43 purpose of pursuing or killing a bear except under the direct
44 supervision of division personnel;

45 (7) To hunt bear with dogs or to cause dogs to chase bear
46 during seasons other than those designated by the Division of
47 Natural Resources for the hunting of bear;

48 (8) To pursue a bear with a pack of dogs other than the
49 pack used at the beginning of the hunt once the bear is
50 spotted and the chase has begun;

51 (9) To possess, harvest, sell or purchase bear parts
52 obtained from bear killed in violation of this section;

53 (10) To organize for commercial purposes or to
54 professionally outfit a bear hunt or to give or receive any
55 consideration whatsoever or any donation in money, goods
56 or services in connection with a bear hunt notwithstanding
57 the provisions of sections twenty-three and twenty-four of
58 this article; or

59 (11) For any person who is not a resident of this state to
60 hunt bear with dogs or to use dogs in any fashion for the
61 purpose of hunting bear in this state except in legally
62 authorized hunts.

63 (d) The following provisions apply to bear destroying
64 property:

65 (1) (A) Any property owner or lessee who has suffered
66 damage to real or personal property, including loss
67 occasioned by the death or injury of livestock or the unborn
68 issue of livestock, caused by an act of a bear may complain
69 to any conservation officer of the Division of Natural
70 Resources for protection against the bear.

71 (B) Upon receipt of the complaint, the officer shall
72 immediately investigate the circumstances of the complaint.
73 If the officer is unable to personally investigate the
74 complaint, he or she shall designate a wildlife biologist to
75 investigate on his or her behalf.

76 (C) If the complaint is found to be justified, the officer or
77 designated person may, together with the owner and other
78 residents, proceed to hunt, destroy or capture the bear that
79 caused the property damage: *Provided*, That only the
80 conservation officer or the wildlife biologist shall determine
81 whether to destroy or capture the bear and whether to use
82 dogs to capture or destroy the bear: *Provided, however*,
83 That, if out-of-state dogs are used in the hunt, the owners of
84 the dogs are the only nonresidents permitted to participate in
85 hunting the bear.

86 (2) (A) When a property owner has suffered damage to
87 real or personal property as the result of an act by a bear, the
88 owner shall file a report with the Director of the Division of
89 Natural Resources. The report shall state whether or not the
90 bear was hunted and destroyed and, if so, the sex, weight and
91 estimated age of the bear. The report shall also include an
92 appraisal of the property damage occasioned by the bear duly
93 signed by three competent appraisers fixing the value of the
94 property lost.

95 (B) The report shall be ruled upon and the alleged
96 damages examined by a commission comprised of the
97 complaining property owner, an officer of the division and a
98 person to be jointly selected by the officer and the
99 complaining property owner.

100 (C) The division shall establish the procedures to be
101 followed in presenting and deciding claims under this section
102 in accordance with article three, chapter twenty-nine-a of this
103 code.

104 (D) All claims shall be paid in the first instance from the
105 Bear Damage Fund provided in section forty-four-b of this
106 article. In the event the fund is insufficient to pay all claims
107 determined by the commission to be just and proper, the
108 remainder due to owners of lost or destroyed property shall
109 be paid from the special revenue account of the Division of
110 Natural Resources.

111 (3) In all cases where the act of the bear complained of
112 by the property owner is the killing of livestock, the value to
113 be established is the fair market value of the livestock at the
114 date of death. In cases where the livestock killed is pregnant,
115 the total value shall be the sum of the values of the mother
116 and the unborn issue, with the value of the unborn issue to be
117 determined on the basis of the fair market value of the issue
118 had it been born.

119 (e) *Criminal penalties.* -- (1) Any person who commits
120 a violation of the provisions of this section is guilty of a
121 misdemeanor and, upon conviction thereof, shall be fined not
122 less than \$1,000 nor more than \$5,000, which fine is not
123 subject to suspension by the court, confined in jail not less
124 than thirty nor more than one hundred days, or both fined and
125 confined. Further, the person's hunting and fishing licenses
126 shall be suspended for two years.

127 (2) Any person who commits a second violation of the
128 provisions of this section is guilty of a misdemeanor and,
129 upon conviction thereof, shall be fined not less than \$2,000
130 nor more than \$7,500, which fine is not subject to suspension
131 by the court, confined in jail not less than thirty days nor
132 more than one year, or both fined and confined. The
133 person's hunting and fishing licenses shall be suspended for
134 life.

135 (3) Any person who commits a third or subsequent
136 violation of the provisions of this section is guilty of a felony
137 and, upon conviction thereof, shall be fined not less than
138 \$5,000 nor more than \$10,000, which fine is not subject to
139 suspension by the court, imprisoned in a correctional facility
140 not less than one year nor more than five years, or both fined
141 and imprisoned.

CHAPTER 125

**(Com. Sub. for H.B. 2795 - By Delegates Ferro, White,
Varner, Talbott, Pethtel, Phillips, Stowers, Hall, Kominar,
Klempa and Lawrence)**

[Passed March 31, 2009; in effect ninety days from passage.]

[Approved by the Governor on April 8, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §20-2-46f, relating
to wildlife resources; and creating a special hunting and fishing
license for persons with a life-threatening condition who are
under twenty-one years of age.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended, by adding thereto a new section, designated §20-2-46f, to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-46f. Class DT special hunting and fishing license for persons with a life-threatening condition.

1 (a) A Class DT license is a special statewide hunting and
2 fishing license for residents of the State of West Virginia and
3 nonresidents, as permitted in subsection (e) of this section,
4 entitling the licensee to fish or hunt all legal species of game
5 at no charge, in accordance with the provisions of this
6 section.

7 (b) A license form shall be furnished by the director to an
8 applicant who meets the following requirements:

9 (1) He or she has been diagnosed by a licensed physician
10 with a life-threatening condition; and

11 (2) He or she is under twenty-one years of age.

12 (c) A licensed physician must certify the applicant's life-
13 threatening condition by completing the license form. A
14 "life-threatening condition" means a terminal condition or
15 illness that according to current diagnosis has a high
16 probability of death within two years, even with treatment
17 with an existing generally accepted protocol. When
18 completed, the license form constitutes a Class DT license.
19 The Class DT license and a completed license application
20 shall be submitted to the division, which will issue a wallet
21 sized card to the licensee. The card and all other documents

22 and identification required to be carried by this article shall
23 be in the licensee's possession when hunting or fishing.

24 (d) A Class DT license entitles the holder to hunt and fish
25 only under the following circumstances:

26 (1) The licensee is accompanied by a parent, guardian or,
27 with written consent of the parent or guardian, any other
28 competent adult at least twenty-one years of age;

29 (2) The individual assisting the licensee must hold a valid
30 fishing or hunting license appropriate to the situation;

31 (3) The licensee and the individual assisting observe all
32 other pertinent laws and regulations.

33 (e) The director shall provide licenses to nonresidents at
34 no charge who:

35 (1) Meet the requirements of subsections (b) and (c) of
36 this section; and

37 (2) Are recommended by qualifying nonprofit
38 organizations who offer hunting and fishing experiences.

39 (f) The director shall propose rules for legislative
40 approval in accordance with the provisions of article three,
41 chapter twenty-nine-a of this code setting forth the
42 qualifications of applicants and nonprofit organizations and
43 the licensing process.

CHAPTER 126

(Com. Sub. for H.B. 2695 - By Delegate Brown)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 11, 2009.]

AN ACT to amend and reenact §20-2-57 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §20-2-57a and 20-2-57b, all relating to duties and conduct by a hunter while hunting and related offenses; amending crimes and penalties for negligent shooting of animals and damage to property by a hunter while hunting; amending crimes and penalties for negligent shooting of another person by a hunter while hunting; amending reporting requirements; requiring hunter responsible for shooting another person to render aid to the injured person; creating misdemeanor and felony offenses for failing to render aid to the injured person; prohibiting hunting while intoxicated; creating misdemeanor offense of hunting while intoxicated; creating misdemeanor and felony offenses for shooting and wounding or killing another person while hunting under the influence of alcohol, controlled substances or drugs; providing for the suspension of hunting and fishing license for violations; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §20-2-57 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and to amend said code by adding

thereto two new sections, designated §20-2-57a and §20-2-57b, all to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-57. Negligent shooting, wounding or killing of livestock while hunting; criminal violations; penalty.

§20-2-57a. Negligent shooting, wounding or killing of another person while hunting; duty to render aid; criminal violations; suspension of hunting and fishing license; criminal penalties; administrative penalties.

§20-2-57b. Prohibition against hunting while intoxicated; offense of hunting while intoxicated, creating offense of shooting another person when hunting while intoxicated; creating misdemeanor and felony offenses for the same; defining suspension of hunting and fishing license; criminal penalties; administrative penalties.

§20-2-57. Negligent shooting, wounding or killing of livestock while hunting; criminal violations; penalty.

1 (a) It is unlawful for any person, while engaged in
2 hunting, pursuing, taking or killing wild animals or wild
3 birds, to carelessly or negligently shoot, wound or kill
4 livestock, or to destroy or injure any other chattels or
5 property.

6 Any person violating this subsection is guilty of a
7 misdemeanor and, upon conviction thereof, shall be fined not
8 more than \$1,000, or confined in jail not more than ninety
9 days, or both fined and confined. Restitution of the value of
10 the livestock, chattel or property injured, damaged or
11 destroyed shall be required upon conviction.

§20-2-57a. Negligent shooting, wounding or killing of another person while hunting; duty to render aid; criminal violations; suspension of hunting and fishing license; criminal penalties; administrative penalties.

1 (a) It is unlawful for any person, while engaged in the act
2 of hunting, pursuing, taking or killing wild animals or wild

3 birds, to carelessly or negligently shoot, wound or kill
4 another person.

5 (b) Anyone who negligently shoots, wounds or injures
6 another person while hunting, not resulting in serious bodily
7 injury or death, is guilty of a misdemeanor, and upon
8 conviction thereof, shall be fined not more than \$1000 or
9 confined in jail not more than six months, or both fined and
10 confined.

11 (c) Anyone who negligently shoots and injures another
12 person while hunting, resulting in serious bodily injury or
13 death, is guilty of a misdemeanor, and upon conviction
14 thereof, shall be fined not more than \$2,500 or confined in
15 jail for not more than one year, or both fined and confined.

16 (d) For purposes of this section, serious bodily injury
17 means bodily injury which creates a substantial risk of death,
18 which causes serious or prolonged disfigurement, prolonged
19 impairment of health or prolonged loss or impairment of the
20 function of any bodily organ.

21 (e)(1) Any person who, while hunting, discharges a
22 firearm or arrow and knows or has reason to know that the
23 discharge has caused bodily harm to another person shall:

24 (A) Immediately investigate the extent of the person's
25 injuries; and

26 (B) Render immediate reasonable assistance to the
27 injured person.

28 (2) As used in this subsection, "reasonable assistance"
29 means aid appropriate to the circumstances, including by not
30 limited to obtaining or attempting to obtain assistance from
31 a conservation or law enforcement officer, 911 dispatchers,
32 emergency medical providers and medical personnel.

33 (f) Any person who fails to render aid and assistance to
34 an injured person as required by subsection (e), to an injured
35 party who has not sustained a serious bodily injury is guilty
36 of a misdemeanor, and upon conviction thereof, shall be
37 fined not more than \$2,500 and confined in jail for not more
38 than one year, or both fined and confined.

39 (g) Any person who fails to render aid as required by
40 subsection (e) to an injured party who has sustained a serious
41 bodily injury or dies as a result of their injuries is guilty of a
42 felony, and upon conviction thereof, shall be fined not more
43 than \$5,000 or imprisoned in a correctional facility for not
44 less than one year nor more than five years, or both fined and
45 imprisoned.

46 (h) Any person found guilty of committing a
47 misdemeanor under this section shall have their hunting and
48 fishing licenses suspended for a period of five years from the
49 date of conviction or the date of release from confinement,
50 whichever is later.

51 (i) Any person found guilty of committing a felony
52 offense under this section shall have their hunting and fishing
53 licenses suspended for a period of ten years from the date of
54 conviction or the date of release from incarceration,
55 whichever is later.

**§20-2-57b. Prohibition against hunting while intoxicated;
offense of hunting while intoxicated, creating
offense of shooting another person when hunting
while intoxicated; creating misdemeanor and
felony offenses for the same; defining suspension
of hunting and fishing license; criminal penalties;
administrative penalties.**

1 (a) It is unlawful for any person to hunt, pursue, take or
2 kill wild animals or wild birds while the person:

3 (1) Is under the influence of alcohol; or

4 (2) Is under the influence of any controlled substance; or

5 (3) Is under the influence of any other drug; or

6 (4) Is under the combined influence of alcohol and any
7 controlled substance or any other drug; or

8 (5) Has an alcohol concentration in his or her blood of
9 eight hundredths of one percent or more by weight.

10 (b) Any person violating subsection (a) of this section is
11 guilty of a misdemeanor, and upon conviction thereof, shall
12 be fined not less than \$100 nor more than \$500, or confined
13 in jail for not less than 30 days nor more than 100 days, or
14 both fined and confined.

15 (c) It is unlawful for any person, while engaged in
16 hunting, pursuing, taking or killing wild animals or wild
17 birds, to carelessly or negligently shoot and wound another
18 person while the shooter:

19 (1) Is under the influence of alcohol; or

20 (2) Is under the influence of any controlled substance; or

21 (3) Is under the influence of any other drug; or

22 (4) Is under the combined influence of alcohol and any
23 controlled substance or any other drug; or

24 (5) Has an alcohol concentration in his or her blood of
25 eight hundredths of one percent or more, by weight.

26 (d) Any person violating subsection (c) of this section is
27 guilty of a misdemeanor, and upon conviction thereof, shall
28 be fined not less than \$500 nor more than \$1,500, or confined

29 in jail for not less than two months nor more than one year,
30 or both fined and confined.

31 (e) It is unlawful for any person, while engaged in
32 hunting, pursuing, taking or killing wild animals or wild
33 birds, to carelessly or negligently shoot and kill another
34 person while the shooter:

35 (2) Is under the influence of alcohol; or

36 (3) Is under the influence of any controlled substance; or

37 (4) Is under the influence of any other drug; or

38 (5) Is under the combined influence of alcohol and any
39 controlled substance or any other drug; or

40 (6) Has an alcohol concentration in his or her blood of
41 eight hundredths of one percent or more, by weight.

42 (f) Any person violating subsection (e) of this section is
43 guilty of a felony, and upon conviction thereof, shall be fined
44 not less than \$1,000 nor more than \$5,000, or imprisoned in
45 a state correctional facility for not less than one year nor
46 more than three years, or both fined and imprisoned.

47 (e) Any person found guilty of committing an offense
48 under this section shall have their hunting and fishing
49 licenses suspended for a period of five years from the date
50 of conviction or the date of release from incarceration,
51 whichever is later.

52 (f) Any person found guilty of committing a felony
53 offense under this section shall have their hunting and fishing
54 licenses suspended for a period of ten years from the date of
55 conviction or the date of release from incarceration,
56 whichever is later.

57 (g) Any person who shoots another person while
58 intoxicated in violation of this section has the same duty and
59 obligation to render aid to the injured person as is set forth in
60 section fifty-seven-a of this article, and is subject to the
61 additional penalties set forth therein as a separate and distinct
62 violation, in the event that he or she fails to render aid to the
63 injured person.

CHAPTER 127

**(H.B. 2913 - By Delegates Williams, Ennis, Pethtel, Morgan
and Stephens)**

[Passed April 11, 2009; in effect from passage.]
[Approved by the Governor on May 6, 2009.]

AN ACT to amend and reenact §18-10M-6 of the Code of West Virginia, 1931, as amended, relating to the Statewide Independent Living Council; clarifying appointment of council members by the Governor; deleting antiquated language and revising duties of the council.

Be it enacted by the Legislature of West Virginia:

That §18-10M-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 10M. WEST VIRGINIA INDEPENDENT LIVING
ACT.**

§18-10M-6. Statewide Independent Living Council.

1 (a) The West Virginia Statewide Independent Living
2 Council is continued as a not-for-profit corporation which
3 has been organized to meet the requirements of the Federal
4 Rehabilitation Act: *Provided*, That the council may not be
5 established as an entity within any agency or political
6 subdivision of the state. The council shall be governed by a
7 board of directors, consisting of the voting members of the
8 council, as provided in this section. The composition of this
9 board of directors, as well as the composition of the full
10 council's membership, shall include a majority of members
11 who are persons with disabilities, as defined in the state plan,
12 and a majority of members who are not employed by any
13 agency of the state or Center for Independent Living. The
14 council's membership shall reflect balanced geographical
15 representation, diverse backgrounds and the full range of
16 disabilities recognized under the federal act, including
17 physical, mental, cognitive, sensory and multiple.

18 (b) The council shall function as a partner with the
19 Division of Rehabilitation Services in the planning and
20 provision of independent living services in the state. In
21 conjunction with the division, the council shall develop,
22 approve and submit to the proper federal authorities the state
23 plan for independent living, as required by the federal act.
24 The council shall monitor, review and evaluate the
25 effectiveness of the implementation of the state plan.

26 (c) *Voting members.* -- The council shall consist of
27 twenty-four voting members including: one director of an
28 Independent Living Center chosen by the directors of the
29 independent living centers in the state. The Governor shall
30 select appointments from among the nominations submitted
31 by organizations representing a wide range of individuals
32 with disabilities and other interested groups, as coordinated
33 by the council, by and with the advice and consent of the
34 Senate. These members may include other representatives
35 from Centers for Independent Living, parents and guardians

36 of individuals with disabilities, advocates of individuals
37 with disabilities, representatives from the business and
38 educational sectors, representatives of organizations that
39 provide services for individuals with disabilities and other
40 interested individuals, as appropriate to the purpose of the
41 council.

42 (d) *Nonvoting members.* -- The membership of the
43 council shall also include the following, nonvoting, ex officio
44 members or their designees:

45 (1) A representative of the Division of Rehabilitation
46 Services;

47 (2) A representative of the Office of Behavioral Health
48 Services within the Department of Health and Human
49 Resources;

50 (3) A representative of the West Virginia Housing
51 Development Fund;

52 (4) A representative of the West Virginia Association of
53 Rehabilitation Facilities;

54 (5) A representative of the Bureau of Senior Services;
55 and

56 (6) A representative of the Office of Special Education
57 Programs and Assurance in the Department of Education.

58 (e) The nonvoting membership may also include
59 additional representatives of groups represented on the board
60 of directors.

61 (f) *Appointment.* -- All council members are appointed by
62 the Governor. The Governor shall appoint from among the
63 nominations submitted by organizations representing a wide

64 range of individuals with disabilities and other interested
65 groups, as coordinated by the council.

66 (g) *Terms of appointment.* -- All council members are
67 appointed to serve for a term of three years, except that a
68 member appointed to fill a vacancy occurring prior to the
69 expiration of the term for which a predecessor was appointed
70 shall be appointed for the remainder of the unexpired term.
71 No member of the council may serve more than two
72 consecutive full terms.

73 (h) *Vacancies.* -- Any vacancy occurring in the appointed
74 membership of the council shall be filled in the same manner
75 as the original appointment. A vacancy does not affect the
76 power of the remaining members to execute the duties of the
77 council.

78 (i) *Delegation.* -- The Governor may delegate the
79 authority to fill a vacancy to the remaining voting members
80 of the council after initial appointments have been made.

81 (j) *Duties.* -- The council shall:

82 (1) In conjunction with the Division of Rehabilitation
83 Services, develop and sign the state plan for independent
84 living;

85 (2) Monitor, review and evaluate the implementation of
86 the state plan;

87 (3) Coordinate activities with the state rehabilitation
88 council and other bodies that address the needs of specific
89 disability populations and issues under other federal and state
90 law;

91 (4) Ensure that all regularly scheduled meetings of the
92 council are open to the public and sufficient advance notice
93 is provided; and

94 (5) Submit to the federal funding agency such periodic
95 reports as are required and keep such records and afford
96 access to such records, as may be necessary to verify such
97 reports.

98 (6) Ensure that the state plan for independent living sets
99 forth the steps that will be taken to maximize the cooperation,
100 coordination and working relationships among:

101 (A) The Independent Living Rehabilitation Service
102 Program, the Statewide Independent Living Council, and
103 Centers for Independent Living; and

104 (B) The designated state unit, other state agencies
105 represented on the council, other councils that address the
106 needs of specific disability populations and issues, and other
107 public and private entities determined to be appropriate by
108 the council.

109 (k) *Staffing and resources.* -- The council may employ
110 staff as necessary to perform the functions of the council,
111 including an executive director, an administrative assistant
112 and other staff as may be determined necessary by the
113 council. The council shall supervise and evaluate staff. The
114 council shall prepare, in conjunction with the division, a plan
115 for the use of available resources as may be necessary to
116 carry out the functions and duties of the council pursuant to
117 this article, utilizing eligible federal funds, funds made
118 available under this article and funds from other public and
119 private sources. This resource plan shall, to the maximum
120 extent possible, rely on the use of existing resources during
121 the period of plan implementation.

122 (l) *Compensation and expenses.* -- The council may use
123 resources that are available to it to reimburse members of the
124 council for reasonable and necessary expenses incurred in the
125 performance of their duties, including attending council

126 meetings, and to pay reasonable compensation to any
127 member of the council who is either not employed by the
128 state or is not otherwise compensated by his or her employer
129 for performance of duties associated with the council, up to
130 \$50 per day.

CHAPTER 128

(Com. Sub. for S.B. 326 - By Senator Stollings)

[Passed April 11, 2009; in effect ninety days from passage.]

[Approved by the Governor on May 12, 2009.]

AN ACT to amend and reenact §5-16-7 and §5-16-9 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §33-15-4j; to amend said code by adding thereto a new section, designated §33-16-3t; to amend said code by adding thereto a new section, designated §33-24-7j; to amend said code by adding thereto a new section, designated §33-25-8h; and to amend said code by adding thereto a new section, designated §33-25A-8i, all relating to mandating insurance coverage of dental anesthesia in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §5-16-7 and §5-16-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §33-15-4j; that said code be amended by adding thereto a new section, designated §33-16-3t; that said code be amended by adding thereto a new section, designated §33-24-7j; that said code be amended by adding

thereto a new section, designated §33-25-8h; and that said code be amended by adding thereto a new section, designated §33-25A-8i, all to read as follows:

Chapter

5. **General Powers and Authority of the Governor; Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, etc.**
 33. **Insurance.**

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF
 THE GOVERNOR, SECRETARY OF STATE AND
 ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
 MISCELLANEOUS AGENCIES, COMMISSIONS,
 OFFICES, PROGRAMS, ETC.**

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES
 INSURANCE ACT.**

- §5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; rules for administration of plans; mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.
 §5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance and other accidental death insurance; mandated benefits; limitations; awarding of contracts; reinsurance; certificates for covered employees; discontinuance of contracts.

***§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; rules for administration of plans; mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.**

- 1 (a) The agency shall establish a group hospital and
 2 surgical insurance plan or plans, a group prescription drug
 3 insurance plan or plans, a group major medical insurance
 4 plan or plans and a group life and accidental death insurance
 5 plan or plans for those employees herein made eligible, and
 6 to establish and promulgate rules for the administration of

***CLERK'S NOTE:** This section was also amended by HB 3288 (Chapter 129), which passed subsequent to this act.

7 these plans, subject to the limitations contained in this article.

8 Those plans shall include:

9 (1) Coverages and benefits for X ray and laboratory
10 services in connection with mammograms when medically
11 appropriate and consistent with current guidelines from the
12 United States Preventive Services Task Force; pap smears,
13 either conventional or liquid-based cytology, whichever is
14 medically appropriate and consistent with the current
15 guidelines from either the United States Preventive Services
16 Task Force or The American College of Obstetricians and
17 Gynecologists; and a test for the human papilloma virus
18 (HPV) when medically appropriate and consistent with
19 current guidelines from either the United States Preventive
20 Services Task Force or The American College of
21 Obstetricians and Gynecologists, when performed for cancer
22 screening or diagnostic services on a woman age eighteen or
23 over;

24 (2) Annual checkups for prostate cancer in men age fifty
25 and over;

26 (3) Annual screening for kidney disease as determined to
27 be medically necessary by a physician using any combination
28 of blood pressure testing, urine albumin or urine protein
29 testing and serum creatinine testing as recommended by the
30 National Kidney Foundation;

31 (4) For plans that include maternity benefits, coverage for
32 inpatient care in a duly licensed health care facility for a
33 mother and her newly born infant for the length of time
34 which the attending physician considers medically necessary
35 for the mother or her newly born child: *Provided*, That no
36 plan may deny payment for a mother or her newborn child
37 prior to forty-eight hours following a vaginal delivery, or
38 prior to ninety-six hours following a caesarean section

39 delivery, if the attending physician considers discharge
40 medically inappropriate;

41 (5) For plans which provide coverages for post-delivery
42 care to a mother and her newly born child in the home,
43 coverage for inpatient care following childbirth as provided
44 in subdivision (4) of this subsection if inpatient care is
45 determined to be medically necessary by the attending
46 physician. Those plans may also include, among other
47 things, medicines, medical equipment, prosthetic appliances
48 and any other inpatient and outpatient services and expenses
49 considered appropriate and desirable by the agency; and

50 (6) Coverage for treatment of serious mental illness.

51 (A) The coverage does not include custodial care,
52 residential care or schooling. For purposes of this section,
53 "serious mental illness" means an illness included in the
54 American Psychiatric Association's diagnostic and statistical
55 manual of mental disorders, as periodically revised, under the
56 diagnostic categories or subclassifications of: (i)
57 Schizophrenia and other psychotic disorders; (ii) bipolar
58 disorders; (iii) depressive disorders; (iv) substance-related
59 disorders with the exception of caffeine-related disorders and
60 nicotine-related disorders; (v) anxiety disorders; and (vi)
61 anorexia and bulimia. With regard to any covered individual
62 who has not yet attained the age of nineteen years, "serious
63 mental illness" also includes attention deficit hyperactivity
64 disorder, separation anxiety disorder and conduct disorder.

65 (B) Notwithstanding any other provision in this section
66 to the contrary, in the event that the agency can demonstrate
67 actuarially that its total anticipated costs for the treatment of
68 mental illness for any plan will exceed or have exceeded two
69 percent of the total costs for such plan in any experience
70 period, then the agency may apply whatever cost-
71 containment measures may be necessary, including, but not

72 limited to, limitations on inpatient and outpatient benefits, to
73 maintain costs below two percent of the total costs for the
74 plan.

75 (C) The agency shall not discriminate between
76 medical-surgical benefits and mental health benefits in the
77 administration of its plan. With regard to both
78 medical-surgical and mental health benefits, it may make
79 determinations of medical necessity and appropriateness, and
80 it may use recognized health care quality and cost
81 management tools, including, but not limited to, limitations
82 on inpatient and outpatient benefits, utilization review,
83 implementation of cost-containment measures,
84 preauthorization for certain treatments, setting coverage
85 levels, setting maximum number of visits within certain time
86 periods, using capitated benefit arrangements, using
87 fee-for-service arrangements, using third-party
88 administrators, using provider networks and using patient
89 cost sharing in the form of copayments, deductibles and
90 coinsurance.

91 (7) Coverage for general anesthesia for dental procedures
92 and associated outpatient hospital or ambulatory facility
93 charges provided by appropriately licensed health care
94 individuals in conjunction with dental care if the covered
95 person is:

96 (A) Seven years of age or younger or is developmentally
97 disabled, and is an individual for whom a successful result
98 cannot be expected from dental care provided under local
99 anesthesia because of a physical, intellectual or other
100 medically compromising condition of the individual and for
101 whom a superior result can be expected from dental care
102 provided under general anesthesia;

103 (B) A child who is twelve years of age or younger with
104 documented phobias, or with documented mental illness, and

105 with dental needs of such magnitude that treatment should
106 not be delayed or deferred and for whom lack of treatment
107 can be expected to result in infection, loss of teeth or other
108 increased oral or dental morbidity and for whom a successful
109 result cannot be expected from dental care provided under
110 local anesthesia because of such condition and for whom a
111 superior result can be expected from dental care provided
112 under general anesthesia.

113 (b) The agency shall make available to each eligible
114 employee, at full cost to the employee, the opportunity to
115 purchase optional group life and accidental death insurance
116 as established under the rules of the agency. In addition,
117 each employee is entitled to have his or her spouse and
118 dependents, as defined by the rules of the agency, included
119 in the optional coverage, at full cost to the employee, for each
120 eligible dependent; and with full authorization to the agency
121 to make the optional coverage available and provide an
122 opportunity of purchase to each employee.

123 (c) The finance board may cause to be separately rated
124 for claims experience purposes:

125 (1) All employees of the State of West Virginia;

126 (2) All teaching and professional employees of state
127 public institutions of higher education and county boards of
128 education;

129 (3) All nonteaching employees of the Higher Education
130 Policy Commission, West Virginia Council for Community
131 and Technical College Education and county boards of
132 education; or

133 (4) Any other categorization which would ensure the
134 stability of the overall program.

135 (d) The agency shall maintain the medical and
136 prescription drug coverage for Medicare-eligible retirees by
137 providing coverage through one of the existing plans or by
138 enrolling the Medicare-eligible retired employees into a
139 Medicare-specific plan, including, but not limited to, the
140 Medicare/Advantage Prescription Drug Plan. In the event
141 that a Medicare-specific plan would no longer be available or
142 advantageous for the agency and the retirees, the retirees
143 shall remain eligible for coverage through the agency.

§5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance and other accidental death insurance; mandated benefits; limitations; awarding of contracts; reinsurance; certificates for covered employees; discontinuance of contracts.

1 (a) The director is hereby given exclusive authorization
2 to execute such contract or contracts as are necessary to carry
3 out the provisions of this article and to provide the plan or
4 plans of group hospital and surgical insurance coverage,
5 group major medical insurance coverage, group prescription
6 drug insurance coverage and group life and accidental death
7 insurance coverage selected in accordance with the
8 provisions of this article, such contract or contracts to be
9 executed with one or more agencies, corporations, insurance
10 companies or service organizations licensed to sell group
11 hospital and surgical insurance, group major medical
12 insurance, group prescription drug insurance and group life
13 and accidental death insurance in this state.

14 (b) The group hospital or surgical insurance coverage and
15 group major medical insurance coverage herein provided
16 shall include coverages and benefits for X ray and laboratory
17 services in connection with mammogram and pap smears

18 when performed for cancer screening or diagnostic services
19 and annual checkups for prostate cancer in men age fifty and
20 over. Such benefits shall include, but not be limited to, the
21 following:

22 (1) Mammograms when medically appropriate and
23 consistent with the current guidelines from the United States
24 Preventive Services Task Force;

25 (2) A pap smear, either conventional or liquid-based
26 cytology, whichever is medically appropriate and consistent
27 with the current guidelines from the United States Preventive
28 Services Task Force or The American College of
29 Obstetricians and Gynecologists, for women age eighteen
30 and over;

31 (3) A test for the human papilloma virus (HPV) for
32 women age eighteen or over, when medically appropriate and
33 consistent with the current guidelines from either the United
34 States Preventive Services Task Force or The American
35 College of Obstetricians and Gynecologists for women age
36 eighteen and over;

37 (4) A checkup for prostate cancer annually for men age
38 fifty or over; and

39 (5) Annual screening for kidney disease as determined to
40 be medically necessary by a physician using any combination
41 of blood pressure testing, urine albumin or urine protein
42 testing and serum creatinine testing as recommended by the
43 National Kidney Foundation.

44 (6) Coverage for general anesthesia for dental procedures
45 and associated outpatient hospital or ambulatory facility
46 charges provided by appropriately licensed healthcare
47 individuals in conjunction with dental care if the covered
48 person is:

49 (A) Seven years of age or younger or is developmentally
50 disabled and is either an individual for whom a successful
51 result cannot be expected from dental care provided under
52 local anesthesia because of a physical, intellectual or other
53 medically compromising condition of the individual and for
54 whom a superior result can be expected from dental care
55 provided under general anesthesia; or

56 (B) A child who is twelve years of age or younger with
57 documented phobias, or with documented mental illness, and
58 with dental needs of such magnitude that treatment should
59 not be delayed or deferred and for whom lack of treatment
60 can be expected to result in infection, loss of teeth or other
61 increased oral or dental morbidity and for whom a successful
62 result cannot be expected from dental care provided under
63 local anesthesia because of such condition and for whom a
64 superior result can be expected from dental care provided
65 under general anesthesia.

66 (c) The group life and accidental death insurance herein
67 provided shall be in the amount of \$10,000 for every
68 employee. The amount of the group life and accidental death
69 insurance to which an employee would otherwise be entitled
70 shall be reduced to \$5,000 upon such employee attaining age
71 sixty-five.

72 (d) All of the insurance coverage to be provided for under
73 this article may be included in one or more similar contracts
74 issued by the same or different carriers.

75 (e) The provisions of article three, chapter five-a of this
76 code, relating to the Division of Purchasing of the
77 Department of Finance and Administration, shall not apply
78 to any contracts for any insurance coverage or professional
79 services authorized to be executed under the provisions of
80 this article. Before entering into any contract for any
81 insurance coverage, as authorized in this article, the director

82 shall invite competent bids from all qualified and licensed
83 insurance companies or carriers, who may wish to offer plans
84 for the insurance coverage desired: *Provided*, That the
85 director shall negotiate and contract directly with health care
86 providers and other entities, organizations and vendors in
87 order to secure competitive premiums, prices and other
88 financial advantages. The director shall deal directly with
89 insurers or health care providers and other entities,
90 organizations and vendors in presenting specifications and
91 receiving quotations for bid purposes. No commission or
92 finder's fee, or any combination thereof, shall be paid to any
93 individual or agent; but this shall not preclude an
94 underwriting insurance company or companies, at their own
95 expense, from appointing a licensed resident agent, within
96 this state, to service the companies' contracts awarded under
97 the provisions of this article. Commissions reasonably
98 related to actual service rendered for the agent or agents may
99 be paid by the underwriting company or companies:
100 *Provided, however*, That in no event shall payment be made
101 to any agent or agents when no actual services are rendered
102 or performed. The director shall award the contract or
103 contracts on a competitive basis. In awarding the contract or
104 contracts the director shall take into account the experience
105 of the offering agency, corporation, insurance company or
106 service organization in the group hospital and surgical
107 insurance field, group major medical insurance field, group
108 prescription drug field and group life and accidental death
109 insurance field, and its facilities for the handling of claims.
110 In evaluating these factors, the director may employ the
111 services of impartial, professional insurance analysts or
112 actuaries or both. Any contract executed by the director with
113 a selected carrier shall be a contract to govern all eligible
114 employees subject to the provisions of this article. Nothing
115 contained in this article shall prohibit any insurance carrier
116 from soliciting employees covered hereunder to purchase
117 additional hospital and surgical, major medical or life and
118 accidental death insurance coverage.

119 (f) The director may authorize the carrier with whom a
120 primary contract is executed to reinsure portions of the
121 contract with other carriers which elect to be a reinsurer and
122 who are legally qualified to enter into a reinsurance
123 agreement under the laws of this state.

124 (g) Each employee who is covered under any contract or
125 contracts shall receive a statement of benefits to which the
126 employee, his or her spouse and his or her dependents are
127 entitled under the contract, setting forth the information as to
128 whom the benefits are payable, to whom claims shall be
129 submitted and a summary of the provisions of the contract or
130 contracts as they affect the employee, his or her spouse and
131 his or her dependents.

132 (h) The director may at the end of any contract period
133 discontinue any contract or contracts it has executed with any
134 carrier and replace the same with a contract or contracts with
135 any other carrier or carriers meeting the requirements of this
136 article.

137 (i) The director shall provide by contract or contracts
138 entered into under the provisions of this article the cost for
139 coverage of children's immunization services from birth
140 through age sixteen years to provide immunization against
141 the following illnesses: Diphtheria, polio, mumps, measles,
142 rubella, tetanus, hepatitis-b, haemophilus influenzae-b and
143 whooping cough. Additional immunizations may be required
144 by the Commissioner of the Bureau for Public Health for
145 public health purposes. Any contract entered into to cover
146 these services shall require that all costs associated with
147 immunization, including the cost of the vaccine, if incurred
148 by the health care provider, and all costs of vaccine
149 administration be exempt from any deductible, per visit
150 charge and/or copayment provisions which may be in force
151 in these policies or contracts. This section does not require

152 that other health care services provided at the time of
153 immunization be exempt from any deductible and/or
154 copayment provisions.

CHAPTER 33. INSURANCE.

Article

- 15. Accident and Sickness Insurance.
- 16. Group Accident and Sickness Insurance.
- 24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.
- 25. Health Care Corporations.
- 25A. Health Maintenance Organization Act.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4j. Required coverage for dental anesthesia services.

1 (a) Notwithstanding any provision of any policy,
2 provision, contract, plan or agreement to which this article
3 applies, any entity regulated by this article shall, on or after
4 July 1, 2009, provide as benefits to all subscribers and
5 members coverage for dental anesthesia services as
6 hereinafter set forth.

7 (b) For purposes of this article and section, “dental
8 anesthesia services” means general anesthesia for dental
9 procedures and associated outpatient hospital or ambulatory
10 facility charges provided by appropriately licensed health
11 care individuals in conjunction with dental care provided to
12 an enrollee or insured if the enrollee or insured is:

13 (A) Seven years of age or younger or is developmentally
14 disabled and is an individual for whom a successful result
15 cannot be expected from dental care provided under local
16 anesthesia because of a physical, intellectual or other
17 medically compromising condition of the enrollee or insured
18 and for whom a superior result can be expected from dental
19 care provided under general anesthesia; or

20 (B) A child who is twelve years of age or younger with
21 documented phobias, or with documented mental illness, and
22 with dental needs of such magnitude that treatment should
23 not be delayed or deferred and for whom lack of treatment
24 can be expected to result in infection, loss of teeth or other
25 increased oral or dental morbidity and for whom a successful
26 result cannot be expected from dental care provided under
27 local anesthesia because of such condition and for whom a
28 superior result can be expected from dental care provided
29 under general anesthesia.

30 (c) *Prior authorization.* -- An entity subject to this
31 section may require prior authorization for general anesthesia
32 and associated outpatient hospital or ambulatory facility
33 charges for dental care in the same manner that prior
34 authorization is required for these benefits in connection with
35 other covered medical care.

36 (d) An entity subject to this section may restrict coverage
37 for general anesthesia and associated outpatient hospital or
38 ambulatory facility charges unless the dental care is provided
39 by:

40 (1) A fully accredited specialist in pediatric dentistry;

41 (2) A fully accredited specialist in oral and maxillofacial
42 surgery; and

43 (3) A dentist to whom hospital privileges have been
44 granted.

45 (e) *Dental care coverage not required.* -- The provisions
46 of this section may not be construed to require coverage for
47 the dental care for which the general anesthesia is provided.

48 (f) *Temporal mandibular joint disorders.* -- The
49 provisions of this section do not apply to dental care rendered
50 for temporal mandibular joint disorders.

51 (g) A policy, provision, contract, plan or agreement may
52 apply to dental anesthesia services the same deductibles,
53 coinsurance and other limitations as apply to other covered
54 services.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3t. Required coverage for dental anesthesia services.

1 (a) Notwithstanding any provision of any policy,
2 provision, contract, plan or agreement to which this article
3 applies, any entity regulated by this article shall, on or after
4 July 1, 2009, provide as benefits to all subscribers and
5 members coverage for dental anesthesia services as
6 hereinafter set forth.

7 (b) For purposes of this article and section, “dental
8 anesthesia services” means general anesthesia for dental
9 procedures and associated outpatient hospital or ambulatory
10 facility charges provided by appropriately licensed health
11 care individuals in conjunction with dental care provided to
12 an enrollee or insured if the enrollee or insured is:

13 (1) Seven years of age or younger or is developmentally
14 disabled and is an individual for whom a successful result
15 cannot be expected from dental care provided under local
16 anesthesia because of a physical, intellectual or other
17 medically compromising condition of the enrollee or insured
18 and for whom a superior result can be expected from dental
19 care provided under general anesthesia; or

20 (2) A child who is twelve years of age or younger with
21 documented phobias, or with documented mental illness, and

22 with dental needs of such magnitude that treatment should
23 not be delayed or deferred and for whom lack of treatment
24 can be expected to result in infection, loss of teeth or other
25 increased oral or dental morbidity and for whom a successful
26 result cannot be expected from dental care provided under
27 local anesthesia because of such condition and for whom a
28 superior result can be expected from dental care provided
29 under general anesthesia.

30 (c) *Prior authorization.* -- An entity subject to this
31 section may require prior authorization for general anesthesia
32 and associated outpatient hospital or ambulatory facility
33 charges for dental care in the same manner that prior
34 authorization is required for these benefits in connection with
35 other covered medical care.

36 (d) An entity subject to this section may restrict coverage
37 for general anesthesia and associated outpatient hospital or
38 ambulatory facility charges unless the dental care is provided
39 by:

40 (1) A fully accredited specialist in pediatric dentistry;

41 (2) A fully accredited specialist in oral and maxillofacial
42 surgery; and

43 (3) A dentist to whom hospital privileges have been
44 granted.

45 (e) *Dental care coverage not required.* -- The provisions
46 of this section may not be construed to require coverage for
47 the dental care for which the general anesthesia is provided.

48 (f) *Temporal mandibular joint disorders.* -- The
49 provisions of this section do not apply to dental care rendered
50 for temporal mandibular joint disorders.

51 (g) A policy, provision, contract, plan or agreement may
52 apply to dental anesthesia services the same deductibles,
53 coinsurance and other limitations as apply to other covered
54 services.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS,
MEDICAL SERVICE CORPORATIONS,
DENTAL SERVICE CORPORATIONS
AND HEALTH SERVICE
CORPORATIONS.**

§33-24-7j. Required coverage for dental anesthesia services.

1 (a) Notwithstanding any provision of any policy,
2 provision, contract, plan or agreement to which this article
3 applies, any entity regulated by this article shall, on or after
4 July 1, 2009, provide as benefits to all subscribers and
5 members coverage for dental anesthesia services as
6 hereinafter set forth.

7 (b) For purposes of this article and section, “dental
8 anesthesia services” means general anesthesia for dental
9 procedures and associated outpatient hospital or ambulatory
10 facility charges provided by appropriately licensed health
11 care individuals in conjunction with dental care provided to
12 an enrollee or insured if the enrollee or insured is:

13 (1) Seven years of age or younger or is developmentally
14 disabled and is an individual for whom a successful result
15 cannot be expected from dental care provided under local
16 anesthesia because of a physical, intellectual or other
17 medically compromising condition of the enrollee or insured
18 and for whom a superior result can be expected from dental
19 care provided under general anesthesia; or

20 (2) A child who is twelve years of age or younger with
21 documented phobias, or with documented mental illness, and

22 with dental needs of such magnitude that treatment should
23 not be delayed or deferred and for whom lack of treatment
24 can be expected to result in infection, loss of teeth or other
25 increased oral or dental morbidity and for whom a successful
26 result cannot be expected from dental care provided under
27 local anesthesia because of such condition and for whom a
28 superior result can be expected from dental care provided
29 under general anesthesia.

30 (c) *Prior authorization.* -- An entity subject to this
31 section may require prior authorization for general anesthesia
32 and associated outpatient hospital or ambulatory facility
33 charges for dental care in the same manner that prior
34 authorization is required for these benefits in connection with
35 other covered medical care.

36 (d) An entity subject to this section may restrict coverage
37 for general anesthesia and associated outpatient hospital or
38 ambulatory facility charges unless the dental care is provided
39 by:

40 (1) A fully accredited specialist in pediatric dentistry;

41 (2) A fully accredited specialist in oral and maxillofacial
42 surgery; and

43 (3) A dentist to whom hospital privileges have been
44 granted.

45 (e) *Dental care coverage not required.* -- The provisions
46 of this section may not be construed to require coverage for
47 the dental care for which the general anesthesia is provided.

48 (f) *Temporal mandibular joint disorders.* -- The
49 provisions of this section do not apply to dental care rendered
50 for temporal mandibular joint disorders.

51 (g) A policy, provision, contract, plan or agreement may
52 apply to dental anesthesia services the same deductibles,
53 coinsurance and other limitations as apply to other covered
54 services.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8h. Required coverage for dental anesthesia services.

1 (a) Notwithstanding any provision of any policy,
2 provision, contract, plan or agreement to which this article
3 applies, any entity regulated by this article shall, on or after
4 July 1, 2009, provide as benefits to all subscribers and
5 members coverage for dental anesthesia services as
6 hereinafter set forth.

7 (b) For purposes of this article and section, “dental
8 anesthesia services” means general anesthesia for dental
9 procedures and associated outpatient hospital or ambulatory
10 facility charges provided by appropriately licensed health
11 care individuals in conjunction with dental care provided to
12 an enrollee or insured if the enrollee or insured is:

13 (1) Seven years of age or younger or is developmentally
14 disabled and is an individual for whom a successful result
15 cannot be expected from dental care provided under local
16 anesthesia because of a physical, intellectual or other
17 medically compromising condition of the enrollee or insured
18 and for whom a superior result can be expected from dental
19 care provided under general anesthesia; or

20 (2) A child who is twelve years of age or younger with
21 documented phobias, or with documented mental illness, and
22 with dental needs of such magnitude that treatment should
23 not be delayed or deferred and for whom lack of treatment
24 can be expected to result in infection, loss of teeth or other
25 increased oral or dental morbidity and for whom a successful

26 result cannot be expected from dental care provided under
27 local anesthesia because of such condition and for whom a
28 superior result can be expected from dental care provided
29 under general anesthesia.

30 (c) *Prior authorization.* -- An entity subject to this
31 section may require prior authorization for general anesthesia
32 and associated outpatient hospital or ambulatory facility
33 charges for dental care in the same manner that prior
34 authorization is required for these benefits in connection with
35 other covered medical care.

36 (d) An entity subject to this section may restrict coverage
37 for general anesthesia and associated outpatient hospital or
38 ambulatory facility charges unless the dental care is provided
39 by:

40 (1) A fully accredited specialist in pediatric dentistry;

41 (2) A fully accredited specialist in oral and maxillofacial
42 surgery; and

43 (3) A dentist to whom hospital privileges have been
44 granted.

45 (e) *Dental care coverage not required.* -- The provisions
46 of this section may not be construed to require coverage for
47 the dental care for which the general anesthesia is provided.

48 (f) *Temporal mandibular joint disorders.* -- The
49 provisions of this section do not apply to dental care rendered
50 for temporal mandibular joint disorders.

51 (g) A policy, provision, contract, plan or agreement may
52 apply to dental anesthesia services the same deductibles,
53 coinsurance and other limitations as apply to other covered
54 services.

**ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION
ACT.**

**§33-25A-8i. Third-party reimbursement for dental anesthesia
services.**

1 (a) Notwithstanding any provision of any policy,
2 provision, contract, plan or agreement to which this article
3 applies, any entity regulated by this article shall, on or after
4 July 1, 2009, provide as benefits to all subscribers and
5 members coverage for dental anesthesia services as
6 hereinafter set forth.

7 (b) For purposes of this section, “dental anesthesia
8 services” means general anesthesia for dental procedures and
9 associated outpatient hospital or ambulatory facility charges
10 provided by appropriately licensed health care individuals in
11 conjunction with dental care provided to a subscriber or
12 member if the subscriber or member is:

13 (1) Seven years of age or younger or is developmentally
14 disabled and is an individual for whom a successful result
15 cannot be expected from dental care provided under local
16 anesthesia because of a physical, intellectual or other
17 medically compromising condition of the subscriber or
18 member and for whom a superior result can be expected from
19 dental care provided under general anesthesia; or

20 (2) A child who is twelve years of age or younger with
21 documented phobias, or with documented mental illness, and
22 with dental needs of such magnitude that treatment should
23 not be delayed or deferred and for whom lack of treatment
24 can be expected to result in infection, loss of teeth, or other
25 increased oral or dental morbidity and for whom a successful
26 result cannot be expected from dental care provided under
27 local anesthesia because of such condition and for whom a

28 superior result can be expected from dental care provided
29 under general anesthesia.

30 (c) *Prior authorization.* -- An entity subject to this
31 section may require prior authorization for general anesthesia
32 and associated outpatient hospital, ambulatory facility or
33 similar charges for dental care in the same manner that prior
34 authorization is required for these benefits in connection with
35 other covered medical care.

36 (d) An entity subject to this section may restrict coverage
37 for general anesthesia and associated outpatient hospital or
38 ambulatory facility charges unless the dental care is provided
39 by:

40 (1) A fully accredited specialist in pediatric dentistry;

41 (2) A fully accredited specialist in oral and maxillofacial
42 surgery; and

43 (3) A dentist to whom hospital privileges have been
44 granted.

45 (e) *Dental care coverage not required.* -- The provisions
46 of this section may not be construed to require coverage for
47 the dental care for which the general anesthesia is provided.

48 (f) *Temporal mandibular joint disorders.* -- The
49 provisions of this section do not apply to dental care rendered
50 for temporal mandibular joint disorders.

51 (g) A policy, provision, contract, plan or agreement may
52 apply to dental anesthesia services the same deductibles,
53 coinsurance and other limitations as apply to other covered
54 services.

●

CHAPTER 129

**(Com. Sub. for H.B. 3288 - By Delegates Perry, Shaver,
Ashley and Moore)**

[Amended and again passed May 27, 2009, as a result of the
objections of the Governor; in effect ninety days from passage.]
[Approved by the Governor on June 5, 2009.]

AN ACT to amend and reenact §5-16-7 of the Code of West Virginia, 1931, as amended, and to amend and reenact §33-16-3a of said code, all relating to group accident and sickness insurance requirements to cover treatment of mental illness; providing that actual increases in costs for certain coverage determine whether cost containment measures may be applied by Public Employees Insurance Agency and private carriers; and removing certain provisions regarding small groups.

Be it enacted by the Legislature of West Virginia:

That §5-16-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §33-16-3a of said code be amended and reenacted, all to read as follows:

Chapter

5. **General Powers and Authority of the Governor; Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, etc.**
33. **Insurance.**

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF
THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES
INSURANCE ACT.*****§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; rules for administration of plans; mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.**

1 (a) The agency shall establish a group hospital and
2 surgical insurance plan or plans, a group prescription drug
3 insurance plan or plans, a group major medical insurance
4 plan or plans and a group life and accidental death insurance
5 plan or plans for those employees herein made eligible, and
6 to establish and promulgate rules for the administration of
7 these plans, subject to the limitations contained in this article.
8 Those plans shall include:

9 (1) Coverages and benefits for X ray and laboratory
10 services in connection with mammograms when medically
11 appropriate and consistent with current guidelines from the
12 United States Preventive Services Task Force; pap smears,
13 either conventional or liquid-based cytology, whichever is
14 medically appropriate and consistent with the current
15 guidelines from either the United States Preventive Services
16 Task Force or The American College of Obstetricians and
17 Gynecologists; and a test for the human papilloma virus
18 (HPV) when medically appropriate and consistent with
19 current guidelines from either the United States Preventive
20 Services Task Force or The American College of
21 Obstetricians and Gynecologists, when performed for cancer

*CLERK'S NOTE: This section was also amended by SB 326 (Chapter 128), which passed prior to this act.

22 screening or diagnostic services on a woman age eighteen or
23 over;

24 (2) Annual checkups for prostate cancer in men age fifty
25 and over;

26 (3) Annual screening for kidney disease as determined to
27 be medically necessary by a physician using any combination
28 of blood pressure testing, urine albumin or urine protein
29 testing and serum creatinine testing as recommended by the
30 National Kidney Foundation;

31 (4) For plans that include maternity benefits, coverage for
32 inpatient care in a duly licensed health care facility for a
33 mother and her newly born infant for the length of time
34 which the attending physician considers medically necessary
35 for the mother or her newly born child: *Provided*, That no
36 plan may deny payment for a mother or her newborn child
37 prior to forty-eight hours following a vaginal delivery, or
38 prior to ninety-six hours following a caesarean section
39 delivery, if the attending physician considers discharge
40 medically inappropriate;

41 (5) For plans which provide coverages for post-delivery
42 care to a mother and her newly born child in the home,
43 coverage for inpatient care following childbirth as provided
44 in subdivision (4) of this subsection if inpatient care is
45 determined to be medically necessary by the attending
46 physician. Those plans may also include, among other
47 things, medicines, medical equipment, prosthetic appliances
48 and any other inpatient and outpatient services and expenses
49 considered appropriate and desirable by the agency; and

50 (6) Coverage for treatment of serious mental illness.

51 (A) The coverage does not include custodial care,
52 residential care or schooling. For purposes of this section,

53 "serious mental illness" means an illness included in the
54 American Psychiatric Association's diagnostic and statistical
55 manual of mental disorders, as periodically revised, under the
56 diagnostic categories or subclassifications of: (i)
57 Schizophrenia and other psychotic disorders; (ii) bipolar
58 disorders; (iii) depressive disorders; (iv) substance-related
59 disorders with the exception of caffeine-related disorders and
60 nicotine-related disorders; (v) anxiety disorders; and (vi)
61 anorexia and bulimia. With regard to any covered individual
62 who has not yet attained the age of nineteen years, "serious
63 mental illness" also includes attention deficit hyperactivity
64 disorder, separation anxiety disorder and conduct disorder.

65 (B) Notwithstanding any other provision in this section
66 to the contrary, in the event that the agency can demonstrate
67 that its total costs for the treatment of mental illness for any
68 plan exceeded two percent of the total costs for such plan in
69 any experience period, then the agency may apply whatever
70 additional cost-containment measures may be necessary,
71 including, but not limited to, limitations on inpatient and
72 outpatient benefits, to maintain costs below two percent of
73 the total costs for the plan for the next experience period.

74 (C) The agency shall not discriminate between
75 medical-surgical benefits and mental health benefits in the
76 administration of its plan. With regard to both
77 medical-surgical and mental health benefits, it may make
78 determinations of medical necessity and appropriateness, and
79 it may use recognized health care quality and cost
80 management tools, including, but not limited to, limitations
81 on inpatient and outpatient benefits, utilization review,
82 implementation of cost-containment measures,
83 preauthorization for certain treatments, setting coverage
84 levels, setting maximum number of visits within certain time
85 periods, using capitated benefit arrangements, using
86 fee-for-service arrangements, using third-party
87 administrators, using provider networks and using patient

88 cost sharing in the form of copayments, deductibles and
89 coinsurance.

90 (7) Coverage for general anesthesia for dental procedures
91 and associated outpatient hospital or ambulatory facility
92 charges provided by appropriately licensed health care
93 individuals in conjunction with dental care if the covered
94 person is:

95 (A) Seven years of age or younger or is developmentally
96 disabled, and is an individual for whom a successful result
97 cannot be expected from dental care provided under local
98 anesthesia because of a physical, intellectual or other
99 medically compromising condition of the individual and for
100 whom a superior result can be expected from dental care
101 provided under general anesthesia;

102 (B) A child who is twelve years of age or younger with
103 documented phobias, or with documented mental illness, and
104 with dental needs of such magnitude that treatment should
105 not be delayed or deferred and for whom lack of treatment
106 can be expected to result in infection, loss of teeth or other
107 increased oral or dental morbidity and for whom a successful
108 result cannot be expected from dental care provided under
109 local anesthesia because of such condition and for whom a
110 superior result can be expected from dental care provided
111 under general anesthesia.

112 (b) The agency shall make available to each eligible
113 employee, at full cost to the employee, the opportunity to
114 purchase optional group life and accidental death insurance
115 as established under the rules of the agency. In addition,
116 each employee is entitled to have his or her spouse and
117 dependents, as defined by the rules of the agency, included
118 in the optional coverage, at full cost to the employee, for each
119 eligible dependent; and with full authorization to the agency

120 to make the optional coverage available and provide an
121 opportunity of purchase to each employee.

122 (c) The finance board may cause to be separately rated
123 for claims experience purposes:

124 (1) All employees of the State of West Virginia;

125 (2) All teaching and professional employees of state
126 public institutions of higher education and county boards of
127 education;

128 (3) All nonteaching employees of the Higher Education
129 Policy Commission, West Virginia Council for Community
130 and Technical College Education and county boards of
131 education; or

132 (4) Any other categorization which would ensure the
133 stability of the overall program.

134 (d) The agency shall maintain the medical and
135 prescription drug coverage for Medicare-eligible retirees by
136 providing coverage through one of the existing plans or by
137 enrolling the Medicare-eligible retired employees into a
138 Medicare-specific plan, including, but not limited to, the
139 Medicare/Advantage Prescription Drug Plan. In the event
140 that a Medicare-specific plan would no longer be available or
141 advantageous for the agency and the retirees, the retirees
142 shall remain eligible for coverage through the agency.

CHAPTER 33. INSURANCE.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3a. Same -- Mental health.

1 (a) (1) Notwithstanding the requirements of subsection
2 (b) of this section, any health benefits plan described in this
3 article that is delivered, issued or renewed in this state shall
4 provide benefits to all individual subscribers and members
5 and to all group members for expenses arising from treatment
6 of serious mental illness. The expenses do not include
7 custodial care, residential care or schooling. For purposes of
8 this section, "serious mental illness" means an illness
9 included in the American Psychiatric Association's
10 Diagnostic and Statistical Manual of Mental Disorders, as
11 periodically revised, under the diagnostic categories or
12 subclassifications of: (A) Schizophrenia and other psychotic
13 disorders; (B) bipolar disorders; (C) depressive disorders; (D)
14 substance-related disorders with the exception of
15 caffeine-related disorders and nicotine-related disorders; (E)
16 anxiety disorders; and (F) anorexia and bulimia.

17 (2) Notwithstanding any other provision in this section to
18 the contrary, in the event that an insurer can demonstrate
19 actuarially to the Insurance Commissioner that its total
20 anticipated costs for treatment for mental illness, for any plan
21 will exceed or have exceeded two percent of the total costs
22 for such plan in any experience period, then the insurer may
23 apply whatever cost containment measures may be necessary,
24 including, but not limited to, limitations on inpatient and
25 outpatient benefits, to maintain costs below two percent of
26 the total costs for the plan: *Provided*, That for any plan year
27 beginning on or after October 3, 2009, an insurer providing
28 a "group health plan," as defined in section one-a of this
29 article, with an average of more than fifty employees on
30 business days during the preceding calendar year, may not
31 apply cost containment measures as provided in this
32 subdivision unless the insurer can demonstrate that the
33 application of this section results in an increase of two
34 percent of the actual total costs of coverage for the plan year
35 involved with respect to medical-surgical benefits and mental
36 health benefits under the plan: *Provided, however*, That such

37 cost containment measures implemented are applicable only
38 for the plan year following approval of the request to
39 implement cost containment measures.

40 (3) The insurer shall not discriminate between
41 medical-surgical benefits and mental health benefits in the
42 administration of its plan. With regard to both
43 medical-surgical and mental health benefits, it may make
44 determinations of medical necessity and appropriateness, and
45 it may use recognized health care quality and cost
46 management tools, including, but not limited to, utilization
47 review, use of provider networks, implementation of cost
48 containment measures, preauthorization for certain
49 treatments, setting coverage levels including the number of
50 visits in a given time period, using capitated benefit
51 arrangements, using fee-for-service arrangements, using
52 third-party administrators, and using patient cost sharing in
53 the form of copayments, deductibles and coinsurance.

54 (4) The amendments to this subsection enacted during the
55 regular session of the Legislature in the year 2009 shall apply
56 with respect to group health plans for plan years beginning
57 on or after October 3, 2009.

58 (b) With respect to mental health benefits furnished to an
59 enrollee of a health benefit plan offered in connection with a
60 group health plan, for a plan year beginning on or after
61 January 1, 1998, the following requirements shall apply to
62 aggregate lifetime limits and annual limits.

63 (1) Aggregate lifetime limits:

64 (A) If the health benefit plan does not include an
65 aggregate lifetime limit on substantially all medical and
66 surgical benefits, as defined under the terms of the plan but
67 not including mental health benefits, the plan may not impose
68 any aggregate lifetime limit on mental health benefits;

69 (B) If the health benefit plan limits the total amount that
70 may be paid with respect to an individual or other coverage
71 unit for substantially all medical and surgical benefits (in this
72 paragraph, "applicable lifetime limit"), the plan shall either
73 apply the applicable lifetime limit to medical and surgical
74 benefits to which it would otherwise apply and to mental
75 health benefits, as defined under the terms of the plan, and
76 not distinguish in the application of the limit between
77 medical and surgical benefits and mental health benefits, or
78 not include any aggregate lifetime limit on mental health
79 benefits that is less than the applicable lifetime limit;

80 (C) If a health benefit plan not previously described in
81 this subdivision includes no or different aggregate lifetime
82 limits on different categories of medical and surgical
83 benefits, the commissioner shall propose rules for legislative
84 approval in accordance with the provisions of article three,
85 chapter twenty-nine-a of this code under which paragraph (B)
86 of this subdivision shall apply, substituting an average
87 aggregate lifetime limit for the applicable lifetime limit.

88 (2) Annual limits:

89 (A) If a health benefit plan does not include an annual
90 limit on substantially all medical and surgical benefits, as
91 defined under the terms of the plan but not including mental
92 health benefits, the plan may not impose any annual limit on
93 mental health benefits, as defined under the terms of the plan;

94 (B) If the health benefit plan limits the total amount that
95 may be paid in a twelve-month period with respect to an
96 individual or other coverage unit for substantially all medical
97 and surgical benefits (in this paragraph, "applicable annual
98 limit"), the plan shall either apply the applicable annual limit
99 to medical and surgical benefits to which it would otherwise
100 apply and to mental health benefits, as defined under the
101 terms of the plan, and not distinguish in the application of the

102 limit between medical and surgical benefits and mental
103 health benefits, or not include any annual limit on mental
104 health benefits that is less than the applicable annual limit;

105 (C) If a health benefit plan not previously described in
106 this subdivision includes no or different annual limits on
107 different categories of medical and surgical benefits, the
108 commissioner shall propose rules for legislative approval in
109 accordance with the provisions of article three, chapter
110 twenty-nine-a of this code under which paragraph (B) of this
111 subdivision shall apply, substituting an average annual limit
112 for the applicable annual limit.

113 (3) If a group health plan or a health insurer offers a
114 participant or beneficiary two or more benefit package
115 options, this subsection shall apply separately with respect to
116 coverage under each option.

CHAPTER 130

(S.B. 494 - By Senator Minard)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §33-2-11 of the Code of West Virginia, 1931, as amended, relating to authorizing the Insurance Commissioner to order restitution in certain cases.

Be it enacted by the Legislature of West Virginia:

That §33-2-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-11. Enforcement of orders; revocation of licenses; court action.

1 In addition to examinations and investigations expressly
2 authorized by this chapter, the commissioner may conduct
3 examinations and investigation of insurance matters he or she
4 considers proper to determine whether any person has violated
5 any provision of this chapter or to secure information useful in
6 the lawful administration of his or her duties. If the
7 commissioner determines, after notice and hearing, that any
8 person is transacting insurance in an illegal, improper or unjust
9 manner or is failing to pay losses and obligations when they
10 become due, excepting claims to which there is a substantial
11 defense, he or she may order the person to discontinue the
12 illegal, improper or unjust manner of transacting insurance, to
13 adjust and pay his or her obligations as they become due:
14 *Provided*, That in any order issued pursuant to subsection (j),
15 section nine of this article or entered as a result of a regulatory
16 enforcement action initiated and prosecuted by the
17 commissioner pursuant to this section or section eleven, article
18 three of this chapter, the commissioner may, in addition to or
19 in lieu of any other penalties or remedies provided therein,
20 order an insurer to pay restitution to affected persons. If a
21 person fails or refuses within twenty days after notice to obey
22 the order, the commissioner may revoke any license issued by
23 the commissioner and held by the person. In addition, the
24 commissioner may apply to the circuit court, or the judge in
25 vacation, having jurisdiction for an injunction or the
26 appointment of a receiver, or for both. The court or judge may
27 enforce the order of the commissioner by injunction or by
28 appointment of a receiver to take charge of the affairs and
29 property of the person, or both, and may make further orders
30 as may be necessary and proper to effectuate the injunction or
31 receivership.

CHAPTER 131

(Com. Sub. for S.B. 631 - By Senators Minard and Plymale)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 6, 2009.]

AN ACT to amend and reenact §33-6A-1 of the Code of West Virginia, 1931, as amended, relating to the cancellation of an automobile liability insurance policy for failure of consideration to be paid by the insured upon initial issuance of the insurance policy; requiring written notice to insured; and exceptions.

Be it enacted by the Legislature of West Virginia:

That §33-6A-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.

§33-6A-1. Cancellation prohibited except for specified reasons; notice.

1 No insurer once having issued or delivered a policy
2 providing automobile liability insurance for a private
3 passenger automobile may, after the policy has been in effect
4 for sixty days, or in case of renewal effective immediately,
5 issue or cause to issue a notice of cancellation during the
6 term of the policy except for one or more of the reasons
7 specified in this section:

8 (a) The named insured fails to make payments of
9 premium for the policy or any installment of the premium
10 when due;

11 (b) The policy is obtained through material
12 misrepresentation;

13 (c) The insured violates any of the material terms and
14 conditions of the policy;

15 (d) The named insured or any other operator, either
16 residing in the same household or who customarily operates
17 an automobile insured under the policy:

18 (1) Has had his or her operator's license suspended or
19 revoked during the policy period including suspension or
20 revocation for failure to comply with the provisions of article
21 five-a, chapter seventeen-c of this code, regarding consent for
22 a chemical test for intoxication: *Provided*, That when a
23 license is suspended for sixty days by the Commissioner of
24 the Division of Motor Vehicles because a person drove a
25 motor vehicle while under the age of twenty-one years with
26 an alcohol concentration in his or her blood of two
27 hundredths of one percent or more, by weight, but less than
28 eight hundredths of one percent, by weight, pursuant to
29 subsection (1), section two of said article, the suspension may
30 not be grounds for cancellation; or

31 (2) Is or becomes subject to epilepsy or heart attacks and
32 the individual cannot produce a certificate from a physician
33 testifying to his or her ability to operate a motor vehicle;

34 (e) The named insured or any other operator, either
35 residing in the same household or who customarily operates
36 an automobile insured under such policy, is convicted of or
37 forfeits bail during the policy period for any of the following
38 reasons:

39 (1) Any felony or assault involving the use of a motor
40 vehicle;

41 (2) Negligent homicide arising out of the operation of a
42 motor vehicle;

43 (3) Operating a motor vehicle while under the influence
44 of alcohol or of any controlled substance or while having an
45 alcohol concentration in his or her blood of eight hundredths
46 of one percent or more, by weight;

47 (4) Leaving the scene of a motor vehicle accident in
48 which the insured is involved without reporting it as required
49 by law;

50 (5) Theft of a motor vehicle or the unlawful taking of a
51 motor vehicle;

52 (6) Making false statements in an application for a motor
53 vehicle operator's license;

54 (7) Three or more moving traffic violations committed
55 within a period of twelve months, each of which results in
56 three or more points being assessed on the driver's record by
57 the Division of Motor Vehicles, whether or not the insurer
58 renewed the policy without knowledge of all such violations.
59 Notice of any cancellation made pursuant to this subsection
60 shall be mailed to the named insured either during the current
61 policy period or during the first full policy period following
62 the date that the third moving traffic violation is recorded by
63 the Division of Motor Vehicles.

64 Notwithstanding any of the provisions of this section to
65 the contrary, no insurer may cancel a policy of automobile
66 liability insurance without first giving the insured thirty days'
67 notice of its intention to cancel: *Provided*, That the insurance
68 policy is voidable from the effective date and time of the

69 policy issued by the insurer if the insurer cancels the policy
70 for failure of consideration to be paid by the insured upon
71 initial issuance of the insurance policy and provides written
72 notice to the insured of the cancellation within fifteen days of
73 receipt of notice of the failure of consideration and
74 consideration has not otherwise been provided within ten
75 days of the notice of cancellation. Notice of cancellation for
76 nonpayment of consideration shall be delivered to the named
77 insured or sent by first class mail to the named insured at the
78 address supplied on the application for insurance and shall
79 state the effective date of the cancellation and shall be
80 accompanied by a written explanation of the specific reason
81 for the cancellation. If the insurer fails to provide such
82 written notice to the insured, then the cancellation of the
83 policy for failure of consideration is effective upon the
84 expiration of ten days' notice of cancellation to the insured.



CHAPTER 132

(S.B. 434 - By Senator Minard)

[Passed April 10, 2009; in effect July 1, 2009.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-12-8a, relating to training of insurance producers selling long-term care products; setting minimum standards for long-term care training; and mandating that certain records be retained by companies.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §33-12-8a, to read as follows:

ARTICLE 12. INSURANCE PRODUCERS AND SOLICITORS.

§33-12-8a. Producer training for long-term care products; record retention requirements.

1 (a) (1) No individual may sell, solicit or negotiate
2 long-term care insurance unless he or she is licensed as a
3 producer for accident and sickness insurance in accordance
4 with the provisions of this article and has completed a
5 one-time training course that meets the requirements of
6 subsection (b) of this section: *Provided*, That a producer
7 selling, soliciting or negotiating long-term care insurance on
8 July 1, 2009 is permitted to continue such activities and must
9 complete the one-time training course prior to July 1, 2010.

10 (2) In addition to the one-time training course required in
11 subdivision (1) of this subsection, every producer who sells,
12 solicits or negotiates long-term care insurance shall complete
13 ongoing training that meets the requirements of subsection
14 (b) of this section.

15 (b) (1) The one-time training shall be no less than eight
16 hours.

17 (2) Beginning July 1, 2010, the ongoing training required
18 by subsection (a) of this section shall be no less than four
19 hours in each mandatory continuing education biennium
20 subsequent to that in which the one-time training was
21 completed.

22 (3) The training required by this section shall consist of
23 topics related to long-term care insurance, long-term care

24 services and, if applicable, qualified state long-term care
25 insurance partnership programs, including, but not limited to,
26 state and federal regulations and requirements and the
27 relationship between qualified state long-term care insurance
28 partnership programs and other public and private coverage
29 of long-term care services, including Medicaid; available
30 long-term services and providers; changes or improvements
31 in long-term care services or providers; alternatives to the
32 purchase of private long-term care insurance; the effect of
33 inflation on benefits and the importance of inflation
34 protection; and consumer suitability standards and
35 guidelines: *Provided*, That the training required by this
36 section may not include training that is insurer or company
37 product-specific or that includes any sales or marketing
38 information, materials or training, other than those required
39 by state or federal law.

40 (4) The training required by this section may be approved
41 for continuing education credit by the board of Insurance
42 Agent Education in the manner as set forth in section eight of
43 this article.

44 (c) An insurer subject to this chapter shall:

45 (1) Verify that each producer appointed to sell its
46 long-term care products is compliant with this section before
47 the producer is permitted to sell, solicit or negotiate such
48 products; and

49 (2) Maintain records supporting the verification for five
50 years and make the records available to the commissioner
51 upon request.

52 (d) If this state participates in the federal Long-Term
53 Care Partnership Program established under the Deficit
54 Reduction Act of 2005, Pub. L. 109-171:

55 (1) All training required by this section must be approved
56 by the commissioner; and

57 (2) Any insurer subject to this chapter shall maintain
58 records with respect to the training of its appointed producers
59 that will allow the commissioner to provide assurances to the
60 state Medicaid agency that producers have received the
61 training required by this section and that completion of such
62 training is sufficient to demonstrate that the producer
63 understands partnership policies and their relationship to
64 public and private coverage of long-term care, including
65 Medicaid, in this state.

66 (e) A nonresident individual producer's satisfaction of
67 another state's training requirements is satisfaction of this
68 section.



CHAPTER 133

(Com. Sub. for S.B. 284 - By Senators Minard and Kessler)

[Passed April 7, 2009; in effect ninety days from passage.]

[Approved by the Governor on April 20, 2009.]

AN ACT to amend and reenact §33-13C-3 and §33-13C-16 of the Code of West Virginia, 1931, as amended, all relating to viatical settlements; adding alternative means for satisfying financial requirements for the licensing of viatical settlement providers and brokers; and making criminal provisions applicable to any person violating the Viatical Settlements Act.

Be it enacted by the Legislature of West Virginia:

That §33-13C-3 and §33-13C-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13C. VIATICAL SETTLEMENTS ACT.

§33-13C-3. License and bond requirements.
§33-13C-16. Criminal penalties.

§33-13C-3. License and bond requirements.

1 (a) (1) A person may not operate as a viatical settlement
2 provider or viatical settlement broker without first obtaining
3 a license from the commissioner.

4 (2) (A) An insurance producer who is authorized to sell
5 life insurance in this state pursuant to a resident or
6 nonresident license issued in accordance with the provisions
7 of article twelve of this chapter may operate as a viatical
8 settlement broker without obtaining a license pursuant to this
9 section if the viatical settlement activities of the producer are
10 incidental to the producer's insurance business activities.

11 (B) The insurer that issued the policy being viaticated is
12 not responsible for any act or omission of a viatical
13 settlement broker or viatical settlement provider arising out
14 of or in connection with the viatical settlement transaction,
15 unless the insurer receives compensation for the placement of
16 a viatical settlement contract from the viatical settlement
17 provider or viatical settlement broker in connection with the
18 viatical settlement contract.

19 (3) A person licensed as an attorney, certified public
20 accountant or financial planner accredited by a nationally
21 recognized accreditation agency who is retained to represent
22 the viator, whose compensation is not paid directly or
23 indirectly by the viatical settlement provider, may negotiate
24 viatical settlement contracts on behalf of the viator without
25 having to obtain a license as a viatical settlement broker.

26 (b) Application for a viatical settlement provider or
27 viatical settlement broker license and for renewals of the
28 licenses shall be made in the manner prescribed by the
29 commissioner and shall be accompanied by fees established
30 in legislative rules, including emergency rules, promulgated
31 by the commissioner.

32 (c) The commissioner has the authority, at any time, to
33 require the applicant to fully disclose the identity of all
34 stockholders, partners, officers, members and employees and
35 the commissioner may, in the exercise of the commissioner's
36 discretion, refuse to issue a license in the name of a legal
37 entity if not satisfied that any officer, employee, stockholder,
38 partner or member of the entity who may materially influence
39 the applicant's conduct meets the standards of this article.

40 (d) The commissioner shall make an investigation of each
41 applicant and issue a license if the commissioner finds that
42 the applicant:

43 (1) If a viatical settlement provider, has provided a
44 detailed plan of operation;

45 (2) Is competent and trustworthy and acts in good faith in
46 the capacity of a licensee;

47 (3) Has a good business reputation and is qualified by
48 experience, training or education as a viatical settlement
49 provider or broker;

50 (4) Has demonstrated evidence of financial responsibility,
51 in a format prescribed by the commissioner, by possessing a
52 minimum equity of not less than \$250,000 in cash or cash
53 equivalents reflected in the applicant's audited financial
54 statements or through a surety bond executed and issued by
55 an insurer authorized to issue surety bonds in this state in the
56 amount of \$250,000: *Provided*, That the commissioner may

57 permit an applicant for a broker's license to demonstrate
58 evidence of financial responsibility through a policy of
59 insurance covering legal liability resulting from erroneous
60 acts or failure to act in their capacity as a viatical settlement
61 broker and inuring to the benefit of any aggrieved party as
62 the result of any single occurrence in the sum of not less than
63 \$100,000 and \$300,000 in the aggregate for all occurrences
64 within one year. Any surety bond issued pursuant to this
65 subdivision shall be in the favor of this state and shall
66 specifically authorize recovery by the commissioner on
67 behalf of any person in this state who sustained damages as
68 the result of erroneous acts, failure to act, conviction of fraud
69 or conviction of unfair practices by the viatical settlement
70 provider or viatical settlement broker. The commissioner
71 shall accept, as evidence of financial responsibility, proof that
72 financial instruments in accordance with the requirements in
73 this paragraph have been filed with a state in which the
74 applicant is licensed as a viatical settlement provider or
75 viatical settlement broker. The commissioner may ask for
76 evidence of financial responsibility at any time he or she
77 considers it necessary.

78 (5) If a legal entity has provided a certificate of good
79 standing from the state of its domicile; and

80 (6) Has provided an antifraud plan that meets the
81 requirements of subsection (g), section fourteen of this
82 article.

83 (e) The commissioner may not issue a license to a
84 nonresident applicant unless the applicant files with the
85 commissioner either a written designation of an agent for
86 service of process or the applicant's written irrevocable
87 consent that any action against the applicant may be
88 commenced against the applicant by service of process on the
89 commissioner.

90 (f) A viatical settlement provider or viatical settlement
91 broker shall provide to the commissioner new or revised
92 information about officers, ten percent or more stockholders,
93 partners, directors, members or designated employees within
94 thirty days of the change.

95 (g) An individual licensed as a viatical settlement broker
96 shall complete on a biennial basis fifteen hours of training
97 related to viatical settlements and viatical settlement
98 transactions as required by the commissioner. A life
99 insurance producer operating as a viatical settlement broker
100 pursuant to subdivision (2), subsection (a) of this section is
101 not subject to the requirements of this subsection. Any
102 person failing to meet the requirements of this subsection is
103 subject to the penalties imposed by the commissioner.

§33-13C-16. Criminal penalties.

1 (a) A person convicted of a fraudulent viatical settlement
2 act is guilty of a felony and, upon conviction thereof, shall be
3 sentenced as follows:

4 (1) Imprisonment in a state correctional facility for not
5 more than twenty years or payment of a fine of not more than
6 \$100,000, or both, if the value of the viatical settlement
7 contract is more than \$35,000;

8 (2) Imprisonment in a state correctional facility for not
9 more than ten years or to payment of a fine of not more than
10 \$20,000, or both, if the value of the viatical settlement
11 contract is more than \$2,500, but not more than \$35,000;

12 (3) Imprisonment in a state correctional facility for not
13 more than five years or payment of a fine of not more than
14 \$10,000, or both, if the value of the viatical settlement
15 contract is more than \$500, but not more than \$2,500.

16 (b) Any person who violates any other provision of this
17 article is guilty of a misdemeanor and, upon conviction
18 thereof, shall be fined not more than \$1,000 or confined in
19 jail not more than one year, or both fined and confined.

CHAPTER 134

(S.B. 495 - By Senator Minard)

[Passed April 10, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-14-6, relating to the Insurance Commissioner's authority to permit groups other than those specifically provided in this article to get life insurance policies.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §33-14-6, to read as follows:

ARTICLE 14. GROUP LIFE INSURANCE.

§33-14-6. Limits of Group Life Insurance.

1 The lives of a group of individuals may be insured under
2 a policy issued to a group other than one of the groups

3 provided in sections two, three, four, five and five-a of this
4 article subject to the following requirements:

5 (a) The policy shall not be delivered in this state unless
6 the commissioner finds that:

7 (1) The issuance of the policy is not contrary to the best
8 interest of the public;

9 (2) The issuance of the policy would result in economics
10 of acquisition or administration; and

11 (3) The benefits are reasonable in relation to the
12 premiums charged.

13 (b) No such group life insurance coverage may be offered
14 in this state by an insurer under a policy issued in another
15 state unless this state or another state having requirements
16 substantially similar to those contained in subsection (a) of
17 this section has made a determination that the requirements
18 have been met.

19 (c) The premium for the policy shall be paid either from
20 the policyholder's funds or from funds contributed by the
21 covered persons, or from both.

22 (d) An insurer may exclude or limit the coverage on any
23 person as to whom evidence of individual insurability is not
24 satisfactory to the insurer.

CHAPTER 135

(Com. Sub. for S.B. 552 - By Senators Minard and Kessler)

[Passed April 11, 2009; in effect from passage.]
[Approved by the Governor on April 16, 2009.]

AN ACT to repeal §33-15D-1, §33-15D-2, §33-15D-3, §33-15D-4, §33-15D-5, §33-15D-6, §33-15D-7, §33-15D-8, §33-15D-9, §33-15D-10 and §33-15D-11 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §33-16-3u; to amend and reenact §33-16F-1, §33-16F-2, §33-16F-3, §33-16F-4, §33-16F-5, §33-16F-6, §33-16F-7 and §33-16F-8 of said code; and to amend said code by adding thereto two new sections, designated §33-16F-9 and §33-16F-10, all relating to health insurance; providing a special enrollment period for continued employee group accident and sickness insurance coverage for certain involuntarily terminated employees and their dependents; providing legislative findings; defining terms; mandating notice to individuals eligible for coverage; providing for a disregard of certain periods for purposes of calculating creditable coverage; establishing a program to provide affordable health care insurance coverage; requiring the Insurance Commissioner to invite carriers and other entities to submit proposals for affordable health insurance plans; defining terms; specifying that plans do not create an entitlement; establishing eligibility and standards for such plans; providing for evaluation of the plans and reports to the Legislature; providing for continuation of existing limited benefit plans; and authorizing emergency and legislative rules.

Be it enacted by the Legislature of West Virginia:

That §33-15D-1, §33-15D-2, §33-15D-3, §33-15D-4, §33-15D-5, §33-15D-6, §33-15D-7, §33-15D-8, §33-15D-9, §33-15D-10 and §33-15D-11 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §33-16-3u; that §33-16F-1, §33-16F-2, §33-16F-3, §33-16F-4, §33-16F-5, §33-16F-6, §33-16F-7 and §33-16F-8 of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §33-16F-9 and §33-16F-10, all to read as follows:

Article

16. Group Accident and Sickness Insurance.

16F. West Virginia Affordable Health Care Plan.

**ARTICLE 16. GROUP ACCIDENT AND SICKNESS
INSURANCE.**

**§33-16-3u. Special enrollment period under the American
Recovery and Reinvestment Act of 2009.**

1 (a) The Legislature finds that recent attempts to assist
2 unemployed persons during the economic downturn
3 beginning at the end of 2008 included a federal initiative to
4 provide subsidies to certain persons who have lost their
5 employer-sponsored health insurance coverage. As part of
6 the American Recovery and Reinvestment Act of 2009,
7 certain involuntarily terminated employees and their
8 dependents were given an second opportunity to elect
9 subsidized COBRA coverage. This federal initiative also
10 included relief to certain persons not covered by the federal
11 COBRA laws, but access to such relief was made dependent
12 on the states acting to require that such persons be given
13 notice of their right to elect such coverage. Therefore, the
14 Legislature intends that this section be interpreted in such a
15 manner as to maximize the opportunity of West Virginians to
16 obtain these much needed subsidies.

17 (b) *Definitions.* -- As used in this section:

18 (1) "Assistance eligible individual" means any qualified
19 beneficiary who was eligible for continuation coverage
20 between September 1, 2008, and February 17, 2009, due to
21 a covered employee's termination from employment during
22 this period and who elected such coverage.

23 (2) "Continuation coverage" means accident and sickness
24 insurance coverage offered to persons pursuant to policy
25 provisions required by subsection (e), section three of this
26 article.

27 (3) "Covered employee" means a person who was
28 involuntarily terminated by a small employer between
29 September 1, 2008, and February 16, 2009, and at the time of
30 his or her termination either: (i) Was eligible for but did not
31 elect to enroll in continuation coverage; or (ii) enrolled but
32 subsequently discontinued enrollment in continuation
33 coverage.

34 (4) "Qualified beneficiary" has the same meaning as that
35 term is defined in §607(3) of the Employee Retirement
36 Income Security Act of 1974, 29 U. S. C. §1167(3).

37 (5) "Small employer" means any employer that had fewer
38 than twenty (20) employees during fifty percent (50%) or
39 more of its typical business days in the previous calendar
40 year.

41 (c) An individual who does not have an election of
42 continuation coverage in effect on February 17, 2009, but
43 who would be an assistance eligible individual if such
44 election were in effect, may elect continuation coverage
45 pursuant to this section. Such election shall be made no later
46 than sixty days after the date the administrator of the group
47 health plan (or other entity involved) provides the notice

48 required by Section 3001(a)(7) of the American Recovery
49 and Reinvestment Act of 2009. The administrator of the
50 group health plan (or other entity involved) shall provide
51 such individuals with additional notice of the right to elect
52 coverage pursuant to this subsection prior to April 18, 2009.

53 (d) Continuation coverage elected pursuant to subsection
54 (c) of this section shall commence with the first period of
55 coverage beginning on or after February 17, 2009: *Provided,*
56 That continuation coverage elected pursuant to this
57 subsection shall not extend beyond the maximum eighteen-
58 month period provided for by subsection (e), section three of
59 this article.

60 (e) With respect to an individual who elects continuation
61 coverage pursuant to subsection (b) of this section, the period
62 beginning on the date of the involuntary termination and
63 ending on the date of the first period of coverage on or after
64 February 17, 2009, shall be disregarded for purposes of
65 determining the sixty-three day period referred to in
66 subsection (b), section three-m of this article.

ARTICLE 16F. WEST VIRGINIA AFFORDABLE HEALTH CARE PLAN.

§33-16F-1. Legislative intent.

§33-16F-2. Definitions.

§33-16F-3. Plan proposals; approval of plans.

§33-16F-4. Required plan provisions; grounds for disapproval; alternative plans.

§33-16F-5. Eligibility of individuals and groups.

§33-16F-6. Regulation and marketing of plans.

§33-16F-7. Applicability of certain provisions; commissioner's authority to forbear from applying certain provisions.

§33-16F-8. Assessment of the West Virginia program.

§33-16F-9. Nonentitlement.

§33-16F-10. Emergency and legislative rules authorized.

§33-16F-1. Legislative intent.

1 The Legislature finds that the inability of a significant
2 number of state residents to obtain affordable health

3 insurance coverage adversely affects everyone in our state.
4 Therefore, it is the intent of the Legislature to expand the
5 availability of health care options for uninsured residents by
6 developing affordable health care products that emphasize
7 coverage for basic and preventive health care services,
8 provide inpatient hospital and emergency care services and
9 offer optional catastrophic coverage.

§33-16F-2. Definitions.

1 As used in this article:

2 "West Virginia affordable health care plan" means a
3 health insurance plan approved under this article.

4 "West Virginia affordable health care plan entity" or
5 "plan entity" means an entity licensed under this chapter that
6 develops and proposes a West Virginia affordable health care
7 plan and, if the plan is approved, is responsible for
8 administering the plan and paying claims of plan enrollees.

9 "Enrollee" means an individual who has been determined
10 to be eligible for and is receiving health insurance coverage
11 under a West Virginia affordable health care plan.

§33-16F-3. Plan proposals; approval of plans.

1 (a) The commissioner shall announce, no later than July
2 1, 2009, an invitation to prospective West Virginia affordable
3 health care plan entities to submit West Virginia affordable
4 health care plan proposals. The invitation shall include
5 guidelines for the review of West Virginia affordable health
6 care plan applications, policies and associated rates.

7 (b) In reviewing proposals under this article, the
8 commissioner shall consider the proposed plans'

9 effectiveness in improving the health status of individuals,
10 their impact on maintaining and improving health and their
11 potential to reduce the unnecessary consumption of health
12 care services.

**§33-16F-4. Required plan provisions; grounds for disapproval;
alternative plans.**

1 (a) To be approved, plan entities must assure that each
2 proposed plan will provide cost containment through the use
3 of plan design features such as limits on the number of
4 services, caps on benefit payments or copayments for
5 services.

6 (b) To provide consumer choice, plan entities must
7 develop and submit two alternative benefit option plans
8 having different cost and benefit levels, including at least one
9 plan that provides catastrophic coverage. Plans providing
10 catastrophic coverage must, at a minimum, provide coverage
11 for preventive health services and inpatient hospital stays and
12 may also include coverage of one or more of the following:
13 Hospital emergency care services and outpatient facility
14 services; outpatient surgery; or outpatient diagnostic services.

15 (c) All plans must offer prescription drug benefit
16 coverage.

17 (d) Plan enrollment materials must provide information
18 in plain language on policy benefit coverage, benefit limits,
19 cost-sharing requirements, exclusions and a clear
20 representation of what is not covered in the plan. The
21 enrollment materials must include a standard disclosure form
22 developed by the commissioner that must be reviewed and
23 executed by all consumers purchasing West Virginia
24 affordable health care plan coverage.

25 (e) The commissioner shall disapprove any plan that:

26 (1) Contains any ambiguous, inconsistent or misleading
27 provisions or any exceptions or conditions that deceptively
28 affect or limit the benefits purported to be assumed in the
29 general coverage provided by the plan;

30 (2) Provides benefits that are unreasonable in relation to
31 the premium charged; or

32 (3) Contains provisions that are unfair or inequitable,
33 contrary to the public policy of this state, encourage
34 misrepresentation or result in unfair discrimination in sales
35 practices.

§33-16F-5. Eligibility of individuals and groups.

1 (a) *Individuals*. — Eligibility to enroll in an individual
2 West Virginia affordable health care plan is limited to any
3 resident of this state who:

4 (1) Is not covered by a private insurance policy and is not
5 eligible for coverage under an employer-sponsored group
6 plan or through a public health insurance program, such as
7 Medicare, Medicaid or the state Children's Health Insurance
8 Program; and

9 (2) Has not been covered by any health insurance
10 program at any time during the past six months, unless
11 coverage under a health insurance program was terminated
12 within the previous six months due to loss of a job that
13 provided an employer-sponsored health benefit plan or death
14 of, or divorce from, a spouse who was provided an employer-
15 sponsored health benefit plan or, with respect to a public
16 health insurance program, eligibility for such program was
17 lost due to an inability to meet income or categorical

18 requirements: *Provided*, That an individual may not be
19 excluded from enrollment in a West Virginia affordable
20 health care plan on the ground that he or she is eligible for or
21 is enrolled in a COBRA plan.

22 (b) *Group*. — An otherwise eligible group may not
23 obtain coverage under a West Virginia affordable health care
24 plan unless the group has not had coverage under any health
25 insurance plan at any time during the previous six months.

§33-16F-6. Regulation and marketing of plans.

1 (a) The commissioner shall issue guidelines to ensure that
2 West Virginia affordable health care plans meet minimum
3 standards for quality of and access to care.

4 (b) Initial filings and changes in West Virginia affordable
5 health care plan benefits, premiums and policy forms are
6 subject to regulatory oversight by the commissioner.

7 (c) The commissioner shall develop a public awareness
8 program to be implemented throughout the state for the
9 promotion of the plans approved under this article, which
10 may include assistance from state health insurance benefits
11 advisors.

12 (d) Each West Virginia affordable health care plan must
13 maintain enrollment data and provide network data and
14 reasonable records to enable the commissioner to assess the
15 plans.

**§33-16F-7. Applicability of certain provisions; commissioner's
authority to forbear from applying certain
provisions.**

1 (a) *Individual plans.* -- Only the following provisions of
2 article fifteen of this chapter apply to West Virginia entities
3 offering individual plans pursuant to this article: Sections
4 two-a, two-d, two-e, three, four, four-c, four-e, four-f, four-g,
5 five, six, seven, eight, nine, thirteen, fourteen, sixteen,
6 seventeen, eighteen, nineteen and twenty. Notwithstanding
7 any other provision of this code, the provisions of article
8 twenty-eight of this chapter and legislative rules regulating
9 individual accident and sickness policies, including the rule
10 contained in series 12, title 114 of the West Virginia Code of
11 State Rules, do not apply to individual plans issued pursuant
12 to this article unless and to the extent specifically
13 incorporated in rules promulgated pursuant to the authority
14 conferred by section eleven of this article.

15 (b) *Group plans.* — Only the following provisions of
16 article sixteen of this chapter apply to insurers offering group
17 plans pursuant to this article: Sections one-a, three, three-g,
18 three-j, three-k, three-l, three-m, three-n, three-o, three-p,
19 four, five, six, seven, nine, ten, eleven, twelve, thirteen,
20 fourteen and fifteen; all other provisions of article sixteen do
21 not apply to group plans approved pursuant to this article
22 unless and to the extent the provisions are specifically
23 incorporated in rules promulgated by the commissioner.
24 Notwithstanding any other provision of this code or of the
25 code of state rules, the provisions of article sixteen-e of this
26 chapter and of legislative rules regulating group accident and
27 sickness policies, including the rule set forth in series 39, title
28 114 of the West Virginia Code of State Rules, do not apply
29 to group plans approved pursuant to this article unless and to
30 the extent specifically incorporated in rules promulgated by
31 the commissioner pursuant to the authority conferred by
32 section eleven of this article.

33 (c) *Small group plans.* -- With respect to any group plan
34 approved under this article and offered to any "small

35 employer", as that term is defined in section two, article
36 sixteen-d of this chapter, the following provisions of article
37 sixteen-d apply: Sections two, four, seven, eight, twelve,
38 thirteen and fourteen: *Provided*, That only the sentence
39 preceding the proviso in section thirteen, article sixteen-d of
40 this chapter applies to small employer plans approved
41 pursuant to this article. Notwithstanding any other provision
42 of this code, all other provisions of article sixteen-d of this
43 chapter do not apply to small employer plans approved
44 pursuant to this article unless and to the extent such
45 provisions are specifically incorporated in rules promulgated
46 by the commissioner.

47 (d) *Forbearance by the commissioner.* — The
48 commissioner may forbear from applying any other statutory
49 or regulatory requirements to an insurer offering an
50 individual or group plan approved pursuant to this article,
51 including any requirements in articles twenty-four and
52 twenty-five-a of this chapter, if he or she determines that
53 such forbearance serves the principles set forth in section one
54 of this article.

55 (e) *Existing limited benefit plans.* — Plans approved
56 pursuant to the provisions of article fifteen-d of this chapter,
57 as that article existed prior to its repeal during the 2009
58 regular legislative session, and this article, as that it existed
59 prior to its amendment and reenactment during the 2009
60 regular legislative session, remain in effect and are subject to
61 those provisions.

§33-16F-8. Assessment of the West Virginia program.

1 The commissioner shall:

2 (1) Provide an assessment of the West Virginia affordable
3 health care plans and their potential applicability in other
4 settings;

5 (2) Use West Virginia affordable health care plans to
6 gather more information to evaluate low-income, consumer-
7 driven benefit packages; and

8 (3) Submit by March 1, 2011, and annually thereafter, a
9 report to the Governor, the President of the Senate and the
10 Speaker of the House of Delegates that provides the
11 information specified in this section and recommendations
12 relating to the successful implementation and administration
13 of the program.

§33-16F-9. Nonentitlement.

1 Coverage under a West Virginia affordable health care
2 plan is not an entitlement and a cause of action does not arise
3 against the state, a local government entity, any other
4 political subdivision of the state or any agency for failure to
5 make coverage available to eligible persons under this article.

§33-16F-10. Emergency and legislative rules authorized.

1 The commissioner may promulgate emergency and
2 legislative rules under the provisions of article three, chapter
3 twenty-nine-a of this code, to prescribe requirements
4 regarding rate making, which may include rules establishing
5 loss ratio standards for the plans; to place limitations on
6 eligibility for coverage under the approved plans; to establish
7 standards to determine whether a plan qualifies as creditable
8 coverage; to determine what medical treatments, procedures
9 and related health services benefits must be included in the
10 plans; and to provide for any other matters deemed necessary
11 to further the intent of this article.

CHAPTER 136

(Com. Sub. for S.B. 278 - By Senator Minard)

[Passed April 11, 2009; in effect ninety days from passage.]
 [Approved by the Governor on May 7, 2009.]

AN ACT to amend and reenact §33-15E-15 of the Code of West Virginia, 1931, as amended, relating to the criminal offenses for failing to provide benefits of a discount medical plan or discount prescription drug plan; clarifying that the severity of the offense is dependant on the total of fees collected; and providing for an alternate sentence upon conviction of the felony offense.

Be it enacted by the Legislature of West Virginia:

That §33-15E-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 15E. DISCOUNT MEDICAL PLAN
 ORGANIZATIONS AND DISCOUNT
 PRESCRIPTION DRUG PLAN
 ORGANIZATIONS ACT.**

§33-15E-15. Criminal penalties.

1 (a) A person that willfully operates as or aids and abets
 2 another operating as a discount medical plan organization in
 3 violation of subsection (a), section four of this article is guilty
 4 of a felony and, upon conviction thereof, shall be fined not
 5 more than \$20,000 for each unauthorized act or imprisoned

6 in the state correctional facility not less than one nor more
7 than five years, or both fined and imprisoned.

8 (b) No person shall collect a fee for purported
9 membership in a discount medical plan or discount
10 prescription drug plan and knowingly and willfully fail to
11 provide the promised benefits of the plan. (1) Any person
12 who violates this subsection and in doing so collects fees
13 totaling \$1,000 or more is guilty of a felony and, upon
14 conviction thereof, shall be fined not more than \$2,500 or
15 imprisoned in a state correctional facility not less than one
16 nor more than ten years or, in the discretion of the court, be
17 confined in jail for not more than one year, or both fined and
18 imprisoned or confined.

19 (2) Any person who violates this subsection and in doing
20 so collects fees totaling less than \$1,000 is guilty of a
21 misdemeanor and, upon conviction thereof, shall be fined not
22 more than \$2,500 or confined in jail not more than one year,
23 or both fined and confined.

CHAPTER 137

**(S.B. 431 - By Senators Minard, Helmick, McCabe
and Barnes)**

[Passed April 7, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2009.]

AN ACT to amend and reenact §33-16D-16 of the Code of West Virginia, 1931, as amended, relating to notice to in-state medical providers of the participation provisions of the small group health benefit plan.

Be it enacted by the Legislature of West Virginia:

That §33-16D-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 16D. MARKETING AND RATE PRACTICES
 FOR SMALL EMPLOYER
 ACCIDENT AND SICKNESS
 INSURANCE POLICIES.**

**§33-16D-16. Authorization of uninsured small group health
 benefit plans.**

1 (a) Upon filing with and approval by the commissioner,
2 any carrier licensed pursuant to this chapter which accesses
3 a health care provider network to deliver services may offer
4 a health benefit plan and rates associated with the plan to a
5 small employer subject to the conditions of this section and
6 subject to the provisions of this article. The health benefit
7 plan is subject to the following conditions:

8 (1) The health benefit plan may be offered by the carrier
9 only to small employers which have not had a health benefit
10 plan covering their employees for at least six consecutive
11 months before the effective date of this section. After the
12 passage of six months from the effective date of this section,
13 the health benefit plan under this section may be offered by
14 carriers only to small employers which have not had a health
15 benefit plan covering their employees for twelve consecutive
16 months;

17 (2) If a small employer covered by a health benefit plan
18 offered pursuant to this section no longer meets the definition
19 of a small employer as a result of an increase in eligible
20 employees, that employer shall remain covered by the health
21 benefit plan until the next annual renewal date;

22 (3) The small employer shall pay at least fifty percent of
23 its employees' premium amount for individual employee
24 coverage;

25 (4) The commissioner shall promulgate emergency rules
26 under the provisions of article three, chapter twenty-nine-a of
27 this code on or before September 1, 2004, to place additional
28 restrictions upon the eligibility requirements for health
29 benefit plans authorized by this section in order to prevent
30 manipulation of eligibility criteria by small employers and
31 otherwise implement the provisions of this section;

32 (5) Carriers must offer the health benefit plans issued
33 pursuant to this section through one of their existing
34 networks of health care providers;

35 (A) The West Virginia Health Care Authority shall, on or
36 before May 1, 2004, and each year thereafter, by regular
37 mail, provide a written notice to all known in-state health
38 care providers that:

39 (i) Informs the health care provider regarding the
40 provisions of this section; and

41 (ii) Notifies the health care provider that if the health care
42 provider does not give written refusal to the West Virginia
43 Health Care Authority within thirty days from receipt of the
44 notice or the health care provider has not previously filed a
45 written notice of refusal to participate, the health care
46 provider must participate with and accept the products and
47 provider reimbursements authorized pursuant to this section;

48 (B) The carrier's network of health care providers, as
49 well as any health care provider which provides health care
50 goods or services to beneficiaries of any departments or
51 divisions of the state, as identified in article twenty-nine-d,
52 chapter sixteen of this code, shall accept the health care

53 provider reimbursement rates set pursuant to this section
54 unless the health care provider gives written refusal to the
55 West Virginia Health Care Authority between May 1 and
56 June 1 that the provider will not participate in this program
57 for the next calendar year. Notwithstanding any provision of
58 this code to the contrary, health care providers may not be
59 mandated to participate in this program except under the
60 opt-out provisions of subdivision (5), subsection (a) of this
61 section and therefore the health care provider shall annually
62 have the ability to file with the West Virginia Health Care
63 Authority written notice that the health care provider will not
64 participate with products issued pursuant to this section.
65 Once a health care provider has filed a notice of refusal with
66 the West Virginia Health Care Authority, the notice shall
67 remain effective until rescinded by the provider and the
68 provider shall not be required to renew the notice each year;

69 (C) The West Virginia Health Care Authority is
70 responsible for receiving the responses, if any, from the
71 health care providers that have elected not to participate and
72 for providing a list to the commissioner of those health care
73 providers that have elected not to participate;

74 (D) Those health care providers that do not file a notice
75 of refusal shall be considered to have accepted participation
76 in this program and to accept Public Employees Insurance
77 Agency health care provider reimbursement rates for their
78 services as set by this section;

79 (E) Health care provider reimbursement rates used by the
80 carrier for a health benefit plan offered pursuant to this
81 section shall have no effect on provider rates for other
82 products offered by the carrier and most-favored-nation
83 clauses do not apply to the rates;

84 (6) With respect to the health benefit plans authorized by
85 this section, the carrier shall reimburse network health care

86 providers at the same health care provider reimbursement
87 rates in effect for the managed care and health maintenance
88 organization plans offered by the West Virginia Public
89 Employees Insurance Agency. Beginning in the year 2004,
90 and in each year thereafter, the health care provider
91 reimbursement rates set under this section may not be
92 lowered from the level of the rates in effect on the July 1 of
93 that year for the managed care and health maintenance plans
94 offered by the Public Employees Insurance Agency. While
95 it is the intent of this paragraph to govern rates for plans
96 offered pursuant to this section for annual periods, this
97 paragraph in no way prevents the Public Employees
98 Insurance Agency from making provider reimbursement rate
99 adjustments to Public Employees Insurance Agency plans
100 during the course of each year. If there is a dispute regarding
101 the determination of appropriate rates pursuant to this
102 section, the Director of the Public Employees Insurance
103 Agency shall, in his or her sole discretion, specify the
104 appropriate rate to be applied;

105 (A) The health care provider reimbursement rates as
106 authorized by this section shall be accepted by the health care
107 provider as payment in full for services or products provided
108 to a person covered by a product authorized by this section;

109 (B) Except for the health care provider rates authorized
110 under this section, a carrier's payment methodology,
111 including copayments and deductibles and other conditions
112 of coverage, remains unaffected by this section;

113 (C) The provisions of this section do not require the
114 Public Employees Insurance Agency to give carriers access
115 to the purchasing networks of the Public Employees
116 Insurance Agency. The Public Employees Insurance Agency
117 may enter into agreements with carriers offering health
118 benefit plans under this section to permit the carrier, at its
119 election, to participate in drug purchasing arrangements

120 pursuant to article sixteen-c, chapter five of this code,
121 including the multistate drug purchasing program. This
122 paragraph provides authorization of the agreements pursuant
123 to section four of said article;

124 (7) Carriers may not underwrite products authorized by
125 this section more strictly than other small group policies
126 governed by this article;

127 (8) With respect to health benefit plans authorized by this
128 section, a carrier shall have a minimum anticipated loss ratio
129 of seventy-seven percent to be eligible to make a rate
130 increase request after the first year of providing a health
131 benefit plan under this section;

132 (9) Products authorized under this section are exempt
133 from the premium taxes assessed under sections fourteen and
134 fourteen-a, article three of this chapter;

135 (10) A carrier may elect to nonrenew any health benefit
136 plan to an eligible employer if, at any time, the carrier
137 determines, by applying the same network criteria which it
138 applies to other small employer health benefit plans, that it no
139 longer has an adequate network of health care providers
140 accessible for that eligible small employer. If the carrier
141 makes a determination that an adequate network does not
142 exist, the carrier has no obligation to obtain additional health
143 care providers to establish an adequate network;

144 (11) Upon thirty days' advance notice to the
145 commissioner, a carrier may, at any time, elect to nonrenew
146 all health benefit plans issued pursuant to this section. If a
147 carrier nonrenews all its business issued pursuant to this
148 section for any reason other than the adequacy of the provider
149 network, the carrier may not offer this health benefit plan to
150 any eligible small employer for a period of at least two years
151 after the last eligible small employer is nonrenewed; and

152 (12) The Insurance Commissioner may not approve any
153 health benefit plan issued pursuant to this section until it has
154 obtained any necessary federal governmental authorizations
155 or waivers. The Insurance Commissioner shall apply for and
156 obtain all necessary federal authorizations or waivers.

157 (b) Health benefit plans authorized by this section are not
158 intended to violate the prohibition set out in subsection (a),
159 section four of this article.

160 (c) The commissioner shall appoint a policy advisory
161 committee to provide advice to the commissioner regarding
162 providing health insurance to uninsureds and to monitor the
163 effectiveness of this section. The committee shall contain
164 members the commissioner considers appropriate, but shall
165 have members representing at least the following interest
166 groups: Labor, hospital providers, physician providers,
167 private business, local government, insurance carriers and the
168 uninsured.

169 (d) Carriers offering health benefit plans pursuant to this
170 section shall annually or before December 1 of each year
171 report in a form acceptable to the commissioner the number
172 of health benefit plans written by the carrier and the number
173 of individuals covered under the health benefit plans.

174 (e) To the extent that provisions of this section differ
175 from those contained elsewhere in this chapter, the provisions
176 of this section control.

●

CHAPTER 138

**(Com. Sub. for H.B. 2660 - By Delegates Perry, Shook,
Moore and Reynolds)**

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2009.]

AN ACT to amend and reenact §33-25D-2 of the Code of West Virginia, 1931, as amended, relating to prepaid limited health service organizations; adding dental, vision, pharmaceutical and podiatric services to those services that may be offered by prepaid limited health service organizations.

Be it enacted by the Legislature of West Virginia:

That §33-25D-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 25D. PREPAID LIMITED HEALTH SERVICE ORGANIZATION ACT.

§33-25D-2. Definitions.

1 (a) “Capitation” means the fixed amount paid by a
2 prepaid limited health service organization to a health care
3 provider under contract with the prepaid limited health
4 service organization in exchange for the rendering of no more
5 than four limited health services.

6 (b) “Commissioner” means the Commissioner of
7 Insurance.

8 (c) “Consumer” means any person who is not a provider
9 of care or an employee, officer, director or stockholder of any
10 provider of care.

11 (d) “Coordinating provider” means the provider of a
12 particular limited health service who is chosen or designated
13 for each subscriber and who will be responsible for
14 coordinating the provision of that particular limited health
15 service to the subscriber, including necessary referrals to
16 other providers of the limited health service: *Provided*, That
17 if a subscriber is also enrolled in a health maintenance
18 organization, the coordinating provider shall send a written
19 report at least annually to the subscriber’s primary care
20 physician, as defined in article twenty-five-a of this chapter,
21 describing the limited health service provided to the
22 subscriber: *Provided, however*, That the coordinating
23 provider may disclose data or information only as permitted
24 under section twenty-eight of this article.

25 (e) “Copayment” means a specific dollar amount, except
26 as otherwise provided by statute, that the subscriber must pay
27 upon receipt of covered limited health services and which is
28 set at an amount consistent with allowing the subscriber
29 access to covered limited health services.

30 (f) “Employee” means a person in some official
31 employment or position working for a salary or wage
32 continuously for no less than one calendar quarter and who
33 is in such a relation to another person that the latter may
34 control the work of the former and direct the manner in
35 which the work is done.

36 (g) “Employer” means any individual, corporation,
37 partnership, other private association, or state or local
38 government that employs the equivalent of at least two
39 full-time employees during any four consecutive calendar
40 quarters.

41 (h) "Enrollee," "subscriber," or "member" means an
42 individual who has been voluntarily enrolled in a prepaid
43 limited health service organization, including individuals on
44 whose behalf a contractual arrangement has been entered into
45 with a prepaid limited health service organization to receive
46 no more than four limited health services.

47 (i) "Evidence of coverage" means any certificate,
48 agreement or contract issued to an enrollee setting out the
49 coverage and other rights to which the enrollee is entitled.

50 (j) "Group practice" means a professional corporation,
51 partnership, association, or other organization composed
52 solely of health professionals licensed to practice medicine or
53 osteopathy and of such other licensed health professionals,
54 including podiatrists, dentists, optometrists and chiropractors,
55 as are necessary for the provision of limited health services
56 for which the group is responsible:

57 (1) A majority of the members of which are licensed to
58 practice medicine, osteopathy or chiropractic;

59 (2) Who as their principal professional activity engage in
60 the coordinated practice of their profession;

61 (3) Who pool their income for practice as members of the
62 group and distribute it among themselves according to a
63 prearranged salary, drawing account or other plan; and

64 (4) Who share medical and other records and substantial
65 portions of major equipment and professional, technical and
66 administrative staff.

67 (k) "Impaired" means a financial situation in which,
68 based upon the financial information which would be
69 required by this chapter for the preparation of the prepaid
70 limited health service organization's annual statement, the

71 assets of the prepaid limited health service organization are
72 less than the sum of all of its liabilities and required reserves
73 including any minimum capital and surplus required of the
74 prepaid limited health service organization by this chapter so
75 as to maintain its authority to transact the kinds of business
76 or insurance it is authorized to transact.

77 (l) “Individual practice arrangement” means any
78 agreement or arrangement to provide medical services on
79 behalf of a prepaid limited health service organization among
80 or between providers or between a prepaid limited health
81 service organization and individual providers or groups of
82 providers, where the providers are not employees or partners
83 of the prepaid limited health service organization and are not
84 members of or affiliated with a group practice.

85 (m) “Insolvent” or “insolvency” means a financial
86 situation in which, based upon the financial information
87 which would be required by this chapter for the preparation
88 of the prepaid limited health service organization's annual
89 statement, the assets of the prepaid limited health service
90 organization are less than the sum of all of its liabilities and
91 required reserves.

92 (n) “Limited health service” means mental or behavioral
93 health services (including mental illness, mental retardation,
94 developmental disabilities, substance abuse, and chemical
95 dependency services), dental care services, vision care
96 services, podiatric care services, pharmaceutical services
97 (including Medicare prescription drug plans), together with
98 any services or goods included in the furnishing to any
99 individual of a limited health service. “Limited health
100 service” does not include inpatient services, hospital surgical
101 services or emergency services except as such services are
102 provided incident to and directly related to a limited health
103 service set forth in this subsection.

104 (o) "Premium" means a prepaid per capita or prepaid
105 aggregate fixed sum unrelated to the actual or potential
106 utilization of services of any particular person which is
107 charged by the prepaid limited health service organization for
108 health services provided to an enrollee.

109 (p) "Prepaid limited health service organization" means
110 a public or private organization which provides, or otherwise
111 makes available to enrollees, no more than four limited health
112 services and which:

113 (1) Receives premiums for the provision of no more than
114 four limited health services to enrollees on a prepaid per
115 capita or prepaid aggregate fixed sum basis, excluding
116 copayments;

117 (2) Provides no more than four limited health services
118 primarily:

119 (A) Directly through an exclusive panel of physicians or
120 other providers who are employees or partners of the
121 organization;

122 (B) Through arrangements with individual physicians or
123 other providers or one or more groups of physicians or other
124 providers organized on a group practice or individual practice
125 arrangement; or

126 (C) Some combination of paragraphs (A) and (B) of this
127 subdivision;

128 (3) Assures the availability, accessibility and quality,
129 including effective utilization, of the limited health service or
130 services that it provides or makes available through clearly
131 identifiable focal points of legal and administrative
132 responsibility; and

133 (4) Offers services through an organized delivery system,
134 in which a coordinating provider of a limited health service
135 is designated for each subscriber to that limited health
136 service. Prepaid limited health service organization does not
137 include an entity otherwise authorized pursuant to the laws of
138 this state to indemnify for any limited health service, or a
139 provider or entity when providing a limited health service
140 pursuant to a contract with a prepaid limited health service
141 organization, a health maintenance organization, a health
142 insurer or a self-insurance plan.

143 (q) “Provider” means any physician or other person or
144 organization licensed or otherwise authorized in this state to
145 furnish a limited health service.

146 (r) “Qualified independent actuary” means an actuary
147 who is a member of the American academy of actuaries or
148 the society of actuaries and has experience in establishing
149 rates for prepaid limited health service organizations and who
150 has no financial or employment interest in the prepaid limited
151 health service organization.

152 (s) “Quality assurance” means an ongoing program
153 designed to objectively and systematically monitor and
154 evaluate the quality and appropriateness of the enrollee's
155 care, pursue opportunities to improve the enrollee's care, and
156 resolve identified problems at the prevailing professional
157 standard of care.

158 (t) “Service area” means the county or counties approved
159 by the commissioner within which the prepaid limited health
160 service organization may provide or arrange for a limited
161 health service to be available to its subscribers.

162 (u) “Statutory surplus” means the minimum amount of
163 unencumbered surplus which a corporation must maintain
164 pursuant to the requirements of this article.

165 (v) "Surplus" means the amount by which a corporation's
166 assets exceed its liabilities and required reserves based upon
167 the financial information which would be required by this
168 chapter for the preparation of the corporation's annual
169 statement except that assets pledged to secure debts not
170 reflected on the books of the prepaid limited health service
171 organization shall not be included in surplus.

172 (w) "Surplus notes" means debt which has been
173 subordinated to all claims of subscribers and all creditors of
174 the organization.

175 (x) "Uncovered expenses" means the cost of a limited
176 health service covered by a prepaid limited health service
177 organization, for which a subscriber would also be liable in
178 the event of the insolvency of the organization.

179 (y) "Utilization management" means a system for the
180 evaluation of the necessity, appropriateness, and efficiency
181 of the use of health care services, procedures and facilities.



CHAPTER 139

**(Com. Sub. for H.B. 3278 - By Delegates Perry, Ashley
and Moore)**

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 12, 2009.]

AN ACT to amend and reenact §33-26A-3, §33-26A-5, §33-26A-6,
§33-26A-8, §33-26A-9, §33-26A-10 and §33-26A-18 of the
Code of West Virginia, 1931, as amended, all relating to the
life and health insurance guaranty association; making specific

provision for treatment of unallocated annuity contracts and structured settlement contracts; providing how payments to residents and nonresidents are determined; providing that duplicate payments not be made; excluding certain policies, portions of policies and obligations from coverage; setting new limits on coverage for various types of policies and contracts; defining terms; changing the composition of the annuity and unallocated annuity accounts; eliminating the association's power to make loans to an insolvent insurer and making other changes to its powers and duties; increasing the permissible maximum annual pro rata assessment; setting forth a process for the protest of assessments; mandating that members comply with requests for information from the association; requiring that the plan of operation include provisions for removing a director for cause and addressing conflicts of interest; and increasing the length of the stay of court proceedings involving an insolvent insurer.

Be it enacted by the Legislature of West Virginia:

That §33-26A-3, §33-26A-5, §33-26A-6, §33-26A-8, §33-26A-9, §33-26A-10 and §33-26A-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

- §33-26A-3. Scope of article; policies and contracts covered; exclusions; extent of liability.
- §33-26A-5. Definitions.
- §33-26A-6. Creation of association; required accounts; supervision of commissioner; meetings and records.
- §33-26A-8. Powers and duties of association.
- §33-26A-9. Assessments.
- §33-26A-10. Plan of operation.
- §33-26A-18. Stay of court proceedings; reopening default judgments.

§33-26A-3. Scope of article; policies and contracts covered; exclusions; extent of liability.

- 1 (a) This article shall provide coverage for the policies and
- 2 contracts specified in subsection (b) of this section:

3 (1) To persons who, regardless of where they reside, are
4 the beneficiaries, assignees or payees of the persons covered
5 under subdivision (2) of this subsection: *Provided*, That the
6 provisions of this subdivision shall not apply to nonresident
7 certificate holders under group policies or contracts;

8 (2) To persons who are owners of or certificate holders
9 under such policies or contracts, other than unallocated
10 annuity contracts and structured settlement annuities, and in
11 each case who:

12 (A) Are residents of this state; or

13 (B) Are not residents of this state, but only under all of
14 the following conditions:

15 (i) The insurer that issued the policies or contracts is
16 domiciled in this state;

17 (ii) The states in which the persons reside have
18 associations similar to the association created by this article;
19 and

20 (iii) The persons are not eligible for coverage by an
21 association in any other state because the insurer was not
22 licensed in the state at the time specified in the state's
23 guaranty association law.

24 (3) For unallocated annuity contracts specified in
25 subdivisions (1) and (2), subsection (b) of this section shall
26 not apply, and this article shall, except as provided in
27 subdivisions (5) and (6) of this subsection, provide coverage
28 to:

29 (A) Persons who are the owners of the unallocated
30 annuity contracts if the contracts are issued to or in

31 connection with a specific benefit plan whose plan sponsor
32 has its principal place of business in this state; and

33 (B) Persons who are owners of unallocated annuity
34 contracts issued to or in connection with government lotteries
35 if the owners are residents.

36 (4) For structured settlement annuities specified in
37 subdivisions (1) and (2), subsection (b) of this section shall
38 not apply, and this article shall, except as provided in
39 subdivisions (5) and (6) of this subsection, provide coverage
40 to a person who is a payee under a structured settlement
41 annuity or beneficiary of a payee if the payee is deceased, if
42 the payee:

43 (A) Is a resident, regardless of where the contract owner
44 resides; or

45 (B) Is not a resident, but only under both of the following
46 conditions:

47 (i) (I) The contract owner of the structured settlement
48 annuity is a resident; or

49 (II) The contract owner of the structured settlement
50 annuity is not a resident, but the insurer that issued the
51 structured settlement annuity is domiciled in this state and the
52 state in which the contract owner resides has an association
53 similar to the association created by this article; and

54 (ii) Neither the payee or beneficiary nor the contract
55 owner is eligible for coverage by the association of the state
56 in which the payee or contract owner resides.

57 (5) This article shall not provide coverage to:

58 (A) A person who is a payee or beneficiary of a contract
59 owner resident of this state, if the payee or beneficiary is
60 afforded any coverage by the association of another state; or

61 (B) A person covered under subdivision (3) of this
62 subsection, if any coverage is provided by the association of
63 another state to the person.

64 (6) This article is intended to provide coverage to a
65 person who is a resident of this state and, in special
66 circumstances, to a nonresident. In order to avoid duplicate
67 coverage, if a person who would otherwise receive coverage
68 under this article is provided coverage under the laws of any
69 other state, the person shall not be provided coverage under
70 this article. In determining the application of the provisions
71 of this subdivision in situations where a person could be
72 covered by the association of more than one state, whether as
73 an owner, payee, beneficiary or assignee, this article shall be
74 construed in conjunction with other state laws to result in
75 coverage by only one association.

76 (b) Coverage as provided by this article shall be as
77 follows:

78 (1) This article shall provide coverage to the persons
79 specified in subsection (a) of this section for direct, nongroup
80 life, health, and annuity policies or contracts, for any
81 supplemental policies to the foregoing, for certificates under
82 direct group policies and contracts, and for unallocated
83 annuity contracts, issued by member insurers, except as
84 limited by this article. Annuity contracts and certificates
85 under group annuity contracts include, but are not limited to,
86 guaranteed investment contracts, deposit administration
87 contracts, unallocated funding agreements, allocated funding
88 agreements, structured settlement annuities, annuities issued
89 in connection with government lotteries and any immediate
90 or deferred annuity contracts.

91 (2) This article shall not provide coverage for:

92 (A) A portion of a policy or contract not guaranteed by
93 the insurer, or under which the risk is borne by the policy or
94 contract owner;

95 (B) A policy or contract of reinsurance, unless
96 assumption certificates have been issued pursuant to the
97 reinsurance policy or contract;

98 (C) A portion of a policy or contract to the extent that the
99 rate of interest on which it is based, or the interest rate,
100 crediting rate or similar factor determined by use of an index
101 or other external reference stated in the policy or contract
102 employed in calculating returns or changes in value:

103 (i) Averaged over the period of four years prior to the
104 date on which the member insurer becomes an impaired or
105 insolvent insurer under this article, exceeds a rate of interest
106 determined by subtracting two percentage points from
107 Moody's Corporate Bond Yield Average averaged for that
108 same four-year period or for such lesser period if the policy
109 or contract was issued less than four years before the member
110 insurer becomes an impaired or insolvent insurer under this
111 article, whichever is earlier; and

112 (ii) On and after the date on which the member insurer
113 becomes an impaired or insolvent insurer under this article,
114 whichever is earlier, exceeds the rate of interest determined
115 by subtracting three percentage points from Moody's
116 Corporate Bond Yield Average as most recently available;

117 (D) A portion of a policy or contract issued to a plan or
118 program of an employer, association or other person to
119 provide life, health or annuity benefits to its employees,
120 members or others, to the extent that the plan or program is
121 self-funded or uninsured, including, but not limited to,
122 benefits payable by an employer, association or other person
123 under:

124 (i) A multiple employer welfare arrangement as defined
125 in section 514 of the Employee Retirement Income Security
126 Act of 1974, 29 U.S.C. §1144, as amended;

- 127 (ii) A minimum premium group insurance plan;
- 128 (iii) A stop-loss group insurance plan; or
- 129 (iv) An administrative services only contract;
- 130 (E) A portion of a policy or contract to the extent that it
131 provides for dividends or experience rating credits, voting
132 rights, or payment of any fees or allowances to any person,
133 including the policy or contract owner, in connection with the
134 service to or administration of the policy or contract;
- 135 (F) A policy or contract issued in this state by a member
136 insurer at a time when it was not licensed or did not have a
137 certificate of authority to issue the policy or contract in this
138 state;
- 139 (G) An unallocated annuity contract issued to an
140 employee benefit plan protected under the federal pension
141 benefit guaranty corporation, regardless of whether the
142 federal pension benefit guaranty corporation has yet become
143 liable to make any payments with respect to the benefit plan;
144 and
- 145 (H) A portion of any unallocated annuity contract which
146 is not issued to or in connection with a specific employee,
147 union or association of natural persons benefit plan or a
148 government lottery.
- 149 (I) A portion of a policy or contract to the extent that the
150 assessments required by section nine of this article with
151 respect to the policy or contract are preempted by federal or
152 state law;
- 153 (J) An obligation that does not arise under the express
154 written terms of the policy or contract issued by the insurer

155 to the contract owner or policy owner, including without
156 limitation:

157 (i) Claims based on marketing materials;

158 (ii) Claims based on side letters, riders or other
159 documents that were issued by the insurer without meeting
160 applicable policy form filing or approval requirements;

161 (iii) Misrepresentations of or regarding policy benefits;

162 (iv) Extra-contractual claims; or

163 (v) A claim for penalties or consequential or incidental
164 damages;

165 (K) A contractual agreement that establishes the member
166 insurer's obligations to provide a book value accounting
167 guaranty for defined contribution benefit plan participants by
168 reference to a portfolio of assets that is owned by the benefit
169 plan or its trustee, which in each case is not an affiliate of the
170 member insurer;

171 (L) A portion of a policy or contract to the extent it
172 provides for interest or other changes in value to be
173 determined by the use of an index or other external reference
174 stated in the policy or contract, but which have not been
175 credited to the policy or contract, or as to which the policy or
176 contract owner's rights are subject to forfeiture, as of the date
177 the member insurer becomes an impaired or insolvent insurer
178 under this article, whichever is earlier. If a policy's or
179 contract's interest or changes in value are credited less
180 frequently than annually, then for purposes of determining
181 the values that have been credited and are not subject to
182 forfeiture, the interest or change in value determined by using
183 the procedures defined in the policy or contract will be
184 credited as if the contractual date of crediting interest or

185 changing values was the date of impairment or insolvency,
186 whichever is earlier, and will not be subject to forfeiture.

187 (M) A policy or contract providing any hospital, medical,
188 prescription drug or other health care benefits pursuant to
189 Part C or Part D of Subchapter XVIII, Chapter 7 of Title 42
190 of the United States Code (commonly known as Medicare
191 Part C & D) or any regulations issued pursuant thereto.

192 (c) The benefits that the association may become liable
193 for shall in no event exceed the lesser of:

194 (1) The contractual obligations for which the insurer is
195 liable or would have been liable if it were not an impaired or
196 insolvent insurer; or

197 (2) (A) With respect to any one life, regardless of the
198 number of policies or contracts:

199 (i) Three hundred thousand dollars in life insurance death
200 benefits, but no more than \$100,000 in net cash surrender and
201 net cash withdrawal values for life insurance;

202 (ii) In health insurance benefits:

203 (I) One hundred thousand dollars for coverages not
204 defined as disability insurance or basic hospital, medical and
205 surgical insurance or major medical insurance or long-term
206 care insurance as defined in section four, article fifteen-a, of
207 this chapter, including any net cash surrender and net cash
208 withdrawal values;

209 (II) Three hundred thousand dollars for disability
210 insurance and \$300,000 for long-term care insurance as
211 defined in section four, article fifteen-a of this chapter;

212 (III) \$500,000 for basic hospital, medical and surgical
213 insurance or major medical insurance; or

214 (iii) \$250,000 in the present value of annuity benefits,
215 including net cash surrender and net cash withdrawal values;

216 (B) With respect to each individual participating in a
217 governmental retirement plan established under section 401,
218 403(b) or 457 of the United States Internal Revenue Code
219 covered by an unallocated annuity contract or the
220 beneficiaries of each such individual if deceased, in the
221 aggregate, \$250,000 in present value annuity benefits,
222 including net cash surrender and net cash withdrawal values.

223 (C) With respect to each payee of a structured settlement
224 annuity, or beneficiary or beneficiaries of the payee if
225 deceased, \$250,000 in present value annuity benefits, in the
226 aggregate, including net cash surrender and net cash
227 withdrawal value;

228 (D) However, in no event shall the association be
229 obligated to cover more than:

230 (i) An aggregate of \$300,000 in benefits with respect to
231 any one life under paragraphs (A), (B) and (C) of this
232 subdivision except with respect to benefits for basic hospital,
233 medical and surgical insurance and major medical insurance
234 under subparagraph (ii), paragraph (A) of this subdivision,
235 in which case the aggregate liability of the association shall
236 not exceed \$500,000 with respect to any one individual, or

237 (ii) With respect to one owner of multiple nongroup
238 policies of life insurance, whether the policy owner is an
239 individual, firm, corporation or other person, and whether the
240 persons insured are officers, managers, employees or other
241 persons, more than \$5 million in benefits, regardless of the
242 number of policies and contracts held by the owner.

243 (E) With respect to either one contract owner provided
244 coverage under paragraph (B), subdivision (3), subsection (a)

245 of this section or one plan sponsor whose plans own directly
246 or in trust one or more unallocated annuity contracts not
247 included in paragraph (B), subdivision (2) of this subsection,
248 \$5 million in benefits, irrespective of the number of contracts
249 with respect to the contract owner or plan sponsor. However,
250 in the case where one or more unallocated annuity contracts
251 are covered contracts under this article and are owned by a
252 trust or other entity for the benefit of two or more plan
253 sponsors, coverage shall be afforded by the association if the
254 largest interest in the trust or entity owning the contract or
255 contracts is held by a plan sponsor whose principal place of
256 business is in this state. In no event shall the association be
257 obligated to cover more than \$5 million in benefits with
258 respect to all of these unallocated contracts.

259 (F) The limitations set forth in this subsection are
260 limitations on the benefits for which the association is
261 obligated before taking into account either its subrogation
262 and assignment rights or the extent to which those benefits
263 could be provided out of the assets of the impaired or
264 insolvent insurer attributable to covered policies. The costs
265 of the association's obligations under this article may be met
266 by the use of assets attributable to covered policies or
267 reimbursed to the association pursuant to its subrogation and
268 assignment rights.

269 (d) In performing its obligations to provide coverage
270 under section eight of this article, the association shall not be
271 required to guarantee, assume, reinsure or perform, or cause
272 to be guaranteed, assumed, reinsured or performed, the
273 contractual obligations of the insolvent or impaired insurer
274 under a covered policy or contract that do not materially
275 affect the economic values or economic benefits of the
276 covered policy or contract.

§33-26A-5. Definitions.

1 As used in this article:

2 (1) “Account” means either of the two accounts created
3 under section six of this article.

4 (2) “Association” means the West Virginia Life and
5 Health Insurance Guaranty Association created under section
6 six of this article.

7 (3) “Authorized assessment” or the term “authorized”
8 when used in the context of assessments means a resolution
9 by the board of directors has been passed whereby an
10 assessment will be called immediately or in the future from
11 member insurers for a specified amount. An assessment is
12 authorized when the resolution is passed.

13 (4) “Basic hospital, medical and surgical insurance or
14 major medical insurance” means accident and sickness
15 insurance subject to the provisions of articles fifteen and
16 sixteen of this chapter and benefits provided by articles
17 twenty-four and twenty-five of this chapter, but excludes any
18 accident and sickness insurance in which the medical care is
19 secondary or incidental to other benefits and also excludes
20 insurance included within the definition of excluded benefits
21 set forth in subsection (f), section one-a, article sixteen of this
22 chapter.

23 (5) “Benefit plan” means a specific employee, union or
24 association of natural persons benefit plan.

25 (6) “Called assessment” or the term “called” when used
26 in the context of assessments means that a notice has been
27 issued by the association to member insurers requiring that an
28 authorized assessment be paid within the time frame set forth
29 within the notice. An authorized assessment becomes a
30 called assessment when notice is mailed by the association to
31 member insurers.

32 (7) “Commissioner” means the Commissioner of
33 Insurance of this state.

34 (8) “Contractual obligation” means any obligation under
35 a policy or contract or certificate under a group policy or
36 contract, or portion thereof for which coverage is provided
37 under section three of this article.

38 (9) “Covered policy” means any policy or contract within
39 the scope of this article under section three of this article.

40 (10) “Extra-contractual claims” shall include claims such
41 as those relating to bad faith in the payment of claims,
42 punitive or exemplary damages or attorneys’ fees and costs.

43 (11) “Impaired insurer” means a member insurer which,
44 after the effective date of this article, is not an insolvent
45 insurer, and (1) is deemed by the commissioner to be
46 potentially unable to fulfill its contractual obligations or (2)
47 is placed under an order of rehabilitation or conservation by
48 a court of competent jurisdiction.

49 (12) “Insolvent insurer” means a member insurer which,
50 after the effective date of this article, is placed under an order
51 of liquidation by a court of competent jurisdiction with a
52 finding of insolvency.

53 (13) “Member insurer” means any insurer licensed or
54 which holds a certificate of authority to transact in this state
55 any kind of insurance for which coverage is provided under
56 section three of this article, and includes an insurer whose
57 license or certificate of authority in this state may have been
58 suspended, revoked, not renewed or voluntarily withdrawn,
59 and includes nonprofit service corporations as defined in
60 article twenty-four of this chapter and health care
61 corporations as defined in article twenty-five of this chapter
62 but does not include:

- 63 (A) A health maintenance organization;
- 64 (B) A fraternal benefit society;
- 65 (C) A mandatory state pooling plan;
- 66 (D) A mutual assessment company or any entity that
67 operates on an assessment basis;
- 68 (E) An insurance exchange;
- 69 (F) An organization which has a certificate or license
70 limited to the issuance of charitable gift annuities under
71 article thirteen-b of this chapter; or
- 72 (G) Any entity similar to any of the above.
- 73 (14) “Moody's Corporate Bond Yield Average” means
74 the Monthly Average Corporates as published by Moody's
75 Investors Service, Inc., or any successor thereto.
- 76 (15) “Owner” of a policy or contract and “policy owner”
77 and “contract owner” mean the person who is identified as
78 the legal owner under the terms of the policy or contract or
79 who is otherwise vested with legal title to the policy or
80 contract through a valid assignment completed in accordance
81 with the terms of the policy or contract and properly recorded
82 as the owner on the books of the insurer. The terms owner,
83 contract owner and policy owner do not include persons with
84 a mere beneficial interest in a policy or contract.
- 85 (16) “Person” means any individual, corporation,
86 partnership, association or voluntary organization.
- 87 (17) “Plan sponsor” means:
- 88 (A) The employer in the case of a benefit plan established
89 or maintained by a single employer;

90 (B) The employee organization in the case of a benefit
91 plan established or maintained by an employee organization;
92 or

93 (C) In a case of a benefit plan established or maintained
94 by two or more employers or jointly by one or more
95 employers and one or more employee organizations, the
96 association, committee, joint board of trustees, or other
97 similar group of representatives of the parties who establish
98 or maintain the benefit plan.

99 (18) "Premiums" means amounts or considerations (by
100 whatever name called) received on covered policies or
101 contracts less premiums, considerations and deposits returned
102 thereon, and less dividends and experience credits thereon.
103 "Premiums" does not include any amounts or considerations
104 received for any policies or contracts or for the portions of
105 any policies or contracts for which coverage is not provided
106 under subsection (b), section three of this article, except that
107 assessable premium shall not be reduced on account of
108 paragraph (C), subdivision (2), subsection (b), section three
109 of this article relating to interest limitations and subdivision
110 (2), subsection (c), section three of this article relating to
111 limitations with respect to any one individual, any one
112 participant and any one contract owner. Premiums shall not
113 include:

114 (A) Premiums in excess of \$5 million on any unallocated
115 annuity contract not issued under a government retirement
116 plan established under section 401, 403(b) or 457 of the
117 United States Internal Revenue Code; or

118 (B) With respect to multiple nongroup policies of life
119 insurance owned by one owner, whether the policy owner is
120 an individual, firm, corporation or other person, and whether
121 the persons insured are officers, managers, employees or
122 other persons, premiums in excess of \$5 million with respect

123 to these policies or contracts, regardless of the number of
124 policies or contracts held by the owner.

125 (19) (A) “Principal place of business” of a plan sponsor
126 or a person other than a natural person means the single state
127 in which the natural persons who establish policy for the
128 direction, control and coordination of the operations of the
129 entity as a whole primarily exercise that function, determined
130 by the association in its reasonable judgment by considering
131 the following factors:

132 (i) The state in which the primary executive and
133 administrative headquarters of the entity is located;

134 (ii) The state in which the principal office of the chief
135 executive officer of the entity is located;

136 (iii) The state in which the board of directors (or similar
137 governing person or persons) of the entity conducts the
138 majority of its meetings;

139 (iv) The state in which the executive or management
140 committee of the board of directors (or similar governing
141 person or persons) of the entity conducts the majority of its
142 meetings;

143 (v) The state from which the management of the overall
144 operations of the entity is directed;

145 (vi) In the case of a benefit plan sponsored by affiliated
146 companies comprising a consolidated corporation, the state
147 in which the holding company or controlling affiliate has its
148 principal place of business as determined using the above
149 factors; and

150 (vii) In the case of a plan sponsor, if more than fifty
151 percent of the participants in the benefit plan are employed in

152 a single state, that state shall be deemed to be the principal
153 place of business of the plan sponsor.

154 (B) The principal place of business of a plan sponsor of
155 a benefit plan described in paragraph (C), subdivision (16) of
156 this section shall be deemed to be the principal place of
157 business of the association, committee, joint board of trustees
158 or other similar group of representatives of the parties who
159 establish or maintain the benefit plan that, in lieu of a specific
160 or clear designation of a principal place of business, shall be
161 deemed to be the principal place of business of the employer
162 or employee organization that has the largest investment in
163 the benefit plan in question.

164 (20) "Receivership court" means the court in the
165 insolvent or impaired insurer's state having jurisdiction over
166 the conservation, rehabilitation or liquidation of the insurer.

167 (21) "Resident" means a person to whom a contractual
168 obligation is owed and who resides in this state on the date of
169 entry of a court order that determines a member insurer to be
170 an impaired insurer or a court order that determines a
171 member insurer to be an insolvent insurer, whichever occurs
172 first. A person may be a resident of only one state, which in
173 the case of a person other than a natural person shall be its
174 principal place of business. Citizens of the United States that
175 are either residents of foreign countries, or residents of
176 United States possessions, territories, or protectorates that do
177 not have an association similar to the association created by
178 this article, shall be deemed residents of the state of domicile
179 of the insurer that issued the policies or contracts.

180 (22) "Structured settlement annuity" means an annuity
181 purchased in order to fund periodic payments for a plaintiff
182 or other claimant in payment for or with respect to personal
183 injury suffered by the plaintiff or other claimant.

184 (23) "Health insurance" means accident and sickness
185 insurance as defined in subsection (b), section ten, article one
186 of this chapter and benefits provided pursuant to articles
187 twenty-four and twenty-five of this chapter.

188 (24) "Supplemental contract" means any agreement
189 entered into for the distribution of policy or contract
190 proceeds.

191 (25) "Unallocated annuity contract" means any annuity
192 contract or group annuity certificate which is not issued to
193 and owned by an individual, except to the extent of any
194 annuity benefits guaranteed to an individual by an insurer
195 under such contract or certificate.

**§33-26A-6. Creation of association; required accounts;
supervision of commissioner; meetings and
records.**

1 (a) There is created a nonprofit legal entity to be known
2 as the West Virginia Life and Health Insurance Guaranty
3 Association. All member insurers shall be and remain
4 members of the association as a condition of their authority
5 to transact insurance in this state. The association shall
6 perform its functions under the plan of operation established
7 and approved under section ten of this article and shall
8 exercise its powers through a board of directors established
9 under section seven of this article. For purposes of
10 administration and assessment, the association shall maintain
11 the following two accounts:

12 (1) The life insurance and annuity account which includes
13 the following subaccounts:

14 (A) Life insurance account;

15 (B) Annuity account which shall include annuity
16 contracts owned by a governmental retirement plan or its

17 trustee established under section 401, 403(b) or 457 of the
18 United States Internal Revenue Code, but shall otherwise
19 exclude unallocated annuities; and

20 (C) Unallocated annuity account which shall exclude
21 contracts owned by a governmental retirement plan or its
22 trustee established under section 401, 403(b) or 457 of the
23 United States Internal Revenue Code.

24 (2) The health insurance account.

25 (b) The association shall come under the immediate
26 supervision of the commissioner and shall be subject to the
27 applicable provisions of the insurance laws of this state.
28 Meetings or records of the association may be opened to the
29 public upon majority vote of the board of directors of the
30 association.

§33-26A-8. Powers and duties of association.

1 (a) If a member insurer is an impaired insurer, the
2 association may, in its discretion, and subject to any
3 conditions imposed by the association that do not impair the
4 contractual obligations of the impaired insurer, that are
5 approved by the commissioner:

6 (1) Guarantee, assume, or reinsure, or cause to be
7 guaranteed, assumed or reinsured, any or all of the covered
8 policies or contracts of the impaired insurer; or

9 (2) Provide such moneys, pledges, notes, guarantees or
10 other means as are proper to effectuate subdivision (1) of this
11 subsection and assure payment of the contractual obligations
12 of the impaired insurer pending action under said subdivision
13 (1).

14 (b) If a member insurer is an insolvent insurer, the
15 association shall, in its discretion, either:

16 (1) (A) (i) Guarantee, assume or reinsure, or cause to be
17 guaranteed, assumed or reinsured, the policies or contracts of
18 the insolvent insurer; or

19 (ii) Assure payment of the contractual obligations of the
20 insolvent insurer; and

21 (B) Provide moneys, pledges, guarantees, or other means
22 as are reasonably necessary to discharge such duties; or

23 (2) Provide benefits and coverages in accordance with the
24 following provisions:

25 (A) With respect to life and health insurance policies and
26 annuities assure payment of benefits for premiums identical
27 to the premiums and benefits, except for terms of conversion
28 and renewability, that would have been payable under the
29 policies or contracts of the insolvent insurer, for claims
30 incurred:

31 (i) With respect to group policies and contracts, not later
32 than the earlier of the next renewal date under such policies
33 or contracts or forty-five days, but in no event less than thirty
34 days, after the date on which the association becomes
35 obligated with respect to such policies and contracts;

36 (ii) With respect to nongroup policies, contracts and
37 annuities, not later than the earlier of the next renewal date,
38 if any, under these policies or contracts or one year, but in no
39 event less than thirty days, from the date on which the
40 association becomes obligated with respect to such policies
41 or contracts;

42 (B) Make diligent efforts to provide all known insureds
43 or annuitants or group policyholders with respect to group
44 policies and contracts thirty days' notice of the termination of
45 the benefits provided pursuant to paragraph (A) of this
46 subdivision; and

47 (C) With respect to nongroup life and health insurance
48 policies and annuities covered by the association, make
49 available to each known insured or annuitant, or owner if
50 other than the insured or annuitant, and with respect to an
51 individual formerly insured or formerly an annuitant under a
52 group policy who is not eligible for replacement group
53 coverage, make available substitute coverage on an
54 individual basis in accordance with the provisions of
55 paragraph (D) of this subdivision, if the insureds or
56 annuitants had a right under law or the terminated policy or
57 annuity to convert coverage to individual coverage or to
58 continue an individual policy or annuity in force until a
59 specified age or for a specified time, during which the insurer
60 had no right unilaterally to make changes in any provision of
61 the policy or had a right only to make changes in premium by
62 class.

63 (D)(i) In providing the substitute coverage required under
64 paragraph (C) of this subdivision, the association may offer
65 either to reissue the terminated coverage or to issue an
66 alternative policy.

67 (ii) Alternative or reissued policies shall be offered
68 without requiring evidence of insurability, and shall not
69 provide for any waiting period or exclusion that would not
70 have applied under the terminated policy.

71 (iii) The association may reinsure any alternative or
72 reissued policy.

73 (E)(i) Alternative policies adopted by the association
74 shall be subject to the approval of the domiciliary
75 commissioner and the receivership court. The association
76 may adopt alternative policies of various types for future
77 issuance without regard to any particular impairment or
78 insolvency.

79 (ii) Alternative policies shall contain at least the
80 minimum statutory provisions required in this state and
81 provide benefits that shall not be unreasonable in relation to
82 the premium charged. The association shall set the premium
83 in accordance with a table of rates which it shall adopt. The
84 premium shall reflect the amount of insurance to be provided
85 and the age and class of risk of each insured, but shall not
86 reflect any changes in the health of the insured after the
87 original policy was last underwritten.

88 (iii) Any alternative policy issued by the association shall
89 provide coverage of a type similar to that of the policy issued
90 by the impaired or insolvent insurer, as determined by the
91 association.

92 (F) If the association elects to reissue terminated
93 coverage at a premium rate different from that charged under
94 the terminated policy, the premium shall be set by the
95 association in accordance with the amount of insurance
96 provided and the age and class of risk, subject to approval of
97 the domiciliary commissioner and the receivership court.

98 (G) The association's obligations with respect to coverage
99 under any policy of the impaired or insolvent insurer or under
100 any reissued or alternative policy shall cease on the date that
101 the coverage or policy is replaced by another similar policy
102 by the policyholder, the insured or the association.

103 (H) When proceeding under subdivision (2) of this
104 subsection with respect to any policy or contract carrying
105 guaranteed minimum interest rates, the association shall
106 assure the payment or crediting of a rate of interest consistent
107 with paragraph (C), subdivision (2), subsection (b), section
108 three of this article.

109 (c) Nonpayment of premium within thirty-one days after
110 the date required under the terms of any guaranteed,

111 assumed, alternative or reissued policy or contract or
112 substitute coverage shall terminate the association's
113 obligations under such policy or coverage under this article
114 with respect to such policy or coverage, except with respect
115 to any claims incurred or any net cash surrender value which
116 may be due in accordance with the provisions of this article.

117 (d) Premiums due for coverage after entry of an order of
118 liquidation of an insolvent insurer shall belong to and be
119 payable at the direction of the association. If the liquidator of
120 an insolvent insurer requests, the association shall provide a
121 report to the liquidator regarding such premium collected by
122 the association. The association shall be liable for unearned
123 premiums due to policy or contract owners arising after the
124 entry of the order.

125 (e) The protection provided by this article shall not apply
126 where any guaranty protection is provided to residents of this
127 state by the laws of the domiciliary state or jurisdiction of the
128 impaired or insolvent insurer other than this state.

129 (f) In carrying out its duties under subsection (b) of this
130 section, the association may, subject to approval by a court in
131 this state:

132 (1) Impose permanent policy or contract liens in
133 connection with any guarantee, assumption or reinsurance
134 agreement, if the association finds that the amounts which
135 can be assessed under this article are less than the amounts
136 needed to assure full and prompt performance of the
137 association's duties under this article, or that the economic or
138 financial conditions as they affect member insurers are
139 sufficiently adverse to render the imposition of such
140 permanent policy or contract liens, to be in the public
141 interest;

142 (2) Impose temporary moratoriums or liens on payments
143 of cash values and policy loans, or any other right to

144 withdraw funds held in conjunction with policies or
145 contracts, in addition to any contractual provisions for
146 deferral of cash or policy loan value. In the event of a
147 temporary moratorium or moratorium charge imposed by the
148 receivership court on payment of cash values or policy loans,
149 or on any other right to withdraw funds held in conjunction
150 with policies or contracts, out of the assets of the impaired or
151 insolvent insurer, the association may defer the payment of
152 cash values, policy loans or other rights by the association for
153 the period of the moratorium or moratorium charge imposed
154 by the receivership court, except for claims covered by the
155 association to be paid in accordance with a hardship
156 procedure established by the liquidator or rehabilitator and
157 approved by the receivership court.

158 (g) A deposit in this state, held pursuant to law or
159 required by the commissioner for the benefit of creditors,
160 including policy owners, not turned over to the domiciliary
161 liquidator upon the entry of a final order of liquidation or
162 order approving a rehabilitation plan of an insurer domiciled
163 in this state or in a reciprocal state, pursuant to article ten of
164 this chapter, shall be promptly paid to the association. The
165 association shall be entitled to retain a portion of any amount
166 so paid to it equal to the percentage determined by dividing
167 the aggregate amount of policy owners claims related to that
168 insolvency for which the association has provided statutory
169 benefits by the aggregate amount of all policy owners' claims
170 in this state related to that insolvency and shall remit to the
171 domiciliary receiver the amount so paid to the association
172 less the amount retained pursuant to this subsection. Any
173 amount so paid to the association and retained by it shall be
174 treated as a distribution of estate assets pursuant to article ten
175 of this chapter.

176 (h) If the association fails to act within a reasonable
177 period of time with respect to an insolvent insurer as
178 provided in subsection (b) of this section, the commissioner

179 shall have the powers and duties of the association under this
180 article with respect to the insolvent insurer.

181 (i) The association may render assistance and advice to
182 the commissioner, upon his or her request, concerning
183 rehabilitation, payment of claims, continuance of coverage,
184 or the performance of other contractual obligations of any
185 impaired or insolvent insurer.

186 (j) The association shall have standing to appear or
187 intervene before any court in this state with jurisdiction over
188 an impaired or insolvent insurer concerning which the
189 association is or may become obligated under this article
190 standing shall extend to all matters germane to the powers
191 and duties of the association, including, but not limited to,
192 proposals for reinsuring, modifying, or guaranteeing the
193 policies or contracts of the impaired or insolvent insurer and
194 the determination of the policies or contracts and contractual
195 obligations. The association shall also have the right to
196 appear or intervene before a court or agency in another state
197 with jurisdiction over an impaired or insolvent insurer for
198 which the association is or may become obligated or with
199 jurisdiction over any person or property against whom the
200 association may have rights through subrogation of the
201 insurer's policyholders, payees or beneficiaries.

202 (k)(1) Any person receiving benefits under this article
203 shall be deemed to have assigned the rights under, and any
204 causes of action against any person for losses arising under,
205 resulting from or otherwise relating to, the covered policy or
206 contract to the association to the extent of the benefits
207 received because of this article, whether the benefits are
208 payments of or on account of contractual obligations,
209 continuation of coverage or provision of substitute or
210 alternative coverages. The association may require an
211 assignment to it of such rights and cause of action by any
212 payee, policy or contract owner, beneficiary, insured or

213 annuitant as a condition precedent to the receipt of any right
214 or benefits conferred by this article upon such person.

215 (2) The subrogation rights of the association under this
216 subsection shall have the same priority against the assets of
217 the impaired or insolvent insurer as that possessed by the
218 person entitled to receive benefits under this article.

219 (3) In addition to subdivisions (1) and (2) of this
220 subsection, the association shall have all common law rights
221 of subrogation and any other equitable or legal remedy that
222 would have been available to the impaired or insolvent
223 insurer or owner or insured of a policy or contract with
224 respect to such policy or contracts.

225 (1) In addition to the rights and powers elsewhere in this
226 article, the association may:

227 (1) Enter into such contracts as are necessary or proper to
228 carry out the provisions and purposes of this article;

229 (2) Sue or be sued, including taking any legal actions
230 necessary or proper to recover any unpaid assessments under
231 section nine of this article and to settle claims or potential
232 claims against it;

233 (3) Borrow money to effect the purpose of this article;
234 any notes or other evidence of indebtedness of the association
235 not in default shall be legal investments for domestic insurers
236 and may be carried as admitted assets;

237 (4) Employ or retain such persons as are necessary to
238 handle the financial transactions of the association, and to
239 perform such other functions as become necessary or proper
240 under this article;

241 (5) Take such legal action as may be necessary to avoid
242 or recover payment of improper claims;

243 (6) Exercise, for the purposes of this article and to the
244 extent approved by the commissioner, the powers of a
245 domestic life or health insurer, but in no case may the
246 association issue insurance policies or annuity contracts other
247 than those issued to perform its obligations under this article;

248 (7) Organize itself as a corporation or in other legal form
249 permitted by the laws of the state;

250 (8) Request information from a person seeking coverage
251 from the association in order to aid the association in
252 determining its obligations under this article with respect to
253 the person, and the person shall promptly comply with the
254 request; and

255 (9) Take other necessary or appropriate action to
256 discharge its duties and obligations under this article or to
257 exercise its powers under this article.

258 (m) The association may join an organization of one or
259 more other state associations of similar purposes, to further
260 the purposes and administer the powers and duties of the
261 association.

262 (n) (1) (A) At any time within one hundred eighty days
263 of the date of the order of liquidation, the association may
264 elect to succeed to the rights and obligations of the ceding
265 member insurer that relate to policies or annuities covered, in
266 whole or in part, by the association, in each case under any
267 one or more reinsurance contracts entered into by the
268 insolvent insurer and its reinsurers and selected by the
269 association. Any such assumption shall be effective as of the
270 date of the order of liquidation. The election shall be effected
271 by the association or the National Organization of Life and
272 Health Insurance Guaranty Associations (NOLHGA) on its
273 behalf sending written notice, return receipt requested, to the
274 affected reinsurers.

275 (B) To facilitate the earliest practicable decision about
276 whether to assume any of the contracts of reinsurance, and in
277 order to protect the financial position of the estate, the
278 receiver and each reinsurer of the ceding member insurer
279 shall make available upon request to the association or to
280 NOLHGA on its behalf as soon as possible after
281 commencement of formal delinquency proceedings (i) copies
282 of in-force contracts of reinsurance and all related files and
283 records relevant to the determination of whether such
284 contracts should be assumed, and (ii) notices of any defaults
285 under the reinsurance contracts or any known event or
286 condition which with the passage of time could become a
287 default under the reinsurance contracts.

288 (C) The following shall apply to reinsurance contracts so
289 assumed by the association:

290 (i) The association shall be responsible for all unpaid
291 premiums due under the reinsurance contracts for periods
292 both before and after the date of the order of liquidation, and
293 shall be responsible for the performance of all other
294 obligations to be performed after the date of the order of
295 liquidation, in each case which relate to policies or annuities
296 covered, in whole or in part, by the association. The
297 association may charge policies or annuities covered in part
298 by the association, through reasonable allocation methods,
299 the costs for reinsurance in excess of the obligations of the
300 association and shall provide notice and an accounting of
301 these charges to the liquidator;

302 (ii) The association shall be entitled to any amounts
303 payable by the reinsurer under the reinsurance contracts with
304 respect to losses or events that occur in periods after the date
305 of the order of liquidation and that relate to policies or
306 annuities covered, in whole or in part, by the association,
307 provided that, upon receipt of any such amounts, the
308 association shall be obliged to pay to the beneficiary under

309 the policy or annuity on account of which the amounts were
310 paid a portion of the amount equal to lesser of:

311 (I) The amount received by the association; and

312 (II) The excess of the amount received by the association
313 over the amount equal to the benefits paid by the association
314 on account of the policy or annuity less the retention of the
315 insurer applicable to the loss or event.

316 (iii) Within thirty days following the association's
317 election (the "election date"), the association and each
318 reinsurer under contracts assumed by the association shall
319 calculate the net balance due to or from the association under
320 each reinsurance contract as of the election date with respect
321 to policies or annuities covered, in whole or in part, by the
322 association, which calculation shall give full credit to all
323 items paid by either the insurer or its receiver or the reinsurer
324 prior to the election date. The reinsurer shall pay the receiver
325 any amounts due for losses or events prior to the date of the
326 order of liquidation, subject to any set-off for premiums
327 unpaid for periods prior to the date, and the association or
328 reinsurer shall pay any remaining balance due the other, in
329 each case within five days of the completion of the
330 aforementioned calculation. Any disputes over the amounts
331 due to either the association or the reinsurer shall be resolved
332 by arbitration pursuant to the terms of the affected
333 reinsurance contracts or, if the contract contains no
334 arbitration clause, as otherwise provided by law. If the
335 receiver has received any amounts due the association
336 pursuant to subparagraph (ii) of this paragraph, the receiver
337 shall remit the same to the association as promptly as
338 practicable.

339 (iv) If the association or receiver, on the association's
340 behalf, within sixty days of the election date, pays the unpaid
341 premiums due for periods both before and after the election

342 date that relate to policies or annuities covered, in whole or
343 in part, by the association, the reinsurer shall not be entitled
344 to terminate the reinsurance contracts for failure to pay
345 premium insofar as the reinsurance contracts relate to policies
346 or annuities covered, in whole or in part, by the association,
347 and shall not be entitled to set off any unpaid amounts due
348 under other contracts, or unpaid amounts due from parties
349 other than the association, against amounts due the
350 association.

351 (2) During the period from the date of the order of
352 liquidation until the election date or, if the election date does
353 not occur, until one hundred eighty days after the date of the
354 order of liquidation:

355 (A) (i) Neither the association nor the reinsurer shall have
356 any rights or obligations under reinsurance contracts that the
357 association has the right to assume under subdivision (1) of
358 this subsection, whether for periods prior to or after the date
359 of the order of liquidation; and

360 (ii) The reinsurer, the receiver and the association shall,
361 to the extent practicable, provide each other data and records
362 reasonably requested;

363 (B) Provided that once the association has elected to
364 assume a reinsurance contract, the parties' rights and
365 obligations shall be governed by subdivision (1) of this
366 subsection.

367 (3) If the association does not elect to assume a
368 reinsurance contract by the election date pursuant to
369 subdivision (1) of this subsection, the association shall have
370 no rights or obligations, in each case for periods both before
371 and after the date of the order of liquidation, with respect to
372 the reinsurance contract.

373 (4) When policies or annuities, or covered obligations
374 with respect thereto, are transferred to an assuming insurer,
375 reinsurance on the policies or annuities may also be
376 transferred by the association, in the case of contracts
377 assumed under subdivision (1) of this subsection, subject to
378 the following:

379 (A) Unless the reinsurer and the assuming insurer agree
380 otherwise, the reinsurance contract transferred shall not cover
381 any new policies of insurance or annuities in addition to those
382 transferred;

383 (B) The obligations described in subdivision (1) of this
384 subsection shall no longer apply with respect to matters
385 arising after the effective date of the transfer; and

386 (C) Notice shall be given in writing, return receipt
387 requested, by the transferring party to the affected reinsurer
388 not less than thirty days prior to the effective date of the
389 transfer.

390 (5) The provisions of this subsection shall supersede the
391 provisions of any law or of any affected reinsurance contract
392 that provides for or requires any payment of reinsurance
393 proceeds, on account of losses or events that occur in periods
394 after the date of the order of liquidation, to the receiver of the
395 insolvent insurer or any other person. The receiver shall
396 remain entitled to any amounts payable by the reinsurer
397 under the reinsurance contracts with respect to losses or
398 events that occur in periods prior to the date of the order of
399 liquidation, subject to applicable setoff provisions.

400 (6) Except as otherwise provided in this subsection,
401 nothing in this subsection shall alter or modify the terms and
402 conditions of any reinsurance contract. Nothing in this
403 subsection shall abrogate or limit any rights of any reinsurer
404 to claim that it is entitled to rescind a reinsurance contract.

405 Nothing in this subsection shall give a policyholder or
406 beneficiary an independent cause of action against a reinsurer
407 that is not otherwise set forth in the reinsurance contract.
408 Nothing in this subsection shall limit or affect the
409 association's rights as a creditor of the estate against the
410 assets of the estate. Nothing in this subsection shall apply to
411 reinsurance agreements covering property or casualty risks.

412 (o) The board of directors of the association shall have
413 discretion and may exercise reasonable business judgment to
414 determine the means by which the association is to provide
415 the benefits of this article in an economical and efficient
416 manner.

417 (p) Where the association has arranged or offered to
418 provide the benefits of this article to a covered person under
419 a plan or arrangement that fulfills the association's
420 obligations under this article, the person shall not be entitled
421 to benefits from the association in addition to or other than
422 those provided under the plan or arrangement.

423 (q) Venue in a suit against the association arising under
424 the article shall be in Kanawha County. The association shall
425 not be required to give an appeal bond in an appeal that
426 relates to a cause of action arising under this act.

427 (r) In carrying out its duties in connection with
428 guaranteeing, assuming or reinsuring policies or contracts
429 under subsections (a) or (b) of this section, the association
430 may, subject to approval of the receivership court, issue
431 substitute coverage for a policy or contract that provides an
432 interest rate, crediting rate or similar factor determined by use
433 of an index or other external reference stated in the policy or
434 contract employed in calculating returns or changes in value
435 by issuing an alternative policy or contract in accordance
436 with the following provisions:

437 (1) In lieu of the index or other external reference
438 provided in the original policy or contract, the alternative
439 policy or contract provides for:

440 (i) A fixed interest rate;

441 (ii) Payment of dividends with minimum guarantees; or

442 (iii) A different method for calculating interest or changes
443 in value;

444 (2) There is no requirement for evidence of insurability,
445 waiting period or other exclusion that would not have applied
446 under the replaced policy or contract; and

447 (3) The alternative policy or contract is substantially
448 similar to the replaced policy or contract in all other material
449 terms.

§33-26A-9. Assessments.

1 (a) For the purpose of providing the funds necessary to
2 carry out the powers and duties of the association, the board
3 of directors shall assess the member insurers, separately for
4 each account, at such time and for such amounts as the board
5 finds necessary. Assessments shall be due not less than thirty
6 days after prior written notice to the member insurers and
7 shall accrue interest at ten percent per annum on and after the
8 due date.

9 (b) There shall be two assessments, as follows:

10 (1) Class A assessments shall be authorized and called for
11 the purpose of meeting administrative and legal costs and
12 other expenses. Class A assessments may be authorized and
13 called whether or not related to a particular impaired or
14 insolvent insurer.

15 (2) Class B assessments shall be authorized and called to
16 the extent necessary to carry out the powers and duties of the
17 association under section eight of this article with regard to
18 an impaired or insolvent insurer.

19 (c)(1) The amount of any Class A assessment shall be
20 determined by the board and may be authorized and called on
21 a pro rata or nonpro rata basis. If pro rata, the board may
22 provide that it be credited against future Class B assessments.
23 A nonpro rata assessment shall not exceed \$300 per member
24 insurer in any one calendar year. The amount of any Class B
25 assessment shall be allocated for assessment purposes among
26 the accounts pursuant to an allocation formula which may be
27 based on the premiums or reserves of the impaired or
28 insolvent insurer or any other standard deemed by the board
29 in its sole discretion as being fair and reasonable under the
30 circumstances.

31 (2) Class B assessments against member insurers for each
32 account and subaccount shall be in the proportion that the
33 premiums received on business in this state by each assessed
34 member insurer on policies or contracts covered by each
35 account for the three most recent calendar years for which
36 information is available preceding the year in which the
37 insurer became impaired or insolvent, as the case may be,
38 bears to such premiums received on business in this state for
39 such calendar years by all assessed member insurers.

40 (3) Assessments for funds to meet the requirements of the
41 association with respect to an impaired or insolvent insurer
42 shall not be authorized or called until necessary to implement
43 the purposes of this article. Classification of assessments
44 under subsection (b) of this section and computation of
45 assessments under this subsection shall be made with
46 reasonable degree of accuracy, recognizing that exact
47 determinations may not always be possible. The association
48 shall notify each member insurer of its anticipated pro rata

49 share of an authorized assessment not yet called within one
50 hundred eighty days after the assessment is authorized.

51 (d) The association may abate or defer, in whole or in
52 part, the assessment of a member insurer if, in the opinion of
53 the board, payment of the assessment would endanger the
54 ability of the member insurer to fulfill its contractual
55 obligations. In the event an assessment against a member
56 insurer is abated, or deferred, in whole or in part, the amount
57 by which such assessment is abated or deferred may be
58 assessed against the other member insurers in a manner
59 consistent with the basis for assessments set forth in this
60 section. Once the conditions that caused a deferral have been
61 removed or rectified, the member insurer shall pay all
62 assessments that were deferred pursuant to a repayment plan
63 approved by the association.

64 (e) (1) (A) Subject to the provisions of paragraph (B) of
65 this subdivision, the total of all assessments upon a member
66 insurer for each subaccount of the life and annuity account
67 and for the health account shall not in any one calendar year
68 exceed two percent of such insurer's average premiums
69 received in this state on the policies and contracts covered by
70 the subaccount or account during the three calendar years
71 preceding the year in which the insurer became an impaired
72 or insolvent insurer.

73 (B) If two or more assessments are authorized in one
74 calendar year with respect to insurers that become impaired
75 or insolvent in different calendar years, the average annual
76 premiums for purposes of the aggregate assessment
77 percentage limitation referenced in paragraph (A) of this
78 subdivision shall be equal and limited to the higher of the
79 three-year average annual premiums for the applicable
80 subaccount or account as calculated pursuant to this section.

81 (C) If the maximum assessment, together with the other
82 assets of the association in an account, does not provide in

83 any one year in either account an amount sufficient to carry
84 out the responsibilities of the association, the necessary
85 additional funds shall be assessed as soon thereafter as
86 permitted by this article.

87 (2) The board may provide in the plan of operation a
88 method of allocating funds among claims, whether relating to
89 one or more impaired or insolvent insurers, when the
90 maximum assessment will be insufficient to cover anticipated
91 claims.

92 (3) If the maximum assessment for any subaccount of the
93 life and annuity account in any one year does not provide an
94 amount sufficient to carry out the responsibilities of the
95 association, then pursuant to subdivision (2), subsection (c)
96 of this section, the board shall assess all subaccounts of the
97 life and annuity account for the necessary additional amount,
98 subject to the maximum stated in subdivision (1), subsection
99 (e) of this section.

100 (f) The board may, by an equitable method as established
101 in the plan of operation, refund to member insurers, in
102 proportion to the contribution of each insurer to that account,
103 the amount by which the assets of the account exceed the
104 amount the board finds is necessary to carry out during the
105 coming year the obligations of the association with regard to
106 that account, including assets accruing from assignment,
107 subrogation, net realized gains and income from investments.
108 A reasonable amount may be retained in any account to
109 provide funds for the continuing expenses of the association
110 and for future claims.

111 (g) It shall be proper for any member insurer, in
112 determining its premium rates and policy owner dividends as
113 to any kind of insurance within the scope of this article, to
114 consider the amount reasonably necessary to meet its
115 assessment obligations under this article.

116 (h) The association shall issue to each insurer paying an
117 assessment under this article, other than Class A assessment,
118 a certificate of contribution, in a form prescribed by the
119 commissioner, for the amount of the assessment so paid. All
120 outstanding certificates shall be of equal dignity and priority
121 without reference to amounts or dates of issue. A certificate
122 of contribution may be shown by the insurer in its financial
123 statement as an asset in such form and for such amount, if
124 any, and period of time as the commissioner may approve.

125 (i) (1) A member insurer that wishes to protest all or part
126 of an assessment shall pay when due the full amount of the
127 assessment as set forth in the notice provided by the
128 association. The payment shall be available to meet
129 association obligations during the pendency of the protest or
130 any subsequent appeal. Payment shall be accompanied by a
131 statement in writing that the payment is made under protest
132 and setting forth a brief statement of the grounds for the
133 protest.

134 (2) Within sixty days following the payment of an
135 assessment under protest by a member insurer, the
136 association shall notify the member insurer in writing of its
137 determination with respect to the protest unless the
138 association notifies the member insurer that additional time
139 is required to resolve the issues raised by the protest.

140 (3) Within thirty days after a final decision has been
141 made, the association shall notify the protesting member
142 insurer in writing of that final decision. Within sixty days of
143 receipt of notice of the final decision, the protesting member
144 insurer may appeal that final action to the commissioner.

145 (4) In the alternative to rendering a final decision with
146 respect to a protest based on a question regarding the
147 assessment base, the association may refer protests to the
148 commissioner for a final decision, with or without a
149 recommendation from the association.

150 (5) If the protest or appeal on the assessment is upheld,
151 the amount paid in error or excess shall be returned to the
152 member company. Interest on a refund due a protesting
153 member shall be paid at the rate actually earned by the
154 association.

155 (j) The association may request information of member
156 insurers in order to aid in the exercise of its power under this
157 section and member insurers shall promptly comply with a
158 request.

§33-26A-10. Plan of operation.

1 (a) (1) The association shall submit to the commissioner
2 a plan of operation and any amendments thereto necessary or
3 suitable to assure the fair, reasonable and equitable
4 administration of the association. The plan of operation and
5 any amendments thereto shall become effective upon the
6 commissioner's written approval or unless he or she has not
7 disapproved of the same within thirty days.

8 (2) If the association fails to submit a suitable plan of
9 operation within one hundred eighty days following the
10 effective date of this article or if at any time thereafter the
11 association fails to submit suitable amendments to the plan,
12 the commissioner shall, after notice and hearing, adopt and
13 promulgate such reasonable rules as are necessary or
14 advisable to effectuate the provisions of this article. Such
15 rules shall continue in force until modified by the
16 commissioner or superseded by a plan submitted by the
17 association and approved by the commissioner.

18 (b) All member insurers shall comply with the plan of
19 operation.

20 (c) The plan of operation shall, in addition to
21 requirements enumerated elsewhere in this article:

22 (1) Establish procedures for handling the assets of the
23 association;

24 (2) Establish the amount and method of reimbursing
25 members of the board of directors under section seven of this
26 article;

27 (3) Establish regular places and times for meetings
28 including telephone conference calls of the board of
29 directors;

30 (4) Establish procedures for records to be kept of all
31 financial transactions of the association, its agents, and the
32 board of directors;

33 (5) Establish the procedures whereby selections for the
34 board of directors will be made and submitted to the
35 commissioner;

36 (6) Establish any additional procedures for assessments
37 under section nine of this article;

38 (7) Contain additional provisions necessary or proper for
39 the execution of the powers and duties of the association;

40 (8) Establish procedures whereby a director may be
41 removed for cause, including in the case where a member
42 insurer director becomes an impaired or insolvent insurer;
43 and

44 (9) Require the board of directors to establish a policy
45 and procedures for addressing conflicts of interests.

46 (d) The plan of operation may provide that any or all
47 powers and duties of the association, except those under
48 subdivision (3), subsection (1), section eight and section nine
49 of this article, are delegated to a corporation, association, or
50 other organization which performs or will perform functions
51 similar to those of this association, or its equivalent, in two
52 or more states. Such a corporation, association or
53 organization shall be reimbursed for any payments made on
54 behalf of the association and shall be paid for its performance
55 of any function of the association. A delegation under this

56 subsection shall take effect only with the approval of both the
 57 board of directors and the commissioner, and may be made
 58 only to a corporation, association or organization which
 59 extends protection not substantially less favorable and
 60 effective than that provided by this article.

§33-26A-18. Stay of court proceedings; reopening default judgments.

1 All proceedings in which the impaired or insolvent
 2 insurer is a party in any court in this state shall be stayed one
 3 hundred eighty days from the date an order of liquidation,
 4 rehabilitation or conservation is final to permit proper legal
 5 action by the association on any matters germane to its
 6 powers or duties. As to a judgment under any decision,
 7 order, verdict or finding based on default the association may
 8 apply to have the judgment set aside by the same court that
 9 made the judgment and shall be permitted to defend against
 10 the suit on the merits.

CHAPTER 140

(Com. Sub. for H.B. 2757 - By Delegates Perry, Shook, Ashley, Schoen, Moore, Manchin, Miley, Skaff, Reynolds and Frazier)

[Passed April 8, 2009; in effect ninety days from passage.]

[Approved by the Governor on April 21, 2009.]

AN ACT to amend and reenact §33-33-1, §33-33-2, §33-33-3, §33-33-4, §33-33-5, §33-33-6, §33-33-8, §33-33-9, §33-33-10, §33-33-10a, §33-33-11, §33-33-12, §33-33-13, §33-33-14 and §33-33-15 of the Code of the West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated

§33-33-16, all relating to financial audits of insurers; defining terms; providing general requirements for filing annual audited financial reports; providing for creation of audit committee; requiring financial reports to include certain items; requiring the designation of an independent certified public accountant by insurers; providing requirements for the independent certified public accountants; prohibiting use of indemnification agreements by independent certified public accountants performing certain audits; permitting mediation or arbitration agreements in certain circumstances; requiring audit to be performed in accordance with generally accepted auditing standards; requiring independent certified public accountants to report adverse financial condition of insurers; requiring independent certified public accountants to report material weaknesses regarding internal control of insurers; requiring independent certified public accountants to provide letter of qualifications; requiring that workpapers of independent certified public accountants be available for review by Insurance Commissioner; providing for requirements of audit committee; requiring certain conduct of insurer regarding preparation of reports and documents; providing requirements for conducting financial audits of Canadian and British insurers; requiring report from insurers regarding internal control over financial reporting; providing exemptions; and providing effective dates of provisions.

Be it enacted by the Legislature of West Virginia:

That §33-33-1, §33-33-2, §33-33-3, §33-33-4, §33-33-5, §33-33-6, §33-33-8, §33-33-9, §33-33-10, §33-33-10a, §33-33-11, §33-33-12, §33-33-13, §33-33-14 and §33-33-15 of the Code of West Virginia, 1931, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-33-16, all to read as follows:

ARTICLE 33. ANNUAL AUDITED FINANCIAL REPORT.

- §33-33-1. Declaration of policy and purpose.
- §33-33-2. Definitions.
- §33-33-3. General requirements related to filing and extensions for filing of annual audited financial reports and audit committee appointment.
- §33-33-4. Contents of annual audited financial report.
- §33-33-5. Designation of independent certified public accountant.
- §33-33-6. Qualifications of independent certified public accountants.
- §33-33-8. Scope of audit and report of independent certified public accountant.
- §33-33-9. Notification of adverse financial condition.
- §33-33-10. Communication of internal control related matters noted in an audit.
- §33-33-10a. Accountant's letter of qualification.
- §33-33-11. Definition, availability and maintenance of independent certified public accountant workpapers.
- §33-33-12. Requirements for audit committees.
- §33-33-13. Conduct of insurer in connection with the preparation of required reports and documents.
- §33-33-14. Canadian and British complaints.
- §33-33-15. Management's report of internal control over financial reporting.
- §33-33-16. Exemptions and effective dates.

§33-33-1. Declaration of policy and purpose.

1 (a) The purpose of this article is to improve the Insurance
2 Commissioner's surveillance of the financial condition of
3 insurers by requiring:

4 (1) An annual audit of financial statements reporting the
5 financial position and the results of operations of insurers by
6 independent certified public accountants;

7 (2) Communication of internal control related matters
8 noted in an audit; and

9 (3) Management's report of internal control over
10 financial reporting.

11 (b) Every insurer, as defined in subdivision (7), section
12 two of this article, shall be subject to this article. Insurers
13 having direct premiums written in this state of less than \$1
14 million in any calendar year and less than one thousand
15 policyholders or certificate holders of directly written
16 policies nationwide at the end of the calendar year shall be
17 exempt from this article for the year, unless the commissioner
18 makes a specific finding that compliance is necessary for the

19 commissioner to carry out statutory responsibilities.
20 However, insurers having assumed premiums pursuant to
21 contracts and/or treaties of reinsurance of \$1 million or more
22 will not be so exempt.

23 (c) Foreign or alien insurers filing audited financial
24 reports in another state, pursuant to the other state's
25 requirement for filing of audited financial reports which has
26 been found by the commissioner to be substantially similar
27 to the requirements herein, are exempt from sections three
28 through eleven of this article if:

29 (1) A copy of the audited financial report, communication
30 of internal control-related matters noted in an audit, report on
31 significant deficiencies in internal controls and the
32 accountant's letter of qualifications which are filed with the
33 other state are filed with the commissioner in accordance
34 with the filing dates specified in sections three, ten and ten-a
35 of this article, respectively. Canadian insurers may submit
36 accountants' reports as filed with the Office of the
37 Superintendent of Financial Institutions, Canada.

38 (2) A copy of any notification of adverse financial
39 condition report filed with the other state is filed with the
40 commissioner within the time specified in section nine of this
41 article.

42 (d) Foreign or alien insurers required to file
43 Management's Report of Internal Control over Financial
44 Reporting in another state are exempt from filing the
45 report in this state provided the other state has
46 substantially similar reporting requirements and the
47 report is filed with the commissioner of the other state
48 within the time specified.

49 (e) This article shall not prohibit or preclude or in any
50 way limit the commissioner from performing examinations

51 of insurers as specified in section nine, article two of this
52 chapter or any other examinations as the commissioner may
53 be authorized by this chapter to perform.

§33-33-2. Definitions.

1 As used in this article:

2 (1) “Accountant” or “independent certified public
3 accountant” means an independent certified public
4 accountant or accounting firm in good standing with the
5 American Institute of Certified Public Accountants and in all
6 states in which the accountant is licensed to practice; for
7 Canadian and British companies, the terms mean a Canadian-
8 chartered or British-chartered accountant.

9 (2) An “affiliate” of, or person “affiliated” with a specific
10 person, is a person that directly, or indirectly through one or
11 more intermediaries, controls or is controlled by, or is under
12 common control with, the person specified.

13 (3) “Audit committee” means a committee or equivalent
14 body established by the board of directors of an entity for the
15 purpose of overseeing the accounting and financial reporting
16 processes of an insurer or group of insurers, and audits of
17 financial statements of the insurer or group of insurers. The
18 audit committee of any entity that controls a group of insurers
19 may be deemed to be the audit committee for one or more of
20 these controlled insurers solely for the purposes of this article
21 at the election of the controlling person. If an audit
22 committee is not designated by the insurer, the insurer’s
23 entire board of directors shall constitute the audit committee.

24 (4) “Audited financial report” means and includes those
25 items specified in section four of this article.

26 (5) “Indemnification” means an agreement of indemnity
27 or a release from liability where the intent or effect is to shift

28 or limit in any manner the potential liability of the person or
29 firm for failure to adhere to applicable auditing or other
30 professional standards, whether or not resulting in part from
31 knowing of other misrepresentations made by the insurer or
32 its representatives.

33 (6) “Independent board member” has the same meaning
34 as described in subdivision (3), section twelve of this article.

35 (7) “Insurer” means any domestic insurer as defined in
36 section six, article one of this chapter and includes any
37 domestic stock insurance company, mutual insurance
38 company, reciprocal insurance company, farmers' mutual fire
39 insurance company, fraternal benefit society, hospital service
40 corporation, medical service corporation, health care
41 corporation, health maintenance organization, captive
42 insurance company or risk retention group and any licensed
43 foreign or alien insurer defined in article one of this chapter.

44 (8) “Group of insurers” means those licensed insurers
45 included in the reporting requirements of article twenty-seven
46 of this chapter, or a set of insurers as identified by
47 management for the purpose of assessing the effectiveness of
48 internal control over financial reporting.

49 (9) “Internal control over financial reporting” means a
50 process effected by an entity’s board of directors,
51 management and other personnel designed to provide
52 reasonable assurance regarding the reliability of the financial
53 statements. The process includes the requirements set forth
54 in subdivisions (2) through (7), subsection (b), section four
55 of this article and those policies and procedures that:

56 (A) Pertain to the maintenance of records that, in
57 reasonable detail, accurately and fairly reflect the transactions
58 and dispositions of assets;

59 (B) Provide reasonable assurance that transactions are
60 recorded as necessary to permit preparation of the financial
61 statements and that receipts and expenditures are being made
62 only in accordance with authorizations of management and
63 directors; and

64 (C) Provide reasonable assurance regarding prevention or
65 timely detection of unauthorized acquisition, use or
66 disposition of assets that could have a material effect on the
67 financial statements.

68 (10) “SEC” means the United States Securities and
69 Exchange Commission.

70 (11) “Section 404” means section 404 of the Sarbanes-
71 Oxley Act of 2002 and the SEC’s rules and regulations
72 promulgated thereunder.

73 (12) “Section 404 report” means management’s report on
74 “internal control over financial reporting” as defined by the
75 SEC and the related attestation report of the independent
76 certified public accountant as described in subdivision (1) of
77 this section.

78 (13) “SOX Compliant Entity” means an entity that either
79 is required to be compliant with, or voluntarily is compliant
80 with, all of the following provisions of the Sarbanes-Oxley
81 Act of 2002:

82 (A) The preapproval requirements of Section 201,
83 Section 10A(i) of the Securities Exchange Act of 1934;

84 (B) The audit committee independence requirements of
85 Section 301, Section 10A(m)(3) of the Securities Exchange
86 Act of 1934; and

87 (C) The internal control over financial reporting
88 requirements of Section 404, Item 308 of SEC Regulation S-
89 K.

§33-33-3. General requirements related to filing and extensions for filing of annual audited financial reports and audit committee appointment.

1 (a) All insurers shall have an annual audit by an
2 independent certified public accountant and shall file an
3 audited financial report with the commissioner on or before
4 June 1 for the year ending December 31 immediately
5 preceding. The commissioner may require an insurer to file
6 an audited financial report earlier than June 1 with ninety
7 days advance notice to the insurer.

8 (b) Extensions of the filing date on June 1 may be granted
9 by the commissioner for thirty-day periods upon showing by
10 the insurer and its independent certified public accountant the
11 reasons for requesting the extension and determination by the
12 commissioner of good cause for an extension. A request for
13 extension must be submitted in writing not less than ten days
14 prior to the due date in sufficient detail to permit the
15 commissioner to make an informed decision with respect to
16 the requested extension.

17 (c) If an extension is granted in accordance with the
18 provisions in subsection (b) of this section, a similar
19 extension of thirty days is granted to the filing of
20 management's report of internal control over financial
21 reporting.

22 (d) Every insurer required to file an annual audited
23 financial report pursuant to this article shall designate a group
24 of individuals as constituting its audit committee, as defined
25 in subdivision (3), section two of this article. The audit
26 committee of an entity that controls an insurer may be
27 deemed to be the insurer's audit committee for purposes of
28 this article at the election of the controlling person.

§33-33-4. Contents of annual audited financial report.

1 (a) The annual audited financial report shall report the
2 financial condition of the insurer as of the end of the most
3 recent calendar year and the results of its operations, cash
4 flows and changes in capital and surplus for the year then
5 ended in conformity with statutory accounting practices
6 prescribed, or otherwise permitted, by the Insurance
7 Commissioner of the state of domicile.

8 (b) The annual audited financial report shall include the
9 following:

10 (1) Report of independent certified public accountant;

11 (2) Balance sheet reporting admitted assets, liabilities,
12 capital and surplus;

13 (3) Statement of operations;

14 (4) Statement of cash flow;

15 (5) Statement of changes in capital and surplus;

16 (6) Notes to financial statements. These notes shall be
17 those required by the appropriate National Association of
18 Insurance Commissioners annual statement instructions and
19 accounting practices and procedures manual, as amended,
20 including reconciliation differences, if any, between the
21 audited statutory financial statements and the annual
22 statement filed pursuant to section fourteen, article four of
23 this chapter, with a written description of the nature of these
24 differences; and

25 (7) The financial statements included in the audited
26 financial report shall be prepared in a form and using
27 language and groupings substantially the same as the relevant
28 sections of the annual statement of the insurer filed with the
29 commissioner, and the financial statement shall be

30 comparative, presenting the amounts as of December 31 of
31 the current year and the amounts as of the immediately
32 preceding December 31. However, in the first year in which
33 an insurer is required to file an audited financial report, the
34 comparative data may be omitted.

§33-33-5. Designation of independent certified public accountant.

1 (a) Each insurer required by this article to file an annual
2 audited financial report must, within sixty days after
3 becoming subject to the requirements, register with the
4 commissioner in writing the name and address of the
5 independent certified public accountant or accounting firm
6 retained to conduct the annual audit set forth in this article.
7 Insurers not retaining an independent certified public
8 accountant on the effective date of this article shall register
9 the name and address of their retained independent certified
10 public accountant not less than six months before the date
11 when the first audited financial report is to be filed.

12 (b) The insurer shall obtain a letter from the accountant,
13 and file a copy with the commissioner stating that the
14 accountant is aware of the provisions of this code and
15 legislative rules promulgated pursuant to article three, chapter
16 twenty-nine-a of this code that relate to accounting and
17 financial matters and affirming that the accountant will
18 express his or her opinion on the financial statements in terms
19 of his or her conformity to the statutory accounting practices
20 prescribed or otherwise permitted by the Insurance
21 Commissioner specifying any exceptions as he or she may
22 believe appropriate.

23 (c) If an accountant who was the accountant for the
24 immediately preceding filed audited financial report is
25 dismissed or resigns, the insurer shall within five business
26 days notify the commissioner of this event. The insurer shall

27 also furnish the commissioner with a separate letter within
28 ten business days of the above notification stating whether in
29 the twenty-four months preceding the notification there were
30 any disagreements with the former accountant on any matter
31 of accounting principles or practices, financial statement
32 disclosure or auditing scope or procedure, which
33 disagreements, if not resolved to the satisfaction of the
34 former accountant, would have caused him or her to make
35 reference to the subject matter of the disagreement in
36 connection with his or her opinion. The disagreements
37 required to be reported in response to this section include
38 both those resolved to the former accountant's satisfaction
39 and those not resolved to the former accountant's
40 satisfaction. Disagreements contemplated by this section are
41 those that occur at the decision-making level between
42 personnel of the insurer responsible for presentation of its
43 financial statements and personnel of the accounting firm
44 responsible for rendering its report. The insurer shall also in
45 writing request the former accountant to furnish it in a letter
46 addressed to the insurer stating whether the accountant agrees
47 with the statements contained in the insurer's letter and, if
48 not, stating the reasons for which he or she does not agree;
49 and the insurer shall furnish the responsive letter from the
50 former accountant to the commissioner together with its own.

§33-33-6. Qualifications of independent certified public accountants.

1 (a) The commissioner may not recognize any person or
2 firm as a qualified independent certified public accountant for
3 purposes of performing the annual audited financial report if
4 the person or firm:

5 (1) Is not in good standing with the American Institute of
6 Certified Public Accountants and in all states in which the
7 accountant is licensed to practice, or, for a Canadian or
8 British company, that is not a chartered accountant; or

9 (2) Has either directly or indirectly entered into an
10 agreement of indemnification or release from liability with
11 respect to an audit of the insurer.

12 (b) Except as otherwise provided herein, the
13 commissioner shall recognize an independent certified public
14 accountant as qualified as long as he or she conforms to the
15 standards of his or her profession, as contained in the Code
16 of Professional Ethics of the American Institute of Certified
17 Public Accountants and the Rules and Regulations and Code
18 of Ethics and Rules of Professional Conduct of the West
19 Virginia Board of Accountancy, or similar code.

20 (c) A qualified independent certified public accountant
21 may enter into an agreement with an insurer to have disputes
22 relating to an audit resolved by mediation or arbitration. In
23 the event a delinquency proceeding is commenced against the
24 insurer under article ten of this chapter, the mediation or
25 arbitration provisions shall operate at the option of the
26 receiver.

27 (d) (1) The lead or coordinating audit partner having
28 primary responsibility for the audit may not act in that
29 capacity for more than five consecutive years. Following a
30 period of service, the person shall be disqualified from acting
31 in that or a similar capacity for the same company or its
32 insurance subsidiaries or affiliates for a period of five
33 consecutive years. An insurer may make application to the
34 commissioner for relief from the above rotation requirement
35 on the basis of unusual circumstances. This application
36 should be made at least thirty days before the end of the
37 calendar year. The commissioner may consider the following
38 factors in determining if the relief should be granted:

39 (A) Number of partners, expertise of the partners or the
40 number of insurance clients in the currently registered firm;

41 (B) Premium volume of the insurer; or

42 (C) Number of jurisdictions in which the insurer transacts
43 business.

44 (2) The insurer shall file, with its annual statement filing,
45 the approval for relief from subdivision (1) of this subsection
46 with the states that it is licensed in or doing business in and
47 with the National Association of Insurance Commissioners.
48 If the nondomestic state accepts electronic filing with the
49 National Association of Insurance Commissioners, the
50 insurer shall file the approval in an electronic format.

51 (e) The commissioner may not recognize as a qualified
52 independent certified public accountant, nor accept any
53 annual audited financial report, prepared, in whole or in part,
54 by any natural person who:

55 (1) Has been convicted of fraud, bribery, a violation of
56 the Racketeer Influenced and Corrupt Organizations Act, 18
57 U.S.C. Sections 1961-1968, or any dishonest conduct or
58 practices under federal or state law;

59 (2) Has been found to have violated the insurance laws of
60 this state with respect to any previous reports submitted
61 under this article; or

62 (3) Has demonstrated a pattern or practice of failing to
63 detect or disclose material information in previous reports
64 filed under the provisions of this article.

65 (f) The commissioner may hold a hearing to determine
66 whether an independent certified public accountant is
67 qualified and, considering the evidence presented, may rule
68 that the accountant is not qualified for purposes of expressing
69 an opinion on the financial statements in the annual audited
70 financial report made pursuant to this article and require the
71 insurer to replace the accountant with another whose
72 relationship with the insurer is qualified within the meaning
73 of this article.

74 (g) (1) The commissioner may not recognize as a qualified
75 independent certified public accountant, nor accept an annual
76 audited financial report, prepared, in whole or in part, by an
77 accountant who provides to an insurer, contemporaneously with
78 the audit, the following nonaudit services:

79 (A) Bookkeeping or other services related to the
80 accounting records or financial statements of the insurer;

81 (B) Financial information systems design and
82 implementation;

83 (C) Appraisal or valuation services, fairness opinions, or
84 contribution-in-kind reports;

85 (D) Actuarially-oriented advisory services involving the
86 determination of amounts recorded in the financial
87 statements. The accountant may assist an insurer in
88 understanding the methods, assumptions and inputs used in
89 the determination of amounts recorded in the financial
90 statement only if it is reasonable to conclude that the services
91 provided will not be subject to audit procedures during an
92 audit of the insurer's financial statements. An accountant's
93 actuary may also issue an actuarial opinion or certification on
94 an insurer's reserves if the following conditions have been
95 met:

96 (i) Neither the accountant nor the accountant's actuary
97 has performed any management functions or made any
98 management decisions;

99 (ii) The insurer has competent personnel or engages a
100 third party actuary to estimate the reserves for which
101 management takes responsibility; and

102 (iii) The accountant's actuary tests the reasonableness of
103 the reserves after the insurer's management has determined
104 the amount of the reserves;

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105 (E) Internal audit outsourcing services;

106 (F) Management functions or human resources;

107 (G) Broker or dealer, investment adviser, or investment
108 banking services;

109 (H) Legal services or expert services unrelated to the
110 audit; or

111 (I) Any other services that the commissioner determines,
112 by legislative rule, are impermissible.

113 (2) In general, the principles of independence with
114 respect to services provided by the qualified independent
115 certified public accountant are largely predicated on three
116 basic principles, violations of which would impair the
117 accountant's independence. The principles are that the
118 accountant cannot function in the role of management, cannot
119 audit his or her own work, and cannot serve in an advocacy
120 role for the insurer.

121 (h) Insurers having direct written and assumed premiums
122 of less than \$1 million in any calendar year may request an
123 exemption from subdivision (1), subsection (g) of this
124 section. The insurer shall file with the commissioner a
125 written statement discussing the reasons why the insurer
126 should be exempt from these provisions. If the commissioner
127 finds, upon review of this statement, that compliance with
128 subdivision (1), subsection (g) of this section would
129 constitute a financial or organizational hardship upon the
130 insurer, an exemption may be granted.

131 (i) A qualified independent certified public accountant
132 who performs the audit may engage in other nonaudit
133 services, including tax services, that are not described in
134 subdivision (1), subsection (g) of this section or that do not

135 conflict with subdivision (2), subsection (g) of this section,
136 only if the activity is approved in advance by the audit
137 committee, in accordance with subsection (j) of this section.

138 (j) All auditing services and nonaudit services provided
139 to an insurer by the qualified independent certified public
140 accountant of the insurer shall be preapproved by the audit
141 committee. The preapproval requirement is waived with
142 respect to nonaudit services if the insurer is a SOX Compliant
143 Entity or a direct or indirect wholly-owned subsidiary of a
144 SOX Compliant Entity or:

145 (1) The aggregate amount of all such nonaudit services
146 provided to the insurer constitutes not more than five percent
147 of the total amount of fees paid by the insurer to its qualified
148 independent certified public accountant during the fiscal year
149 in which the nonaudit services are provided;

150 (2) The services were not recognized by the insurer at the
151 time of the engagement to be nonaudit services; and

152 (3) The services are promptly brought to the attention of
153 the audit committee and approved prior to the completion of
154 the audit by the audit committee or by one or more members
155 of the audit committee who are the members of the board of
156 directors to whom authority to grant such approvals has been
157 delegated by the audit committee.

158 (k) The audit committee may delegate to one or more
159 designated members of the audit committee the authority to
160 grant the preapprovals required by subsection (j) of this
161 section. The decisions of any member to whom this authority
162 is delegated shall be presented to the full audit committee at
163 each of its scheduled meetings.

164 (l) The commissioner may not recognize an independent
165 certified public accountant as qualified for a particular insurer

166 if a member of the board, president, chief executive officer,
167 controller, chief financial officer, chief accounting officer, or
168 any person serving in an equivalent position for that insurer,
169 was employed by the independent certified public accountant
170 and participated in the audit of that insurer during the one-
171 year period preceding the date that the most current statutory
172 opinion is due. This section shall only apply to partners and
173 senior managers involved in the audit. An insurer may make
174 application to the commissioner for relief from the above
175 requirement on the basis of unusual circumstances.

176 (2) The insurer shall file, with its annual statement filing,
177 the approval for relief from subdivision (1) of this subsection
178 with the states that it is licensed in or doing business in and
179 the National Association of Insurance Commissioners. If the
180 nondomestic state accepts electronic filing with the National
181 Association of Insurance Commissioners, the insurer shall
182 file the approval in an electronic format acceptable to the
183 National Association of Insurance Commissioners.

**§33-33-8. Scope of audit and report of independent certified
public accountant.**

1 Financial statements furnished pursuant to section four of
2 this article shall be examined by the independent certified
3 public accountant. The audit of the insurer's financial
4 statements shall be conducted in accordance with generally
5 accepted auditing standards. In accordance with AU Section
6 319 of the professional standards of the American Institute of
7 Certified Public Accountants, "Consideration of Internal
8 Control in a Financial Statement Audit" or its replacement,
9 the independent certified public accountant should obtain an
10 understanding of internal control sufficient to plan the audit.
11 To the extent required by AU 319, for those insurers required
12 to file a management's report of internal control over
13 financial reporting pursuant to section fifteen of this article,
14 the independent certified public accountant should consider,

15 as that term is defined in Statement on Auditing Standards
16 No. 102, "Defining Professional Requirements in Statements
17 on Auditing Standards" or its replacement, the most recently
18 available report in planning and performing the audit of the
19 statutory financial statements. Consideration shall be given
20 to the procedures illustrated in the Financial Condition
21 Examiners Handbook promulgated by the National
22 Association of Insurance Commissioners as the independent
23 certified public accountant deems necessary.

§33-33-9. Notification of adverse financial condition.

1 (a) The insurer required to furnish the annual audited
2 financial report shall require the independent certified public
3 accountant to report, in writing, within five business days to
4 the board of directors or its audit committee any
5 determination by the independent certified public accountant
6 that the insurer has materially misstated its financial
7 condition as reported to the commissioner as of the balance
8 sheet date currently under audit or that the insurer does not
9 meet the minimum capital and surplus requirements of this
10 chapter as of that date. An insurer that has received a report
11 pursuant to this subsection shall forward a copy of the report
12 to the commissioner within five business days of receipt of
13 the report and shall provide the independent certified public
14 accountant making the report with evidence of the report
15 being furnished to the commissioner. If the independent
16 certified public accountant fails to receive the evidence
17 within the required five business day period, the independent
18 certified public accountant shall furnish to the
19 commissioner a copy of his or her report within the next
20 five business days.

21 (b) No independent public accountant shall be liable in
22 any manner to any person for any statement made in
23 connection with subsection (a) of this section if the statement
24 is made in good faith in compliance with said subsection.

25 (c) If the accountant, subsequent to the date of the audited
26 financial report filed pursuant to this article, becomes aware
27 of facts which might have affected the report, the
28 commissioner notes the obligation of the accountant to take
29 action as prescribed in volume 1, section AU 561 of the
30 professional standards of the American Institute of Certified
31 Public Accountants.

**§33-33-10. Communication of internal control related matters
noted in an audit.**

1 (a) In addition to the annual audited financial report, each
2 insurer shall furnish the commissioner with a written
3 communication as to any unremediated material weaknesses in
4 its internal control over financial reporting noted by the
5 accountant during the audit. Such communication shall be
6 prepared by the accountant within sixty days after the filing of
7 the annual audited financial report, and shall contain a
8 description of any unremediated material weakness, as the term
9 material weakness is defined by Statement on Auditing
10 Standards (SAS) No. 60, "Communication of Internal Control
11 Related Matters Noted in an Audit" or its replacement, as of
12 December 31 immediately preceding, so as to coincide with the
13 audited financial report discussed in subsection (a), section three
14 of this article, in the insurer's internal control over financial
15 reporting noted by the accountant during the course of their
16 audit of the financial statements. If no unremediated material
17 weaknesses were noted, the communication should so state.

18 (b) The insurer is required to provide a description of
19 remedial actions taken or proposed to correct unremediated
20 material weaknesses, if the actions are not described in the
21 accountant's communication.

§33-33-10a. Accountant's letter of qualifications.

1 The accountant shall furnish the insurer in connection
2 with, and for inclusion in, the filing of the annual audited
3 financial report, a letter stating:

4 (1) That the accountant is independent with respect to the
5 insurer and conforms to the standards of his or her profession
6 as contained in the code of professional ethics and
7 pronouncements of the American Institute of Certified Public
8 Accountants and the rules of professional conduct of the
9 West Virginia Board of Accountancy, or similar code;

10 (2) The background and experience in general, and the
11 experience in audits of insurers of the staff assigned to the
12 engagement and whether each is an independent certified
13 public accountant. Nothing within this article shall be
14 construed as prohibiting the accountant from utilizing such
15 staff as he or she deems appropriate where use is consistent
16 with the standards prescribed by generally accepted auditing
17 standards;

18 (3) That the accountant understands the annual audited
19 financial report and his or her opinion thereon will be filed in
20 compliance with this article and that the commissioner will
21 be relying on this information in the monitoring and
22 regulation of the financial position of insurers;

23 (4) That the accountant consents to the requirements of
24 section eleven of this article and that the accountant consents
25 and agrees to make available for review by the commissioner,
26 or the commissioner's designee or appointed agent, the
27 workpapers, as defined in section eleven of this article;

28 (5) A representation that the accountant is properly
29 licensed by an appropriate state licensing authority and is a
30 member in good standing in the American Institute of
31 Certified Public Accountants; and

32 (6) A representation that the accountant is in compliance
33 with the requirements of section six of this article.

§33-33-11. Definition, availability and maintenance of independent certified public accountant workpapers.

1 (a) Workpapers are the records kept by the independent
2 certified public accountant of the procedures followed, the
3 tests performed, the information obtained, and the
4 conclusions reached pertinent to the accountant's audit of the
5 financial statements of an insurer. Workpapers may include
6 audit planning documentation, work programs, analyses,
7 memoranda, letters of confirmation and representation,
8 abstracts of company documents and schedules or
9 commentaries prepared or obtained by the independent
10 certified public accountant in the course of his or her audit of
11 the financial statements of an insurer and which support the
12 accountant's opinion.

13 (b) Every insurer required to file an audited financial
14 report pursuant to this article shall require the accountant to
15 make available for review by the commissioner all
16 workpapers prepared in the conduct of the accountant's audit
17 and any communications related to the audit between the
18 accountant and the insurer, at the offices of the insurer, at the
19 insurance department or at any other reasonable place
20 designated by the commissioner. The insurer shall require
21 that the accountant retain the audit workpapers and
22 communications until the commissioner has filed a report of
23 examination, as required by section nine, article two of this
24 chapter, covering the period of the audit but no longer than
25 seven years from the date of the audit report.

26 (c) In the conduct of the aforementioned periodic review
27 by the commissioner, it shall be agreed that copies of
28 pertinent audit workpapers may be made and retained by the

29 commissioner. Reviews by the commissioner shall be
30 considered investigations and all workpapers and
31 communications obtained during the course of such
32 investigations shall be afforded the same confidentiality as
33 other examination workpapers generated by the
34 commissioner.

§33-33-12. Requirements for audit committees.

1 This section shall not apply to foreign or alien insurers
2 licensed in this state or an insurer that is a SOX Compliant
3 Entity or a direct or indirect wholly-owned subsidiary of a
4 SOX Compliant Entity.

5 (1) The audit committee shall be directly responsible for
6 the appointment, compensation and oversight of the work of
7 any accountant, including resolution of disagreements
8 between management and the accountant regarding financial
9 reporting, for the purpose of preparing or issuing the audited
10 financial report or related work pursuant to this article. Each
11 accountant shall report directly to the audit committee.

12 (2) Each member of the audit committee shall be a
13 member of the board of directors of the insurer or a member
14 of the board of directors of an entity elected pursuant to
15 subdivision (3), section two of this article and subdivision (5)
16 of this section.

17 (3) In order to be considered independent for purposes of
18 this section, a member of the audit committee may not, other
19 than in his or her capacity as a member of the audit
20 committee, the board of directors, or any other board
21 committee, accept any consulting, advisory or other
22 compensatory fee from the entity or be an affiliated person of
23 the entity or subsidiary thereof. However, if law requires
24 board participation by otherwise nonindependent members,
25 that law shall prevail and such members may participate in

26 the audit committee and be designated as independent for
27 audit committee purposes, unless they are an officer or
28 employee of the insurer or one of its affiliates.

29 (4) If a member of the audit committee ceases to be
30 independent for reasons outside the member's reasonable
31 control, that person, with notice by the responsible entity to
32 the state, may remain an audit committee member of the
33 responsible entity until the earlier of the next annual meeting
34 of the responsible entity or one year from the occurrence of
35 the event that caused the member to be no longer
36 independent.

37 (5) To exercise the election of the controlling person to
38 designate the audit committee for purposes of this article, the
39 ultimate controlling person shall provide written notice to the
40 commissioners of the affected insurers. Notification shall be
41 made timely prior to the issuance of the statutory audit report
42 and include a description of the basis for the election. The
43 election can be changed through notice to the commissioner
44 by the insurer, which shall include a description of the basis
45 for the change. The election shall remain in effect for
46 perpetuity, until rescinded.

47 (6)(A) The audit committee shall require the
48 accountant that performs for an insurer any audit
49 required by this article to timely report to the audit
50 committee in accordance with the requirements of
51 Statement of Auditing Standards (SAS) No. 61,
52 "Communication with Audit Committees" or its
53 replacement, including:

54 (i) All significant accounting policies and material
55 permitted practices;

56 (ii) All material alternative treatments of financial
57 information within statutory accounting principles that have

58 been discussed with management officials of the insurer,
 59 ramifications of the use of the alternative disclosures and
 60 treatments, and the treatment preferred by the accountant;
 61 and

62 (iii) Other material written communications between the
 63 accountant and the management of the insurer, such as any
 64 management letter or schedule of unadjusted differences.

65 (B) If an insurer is a member of an insurance holding
 66 company system, the reports required by paragraph (A) of
 67 this subdivision may be provided to the audit committee on
 68 an aggregate basis for insurers in the holding company
 69 system, provided that any substantial differences among
 70 insurers in the system are identified to the audit committee.

71 (7) The proportion of independent audit committee
 72 members shall meet or exceed the following criteria:

Prior Calendar Year Direct Written and Assumed Premiums		
\$0-\$300,000,000	Over \$300,000,000- \$500,000,000	Over \$500,000,000
No minimum requirements.	Majority (50% or more) of members shall be independent.	Supermajority of members (75% or more) shall be independent.

73 (A) The commissioner has authority afforded by state law
 74 to require the entity's board to enact improvements to the
 75 independence of the audit committee membership if the
 76 insurer is in a risk based capital action level event, meets one
 77 or more of the standards of an insurer deemed to be in
 78 hazardous financial condition, or otherwise exhibits qualities
 79 of a troubled insurer.

80 (B) All insurers with less than \$500 million in prior year
 81 direct written and assumed premiums are encouraged to
 82 structure their audit committees with at least a supermajority
 83 of independent audit committee members.

84 (C) Prior calendar year direct written and assumed
85 premiums shall be the combined total of direct premiums and
86 assumed premiums from nonaffiliates for the reporting
87 entities.

88 (8) An insurer with direct written and assumed premium,
89 excluding premiums reinsured with the Federal Crop
90 Insurance Corporation and Federal Flood Program for less
91 than \$500 million, may make application to the
92 commissioner for a waiver from this section's requirements
93 based upon hardship. The insurer shall file, with its annual
94 statement filing, the approval for relief from this section with
95 the states that it is licensed in or doing business in and the
96 National Association of Insurance Commissioners. If the
97 nondomestic state accepts electronic filing with the National
98 Association of Insurance Commissioners, the insurer shall
99 file the approval in an electronic format acceptable to the
100 National Association of Insurance Commissioners.

**§33-33-13. Conduct of insurer in connection with the
preparation of required reports and
documents.**

1 (a) No director or officer of an insurer shall, directly or
2 indirectly:

3 (1) Make or cause to be made a materially false or
4 misleading statement to an accountant in connection with any
5 audit, review or communication required under this article; or

6 (2) Omit to state, or cause another person to omit to state,
7 any material fact necessary in order to make statements
8 made, in light of the circumstances under which the
9 statements were made, not misleading to an accountant in
10 connection with any audit, review or communication required
11 under this article.

12 (b) No officer or director of an insurer, or any other
13 person acting under the direction thereof, shall directly or
14 indirectly take any action to coerce, manipulate, mislead or
15 fraudulently influence any accountant engaged in the
16 performance of an audit pursuant to this article if that person
17 knew or should have known that the action, if successful,
18 could result in rendering the insurer's financial statements
19 materially misleading.

20 (c) For purposes of subsection (b) of this section, actions
21 that, "if successful, could result in rendering the insurer's
22 financial statements materially misleading" include, but are
23 not limited to, actions taken at any time with respect to the
24 professional engagement period to coerce, manipulate,
25 mislead or fraudulently influence an accountant:

26 (1) To issue or reissue a report on an insurer's financial
27 statements that is not warranted in the circumstances due to
28 material violations of statutory accounting principles
29 prescribed by the commissioner, generally accepted auditing
30 standards, or other professional or regulatory standards;

31 (2) Not to perform audit, review or other procedures
32 required by generally accepted auditing standards or other
33 professional standards;

34 (3) Not to withdraw an issued report; or

35 (4) Not to communicate matters to an insurer's audit
36 committee.

§33-33-14. Canadian and British companies.

1 (a) In the case of Canadian and British insurers, the
2 annual audited financial report shall be defined as the annual
3 statement of total business on the form filed by the
4 companies with their supervision authority duly audited by an
5 independent chartered accountant.

6 (b) For Canadian and British insurers, the letter required
7 in subsection (b), section five of this article shall state that the
8 accountant is aware of the requirements relating to the annual
9 audited financial report filed with the commissioner pursuant
10 to section three of this article and shall affirm that the opinion
11 expressed is in conformity with those requirements.

§33-33-15. Management's report of internal control over financial reporting.

1 (a) Every insurer required to file an audited financial
2 report pursuant to this article that has annual direct written
3 and assumed premiums, excluding premiums reinsured with
4 the Federal Crop Insurance Corporation and Federal Flood
5 Program, of \$500 million, or more, shall prepare a report of
6 the insurer's or group of insurers' internal control over
7 financial reporting, as these terms are defined in section two
8 of this article. The report shall be filed with the
9 commissioner along with the communication of internal
10 control related matters noted in an audit described under
11 section ten of this article. Management's report of internal
12 control over financial reporting shall be filed as of December
13 31 immediately preceding.

14 (b) Notwithstanding the premium threshold in subsection
15 (a) of this section, the commissioner may require an insurer
16 to file management's report of internal control over financial
17 reporting if the insurer is in any risk-based capital level
18 event, or meets any one or more of the standards of an insurer
19 deemed to be in hazardous financial condition as defined in
20 article ten of this chapter.

21 (c) An insurer or a group of insurers may file its or its
22 parent's Section 404 Report and an addendum in satisfaction
23 of this section's requirement provided that those internal
24 controls of the insurer or group of insurers having a material
25 impact on the preparation of the insurer's or group of

26 insurers' audited statutory financial statements were included
27 in the scope of the Section 404 Report and if the insurer or
28 group of insurers is:

29 (1) Directly subject to Section 404;

30 (2) Part of a holding company system whose parent is
31 directly subject to Section 404;

32 (3) Not directly subject to Section 404 but is a SOX
33 Compliant Entity; or

34 (4) A member of a holding company system whose
35 parent is not directly subject to Section 404 but is a SOX
36 Compliant Entity.

37 (d) The addendum referenced in subsection (c) of this
38 section shall be a positive statement by management that
39 there is no material process with respect to the preparation of
40 the insurer's or group of insurers' audited statutory financial
41 statements excluded from the Section 404 Report.

42 (e) If there are internal controls of the insurer or group of
43 insurers that have a material impact on the preparation of the
44 insurer's or group of insurers' audited statutory financial
45 statements and those internal controls were not included in
46 the scope of the Section 404 Report, the insurer or group of
47 insurers may either file:

48 (1) A report pursuant to subsection (a) of this section; or

49 (2) The Section 404 Report and a [Section 16] report
50 pursuant to subsection (a) of this section for those internal
51 controls that have a material impact on the preparation of the
52 insurer's or group of insurers' audited statutory financial
53 statements not covered by the Section 404 Report.

54 (f) Management's report of internal control over financial
55 reporting shall include:

56 (1) A statement that management is responsible for
57 establishing and maintaining adequate internal control over
58 financial reporting;

59 (2) A statement that management has established internal
60 control over financial reporting and an assertion, to the best
61 of management's knowledge and belief, after diligent
62 inquiry, as to whether its internal control over financial
63 reporting is effective to provide reasonable assurance
64 regarding the reliability of financial statements in accordance
65 with statutory accounting principles;

66 (3) A statement that briefly describes the approach or
67 processes by which management evaluated the effectiveness
68 of its internal control over financial reporting;

69 (4) A statement that briefly describes the scope of work
70 that is included and whether any internal controls were
71 excluded;

72 (5) Disclosure of any unremediated material weaknesses
73 in the internal control over financial reporting identified by
74 management as of the December 31 immediately preceding.
75 Management is not permitted to conclude that the internal
76 control over financial reporting is effective to provide
77 reasonable assurance regarding the reliability of financial
78 statements in accordance with statutory accounting principles
79 if there is one or more unremediated material weaknesses in
80 its internal control over financial reporting;

81 (6) A statement regarding the inherent limitations of
82 internal control systems; and

83 (7) Signatures of the chief executive officer and the chief
84 financial officer, or the equivalent position or title.

85 (g) Management shall document and make available upon
86 financial condition examination the basis upon which its
87 assertions, required in subsection (f) of this section, are
88 made. Management may base its assertions, in part, upon its
89 review, monitoring and testing of internal controls
90 undertaken in the normal course of its activities.

91 (1) Management shall have discretion as to the nature of
92 the internal control framework used, and the nature and
93 extent of documentation, in order to make its assertion in a
94 cost effective manner and, as such, may include assembly of
95 or reference to existing documentation.

96 (2) Management's report on internal control over
97 financial reporting, required by subsection (a) of this section,
98 and any documentation provided in support thereof during
99 the course of a financial condition examination, shall be kept
100 confidential by the commissioner.

§33-33-16. Exemptions and effective dates.

1 (a) Upon written application of any insurer, the
2 commissioner may grant an exemption from compliance with
3 any and all provisions of this article if the commissioner
4 finds, upon review of the application, that compliance with
5 this article would constitute a financial or organizational
6 hardship upon the insurer. An exemption may be granted at
7 any time and from time to time for a specified period or
8 periods. Within ten days from a denial of an insurer's written
9 request for an exemption from this article, the insurer may
10 request in writing a hearing on its application for an
11 exemption.

12 (b) Unless otherwise provided in this section, the
13 provisions of this article shall become effective on January 1,
14 2010.

15 (c) Domestic insurers retaining a certified public
16 accountant on the effective date of this article who qualify as
17 independent shall comply with this article for the year ending
18 December 31, 2010, and each year thereafter, unless the
19 commissioner permits otherwise.

20 (d) Domestic insurers not retaining a certified public
21 accountant on the effective date of this article who qualifies
22 as independent may meet the following schedule for
23 compliance unless the commissioner permits otherwise:

24 (1) As of December 31, 2010, file with the commissioner
25 an audited financial report; and

26 (2) For the year ending December 31, 2010, and each
27 year thereafter, such insurers shall file with the commissioner
28 all reports and communication required by this article.

29 (e) Foreign insurers shall comply with this article for the
30 year ending December 31, 2010, and each year thereafter,
31 unless the commissioner permits otherwise.

32 (f) The requirements of subsection (d), section six of this
33 article shall be in effect for audits of the year beginning
34 January 1, 2010, and each year thereafter.

35 (g) The requirements of section twelve of this article are
36 to be in effect January 1, 2010, and each year thereafter. An
37 insurer or group of insurers that is not required to have
38 independent audit committee members or only a majority of
39 independent audit committee members, as opposed to a
40 supermajority, because the total written and assumed
41 premium is below the threshold and subsequently becomes
42 subject to one of the independence requirements due to
43 changes in premium shall have one year following the year
44 the threshold exceeded to comply with the independence
45 requirements. An insurer that becomes subject to one of the
46 independence requirements as a result of a business
47 combination shall have one calendar year following the date

48 of acquisition or combination to comply with the
49 independence requirements.

50 (h) The requirements of section fifteen of this article are
51 effective beginning with the reporting period ending
52 December 31, 2010, and each year thereafter. An insurer or
53 group of insurers that is not required to file a report because
54 the total written premium is below the threshold and
55 subsequently becomes subject to the reporting requirements
56 shall have two years following the year the threshold is
57 exceeded to file a report. An insurer acquired in a business
58 combination shall have two calendar years following the date
59 of acquisition or combination to comply with the reporting
60 requirements.

CHAPTER 141

**(Com. Sub. for S.B. 408 - By Senators Minard, Jenkins,
Stollings and Kessler)**

[Passed April 9, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to repeal §33-48-11 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §33-48-7b; and to amend and reenact §33-48-8 of said code, all relating to the model health plan for uninsurable individuals; removing obsolete sunset provision; authorizing the use of surplus funds in the plan fund to subsidize premiums of certain enrollees; and permitting the board to propose legislative rules to propose additional classes of individuals to which the preexisting condition exclusion may not apply.

Be it enacted by the Legislature of West Virginia:

That §33-48-11 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §33-48-7b; and that §33-48-8 of said code be amended and reenacted, all to read as follows:

**ARTICLE 48. MODEL HEALTH PLAN FOR
UNINSURABLE INDIVIDUALS
ACT.**

§33-48-7b. Surplus available to subsidize premiums.

§33-48-8. Benefits.

§33-48-7b. Surplus available to subsidize premiums.

1 Whenever the board determines that the account created
2 pursuant to section seven-a of this article contains a surplus
3 above those amounts necessary to provide fully for the
4 expected costs of claims and other expenses listed in
5 subsection (a), section seven of this article, the plan may use
6 such surpluses to subsidize the premium of certain low
7 income enrollees whose eligibility shall be established by
8 legislative rule. The board shall propose rules for legislative
9 approval in accordance with the provisions of article three,
10 chapter twenty-nine-a of this code to establish criteria for
11 enrollees with low income eligible for premium subsidy
12 pursuant to this section.

§33-48-8. Benefits.

1 (a) The plan shall offer health care coverage consistent
2 with comprehensive coverage to every eligible person who is
3 not eligible for medicare. The coverage to be issued by the
4 plan, its schedule of benefits, exclusions and other limitations
5 shall be established by the board and subject to the approval
6 of the commissioner.

7 (b) In establishing the plan coverage, the board shall take
8 into consideration the levels of health insurance coverage

9 provided in the state and medical economic factors as may be
10 deemed appropriate; and promulgate benefit levels,
11 deductibles, coinsurance factors, exclusions and limitations
12 determined to be generally reflective of and commensurate
13 with health insurance coverage provided through a
14 representative number of large employers in the state.

15 (c) The board may adjust any deductibles and
16 coinsurance factors annually according to the medical
17 component of the consumer price index.

18 (d) *Preexisting conditions.* --

19 (1) Plan coverage shall exclude charges or expenses
20 incurred during the first six months following the effective
21 date of coverage as to any condition for which medical
22 advice, care or treatment was recommended or received as to
23 such conditions during the six-month period immediately
24 preceding the effective date of coverage, except that no
25 preexisting condition exclusion shall be applied to a federally
26 defined eligible individual. The board may propose rules for
27 legislative approval in accordance with the provisions of
28 article three, chapter twenty-nine-a of this code to propose
29 any other additional class of eligible individuals to which the
30 preexisting condition exclusion may not apply.

31 (2) Subject to subdivision (1) of this subsection, the
32 preexisting condition exclusions shall be waived to the extent
33 that similar exclusions, if any, have been satisfied under any
34 prior health insurance coverage which was involuntarily
35 terminated: *Provided, That:*

36 (A) Application for pool coverage is made not later than
37 sixty-three days following such involuntary termination and,
38 in such case, coverage in the plan shall be effective from the
39 date on which such prior coverage was terminated; and

40 (B) The applicant is not eligible for continuation or
41 conversion rights that would provide coverage substantially
42 similar to plan coverage.

43 (e) *Nonduplication of benefits.* --

44 (1) The plan shall be payer of last resort of benefits
45 whenever any other benefit or source of third-party payment
46 is available. Benefits otherwise payable under plan coverage
47 shall be reduced by all amounts paid or payable through any
48 other health insurance coverage and by all hospital and
49 medical expense benefits paid or payable under any workers'
50 compensation coverage, automobile medical payment or
51 liability insurance, whether provided on the basis of fault or
52 nonfault, and by any hospital or medical benefits paid or
53 payable under or provided pursuant to any state or federal
54 law or program.

55 (2) The plan shall have a cause of action against an
56 eligible person for the recovery of the amount of benefits
57 paid that are not for covered expenses. Benefits due from the
58 plan may be reduced or refused as a set-off against any
59 amount recoverable under this subdivision.

CHAPTER 142

**(Com. Sub. for H.B. 3076 - By Delegates Martin, Walker,
Butcher, D. Poling, M. Poling, Boggs, Perry, Caputo,
Hamilton and Ellem)**

[Passed April 7, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2009.]

AN ACT to amend and reenact §21-3D-1, §21-3D-2, §21-3D-3,
§21-3D-4 and §21-3D-7 of the Code of West Virginia, 1931, as
amended, all relating to the regulation and operation of cranes;
providing new definition for tower crane; establishing

certification renewal requirements for crane operators; providing for automatic certification of certain crane operators; and creating a penalty for operation of tower cranes without certification.

Be it enacted by the Legislature of West Virginia:

That §21-3D-1, §21-3D-2, §21-3D-3, §21-3D-4 and §21-3D-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3D. CRANE OPERATOR CERTIFICATION ACT.

§21-3D-1. Definitions.

§21-3D-2. Certification required; exemptions.

§21-3D-3. Powers and duties of the commissioner.

§21-3D-4. Minimum certification requirements.

§21-3D-7. Penalties.

§21-3D-1. Definitions.

1 For purposes of this article:

2 (a) "Commissioner" means the Commissioner of the
3 Division of Labor, or his or her authorized representative.

4 (b) "Crane" means a power-operated hoisting machine
5 used in construction, demolition or excavation work, which
6 has a power-operated winch and load line and a power-
7 operated boom that moves laterally by the rotation of the
8 machine on a carrier, and which has a manufacturer's rated
9 lifting capacity of five tons or more. "Crane" does not mean
10 a forklift, digger derrick truck, bucket truck or any vehicle,
11 aircraft or helicopter, or equipment which does not have a
12 power-operated winch and load line.

13 (c) "Emergency basis" means an occurrence of an event,
14 circumstance or situation that presents an imminent threat to
15 persons or property and constitutes a serious health or safety
16 hazard.

17 (d) "Employer" means any person, firm, corporation or
18 other entity who hires or permits any individual to work.

19 (e) "Employee" means any individual employed by an
20 employer and also as defined by the commissioner.

21 (f) "Tower crane" means a crane in which a boom,
22 swinging jib, or other structural member is mounted on a
23 vertical mast or tower.

24 (g) "Training or training course" means a course
25 approved by the commissioner which includes some form of
26 testing throughout, or a final written examination or practical
27 test, or both, which ensures, or tends to ensure that learning
28 has occurred and that the objectives of the training have been
29 realized. The commissioner will evaluate whether the
30 approved training adequately demonstrates competency to
31 safely operate cranes.

§21-3D-2. Certification required; exemptions.

1 (a) A person may not operate a crane or tower crane
2 without certification issued under this article except for those
3 persons exempted under subsection (b) of this section.

4 (b) A person is not required to obtain certification under
5 this article if the person:

6 (1) Is a member of the Armed Forces of the United States
7 or an employee of the United States, when such member or
8 employee is engaged in the work of a crane operator
9 exclusively for such governmental unit; or

10 (2) Is primarily an operator of farm machinery who is
11 performing the work of a crane operator as part of an
12 agricultural operation; or

13 (3) Is operating a crane on an emergency basis; or

14 (4) Is operating a crane for personal use and not for profit
15 on the site of real property which the person owns or leases;
16 or

17 (5) Is under the direct supervision of a certified crane
18 operator and:

19 (A) Who is enrolled in an industry recognized in-house
20 training course based on the American National Standards
21 Institute Standards for Crane Operators and who is employed
22 by the entity that either taught the training course or
23 contracted to have the training course taught, all of which is
24 approved by the commissioner; or

25 (B) Who is enrolled in an apprenticeship program or
26 training program for crane operators approved by the United
27 States Department of Labor, Bureau of Apprenticeship and
28 Training;

29 (6) Is an employee of and operating a crane at the
30 direction of any manufacturing plant or other industrial
31 establishment, including any mill, factory, tannery, paper or
32 pulp mill, mine, colliery, breaker or mineral processing
33 operation, quarry, refinery or well or is an employee of and
34 operating a crane at the direction of the person, firm or
35 corporation who owns or is operating such plant or
36 establishment;

37 (7) Is an employee of a public utility operating a crane to
38 perform work in connection with facilities used to provide a
39 public service under the jurisdiction of the Public Service
40 Commission, Federal Energy Regulatory Commission or
41 Federal Communications Commission; or

42 (8) Is operating timbering harvesting machinery
43 associated with the production of timber and the
44 manufacturing of wood products.

§21-3D-3. Powers and duties of commissioner.

1 The commissioner shall:

2 (a) Propose rules for legislative approval in accordance
3 with the provisions of article three, chapter twenty-nine-a of
4 this code, which rules at the minimum must include
5 provisions for:

6 (1) Certification of individuals who operate cranes or
7 tower cranes in the State of West Virginia, which
8 certification process must include a written examination and
9 a practical demonstration, and must utilize standards no less
10 restrictive than those prescribed by the American society of
11 mechanical engineers/American National Standards Institute
12 Safety Code and personnel certification accreditation
13 standards; as of the effective date of this article: *Provided,*
14 That the rule governing the practical examination must be a
15 separate rule and provide for the implementation of the
16 practical examination on or before July 1, 2001: *Provided,*
17 *however,* That the successful completion of a training course
18 approved by the commissioner may be substituted for the
19 written examination and for the practical demonstration as set
20 forth in section four of this article.

21 (2) Certification categories including lattice boom truck
22 cranes; lattice boom crawler cranes; fixed cab-telescoping
23 boom cranes; swing cab-telescoping boom cranes; and tower
24 cranes: *Provided,* That the holders of a certification for the
25 large telescoping boom crane, upon application for
26 recertification, will be provided with a one time election to
27 either be certified as an operator of a fixed-cab or swing-cab
28 telescoping boom crane, and that holders of a certification for
29 the small telescoping boom crane, upon application for
30 recertification, will be automatically certified as a fixed cab
31 operator.

32 (3) Certification renewal requirements of individuals who
33 operate cranes in the State of West Virginia, that may not be
34 more restrictive than those prescribed for the individual's
35 initial certification, but must include a written examination
36 and a current physician's certificate at least every five years:
37 *Provided*, That the successful completion of a training course
38 approved by the commissioner may be substituted for the
39 written examination.

40 (b) Prescribe application forms for original and renewal
41 certification.

42 (c) Set application fees in amounts that are reasonable
43 and necessary to defray the costs of the administration of this
44 article in an amount not to exceed \$75 per year.

45 (d) Set examination and training course fees in an amount
46 not to exceed the actual cost of the examination and the
47 training course.

48 (e) Administer or cause to be administered the written
49 examination, practical demonstrations and the training course
50 as required for certification.

51 (f) Determine the standards for acceptable performance
52 on the written examination, practical demonstration and the
53 required training course: *Provided*, That the minimum
54 standards must be consistent with national standards, current
55 operating procedures and technology and be transferable to
56 other states where possible: *Provided, however*, That the
57 commissioner shall develop standards and criteria to establish
58 a dual classification system of certification and implement
59 this dual system of certification no later than January 1, 2001.

60 (g) Provide the option for applicants and crane operators
61 to take examinations that meet or exceed requirements for
62 national crane operator certification.

63 (h) Take other action as necessary to enforce this article.

§21-3D-4. Minimum certification requirements.

1 (a) The commissioner shall certify an applicant who:

2 (1) Is at least eighteen years of age;

3 (2) Meets the application requirements as prescribed by
4 rule;

5 (3) Passes the written examination: *Provided*, That any
6 person who documents at least two thousand hours of on-the-
7 job experience operating a crane during the four years
8 immediately preceding filing for application, or successfully
9 completes a training course approved by the commissioner,
10 and applies for certification no later than September 1, 2001,
11 and meets all other requirements and pays all applicable fees,
12 is entitled to certification without a written examination;

13 (4) Passes the practical demonstration: *Provided*, That the
14 practical demonstration approved by the commissioner may
15 be administered on-site by a qualified company
16 representative: *Provided, however*, That any person who
17 documents at least two thousand hours of on-the-job
18 experience operating a crane during the preceding four years
19 next prior to filing for application or the successful
20 completion of a training course approved by the
21 commissioner is entitled to certification without a practical
22 demonstration under this article if the person applies for
23 certification no later than September 1, 2001, meets all other
24 requirements and pays applicable application and
25 examination fees;

26 (5) Presents the original, or a photographic copy, of a
27 physician's certificate that he or she is physically qualified to
28 drive a commercial motor vehicle as required by 49 C.F.R.

29 §391.41, as of the effective date of this article or an
30 equivalent physician's certificate as approved by the
31 commissioner; and

32 (6) Pays the appropriate fees.

33 (b) Certification issued under this article is valid
34 throughout the state and is not assignable or transferable, and
35 is valid for one year from the date on which it was issued.

36 (c) Notwithstanding any other provision of this section,
37 the Division of Labor may issue a temporary certification, to
38 expire on January 1, 2001, to an applicant who: (1)
39 Documents at least two thousand hours of on-the-job
40 experience during the preceding four years; (2) submits
41 scores for the written examination; and (3) provides proof of
42 attendance at an approved crane safety training course, in an
43 application for certification filed not later than July 1, 2000.

44 (d) Notwithstanding any other provision of this article to
45 the contrary, the commissioner shall establish a dual
46 classification system of certification no later than January 1,
47 2001. One classification will provide eligibility for national
48 certification, and the applicant must achieve a passing score
49 of seventy on the national commission for the certification of
50 crane operators written examination. To be classified for
51 West Virginia certification, the commissioner may accept a
52 lesser score on the national commission for the certification
53 of crane operators written examination: *Provided*, That this
54 score may not be less than sixty for state certification:
55 *Provided, however*, That the successful completion of a
56 training course approved by the commissioner may be
57 substituted for the written examination and for the practical
58 demonstration if the applicant applies for certification no
59 later than September 1, 2001. The commissioner shall
60 propose a legislative rule as to the dual classification system
61 no later than July 1, 2000.

§21-3D-7. Penalties.

1 (a) A person required to obtain certification under this
2 article, who operates a crane or tower crane without
3 certification, is guilty of a misdemeanor and, upon conviction
4 thereof, shall be fined not less than \$50 nor more than \$500
5 for each violation.

6 (b) No person may knowingly or intentionally drive or
7 operate a crane or tower crane while:

8 (1) Having any measurable alcohol in his or her system;
9 or

10 (2) Under the influence of any controlled substance, as
11 defined by subdivision (d), section one hundred one, article
12 one, chapter sixty-a of this code; or

13 (3) Under the combined influence of alcohol and any
14 controlled substance or any other drug.

15 A person who violates this subsection is guilty of a
16 misdemeanor and, upon conviction thereof, shall be fined not
17 less than \$100 nor more than \$1,000. In addition to the fine,
18 the Commissioner of Labor shall revoke the person's
19 certification for not less than one year.

20 (c) An employer who knowingly employs, permits or
21 directs a person to operate a crane or tower crane without
22 proper certification is guilty of a misdemeanor and, upon
23 conviction thereof, shall be fined not less than \$100 nor more
24 than \$1,000 for each violation.

25 (d) A person, operating a crane or tower crane, who fails
26 to produce the certification within twenty-four hours after
27 request of the commissioner or his or her authorized
28 representative, is guilty of a misdemeanor and, upon

29 conviction thereof, shall be fined not less than \$50 nor more
30 than \$100.

31 (e) If a person is convicted for an offense described in
32 this section, and does not act to appeal the conviction within
33 the time periods as hereinafter described, then the person's
34 certification may be revoked or suspended in accordance with
35 the provisions of this article, and, further:

36 (1) The clerk of the court in which a person is convicted
37 for an offense described in this section shall forward to the
38 commissioner a transcript of the judgment of conviction. If
39 the conviction is the judgment of a magistrate court, the
40 magistrate court clerk shall forward the transcript when the
41 person convicted has not requested an appeal within twenty
42 days of the sentencing for such conviction. If the conviction
43 is the judgment of a circuit court, the circuit clerk shall
44 forward the transcript when the person convicted has not
45 filed a notice of intent to file a petition for appeal or writ of
46 error within thirty days after the judgment was entered; and

47 (2) If, upon examination of the transcript of the judgment
48 of conviction, the commissioner shall determine that the
49 person was convicted for any of the offenses described in this
50 section, the commissioner shall make and enter an order
51 revoking or suspending the person's certificate to operate a
52 crane or tower crane in this state. The order shall contain the
53 reasons for the revocation or suspension and the revocation
54 or suspension periods provided by this article or by rule.
55 Further, the order shall give the procedures for requesting a
56 hearing. The person shall be advised in the order that
57 because of the receipt of a transcript of the judgment of
58 conviction by the commissioner a presumption exists that the
59 person named in the transcript of the judgment of conviction
60 is the person named in the commissioner's order and such
61 constitutes sufficient evidence to support revocation or
62 suspension and that the sole purpose for the hearing held

63 under this section is for the person requesting the hearing to
64 present evidence that he or she is not the person named in the
65 transcript of the judgment of conviction. A copy of the order
66 shall be forwarded to the person by registered or certified
67 mail, return receipt requested. No revocation or suspension
68 shall become effective until ten days after receipt of a copy
69 of the order; and

70 (3) The provisions of this subsection do not apply if an
71 order reinstating the crane or tower crane operator's
72 certification of the person has been entered by the
73 commissioner prior to the receipt of the transcript of the
74 judgment of conviction; and

75 (4) For the purposes of this section, a person is convicted
76 when the person enters a plea of guilty or is found guilty by
77 a court or jury.

CHAPTER 143

**(Com. Sub. for S.B. 172 - By Senators Minard, Fanning,
Prezioso, Unger, Boley and Facemyer)**

[Passed April 11, 2009; in effect from passage.]
[Approved by the Governor on May 11, 2009.]

AN ACT to amend and reenact article 2, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; continuing rules previously promulgated by state agencies and boards; legislative mandate or authorization for the

promulgation of certain legislative rules; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rule with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rule with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; repealing certain legislative rule; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to general provisions; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to benefit determination and appeal; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Teachers Retirement System; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Public Employees Retirement System; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to refund, reinstatement, retroactive service and loan interest factors; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to service credit for accrued and unused sick and annual leave; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the West Virginia State Police; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Deputy Sheriff Retirement System; authorizing the Division of Personnel to promulgate a legislative rule relating to reimbursement of compensation paid to state employees for training, education and professional development; authorizing the Department of Administration to promulgate a legislative rule relating to the Purchasing Division; authorizing the Department of Administration to promulgate a legislative rule relating to fair market price determination; authorizing the

Department of Administration to promulgate a legislative rule relating to statewide contracts; authorizing the Department of Administration to promulgate a legislative rule relating to qualifications for participation; authorizing the Department of Administration to promulgate a legislative rule relating to parking; authorizing the Ethics Commission to promulgate a legislative rule relating to the purchase, sale or lease of personal property; authorizing the Ethics Commission to promulgate a legislative rule relating to interest in public contracts; authorizing the Ethics Commission to repeal a legislative rule relating to voting; authorizing the Ethics Commission to promulgate a legislative rule relating to employment exemptions; authorizing the Ethics Commission to promulgate a legislative rule relating to lobbying; and authorizing the Ethics Commission to promulgate a legislative rule relating to the filing of verified time records.

Be it enacted by the Legislature of West Virginia:

That article 2, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

**ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF
ADMINISTRATION TO PROMULGATE
LEGISLATIVE RULES.**

§64-2-1. Consolidated Public Retirement Board.

§64-2-2. Division of Personnel.

§64-2-3. Department of Administration.

§64-2-4. Ethics Commission.

§64-2-1. Consolidated Public Retirement Board.

1 (a) The legislative rule filed in the State Register on
2 August 13, 2008, authorized under the authority of section
3 one, article ten-d, chapter five of this code, relating to the
4 Consolidated Public Retirement Board (general provisions,
5 162 CSR 1), is authorized.

6 (b) The legislative rule filed in the State Register on
7 August 13, 2008, authorized under the authority of section
8 one, article ten-d, chapter five of this code, modified by the
9 Consolidated Public Retirement Board to meet the objections
10 of the Legislative Rule-Making Review Committee and
11 refiled in the State Register on September 3, 2008, relating to
12 the Consolidated Public Retirement Board (benefit
13 determination and appeal, 162 CSR 2), is authorized.

14 (c) The legislative rule filed in the State Register on
15 August 13, 2008, authorized under the authority of section
16 one, article ten-d, chapter five of this code, modified by the
17 Consolidated Public Retirement Board to meet the objections
18 of the Legislative Rule-Making Review Committee and
19 refiled in the State Register on September 3, 2008, relating to
20 the Consolidated Public Retirement Board (Teachers'
21 Retirement System, 162 CSR 4), is authorized.

22 (d) The legislative rule filed in the State Register on
23 August 13, 2008, authorized under the authority of section
24 one, article ten-d, chapter five of this code, relating to the
25 Consolidated Public Retirement Board (Public Employees
26 Retirement System, 162 CSR 5), is authorized.

27 (e) The legislative rule filed in the State Register on
28 August 13, 2008, authorized under the authority of section
29 one, article ten-d, chapter five of this code, relating to the
30 Consolidated Public Retirement Board (refund,
31 reinstatement, retroactive service and loan interest factors,
32 162 CSR 7), is authorized.

33 (f) The legislative rule filed in the State Register on the
34 August 13, 2008, authorized under the authority of section
35 one, article ten-d, chapter five of this code, relating to the
36 Consolidated Public Retirement Board (service credit for
37 accrued and unused sick and annual leave, 162 CSR 8), is
38 authorized.

39 (g) The legislative rule filed in the State Register on
40 August 13, 2008, authorized under the authority of section
41 one, article ten-d, chapter five of this code, relating to the
42 Consolidated Public Retirement Board (West Virginia State
43 Police, 162 CSR 9), is authorized.

44 (h) The legislative rule filed in the State Register on
45 August 13, 2008, authorized under the authority of section
46 one, article ten-d, chapter five of this code, modified by the
47 Consolidated Public Retirement Board to meet the objections
48 of the Legislative Rule-Making Review Committee and
49 refiled in the State Register on September 3, 2008, relating to
50 the Consolidated Public Retirement Board (Deputy Sheriff
51 Retirement System, 162 CSR 10), is authorized.

§64-2-2. Division of Personnel.

1 The legislative rule filed in the State Register on July 25,
2 2008, authorized under the authority of section two, article
3 four, chapter six-c of this code, modified by the Division of
4 Personnel to meet the objections of the Legislative Rule-
5 Making Review Committee and refiled in the State Register
6 on September 5, 2008, relating to the Division of Personnel
7 (reimbursement of compensation paid to state employees for
8 training, education and professional development, 143 CSR
9 8), is authorized.

§64-2-3. Department of Administration.

1 (a) The legislative rule filed in the State Register on
2 August 12, 2008, authorized under the authority of section
3 four, article three, chapter five-a of this code, relating to the
4 Department of Administration (Purchasing Division, 148
5 CSR 1), is authorized.

6 (b) The legislative rule filed in the State Register on
7 August 28, 2008, authorized under the authority of section
8 five, article four, chapter five-a of this code, modified by the
9 Department of Administration to meet the objections of the

10 Legislative Rule-Making Review Committee and refiled in
11 the State Register on November 20, 2008, relating to the
12 Department of Administration (parking, 148 CSR 6), is
13 authorized.

14 (c) The legislative rule filed in the State Register on
15 August 27, 2008, authorized under the authority of section
16 five, article three-a, chapter five-a of this code, modified by
17 the Department of Administration to meet the objections of
18 the Legislative Rule-Making Review Committee and refiled
19 in the State Register on December 12, 2008, relating to the
20 Department of Administration (fair market price
21 determination, 186 CSR 1), is authorized, with the following
22 amendment:

23 On page three, subsection 3.3.1, line twenty-one,
24 following the period after the words “receipt of request”, by
25 inserting the words “If the spending unit does not have copies
26 of the most recent solicitation and contract for the service or
27 commodity, the spending unit shall authorize the Purchasing
28 Division to release to the CNA that information, if available,
29 within ten (10) working days of receipt of request by the
30 CNA.”;

31 And,

32 On page seven, subsection 5.1.5, line twenty-two,
33 following the period after the words “receipt of the proposed
34 price”, by striking out the remainder of the sentence.

35 (d) The legislative rule filed in the State Register on
36 August 27, 2008, authorized under the authority of section
37 five, article three-a, chapter five-a of this code, modified by
38 the Department of Administration to meet the objections of
39 the Legislative Rule-Making Review Committee and refiled
40 in the State Register on December 12, 2008, relating to the
41 Department of Administration (statewide contracts, 186 CSR
42 3), is authorized.

43 (e) The legislative rule filed in the State Register on
44 August 27, 2008, authorized under the authority of section
45 five, article three-a, chapter five-a of this code, modified by
46 the Department of Administration to meet the objections of
47 the Legislative Rule-Making Review Committee and refiled
48 in the State Register on December 12, 2008, relating to the
49 Department of Administration (qualifications for
50 participation, 186 CSR 4), is authorized.

§64-2-4. Ethics Commission.

1 (a) The legislative rule filed in the State Register on
2 August 21, 2008, authorized under the authority of section
3 five, article two, chapter six-b of this code, modified by the
4 Ethics Commission to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the State
6 Register on November 26, 2008, relating to the Ethics
7 Commission (purchase, sale or lease of personal property,
8 158 CSR 3), is authorized.

9 (b) The legislative rule filed in the State Register on
10 August 21, 2008, authorized under the authority of section
11 two, article two, chapter six-b of this code, modified by the
12 Ethics Commission to meet the objections of the Legislative
13 Rule-Making Review Committee and refiled in the State
14 Register on November 26, 2008, relating to the Ethics
15 Commission (interest in public contracts, 158 CSR 8), is
16 authorized.

17 (c) The legislative rule filed in the State Register on July
18 29, 2008, authorized under the authority of section two,
19 article two, chapter six-b of this code, relating to the Ethics
20 Commission (voting, 158 CSR 9), is authorized.

21 (d) The legislative rule filed in the State Register on
22 August 21, 2008, authorized under the authority of section
23 five, article two, chapter six-b of this code, modified by the
24 Ethics Commission to meet the objections of the Legislative

25 Rule-Making Review Committee and refiled in the State
26 Register on November 26, 2008, relating to the Ethics
27 Commission (employment exemptions, 158 CSR 11), is
28 authorized.

29 (e) The legislative rule filed in the State Register on July
30 28, 2008, authorized under the authority of section two,
31 article two, chapter six-b of this code, modified by the Ethics
32 Commission to meet the objections of the Legislative Rule-
33 Making Review Committee and refiled in the State Register
34 on September 5, 2008, relating to the Ethics Commission
35 (lobbying, 158 CSR 12), is authorized.

36 (f) The legislative rule filed in the State Register on
37 August 21, 2008, authorized under the authority of section
38 two, article two, chapter six-b of this code, relating to the
39 Ethics Commission (filing of verified time records, 158 CSR
40 14), is authorized.

CHAPTER 144

**(Com. Sub. for S.B. 153 - By Senators Minard, Fanning,
Prezioso, Unger, Boley and Facemyer)**

[Passed April 8, 2009; in effect from passage.]

[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact article 3, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; continuing rules previously promulgated by state agencies and

boards; legislative mandate or authorization for the promulgation of certain legislative rules; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rule with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; repealing certain legislative rules; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to hazardous waste management systems; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the assessment of civil administrative penalties; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the hazardous waste management fee; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to surface mining reclamation; authorizing the Department of Environmental Protection to repeal a legislative rule relating to the control and reduction of nitrogen oxides from nonelectric-generating units as a means of mitigate transport of ozone precursors; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to ambient air quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction, modification, relocation and operation of stationary sources of air pollutants, notification requirements, administrative updates, temporary permits, general permits, permission to commence construction and procedures for evaluation; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction and major modification of major stationary sources of air pollution for the prevention of significant deterioration; authorizing the Department of Environmental Protection to promulgate a legislative rule

relating to the control of air pollution from hazardous waste treatment, storage and disposal facilities; authorizing the Department of Environmental Protection to repeal a legislative rule relating to the Nox budget trading program as a means of control and reduction of nitrogen oxides from electric-generating units; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to a mercury budget trading program to reduce mercury emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the WV/NPDES rules for coal mining facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the State Water Pollution Control Revolving Fund; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to environmental laboratories' certification and standards of performance; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to dam safety; and authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the assessment of civil administrative penalties; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to voluntary remediation and redevelopment.

Be it enacted by the Legislature of West Virginia:

That article 3, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PROMULGATE LEGISLATIVE RULES.

§64-3-1. Department of Environmental Protection.

1 (a) The legislative rule filed in the State Register on
2 August 28, 2008, authorized under the authority of section
3 four, article five, chapter twenty-two of this code, relating to
4 the Department of Environmental Protection (standards of
5 performance for new stationary sources, 45 CSR 16), is
6 authorized.

7 (b) The legislative rule filed in the State Register on
8 August 29, 2008, authorized under the authority of section
9 six, article eighteen, chapter twenty-two of this code,
10 modified by the Department of Environmental Protection to
11 meet the objections of the legislative rule-making review
12 committee and refiled in the State Register on October 24,
13 2008, relating to the Department of Environmental Protection
14 (hazardous waste management systems, 33 CSR 20), is
15 authorized.

16 (c) The legislative rule filed in the State Register on
17 August 28, 2008, authorized under the authority of section
18 fifteen, article fifteen, chapter twenty-two of this code,
19 modified by the Department of Environmental Protection to
20 meet the objections of the legislative rule-making review
21 committee and refiled in the State Register on November 21,
22 2008, relating to the Department of Environmental Protection
23 (assessment of civil administrative penalties, 33 CSR 22), is
24 authorized.

25 (d) The legislative rule filed in the State Register on
26 August 26, 2008, authorized under the authority of section
27 twenty-two, article eighteen, chapter twenty-two of this code,
28 modified by the Department of Environmental Protection to
29 meet the objections of the legislative rule-making review
30 committee and refiled in the State Register on October 24,
31 2008, relating to the Department of Environmental Protection
32 (hazardous waste management fee, 33 CSR 24), is
33 authorized.

34 (e) The legislative rule filed in the State Register on
35 August 29, 2008, authorized under the authority of section
36 four, article three, chapter twenty-two of this code, modified
37 by the Department of Environmental Protection to meet the
38 objections of the legislative rule-making review committee
39 and refiled in the State Register on February 17, 2009,
40 relating to the Department of Environmental Protection
41 (surface mining reclamation, 38 CSR 2), is authorized.

42 (f) The legislative rule filed in the State Register on
43 August 29, 2008, authorized under the authority of section
44 four, article five, chapter twenty-two of this code, relating to
45 the Department of Environmental Protection (control and
46 reduction of nitrogen oxides from nonelectric-generating
47 units as a means of mitigate transport of ozone precursors, 45
48 CSR 1), is authorized.

49 (g) The legislative rule filed in the State Register on
50 August 29, 2008, authorized under the authority of section
51 four, article five, chapter twenty-two of this code, modified
52 by the Department of Environmental Protection to meet the
53 objections of the legislative rule-making review committee
54 and refiled in the State Register on November 21, 2008,
55 relating to the Department of Environmental Protection
56 (ambient air quality standards, 45 CSR 8), is authorized.

57 (h) The legislative rule filed in the State Register on
58 August 29, 2008, authorized under the authority of section
59 four, article five, chapter twenty-two of this code, relating to
60 the Department of Environmental Protection (permits for
61 construction, modification, relocation and operation of
62 stationary sources of air pollutants, notification requirements,
63 administrative updates, temporary permits, general permits,
64 permission to commence construction and procedures for
65 evaluation, 45 CSR 13), is authorized.

66 (i) The legislative rule filed in the State Register on
67 August 29, 2008, authorized under the authority of section

68 four, article five, chapter twenty-two of this code, modified
69 by the Department of Environmental Protection to meet the
70 objections of the legislative rule-making review committee
71 and refiled in the State Register on January 16, 2009, relating
72 to the Department of Environmental Protection (permits for
73 construction and major modification of major stationary
74 sources of air pollution for the prevention of significant
75 deterioration, 45 CSR 14), is authorized.

76 (j) The legislative rule filed in the State Register on
77 August 29, 2008, authorized under the authority of section
78 four, article five, chapter twenty-two of this code, relating to
79 the Department of Environmental Protection (control of air
80 pollution from hazardous waste treatment, storage and
81 disposal facilities, 45 CSR 25), is authorized.

82 (k) The legislative rule filed in the State Register on
83 August 29, 2008, authorized under the authority of section
84 four, article five, chapter twenty-two of this code, relating to
85 the Department of Environmental Protection (Nox budget
86 trading program as a means of control and reduction of
87 nitrogen oxides from electric-generating units, 45 CSR 26),
88 is authorized.

89 (l) The legislative rule filed in the State Register on
90 August 29, 2008, authorized under the authority of section
91 four, article five, chapter twenty-two of this code, relating to
92 the Department of Environmental Protection (emission
93 standards for hazardous air pollutants, 45 CSR 34), is
94 authorized.

95 (m) The legislative rule filed in the State Register on
96 August 29, 2008, authorized under the authority of section
97 four, article five, chapter twenty-two of this code, relating to
98 the Department of Environmental Protection (mercury budget
99 training program to reduce mercury emissions, 45 CSR 37),
100 is authorized.

101 (n) The legislative rule filed in the State Register on
102 August 28, 2008, authorized under the authority of section
103 four, article eleven, chapter twenty-two of this code,
104 modified by the Department of Environmental Protection to
105 meet the objections of the legislative rule-making review
106 committee and refiled in the State Register on February 17,
107 2009, relating to the Department of Environmental Protection
108 (WV/NPDES rules for coal mining facilities, 47 CSR 30), is
109 authorized.

110 (o) The legislative rule filed in the State Register on
111 August 28, 2008, authorized under the authority of section
112 three, article two, chapter twenty-two-c of this code,
113 relating to the Department of Environmental Protection
114 (state water pollution control revolving fund, 47 CSR 31),
115 is authorized.

116 (p) The legislative rule filed in the State Register on
117 August 28, 2008, authorized under the authority of section
118 fifteen, article one, chapter twenty-two of this code, modified
119 by the Department of Environmental Protection to meet the
120 objections of the legislative rule-making review committee
121 and refiled in the State Register on December 12, 2008,
122 relating to the Department of Environmental Protection
123 (environmental laboratories certification and standards of
124 performance, 47 CSR 32), is authorized.

125 (q) The legislative rule filed in the State Register on
126 August 28, 2008, authorized under the authority of section
127 six, article eighteen, chapter twenty-two of this code,
128 modified by the Department of Environmental Protection to
129 meet the objections of the legislative rule-making review
130 committee and refiled in the State Register on January 22,
131 2009, relating to the Department of Environmental Protection
132 (dam safety, 47 CSR 34), is authorized.

133 (r) The legislative rule filed in the State Register on
134 August 28, 2008, authorized under the authority of section
135 ten, article twelve, chapter twenty-two of this code, modified
136 by the Department of Environmental Protection to meet the
137 objections of the legislative rule-making review committee
138 and refiled in the State Register on November 21, 2008,
139 relating to the Department of Environmental Protection
140 (assessment of civil administrative penalties, 47 CSR 56), is
141 authorized.

142 (s) The legislative rule filed in the State Register on
143 August 25, 2008, authorized under the authority of section
144 three, article twenty-two, chapter twenty-two of this code,
145 relating to the Department of Environmental Protection
146 (voluntary remediation and redevelopment, 60 CSR 3), is
147 authorized.



CHAPTER 145

**(Com. Sub. for H.B. 2225 - By Delegates Brown, D. Poling,
Talbott, Miley, Overington and Sobonya)**

[Passed April 7, 2009; in effect from passage.]
[Approved by the Governor on April 11, 2009.]

AN ACT to amend and reenact article 4, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Education and the Arts and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative

agencies of the Department of Education and the Arts; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-making Review Committee; authorizing the Division of Rehabilitation Services to promulgate a legislative rule relating to low vision driver training program.

Be it enacted by the Legislature of West Virginia:

That article 4, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 4. AUTHORIZATION FOR DEPARTMENT OF
EDUCATION AND THE ARTS TO
PROMULGATE LEGISLATIVE RULES.**

§64-4-1. Division of Rehabilitation Services.

1 The legislative rule filed in the State Register on August
2 28, 2008, authorized under the authority of section ten, article
3 two-b, chapter seventeen-b, of this code, modified by the
4 Division of Rehabilitation Services to meet the objections of
5 the legislative rule-making review committee and refiled in
6 the State Register on January 21, 2009, relating to the
7 Division of Rehabilitation Services (low vision driver
8 training program, 130 CSR 3), is authorized.

CHAPTER 146

**(Com. Sub. for S.B. 195 - By Senators Minard, Fanning,
Prezioso, Unger, Boley and Facemyer)**

[Passed April 9, 2009; in effect from passage.]

[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; continuing rules previously promulgated by state agencies and boards; legislative mandate or authorization for the promulgation of certain legislative rules; authorizing certain of the agencies to promulgate certain legislative rule with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to public water systems; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to licensure of medical adult day care centers; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to tuberculosis testing, control treatment and commitment; authorizing the Commission for the Deaf and Hard of Hearing to promulgate

a legislative rule relating to the establishment of required qualifications and ethical standards for interpreters and transliterators; and authorizing the Division of Human Services to promulgate a legislative rule relating to child care center licensing.

Be it enacted by the Legislature of West Virginia:

That article 5, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-5-1. Department of Health and Human Resources.

§64-5-2. Commission for the Deaf and Hard of Hearing.

§64-5-3. Division of Human Services.

§64-5-1. Department of Health and Human Resources.

1 (a) The legislative rule filed in the State Register on
2 August 28, 2008, authorized under the authority of section
3 four, article one, chapter sixteen of this code, modified by the
4 Department of Health and Human Resources to meet the
5 objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on October 27,
7 2008, relating to the Department of Health and Human
8 Resources (public water systems, 64 CSR 3), is authorized.

9 (b) The legislative rule filed in the State Register on
10 August 27, 2008, authorized under the authority of section
11 eight, article five-b, chapter sixteen of this code, modified by
12 the Department of Health and Human Resources to meet the
13 objections of the Legislative Rule-Making Review
14 Committee and refiled in the State Register on December 17,
15 2008, relating to the Department of Health and Human

16 Resources (licensure of medical adult day care centers, 64
17 CSR 2), is authorized with the following amendments:

18 On page five, section three, by inserting a new
19 subsection, designated 3.39, to read as follows:

20 3.39. Substantial compliance. The Medical Adult Day
21 Care Center has no violation of which, as the secretary
22 determines, would present an imminent danger to the health,
23 safety or welfare of any resident or a probability that death or
24 serious physical harm could result, and has no ongoing
25 violation of a regulation where there is a direct or immediate
26 relationship to the health, safety or welfare of the resident(s).;

27 And renumbering the remaining subsections;

28 On page twenty-three, section eight, by striking out all of
29 8.4.a and inserting in lieu thereof a new 8.4.a, to read as
30 follows:

31 8.4.a. The licensee shall ensure that all participant care
32 and treatment is provided by appropriate individuals as
33 required by state and federal law.;

34 And,

35 On page thirty, section fourteen, by striking out all of
36 subsection 14.1 and inserting in lieu thereof a new subsection
37 14.1, to read as follows:

38 14.1. The Secretary may suspend or revoke a medical
39 adult day care center license according to the provision of
40 Chapter 16, Article 5B, Section 6 of the West Virginia Code.

41 (c) The legislative rule filed in the State Register on
42 August 28, 2008, authorized under the authority of section

43 nine, article three-d, chapter sixteen of this code, modified by
44 the Department of Health and Human Resources to meet the
45 objections of the Legislative Rule-Making Review
46 Committee and refiled in the State Register on October 27,
47 2008, relating to the Department of Health and Human
48 Resources (tuberculosis testing, control treatment and
49 commitment, 64 CSR 76), is authorized.

§64-5-2. Commission for the Deaf and Hard of Hearing.

1 The legislative rule filed in the State Register on August
2 27, 2008, authorized under the authority of section five,
3 article fourteen, chapter five of this code, modified by the
4 Commission for the Deaf and Hard of Hearing to meet the
5 objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on October 21,
7 2008, relating to the Commission for the Deaf and Hard of
8 Hearing (establishment of required qualifications and ethical
9 standards for interpreters and transliterators, 192 CSR 3), is
10 authorized.

§64-5-3. Division of Human Services.

1 The legislative rule filed in the State Register on August
2 26, 2008, authorized under the authority of section four,
3 article two-b, chapter forty-nine of this code, modified by the
4 Division of Human Services to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in
6 the State Register on November 21, 2008, relating to the
7 Division of Human Services (child care center licensing, 78
8 CSR 1), is authorized.

CHAPTER 147

**(Com. Sub. for H.B. 2222 - By Delegates Brown, D. Poling,
Talbot, Miley, Overington and Sobonya)**

[Passed April 8, 2009; in effects from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact article 6, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Military Affairs and Public Safety and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the Department of Military Affairs and Public Safety; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Regional Jail and Correctional Facility Authority to promulgate a legislative rule relating to criteria and procedures for determination of projected cost per day for inmates incarcerated in regional jails operated by the Authority; authorizing the Fire Commission to promulgate a legislative rule relating to the standards for the

certification and continuing education of municipal, county and other public building code officials, building code inspectors and plans examiners; and authorizing the State Fire Marshal to promulgate a legislative rule relating to the supervision of fire protection work.

Be it enacted by the Legislature of West Virginia:

That article 6, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 6. AUTHORIZATION FOR THE DEPARTMENT
OF MILITARY AFFAIRS AND PUBLIC
SAFETY TO PROMULGATE
LEGISLATIVE RULES.**

§64-6-1. Regional Jail and Correctional Facility Authority.

§64-6-2. Fire Commission.

§64-6-3. State Fire Marshal.

§64-6-1. Regional Jail and Correctional Facility Authority.

1 The legislative rule filed in the state register on the
2 eighteenth day of January, two thousand eight, authorized
3 under the authority of section ten, article twenty, chapter
4 thirty-one, of this code, modified by the Regional Jail and
5 Correctional Facility Authority to meet the objections of the
6 legislative rule-making review committee and refiled in the
7 state register on the ninth day of January, two thousand nine,
8 relating to the Regional Jail and Correctional Facility
9 Authority (criteria and procedures for determination of
10 projected cost per day for inmates incarcerated in regional
11 jails operated by the authority, 94 CSR 7), is authorized, with
12 the following amendments:

13 On page 1, subsection 2.2, by deleting the last sentence
14 and inserting in lieu thereof the following:

15 “In calculating the schedule, the Authority may include
16 moneys for an operational reserve fund: *Provided*, That

17 moneys budgeted for the operational reserve fund may not
18 exceed the amount of actual operational expenditures incurred
19 during a three month period in the preceding fiscal year:
20 *Provided, however,* That such three month period must be the
21 three month period with the lowest operational expenditures
22 for any three month period in the preceding fiscal year.”.

§64-6-2. Fire Commission.

1 The legislative rule filed in the state register on the
2 twenty-seventh day of August, two thousand eight,
3 authorized under the authority of section five, article three,
4 chapter twenty-nine, of this code, modified by the Fire
5 Commission to meet the objections of the legislative rule-
6 making review committee and refiled in the state register on
7 the eighteenth day of February, two thousand nine, relating
8 to the Fire Commission (standards for the certification and
9 continuing education of municipal, county and other public
10 building code officials, building code inspectors and plans
11 examiners, 87 CSR 7), is authorized, with the following
12 amendments:

13 On page 2, by striking subdivision 3.2.a in its entirety and
14 inserting in lieu thereof the following:

15 “3.2.a. Building Code Official. - To be certified as a
16 ‘Building Code Official’ a person must:

17 (1) Complete the following courses:

18 (A) 01 CBO Legal & Management and 02 CBO
19 Technology; or

20 (B) 01 CBO Legal & Management and B1 Residential
21 Building Inspector, B2 Commercial Building Inspector, M1
22 Residential Mechanical Inspector, E1 Residential Electrical
23 Inspector, E2 Commercial Electrical Inspector, P1

24 Residential Plumbing Inspector and P2 Commercial
25 Plumbing Inspector; or

26 (2) Be certified as a Certified Building Code Official
27 (CBCO) by successfully completing the following
28 examinations: B1 Residential Building Inspector; B2
29 Commercial Building Inspector; B3 Residential Plans
30 Examiner; 01 Legal and Management; and 02 CBO
31 Technology; or

32 (3) Complete an equivalent certification by an
33 examination authority accepted by the State Fire
34 Commission; or

35 (4) Be licensed by the State of West Virginia as a
36 Professional Engineer or Professional Architect.”;

37 On page 4, subsection 6.1., by striking, “government
38 body” and inserting in lieu thereof the words, “government
39 entity”;

40 And,

41 On page 4, subsection 6.3., by striking the words,
42 “government body” and inserting in lieu thereof the word,
43 “government entity”.

§64-6-3. State Fire Marshal.

1 The legislative rule filed in the state register on the sixth
2 day of August, two thousand eight, authorized under the
3 authority of section four, article three-d, chapter twenty-nine,
4 of this code, modified by the State Fire Marshal to meet the
5 objections of the legislative rule-making review committee
6 and refiled in the state register on the eighteenth day of
7 February, two thousand nine, relating to the State Fire
8 Marshal (supervision of fire protection work, 103 CSR 3), is
9 authorized.

●

CHAPTER 148

**(Com. Sub. for S.B. 227 - By Senators Minard, Fanning,
Prezioso, Unger, Boley and Facemyer)**

[Passed April 11, 2009; in effect from passage.]
[Approved by the Governor on May 11, 2009.]

AN ACT to amend and reenact article 7, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Revenue; legislative mandate or authorization for the promulgation of certain legislative rules; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; repealing certain legislative rules; authorizing the State Tax Department to repeal a legislative rule relating to valuation of intangible personal property including stock accounts receivable and stock in banks and capital of savings and loan associations; authorizing the State Tax Department to promulgate a legislative rule relating to combined returns pursuant to an investigation by the Tax Commissioner; authorizing the State Tax Department to promulgate a legislative rule relating to the film industry

investment tax credit; authorizing the State Tax Department to promulgate a legislative rule relating to electronic filing and payment of special district excise tax; authorizing the State Tax Department to promulgate a legislative rule relating to the withholding or denial of personal income tax refunds from taxpayers who owe municipal costs, fines, forfeitures or penalties; disapproving the State Tax Department's proposed legislative rule relating to an exchange of information agreement between the State Tax Division and the Department of Health and Human Resources Office of the Inspector General Medicaid Fraud Control Unit; authorizing the Insurance Commissioner to promulgate a legislative rule relating to coordination of health benefits; authorizing the Insurance Commissioner to promulgate a legislative rule relating to long-term care insurance; authorizing the Insurance Commissioner to promulgate a legislative rule relating to actuarial opinion and memorandum; authorizing the Insurance Commissioner to promulgate a legislative rule relating to continuing education for individual insurance producers; authorizing the Insurance Commissioner to promulgate a legislative rule relating to viatical settlements; authorizing the Insurance Commissioner to promulgate a legislative rule relating to discount medical plan organizations and discount prescription drug plan organizations; authorizing the Insurance Commissioner to promulgate a legislative rule relating to professional employer organizations; authorizing the Insurance Commissioner to promulgate a legislative rule relating to preneed life insurance minimum standards for determining reserve liabilities and nonforfeiture values; authorizing the Racing Commission to promulgate a legislative rule relating to greyhound racing; and authorizing the Lottery Commission to promulgate a legislative rule relating to limited video lottery.

Be it enacted by the Legislature of West Virginia:

That article 7, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

**ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF
TAX AND REVENUE TO PROMULGATE
LEGISLATIVE RULES.**

§64-7-1. State Tax Department.

§64-7-2. Insurance Commissioner.

§64-7-3. Racing Commission.

§64-7-4. Lottery Commission.

§64-7-1. State Tax Department.

1 (a) The legislative rule filed in the State Register on
2 August 29, 2008, authorized under the authority of section
3 five, article ten, chapter eleven of this code, relating to the
4 State Tax Department (Valuation of Intangible Personal
5 Property Including Stock Accounts Receivable and Stock in
6 Banks and Capital of Savings and Loan Associations, 110
7 CSR 1L), is authorized.

8 (b) The legislative rule filed in the State Register on
9 August 29, 2008, authorized under the authority of section
10 seven-d, article ten, chapter eleven of this code, modified by
11 the State Tax Department to meet the objections of the
12 Legislative Rule-Making Review Committee and refiled in
13 the State Register on January 12, 2009, relating to the State
14 Tax Department (Combined Returns Pursuant to an
15 Investigation by the Tax Commissioner, 110 CSR 10K), is
16 authorized.

17 (c) The legislative rule filed in the State Register on
18 August 29, 2008, authorized under the authority of section
19 nine, article thirteen-x, chapter eleven of this code, modified
20 by the State Tax Department to meet the objections of the
21 Legislative Rule-Making Review Committee and refiled in
22 the State Register on January 12, 2009, relating to the State
23 Tax Department (Film Industry Investment Tax Credit, 110
24 CSR 13X), is authorized with the following amendments:

25 On page five, paragraph 3.1.b.1. by striking out the words
26 “Tax Commissioner” and inserting in lieu thereof the words
27 “Film Office”;

28 On page five, paragraph 3.1.b.2. by striking out the words
29 “this article” and inserting in lieu thereof “W. Va. Code, §11-
30 13X-1 et seq”;

31 On page six, by striking out “4.1.d.” and inserting in lieu
32 thereof “4.1.c.3.”;

33 On page six, by striking out all of subdivision 4.1.e. and
34 inserting in lieu thereof a new subdivision, designated
35 subdivision 4.1.d., to read as follow:

36 4.1.d. Upon approval of an eligibility application, the
37 eligible company shall begin production within one hundred
38 twenty (120) days of approval, or shall otherwise forfeit the
39 right to claim any tax credit for the approved qualified
40 project. The forfeiture does not preclude the eligible
41 company from resubmitting an eligibility application for the
42 same project at a future date. Upon written request by the
43 eligible company, and prior to the expiration of the one
44 hundred twenty (120) day deadline, the reviewing committee
45 may extend the deadline at its discretion.;

46 On page six, by striking out “4.2.c.1.” and inserting in
47 lieu thereof “4.2.a.”;

48 On page six, by striking out “4.2.c.2.” and inserting in
49 lieu thereof “4.2.b.”;

50 On page six, by striking out “4.2.c.3.” and inserting in
51 lieu thereof “4.2.c.”;

52 On page six, by striking out “4.2.c.4.” and inserting in
53 lieu thereof “4.2.d.”;

54 On page seven, by striking out “4.2.d” and inserting in
55 lieu thereof “4.2.e.”;

56 On page nine, subsection 5.5, by striking out the words
57 “be considered” and inserting in lieu thereof the words
58 “maintain its initial position in the queue”;

59 On page nine, by striking out all of subdivisions 5.5.a.
60 and 5.5.b.;

61 On page nine, by inserting two new subsections,
62 designated subsections 5.6 and 5.7, to read as follows:

63 5.6. Requests for Increase in Tax Credit Allocation. – If
64 an eligible company seeks an increase in the amount of tax
65 credits for an approved qualified project, the eligible
66 company shall submit an application for modification to the
67 Film Office, which shall be submitted by and bear the same
68 signature as the person who submitted the original eligibility
69 application, or a duly authorized representative. The
70 reviewing committee shall place requests for an increase in
71 the order of receipt of all applications, assign each request a
72 new application number and review each request separately
73 from the original eligibility application. The reviewing
74 committee shall consider the application at its next scheduled
75 meeting, but within thirty (30) days of receipt, and may
76 request additional information from the applicant to assist in
77 its evaluation of the request. The reviewing committee shall
78 determine approval using the same criteria of the review
79 process and based on the availability of any remaining credits
80 for the fiscal year in which the request is received. The Film
81 Office shall notify the eligible company in writing of the
82 reviewing committee's decision.

83 5.7. Other Revisions to Application. – If an eligible
84 company seeks to revise its original eligibility application for
85 a qualified project for reasons other than those identified in

86 subsection 5.6 of this rule, the eligible company shall submit
87 an application for modification to the Film Office, which
88 shall be submitted by and bear the same signature as the
89 person who submitted the original eligibility application, or
90 a duly authorized representative. The reviewing committee
91 shall consider the application at its next scheduled meeting,
92 but within thirty (30) days of receipt, and may request
93 additional information from the applicant to assist in its
94 evaluation of the request. The reviewing committee shall
95 determine the approval using the same criteria of the review
96 process. The Film Office shall notify the eligible company
97 in writing of the reviewing committee's decision.;

98 And by renumbering the remaining subsections;

99 And,

100 On page ten, subsection 6.1., by striking out "4.1.e." and
101 inserting in lieu thereof "4.1.d."

102 (d) The legislative rule filed in the State Register on
103 August 29, 2008, authorized under the authority of section
104 five, article ten, chapter eleven of this code, modified by the
105 State Tax Department to meet the objections of the
106 Legislative Rule-Making Review Committee and refiled in
107 the State Register on January 12, 2009, relating to the State
108 Tax Department (Electronic Filing and Payment of Special
109 District Excise Tax, 110 CSR 39), is authorized.

110 (e) The legislative rule filed in the State Register on
111 August 29, 2008, authorized under the authority of section
112 two-b, article ten, chapter eight of this code, modified by the
113 State Tax Department to meet the objections of the
114 Legislative Rule-Making Review Committee and refiled in
115 the State Register on January 12, 2009, relating to the State
116 Tax Department (Withholding or Denial of Personal Income

117 Tax Refunds from Taxpayers Who Owe Municipal Costs,
118 Fines, Forfeitures or Penalties, 110 CSR 40), is authorized.

119 (f) The legislative rule filed in the State Register on
120 August 29, 2008, authorized under the authority of section
121 five-s, article ten, chapter eleven of this code, modified by
122 the State Tax Department to meet the objections of the
123 Legislative Rule-Making Review Committee and refiled in
124 the State Register on January 12, 2009, relating to the State
125 Tax Department (Exchange of Information Agreement
126 between the State Tax Division and the Department of Health
127 and Human Resources Office of the Inspector General
128 Medicaid Fraud Control Unit, 110 CSR 50E), is disapproved.

§64-7-2. Insurance Commissioner.

1 (a) The legislative rule filed in the State Register on
2 August 29, 2008, authorized under the authority of section
3 ten, article two, chapter thirty-three of this code, modified by
4 the Insurance Commissioner to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in
6 the State Register on February 20, 2009, relating to the
7 Insurance Commissioner (Long-term Care Insurance, 114
8 CSR 32), is authorized.

9 (b) The legislative rule filed in the State Register on
10 August 29, 2008, authorized under the authority of section
11 ten, article two, chapter thirty-three of this code, modified by
12 the Insurance Commissioner to meet the objections of the
13 Legislative Rule-Making Review Committee and refiled in
14 the State Register on February 20, 2009, relating to the
15 Insurance Commissioner (Actuarial Opinion and
16 Memorandum, 114 CSR 41), is authorized.

17 (c) The legislative rule filed in the State Register on
18 August 29, 2008, authorized under the authority of section
19 ten, article two, chapter thirty-three of this code, modified by

20 the Insurance Commissioner to meet the objections of the
21 Legislative Rule-Making Review Committee and refiled in
22 the State Register on October 22, 2008, relating to the
23 Insurance Commissioner (Continuing Education for
24 Individual Insurance Producers, 114 CSR 42), is authorized,
25 with the following amendment:

26 On page 11, subdivision 8.5.a., by striking out the words
27 “within fifteen (15) days of the date of hearing” and inserting
28 in lieu thereof the words “not less than fifteen (15) days prior
29 to the date of hearing”.

30 (d) The legislative rule filed in the State Register on
31 August 14, 2008, authorized under the authority of section
32 ten, article two, chapter thirty-three of this code, modified by
33 the Insurance Commissioner to meet the objections of the
34 Legislative Rule-Making Review Committee and refiled in
35 the State Register on February 20, 2009, relating to the
36 Insurance Commissioner (Viatical Settlements, 114 CSR 80),
37 is authorized.

38 (e) The legislative rule filed in the State Register on
39 August 14, 2008, authorized under the authority of section
40 ten, article two, chapter thirty-three of this code, modified by
41 the Insurance Commissioner to meet the objections of the
42 Legislative Rule-Making Review Committee and refiled in
43 the State Register on February 20, 2009, relating to the
44 Insurance Commissioner (Discount Medical Plan
45 Organizations and Discount Prescription Drug Plan
46 Organizations, 114 CSR 83), is authorized.

47 (f) The legislative rule filed in the State Register on
48 August 29, 2008, authorized under the authority of section
49 ten, article two, chapter thirty-three of this code, modified by
50 the Insurance Commissioner to meet the objections of the
51 Legislative Rule-Making Review Committee and refiled in
52 the State Register on February 20, 2009, relating to the

53 Insurance Commissioner (Professional Employer
54 Organizations, 114 CSR 85), is authorized with the following
55 amendments:

56 On page 1, subsection 2.1., after the words ‘voting stock’
57 by striking the word ‘or’ and inserting in lieu thereof the
58 word ‘of’;

59 On page 1, subdivision 2.3.a, after the word ‘hiring’ by
60 inserting the words ‘his, her or’;

61 On page 2, subsection 3.1., after the words ‘itself out as
62 providing’ by omitting the comma, and after the words
63 ‘professional employer’ by inserting the word ‘organization’;
64

65 On page 2, subdivision 3.2.b, after the words ‘fee of’ by
66 striking the word ‘\$300’ and inserting in lieu thereof the
67 words ‘\$200, and an annual report fee of \$100’;

68 On page 2, subdivision 3.2.h., by striking out said
69 subdivision 3.2.h. in its entirety and inserting in lieu thereof
70 a new subdivision 3.2.h. to read as follows:

71 h. A statement of management which includes the name
72 and evidence of business experience of any person who
73 serves as a president, chief executive officer or otherwise has
74 the authority to act as a senior executive officer of the PEO.;

75 On page 3, subdivision 3.2.l., in the last sentence of the
76 subdivision, after the words ‘certificate of authority’ by
77 inserting the words ‘to do business in the state, issued by the
78 Secretary of State,’;

79 And,

80 On page 3, subsection 3.4 after the words ‘file for
81 renewal of’ by striking the word ‘their’ and inserting in lieu

82 thereof the word 'its', and after the words 'accompanied by
83 a fee of' by striking the word '\$300' and inserting in lieu
84 thereof the words '\$200 for the application fee and \$100 for
85 the annual report.'

86 (g) The legislative rule filed in the State Register on
87 August 29, 2008, authorized under the authority of section
88 ten, article two, chapter thirty-three of this code, modified by
89 the Insurance Commissioner to meet the objections of the
90 Legislative Rule-Making Review Committee and refiled in
91 the State Register on October 22, 2008, relating to the
92 Insurance Commissioner (Preneed Life Insurance Minimum
93 Standards for Determining Reserve Liabilities and
94 Nonforfeiture Values, 114 CSR 86), is authorized.

§64-7-3. Racing Commission.

1 The legislative rule filed in the State Register on July 29,
2 2006, authorized under the authority of section six, article
3 twenty-three, chapter nineteen of this code, approved for
4 promulgation by the Legislature on March 11, 2006 and
5 refiled in the State Register on May 5, 2006, relating to the
6 Racing Commission (Greyhound Racing, 178 CSR 2) is
7 authorized with the following amendment:

§178-2-53. Training Tracks.

1 2-53.1. General physical requirements.

2 53.1.a. Any public training track must be approved and
3 licensed by the commission. Only a public training track
4 meeting the following criteria shall be eligible to receive
5 funds as provided in WVC §19-23-10.

6 53.1.b. The state may own or operate or both own and
7 operate any training track built in this state, or a training track
8 may be on land leased at fair market value for a period of

9 twenty years. The state may contract operations to a private
10 entity. Any lease or contract for services will follow the
11 requirements of article three, chapter five-a of this code and
12 the requirements of the Department of Administration
13 regarding purchasing.

14 53.1.b.1. The track compound shall have (1) a minimum
15 area of twenty acres for development of the initial facility and
16 an additional ten acres available for future expansion, (2) a
17 ten-thousand-gallons-per-minute sewer plant, (3) adequate
18 ingress and egress for safety and accessibility and (4)
19 adequate public parking.

20 53.1.b.2. The track shall be at least 1,320 feet in
21 circumference or 1/4 mile in length, and the track shall have
22 adequate in-ground heating elements to ensure year-round
23 training.

24 53.1.b.3. The track shall have an approved racing surface,
25 rails, lure, timing equipment, and starting box. The track
26 surface shall consist of at least six inches of silt surface,
27 followed by at least six inches of fill sand, followed by two
28 inches of rigid insulation with an under-slab membrane.

29 53.2. Security requirements.

30 53.2.a. Security shall be adequate to ensure the safety of
31 persons and dogs. The training track must have the following
32 minimum security measures at a kennel compound.

33 53.2.b. The kennel compound must be surrounded by a
34 perimeter fence which will reduce the likelihood of
35 unauthorized entry. The perimeter fence must be approved
36 by the commission's chief investigator.

37 53.2.b.1. The training track must have an appropriate
38 check in and out system which will ensure that only those

39 individuals who are licensees or authorized visitors and
40 whose duties clearly require entry to the area will be allowed
41 access.

42 53.2.b.2. No law-enforcement officer, employee of the
43 commission, or employee of a licensee, when in the
44 performance of official duties, may be denied entry to the
45 kennel compound. All visitors to the kennel compound will
46 be accompanied by a commission representative, the licensee
47 sponsoring the visitor or the licensee's security personnel.

48 53.2.b.3. Access records will be available to the
49 commission, its investigative personnel and the board of
50 judges on request.

51 53.2.b.4. In a case of an emergency a veterinarian
52 licensed by the West Virginia State Board of Veterinarian
53 Examiners may be allowed in the kennel compound if
54 accompanied by appropriate personnel.

55 53.2.b.5. At least one fire extinguisher shall be installed
56 on the exterior wall of each kennel enclosure. The type and
57 size of fire extinguisher must meet the State Fire Marshal's
58 standards.

59 53.2.b.6. A veterinarian licensed by West Virginia may
60 possess, transport or use any drug or medication which by
61 federal or state law requires a prescription within the confines
62 of the kennel compound.

63 53.2.b.6.A. A person having a legally valid prescription
64 which includes a complete statement of the uses and purposes
65 of the medication upon the medicine container may possess,
66 transport or use a drug or medication which by federal or
67 state law requires a prescription within the confines of the
68 kennel compound if a copy of the prescription has been filed

69 with the commission veterinarian and he or she has approved
70 the use of the medication prior to its use on a greyhound.

71 53.2.b.6.B. Over the counter drugs are allowed in the
72 kennel compound however, the medication must be in the
73 original container bearing the manufacturer's label with the
74 serial or lot number.

75 53.2.b.6.C. While in the compound all medications must
76 be stored in locked cabinets in the kennel.

77 53.2.b.6.D. The trainer must provide a list of all drugs or
78 medications in the trainer's kennel to the commission
79 veterinarian on a form provided by the commission
80 veterinarian. The trainer is responsible for updating the list
81 on a daily basis so that at all times it reflects the current drugs
82 or medications in the trainer's kennel. A copy of the current
83 list with the commission veterinarian's initials or signature on
84 it must be posted in the trainer's kennel next to the
85 medication cabinet.

86 53.3. Operation and Maintenance of Kennel Compound

87 53.3.a. No living quarters are provided and overnight
88 stays will not be permitted except for emergencies. For
89 emergency needs that require 24 hour assistance to a sick or
90 injured greyhound the stay must first be approved by the
91 training track's chief of security.

92 53.3.b. The following restrictions apply to entry to the
93 compound during the race meet, beginning with the start of
94 official schooling. The kennel compound is a restricted area
95 which requires special security controls and identity
96 verification by security for all persons entering and leaving
97 the compound:

98 53.3.b.1. The person is a race-meet licensee official, a
99 designated facility employee, or a West Virginia Racing
100 Commission official or employee, each of whom shall
101 present proper identification to the kennel compound security
102 officer;

103 53.3.b.2. Designated service-company personnel such as
104 a licensed food vendor, electrical maintenance and repair,
105 equipment and building servicing, telephone and utilities
106 service, or garbage collection. These individuals do not
107 require a kennel compound pass, but they must properly
108 identify themselves and their purpose for entering and
109 leaving the facility with the security officer prior to entering
110 and leaving the facility.

111 53.3.b.3. Visitors to the compound are discouraged;
112 however, the facility licensee may develop a visitor pass
113 system subject to the approval of the commission.

114 53.3b.4. Alcoholic beverages are not allowed in the
115 kennel compound.

116 53.4.1. The facility licensee shall be responsible for
117 providing garbage and waste disposal;

118 53.4.2. Each kennel is responsible for the daily pick up of
119 all turn-out pen waste;

120 53.4.3. Each kennel is responsible for the regular
121 watering of turn-out pens to minimize odor;

122 53.4.4. A 5 mile per hour speed limit shall be posted in
123 the kennel compound.

§64-7-4. Lottery Commission.

1 The legislative rule filed in the State Register on April,
2 20, 2004, under the authority of section four hundred two,

3 article twenty-two-b, chapter twenty-nine of this code,
4 approved for promulgation by the Legislature on March 12,
5 2004, relating to the lottery commission (Limited Video
6 Lottery, 179 CSR 5), is authorized with the following
7 amendments:

§179-5-35. Prohibition Against Extending Credit.

1 35.1. A video lottery retailer shall not extend credit, in
2 any manner, to a player to enable the player to play a video
3 lottery game.

4 35.2. For purposes of this rule, a video lottery retailer
5 shall be deemed to be extending credit when he or she knows
6 or has reason to know that the proceeds of the check will be
7 used solely to play or continue to play a video lottery game.

CHAPTER 149

**(Com. Sub. for H.B. 2218 - By Delegates Brown, D. Poling,
Talbot, Miley, Overington and Sobonya)**

[Passed April 11, 2009; in effect from passage.]

[Approved by the Governor on May 7, 2009.]

CLERK'S NOTE: It has been determined that Com. Sub. for H.B. 2218, originally styled as Chapter 149, was incorrectly enrolled and signed by the Governor in an incorrect form.

Therefore, the Governor not having received and signed a true and correct copy of the bill as passed by both houses, Com. Sub. for H.B. 2218 did not become law.

CHAPTER 150

**(Com. Sub. for H.B. 2819 - By Delegates Brown, D. Poling,
Talbot, Miley, Overington and Sobonya)**

[Passed April 10, 2009; in effect from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact article 9, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Board of Accountancy to promulgate a legislative rule relating to the Board and rules of professional conduct; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to a schedule of charges for inspection services: fruit; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to animal disease control; authorizing the Commissioner of Agriculture to promulgate a legislative rule

relating to the disposal of dead poultry; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to commercial feed; authorizing the Board of Architects to promulgate a legislative rule relating to the fees for registration of architects; authorizing the Board of Architects to promulgate a legislative rule relating to the registration of architects; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to the Board; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to the formation and approval of dental corporations; authorizing the Governor's Committee on Crime, Delinquency and Correction to promulgate a legislative rule relating to law enforcement training standards; authorizing the Board of Medicine to promulgate a legislative rule relating to licensure, disciplinary, complaint procedures, continuing education, and physician assistants; authorizing the Board of Medicine to promulgate a legislative rule relating to the establishment and regulation of a restricted license issued to an applicant in extraordinary circumstances; authorizing the Board of Pharmacy to promulgate a legislative rule relating to licensure and the practice of pharmacy; authorizing the Board of Pharmacy to promulgate a legislative rule relating to immunizations administered by pharmacists; authorizing the Board of Pharmacy to promulgate a legislative rule relating to the regulation of charitable clinic pharmacies; authorizing the Board of Physical Therapy to promulgate a legislative rule relating to general provisions; authorizing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to policies, standards and criteria for the evaluation and accreditation of colleges, departments or schools of nursing; authorizing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to limited prescriptive authority for nurses in advanced practice; authorizing the Board of Respiratory Care to promulgate a legislative rule relating to student temporary permits; authorizing the Secretary of State to promulgate a

legislative rule relating to the administration of the address confidentiality program; authorizing the Board of Social Work Examiners to promulgate a legislative rule relating to a fee schedule; authorizing the Treasurer's Office to promulgate a legislative rule relating to the selection of state depositories for receipt accounts; and authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to a schedule of fees.

Be it enacted by the Legislature of West Virginia:

That article nine, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

- §64-9-1. Board of Accountancy.
- §64-9-2. Commission on Agriculture.
- §64-9-3. Board of Architects.
- §64-9-4. Board of Dental Examiners.
- §64-9-5. Governor's Committee on Crime, Delinquency and Correction.
- §64-9-6. Board of Medicine.
- §64-9-7. Board of Pharmacy.
- §64-9-8. Physical Therapy.
- §64-9-9. Board of Examiners for Registered Professional Nurses.
- §64-9-10. Board of Respiratory Care.
- §64-9-11. Secretary of State.
- §64-9-12. Board of Social Work Examiners.
- §64-9-13. Treasurer's Office.
- §64-9-14. Board of Veterinary Medicine.

§64-9-1. Board of Accountancy.

1 The legislative rule filed in the State Register on the
2 twenty-ninth day of August, two thousand eight, authorized
3 under the authority of section four, article nine, chapter thirty
4 of this code, modified by the Board of Accountancy to meet
5 the objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the twenty-
7 first day of January, two thousand nine, relating to the Board

8 of Accountancy (the Board and rules of professional conduct,
9 1 CSR 1), is authorized, with the following amendment:

10 On page 2, former subsection 2.9., by reinserting the
11 stricken language in said former subsection 2.9. and
12 renumbering the subsection as subsection 2.10 and
13 renumbering the remaining subsections in the section
14 accordingly;

15 On page 3, subsection 2.10 which is renumbered as
16 subsection 2.11 by the above amendment, after the word
17 "Reciprocal" by inserting the words "substantial
18 equivalency" and in the same subsection after the words
19 "issued under" by striking out the words "reciprocal
20 regulations of prior law" and inserting in lieu thereof the
21 words "the provisions of *W. Va. Code* §30-9-9";

22 On page 6, subdivision 4.1.c., in the second sentence of
23 said subdivision after the words "a West Virginia registered
24 public accountant or" by inserting the words "a holder of";

25 On page 7, in the title to §1-1-5., after the word
26 "Reciprocal" by inserting the words "Substantial
27 Equivalency";

28 On page 7, subsection 5.1., after the words "application
29 for a reciprocal" by inserting the words "substantial
30 equivalency";

31 On page 7, subdivision 5.1.a., after the word
32 "Reciprocal" by inserting the words "Substantially
33 Equivalent";

34 On page 8, subdivision 5.1.a., after the word "reciprocal"
35 by inserting the words "substantially equivalent";

36 On page 8, subdivision 5.1.b., after the word
37 "Reciprocal" by inserting the words "Substantially
38 Equivalent";

39 On page 8, subdivision 5.1.b., after the words “Board
40 shall issue a reciprocal” by inserting the words “substantially
41 equivalent”;

42 On page 8, subdivision 5.1.c., after the word
43 “Reciprocal” by inserting the words “Substantially
44 Equivalent”;

45 On page 8, subdivision 5.1.c., after the words “Board
46 shall issue a reciprocal” by inserting the words “substantially
47 equivalent”;

48 On page 9, paragraph 5.1.d, after the word “Reciprocal”
49 by inserting the words “Substantial Equivalency”;

50 On page 10, paragraph 5.1.d.1., after the words “issuance
51 of a reciprocal” by inserting the words “substantial
52 equivalency”;

53 On page 10, paragraph 5.1.d.2., after the words “received
54 a certificate” by striking out the remainder of the paragraph
55 and inserting in lieu thereof the words “he or she may not
56 establish a place of business in this state.”;

57 On page 10, paragraph 5.1.d.3, by striking out said
58 paragraph 5.1.d.3 in its entirety;

59 On page 19, subdivision 6.8.e., at the beginning of the
60 sentence before the words “In any case” by inserting the
61 words “After a hearing”;

62 On page 19, subdivision 6.8.e., in the last sentence of the
63 subdivision, after the words “for the examination,” by
64 striking out the remainder of the sentence and inserting in
65 lieu thereof the words “a copy of the final order containing
66 findings of fact and conclusions of law.”;

67 On page 20, subdivision 7.3.a., in the last sentence of the
68 subdivision, after the words “the Board shall” by striking out
69 the words “apply the following standards” and inserting in
70 lieu thereof the words “consider whether”;

71 On page 21, paragraph 7.3.a.1, after the words “The
72 program” by striking out the words “should contribute” and
73 inserting in lieu thereof the word “contributes”;

74 On page 21, paragraph 7.3.a.2., after the words
75 “objectives of a program” by striking out the word “should”;

76 On page 21, paragraph 7.3.a.3., after the words “for the
77 program” by striking out the words “should be stated” and
78 inserting in lieu thereof the words “are stated with
79 specificity”;

80 On page 21, paragraph 7.3.a.4., after the words “used in
81 programs” by striking out the words “should be” and
82 inserting in lieu thereof the word “are”;

83 On page 21, paragraph 7.3.a.5., after the words “Program
84 content” by striking out the words “should be” and inserting
85 in lieu thereof the word “is”;

86 On page 21, paragraph 7.3.a.6., after the word
87 “Programs” by striking out the words “should be” and
88 inserting in lieu thereof the word “are”;

89 On page 21, paragraph 7.3.a.7., after the word
90 “Programs” by striking out the word “should”;

91 On page 27, subsection 12.1., after the words
92 “practitioner or” by striking out the words “business entity”
93 and inserting in lieu thereof the word “firm”;

94 And,

95 On page 27, subsection 12.1., after the words
96 “authorization issued by this Board” by striking out the
97 remainder of subsection 12.1. in its entirety and inserting in
98 lieu thereof the words “unless the individual practitioner or
99 firm meets the substantial equivalency practice privilege
100 exceptions below:

101 a. Individual practitioners who have substantial
102 equivalency practice privileges who provide only compilation
103 services performed in accordance with Statements on
104 Standards for Accounting and Review Services who:

105 1. Sign compilation reports as a certified public
106 accountant;

107 2. Meet the competency requirements set forth in the
108 professional standards for those services; and

109 3. Are undergoing a peer review program that
110 conforms with applicable laws and rules;

111 b. Out-of-state firms who provide only compilation
112 services performed in accordance with the Statements on
113 Standards for Accounting and Review Services who:

114 1. Meet firm ownership requirements;

115 2. Are undergoing a peer review program that
116 conforms with applicable rules; and

117 3. Performs the services through an individual with
118 substantial equivalency practice privileges.”.

§64-9-2. Commissioner of Agriculture.

1 (a) The legislative rule filed in the state register on the
2 thirtieth day of July, two thousand eight, authorized under the

3 authority of section five, article two, chapter nineteen, of this
4 code, relating to the Commissioner of Agriculture (schedule
5 of charges for inspection services: fruit, 61 CSR 8B), is
6 authorized.

7 (b) The legislative rule filed in the state register on the
8 twenty-ninth day of August, two thousand eight, authorized
9 under the authority of section two, article nine, chapter
10 nineteen, of this code, modified by the Commissioner of
11 Agriculture to meet the objections of the legislative rule-
12 making review committee and refiled in the state register on
13 the twenty-first day of October, two thousand eight, relating
14 to the Commissioner of Agriculture (animal disease control,
15 61 CSR 1), is authorized.

16 (c) The legislative rule filed in the state register on the
17 thirtieth day of July, two thousand eight, authorized under the
18 authority of section thirty-four-a, article nine, chapter
19 nineteen, of this code, modified by the Commissioner of
20 Agriculture to meet the objections of the legislative rule-
21 making review committee and refiled in the state register on
22 the twenty-ninth day of September, two thousand eight,
23 relating to the Commissioner of Agriculture (disposal of dead
24 poultry, 61 CSR 1C), is authorized.

25 (d) The legislative rule filed in the state register on the
26 thirtieth day of July, two thousand eight, authorized under the
27 authority of section three, article fourteen, chapter nineteen,
28 of this code, modified by the Commissioner of Agriculture to
29 meet the objections of the legislative rule-making review
30 committee and refiled in the state register on the twenty-ninth
31 day of September, two thousand eight, relating to the
32 Commissioner of Agriculture (commercial feed, 61 CSR 5),
33 is authorized.

§64-9-3. Board of Architects.

1 (a) The legislative rule filed in the state register on the
2 twenty-eighth day of August, two thousand eight, authorized
3 under the authority of section one, article twelve, chapter
4 thirty, of this code, relating to the Board of Architects (fees
5 for registration of architects, 2 CSR 3), is authorized.

6 (b) The legislative rule filed in the state register on the
7 twenty-eighth day of August, two thousand eight, authorized
8 under the authority of section one, article twelve, chapter
9 thirty, of this code, modified by the Board of Architects to
10 meet the objections of the legislative rule-making review
11 committee and refiled in the state register on the fourteenth
12 day of January, two thousand nine, relating to the Board of
13 Architects (registration of architects, 2 CSR 1), is authorized,
14 with the following amendment:

15 On page 5, paragraph 3.11.2.d., after the words “all
16 documents” by striking out the remainder of paragraph
17 3.11.2.d. and inserting in lieu thereof the words “exempt
18 from disclosure by the provisions of *W. Va. Code*
19 §29B-1-4.”;

20 On page 5, subsection 3.13., after the words “web site”
21 by striking out the words “at www.wvbrdarch.org”;

22 On page 6, subdivision 5.1.2., after the words “Board
23 considers the” by striking out the words “qualifications to be
24 equivalent” and inserting in lieu thereof the words
25 “experience to be equivalent to the registration
26 requirements”;

27 And,

28 On page 7, subsection 8.2., after the words “web site” by
29 striking out the words “at www.wvbrdarch.org”.

§64-9-4. Board of Dental Examiners.

1 (a) The legislative rule filed in the state register on the
2 fifteenth day of July, two thousand eight, authorized under
3 the authority of section six, article four, chapter thirty, of this
4 code, modified by the Board of Dental Examiners to meet the
5 objections of the legislative rule-making review committee
6 and refiled in the state register on the twenty-third day of
7 January, two thousand nine, relating to the Board of Dental
8 Examiners (rule for the West Virginia Board of Dental
9 Examiners, 5 CSR 1), is authorized, with the following
10 amendment:

11 On page ten, subsection 8.7(j)(8), following the word
12 "teeth" and the period by striking out the remainder of the
13 subdivision and inserting in lieu thereof the words:

14 “The dental hygienist and a licensed dentist shall attempt
15 to reach a collaborative agreement regarding such treatment.
16 If such an agreement cannot be reached then the dental
17 hygienist shall have a written order from a licensed dentist
18 prescribing such treatment.”.

19 (b) The legislative rule filed in the state register on the
20 twenty-eighth day of August, two thousand eight, authorized
21 under the authority of section six, article four, chapter thirty,
22 of this code, modified by the Board of Dental Examiners to
23 meet the objections of the legislative rule-making review
24 committee and refiled in the state register on the seventeenth
25 day of December, two thousand eight, relating to the Board
26 of Dental Examiners (formation and approval of dental
27 corporations, 5 CSR 6), is authorized.

**§64-9-5. Governor’s Committee on Crime, Delinquency and
Correction.**

1 The legislative rule filed in the state register on the first
2 day of August, two thousand eight, authorized under the
3 authority of section three, article twenty-nine, chapter thirty,
4 of this code, modified by the Governor’s Committee on

5 Crime, Delinquency and Correction to meet the objections of
6 the legislative rule-making review committee and refiled in
7 the state register on the seventeenth day of February, two
8 thousand nine, relating to the Governor's Committee on
9 Crime, Delinquency and Correction (law enforcement
10 training standards, 149 CSR 2), is authorized, with the
11 following amendments:

12 On page 3, subsection 3.7, after the words "and defensive
13 tactics" by inserting the word "training.";

14 On page 5, subdivision 5.1.a., after the words "law
15 enforcement" by striking out the words "instructor's
16 certification" and inserting in lieu thereof the words
17 "instructors' certifications";

18 On page 6, subdivision 5.1.b., after the words "keep
19 their" by striking out the word "certification" and inserting in
20 lieu thereof the word "certifications";

21 On page 6, paragraph 5.1.b.1., after the word "original"
22 by striking out the word "certification" and inserting in lieu
23 thereof the word "certifications";

24 On page 6, subdivision 5.2.a., after the word "shall" by
25 striking out the words "have the following";

26 On page 6, paragraph 5.2.a.1., at the beginning of the
27 sentence before the word "Experience" by inserting the word
28 "Have";

29 On page 6, paragraph 5.2.a.2., at the beginning of the
30 sentence before the words "a handgun" by striking out the
31 word "Completed" and inserting in lieu thereof the word
32 "Complete";

33 On page 6, subdivision 5.2.b., after the words “keep
34 their” by striking out the word “certification” and inserting in
35 lieu thereof the word “certifications”;

36 On page 7, paragraph 5.2.b.1., after the words “original
37 instructor” by striking out the word “certification” and
38 inserting in lieu thereof the word “certifications”;

39 On page 7, subdivision 5.2.c., after the words “original
40 instructor” by striking out the word “certification” and
41 inserting in lieu thereof the word “certifications”;

42 On page 7, subdivision 5.5.d., after the words “omitted
43 information” by striking out the word “required”;

44 On page 8, subsection 6.3., after the words “to obtain
45 75% on” by striking out the word “a” and inserting in lieu
46 thereof the word “an”;

47 On page 9, subsection 8.1., inserting a comma after the
48 words “but are not limited to”;

49 On page 9, subsection 8.1., after the words “job
50 description and” by striking the words “they must” and
51 inserting in lieu thereof the words “the ability to”;

52 On page 9, subdivision 8.1.a., after the words “training
53 requirements for” by striking out the word “such” and
54 inserting in lieu thereof the word “the”;

55 On page 9, subdivision 8.1.a., after the words “position,
56 and” by inserting the word “to”;

57 On page 10, paragraph 8.3.a.11., after the words “Check
58 for” by striking out the words “wants or” and after the words
59 “persons through” by striking out the word “DMV/NCIC”
60 and inserting in lieu thereof the word “NCIC”;

61 On page 18, subparagraph 8.5.d.1.B., after the word
62 “eyeglasses” by striking out the words “is commonly
63 accepted”;

64 On page 18, subparagraph 8.5.d.1.F., after the words
65 “perform the essential” by striking out the word “task” and
66 inserting in lieu thereof the word “tasks”;

67 On page 18, subparagraph 8.5.d.2.A., after the words “the
68 applicant” by striking out the words “should not have or”;

69 On page 18, subparagraph 8.5.d.3.C., after the words “or
70 mouth” by inserting a comma and the following words
71 “except as described in subparagraphs 8.5.d.3.A. and
72 8.5.d.3.B.”;

73 On page 21, subparagraph 8.5.d.7.L., after the words
74 “e.g.,” by striking out the word “Scleroderm” and inserting
75 in lieu thereof the word “Scleroderma”;

76 On page 21, subparagraph 8.5.d.8.K., after the words
77 “Tract Infection” by striking out the words “(now
78 disqualifying)”;

79 On page 23, paragraph 8.5.d.13., after the words “listed
80 in this” by striking the word “section” and inserting in lieu
81 thereof the word “subsection”;

82 On page 27, subsection 13.4., after the words “and the
83 head of” by striking the word “each” and inserting in lieu
84 thereof the words “the applicant's employing”;

85 On page 31, subdivision 16.1.h., at the beginning of the
86 sentence by striking out the word “Whose” and inserting in
87 lieu thereof the words “Having his or her”;

88 And,

89 On page 31, subsection 16.4., after the words “outlined
90 in this” by striking through the word “rule” and inserting in
91 lieu thereof the word “section”.

§64-9-6. Board of Medicine.

1 (a) The legislative rule filed in the state register on the
2 eighteenth day of July, two thousand eight, authorized under
3 the authority of section sixteen, article three, chapter thirty,
4 of this code, modified by the Board of Medicine to meet the
5 objections of the legislative rule-making review committee
6 and refiled in the state register on the nineteenth day of
7 November, two thousand eight, relating to the Board of
8 Medicine (licensure, disciplinary and complaint procedures;
9 continuing education; and physician assistants, 11 CSR 1B),
10 is authorized.

11 (b) The legislative rule filed in the state register on the
12 eighteenth day of July, two thousand eight, authorized under
13 the authority of section ten, article three, chapter thirty, of
14 this code, modified by the Board of Medicine to meet the
15 objections of the legislative rule-making review committee
16 and refiled in the state register on the fifteenth day of
17 October, two thousand eight, relating to the Board of
18 Medicine (establishment and regulation of restricted license
19 issued to an applicant in extraordinary circumstances, 11
20 CSR 2), is authorized, with the following amendment:

21 On page three, subsection 3.8. after the word “not” by
22 striking out the word “be”.

§64-9-7. Board of Pharmacy.

1 (a) The legislative rule filed in the state register on the
2 twenty-ninth day of August, two thousand eight, authorized
3 under the authority of section twelve, article five, chapter
4 thirty, of this code, modified by the Board of Pharmacy to

5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the twentieth
7 day of February, two thousand nine, relating to the Board of
8 Pharmacy (licensure and the practice of pharmacy, 15 CSR
9 1), is authorized.

10 (b) The legislative rule filed in the state register on the
11 twenty-ninth day of August, two thousand eight, authorized
12 under the authority of section thirty, article five, chapter
13 thirty, of this code, modified by the Board of Pharmacy to
14 meet the objections of the legislative rule-making review
15 committee and refiled in the state register on the twentieth
16 day of February, two thousand nine, relating to the Board of
17 Pharmacy (immunizations administered by pharmacists, 15
18 CSR 12), is authorized.

19 (c) The legislative rule filed in the state register on the
20 twenty-ninth day of August, two thousand eight, authorized
21 under the authority of section one, article five, chapter thirty,
22 of this code, modified by the Board of Pharmacy to meet the
23 objections of the legislative rule-making review committee
24 and refiled in the state register on the twentieth day of
25 February, two thousand nine, relating to the Board of
26 Pharmacy (regulation of charitable clinic pharmacies, 15
27 CSR 13), is authorized, with the following amendment:

28 On pages one and two, section seven, by striking out all
29 of subsection 1.5.

§64-9-8. Physical Therapy.

1 The legislative rule filed in the state register on the
2 twenty-eighth day of August, two thousand eight, authorized
3 under the authority of section five, article twenty, chapter
4 thirty, of this code, modified by the Board of Physical
5 Therapy to meet the objections of the legislative rule-making
6 review committee and refiled in the state register on the

7 twenty-fourth day of October, two thousand eight, relating to
8 the Board of Physical Therapy (general provisions, 16 CSR
9 1), is authorized, with the following amendments:

10 On page 1, subsection 16-1-2.4, after the words
11 "assistance in the practice of physical therapy." by striking
12 out the following sentence, "Massage therapists, exercise
13 physiologists, athletic trainers or other persons who have
14 technical or professional education or training, and who assist
15 the physical therapist, should be considered physical therapy
16 aides and be represented as such.";

17 On page 3, subsection 16-1-7.2, by removing the
18 underlined language and inserting in lieu thereof the
19 following, "provide on-site supervision.";

20 On page 4, subsection 16-1-9.1(c)(3), by removing the
21 following new language, "physical therapists holding a
22 temporary permit";

23 On page 7, subdivision 16-1-11.2.b. by striking out the
24 dollar amount "\$110.00" and inserting in lieu thereof the
25 dollar amount "\$220.00";

26 And,

27 On page 7, subdivision 16-1-11.2.g. by striking out the
28 dollar amount "\$70.00" and inserting in lieu thereof the
29 dollar amount "\$140.00".

§64-9-9. Board of Examiners for Registered Professional Nurses.

1 (a) The legislative rule filed in the state register on the
2 twenty-ninth day of July, two thousand eight, authorized
3 under the authority of section four, article seven, chapter
4 thirty, of this code, modified by the Board of Examiners for
5 Registered Professional Nurses to meet the objections of the

6 legislative rule-making review committee and refiled in the
7 state register on the ninth day of January, two thousand nine,
8 relating to the Board of Examiners for Registered
9 Professional Nurses (policies, standards and criteria for the
10 evaluation and accreditation of colleges, departments or
11 schools of nursing, 19 CSR 1), is authorized, with the
12 following amendment:

13 On page 3, subsection 4.1, after the words “on-site visit
14 is” by reinserting the stricken words “fifty dollars (\$50.00)”,
15 and by striking the underscored words “as set forth in the
16 board’s rule Fees, 19 CSR 12.”.

17 (b) The legislative rule filed in the state register on the
18 first day of August, two thousand eight, authorized under the
19 authority of section fifteen-a, article seven, chapter thirty, of
20 this code, modified by the Board of Examiners for Registered
21 Professional Nurses to meet the objections of the legislative
22 rule-making review committee and refiled in the state register
23 on the twentieth day of January, two thousand nine, relating
24 to the Board of Examiners for Registered Professional Nurses
25 (limited prescriptive authority for nurses in advanced
26 practice, 19 CSR 8), is authorized.

§64-9-10. Board of Respiratory Care.

1 The legislative rule filed in the state register on the
2 twenty-fifth day of July, two thousand eight, authorized
3 under the authority of section six-a, article thirty-four,
4 chapter thirty, of this code, modified by the Board of
5 Respiratory Care to meet the objections of the legislative
6 rule-making review committee and refiled in the state register
7 on the twenty-third day of October, two thousand eight
8 relating to the Board of Respiratory Care (student temporary
9 permits, 30 CSR 9), is authorized, with the following
10 amendment:

11 On page 1, subdivision 2.2b, by striking subdivision 2.2b
12 in its entirety and inserting in lieu thereof a new subdivision
13 2.2b to read as follows:

14 "2.2b. An official transcript indicating successful
15 completion of a minimum of thirty semester hours or the
16 quarter hour equivalent, eighteen of which must be specific
17 to respiratory care core curriculum, and at least two hundred
18 clinical hours;"

§64-9-11. Secretary of State.

1 The legislative rule filed in the state register on the
2 fifteenth day of February, two thousand eight, authorized
3 under the authority of section one hundred ten, article twenty-
4 eight-a, chapter forty-eight, of this code, modified by the
5 Secretary of State to meet the objections of the legislative
6 rule-making review committee and refiled in the state register
7 on the seventh day of August, two thousand eight, relating to
8 the Secretary of State (administration of the address
9 confidentiality program, 153 CSR 37), is authorized, with the
10 following amendment:

11 On page 8, subsection 153-37-15, by striking section 15.1
12 in its entirety and inserting in lieu thereof the following:

13 "15.1. If any post election challenges are brought
14 pertaining to the outcome of any election and it becomes
15 necessary to check the validity of all absentee ballots cast in
16 the election by verifying the names and addresses of all
17 voters casting absentee ballots, a protected records voter's
18 ballot shall not be included in the review unless the county
19 canvassing board determines that such a ballot would be
20 determinative of a county election outcome. When the county
21 canvassing board has determined that review of a protected
22 records voter's ballot is necessary, the designated county
23 contact shall verify the protected records voter's ballot, in

24 executive session, using extreme caution to ensure continued
25 confidentiality.

26 15.2. When the Secretary of State determines the review
27 of a protected records voter's ballot is necessary to determine
28 the outcome of any election that would be determined by
29 voters outside that county, the county canvassing board shall
30 review the protected ballots.".

§64-9-12. Board of Social Work Examiners.

1 The legislative rule filed in the state register on the
2 twenty-eighth day of July, two thousand eight, authorized
3 under the authority of section three, article thirty, chapter
4 thirty, of this code, relating to the Board of Social Work
5 Examiners (fee schedule, 25 CSR 3), is authorized.

§64-9-13. Treasurer's Office.

1 The legislative rule filed in the state register on the
2 twenty-ninth day of August, two thousand eight, authorized
3 under the authority of section two, article one, chapter
4 twelve, of this code, modified by the Treasurer's Office to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the fourth day
7 of February, two thousand nine, relating to the Treasurer's
8 Office (selection of state depositories for receipt accounts,
9 112 CSR 7), is authorized, with the following amendments:

10 On page 3, beginning on line twelve, by striking out all
11 of subdivisions 3.1.b. and 3.1.c. and inserting in lieu thereof
12 the following:

13 "3.1.b. Be insured by an agency of the federal government;

14 3.1.c. For deposits of state funds in excess of any amount
15 insured by an agency of the federal government, be insured by:

16 3.1.c.i. A deposit guaranty bond issued by a valid
17 bankers' surety company acceptable to the Treasurer;
18 and/or

19 3.1.c.ii. A collaterally secured bond, first approved by the
20 Treasurer, in the amount of not less than Ten Thousand
21 Dollars (\$10,000.00).”;

22 On page 6, following subsection 4.11., by adding a new
23 subsection to read as follows:

24 “4.12. A deposit guaranty bond issued by an approved
25 bankers' surety company to insure state funds on deposit with
26 an eligible state depository may only secure those funds in
27 the custody of the Treasurer.”;

28 On page 7, following subsection 5.3., by adding a new
29 subsection to read as follows:

30 “5.4. If a state depository insured through a collaterally
31 secured bond or through letters of credit becomes insolvent
32 or in any way breaches its contract with the Treasurer and
33 fails to cure the insolvency or breach within five (5) business
34 days, the holder of the collateral or the obligor for the letters
35 of credit for the depository shall, upon written demand from
36 the Treasurer, within three (3) business days remit to the
37 Treasurer the collateral securing state funds on deposit with
38 the state depository.”;

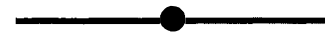
39 And,

40 On page 8, subsection 8.1, following the words “with the
41 Treasurer”, by striking out the comma and the word “the”
42 and inserting in lieu thereof a period and the word “The”.

§64-9-14. Board of Veterinary Medicine.

1 The legislative rule filed in the state register on the
2 twenty-ninth day of August, two thousand eight, authorized

3 under the authority of section four, article ten, chapter thirty,
4 of this code, modified by the West Virginia, 1931, as
5 amended, relating to authorizing the Board of Veterinary
6 Medicine to meet the objections of the legislative rule-
7 making review committee and refiled in the state register on
8 the fifth day of December, two thousand eight, relating to the
9 West Virginia, 1931, as amended, relating to the Board of
10 Veterinary Medicine (schedule of fees, 26 CSR 6), is
11 authorized.



CHAPTER 151

**(Com. Sub. for H.B. 2170 - By Delegates Brown, D. Poling,
Talbot, Miley, Overington and Sobonya)**

[Passed April 10, 2009; in effect from passage.]
[Approved by the Governor on April 24, 2009.]

AN ACT to amend and reenact article 10, chapter 64 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the Department of Commerce; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various

modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; repealing certain legislative rules; authorizing the Development Office to promulgate a legislative rule relating to Brownfield Economic Development Districts; authorizing the Division of Labor to repeal a legislative rule relating to packaging and labeling; authorizing the Division of Labor to repeal a legislative rule relating to a method of sale of commodities; authorizing the Division of Labor to promulgate a legislative rule relating to the West Virginia Manufactured Housing Construction and Safety Standards Board; authorizing the Division of Labor to promulgate a legislative rule relating to weights and measures calibration fees; authorizing the Division of Labor to promulgate a legislative rule relating to standards for weights and measures inspectors adoption of National Conference of Weights and Measures (NCWM) Handbook 130, 1987 edition; authorizing the Division of Labor to promulgate a legislative rule relating to the Amusement Rides and Attractions Safety Act; authorizing the Division of Labor to promulgate a legislative rule relating to the Elevator Safety Act; authorizing the Division of Labor to promulgate a legislative rule relating to the supervision of elevator mechanics and apprentices; authorizing the Division of Natural Resources to promulgate a legislative rule relating to boating; authorizing the Division of Natural Resources to promulgate a legislative rule relating to deer hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to lifetime hunting, trapping and fishing licenses; authorizing the Division of Natural Resources to promulgate a legislative rule relating to hunting, trapping and fishing license and stamp fees; authorizing the Division of Tourism to promulgate a legislative rule relating to the direct advertising grants program.

Be it enacted by the Legislature of West Virginia:

That article 10, chapter 64 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 10. AUTHORIZATION FOR BUREAU OF
COMMERCE TO PROMULGATE
LEGISLATIVE RULES.**

§64-10-1. Development Office.

§64-10-2. Division of Labor.

§64-10-3. Division of Natural Resources.

§64-10-4. Division of Tourism.

§64-10-1. Development Office.

1 The legislative rule filed in the state register on the
2 fifteenth day of August, two thousand eight, authorized under
3 the authority of section six-a, article two, chapter five-b, of
4 this code, modified by the Development Office to meet the
5 objections of the legislative rule-making review committee
6 and refiled in the state register on the twentieth day of
7 February, two thousand nine, relating to the Development
8 Office (brownfield economic development districts, 145 CSR
9 11), is authorized.

§64-10-2. Division of Labor.

1 (a) The legislative rule filed in the state register on the
2 twenty-seventh day of August, two thousand eight,
3 authorized under the authority of section three, article one,
4 chapter forty-seven, of this code, relating to the Division of
5 Labor (packaging and labeling, 42 CSR 10), is authorized.

6 (b) The legislative rule filed in the state register on the
7 twenty-seventh day of August, two thousand eight,
8 authorized under the authority of section three, article one,
9 chapter forty-seven, of this code, relating to the Division of
10 Labor (method of sale of commodities, 42 CSR 11), is
11 authorized.

12 (c) The legislative rule filed in the state register on the
13 twenty-seventh day of August, two thousand eight,
14 authorized under the authority of section four, article nine,

15 chapter twenty-one, of this code, relating to the Division of
16 Labor (West Virginia Manufactured Housing Construction
17 and Safety Standards Board, 42 CSR 19), is authorized.

18 (d) The legislative rule filed in the state register on the
19 twenty-seventh day of August, two thousand eight,
20 authorized under the authority of section three, article one,
21 chapter forty-seven, of this code, relating to the Division of
22 Labor (weights and measures calibration fees, 42 CSR 26),
23 is authorized.

24 (e) The legislative rule filed in the state register on the
25 twenty-seventh day of August, two thousand eight,
26 authorized under the authority of section three, article one,
27 chapter forty-seven, of this code, modified by the Division of
28 Labor to meet the objections of the legislative rule-making
29 review committee and refiled in the state register on the
30 twenty-first day of November, two thousand eight, relating to
31 the Division of Labor (standards for weights and measures
32 inspectors adoption of National Conference of Weights and
33 Measures (NCWM) Handbook 130, 1987 edition, 42 CSR
34 16), is authorized.

35 (f) The legislative rule filed in the state register on the
36 twenty-seventh day of August, two thousand eight,
37 authorized under the authority of section three, article ten,
38 chapter twenty-one, of this code, modified by the Division of
39 Labor to meet the objections of the legislative rule-making
40 review committee and refiled in the state register on the
41 twenty-first day of November, two thousand eight, relating to
42 the Division of Labor (Amusement Rides and Attractions
43 Safety Act, 42 CSR 17), is authorized.

44 (g) The legislative rule filed in the state register on the
45 twenty-seventh day of August, two thousand eight, authorized
46 under the authority of section eleven, article three-c, chapter
47 twenty-one, of this code, modified by the Division of Labor to

48 meet the objections of the legislative rule-making review
49 committee and refiled in the state register on the twenty-first
50 day of November, two thousand eight, relating to the Division
51 of Labor (Elevator Safety Act, 42 CSR 21), is authorized.

52 (h) The legislative rule filed in the state register on the
53 twenty-seventh day of August, two thousand eight,
54 authorized under the authority of section eleven, article three-
55 c, chapter twenty-one, of this code, modified by the Division
56 of Labor to meet the objections of the legislative rule-making
57 review committee and refiled in the state register on the
58 twenty-sixth day of January, two thousand nine, relating to
59 the Division of Labor (supervision of elevator mechanics and
60 apprentices, 42 CSR 21A), is authorized, with the following
61 amendment:

62 On page two, section four, subsection 4.1, after the word
63 “Escalators” by inserting a comma and the words “issued or
64 effective on October 6, 2007, October 5, 2007, and March 31,
65 2006, respectively,”;

66 On page two, section four, subsection 4.1, after the word
67 “Chairlifts” by inserting a comma and the words “published
68 on August 28, 2008,”;

69 On page 3, paragraph 6.1.d.1., after the words “previous
70 employers” by striking out the words “licensed to do business
71 in this state”;

72 On page 4, subsection 7.3., after the words “An elevator
73 mechanic” by reinserting the stricken word “may” and striking
74 out the underlined word “shall”, and after the words “only under
75 the” by striking out the word “direct”, and after the words
76 “licensed elevator mechanic” by striking out the period and
77 inserting in lieu thereof a comma and the words “as specifically
78 set forth in *West Virginia Code* § 21-3C-10a(c).”;

79 On page 4, subdivisions 7.3.1. and 7.3.2, by striking out
80 subdivisions 7.3.1 and 7.3.2 in their entirety;

81 On page 6, subdivision 10.3, after the words “the
82 commissioner” by striking out the word “may”;

83 On page 6, subdivision 12.1, after the words “state that
84 has” by inserting the words “requirements substantially
85 equivalent to those provided for by *W. Va. Code* §21-3C-1 *et*
86 *seq.* and this rule, and has”;

87 On page 7, subdivision 15.2, after the words “upon
88 observing” by inserting the words “or learning of”;

89 On page 8, paragraph (a), after the words “The name” by
90 striking out the words “and address”;

91 On page 8, paragraph (b), after the word “alleged” by
92 striking out the words “unlawful act” and inserting in lieu
93 thereof the word “infraction”;

94 On page 8, paragraph (c), after the word “alleged” by
95 striking out the words “unlawful act” and inserting in lieu
96 thereof the word “infraction”;

97 And,

98 On page 8, paragraph (d), after the word “alleged” by
99 striking out the words “unlawful act” and inserting in lieu
100 thereof the word “infraction”.

§64-10-3. Division of Natural Resources.

1 (a) The legislative rule filed in the state register on the
2 thirtieth day of July, two thousand eight, authorized under the
3 authority of section seven, article one, chapter twenty, of this

4 code, relating to the Division of Natural Resources (boating,
5 58 CSR 25), is authorized.

6 (b) The legislative rule filed in the state register on the
7 thirtieth day of July, two thousand eight, authorized under the
8 authority of section seven, article one, chapter twenty, of this
9 code, relating to the Division of Natural Resources (deer
10 hunting, 58 CSR 50), is authorized.

11 (c) The legislative rule filed in the state register on the
12 twenty-ninth day of July, two thousand eight, authorized
13 under the authority of section seven, article two-b, chapter
14 twenty, of this code, relating to the Division of Natural
15 Resources (lifetime hunting, trapping and fishing licenses, 58
16 CSR 67), is authorized.

17 (d) The legislative rule filed in the state register on the
18 twenty-ninth day of July, two thousand eight, authorized
19 under the authority of section forty-two, article two, chapter
20 twenty, of this code, modified by the Division of Natural
21 Resources to meet the objections of the Legislative Rule-
22 Making Review Committee and refiled in the State Register
23 on the eighth day of September, two thousand eight, relating
24 to the Division of Natural Resources (hunting, trapping and
25 fishing license and stamp fees, 58 CSR 71), is authorized.

§64-10-4. Division of Tourism.

1 The legislative rule filed in the state register on the first
2 day of August, two thousand eight, authorized under the
3 authority of section nine, article two, chapter five-b, of this
4 code, relating to the Division of Tourism (direct advertising
5 grants program, 144 CSR 1), is authorized.

CHAPTER 152

**(S.B. 468 - By Senators Laird, White, D. Facemire
and Kessler)**

[Passed April 10, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §11A-3-24 of the Code of West Virginia, 1931, as amended, relating to requiring a purchaser of redemption property to pay in certified funds.

Be it enacted by the Legislature of West Virginia:

That §11A-3-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. SALE OF TAX LIENS AND NONENTERED,
ESCHEATED AND WASTE AND
UNAPPROPRIATED LANDS.**

**§11A-3-24. Notice of redemption to purchaser; moneys received
by sheriff.**

1 (a) Upon payment made by cashier check, money order,
2 certified check or United States currency in the amount
3 necessary to redeem, the clerk shall deliver to the sheriff the
4 redemption money paid and the name and address of the
5 purchaser, his or her heirs and assigns. The clerk shall also
6 note the fact of redemption on his or her record of delinquent
7 lands.

8 (b) Of the redemption money received by the sheriff
9 pursuant to this section, the sheriff shall deposit into the sale

10 of tax lien surplus fund provided by section ten of this article
11 an amount equal to the amount of taxes, interest and charges
12 due on the date of the sale, plus the interest at the rate of one
13 percent per month from the date of sale to the date of
14 redemption, the amount of the subsequent years' taxes paid
15 the day of or after the sheriff's sale, plus interest at the rate of
16 one percent per month thereon from the date of payment to
17 the date of redemption, the amount of any additional
18 expenses incurred after January 1 of the year following the
19 sheriff's sale for the preparation of the list of those to be
20 served with notice to redeem and any examination of title
21 performed and certified pursuant to the provisions of section
22 nineteen of this article, plus interest at a rate of one percent
23 per month from the date of payment to the date of
24 redemption. In cases where the clerk has not received from
25 the purchaser satisfactory proof of additional expenses
26 incurred after January 1 of the year following the sheriff's
27 sale as provided in section twenty-three of this article, the
28 sheriff shall deposit the money received in the sale of tax lien
29 surplus fund provided by section ten of this article.



CHAPTER 153

**(H.B. 2884 - By Delegates Campbell, Border, Perdue,
Webster and White)**

[Passed April 11, 2009; in effect ninety days from passage.]

[Approved by the Governor on May 7, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new article, designated §9-4E-1, §9-4E-2
and §9-4E-3, all relating to Medicaid; the development of a
public-private long-term care partnership program.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §9-4E-1, §9-4E-2 and §9-4E-3, all to read as follows:

ARTICLE 4E. LONG-TERM CARE PARTNERSHIP PROGRAM.

§9-4E-1. Purpose.

§9-4E-2. Definitions.

§9-4E-3. Authority.

§9-4E-1. Purpose.

1 (a) The purpose of this program shall be to reduce
2 Medicaid costs for long-term care by encouraging the
3 purchase of private long-term care insurance policies that are
4 covered under the “qualified state long-term care insurance
5 partnerships.”

6 (b) It is the intent of the long-term care partnership to do
7 all of the following:

8 (1) Provide incentives for individuals to insure against the
9 costs of providing for their long-term care needs.

10 (2) Provide a mechanism for individuals to qualify for
11 coverage of the cost of their long-term care needs under
12 Medicaid without first being required to substantially exhaust
13 their resources.

14 (3) Alleviate the financial burden on the state’s medical
15 assistance program by encouraging the pursuit of private
16 initiatives.

§9-4E-2. Definitions.

1 (a) “Asset disregard” means, with regard to the state’s
2 medical assistance program, disregarding any assets or

3 resources in an amount equal to the insurance benefit
4 payments that are made to or on behalf of an individual who
5 is a beneficiary under a qualified long-term care insurance
6 partnership policy.

7 (b) “Long-term care insurance” means a policy described
8 in section four (a), article fifteen (A), chapter thirty-three of
9 this code.

10 (c) “Long-term care partnership program” means a
11 qualified state long-term care insurance partnership as
12 defined in 42 U.S.C. 1396, Section 1917(b) of the Social
13 Security Act.

14 (d) “Medicaid” means that assistance provided under a
15 state plan implemented by subchapter nineteen, chapter
16 seven, Title 42, United States Code, as that chapter has been
17 and may hereafter be amended.

§9-4E-3. Authority.

1 (a) The program shall be administered by the Bureau for
2 Medical Services. The bureau shall establish a long-term
3 care partnership program in West Virginia in order to provide
4 for the financing of long-term care through a combination of
5 private insurance and Medicaid in accordance with federal
6 requirements on qualified state long-term care insurance
7 partnerships.

8 (b) Not later than ninety days after the effective date of
9 this article, the Bureau for Medical Services shall file a state
10 plan amendment, pursuant to Title XIX of the United States
11 Social Security Act and any amendments thereto, to the
12 United States Department of Health and Human Services to
13 establish that the assets an individual owns and may retain
14 under Medicaid and still qualify for benefits under Medicaid
15 at the time the individuals applies for benefits is increased

16 dollar-for-dollar for each dollar paid out under the
17 individuals's long-term care insurance policy if the individual
18 is a beneficiary of a qualified long-term care partnership
19 program policy.

20 (c) An individual who is a beneficiary of a West Virginia
21 long-term care partnership program and meets eligibility
22 requirements is eligible for assistance under the state's
23 medical assistance program using the asset disregard as
24 provided under subsection (b).

25 (d) The Bureau of Medical Services shall pursue
26 reciprocal agreements with other states to extend the asset
27 disregard to West Virginia residents who purchased long-
28 term care partnership policies in other states that are
29 compliant with Title VI, Section 6021 of the Federal Deficit
30 Reduction Act of 2005, PL 109-171, and any applicable
31 federal regulations or guidelines.

32 (e) Upon diminishment of assets below the anticipated
33 remaining benefits under a long-term care partnership
34 program policy, certain assets of an individual, as provided
35 under subsection (b), shall not be considered when
36 determining any of the following:

37 (1) Medicaid eligibility;

38 (2) The amount of any Medicaid payment;

39 (3) Any subsequent recovery by the state of a payment
40 for medical services or long-term care services.

41 (f) If the long-term care partnership program is
42 discontinued, an individual who purchased a West Virginia
43 long-term care partnership program policy before the date the
44 program was discontinued shall be eligible to receive asset
45 disregard if allowed as provided by Title VI, Section 6021 of
46 the Federal Deficit Reduction Act of 2005, PL 109-171.

CHAPTER 154**(S.B. 344 - By Senators Kessler and Minard)**

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §27-7-4 of the Code of West Virginia, 1931, as amended, relating to authorizing mental hygiene commissioners to sign readmission orders.

Be it enacted by the Legislature of West Virginia:

That §27-7-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 7. RELEASE, DISCHARGE AND READMISSION
OF PATIENTS; ESCAPEES.**

§27-7-4. Readmission of patients.

1 While any involuntary patient is out of the mental health
2 facility under the provisions of section two or three of this
3 article, he or she may be readmitted to the mental health
4 facility on the basis of the original commitment. If there is
5 reason to believe that it is in the best interest of the patient to
6 be hospitalized, the chief medical officer of the mental health
7 facility may issue a sworn notice for the immediate
8 readmission of the patient, which notice shall contain facts
9 concerning the original commitment and the current
10 condition of the patient. This notice shall be sent to the clerk
11 of the circuit court which ordered his or her admission, to the

12 clerk of the circuit court of the county of the patient's
13 residence, to the circuit court or mental hygiene
14 commissioner of the county in which the patient may be
15 found and to the patient at the location where the patient may
16 be found. Upon receipt of such notice, the circuit court or
17 mental hygiene commissioner may, if satisfied that the
18 condition of the patient warrants his or her return, authorize
19 any health officer or police officer to take the patient into
20 custody and transport him or her to the mental health facility
21 where the notice originated.

CHAPTER 155

**(Com. Sub. for S.B. 239 - By Senators McCabe, Foster,
Palumbo, Wells and Kessler)**

[Amended and again passed May 28, 2009, as a result of the
objections of the Governor; in effect from passage.]
[Approved by the Governor on June 5, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §7A-7-4a, relating
to authorizing counties with a population exceeding 150,000
and a Class I municipality to approve metro government by a
majority vote.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new section, designated §7A-7-4a, to read as
follows:

ARTICLE 7. ELECTIONS ON METRO GOVERNMENT.

§7A-7-4a. Modifying the percentage vote required to approve metro government in municipal and countywide elections from fifty-five percent to a majority in counties with populations in excess of 150,000.

1 (a) Notwithstanding any other provision of this chapter to
2 the contrary, where the election is on the question of
3 consolidation of a county with a population exceeding
4 150,000, based on the 2000 or 2010 census of population
5 taken under the authority of the United States government,
6 and a single Class I city that is the principal municipality of
7 the county, then metro government becomes effective
8 pursuant to the charter if a majority of the legal votes cast by
9 the qualified voters of the principal city and a majority of the
10 legal votes cast by the qualified voters of all incorporated and
11 unincorporated areas of the affected county, excluding the
12 principal city, approves the consolidation.

13 (b) As used in this section, a Class I city is a municipality
14 so classified under section three, article one, chapter eight of
15 this code.

CHAPTER 156

**(Com. Sub. for H.B. 2877 - By Delegates Lawrence, Phillips,
D. Poling, Stowers, Ferro, Argento and Schadler)**

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §11-16-19 of the Code of West Virginia, 1931, as amended; to amend and reenact §49-1-4 of said code; and to amend and reenact §60-3A-24 of said code, all relating to changing the use of alcoholic beverages by

minors from a status offense to an act of juvenile delinquency; and establishing penalties.

Be it enacted by the Legislature of West Virginia:

That §11-16-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §49-1-4 of said code be amended and reenacted; and that §60-3A-24 of said code be amended and reenacted, all to read as follows:

Chapter

11. Taxation.

49. Child Welfare.

60. State Control of Alcoholic Liquors.

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-19. Unlawful acts of persons; criminal penalties.

1 (a) (1) Any person under the age of twenty-one years,
2 who purchases, consumes, sells, possesses or serves
3 nonintoxicating beer is guilty of a misdemeanor and, upon
4 conviction thereof, shall be fined an amount not to exceed
5 \$500 or shall be confined in jail, or, in the case of a juvenile,
6 a detention facility, for a period not to exceed seventy-two
7 hours, or both fined and confined or, in lieu of such fine and
8 confinement, may, for the first offense, be placed on
9 probation for a period not to exceed one year. Any person
10 convicted under this section may be sentenced pursuant to the
11 provisions of section one-a, article eleven-a, chapter sixty-
12 two of this code.

13 (2) Nothing in this article, nor any rule or regulation of
14 the commissioner, shall prevent or be deemed to prohibit any
15 person who is at least eighteen years of age from serving in
16 the lawful employment of any licensee, which may include
17 the sale or delivery of nonintoxicating beer as defined in this

18 article. Further, nothing in this article, nor any rule or
19 regulation of the commissioner, shall prevent or be deemed
20 to prohibit any person who is less than eighteen but at least
21 sixteen years of age from being employed by a licensee
22 whose principal business is the sale of food or consumer
23 goods or the providing of recreational activities, including,
24 but not limited to, nationally franchised fast-food outlets,
25 family-oriented restaurants, bowling alleys, drug stores,
26 discount stores, grocery stores and convenience stores:
27 *Provided*, That such person shall not sell or deliver
28 nonintoxicating beer.

29 (3) Nothing in this subsection shall prohibit a person who
30 is at least eighteen years of age from purchasing or
31 possessing nonintoxicating beer when he or she is acting
32 upon the request of or under the direction and control of any
33 member of a state, federal or local law-enforcement agency
34 or the West Virginia Alcohol Beverage Administration while
35 the agency is conducting an investigation or other activity
36 relating to the enforcement of the alcohol beverage control
37 statutes and the rules of the commissioner.

38 (b) Any person under the age of twenty-one years who,
39 for the purpose of purchasing nonintoxicating beer,
40 misrepresents his or her age or who for such purpose presents
41 or offers any written evidence of age which is false,
42 fraudulent or not actually his or her own or who illegally
43 attempts to purchase nonintoxicating beer is guilty of a
44 misdemeanor and, upon conviction thereof, shall be fined an
45 amount not to exceed \$100 or shall be confined in jail, or in
46 the case of a juvenile, a juvenile detention facility, for a
47 period not to exceed seventy-two hours, or both such fine and
48 confinement or, in lieu of such fine and confinement, may,
49 for the first offense, be placed on probation for a period not
50 exceeding one year.

51 (c) Any person who shall knowingly buy for, give to or
52 furnish nonintoxicating beer to anyone under the age of

53 twenty-one to whom they are not related by blood or
54 marriage is guilty of a misdemeanor and, upon conviction
55 thereof, shall be fined an amount not to exceed \$100 or shall
56 be confined in jail for a period not to exceed ten days, or both
57 such fine and confinement.

58 (d) (1) Any person who at any one time transports into
59 the state for their personal use, and not for resale, more than
60 six and seventy-five hundredths gallons of nonintoxicating
61 beer, upon which the West Virginia barrel tax has not been
62 imposed, shall be guilty of a misdemeanor and, upon
63 conviction thereof, shall be fined an amount not to exceed
64 \$100 or confined for ten days in jail, or both fined and
65 imprisoned. The untaxed nonintoxicating beer found in the
66 person's possession shall be confiscated.

67 (2) If the Congress of the United States repeals the
68 mandate established by the Surface Transportation Assistance
69 Act of 1982 relating to national uniform drinking age of
70 twenty-one as found in section six of Public Law 98-363, or
71 a court of competent jurisdiction declares the provision to be
72 unconstitutional or otherwise invalid, it is the intent of the
73 Legislature that the provisions contained in this section and
74 section eighteen of this article which prohibit the sale,
75 furnishing, giving, purchase or ownership of nonintoxicating
76 beer to or by a person who is less than twenty-one years of
77 age shall be null and void and the provisions therein shall
78 thereafter remain in effect and apply to the sale, furnishing,
79 giving, purchase or ownership of nonintoxicating beer to or
80 by a person who is less than nineteen years of age.

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-4. Other definitions.

1 As used in this chapter:

2 (1) "Child welfare agency" means any agency or facility
3 maintained by the state or any county or municipality thereof
4 or any agency or facility maintained by an individual, firm,
5 corporation, association or organization, public or private, to
6 receive children for care and maintenance or for placement in
7 residential care facilities or any facility that provides care for
8 unmarried mothers and their children;

9 (2) "Child advocacy center" means a community-based
10 organization that is a member in good standing with the West
11 Virginia Child Abuse Network, Inc., and is working to
12 implement the following program components:

13 (A) Child-appropriate/child-friendly facility: A child
14 advocacy center provides a comfortable, private,
15 child-friendly setting that is both physically and
16 psychologically safe for clients;

17 (B) Multidisciplinary team (MDT): A multidisciplinary
18 team for response to child abuse allegations includes
19 representation from the following: Law enforcement; child
20 protective services; prosecution; mental health; medical;
21 victim advocacy; child advocacy center;

22 (C) Organizational capacity: A designated legal entity
23 responsible for program and fiscal operations has been
24 established and implements basic sound administrative
25 practices;

26 (D) Cultural competency and diversity: The child
27 advocacy center promotes policies, practices and procedures
28 that are culturally competent. Cultural competency is defined
29 as the capacity to function in more than one culture, requiring
30 the ability to appreciate, understand and interact with
31 members of diverse populations within the local community;

32 (E) Forensic interviews: Forensic interviews are
33 conducted in a manner which is of a neutral, fact-finding
34 nature and coordinated to avoid duplicative interviewing;

35 (F) Medical evaluation: Specialized medical evaluation
36 and treatment are to be made available to child advocacy
37 center clients as part of the team response, either at the child
38 advocacy center or through coordination and referral with
39 other specialized medical providers;

40 (G) Therapeutic intervention: Specialized mental health
41 services are to be made available as part of the team
42 response, either at the child advocacy center or through
43 coordination and referral with other appropriate treatment
44 providers;

45 (H) Victim support/advocacy: Victim support and
46 advocacy are to be made available as part of the team
47 response, either at the child advocacy center or through
48 coordination with other providers, throughout the
49 investigation and subsequent legal proceedings;

50 (I) Case review: Team discussion and information
51 sharing regarding the investigation, case status and services
52 needed by the child and family are to occur on a routine
53 basis;

54 (J) Case tracking: Child advocacy centers must develop
55 and implement a system for monitoring case progress and
56 tracking case outcomes for team components: *Provided,*
57 That a child advocacy center may establish a safe exchange
58 location for children and families who have a parenting
59 agreement or an order providing for visitation or custody of
60 the children that require a safe exchange location;

61 (3) "Community based", when referring to a facility,
62 program, or service, means located near the juvenile's home
63 or family and involving community participation in planning,
64 operation and evaluation and which may include, but is not
65 limited to, medical, educational, vocational, social and
66 psychological guidance, training, special education,

67 counseling, alcoholism and any treatment and other
68 rehabilitation services;

69 (4) "Court" means the circuit court of the county with
70 jurisdiction of the case or the judge thereof in vacation unless
71 otherwise specifically provided;

72 (5) "Custodian" means a person who has or shares actual
73 physical possession or care and custody of a child, regardless
74 of whether such person has been granted custody of the child
75 by any contract, agreement or legal proceedings;

76 (6) "Department" or "state department" means the State
77 Department of Health and Human Resources;

78 (7) "Division of Juvenile Services" means the division
79 within the Department of Military Affairs and Public Safety
80 pursuant to article five-e of this chapter;

81 (8) "Guardian" means a person who has care and custody
82 of a child as a result of any contract, agreement or legal
83 proceeding;

84 (9) "Juvenile delinquent" means a juvenile who has been
85 adjudicated as one who commits an act which would be a
86 crime under state law or a municipal ordinance if committed
87 by an adult;

88 (10) "Nonsecure facility" means any public or private
89 residential facility not characterized by construction fixtures
90 designed to physically restrict the movements and activities
91 of individuals held in lawful custody in such facility and
92 which provides its residents access to the surrounding
93 community with supervision;

94 (11) "Referee" means a juvenile referee appointed
95 pursuant to section one, article five-a of this chapter, except

96 that in any county which does not have a juvenile referee, the
97 judge or judges of the circuit court may designate one or
98 more magistrates of the county to perform the functions and
99 duties which may be performed by a referee under this
100 chapter;

101 (12) "Secretary" means the Secretary of Health and
102 Human Resources;

103 (13) "Secure facility" means any public or private
104 residential facility which includes construction fixtures
105 designed to physically restrict the movements and activities
106 of juveniles or other individuals held in lawful custody in
107 such facility;

108 (14) "Staff-secure facility" means any public or private
109 residential facility characterized by staff restrictions of the
110 movements and activities of individuals held in lawful
111 custody in such facility and which limits its residents' access
112 to the surrounding community, but is not characterized by
113 construction fixtures designed to physically restrict the
114 movements and activities of residents;

115 (15) "Status offender" means a juvenile who has been
116 adjudicated as one:

117 (A) Who habitually and continually refuses to respond to
118 the lawful supervision by his or her parents, guardian or legal
119 custodian such that the child's behavior substantially
120 endangers the health, safety or welfare of the juvenile or any
121 other person;

122 (B) Who has left the care of his or her parents, guardian
123 or custodian without the consent of such person or without
124 good cause; or

125 (C) Who is habitually absent from school without good
126 cause;

127 (16) "Valid court order" means a court order given to a
128 juvenile who was brought before the court and made subject
129 to such order and who received, before the issuance of such
130 order, the full due process rights guaranteed to such juvenile
131 by the Constitutions of the United States and the State of
132 West Virginia.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-24. Unlawful acts by persons.

1 (a) (1) Any person who is under the age of twenty-one
2 years who purchases, consumes, sells, serves or possesses
3 alcoholic liquor is guilty of a misdemeanor and, upon
4 conviction thereof, shall be fined an amount not to exceed
5 \$500 or shall be confined in jail, or, in the case of a juvenile,
6 a detention center, for a period not to exceed seventy-two
7 hours, or both fined and imprisoned or, in lieu of such fine
8 and incarceration, may, for the first offense, be placed on
9 probation for a period not to exceed one year.

10 (2) Nothing in this article, nor any rule or regulation of
11 the commissioner, shall prevent or be deemed to prohibit any
12 person who is at least eighteen years of age from serving in
13 the lawful employment of a licensee which includes the sale
14 and serving of alcoholic liquor.

15 (3) Nothing in this subsection shall prohibit a person who
16 is at least eighteen years of age from purchasing or
17 possessing alcoholic liquor when he or she is acting upon the
18 request of or under the direction and control of any member
19 of a state, federal or local law-enforcement agency or the
20 West Virginia Alcohol Beverage Control Administration
21 while the agency is conducting an investigation or other

22 activity relating to the enforcement of the alcohol beverage
23 control statutes and the rules and regulations of the
24 commissioner.

25 (b) Any person under the age of twenty-one years who,
26 for the purpose of purchasing liquor from a retail licensee,
27 misrepresents his or her age or who for such purpose presents
28 or offers any written evidence of age which is false,
29 fraudulent or not actually his or her own or who illegally
30 attempts to purchase liquor from a retail licensee is guilty of
31 a misdemeanor and, upon conviction thereof, shall be fined
32 an amount not to exceed \$100 or confined in jail, or, in the
33 case of a juvenile, a detention facility, for a period not to
34 exceed seventy-two hours, or both fined and confined or, in
35 lieu of such fine and confinement, may, for the first offense,
36 be placed on probation for a period not exceeding one year.
37 Any person convicted under this section may be sentenced
38 pursuant to the provisions of section one-a, article eleven-a,
39 chapter sixty-two of this code.

40 (c) Any person who knowingly buys for, gives to or
41 furnishes to anyone under the age of twenty-one to whom he
42 or she is not related by blood or marriage any liquor from
43 whatever source is guilty of a misdemeanor and, upon
44 conviction thereof, shall be fined an amount not to exceed
45 \$250 dollars or confined in jail for a period not to exceed ten
46 days, or both fined and confined.

47 (d) No person while on the premises of a retail outlet may
48 consume liquor or break the seal on any package or bottle of
49 liquor. Any person who violates the provisions of this
50 subsection is guilty of a misdemeanor and, upon conviction
51 thereof, shall be fined an amount not to exceed \$100 or
52 confined in jail for a period not to exceed ten days, or both
53 fined and confined.

●

CHAPTER 157

**(S.B. 12 - By Senators Jenkins, Williams, Barnes, D. Facemire,
Wells, Chafin and White)**

[Passed April 9, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §17A-3-16 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17A-10-3 of said code, all relating to registration fees for vehicles; allowing a registrant to register a Class G vehicle for a two-year period; requiring all registrations for at least one full year; and facilitating expiration date changes.

Be it enacted by the Legislature of West Virginia:

That §17A-3-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17A-10-3 of said code be amended and reenacted, all to read as follows:

Article

- 3. Original and Renewal of Registration; Issuance of Certificates of Title.**
- 10. Fees for Registration, Licensing, etc.**

**ARTICLE 3. ORIGINAL AND RENEWAL OF
REGISTRATION; ISSUANCE OF
CERTIFICATES OF TITLE.**

§17A-3-16. Expiration of registration and certificates of title.

- 1 (a) Every vehicle registration under this chapter and
- 2 every registration card and registration plate issued under this

3 chapter expires at midnight on the last day of the month
4 designated by the commissioner: *Provided*, That the
5 commissioner may extend the period during which the
6 registration plates may be used.

7 Certificates of title need not be renewed annually but
8 remain valid until canceled by the division for cause or upon
9 a transfer of any interest shown in the vehicle.

10 (b) Notwithstanding the provisions of this section or of
11 any provision of this chapter, the commissioner shall adopt
12 a staggered registration system whereby the registration of
13 Class A motor vehicles is for a period of twelve consecutive
14 calendar months, the expiration dates of the registrations to
15 be staggered throughout the year: *Provided*, That on or after
16 July 1, 1997, the commissioner shall also offer an optional
17 two-year registration system whereby the registration of all
18 vehicles shall be for a period of twenty-four consecutive
19 calendar months, the expiration dates of the registrations to
20 be staggered throughout the year. Under this option, all
21 annual fees due at the time of registration shall be multiplied
22 by two.

23 (1) On or after July 1, 1997, all Class A motor vehicles as
24 defined in section one, article ten of this chapter shall be
25 registered for a period of twelve or twenty-four consecutive
26 calendar months. There hereby are established twelve
27 registration periods, each of which shall start on day one of
28 each calendar month of the year and shall end on the last day
29 of month twelve from date of beginning. The period ending
30 on January 31 is designated the first period; that ending on
31 February 28 or 29 is designated the second; that ending on
32 March 31 is designated the third; that ending on April 30 is
33 designated the fourth; that ending on May 31 is designated
34 the fifth; that ending on June 30 is designated the sixth; that
35 ending on July 31 is designated the seventh; that ending on
36 August 31 is designated the eighth; that ending on September

37 30 is designated the ninth; that ending on October 31 is
38 designated the tenth; that ending on November 30 is
39 designated the eleventh; and that ending on December 31 is
40 designated the twelfth.

41 (2) All Class A motor vehicles, which are operated for
42 the first time upon the public highways of this state to and
43 including day fifteen of any given month are subject to
44 registration and payment of the fee for the twelve- or 24-
45 month period commencing day one of the month of
46 operation. All Class A motor vehicles operated for the first
47 time upon the public highways of this state on and after day
48 sixteen of any given month are subject to registration and
49 payment of fee for the twelve- or 24-month period
50 commencing day one of the month of the next following
51 calendar month.

52 (c) On or before July 1, 1996, all Class T and Class R
53 vehicles shall be registered for a maximum period of three
54 years or portion thereof based on the number of years
55 remaining in the three year period designated by the
56 commissioner.

57 (d) On or before July 1, 2000, all Class C trailers shall be
58 registered for the duration of the owner's interest in the trailer
59 and shall not expire until either sold or otherwise
60 permanently removed from the service of the owner.

61 (e) Notwithstanding the provisions of this section or of
62 any other provision of this chapter to the contrary, the
63 commissioner shall on or before July 1, 2010, offer an
64 optional two-year registration for Class G vehicles. The
65 commissioner may offer extended prorated registration
66 renewal cycles to accommodate changes in designated
67 expiration dates.

**ARTICLE 10. FEES FOR REGISTRATION, LICENSING,
ETC.****§17A-10-3. Registration fees for vehicles equipped with
pneumatic tires.**

1 The following registration fees for the classes indicated
2 shall be paid to the division for the registration of vehicles
3 subject to registration under this chapter when equipped with
4 pneumatic tires:

5 (a) Registration fees for the following classes shall be
6 paid to the division annually:

7 (1) *Class A.* -- The registration fee for all motor vehicles
8 of this class is \$28.50: *Provided,* That the registration fees
9 and any other fees required by this chapter for Class A
10 vehicles under the optional biennial staggered registration
11 system shall be multiplied by two and paid biennially to the
12 division.

13 No license fee may be charged for vehicles owned by
14 churches, or by trustees for churches, which are regularly
15 used for transporting parishioners to and from church
16 services. Notwithstanding the exemption, the certificate of
17 registration and license plates shall be obtained the same as
18 other cards and plates under this article.

19 (2) *Class B.* -- The registration fee for all motor vehicles
20 of this class is as follows:

21 (A) For declared gross weights of eight thousand one
22 pounds to sixteen thousand pounds -- \$28 plus \$5 for each
23 one thousand pounds or fraction of one thousand pounds that
24 the gross weight of the vehicle or combination of vehicles
25 exceeds eight thousand pounds.

26 (B) For declared gross weights greater than sixteen
27 thousand pounds, but less than fifty-five thousand pounds --
28 \$78.50 plus \$10 for each one thousand or fraction of one
29 thousand pounds that the gross weight of the vehicle or
30 combination of vehicles exceeds sixteen thousand pounds.

31 (C) For declared gross weights of fifty-five thousand
32 pounds or more -- \$737.50 plus \$15.75 for each one thousand
33 pounds or fraction of one thousand pounds that the gross
34 weight of the vehicle or combination of vehicles exceeds
35 fifty-five thousand pounds.

36 (3) *Class G.* -- The registration fee for each motorcycle
37 or parking enforcement vehicle is \$8: *Provided,* That the
38 registration fee and any other fees required by this chapter for
39 Class G vehicles shall be for at least one year and under an
40 optional biennial registration system the annual fee shall be
41 multiplied by two and paid biennially to the division.

42 (4) *Class H.* -- The registration fee for all vehicles for
43 this class operating entirely within the state is \$5; and for
44 vehicles engaged in interstate transportation of persons, the
45 registration fee is the amount of the fees provided by this
46 section for Class B, reduced by the amount that the mileage
47 of the vehicles operated in states other than West Virginia
48 bears to the total mileage operated by the vehicles in all states
49 under a formula to be established by the Division of Motor
50 Vehicles.

51 (5) *Class J.* -- The registration fee for all motor vehicles
52 of this class is \$85. Ambulances and hearses used
53 exclusively as ambulances and hearses are exempt from the
54 special fees set forth in this section.

55 (6) *Class M.* -- The registration fee for all vehicles of this
56 class is \$17.50.

57 (7) *Class farm truck.* -- The registration fee for all motor
58 vehicles of this class is as follows:

59 (A) For farm trucks of declared gross weights of eight
60 thousand one pounds to sixteen thousand pounds -- \$30.

61 (B) For farm trucks of declared gross weights of sixteen
62 thousand one pounds to twenty-two thousand pounds -- \$60.

63 (C) For farm trucks of declared gross weights of twenty-
64 two thousand one pounds to twenty-eight thousand pounds --
65 \$90.

66 (D) For farm trucks of declared gross weights of twenty-
67 eight thousand one pounds to thirty-four thousand pounds --
68 \$115.

69 (E) For farm trucks of declared gross weights of thirty-
70 four thousand one pounds to forty-four thousand pounds --
71 \$160.

72 (F) For farm trucks of declared gross weights of forty-
73 four thousand one pounds to fifty-four thousand pounds --
74 \$205.

75 (G) For farm trucks of declared gross weights of fifty-
76 four thousand one pounds to eighty thousand pounds -- \$250:
77 *Provided*, That the provisions of subsection (a), section eight,
78 article one, chapter seventeen-e of this code do not apply if
79 the vehicle exceeds sixty-four thousand pounds and is a truck
80 tractor or road tractor.

81 (b) Registration fees for the following classes shall be
82 paid to the division for a maximum period of three years, or
83 portion of a year based on the number of years remaining in
84 the three-year period designated by the commissioner:

85 (1) *Class R.* -- The annual registration fee for all vehicles
86 of this class is \$12.

87 (2) *Class T.* -- The annual registration fee for all vehicles
88 of this class is \$8.

89 (c) The fees paid to the division for a multiyear
90 registration provided by this chapter shall be the same as the
91 annual registration fee established by this section and any
92 other fee required by this chapter multiplied by the number
93 of years for which the registration is issued.

94 (d) The registration fee for all Class C vehicles is \$50.
95 On or before July 1, 2000, all Class C trailers shall be
96 registered for the duration of the owner's interest in the trailer
97 and do not expire until either sold or otherwise permanently
98 removed from the service of the owner: *Provided*, That a
99 registrant may transfer a Class C registration plate from a
100 trailer owned less than thirty days to another Class C trailer
101 titled in the name of the registrant upon payment of the
102 transfer fee prescribed in section ten of this article.



CHAPTER 158

**(Com. Sub. for H.B. 2557 - By Delegates Webster, Guthrie,
Tabb, M. Poling, Hamilton and Stagers)**

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2009.]

AN ACT to amend and reenact §46A-6A-2, §46A-6A-3 and §46A-6A-3a of the Code of West Virginia, 1931, as amended, all relating to repairing or replacing a new motor vehicle under a new motor vehicle warranty; providing a definition of "motor vehicle"; making the provisions related to the enforcement of new motor vehicle warranties applicable to vehicles registered and titled in this state, regardless of where the vehicle was purchased; setting forth the liability of an authorized dealer as

to new motor vehicle warranties; and disclosing to a consumer in writing as to any repairs made by an authorized dealer to a new motor vehicle.

Be it enacted by the Legislature of West Virginia:

That §46A-6A-2, §46A-6A-3 and §46A-6A-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6A. CONSUMER PROTECTION-NEW MOTOR VEHICLE WARRANTIES.

§46A-6A-2. Definitions.

§46A-6A-3. Manufacturer's duty to repair or replace new motor vehicles.

§46A-6A-3a. Dealer's duty to disclose repairs to consumer.

§46A-6A-2. Definitions.

1 When used in this article, the following words, terms and
2 phrases shall have the meaning ascribed to them, except
3 where the context indicates a different meaning:

4 (1) "Consumer" means the purchaser, other than for
5 purposes of resale, of a new motor vehicle used primarily
6 for personal, family or household purposes, a person to
7 whom the new motor vehicle is transferred for the same
8 purposes during the duration of an express warranty
9 applicable to the motor vehicle and any other person
10 entitled by the terms of the warranty to enforce the
11 obligations of the warranty;

12 (2) "Manufacturer" means a person engaged in the
13 business of manufacturing, assembling or distributing motor
14 vehicles, who will, under normal business conditions during
15 the year, manufacture, assemble or distribute to dealers at
16 least ten new motor vehicles;

17 (3) "Manufacturer's express warranty" and "warranty"
18 mean the written warranty of the manufacturer of a new
19 motor vehicle of its condition and fitness for use, including
20 any terms or conditions precedent to the enforcement of
21 obligations under that warranty; and

22 (4) "Motor vehicle" means any passenger automobile
23 purchased in this state or registered and titled in this state,
24 including any pickup truck or van registered as a Class A
25 motor vehicle under the provisions of article ten, chapter
26 seventeen-a of this code, and any self-propelled motor
27 vehicle chassis of a motor home registered as a Class A or
28 Class B motor vehicle under the provisions of article ten,
29 chapter seventeen-a of this code.

§46A-6A-3. Manufacturer's duty to repair or replace new motor vehicles.

1 (a) If a new motor vehicle does not conform to all
2 applicable express warranties and the consumer reports the
3 nonconformity to the manufacturer, its agent or its authorized
4 dealer during the term of the express warranties or within a
5 period of one year following the date of original delivery of
6 the new motor vehicle to a consumer, whichever is the longer
7 period, the manufacturer, its agent or its authorized dealer
8 shall make the repairs necessary to conform the vehicle to the
9 express warranties, notwithstanding the fact that the repairs
10 are made after the expiration of the warranty term.

11 (b) If the manufacturer, its agents or its authorized dealer
12 are unable to conform the new motor vehicle to any
13 applicable express warranty by repairing or correcting any
14 defect or condition which substantially impairs the use or
15 market value of the motor vehicle to the consumer after a
16 reasonable number of attempts, the manufacturer shall

17 replace the new motor vehicle with a comparable new motor
18 vehicle which does conform to the warranties.

19 (c) No authorized dealer shall be held liable by the
20 manufacturer for any refunds or vehicle replacements in the
21 absence of evidence indicating that the dealership repairs
22 have been carried out in a manner substantially inconsistent
23 with the manufacturer's instruction. This section does not
24 create any cause of action by a consumer against an
25 authorized dealer.

§46A-6A-3a. Dealer's duty to disclose repairs to consumer.

1 All authorized dealers of new motor vehicles shall
2 provide to any consumer a written disclosure of any repairs
3 to a new motor vehicle that have a retail value of five percent
4 of the manufacturer's suggested retail price and were
5 performed after shipment from the manufacturer to the
6 dealer, including damage to the new motor vehicle while in
7 transit.

8 This disclosure requirement does not apply to identical
9 replacement of stolen or damaged accessories or their
10 components, tires or antennae.

11 For purposes of this section, a motor vehicle is not a new
12 motor vehicle when it has been previously titled or the motor
13 vehicle has been damaged in such a manner that, were the
14 damage not repaired, the value and usability of the motor
15 vehicle would be substantially impaired.



CHAPTER 159

(Com. Sub. for S.B. 256 - By Senator Snyder)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 11, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-6-4a; and to amend and reenact §8A-7-2 of said code, all relating to urban growth boundaries; definitions; providing new procedures for annexation without election and annexation by minor boundary adjustment for municipalities in growth counties that have an adopted countywide zoning ordinance which includes urban growth boundaries; setting requirements; and permitting urban growth boundaries in zoning ordinances.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §8-6-4a; and that §8A-7-2 of said code be amended and reenacted, all to read as follows:

Chapter

8. Municipal Corporations.

8A. Land Use Planning.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 6. ANNEXATION.

PART III - ANNEXATION WITHOUT ELECTION.

§8-6-4a. Annexation without election for municipalities in counties that have an adopted countywide zoning ordinance which includes urban growth boundaries.

1 (a) This section applies to municipalities in counties that
2 have adopted a countywide zoning ordinance with designated
3 urban growth boundaries and, prior to January 1, 2009, have
4 adopted local impact fees pursuant to the provisions of article
5 twenty, chapter seven of this code that want to annex
6 additional property without an election.

7 (b) For purposes of this section only:

8 (1) "Contiguous" means property that is next to, abutting
9 and having a boundary that is coterminous with the
10 municipality's designated urban growth boundary. The
11 length of a street, highway, road or other traffic or utility
12 easement, streams, rivers or other natural topography are not
13 to be used to determine if a property is contiguous: *Provided,*
14 That the width of a street, highway, road or other traffic or
15 utility easement, streams, rivers or other natural topography
16 may be used to determine contiguous boundaries.

17 (2) "Urban growth boundary" means a site-specific line,
18 delineated on a zoning map or a written description in a
19 zoning ordinance identifying an area around and outside the
20 corporate limits of a municipality within which there is a
21 sufficient supply of developable land within the boundary for
22 at least a prospective twenty-year period of municipal growth
23 based on demographic forecasts and the time reasonably
24 required to effectively provide municipal services to the
25 identified area. The urban growth boundary may be called by
26 any name chosen by the county commission, but the word
27 "boundary" shall be used in the name of the boundary. The

28 boundary shall be established by the county commission in
29 agreement with each individual municipality regarding that
30 municipality's boundary. If the county commission and
31 municipality cannot agree upon the location or size of the
32 boundary, either party may file for declaratory judgment
33 relief in the circuit court which shall submit the dispute to
34 mediation or arbitration prior to final resolution by the circuit
35 court. Once a county has adopted an urban growth boundary
36 by its designation on an adopted county zoning map, the
37 gross area inside the boundary may not be reduced without
38 written consent of the municipality. The county commission
39 shall review each urban growth boundary at a period not to
40 exceed ten years or upon request of the individual
41 municipality.

42 (c) *Procedure for a municipality to annex property within*
43 *an urban growth boundary. --*

44 (1) If the proposed property to be annexed by a
45 municipality is entirely within the municipality's designated
46 urban growth boundary, then the municipality may annex
47 without an election the proposed property pursuant to the
48 provisions of section four of this article. Agreement with the
49 county commission is not required.

50 (2) If the proposed property to be annexed by minor
51 boundary adjustment by a municipality is entirely within the
52 municipality's designated urban growth boundary, then the
53 municipality may annex without an election the proposed
54 property pursuant to the provisions of section four of this
55 article if the provisions of section five of this article are
56 followed, except that agreement with the county commission
57 is not required.

58 (d) *Procedure for a municipality to annex property within*
59 *urban growth boundaries of two or more municipalities. --*

60 If the proposed property to be annexed by a municipality
61 is partially or wholly within another municipality's urban
62 growth boundary, then the municipality may annex without
63 an election the proposed property pursuant to the provisions
64 of section four of this article if the two municipalities have
65 executed an intergovernmental agreement regarding the
66 annexation of the subject property. Agreement with the
67 county commission is not required.

68 (e) *Procedure for a municipality to annex contiguous*
69 *property outside an urban growth boundary. --*

70 (1) If the proposed property to be annexed by a
71 municipality is outside the municipality's designated urban
72 growth boundary, then the municipality may annex without
73 an election the proposed property pursuant to the provisions
74 of section four of this article, if:

75 (A) The proposed property to be annexed is contiguous
76 to the municipality, as defined in this section; and

77 (B) The municipality has the county commission's
78 agreement.

79 (2) Prior to the agreement of the county commission to
80 the annexation of the proposed property the county
81 commission shall:

82 (A) Hold a public hearing;

83 (B) Place a notice on the subject property, which notice
84 shall be the same as that required for property to be rezoned;
85 and

86 (C) At least fifteen days prior to the public hearing,
87 publish a notice of the date, time and place of the public
88 hearing as a Class I legal advertisement in compliance with
89 the provisions of article three, chapter fifty-nine of this code.

90 (f) *Procedure for a municipality to annex noncontiguous*
91 *property outside an urban growth boundary. --*

92 (1) If the proposed property to be annexed by a
93 municipality is entirely outside the municipality's designated
94 urban growth boundary and is not contiguous to the
95 municipality, as defined in this section, then the municipality
96 may annex without an election the proposed property
97 pursuant to the provisions of section four of this article if the
98 municipality has the county commission's agreement and,
99 prior to the agreement of the county commission to the
100 annexation of the proposed property, the county commission
101 shall:

102 (A) Hold a public hearing;

103 (B) Place a notice on the subject property, which notice
104 shall be the same as that required for property to be rezoned;
105 and

106 (C) At least fifteen days prior to the public hearing,
107 publish a notice of the date, time and place of the public
108 hearing as a Class I legal advertisement in compliance with
109 the provisions of article three, chapter fifty-nine of this code.

110 (2) After the public hearing and on-site notice, if the
111 county commission finds, by a written record, that the
112 proposed annexation is for the good of the county as a whole,
113 then the county commission may agree to the annexation.

114 (g) Prior to the county commission entering an order for
115 any annexation pursuant to this section, the annexed property
116 shall be surveyed by a licensed professional surveyor and a
117 metes and bounds description of the annexed property must
118 be provided to the county commission in which the property
119 is located.

120 (h) After a municipality has annexed property pursuant to
121 this section and the property has been surveyed, the county
122 commission shall enter an order. After the order is entered,
123 the corporate limits of the municipality include the annexed
124 property.

CHAPTER 8A. LAND USE PLANNING.

ARTICLE 7. ZONING ORDINANCE.

§8A-7-2. Contents of zoning ordinance.

1 (a) The following must be considered when enacting a
2 zoning ordinance:

3 (1) Promoting general public welfare, health, safety,
4 comfort and morals;

5 (2) A plan so that adequate light, air, convenience of
6 access and safety from fire, flood and other danger is
7 secured;

8 (3) Ensuring attractiveness and convenience is promoted;

9 (4) Lessening congestion;

10 (5) Preserving historic landmarks, sites, districts and
11 buildings;

12 (6) Preserving agricultural land; and

13 (7) Promoting the orderly development of land.

14 (b) A zoning ordinance may include the following:

15 (1) Regulating the use of land and designating or
16 prohibiting specific land uses;

17 (2) Authorizing flexible planning standards to create,
18 redevelop, reuse, protect and enhance the physical qualities
19 of the community;

20 (3) Designating historic districts and regulating the uses
21 of land and the design of buildings within the historic district;

22 (4) Establishing corridor overlay districts to achieve land
23 design goals and regulating the uses of land within the
24 corridor overlay districts;

25 (5) Establishing design standards and site plan approval
26 procedures;

27 (6) Dividing the land of the governing body into different
28 zone classifications regulating the use of land, establishing
29 performance standards for various land uses when dividing
30 is not desired or any combination of both;

31 (7) Authorizing overlay districts and special design
32 districts within which specific additional development
33 standards for each permitted, accessory and conditional use
34 shall apply;

35 (8) Regulating the height, area, bulk, use and
36 architectural features of buildings, including reasonable
37 exterior architectural features and reasonable aesthetic
38 standards for factory-built homes;

39 (9) Authorizing a process and standards for factory-built
40 homes: *Provided*, That a governing body is prohibited from
41 establishing a process and standards for regulating
42 factory-built homes that is more restrictive than a process and
43 standards for site-built homes;

44 (10) Preserving green spaces and requiring new green
45 spaces, landscaping, screening and the preservation of
46 adequate natural light;

47 (11) Regulating traffic flow and access, pedestrian flow
48 and access, parking and loading;

49 (12) Identifying flood-prone areas subject to periodic
50 flooding and regulating with specific control the permitted
51 use, type of construction and height of floor levels above
52 base flood elevation permitted in the area so as to lessen or
53 avoid the hazards to persons and damage to property
54 resulting from the accumulation of storm or flood waters;

55 (13) Designating an airport area and establishing land-use
56 regulations within a specific distance from the boundaries of
57 the airport;

58 (14) Authorizing planned unit developments to achieve
59 more efficient use of land and setting standards and
60 regulations for the developments; and

61 (15) Identifying, establishing and designating urban
62 growth boundaries, as defined in section four-a, article six,
63 chapter eight of this code, for municipalities.

64 (c) A zoning ordinance shall:

65 (1) Create a board of zoning appeals;

66 (2) Specify certification requirements for zoning district
67 maps that are consistent with the governing body's
68 comprehensive plan;

69 (3) Adopt procedures and requirements for
70 nonconforming land uses;

71 (4) Adopt procedures and requirements for variances; and

72 (5) Adopt procedures and requirements for conditional
73 use permits.

CHAPTER 160

**(H.B. 3197 - By Delegates Fleischauer, Beach, Shook,
Marshall, Manchin, Talbott, Miley, Mahan, Caputo,
Fragale and Perdue)**

[Amended and again passed May 27, 2009, as a result of the
objections of the Governor; in effect ninety days from passage.]

[Approved by the Governor on June 5, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-12-16b, relating to authorizing municipalities to appoint special litter prevention officers by ordinance; and authorizing special litter prevention officers to perform their duties as provided for by ordinance.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §8-12-16b, 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.**

§8-12-16b. Special litter prevention officers.

1 (a) A municipality that has adopted an anti-littering
2 ordinance pursuant to section five of this article may provide,
3 by ordinance, for the appointment of special litter prevention
4 officers to aid in the enforcement of the municipal anti-
5 littering ordinance.

6 (b) The ordinance enacted, pursuant to this section, must
7 specify the duties to be performed by the special litter
8 prevention officers and the required training such officers
9 must undertake prior to commencement of their duties.

10 (c) Notwithstanding any other provision of this code, a
11 special litter prevention officer may be presently employed by
12 the municipality in another capacity. In the performance of the
13 duties of special litter prevention officer, such officers shall be
14 vested with the power to issue a citation, issue a summons, and
15 sign a complaint. Such officers shall display at all times a badge
16 or other sign of authority issued by the municipality.

17 (d) The governing body of the municipality may require
18 such special litter prevention officers to give bond, payable
19 to the municipality, in its corporate name, with such sureties
20 and such penalties as the governing body may see fit,
21 conditioned for the faithful performance of their duties.

CHAPTER 161

(Com. Sub. for H.B. 2723 - By Delegates Morgan, Martin, Argento, Beach, Caputo, Eldridge, Andes and C. Miller)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 12, 2009.]

AN ACT to amend and reenact §8-13-13 of the Code of West Virginia, 1931, as amended, relating to authorizing municipalities to file liens for delinquent service fees; requiring municipal ordinances to have assessment and collection procedures for the service fees; requiring administrative procedures by municipalities for imposition of liens; and requiring the right to appeal to circuit court.

Be it enacted by the Legislature of West Virginia:

That §8-13-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13. TAXATION AND FINANCE.

PART III. SPECIAL CHARGES FOR MUNICIPAL SERVICES.

§8-13-13. Special charges for municipal services.

1 (a) Notwithstanding any charter provisions to the
2 contrary, a municipality which furnishes any essential or
3 special municipal service, including, but not limited to, police
4 and fire protection, parking facilities on the streets or
5 otherwise, parks and recreational facilities, street cleaning,
6 street lighting, street maintenance and improvement,

7 sewerage and sewage disposal, and the collection and
8 disposal of garbage, refuse, waste, ashes, trash and any other
9 similar matter, has plenary power and authority to provide by
10 ordinance for the installation, continuance, maintenance or
11 improvement of the service, to make reasonable regulations
12 of the service, and to impose by ordinance upon the users of
13 the service reasonable rates, fees and charges to be collected
14 in the manner specified in the ordinance.

15 (b) Any sewerage and sewage disposal service and any
16 service incident to the collection and disposal of garbage,
17 refuse, waste, ashes, trash and any other similar matter is
18 subject to the provisions of chapter twenty-four of this code.

19 (c) A municipality shall not have a lien on any property
20 as security for payments due under subsection (a) of this
21 section except as provided in subsection (d) of this section.

22 (d) A municipality has authority to enact an ordinance,
23 pursuant to this section, permitting it to file a lien on real
24 property located within the municipal corporate limits for
25 unpaid and delinquent fire, police or street fees. The
26 ordinance must provide an administrative procedure for the
27 municipality's assessment and collection of the fees. The
28 administrative procedure must require that, before any lien is
29 filed, the municipality will give notice to the property owner,
30 by certified mail, return receipt requested, that the
31 municipality will file the lien unless the delinquency is paid
32 by a date stated in the notice, which must be no less than
33 ninety days from the date the notice is mailed. The
34 administrative procedure must include the right to appeal to
35 the circuit court of the county in which the real property is
36 located. The circuit court shall consider the appeal under its
37 general authority, including but not limited to subsection (f),
38 section two, article two of chapter fifty-one of this code.

39 (e) Notwithstanding the provisions of section four, article
40 eleven of this chapter, any ordinance enacted or substantially
41 amended under the provisions of this section shall be

42 published as a Class II legal advertisement in compliance
43 with the provisions of article three, chapter fifty-nine of this
44 code. The publication area for the publication is the
45 municipality.

46 (f) In the event thirty percent of the qualified voters of the
47 municipality, by petition duly signed by them in their own
48 handwriting and filed with the recorder of the municipality
49 within forty-five days after the expiration of the publication,
50 protest against the ordinance as enacted or amended, the
51 ordinance shall not become effective until it is ratified by a
52 majority of the legal votes cast by the qualified voters of the
53 municipality at a regular municipal election or special
54 municipal election, as the governing body directs. Voting
55 shall not take place until after notice of the submission is
56 given by publication as provided in subsection (e) of this
57 section.

58 (g) The powers and authority granted to municipalities
59 and to the governing bodies of municipalities in this section
60 are in addition and supplemental to the powers and authority
61 named in any charters of the municipalities.

62 (h) Notwithstanding any other provisions of this section,
63 if rates, fees and charges provided in this section are imposed
64 by the governing body of a municipality for the purpose of
65 replacing, and in amounts approximately sufficient to replace
66 in its general fund amounts appropriated to be paid from ad
67 valorem taxes upon property within the municipality,
68 pursuant to an election duly called and held under the
69 Constitution and laws of the state to authorize the issuance
70 and sale of the municipality's general obligation bonds for
71 public improvement purposes, the call for the election shall
72 state that the governing body of the municipality proposes to
73 impose rates, fees and charges in specified amounts under
74 this section for the use of one or more of the services
75 specified in subsection (a) of this section, which shall be
76 related to the public improvement proposed to be made with
77 the proceeds of the bonds, no notice, publication of notice, or

78 referendum or election or other condition or prerequisite to
79 the imposition of the rates, fees and charges shall be required
80 or necessary other than the legal requirements for issuance
81 and sale of the general obligation bonds.

CHAPTER 162

**(S.B. 719 - By Senators Kessler, Williams, Unger, Laird
and Deem)**

[Passed April 7, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2009.]

AN ACT to amend and reenact §8-14-24 of the Code of West Virginia, 1931, as amended, relating to allowing a police officer meeting certain requirements to keep, without charge, his or her service weapon upon retirement.

Be it enacted by the Legislature of West Virginia:

That §8-14-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILDING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

§8-14-24. Right to receive complete standard uniform; right to acquire badge; and right to keep service weapon.

1 (a) A police officer, upon honorable retirement, is
2 authorized to maintain at his or her own cost a complete
3 standard uniform from the law-enforcement agency of which
4 he or she was a member and shall be issued an identification
5 card indicating his or her honorable retirement from the law-
6 enforcement agency. The uniform may be worn by the
7 officer in retirement only on the following occasions: Police
8 Officer's Memorial Day, Law-Enforcement Appreciation
9 Day, at the funeral of a law-enforcement officer or during
10 any other police ceremony. The honorably retired officer is
11 authorized to acquire a badge of the law-enforcement agency
12 from which he or she is retired with the word "retired" placed
13 on it.

14 (b) Upon retirement, a police officer is entitled to keep,
15 without charge, his or her service weapon after a
16 determination by the chief of police:

17 (1) That the police officer is retiring honorably with at
18 least twenty years of recognized law-enforcement service; or

19 (2) That the police officer is retiring with less than twenty
20 years of service and that he or she is totally physically
21 disabled as a result of service as a police officer.

22 (c) Notwithstanding the provisions of subsection (b) of
23 this section, the chief of police may not award a service
24 weapon to any police officer who has been declared mentally
25 incompetent by a licensed physician or a court of law, or
26 who, in the opinion of the chief of police, constitutes a
27 danger to any person or the community.

CHAPTER 163

**(Com. Sub. for H.B. 2421 - By Delegates Staggers, Perry,
Shaver, Rodighiero, Moye, Swartzmiller, Martin, Argento,
Crosier, D. Poling and Manypenny)**

[Passed April 10, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-19-22, relating to fire hydrants; requiring the marking of an inoperable fire hydrant; setting requirements for the marking; and defining inoperable.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §8-19-22, to read as follows:

**ARTICLE 19. MUNICIPAL AND COUNTY WATER WORKS
AND ELECTRIC POWER SYSTEMS.**

**§8-19-22. Identification requirement for fire hydrants that are
inoperable or unavailable for use in emergency
situations.**

- 1 (a) The owner or operator of a fire hydrant or any device
- 2 having the appearance of a fire hydrant that is located in a
- 3 place that an entity responsible for providing fire suppression
- 4 services in a fire emergency would expect a fire hydrant to
- 5 typically be located, shall mark the fire hydrant or device, as

6 set out in subsection (b) of this section, if the owner or
7 operator has actual knowledge that the fire hydrant or device
8 is inoperable or is unavailable for use by an entity providing
9 fire suppression services in a fire emergency.

10 (b) To mark the fire hydrant or device, the owner or
11 operator of the fire hydrant or device shall:

12 (1) Paint the fire hydrant or device black if the fire
13 hydrant or device is inoperable or unavailable for use; or

14 (2) Place a black tarp over the fire hydrant or device if the
15 device is temporarily inoperable or temporarily unavailable
16 for use in a fire emergency, for a period not to exceed
17 fourteen days.

18 (c) For the purposes of this section, the word
19 “inoperable” means a fire hydrant that does not produce
20 water flow when activated.



CHAPTER 164

**(S.B. 346 - By Senators Kessler, Browning, Foster, Jenkins,
Laird, Minard, Oliverio, Palumbo, Snyder, Stollings,
Williams, Yost, Barnes, Caruth, Deem and Hall)**

[Passed April 3, 2009; in effect ninety days from passage.]

[Approved by the Governor on April 11, 2009.]

AN ACT to amend and reenact §20-2-22 of the Code of West Virginia, 1931, as amended, relating to making a technical correction to an internal code reference related to bear tagging.

Be it enacted by the Legislature of West Virginia:

That §20-2-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-22. Tagging, removing, transporting and reporting bear, bobcat, deer, wild boar and wild turkey.

1 (a) Each person killing a bear, bobcat, deer, wild boar or
2 wild turkey found in a wild state shall either attach a
3 completed game tag to the animal or remain with the animal
4 and have upon his or her person a completed game tag before
5 removing the carcass in any manner from where it was killed.

6 (b) While transporting the carcass of a bear, bobcat, deer,
7 wild boar or wild turkey from where it was killed, each
8 person shall either attach a completed game tag to the animal
9 or have upon his or her person a completed game tag.

10 (c) Upon arriving at a residence, camp, hunting lodge,
11 vehicle or vessel each person shall attach a game tag to the
12 killed bear, bobcat, deer, wild boar or wild turkey. The game
13 tag shall remain on the carcass until it is retagged by a
14 conservation officer or an official checking station.

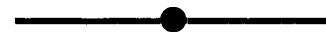
15 (d) If a person who does not possess a game tag kills a
16 bear, bobcat, deer, wild boar or wild turkey, he or she shall
17 make a tag. The tag shall bear the name, address and, if
18 applicable, the license number of the hunter and the time,
19 date and county of killing.

20 (e) The carcass of a wild turkey shall be delivered to a
21 conservation officer or an official checking station for
22 checking and retagging before it is either skinned or
23 transported beyond the boundaries of the county adjacent to
24 that in which the kill was made.

25 (f) The fresh skin and head or carcass of the deer shall be
26 delivered to a conservation officer or an official checking
27 station for checking and retagging before it is transported
28 beyond the boundaries of the county adjacent to that in which
29 the kill was made.

30 (g) A person who kills a bear shall treat the carcass and
31 remains in accordance with the provisions of section twenty-
32 two-a of this article.

33 (h) For each violation of this section a person is subject
34 to the penalties provided in this article.



CHAPTER 165

**(Com. Sub. for S.B. 470 - By Senators Kessler, Chafin,
Plymale and Stollings)**

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 11, 2009.]

AN ACT to amend and reenact §20-15-1, §20-15-2, §20-15-3, §20-15-4, §20-15-5 and §20-15-6 of the Code of West Virginia, 1931, as amended, all relating to regulating all-terrain vehicles and utility-terrain vehicles on the Hatfield-McCoy Trail; standardizing the definition of “all-terrain vehicle”; defining and regulating “utility-terrain vehicle”; defining and regulating “motorcycle”; extending the limitations of liability of the Hatfield-McCoy Regional Recreation Authority; and making stylistic and technical corrections.

Be it enacted by the Legislature of West Virginia:

That §20-15-1, §20-15-2, §20-15-3, §20-15-4, §20-15-5 and §20-15-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 15. ATV, UTV AND MOTORCYCLE RESPONSIBILITY ACT.

§20-15-1. Legislative findings.

§20-15-2. Definitions.

§20-15-3. Scope.

§20-15-4. Duties of authorized outfitters or licensees.

§20-15-5. Duties of participants.

§20-15-6. Liability of authorized outfitters and licensees.

§20-15-1. Legislative findings.

1 The West Virginia Legislature finds that trail-oriented
2 recreation for off-highway vehicle enthusiasts offered by the
3 Hatfield-McCoy Regional Recreation Authority significantly
4 contributes to the economy of West Virginia and is enjoyed
5 by a large and growing number of residents and nonresidents
6 alike. Since it is recognized that there are inherent risks in
7 the operation of such off-highway vehicles which should be
8 understood by each operator and which cannot be eliminated
9 by the Hatfield -McCoy Regional Recreation Authority or its
10 authorized outfitters or licensees, it is the purpose of this
11 article to define the areas of responsibility and affirmative
12 acts which authorized outfitters must perform or risk being
13 liable for loss, damage or injury suffered by participants and
14 to define the risk which the participants expressly assume and
15 for which there can be no recovery.

§20-15-2. Definitions.

1 The terms in this article have the following meaning,
2 unless the context clearly requires a different meaning:

3 (1) “All-terrain vehicle” or “ATV” means any motor
4 vehicle designed for off-highway use and designed to travel
5 on not less than three low-pressure tires, having a seat

6 designed to be straddled by the operator and handlebars for
7 steering control and intended by the manufacturer to be used
8 by a single operator or by an operator and no more than one
9 passenger.

10 (2) “Authorized outfitter” or “licensee” means a
11 commercial outfitter, which is a person, partnership, limited
12 liability company (“LLC”), corporation, other organization,
13 or any combination thereof, licensed by the Hatfield-McCoy
14 Regional Recreation Authority, who operates from any
15 temporary or permanent camp, private or public lodge, or
16 private home, who provides guided tours or the rental of all-
17 terrain vehicles, utility-terrain vehicles or motorcycles for use
18 on assigned lands for monetary profit or gain.

19 (3) “Low-pressure tire” means every tire in which twenty
20 pounds per square inch or less of compressed air is designed
21 to support the load.

22 (4) “Motorcycle” means any motor vehicle manufactured
23 with no more than two wheels and having a seat or saddle for
24 the use of the operator.

25 (5) “Participant” means any person using the facilities of
26 the Hatfield-McCoy Regional Recreation Authority.

27 (6) “Utility-terrain vehicle” or “UTV” means any motor
28 vehicle with four or more low-pressure tires designed for off-
29 highway use having bench or bucket seating for each
30 occupant and a steering wheel for control.

§20-15-3. Scope.

1 This article shall only apply to the Hatfield-McCoy
2 Regional Recreation Authority, authorized outfitters or
3 licensees and any participant as defined in section two of this
4 article.

§20-15-4. Duties of authorized outfitters or licensees.

1 (a) Every authorized outfitter or licensee shall:

2 (1) Mark for identification purposes all equipment and
3 vehicles used in the business;

4 (2) Maintain all equipment and vehicles used in the
5 business in such condition that the equipment and vehicles
6 are safe to operate or use as intended and recommended by
7 the manufacturer;

8 (3) Provide facilities, equipment and services conforming
9 to safety and other requirements established by the rules
10 promulgated by the Hatfield-McCoy Regional Recreation
11 Authority;

12 (4) Provide facilities, equipment and services as
13 advertised or as agreed to by the authorized outfitter or
14 licensee and the participant;

15 (5) Provide protective helmets which are size appropriate
16 and which meet the current performance specifications
17 established by the American National Standards Institute
18 standard, z 90.1, the United States Department of
19 Transportation federal motor vehicle safety standard no. 218
20 or Snell safety standards for protective headgear for vehicle
21 users as defined by subdivision (5), subsection (a), section
22 one, article one, chapter seventeen-f of this code, to all
23 persons using all-terrain vehicles, utility-terrain vehicles or
24 motorcycles;

25 (6) Provide all-terrain vehicles or motorcycles which are
26 age and size appropriate as recommended by the
27 manufacturer;

28 (7) Make reasonable and prudent efforts to ensure that
29 participants utilizing the facilities, equipment or services of

30 the authorized outfitter or licensee have received the safety
31 training required by the provisions of the legislative rule for
32 the use of the Hatfield-McCoy Regional Recreation Area;

33 (8) Make certain that every guide offered to participants
34 by the authorized outfitter or licensee has a current standard
35 first aid training certificate and CPR certificate issued by the
36 American Red Cross or its equivalent and ATV safety
37 training by the Hatfield-McCoy Recreation Authority or its
38 designee;

39 (9) Make certain that employees carry first aid kits when
40 acting as guides; and

41 (10) Make known to any participant utilizing the
42 facilities, equipment or services of the authorized outfitter or
43 licensee any dangerous condition as to trail lands, facilities or
44 equipment to be traversed or used which is known by the
45 outfitter or licensee.

46 (b) An authorized outfitter or licensee may not rent or
47 lease an all-terrain vehicle, utility-terrain vehicle or
48 motorcycle to a person under the age of eighteen years or
49 allow any owner-operated all-terrain vehicle, utility-terrain
50 vehicle or motorcycle on any guided tour when operated by
51 any person under the age of eighteen years without first
52 obtaining a written statement, signed by the minor's parent or
53 guardian certifying that:

54 (1) Any machine to be operated by the minor or his or her
55 parent or guardian is of a model that is recommended by the
56 manufacturer as appropriate to the minor's age and size;

57 (2) All rules governing the use of the vehicle and the
58 Hatfield-McCoy Recreation Area have been explained to the
59 minor in sufficient detail to enable the minor to abide by the
60 rules; and

61 (3) Any minor under the age of sixteen will remain under
62 the supervision of and the sight of the parent or guardian at
63 all times.

64 (c) An authorized outfitter or licensee may not rent or
65 lease a utility-terrain vehicle to any person who is not at least
66 sixteen years of age and in possession of a valid driver's
67 license.

68 (d) An authorized outfitter or licensee shall provide a
69 participant utilizing the facilities, equipment or services of
70 the authorized outfitter or licensee with written notification
71 of his or her duties as prescribed in section five of this article.
72 The participant shall sign the notification prior to using the
73 equipment. The signed notification, or an electronically
74 stored copy thereof, shall be kept on file by the outfitter or
75 licensee for not less than five years.

§20-15-5. Duties of participants.

1 (a) All participants:

2 (1) Shall comply with any requirements established by
3 law, including those in section one, article one, chapter
4 seventeen-f of this code which defines those acts prohibited
5 by operators of all-terrain vehicles;

6 (2) Shall comply with the rules or regulations established
7 for use of the Hatfield-McCoy Recreation Area;

8 (3) Shall, as to the Hatfield-McCoy Regional Recreation
9 Authority, authorized outfitter or licensee, expressly assume
10 the risk of and legal responsibility for any injury, loss or
11 damage to person or property which results from
12 participation in operating an all-terrain vehicle, utility-terrain
13 vehicle or motorcycle, and caused by any of the following:

- 14 (A) Variations in terrain, slope or angle of terrain;
- 15 (B) Surface or subsurface conditions including: Rocks,
16 trees or other forms of forest growth or debris;
- 17 (C) Collisions with signs, markers, width restrictors,
18 culverts, bridges, pipes, equipment, vehicles or any other
19 objects or fixtures used in trail management, maintenance,
20 construction or development;
- 21 (D) Collisions with signs, markers, pipes, equipment,
22 vehicles or any component thereof used in natural resource
23 maintenance, development or extraction;
- 24 (E) Collisions with electrical transmission poles, towers,
25 lines, guy wires or any component thereof;
- 26 (4) Shall obey all rules or instructions announced by the
27 Hatfield-McCoy Regional Recreation Authority, authorized
28 outfitter or licensee, with regard to the operation of the
29 all-terrain vehicle or motorcycle he or she is operating; and
- 30 (5) Shall wear all safety equipment provided by the
31 authorized outfitter or licensee, or which might otherwise be
32 required by law.
- 33 (b) Each participant shall have the sole individual
34 responsibility for:
- 35 (1) Knowing the range of his or her own ability to
36 negotiate any slope or trail;
- 37 (2) Operating the ATV, UTV or motorcycle within the
38 limits of the participant's own ability;
- 39 (3) Maintaining reasonable control of speed and course
40 at all times;

- 41 (4) Heeding all posted warnings;
- 42 (5) Operating only on trails designated by the Hatfield-
43 McCoy Regional Recreation Authority; and
- 44 (6) Refraining from acting in a manner which may cause
45 or contribute to the injury of any person.
- 46 (c) If while riding an ATV, UTV or motorcycle any
47 participant collides with any object or person, the
48 responsibility for the collision shall be solely that of the
49 participant or participants involved and not that of the
50 Hatfield-McCoy Regional Recreation Authority, authorized
51 outfitter or licensee unless the Hatfield-McCoy Regional
52 Recreation Authority, authorized outfitter or licensee or their
53 agent caused the collision in a tortious manner.
- 54 (d) After an accident, a participant may not leave the area
55 where the accident took place without:
- 56 (1) Leaving personal identification, including his or her
57 name and address;
- 58 (2) Notifying the proper authorities; and
- 59 (3) Obtaining assistance when he or she knows or
60 reasonably should know that any other person involved in the
61 accident is in need of medical or other assistance.
- 62 (e) Where a participant is a lawful passenger, that
63 participant may not distract or perform any act which might
64 interfere with the safe operation of the all-terrain vehicle,
65 utility-terrain vehicle or motorcycle of which he or she is a
66 passenger.
- 67 (f) Any person under the age of sixteen years shall
68 remain under the direct supervision and within sight of a

69 parent or guardian both of whom must otherwise comply
70 with state or federal laws and any rules or regulations
71 promulgated thereunder.

72 (g) A participant may not make any alterations or tamper
73 with the all-terrain vehicle, utility-terrain vehicle or
74 motorcycle he or she is operating or of which he or she is a
75 passenger in any way which would interfere with the
76 continued safe operation of that machine.

§20-15-6. Liability of authorized outfitters and licensees.

1 (a) Any authorized outfitter or licensee is liable for
2 injury, loss or damage caused by failure to follow the duties
3 set forth in section four of this article where the violation of
4 duty is causally related to the injury, loss or damage suffered.

5 (b) An authorized outfitter or licensee is not liable for any
6 injury, loss or damage caused by the negligence of any
7 person who is not an agent or employee of the authorized
8 outfitter or licensee.

9 (c) An authorized outfitter or licensee is not liable for any
10 injury, loss or damage caused by a participant's violation of
11 any duty described in section five of this article.

12 (d) An authorized outfitter or licensee is not liable for any
13 injury, loss or damage caused solely by the participant's
14 failure to negotiate the terrain or environment over which or
15 through which the participant is operating his or her all-
16 terrain vehicle, utility-terrain vehicle or motorcycle as
17 described in section five of this article.



CHAPTER 166

(S.B. 487 - By Senators Bowman and Snyder)

[Passed April 6, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 20, 2009.]

AN ACT to amend and reenact §29-6-7 of the Code of West Virginia, 1931, as amended, relating to the qualifications of the Director of the Division of Personnel.

Be it enacted by the Legislature of West Virginia:

That §29-6-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-7. Director of personnel; appointment; qualifications; powers and duties.

1 (a) The Secretary of the Department of Administration
2 shall appoint the director. The director shall be a person
3 knowledgeable of the application of the merit principles in
4 public employment as evidenced by the obtainment of a
5 degree in business administration, personnel administration,
6 public administration or the equivalent or at least five years
7 of administrative experience. The salary for the director shall
8 be that which is set out in section two-a, article seven,
9 chapter six of this code.

10 (b) The director shall:

11 (1) Consistent with the provisions of this article,
12 administer the operations of the division, allocating the
13 functions and activities of the division among sections as the
14 director may establish;

15 (2) Maintain a personnel management information system
16 necessary to carry out the provisions of this article;

17 (3) Supervise payrolls and audit payrolls, reports or
18 transactions for conformity with the provisions of this article;

19 (4) Plan, evaluate, administer and implement personnel
20 programs and policies in state government and to political
21 subdivisions after agreement by the parties;

22 (5) Supervise the employee selection process and employ
23 performance evaluation procedures;

24 (6) Develop programs to improve efficiency and
25 effectiveness of the public service, including, but not limited
26 to, employee training, development, assistance and
27 incentives, which, notwithstanding any provision of this code
28 to the contrary, may include a one-time monetary incentive
29 for recruitment and retention of employees in critically
30 understaffed classifications. The director, in consultation
31 with the board, shall determine which classifications are
32 critically understaffed. The one-time monetary incentive
33 program shall continue until June 30, 2009. The director
34 shall report annually on or before December 31, commencing
35 in the year 2007, to the Joint Committee on Government and
36 Finance. The annual report shall provide all relevant
37 information on the one-time monetary incentive program and
38 the understaffed classifications in state agencies;

39 (7) Establish pilot programs and other projects for a
40 maximum of one year outside of the provisions of this article,
41 subject to approval by the board, to be included in the annual
42 report;

43 (8) Establish and provide for a public employee
44 interchange program and may provide for a voluntary
45 employee interchange program between public and private
46 sector employees;

47 (9) Establish an internship program;

48 (10) Assist the Governor and Secretary of the Department
49 of Administration in general workforce planning and other
50 personnel matters;

51 (11) Make an annual report to the Governor and
52 Legislature and all other special or periodic reports as may be
53 required;

54 (12) Assess cost for special or other services;

55 (13) Recommend rules to the board for implementation
56 of this article; and

57 (14) Conduct schools, seminars or classes for supervisory
58 employees of the state regarding handling of complaints and
59 disciplinary matters and the operation of the state personnel
60 system.

CHAPTER 167

(Com. Sub. for H.B. 3305 - By Delegates Webster, Caputo, Frazier, Hutchins, Kominar, Miley, Moore and Stagers)

[Passed April 10, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §62-12-6 of the Code of West Virginia, 1931, as amended, relating to the powers and duties of probation officers; authorizing probation officers to arrest persons who violate conditions of probation or supervised release; eliminating the authority of probation officers to collect money; eliminating the requirement that probation officers post bond; and specifying the manner in which probation officers may exercise the power to arrest probationers and persons under their supervision.

Be it enacted by the Legislature of West Virginia:

That §62-12-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-6. Powers and duties of probation officers.

1 (a) Each probation officer shall investigate all cases
2 which the court refers to the officer for investigation and
3 shall report in writing on each case. The probation officer
4 shall furnish to each person released on probation under the
5 officer's supervision a written statement of the probationer's
6 conditions of probation together with a copy of the rules

7 prescribed by the court for the supervision of probationers.
8 The probation officer shall stay informed concerning the
9 conduct and condition of each probationer under the officer's
10 supervision and shall report on the conduct and condition of
11 each probationer in writing as often as the court requires.
12 The probation officer shall use all practicable and suitable
13 methods to aid and encourage the probationer to improve his
14 or her conduct and condition. The probation officer shall
15 maintain detailed work records and shall perform any other
16 duties the court requires. The probation officer has authority,
17 with or without an order or warrant, to arrest any probationer
18 as provided in section ten of this article, and to arrest any
19 person on supervised release when there is reasonable cause
20 to believe that the person on supervised release has violated
21 a condition of release. A person on supervised release so
22 arrested shall be brought before the court for a prompt and
23 summary hearing.

24 (b) Notwithstanding any provision of this code to the
25 contrary:

26 (1) Any probation officer appointed on or after July 1,
27 2002, may carry handguns in the course of the officer's
28 official duties after meeting specialized qualifications
29 established by the Governor's Committee on Crime,
30 Delinquency and Correction, which qualifications shall
31 include the successful completion of handgun training,
32 including a minimum of four hours' training in handgun
33 safety and comparable to the handgun training provided to
34 law-enforcement officers by the West Virginia State Police.

35 (2) Probation officers may only carry handguns in the
36 course of their official duties after meeting the specialized
37 qualifications set forth in subdivision (1) of this subsection.

38 (3) Nothing in this subsection includes probation
39 officers within the meaning of law-enforcement officers as
40 defined in section one, article twenty-nine, chapter thirty of
41 this code.

CHAPTER 168

**(H.B. 2539 - By Delegates Morgan, Stephens, Argento, Cann
and C. Miller)**

[Passed April 11, 2009; in effect ninety days from passage.]

[Approved by the Governor on May 12, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-1-19, relating to professional licensing boards; authorizing the combining of administrative staff functions of boards; requiring consultation with the office of the Attorney General; requiring memorandum of understanding; and authorizing emergency rules and rulemaking.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §30-1-19, to read as follows:

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO STATE BOARDS.

§30-1-19. Combining board staff functions.

- 1 (a) Any board referred to in this chapter may combine
- 2 administrative staff functions with any other board or boards
- 3 referred to in this chapter, pursuant to the provisions of
- 4 subsection (b) of this section, to carry out the administrative
- 5 duties of the boards as set forth in this article, the practice

6 acts of each board set forth in this chapter and the legislative
7 rules of each board: *Provided*, That each board retains
8 responsibility for fulfilling its statutory duties.

9 (b) Before combining administrative staff functions
10 pursuant to subsection (a) of this section, the boards shall, in
11 consultation with the office of the Attorney General, enter
12 into a memorandum of understanding with the following
13 provisions:

14 (1) The names of the boards combining administrative
15 staff functions;

16 (2) The administrative staff functions being combined,
17 including the staffs' titles and duties relative to each board;

18 (3) The prorata share of expenses that each board will be
19 responsible for paying, including salaries, office rent, office
20 supplies, telephone, fax and computer services, travel
21 expenses and any other expenses anticipated by the boards;

22 (4) A description of how decisions will be made by the
23 boards, including employment of staff, the staff's functions
24 and duties, and any other necessary decisions;

25 (5) A description of how modifications may be made to
26 the terms of the agreement; and

27 (6) Any other provisions necessary to set forth the
28 agreement of the boards.

29 (c) The boards that combine administrative staff
30 functions pursuant to this section, may promulgate rules in
31 accordance with the provisions of chapter twenty-nine-a of
32 this code, to make any necessary changes to facilitate the
33 combining of administrative staff functions. The boards may
34 also promulgate emergency rules pursuant to the provisions
35 of section fifteen, article three, chapter twenty-nine-a of this
36 code, to correct any conflicts with a board's current rules.

●

CHAPTER 169

**(H.B. 2801 - By Delegates Morgan, Stephens, Hatfield,
Staggers, Perry, Perdue and Craig)**

[Passed April 11, 2009; in effect July 1, 2009.]
[Approved by the Governor on May 12, 2009.]

AN ACT to amend and reenact §30-3-7 of the Code of West Virginia, 1931, as amended; relating to updating language and making technical changes clarifying that the Board of Medicine is an autonomous board which may hire its employees at the board's will and pleasure, and providing for continuation of employment and coverage under the classified service of the Division of Personnel for current employees.

Be it enacted by the Legislature of West Virginia:

That §30-3-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-7. Powers and duties of West Virginia Board of Medicine.

- 1 (a) The board is autonomous and, in accordance with this
- 2 article, shall determine qualifications of applicants for
- 3 licenses to practice medicine and surgery, to practice
- 4 podiatry, and to practice as a physician assistant for a
- 5 physician licensed under this article, and shall issue licenses
- 6 to qualified applicants and shall regulate the professional

7 conduct and discipline of such individuals. In carrying out its
8 functions, the board may:

9 (1) Adopt such rules as are necessary to carry out the
10 purposes of this article;

11 (2) Hold hearings and conduct investigations, subpoena
12 witnesses and documents and administer oaths;

13 (3) Institute proceedings in the courts of this state to
14 enforce its subpoenas for the production of witnesses and
15 documents and its orders and to restrain and enjoin violations
16 of this article and of any rules promulgated under it;

17 (4) Employ investigators, attorneys, hearing examiners,
18 consultants and such other employees as may be necessary,
19 who shall be exempt from the classified service of the
20 Division of Personnel and who shall serve at the will and
21 pleasure of the board. In addition, all personnel employed
22 through the Department of Health and Human Resources on
23 June 30, 2009, to provide services for the board are hereby
24 transferred to the board effective July 1, 2009. However, the
25 employment, salary, benefits or position classification of any
26 person transferred under this section may not be reduced or
27 diminished by reason of this section. All persons transferred
28 shall retain their coverage under the classified service of the
29 Division of Personnel and all matters relating to job
30 classification, job tenure and conditions of employment shall
31 remain in force and effect from and after the date of this
32 section, to the same extent as if this section had not been
33 reenacted. Also, nothing herein shall prohibit the disciplining
34 or dismissal of any employee for cause.

35 (5) Enter into contracts and receive and disburse funds
36 according to law;

37 (6) Establish and certify standards for the supervision and
38 certification of physician assistants;

39 (7) Authorize medical and podiatry corporations in
40 accordance with the limitations of section fifteen of this
41 article to practice medicine and surgery or podiatry through
42 duly licensed physicians or podiatrists; and

43 (8) Perform such other duties as are set forth in this
44 article or otherwise provided for in this code.

45 (b) The board shall submit an annual report of its
46 activities to the Legislature. The report shall include a
47 statistical analysis of complaints received, charges
48 investigated, charges dismissed after investigation, the
49 grounds for each such dismissal and disciplinary proceedings
50 and disposition.



CHAPTER 170

**(Com. Sub. for S.B. 293 - By Senators Foster, Stollings,
Jenkins, Bowman, Prezioso, Green, Plymale, Deem, Palumbo,
Kessler, Guills, White and Williams)**

[Passed April 11, 2009; in effect ninety days from passage.]

[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §30-3-13 of the Code of West Virginia, 1931, as amended, relating to unauthorized practice of medicine and surgery or podiatry or as a physician assistant; criminal penalties; reducing the amount of fine for a person practicing on an expired, lapsed or terminated license for less than ninety days; and specifying as a felony the intentional unauthorized practice of medicine and surgery or podiatry or as a physician assistant in all other instances.

Be it enacted by the Legislature of West Virginia:

That §30-3-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-13. Unauthorized practice of medicine and surgery or podiatry; criminal penalties; limitations.

1 (a) A person may not engage in the practice of medicine
2 and surgery or podiatry, hold himself or herself out as
3 qualified to practice medicine and surgery or podiatry or use
4 any title, word or abbreviation to indicate to or induce others
5 to believe that he or she is licensed to practice medicine and
6 surgery or podiatry in this state unless he or she is actually
7 licensed under the provisions of this article. A person
8 engaged in the practice of telemedicine is considered to be
9 engaged in the practice of medicine within this state and is
10 subject to the licensure requirements of this article. As used
11 in this section, the term "practice of telemedicine" means the
12 use of electronic information and communication
13 technologies to provide health care when distance separates
14 participants and includes one or both of the following: (1)
15 The diagnosis of a patient within this state by a physician
16 located outside this state as a result of the transmission of
17 individual patient data, specimens or other material by
18 electronic or other means from within this state to the
19 physician or his or her agent; or (2) the rendering of
20 treatment to a patient within this state by a physician located
21 outside this state as a result of transmission of individual
22 patient data, specimens or other material by electronic or
23 other means from within this state to the physician or his or
24 her agent. No person may practice as a physician assistant,
25 hold himself or herself out as qualified to practice as a
26 physician assistant or use any title, word or abbreviation to
27 indicate to or induce others to believe that he or she is
28 licensed to practice as a physician assistant in this state unless

29 he or she is actually licensed under the provisions of this
30 article.

31 (b) Any person who intentionally practices, or holds
32 himself or herself out as qualified to practice, or uses any
33 title, word or abbreviation to indicate to or induce others to
34 believe he or she is licensed to practice a health care
35 profession licensed under this article with a license classified
36 by the board as expired, lapsed or terminated, for any period
37 of time up to ninety days, is guilty of a misdemeanor and,
38 upon conviction thereof, shall be fined not more than \$5,000
39 or confined in jail not more than twelve months, or both fined
40 and confined.

41 (c) Any person who intentionally practices, or holds
42 himself or herself out as qualified to practice, or uses any
43 title, word or abbreviation to indicate to or induce others to
44 believe he or she is licensed to practice as a physician,
45 podiatrist or physician assistant without obtaining an active,
46 valid West Virginia license to practice that profession or with
47 a license that is: (1) Expired, terminated or lapsed, for over
48 ninety days; or (2) inactive, revoked, suspended or
49 surrendered, is guilty of a felony and, upon conviction
50 thereof, shall be fined not more than \$10,000 or imprisoned
51 in a state correctional facility for not less than one year nor
52 more than five years, or both fined and imprisoned.

53 (d) The provisions of this section do not apply to:

54 (1) Persons who are duly licensed health care providers
55 under other pertinent provisions of this code and are acting
56 within the scope of their license;

57 (2) Physicians or podiatrists licensed in other states or
58 foreign countries who are acting in a consulting capacity with
59 physicians or podiatrists duly licensed in this state for a
60 period of not more than three months: *Provided*, That this
61 exemption is applicable on a one-time only basis;

62 (3) An individual physician or podiatrist, or physician or
63 podiatrist groups, or physicians or podiatrists at a tertiary care
64 or university hospital outside this state and engaged in the
65 practice of telemedicine who consult or render second
66 opinions concerning diagnosis or treatment of patients within
67 this state: (i) In an emergency or without compensation or
68 expectation of compensation; or (ii) on an irregular or
69 infrequent basis which occurs less than once a month or less
70 than twelve times in a calendar year;

71 (4) Persons holding licenses granted by another state or
72 foreign country who are commissioned medical officers of,
73 a member of or employed by the armed forces of the United
74 States, the United States Public Health Service, the Veterans'
75 Administration of the United States, any federal institution or
76 any other federal agency while engaged in the performance
77 of their official duties;

78 (5) Any person providing first-aid care in emergency
79 situations;

80 (6) The practice of the religious tenets of any recognized
81 church in the administration of assistance to the sick or
82 suffering by mental or spiritual means;

83 (7) Visiting medical faculty engaged in teaching or
84 research duties at a medical school or institution recognized
85 by the board and who are in this state for periods of not more
86 than six months: *Provided*, That the individuals do not
87 otherwise engage in the practice of medicine or podiatry
88 outside of the auspices of their sponsoring institutions;

89 (8) Persons enrolled in a school of medicine approved by
90 the liaison committee on medical education or by the board,
91 or persons enrolled in a school of podiatric medicine
92 approved by the council of podiatry education or by the
93 board, or persons enrolled in an undergraduate or graduate
94 physician assistant program approved by the committee on
95 allied health education and accreditation or its successor on

96 behalf of the American Medical Association or by the board,
97 or persons engaged in graduate medical training in a program
98 approved by the liaison committee on graduate medical
99 education or the board, or engaged in graduate podiatric
100 training in a program approved by the council on podiatric
101 medical education or by the board, who are performing
102 functions in the course of training including with respect to
103 functions performed by medical residents or medical students
104 under the supervision of a licensed physician, ordering and
105 obtaining laboratory tests, medications and other patient
106 orders by computer or other electronic means and no other
107 provision of this code to the contrary may be construed to
108 prohibit or limit medical residents' or medical students' use of
109 computers or other electronic devices in this manner;

110 (9) The fitting, recommending or sale of corrective shoes,
111 arch supports or similar mechanical appliances in commercial
112 establishments; and

113 (10) The fitting or sale of a prosthetic or orthotic device
114 not involving any surgical procedure, in accord with a
115 prescription of a physician, osteopathic physician or where
116 chiropractors or podiatrists are authorized by law to prescribe
117 such a prosthetic or orthotic device, in accord with a
118 prescription of a chiropractor or podiatrist, by a practitioner
119 certified in the provision of custom orthotic and prosthetic
120 devices, respectively, by a nationally recognized
121 credentialing body for orthotics and prosthetics that is
122 accredited by the National Commission for Certifying
123 Agencies (NCCA): *Provided*, That the sale of any prosthetic
124 or orthotic device by a partnership, proprietorship or
125 corporation which employs such a practitioner or registered
126 technician who fitted the prosthetic or orthotic device shall
127 not constitute the unauthorized practice of medicine:
128 *Provided, however*, That the practitioner or registered
129 technician may, without a prescription, make
130 recommendation solely to a physician or osteopathic
131 physician or to a chiropractor or podiatrist otherwise

132 authorized by law to prescribe a particular prosthetic or
133 orthotic device regarding any prosthetic or orthotic device to
134 be used for a patient upon a request for such
135 recommendation.

136 (e) This section may not be construed as being in any
137 way a limitation upon the services of a physician assistant
138 performed in accordance with the provisions of this article.

139 (f) Persons covered under this article may be permitted to
140 utilize electronic signature or unique electronic identification
141 to effectively sign materials, transmitted by computer or
142 other electronic means, upon which signature is required for
143 the purpose of authorized medical practice. Such signatures
144 are deemed legal and valid for purposes related to the
145 provision of medical services. This subsection does not
146 confer any new practice privilege or right on any persons
147 covered under this article.

CHAPTER 171

**(Com. Sub. for H.B. 2839 - By Delegates Perdue, Boggs,
Hatfield, Border, Moore, Moye and Rodighiero)**

[Passed April 8, 2009; in effect ninety days from passage.]

[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §30-3A-1 and §30-3A-2 of the Code of West Virginia, 1931, as amended, all relating to the management of pain by physicians; eliminating the definition of "intractable pain" and defining the word "pain"; making conforming amendments to the Management of Pain Act; and

expanding the definition of "pain-relieving controlled substance" in the Act.

Be it enacted by the Legislature of West Virginia:

That §30-3A-1 and §30-3A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3A. MANAGEMENT OF PAIN ACT.

§30-3A-1. Definitions.

§30-3A-2. Limitation on disciplinary sanctions or criminal punishment related to management of pain.

§30-3A-1. Definitions.

1 For the purposes of this article, the words or terms
2 defined in this section have the meanings ascribed to them.
3 These definitions are applicable unless a different meaning
4 clearly appears from the context.

5 (1) An "accepted guideline" is a care or practice guideline
6 for pain management developed by a nationally recognized
7 clinical or professional association or a specialty society or
8 government-sponsored agency that has developed practice or
9 care guidelines based on original research or on review of
10 existing research and expert opinion. An accepted guideline
11 also includes policy or position statements relating to pain
12 management issued by any West Virginia board included in
13 chapter thirty of the West Virginia Code with jurisdiction
14 over various health care practitioners. Guidelines established
15 primarily for purposes of coverage, payment or
16 reimbursement do not qualify as accepted practice or care
17 guidelines when offered to limit treatment options otherwise
18 covered by the provisions of this article.

19 (2) "Board" or "licensing board" means the West Virginia
20 Board of Medicine, the West Virginia Board of Osteopathy,

21 the West Virginia Board of Registered Nurses or the West
22 Virginia Board of Pharmacy.

23 (3) "Nurse" means a registered nurse licensed in the State
24 of West Virginia pursuant to the provisions of article seven
25 of this chapter.

26 (4) "Pain" means an unpleasant sensory and emotional
27 experience associated with actual or potential tissue damage
28 or described in terms of such damage.

29 (5) "Pain-relieving controlled substance" includes, but is
30 not limited to, an opioid or other drug classified as a
31 Schedule II through V controlled substance and recognized
32 as effective for pain relief, and excludes any drug that has no
33 accepted medical use in the United States or lacks accepted
34 safety for use in treatment under medical supervision
35 including, but not limited to, any drug classified as a
36 Schedule I controlled substance.

37 (6) "Pharmacist" means a registered pharmacist licensed
38 in the State of West Virginia pursuant to the provisions of
39 article five of this chapter.

40 (7) "Physician" means a physician licensed in the State of
41 West Virginia pursuant to the provisions of article three or
42 article fourteen of this chapter.

**§30-3A-2. Limitation on disciplinary sanctions or criminal
punishment related to management of pain.**

1 (a) A physician is not subject to disciplinary sanctions by
2 a licensing board or criminal punishment by the state for
3 prescribing, administering or dispensing pain-relieving
4 controlled substances for the purpose of alleviating or
5 controlling pain if:

6 (1) In the case of a dying patient experiencing pain, the
7 physician practices in accordance with an accepted guideline
8 as defined in section one of this article and discharges his or
9 her professional obligation to relieve the dying patient's pain
10 and promote the dignity and autonomy of the dying patient;
11 or

12 (2) In the case of a patient who is not dying and is
13 experiencing pain, the physician discharges his or her
14 professional obligation to relieve the patient's pain, if the
15 physician can demonstrate by reference to an accepted
16 guideline that his or her practice substantially complied with
17 that accepted guideline. Evidence of substantial compliance
18 with an accepted guideline may be rebutted only by the
19 testimony of a clinical expert. Evidence of noncompliance
20 with an accepted guideline is not sufficient alone to support
21 disciplinary or criminal action.

22 (b) A registered nurse is not subject to disciplinary
23 sanctions by a licensing board or criminal punishment by the
24 state for administering pain-relieving controlled substances
25 to alleviate or control pain, if administered in accordance
26 with the orders of a licensed physician.

27 (c) A registered pharmacist is not subject to disciplinary
28 sanctions by a licensing board or criminal punishment by the
29 state for dispensing a prescription for a pain-relieving
30 controlled substance to alleviate or control pain, if dispensed
31 in accordance with the orders of a licensed physician.

32 (d) For purposes of this section, the term "disciplinary
33 sanctions" includes both remedial and punitive sanctions
34 imposed on a licensee by a licensing board, arising from
35 either formal or informal proceedings.

36 (e) The provisions of this section apply to the treatment
37 of all patients for pain, regardless of the patient's prior or
38 current chemical dependency or addiction. The board may

39 develop and issue policies or guidelines establishing
40 standards and procedures for the application of this article to
41 the care and treatment of persons who are chemically
42 dependent or addicted.

CHAPTER 172

**(Com. Sub. for S.B. 526 - By Senators Foster,
Stollings and Laird)**

[Passed April 7, 2009; in effect from passage.]

[Approved by the Governor on April 20, 2009.]

AN ACT to amend and reenact §30-14-1, §30-14-2, §30-14-4, §30-14-5, §30-14-6 and §30-14-10 of the Code of West Virginia, 1931, as amended, all relating to the regulation of osteopathy; defining terms; revising requirements for post-doctoral training as a requirement for licensure; providing for educational permits for post-doctoral clinical training; authorizing the promulgation of an emergency legislative rule; eliminating redundant language regarding licenses, internships, formation of medical corporations and fees; and defining the scope and duration of educational permits.

Be it enacted by the Legislature of West Virginia:

That §30-14-1, §30-14-2, §30-14-4, §30-14-5, §30-14-6 and §30-14-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-1. License required.

§30-14-2. Definitions.

§30-14-4. Application for license or educational permit.

§30-14-5. Examination.

§30-14-6. Issuance of license without examination; fee.

§30-14-10. Renewal of license; fee; refresher training a prerequisite; effect of failure to renew; reinstatement; educational permit.

§30-14-1. License required.

1 It is unlawful for any person to practice or offer to
2 practice medicine and surgery as an osteopathic physician
3 and surgeon in this state without a license or permit issued by
4 the West Virginia Board of Osteopathy: *Provided*, That any
5 license heretofore issued under the laws of this state,
6 authorizing its holder to practice osteopathy and surgery,
7 shall in no way be affected by the enactment of this article;
8 except that the holder of every such license shall be subject
9 to all of the provisions of this article respecting the
10 requirements and obligations herein prescribed for the
11 continuance in force of such license.

§30-14-2. Definitions.

1 For the purposes of this article:

2 (a) "Accredited osteopathic college" means a college of
3 osteopathy and surgery which requires as a minimum
4 prerequisite for admission preprofessional training of at least
5 two years of academic work in specified scientific subjects,
6 as prescribed by the board or by the college accrediting
7 agency of the American Osteopathic Association, in an
8 accredited college of arts and sciences and which requires for
9 graduation a course of study approved by the board in
10 accordance with the minimum standards established by the
11 American Osteopathic Association;

12 (b) "Approved program of post-graduate clinical
13 training" means a program of clinical training approved by,
14 or subject of approval by, the American Osteopathic

15 Association or approved by the Accreditation Council for
16 Graduate Medical Education for the purposes of intern or
17 resident training;

18 (c) “Board” means the West Virginia Board of
19 Osteopathy;

20 (d) “License” means legal authorization issued by the
21 board to a fully qualified osteopathic physician to engage in
22 the regular practice of osteopathic medicine and surgery;

23 (e) “Osteopathy” means that system of the healing art
24 which places the chief emphasis on the structural integrity of
25 the body mechanism as being the most important single
26 factor in maintaining the well-being of the organism in health
27 and disease;

28 (f) “Permit” means a limited, legal authorization issued
29 by the board to an osteopathic physician to practice
30 osteopathic medicine and surgery in this state while serving
31 under special circumstances of public need or while
32 undergoing post-graduate clinical training as a prerequisite to
33 licensure;

34 (g) “Reciprocal endorsement” means a duly authenticated
35 verification of the board, addressed to a board or agency of
36 another country, state, territory, province or the District of
37 Columbia, vouching that a license issued to an osteopathic
38 physician and surgeon pursuant to the laws of this state is
39 currently valid and not suspended or revoked for any cause
40 or causes specified in this article.

§30-14-4. Application for license or educational permit.

1 (a) Each applicant for examination by the board, with the
2 exception of assistants to osteopathic physicians and
3 surgeons, as hereinafter provided, shall submit an application
4 therefor on forms prepared and furnished by the board.

5 (b) Each applicant for a license shall furnish evidence,
6 verified by oath and satisfactory to the board, establishing
7 that the applicant has satisfied the following requirements:

8 (1) The applicant is eighteen years of age or over;

9 (2) The applicant is of good moral character;

10 (3) The applicant has graduated from an accredited
11 osteopathic college;

12 (4) The applicant has successfully completed either of the
13 following:

14 (A) A minimum of one year of post-doctoral, clinical
15 training in a program approved by the American Osteopathic
16 Association; or

17 (B) A minimum of one year of post-doctoral, clinical
18 training in a program approved by the Accreditation Council
19 for Graduate Medical Education and forty hours of
20 continuing medical education in osteopathic manipulative
21 medicine and osteopathic manipulative treatment in courses
22 approved, and classified as Category 1A, by the American
23 Osteopathic Association.

24 (c) Each applicant for an educational permit shall furnish
25 evidence, verified by oath and satisfactory to the board,
26 establishing that the applicant has satisfied the following
27 requirements:

28 (1) The applicant is eighteen years of age or over;

29 (2) The applicant is of good moral character;

30 (3) The applicant has graduated from an accredited
31 osteopathic college; and

32 (4) The applicant is under contract as an intern or resident
33 in an approved program of post-graduate clinical training.

34 (d) The board may not issue a license or permit to any
35 person until the applicant has paid the application fee
36 established by legislative rule of the board.

37 (e) In order to give timely effect to the amendments to
38 this section and section ten of this article, the board is
39 authorized to propose a legislative rule consistent with these
40 amendments as an emergency rule under the provisions of
41 section fifteen, article three, chapter twenty-nine-a of this
42 code.

§30-14-5. Examination.

1 In order to receive a license to practice osteopathic
2 medicine and surgery, an applicant must satisfactorily
3 complete a standard, national examination, specified through
4 legislative rule of the board or an examination administered
5 by the licensing authority of another state and approved by
6 the board as equivalent to the national examination or to the
7 former West Virginia state examination.

8 The examination for a license to practice medicine and
9 surgery as an osteopathic physician and surgeon shall cover
10 substantive and clinical knowledge in all the essential
11 branches of medicine and surgery including anatomy,
12 physiology, chemistry, pharmacology, pathology, public
13 health--preventive medicine, surgery, obstetrics and
14 gynecology, osteopathic medicine, materia medica principles
15 and practice of osteopathy. The list of subjects may be
16 expanded or regrouped at the discretion of the board.

§30-14-6. Issuance of license without examination; fee.

1 The board may at its discretion issue a license without
2 examination to an applicant who has been licensed by the

3 national board of examiners for osteopathic physicians and
4 surgeons, and to an applicant who has been licensed by
5 examination in any country, state, territory, province or the
6 District of Columbia, provided the requirements for licensure
7 in the country, state, territory, province or the District of
8 Columbia in which the applicant is licensed are deemed by
9 the board to have been equivalent to requirements for
10 licensure in this state at the date such license was issued. The
11 board may also at its discretion issue a license without
12 examination to an osteopathic physician and surgeon who is
13 a graduate of an accredited osteopathic college and who has
14 passed the examination for admission into the medical corps
15 of any of the armed services of the United States or the
16 United States public health service. But no license shall be
17 issued under the provisions of this section until the person
18 applying therefor shall have paid to the board a reasonable
19 fee, the amount of such reasonable fee to be set by the board
20 rules, and any other fees applicable to investigation.

§30-14-10. Renewal of license; fee; refresher training a prerequisite; effect of failure to renew; reinstatement; educational permit.

1 (a) All holders of licenses to practice as osteopathic
2 physicians and surgeons in this state shall renew the licenses
3 biennially on or before July 1, by the payment of a renewal
4 fee, to the board. The board shall notify each licensee of the
5 necessity of renewing his or her license at least thirty days
6 prior to the expiration of the license.

7 (b) As a prerequisite to renewal of a license issued by the
8 board, each licensee shall furnish biennially to the board
9 satisfactory evidence of having completed thirty-two hours
10 of educational refresher course training, of which the total
11 amount of hours must be approved by the American
12 Osteopathic Association, and fifty percent of the required
13 thirty-two hours shall be classified as category (1).

14 (c) The failure to renew a license shall operate as an
15 automatic suspension of the rights and privileges granted by
16 its issuance. The board may propose rules for legislative
17 approval, pursuant to the provisions of article three, chapter
18 twenty-nine-a of this code, providing that an osteopathic
19 physician may renew a license on an inactive basis.

20 (d) A license suspended by a failure to make a biennial
21 renewal thereof may be reinstated by the board upon
22 compliance of the licensee with the following requirements:

23 (1) Presentation to the board of satisfactory evidence of
24 educational refresher training of quantity and standard
25 approved by the board for the previous two years;

26 (2) Payment of all fees for the previous two years that
27 would have been paid had the suspended licensee maintained
28 his or her license in good standing; and

29 (3) Payment to the board of a reinstatement fee specified
30 by legislative rule of the board.

31 (e) An educational permit authorizes the holder to
32 practice osteopathic medicine and surgery only for work
33 performed within an approved program of post-graduate
34 clinical training under the supervision of a duly licensed
35 osteopathic or allopathic physician. The first educational
36 permit issued to a graduate of an accredited osteopathic
37 college may be valid for a period of fifteen months and
38 subsequent educational permits issued to the same person
39 may be valid for not more than twelve months. An
40 educational permit shall expire upon the termination of the
41 permit holder from an approved program of post-graduate
42 clinical training and may also be suspended or revoked by the
43 board at any time upon grounds defined by the board by
44 legislative rule.

CHAPTER 173

**(Com. Sub. for H.B. 2528 - By Delegates Morgan, Martin,
Argento, Beach, Caputo, Cann, Eldridge and Andes)**

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 7, 2009.]

AN ACT to amend and reenact §30-19-1, §30-19-2, §30-19-3, §30-19-4, §30-19-5, §30-19-6, §30-19-7, §30-19-8, §30-19-9, §30-19-10 and §30-19-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto six new sections, designated §30-19-12, §30-19-13, §30-19-14, §30-19-15, §30-19-16 and §30-19-17, all relating to State Board of Registration of Foresters; prohibiting the use of the titles registered forester and registered forestry technician; providing other applicable sections; providing definitions; providing for board composition; setting forth the powers and duties of the board; clarifying rule making authority; continuing a special revenue account; establishing certificate and permit requirements; providing for licensure for persons licensed in another state; establishing renewal requirements; requiring display of license; setting forth grounds for disciplinary actions; allowing for specific disciplinary actions; providing procedures for investigation of complaints; providing for judicial review and appeals of decisions; setting forth hearing and notice requirements; providing for civil causes of action; providing criminal penalties; and providing that a single act is evidence of practice.

Be it enacted by the Legislature of West Virginia:

That §30-19-1, §30-19-2, §30-19-3, §30-19-4, §30-19-5, §30-19-6, §30-19-7, §30-19-8, §30-19-9, §30-19-10 and §30-19-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto six new sections, designated §30-19-12, §30-19-13, §30-19-14, §30-19-15, §30-19-16 and §30-19-17, all to read as follows:

ARTICLE 19. FORESTERS.

- §30-19-1. Use of descriptive title restricted.
- §30-19-2. Applicable law.
- §30-19-3. Definitions.
- §30-19-4. State Board of Registration of Foresters.
- §30-19-5. Powers and duties of the board.
- §30-19-6. Rulemaking.
- §30-19-7. Fees; special revenue account; administrative fines.
- §30-19-8. General requirements to be certified as a registered forester.
- §30-19-9. General requirements to be a registered forestry technician.
- §30-19-10. Qualifications for permit as a forester-in-training or a forestry technician-in-training.
- §30-19-11. License from another state.
- §30-19-12. Renewal requirements.
- §30-19-13. Complaints; investigations; due process procedure; grounds for disciplinary action.
- §30-19-14. Procedures for hearing; right of appeal.
- §30-19-15. Judicial review; appeal to Supreme Court of Appeals.
- §30-19-16. Criminal proceedings; penalties.
- §30-19-17. Single act evidence of practice.

§30-19-1. Use of descriptive title restricted.

1 (a) No person may use in connection with his or her name
2 or otherwise assume, use or advertise any title or description
3 tending to convey the impression that he or she is a registered
4 forester or registered forestry technician unless he or she is
5 certified in accordance with this article.

6 (b) Nothing contained in this article shall be construed as
7 preventing any person, firm, partnership or corporation from
8 practicing forestry, managing woodlands or forests, removing
9 any products or planting trees on any land, in any manner
10 desired.

§30-19-2. Applicable law.

1 The practice of forestry and the State Board of
2 Registration of Foresters are subject to article one of this
3 chapter, this article, and any rules promulgated hereunder.

§30-19-3. Definitions.

1 As used in this article, the following words and terms
2 have the following meanings:

3 (a) "Board" means the State Board of Registration of
4 Foresters.

5 (b) "Certificate" means a certificate issued to practice as
6 a registered forester or registered forestry technician.

7 (c) "Certification" means a certificate issued under the
8 provisions of this article.

9 (d) "Certified" means a person holding a certification
10 issued under the provisions of this article.

11 (e) "Forester" means a person who has acquired
12 specialized forestry training by reason of his or her
13 knowledge of the natural sciences, mathematics, silviculture,
14 forest protection, forest management, forest economics and
15 forest utilization, acquired by professional forestry education
16 and practical experience.

17 (f) "Forester-in-training" or "Forestry technician-in-
18 training" means a person who possesses the necessary
19 educational qualifications as prescribed in this article for
20 certification, but who has not completed the experience
21 requirements in the field of forestry as required for
22 certification.

23 (g) "Forestry" means the professional practice embracing
24 the science, business, and the art of creating, conserving and

25 managing forests and forestlands for the sustained use and
26 enjoyment of their resources, material or other forest
27 produce.

28 (h) "Practice of forestry" means professional forestry
29 services, including the consultation, investigation, evaluation,
30 planning or responsible supervision of any forestry activities
31 when such professional service requires the application of
32 forestry principles and techniques.

33 (i) "Permit" means a document issued as evidence of
34 qualification to practice as a forester-in-training or forestry
35 technician-in-training under this article.

36 (j) "Permitee" means a person holding a permit issued
37 under the provisions of this article.

38 (k) "Registered Forester" means a forester certified under
39 this article.

40 (l) "Registered Forestry Technician" means a forestry
41 technician certified under this article.

§30-19-4. State Board of Registration of Foresters.

1 (a) The State Board of Registration of Foresters is
2 continued. The members of the board in office on July 1,
3 2009, shall, unless sooner removed, continue to serve until
4 their respective terms expire and until their successors have
5 been appointed and qualified.

6 (b) To be effective on July 1, 2009, the Governor shall
7 appoint, by and with the advise and consent of the Senate, a
8 registered forestry technician to replace the board member
9 whose term ends on June 30, 2009.

10 (c) Commencing July 1, 2009, the board shall consist of
11 the following five members:

12 (1) Four registered foresters; and

13 (2) One registered forestry technician.

14 (d) Each member shall be appointed by the Governor, by
15 and with the consent of the Senate, from five nominees
16 recommended by the West Virginia Division of the Society
17 of American Foresters. The term is for five years.

18 (e) A member may not serve more than two consecutive
19 full terms. A member having served two consecutive full
20 terms may not be appointed for one year after completion of
21 his or her second full term. A member may continue to serve
22 until a successor has been appointed and qualified.

23 (f) Each member of the board shall be a resident of West
24 Virginia during the appointment term.

25 (g) Each member must have been certified in this state for
26 a period of not less than three years prior to his or her
27 appointment and must have engaged in the practice of
28 forestry for at least ten years.

29 (h) Each member shall maintain an active certification
30 with the board.

31 (i) The Governor may remove any member from the
32 board for neglect of duty, incompetency or official
33 misconduct.

34 (j) A member of the board immediately and automatically
35 forfeits membership to the board if his or her certification has
36 been suspended or revoked, is convicted of a felony under the
37 laws of any jurisdiction, or becomes a nonresident of this
38 state.

39 (k) The board shall elect annually one of its members as
40 chairperson and one member as secretary who shall serve at
41 the will and pleasure of the board.

42 (l) Each member of the board is entitled to compensation
43 and expense reimbursement in accordance with article one of
44 this chapter.

45 (m) A majority of the members serving on the board
46 constitutes a quorum.

47 (n) The board shall hold at least two meetings annually.
48 Other meetings shall be held at the call of the chairperson or
49 upon the written request of two members, at such time and
50 place as designated in the call or request.

51 (o) Prior to commencing his or her duties as a member of
52 the board, each member shall take and subscribe to the oath
53 required by section five, article four of the Constitution of
54 this state.

§30-19-5. Powers and duties of the board.

1 (a) The board has all the powers and duties set forth in
2 this article, by rule, in article one of this chapter and
3 elsewhere in law.

4 (b) The board shall:

5 (1) Hold meetings, conduct hearings and administer
6 examinations;

7 (2) Establish requirements for a certification or permit;

8 (3) Establish procedures for submitting, approving and
9 rejecting applications for a certification or permit;

- 10 (4) Determine the qualifications of any applicant for a
11 certification or permit;
- 12 (5) Prepare, conduct, administer and grade written, oral
13 or written and oral examinations for a certificate;
- 14 (6) Determine the passing grade for the examinations;
- 15 (7) Maintain records of the examinations the board or a
16 third party administers, including the number of persons
17 taking the examination and the pass and fail rate;
- 18 (8) Maintain an office, and hire, discharge, establish the
19 job requirements and fix the compensation of employees and
20 contracted employees necessary to enforce this article;
- 21 (9) Investigate alleged violations of this article,
22 legislative rules, orders and final decisions of the board;
- 23 (10) Conduct disciplinary hearings of persons regulated
24 by the board;
- 25 (11) Determine disciplinary action and issue orders;
- 26 (12) Institute appropriate legal action for the enforcement
27 of this article;
- 28 (13) Maintain an accurate registry of names and
29 addresses of all persons regulated by the board;
- 30 (14) Keep accurate and complete records of its
31 proceedings, and certify the same as may be necessary and
32 appropriate;
- 33 (15) Establish, by legislative rule, the continuing
34 education requirements for certificate holders and permittees;
35 and

36 (16) Propose rules in accordance with article three,
37 chapter twenty-nine-a of this code to implement this article.

38 (c) The board may:

39 (1) Contract with third parties to administer the
40 examinations required under this article;

41 (2) Define, by legislative rule, the fees charged under this
42 article;

43 (3) Issue, renew, deny, suspend, revoke or reinstate a
44 certification or permit;

45 (4) Sue and be sued in its official name as an agency of
46 this state;

47 (5) Confer with the Attorney General or his or her
48 assistant in connection with legal matters and questions; and

49 (6) Take all other actions proper to effectuate the
50 purposes of this article.

§30-19-6. Rulemaking.

1 (a) The board shall propose rules for legislative approval,
2 in accordance with article three, chapter twenty-nine-a of this
3 code, to implement this article, including:

4 (1) Standards and requirements for a certification and
5 permit;

6 (2) Procedures for examinations and reexaminations;

7 (3) Requirements for third parties to prepare and/or
8 administer examinations and reexaminations;

9 (4) Educational and experience requirements, and the
10 passing grade on the examination;

11 (5) Standards for ethical conduct;

12 (6) Procedures for the issuance and renewal of a
13 certification and permit;

14 (7) A fee schedule;

15 (8) Continuing education requirements for a certificate
16 holder and permittee;

17 (9) Procedures for denying, suspending, revoking,
18 reinstating or limiting the practice of a certificate holder or
19 permittee;

20 (10) Requirements for inactive or revoked certificate and
21 permit; and

22 (11) Any other rules necessary to effectuate the
23 provisions of this article.

24 (b) All of the board's rules in effect on the effective date
25 of this article shall remain in effect until amended or
26 repealed, and references to former enactments of this act are
27 interpreted to mean this article.

§30-19-7. Fees; special revenue account; administrative fines.

1 (a) All fees and other moneys, except administrative
2 fines, received by the board shall be deposited in a separate
3 special revenue fund in the State Treasury designated the
4 "Board of Foresters Fund", which fund is continued. The
5 fund shall be used by the board for the administration of this
6 article. Except as provided in article one of this chapter, the
7 board shall retain the amounts in the special revenue account

8 from year to year. No compensation or expense incurred
9 under this article is a charge against the General Revenue
10 Fund.

11 (b) Any amounts received as administrative fines
12 imposed pursuant to this article shall be deposited into the
13 General Revenue Fund of the State Treasury.

§30-19-8. General requirements to be certified as a registered forester.

1 (a) To be eligible to be certified as a registered forester,
2 the applicant must:

3 (1) Be of good moral character;

4 (2) Have a high school diploma or its equivalent;

5 (3) Have obtained either:

6 (A) Completion of a four-year degree program or masters
7 degree program in professional forestry, accredited by the
8 Society of American Foresters and have two years related
9 experience in the field of forestry; or

10 (B) Completion of a two-year technical forestry program
11 in a program accredited or recognized by the Society of
12 American Foresters, completion of a bachelor's degree in a
13 field used in the practice of forestry as approved by the board
14 and four years related experience in the field of forestry;

15 (4) Successfully pass an examination approved by the
16 board.

17 (b) Those persons licensed by the board as a forester as
18 of the effective date of this section are not required to take
19 the examination.

§30-19-9. General requirements to be registered forestry technician.

1 To be eligible to be certified as a registered forestry
2 technician, the applicant must:

3 (1) Be of good moral character;

4 (2) Have a high school diploma or its equivalent;

5 (3) Graduate from a two-year technical forestry program
6 accredited or recognized by the Society of American
7 Foresters;

8 (4) Complete four years of related experience in the field
9 of forestry.

§30-19-10. Qualifications for permit as a forester-in-training or a forestry technician-in-training.

1 (a) The board may issue a permit to practice as a forester-
2 in-training or a forestry technician-in-training to an applicant
3 who meets all the requirements for certification, except the
4 experience requirements of paragraph (A) or (B), subdivision
5 three, subsection (a), section eight or subdivision four,
6 section nine.

7 (b) A permit to practice as a forester-in-training or
8 forestry technician-in-training may be renewed annually for
9 a period not to exceed five years. The board may extend the
10 five year limitation if the board finds the applicant
11 experienced an undue hardship which prevented the
12 attainment of the required experience.

§30-19-11. License from another state.

1 The board may issue a certification to a person as a
2 registered forester in this state, without requiring an
3 examination, to an applicant from another jurisdiction who:

4 (1) Is not a resident of this state;

5 (2) Is of good moral character;

6 (3) Holds a valid forestry license or other authorization
7 to practice forestry in another jurisdiction which meets
8 requirements that are substantially equivalent to the
9 certification requirements set forth in this article;

10 (4) Is not currently being investigated by a disciplinary
11 authority of this state or another jurisdiction, does not have
12 charges pending against his or her authorization, and has
13 never had his or her authorization revoked;

14 (5) Has not previously failed an examination for
15 certification in this state;

16 (6) Has paid all the applicable fees; and

17 (7) Has completed such other action as required by the
18 board.

§30-19-12. Renewal requirements.

1 (a) All persons regulated under the provisions of this
2 article shall annually before January 1, renew his or her
3 certification or permit by completing a form prescribed by
4 the board and submit any other information required by the
5 board.

6 (b) At least thirty days prior to July 1 of each year, the
7 board shall mail to every person regulated under the
8 provisions of this article an application for renewal.

9 (c) The board shall charge a fee for each renewal of a
10 certification or permit and may charge a late fee for any
11 renewal not paid in a timely manner.

12 (d) The board shall require as a condition for the renewal
13 of a certification or permit that each person regulated under
14 the provisions of this article complete continuing education.

15 (e) The board may deny an application for renewal for
16 any reason which would justify the denial of an original
17 application for a certification or permit.

**§30-19-13. Complaints; investigations; due process procedure;
grounds for disciplinary action.**

1 (a) The board may upon its own motion based on credible
2 information, and shall upon the written complaint of any
3 person, cause an investigation to be made to determine
4 whether grounds exist for disciplinary action under this
5 article or the legislative rules of the board.

6 (b) Upon initiation or receipt of the complaint, the board
7 shall provide a copy of the complaint to the certificate holder
8 or permittee.

9 (c) After reviewing any information obtained through an
10 investigation, the board shall determine if probable cause
11 exists that the certificate holder or permittee has violated
12 subsection (g) of this section or rules promulgated pursuant
13 to this article.

14 (d) Upon a finding that probable cause exists that the
15 certificate holder or permittee has violated subsection (g) of
16 this section or rules promulgated pursuant to this article, the
17 board may enter into a consent decree or hold a hearing for
18 the suspension or revocation of the certification or permit or
19 the imposition of sanctions against the certificate holder or

20 permittee. Any hearing shall be held in accordance with the
21 provisions of this article.

22 (e) Any member of the board or the executive director of
23 the board may issue subpoenas and subpoenas duces tecum
24 to obtain testimony and documents to aid in the investigation
25 of allegations against any person regulated by the article.

26 (f) Any member of the board or its executive director
27 may sign a consent decree or other legal document on behalf
28 of the board.

29 (g) The board may, after notice and opportunity for
30 hearing, deny or refuse to renew, suspend or revoke the
31 certification or permit of, impose probationary conditions
32 upon or take disciplinary action against, any certificate holder
33 or permittee for any of the following reasons once a violation
34 has been proven by a preponderance of the evidence:

35 (1) Obtaining a certification or permit by fraud,
36 misrepresentation or concealment of material facts;

37 (2) Being convicted of a felony or other crime involving
38 moral turpitude;

39 (3) Being guilty of unprofessional conduct as defined by
40 legislative rule of the board;

41 (4) Violating this article or lawful order or rule of the
42 board;

43 (5) Having had a certificate or permit revoked or
44 suspended, other disciplinary action taken, or an application
45 for certification or permit or other authorization refused,
46 revoked or suspended by the proper authorities of another
47 jurisdiction; or

48 (6) Engaging in any act which has endangered or is likely
49 to endanger the health, welfare or safety of the public.

50 (h) For the purposes of subsection (g) of this section,
51 disciplinary action may include:

52 (1) Reprimand;

53 (2) Probation;

54 (3) Administrative fine, not to exceed \$1,000 per day per
55 violation;

56 (4) Mandatory attendance at continuing education
57 seminars or other training;

58 (5) Practicing under supervision or other restriction;

59 (6) Requiring the certificate holder or permittee to report
60 to the board for periodic interviews for a specified period of
61 time; or

62 (7) Other corrective action considered by the board to be
63 necessary to protect the public, including advising other
64 parties whose legitimate interests may be at risk.

§30-19-14. Procedures for hearing; right of appeal.

1 (a) Hearings shall be governed by section eight, article
2 one of this chapter.

3 (b) The board may conduct the hearing or elect to have an
4 administrative law judge conduct the hearing.

5 (c) If the hearing is conducted by an administrative law
6 judge, at the conclusion of a hearing he or she shall prepare
7 a proposed written order containing findings of fact and

8 conclusions of law. The proposed order may contain
9 proposed disciplinary actions if the board so directs. The
10 board may accept, reject or modify the decision of the
11 administrative law judge.

12 (d) Any member or the executive director of the board
13 has the authority to administer oaths, examine any person
14 under oath and issue subpoenas and subpoenas duces tecum.

15 (e) If, after a hearing, the board determines the certificate
16 holder or permittee has violated this article or the board's
17 rules, a formal written decision shall be prepared which
18 contains findings of fact, conclusions of law and a specific
19 description of the disciplinary actions imposed.

§30-19-15. Judicial review; appeal to Supreme Court of Appeals.

1 Any certificate holder or permittee adversely affected by
2 a decision of the board entered after a hearing may obtain
3 judicial review of the decision in accordance with section
4 four, article five, chapter twenty-nine-a of this code, and may
5 appeal any ruling resulting from judicial review in
6 accordance with article six, chapter twenty-nine-a of this
7 code.

§30-19-16. Criminal proceedings; penalties.

1 (a) When, as a result of an investigation under this article
2 or otherwise, the board has reason to believe that a certificate
3 holder or permittee has committed a criminal offense under
4 this article, the board may bring the information to the
5 attention of an appropriate law-enforcement official.

6 (b) Effective July 15, 2009, a person violating a provision
7 of this article is guilty of a misdemeanor and, upon
8 conviction thereof, shall be fined not less than \$500 nor more

- 9 than \$1,000 or confined in jail not more than six months, or
10 both fined and confined.

§30-19-17. Single act evidence of practice.

- 1 In any action brought or in any proceeding initiated under
2 this article, evidence of the commission of a single act
3 prohibited by this article is sufficient to justify a penalty,
4 injunction, restraining order or conviction without evidence
5 of a general course of conduct.

CHAPTER 174

(Com. Sub. for H.B. 2423 - By Delegate Morgan)

[Amended and again passed May 27, 2009, as a result of the
objections of the Governor; in effect from passage.]
[Approved by the Governor on June 5, 2009.]

AN ACT to amend and reenact §30-23-4, §30-23-5, §30-23-6, §30-23-9, §30-23-10, §30-23-13, §30-23-14, §30-23-16, §30-23-17 and §30-23-19 of the Code of West Virginia, 1931, as amended, all relating to the practice of medical imaging and radiation therapy technology; updating terminology; revising the powers and duties of the board; removing the licensure exemption for limited practice; clarifying scopes of practice; revising licensure requirements; revising supervision requirements for apprentices; and extending the length of time an apprentice may be licensed.

Be it enacted by the Legislature of West Virginia:

That §30-23-4, §30-23-5, §30-23-6, §30-23-9, §30-23-10, §30-23-13, §30-23-14, §30-23-16, §30-23-17 and §30-23-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 23. RADIOLOGIC TECHNOLOGISTS.

- §30-23-4. Definitions.
- §30-23-5. Medical Imaging and Radiation Therapy Technology Board of Examiners.
- §30-23-6. Powers and duties of the board.
- §30-23-9. Requirements of Radiological Technology license.
- §30-23-10. Scope of Practice for a Radiological Technologist.
- §30-23-13. Requirements for temporary Medical Imaging and Radiation Therapy Technology license.
- §30-23-14. Medical Imaging and Radiation Therapy technology license from another state; license to practice in this state.
- §30-23-16. Scope of practice for Nuclear Medicine Technologist.
- §30-23-17. Requirements for Magnetic Resonance Imaging Technologist license.
- §30-23-19. Requirements for an apprentice license for Nuclear Medicine Technologists and Magnetic Resonance Imaging Technologists.

§30-23-4. Definitions.

1 As used in this article, the following words and terms
2 have the following meanings, unless the context clearly
3 indicates otherwise:

4 (a) “ASPMA” means the American Society of Podiatric
5 Medical Assistants.

6 (b) “ARMRIT” means the American Registry of
7 Magnetic Resonance Imaging Technologists.

8 (c) “ARRT” means the American Registry of Radiologic
9 Technologist.

10 (d) “Board” means the West Virginia Medical Imaging
11 and Radiation Therapy Technology Board of Examiners.

12 (e) “Business entity” means any firm, partnership,
13 association, company, corporation, limited partnership,

14 limited liability company or other entity providing medical
15 imaging or radiation therapy technology.

16 (f) “Dental X-rays” means X-rays taken of the oral cavity
17 with x-ray units designed for this specific performance.

18 (g) “JRCERT” means the Joint Review Committee on
19 Education in Radiologic Technology.

20 (h) “JRCNMT” means the Joint Review Committee on
21 Education Programs in Nuclear Medicine Technology.

22 (i) “License” means a medical imaging and radiation
23 therapy technology license issued under the provisions of this
24 article.

25 (j) “Licensed practitioner” means a person licensed in
26 West Virginia to practice medicine, chiropractic, podiatry,
27 osteopathy or dentistry.

28 (k) “Licensee” means a person holding a license issued
29 under the provisions of this article.

30 (l) “Magnetic Resonance Imaging or MRI” means the
31 performance of medical imaging using radio waves, magnetic
32 fields and a computer to produce images of the body tissues.

33 (m) “Medical Imaging” means the use of ionizing
34 radiation, electromagnetic radiation, or radioactivity for
35 evaluation of body tissue in order to diagnose injury and
36 disease by means of image production.

37 (n) “NMTCB” means the Nuclear Medicine Technology
38 Certification Board.

39 (o) “Nuclear Medicine Technologist” means a person
40 holding a nuclear medicine license issued under the
41 provisions of this article.

42 (p) “Nuclear Medicine Technology” means the
43 compounding, calibrating, dispensing and administrating of
44 radio- pharmaceuticals, pharmaceuticals and radio-nuclides
45 under the direction of an individual listed as an authorized
46 user by the U.S. Nuclear Regulatory Commission for the
47 production of images for diagnosis and/or treatment of
48 various disorders.

49 (q) “Permittee” means any person holding a podiatric
50 medical assistant permit issued pursuant to the provisions of
51 this article.

52 (r) “PET/CT Technologist” means an individual
53 recognized by the board as qualified to operate a PET/CT
54 scanner.

55 (s) “PET/CT Technology” means the operation of a
56 Positron Emission Tomography/Computerized Tomography
57 scanner to view internal images of the body.

58 (t) “Podiatric medical assistant” means a person who has
59 been issued a permit under the provisions of this article, to
60 perform podiatric radiographs.

61 (u) “Podiatric radiographs” means radiographs confined
62 to the foot and ankle performed on dedicated podiatric X-ray
63 equipment.

64 (v) “Practice of Medical Imaging and Radiation Therapy
65 Technology” means the practice of Radiologic Technology,
66 Radiation Therapy, Nuclear Medicine Technology and
67 Magnetic Resonance Imaging Technology.

68 (w) “Radiologic technologist” means a person, other than
69 a licensed practitioner, who applies medical imaging or
70 assists in the application of ionizing radiation to human
71 beings for diagnostic or therapeutic purposes as prescribed by
72 a licensed practitioner.

73 (x) “Radiologic technology” means the application of
74 ionizing radiation or assisting in the application of medical
75 imaging to human beings for diagnostic or therapeutic
76 purposes as prescribed by a licensed practitioner.

77 (y) “Radiologist” means a licensed practitioner who has
78 successfully completed a residency in the field of Radiology
79 and specializes in the use of medical imaging for the
80 diagnosis or treatment of disease.

81 (z) “Radiologist Assistant or RA” means an individual
82 who is licensed under the rules of the West Virginia Board of
83 Medicine and has completed specialized training from an
84 accredited program in the profession and passed a written
85 examination as recognized by the West Virginia Board of
86 Medicine.

87 (aa) “Radiology resident” means a licensed practitioner
88 who is in training to become a Radiologist and who uses
89 medical imaging in the diagnosis or treatment of disease,
90 under the supervision of a Radiologist.

91 (bb) “Supervision” means responsibility for and control
92 of quality, safety and technical aspects in the application of
93 medical imaging technology on human beings for diagnostic
94 or therapeutic purposes.

95 (cc) “Technology” means Medical Imaging Technology
96 or Radiation Therapy Technology.

**§30-23-5. Medical Imaging and Radiation Therapy Technology
Board of Examiners.**

1 (a) The West Virginia Medical Imaging and Radiation
2 Therapy Technology Board of Examiners is continued. The
3 members of the board in office, unless sooner removed,
4 continue to serve until their respective terms expire and until
5 their successors have been appointed and qualified.

6 (b) The board shall consist of the following eleven
7 members, appointed by the Governor by and with the advice
8 and consent of the Senate:

9 (1) One Radiologic Health Specialist from the Radiation,
10 Toxics and Indoor Air Division of the West Virginia
11 Department of Health and Human Resources;

12 (2) Three licensed practitioners, two of whom shall be
13 Radiologists;

14 (3) Three licensed Radiologic Technologists, one of
15 whom shall be an active medical imaging educator;

16 (4) One licensed Nuclear Medicine Technologist;

17 (5) One licensed Magnetic Resonance Imaging
18 Technologist; and

19 (6) Two citizen members, who are not licensed under the
20 provisions of this article and do not perform any services
21 related to the practice licensed under the provisions of this
22 article.

23 (c) Each member shall be appointed for a term of three
24 years and may not serve more than two consecutive full
25 terms. A member having served two consecutive full terms
26 may not be appointed for one year after completion of his or
27 her second full term. A member continues to serve until a
28 successor has been appointed and has qualified. The terms
29 shall be staggered in accordance with the initial appointments
30 under prior enactments of this article.

31 (d) Each member of the board shall be a resident of West
32 Virginia during the appointment term.

33 (e) The Radiologic Technologists, Nuclear Medicine
34 Technologists and the Magnetic Resonance Imaging
35 Technologists serving on the board shall maintain an active
36 license with the board.

37 (f) A vacancy on the board shall be filled by appointment
38 by the Governor for the unexpired term of the member whose
39 office is vacant.

40 (g) The Governor may remove any member from the
41 board for neglect of duty, incompetency or official
42 misconduct.

43 (h) A licensed member of the board immediately and
44 automatically forfeits membership to the board if his or her
45 license to practice has been suspended or revoked. A
46 member of the board immediately and automatically forfeits
47 membership to the board if he or she is convicted of a felony
48 under the laws of any state or the United States, or becomes
49 a nonresident of this state.

50 (i) The board shall designate one of its members as
51 chairperson and one member as secretary who shall serve at
52 the will of the board.

53 (j) Each member of the board shall receive compensation
54 and expense reimbursement in accordance with article one of
55 this chapter.

56 (k) A majority of the members serving on the board shall
57 constitute a quorum.

58 (l) The board shall hold at least two annual meetings.
59 Other meetings shall be held at the call of the chairperson or
60 upon the written request of two members, at such time and
61 place as designated in the call or request.

62 (m) Prior to commencing his or her duties as a member
63 of the board, each member shall take and subscribe to the
64 oath required by section five, article four of the Constitution
65 of this State.

§30-23-6. Powers and duties of the board.

1 (a) The board has all the powers and duties set forth in
2 this article, by rule, in article one of this chapter, and
3 elsewhere in law.

4 (b) The board shall:

5 (1) Hold meetings, conduct hearings and administer
6 examinations;

7 (2) Establish requirements for a license, apprentice
8 license and permit;

9 (3) Establish procedures for submitting, approving and
10 rejecting applications for a license, apprentice license and
11 permit;

12 (4) Determine the qualifications of any applicant for a
13 license, permit, certificate and registration;

14 (5) Provide standards for approved schools of Medical
15 Imaging and Radiation Therapy Technology, procedures for
16 obtaining and maintaining approval, and procedures of
17 revocation of approval where standards are not maintained:
18 *Provided*, That the standards for approved schools meet at
19 least the minimal requirements of the American Registry of
20 Radiologic Technologist JRCERT, JRCNMT or standards
21 determined programmatically equivalent by the board;

22 (6) Work with the West Virginia Board of Medicine to
23 determine the scope of practice, the required education and

24 training, and the type of regulations necessary for
25 Radiologist;

26 (7) Prepare, conduct, administer and grade written, oral
27 or written and oral examinations for a license, certificate and
28 registration;

29 (8) Determine the passing grade for the examinations;

30 (9) Maintain records of the examinations the board or a
31 third party administers, including the number of persons
32 taking the examination and the pass and fail rate;

33 (10) Maintain an office, and hire, discharge, establish the
34 job requirements and fix the compensation of employees and
35 contract with persons necessary to enforce the provisions of
36 this article;

37 (11) Investigate alleged violations of the provisions of
38 this article, legislative rules, orders and final decisions of the
39 board;

40 (12) Conduct disciplinary hearings of persons regulated
41 by the board;

42 (13) Determine disciplinary action and issue orders;

43 (14) Institute appropriate legal action for the enforcement
44 of the provisions of this article;

45 (15) Maintain an accurate registry of names and
46 addresses of all persons regulated by the board;

47 (16) Keep accurate and complete records of its
48 proceedings, and certify the same as may be necessary and
49 appropriate;

50 (17) Establish, by legislative rule, the continuing
51 education requirements for licensees, permittees, certificate
52 holders and registrants; and

53 (18) Propose rules in accordance with the provisions of
54 article three, chapter twenty-nine-a of this code to implement
55 the provisions of this article.

56 (c) The board may:

57 (1) Contract with third parties to administer the
58 examinations required under the provisions of this article;

59 (2) Define, by legislative rule, the fees charged under the
60 provisions of this article;

61 (3) Issue, renew, deny, suspend, revoke or reinstate a
62 license, permit, certificate and registration;

63 (4) Sue and be sued in its official name as an agency of
64 this state;

65 (5) Confer with the Attorney General or his or her
66 assistant in connection with legal matters and questions; and

67 (6) Take all other actions necessary and proper to
68 effectuate the purposes of this article.

§30-23-9. Requirements for Radiologic Technology license.

1 (a) To be eligible for a license to practice Radiologic
2 Technology, the applicant must:

3 (1) Be of good moral character;

4 (2) Have a high school diploma or its equivalent;

5 (3) Have successfully completed an accredited program
6 in Radiologic technology, as determined by an accreditation
7 body recognized by the board, from a school of Radiologic
8 Technology that has been approved by the board;

9 (4) Have passed the examination prescribed by the board,
10 which examination shall cover the basic subject matter of
11 Radiologic Technology, skills and techniques; and

12 (5) Not have been convicted of a felony under the laws of
13 any state or the United States within five years preceding the
14 date of application for licensure, which conviction remains
15 unreversed; and

16 (6) Not have been convicted of a misdemeanor or a
17 felony under the laws of any state or the United States at any
18 time if the offense for which the applicant was convicted
19 related to the practice of Medical Imaging, which conviction
20 remains unreversed.

21 (b) A person seeking a Radiologic Technology license
22 shall submit an application on a form prescribed by the board
23 and pay the license fee, which fee shall be returned to the
24 applicant if the license application is denied.

25 (c) A Radiologic Technology license issued by the board
26 prior to July 1, 2009, shall for all purposes be considered a
27 license issued under this article.

§30-23-10. Scope of Practice for a Radiologic Technologist.

1 The scope of practice of a Radiologic Technologist
2 includes the following:

3 (1) Analysis and correlation of procedure requests and
4 clinical information provided by a physician or patient, or

5 both, for preprocedure determination of the appropriate
6 exam, its extent, and its scope;

7 (2) Evaluation of the physical, mental and emotional
8 status of the patient with respect to the ability to understand
9 the risk versus benefit of the procedure and to undergo the
10 procedure requested;

11 (3) Selection, preparation, and operation of medical
12 imaging equipment and accessories to perform procedures;

13 (4) Positioning patient to best demonstrate anatomy of
14 interest, while respecting patient's physical limitations and
15 comfort;

16 (5) Determination of imaging exposure factors, setting of
17 factors on control panel, and application of medical imaging
18 exposures;

19 (6) Application of radiation protection principles to
20 minimize radiation exposure to patient, self, and others;

21 (7) Evaluation of images for technical quality;

22 (8) Performance of noninterpretive fluoroscopic
23 procedures according to institutional policy;

24 (9) Oversight of image processing standards and the
25 appropriate labeling of images;

26 (10) Administering contrast media after consultation
27 with, and under the supervision of, a physician who is
28 immediately and physically available;

29 (11) Maintaining values congruent with the profession's
30 Code of Ethics and scope of practice as well as adhering to
31 national, institutional and/or departmental standards, policies

32 and procedures regarding delivery of services and patient
33 care; and

34 (12) Performing any other duties that the board authorizes
35 for a Radiologic Technologist.

**§30-23-13. Requirements for temporary Medical Imaging and
Radiation Therapy Technology license.**

1 (a) The board may issue a temporary Medical Imaging
2 and Radiation Therapy Technology license to engage in the
3 practice of Medical Imaging and Radiation Therapy
4 Technology in this state to an applicant who meets the
5 qualifications for a Medical Imaging and Radiation Therapy
6 Technology license, but has not passed the examination.

7 (b) Temporary licenses expire as provided by rule.

**§30-23-14. Medical Imaging and Radiation Therapy
Technology license from another state;
license to practice in this state.**

1 The board may issue a license to practice Medical
2 Imaging and Radiation Therapy Technology in this state,
3 without requiring an examination, to an applicant from
4 another jurisdiction who:

5 (1) Is not a resident of this state;

6 (2) Is of good moral character:

7 (3) Holds a valid Medical Imaging and Radiation
8 Therapy Technology license, certificate or other
9 authorization, including the American Registry of Radiologic
10 Technologists, or Nuclear Medicine Technology Certification
11 Board or equivalent to practice Medical Imaging and
12 Radiation Therapy Technology in another jurisdiction and

13 meets requirements which are substantially equivalent to the
14 Medical Imaging and Radiation Therapy Technology
15 licensure requirements set forth in this article;

16 (4) Is not currently being investigated by a disciplinary
17 authority of this state or another jurisdiction, does not have
18 charges pending against his or her license or other
19 authorization to practice Medical Imaging and Radiation
20 Therapy Technology, and has never had a license or other
21 authorization to practice Medical Imaging and Radiation
22 Therapy Technology revoked;

23 (5) Has not previously failed an examination for licensure
24 in this state;

25 (6) Has paid all the applicable fees; and

26 (7) Has completed other action as required by the board.

§30-23-16. Scope of practice for Nuclear Medicine Technologist.

1 The scope of practice for Nuclear Medicine Technology
2 includes the following:

3 (1) The practice of diagnostic in-vivo procedures and
4 in-vitro procedures which include:

5 (A) Analysis and correlation of procedure request and
6 clinical information provided by the referring physician or
7 patient, or both, for determination of appropriate exam,
8 extent, and scope;

9 (B) Evaluation of the physical and emotional status of the
10 patient with respect to the ability to undergo the procedure
11 requested;

12 (C) Immediate predose review of patient's identification,
13 prescribed dose quantity and route of administration, and

- 14 identification of the test agent designed to prevent dose
15 mis-administration;
- 16 (D) Preparation of the appropriate radiopharmaceutical
17 with measurement of dose activity;
- 18 (E) Administration of appropriate diagnostic dose levels
19 of radiopharmaceuticals;
- 20 (F) Administration of nonradioactive pharmaceuticals
21 utilized in conjunction with a nuclear medicine imaging or
22 in-vivo procedure, for example, cholecystokinin, furosemide,
23 vitamin B12, in accordance with hospital or facility
24 procedures, excluding narcotic and sedating medication;
- 25 (G) Selection of appropriate imaging or test parameters,
26 or both;
- 27 (H) Obtaining images according to established protocols
28 and any special views to optimize information as appropriate;
- 29 (I) Placement of patient in proper position using
30 supportive materials and immobilizer as necessary;
- 31 (J) Assuring appropriate image labeling as to patient;
- 32 (K) Monitoring of patient and equipment during
33 procedure for determination and application of any corrective
34 actions necessary;
- 35 (L) Monitoring of data collection and processing and
36 performance of technical analysis of test results;
- 37 (M) Preparation and performance of laboratory in-vivo
38 nuclear medicine procedures, inclusive of the selection and
39 operation of laboratory counting equipment, performance of
40 calculations and data processing necessary for completion of

41 lab procedures and the submission of results to the physician
42 or licensee;

43 (N) Oversight and application of image development; and

44 (O) Performance of in-vitro testing of serum, plasma, or
45 other body fluids using radio immunoassay, or similar ligand
46 assay methods.

47 (2) The practice for handling radiopharmaceuticals which
48 includes:

49 (A) Preparation, by means of tagging, compounding, etc.,
50 in accordance with manufacturer's specifications;

51 (B) Measurement and calculation of activity of
52 radionuclides with a dose calibrator;

53 (C) Application of radioactive decay calculations to
54 determine required volume or unit form necessary to deliver
55 the prescribed radioactive dose; and

56 (D) Recording of radiopharmaceutical information on a
57 patient's permanent record.

58 (3) The practice for radionuclide therapy which includes:

59 (A) Assisting licensee in the preparation and applications
60 of therapeutic radionuclides;

61 (B) Oversight of radiation safety practices related to the
62 handling and administration of radiopharmaceuticals for
63 therapy of patients;

64 (C) Maintenance of records of radioactive material
65 receipt, use, storage, and disposal in accordance with
66 regulatory requirements;

67 (D) Oversight and enforcement of radiation safety
68 policies, practices, and regulations regarding the possession
69 and use of radioactive materials;

70 (E) Performance of radiation safety procedures such as
71 radiation survey and wipe testing of incoming radioactive
72 shipments and facility fixtures;

73 (F) Maintaining values congruent with the profession's
74 code of ethics and scope of practice as well as adhering to
75 national, institutional and/or departmental standards, policies
76 and procedures regarding delivery of services and patient
77 care; and

78 (G) Performing any other duties that the board determines
79 may be performed by a Nuclear Medicine Technologist.

80 (4) The scope of practice for a Nuclear Medicine
81 Technologist or certified PET Technologist to operate a
82 multimodality device, i.e. PET/CT, SPECT/CT etc, requires
83 that:

84 (A) A Nuclear Medicine Technologist, (ARRT(N) or
85 NMTCB) or certified PET Technologist may administer
86 radiopharmaceuticals and/or ionizing radiation from an
87 integrated multimodality device, if the ionizing radiation is
88 produced for the sole purpose of attenuation correction and
89 considered an essential component of the procedure, provided
90 the licensee has obtained proper documented training that has
91 been approved by the board in the radiation safety aspect of
92 the operation of these units; and

93 (B) A licensed radiographer, (ARRT(R)), or Nuclear
94 Medicine Technologist with an additional certification by the
95 ARRT or other nationally recognized certifying body in
96 computed tomography, shall operate the computed
97 tomography scanner if it is used for any other diagnostic
98 radiographic procedures.

§30-23-17. Requirements for Magnetic Resonance Imaging Technologist license.

1 (a) To be eligible for a license to practice Magnetic
2 Resonance Imaging Technology, the applicant must:

3 (1) Be of good moral character;

4 (2) Have a high school diploma or its equivalent;

5 (3) Not have been convicted of a felony under the laws of
6 any state or the United States within five years preceding the
7 date of application for licensure, which conviction remains
8 unreversed;

9 (4) Not have been convicted of a misdemeanor or a
10 felony under the laws of any state or the United States at any
11 time if the offense for which the applicant was convicted
12 related to the practice of Medical Imaging, which conviction
13 remains unreversed.

14 (5) Meet one of the following qualifications:

15 (A) Have a baccalaureate or associate degree in one of
16 the physical or biological sciences pertaining to the Medical
17 Imaging or Radiation Therapy profession;

18 (B) Have a baccalaureate or associate degree in other
19 disciplines of Medical Imaging with successful completion of
20 courses in the following areas: college algebra, physics or
21 chemistry, human anatomy, physiology, and radiation safety;

22 (C) National certification as a certified Nuclear Medicine
23 Technologist (CNMT);

24 (D) National certification as a Registered Radiographer
25 (ARRT (R));

26 (E) National certification as a Registered Radiographer
27 specializing in Nuclear Medicine (ARRT (N));

28 (F) National certification as a Radiation Therapist
29 (ARRT(T)); or

30 (G) National certification as an MRI technologist (ARRT
31 (MR) or ARMRT); and

32 (6) Pass an examination which has been approved by the
33 board, with a minimum passing score of seventy-five percent,
34 which examination shall cover the basic subject matter of
35 Medical Imaging, radiation safety, skills and techniques as it
36 pertains to Magnetic Resonance Imaging.

37 (b) A person seeking a Magnetic Resonance Imaging
38 Technology license shall submit an application on a form
39 prescribed by the board and pay the license fee, which fee
40 shall be returned to the applicant if the license application is
41 denied.

42 (c) A Magnetic Resonance Imaging Technology license
43 issued by the board prior to July 1, 2007, shall for all
44 purposes be considered a license issued under this article:
45 *Provided*, That a person holding a Magnetic Resonance
46 Imaging Technology license issued prior to July 1, 2007,
47 must renew the license pursuant to the provisions of this
48 article.

**§30-23-19. Requirements for an apprentice license for Nuclear
Medicine Technologists and Magnetic Resonance
Imaging Technologists.**

1 (a) The board may issue an apprentice license to an
2 individual who is practicing as a Nuclear Medicine
3 Technologist or a Magnetic Resonance Imaging Technologist

4 prior to July 1, 2007 but has not obtained certification in the
5 discipline. A notarized letter, signed by the individual's
6 supervising licensed physician, must be submitted with the
7 individual's application, stating that the individual has
8 performed the duties of a Nuclear Medicine Technologist or
9 Magnetic Resonance Imaging Technologist prior to July 1,
10 2007.

11 (b) The apprentice license is valid for one year. An
12 apprentice license may be renewed annually for an additional
13 four years, giving the individual a total of five years to
14 complete the requirements and successfully pass the
15 certification examination for a Nuclear Medicine
16 Technologist license or a Magnetic Resonance Imaging
17 Technologist license. All individuals possessing an
18 apprentice license must work under the supervision of a
19 licensed practitioner for MRI, an authorized user for nuclear
20 medicine or a technologist who is licensed in that discipline.

21 (c) Any individual possessing a valid Medical Imaging
22 license issued by the board and seeks to cross-train in the
23 discipline of Nuclear Medicine Technology or Magnetic
24 Resonance Imaging Technology, may obtain an apprentice
25 license in that discipline for the purpose of obtaining the
26 necessary clinical experience requirements in order to qualify
27 to sit for the required examination. This apprentice license
28 will be valid for one year and renewable for four year, giving
29 a cross-trained individual five years to obtain certification in
30 the discipline.

CHAPTER 175

**(Com. Sub. for H.B. 2531 - By Delegates Morgan,
Stephens and Argento)**

[Passed April 11, 2009; in effect ninety days from passage.]

[Approved by the Governor on May 6, 2009.]

AN ACT to repeal §16-14-1, §16-14-2 and §16-14-3 of the Code of West Virginia, 1931, as amended; to repeal §30-27-10a of said code; to amend and reenact §30-27-1, §30-27-2, §30-27-3, §30-27-4, §30-27-5, §30-27-6, §30-27-7, §30-27-8, §30-27-9, §30-27-10, §30-27-11, §30-27-12, §30-27-13, §30-27-14, §30-27-15, §30-27-16, §30-27-17 and §30-27-18; and to amend said code by adding thereto six new sections, designated §30-27-19, §30-27-20, §30-27-21, §30-27-22, §30-27-23 and §30-27-24, all relating to the Board of Barbers and Cosmetologists; prohibiting the practice of barbering, permanent waving, cosmetology, aesthetics, or nail care without a license; providing other applicable sections; providing definitions; providing for board composition; setting forth the powers and duties of the board; clarifying rulemaking authority; continuing a special revenue account; establishing license requirements; providing for licensure for persons licensed in another state; establishing renewal requirements; providing permit requirements; requiring display of license; prohibiting practice when a person has an communicable disease; providing requirements for school licensure; providing requirement to be an instructor; providing requirements for a salon license; providing salon management requirements; providing booth and chair rental requirements; setting forth grounds for disciplinary actions; allowing for specific disciplinary actions;

providing procedures for investigation of complaints; providing for judicial review and appeals of decisions; setting forth hearing and notice requirements; providing for civil causes of action; providing criminal penalties; providing that a single act is evidence of practice; establishing fees; and establishing continuing education requirements.

Be it enacted by the Legislature of West Virginia:

That §16-14-1, §16-14-2 and §16-14-3 of the Code of West Virginia, 1931, as amended, be repealed; that §30-27-10a of said code be repealed; that §30-27-1, §30-27-2, §30-27-3, §30-27-4, §30-27-5, §30-27-6, §30-27-7, §30-27-8, §30-27-9, §30-27-10, §30-27-11, §30-27-12, §30-27-13, §30-27-14, §30-27-15, §30-27-16, §30-27-17 and §30-27-18 of said code be amended and reenacted; and that said code be amended by adding thereto six new sections, designated §30-27-19, §30-27-20, §30-27-21, §30-27-22, §30-27-23 and §30-27-24, all to read as follows:

ARTICLE 27. BOARD OF BARBERS AND COSMETOLOGISTS.

- §30-27-1. Unlawful acts.
- §30-27-2. Applicable law.
- §30-27-3. Definitions.
- §30-27-4. Board of Barbers and Cosmetologists.
- §30-27-5. Powers and duties of the board.
- §30-27-6. Rulemaking.
- §30-27-7. Fees; special revenue account; administrative fines.
- §30-27-8. Professional license requirements.
- §30-27-9. Professional license from another state; license to practice in this state.
- §30-27-10. Professional license and certificate renewal requirements.
- §30-27-11. Work permit.
- §30-27-12. Student registration.
- §30-27-13. Display of professional license and permits.
- §30-27-14. Health certificate requirements.
- §30-27-15. School license requirements.
- §30-27-16. Certificate requirements to be an instructor in a school.
- §30-27-17. Salon license requirements.
- §30-27-18. Salon management requirements.
- §30-27-19. Booth or chair rental registration requirements.
- §30-27-20. Complaints; investigations; due process procedure; grounds for disciplinary action.
- §30-27-21. Procedure for hearing; right of appeal.
- §30-27-22. Judicial review.

§30-27-23. Criminal proceedings; penalties.

§30-27-24. Single act evidence of practice.

§30-27-1. Unlawful acts.

1 (a) It is unlawful for any person to practice or offer to
2 practice barbering, barber permanent waving, cosmetology,
3 aesthetics, or nail care in this state without a license issued
4 under the provisions of this article, or advertise or use any
5 title or description tending to convey the impression that the
6 person is a licensed aesthetician, barber, barber crossover,
7 barber permanent wavist, cosmetologist, cosmetologist
8 crossover or nail technician, unless the person has been
9 licensed under the provisions of this article, and the license
10 has not expired, been suspended or revoked.

11 (b) No salon, except through a licensee, may render any
12 service or engage in any activity which if rendered or
13 engaged in by an individual, would constitute the practices
14 licensed under the provisions of this article.

15 (c) No school, except through a licensee, may instruct,
16 render any service or engage in any activity which if taught,
17 rendered or engaged in by an individual, would constitute the
18 practices licensed under the provisions of this article.

§30-27-2. Applicable law.

1 The practices licensed under the provisions of this article
2 and the Board of Barbers and Cosmetologists are subject to
3 the provisions of article one of this chapter, the provisions of
4 this article, and any rules promulgated hereunder.

§30-27-3. Definitions.

1 As used in this article, the following words and terms
2 have the following meanings, unless the context clearly
3 indicates otherwise:

4 (a) “Aesthetics” or “esthetics” means any one or any
5 combination of the following acts when done on the human
6 body for compensation and not for the treatment of disease:

7 (1) Administering cosmetic treatments to enhance or
8 improve the appearance of the skin, including cleansing,
9 toning, performing effleurage or other related movements,
10 stimulating, exfoliating or performing any other similar
11 procedure on the skin of the human body or scalp;

12 (2) Applying, by hand or with a mechanical or electrical
13 apparatus, any cosmetics, makeups, oils, powders, clays,
14 antiseptics, tonics, lotions, creams or chemical preparations
15 necessary for the practice of aesthetics to another person’s
16 face, neck, back, shoulders, hands, elbows and feet up to and
17 including the knee;

18 (3) The rubbing, cleansing, exercising, beautifying or
19 grooming of another person’s face, neck, back, shoulders,
20 hands, elbows and feet up to and including the knee;

21 (4) The waxing, tweezing and threading of hair on
22 another person’s body;

23 (5) The wrapping of another person’s body in a body
24 wrap;

25 (6) Applying artificial eyelashes and eyebrows; and

26 (7) The lightening of hair on the body except the scalp.

27 (b) “Aesthetician” or “esthetician” means a person
28 licensed under the provisions of this article who engages in
29 the practice of aesthetics.

30 (c) “Applicant” means a person making application for a
31 professional license, license, certificate, registration, permit
32 or renewal under the provisions of this article.

33 (d) “Barber” means a person licensed under the
34 provisions of this article who engages in the practice of
35 barbering.

36 (e) “Barbering” means any one or any combination of the
37 following acts when done on the human body for
38 compensation and not for the treatment of disease:

39 (1) Shaving, shaping and/or trimming the beard;

40 (2) Cutting, singeing, shampooing, arranging, dressing,
41 tinting, bleaching, or applying lotions or tonics on human
42 hair, or a wig or hairpiece; and

43 (3) Applications, treatments or rubs of the scalp, face, or
44 neck with oils, creams, lotions, cosmetics, antiseptics,
45 powders, or other preparations in connection with the
46 shaving, cutting or trimming of the hair or beard.

47 (f) “Barber crossover” or “cosmetologist crossover” is a
48 person who is licensed to perform barbering and
49 cosmetology.

50 (g) “Barber permanent waving” means the following acts
51 done on the human body for compensation and not for the
52 treatment of disease:

53 (1) The bleaching or tinting of hair; and

54 (2) The permanent waving of hair.

55 (h) “Barber permanent waviest” means a person licensed
56 to perform barbering and barber permanent waving.

57 (i) “Board” means the West Virginia Board of Barbers
58 and Cosmetologists.

59 (j) “Certificate” means an instructor certificate to teach in
60 a school under the provisions of this article.

61 (k) “Certificate holder” means a person certified as an
62 instructor to teach in a school under the provisions of this
63 article.

64 (l) “Cosmetologist” means a person licensed under the
65 provisions of this article who engages in the practice of
66 cosmetology.

67 (m) “Cosmetology” means any one or any combination
68 of the following acts when done on the human body for
69 compensation and not for the treatment of disease:

70 (1) Cutting, styling, shaping, arranging, braiding,
71 weaving, dressing, adding extensions, curling, waving,
72 permanent waving, relaxing, straightening, shampooing,
73 cleansing, singeing, bleaching, tinting, coloring, waxing,
74 tweezing, or similarly work on human hair, or a wig or
75 hairpiece, by any means, including hands, mechanical or
76 electrical devices or appliances;

77 (2) Nail care;

78 (3) Applying by hand or with a mechanical or electrical
79 device or appliance, any cosmetics, makeups, oils, powders,
80 clays, antiseptics, tonics, lotions, creams or chemical
81 preparations necessary for the practice of aesthetics to
82 another person’s face, neck, shoulders, hands, elbows and
83 feet up to and including the knee;

84 (4) The rubbing, cleansing, exercising, beautifying or
85 grooming of another person’s face, neck, shoulders, hands,
86 elbows and feet up to and including the knee;

87 (5) The wrapping of another person’s body in a body
88 wrap; and

89 (6) Performing aesthetics.

90 (n) “General supervision” means:

91 (1) For schools, a master or certified instructor is on the
92 premises and is quickly and easily available; or

93 (2) For salons, a professional licensee is on the premises
94 and is quickly and easily available.

95 (o) “Hair braiding” means any one or any combination of
96 the following acts when done on the human body for
97 compensation and not for the treatment of disease: Braiding,
98 plaiting, twisting, wrapping, threading, weaving, extending
99 or locking of natural human hair by hand or mechanical
100 device.

101 (p) “License” means a professional license, a salon
102 license or a school license.

103 (q) “Licensee” means a person, corporation or firm
104 holding a license issued under the provisions of this article.

105 (r) “Nail care” means any one or any combination of the
106 following acts when done on the human body for
107 compensation and not for the treatment of disease:

108 (1) The cleansing, dressing, or polishing of nails of a
109 person;

110 (2) Performing artificial nail service; and

111 (3) The cosmetic treatment of the feet up to the knee and
112 the hands up to the elbow.

113 (s) “Nail technician” or “manicurist” means a person
114 licensed under the provisions of this article who engages in
115 the practice of nail care.

- 116 (t) "Permit" means a work permit.
- 117 (u) "Permittee" means a person holding a work permit.
- 118 (v) "Professional license" means a license to practice as
119 a aesthetician, barber, barber crossover, barber permanent
120 wavist, cosmetologist, cosmetologist crossover or nail
121 technician.
- 122 (w) "Registration" means a registration issued by the
123 board to a person who rents or leases a booth or chair from a
124 licensed salon owner and/or operator or a registration issued
125 by the board to a person who is a student in a school.
- 126 (x) "Registrant" means a person who holds a registration
127 under the provisions of this article.
- 128 (y) "Salon" means a shop or other facility where a person
129 practices under a professional license.
- 130 (z) "Salon license" means a license to own and operate a
131 salon.
- 132 (aa) "School" means a facility to educate persons to be
133 licensed with professional licenses under the provisions of
134 this article.
- 135 (bb) "School license" means a license to own and operate
136 a school.
- 137 (cc) "Student registration" means a registration issued by
138 the board to a student to study at a school licensed under the
139 provisions of this article.

§30-27-4. Board of Barbers and Cosmetologists.

- 1 (a) The West Virginia Board of Barbers and
2 Cosmetologists is continued. The members of the board in
3 office on July 1, 2009, shall, unless sooner removed, continue

4 to serve until their respective terms expire and until their
5 successors have been appointed and qualified.

6 (b) To be effective on July 1, 2009, the Governor shall
7 appoint, by and with the advice and consent of the Senate:

8 (1) One person who is a licensed cosmetologist for a term
9 of five years;

10 (2) One person who is a licensed barber for a term of five
11 years;

12 (3) One person who is a licensed barber crossover or a
13 licensed barber permanent wavist for a term of four years;

14 (4) One person who is a licensed aesthetician for a term
15 of four years;

16 (5) One person who is a licensed nail technician for a
17 term of four years;

18 (6) One person who is a licensed cosmetologist for a term
19 of three years; and

20 (7) One citizen member, who is not licensed under the
21 provisions of this article and who does not perform any
22 services related to the practice of the professions regulated
23 under the provisions of this article, for a term of three years.

24 (c) After the initial appointment term, the term shall be
25 for five years. All appointments to the board shall be made
26 by the Governor by and with the advice and consent of the
27 Senate.

28 (d) Commencing July 1, 2009, the board shall consist of
29 the following seven members:

30 (1) Two licensed cosmetologists;

31 (2) One licensed barber;

32 (3) One licensed barber crossover or licensed barber
33 permanent wavist;

34 (4) One licensed aesthetician;

35 (5) One licensed nail technician; and

36 (6) One citizen member.

37 (e) Each licensed member of the board, at the time of his
38 or her appointment, must have held a professional license in
39 this state for a period of not less than three years immediately
40 preceding the appointment.

41 (f) Each member of the board must be a resident of this
42 state during the appointment term.

43 (g) A member may not serve more than two consecutive
44 full terms. A member may continue to serve until a successor
45 has been appointed and has qualified. A member serving on
46 the board on June 30, 2009, may be reappointed in
47 accordance with the provisions of this section.

48 (h) A vacancy on the board shall be filled by appointment
49 by the Governor for the unexpired term of the member whose
50 office is vacant and the appointment shall be made within
51 sixty days of the vacancy.

52 (i) The Governor may remove any member from the
53 board for neglect of duty, incompetency or official
54 misconduct.

55 (j) A member of the board immediately and automatically
56 forfeits membership to the board if his or her license to

57 practice is suspended or revoked, is convicted of a felony
58 under the laws of any jurisdiction, or becomes a nonresident
59 of this state.

60 (k) The board shall elect annually one of its members as
61 chairperson who serves at the will of the board.

62 (l) Each member of the board is entitled to compensation
63 and expense reimbursement in accordance with article one of
64 this chapter.

65 (m) A majority of the members of the board constitutes
66 a quorum.

67 (n) The board shall hold at least two annual meetings.
68 Other meetings may be held at the call of the chairperson or
69 upon the written request of two members, at the time and
70 place as designated in the call or request.

71 (o) Prior to commencing his or her duties as a member of
72 the board, each member shall take and subscribe to the oath
73 required by section five, article four of the Constitution of
74 this state.

§30-27-5. Powers and duties of the board.

1 (a) The board has all the powers and duties set forth in
2 this article, by rule, in article one of this chapter and
3 elsewhere in law.

4 (b) The board shall:

5 (1) Hold meetings, conduct hearings and administer
6 examinations;

7 (2) Establish requirements for licenses, permits,
8 certificates and registrations;

- 9 (3) Establish procedures for submitting, approving and
10 rejecting applications for licenses, permits, certificates and
11 registrations;
- 12 (4) Determine the qualifications of any applicant for
13 licenses, permits, certificates and registrations;
- 14 (5) Prepare, conduct, administer and grade examinations
15 for professional licenses and certificates;
- 16 (6) Determine the passing grade for the examinations;
- 17 (7) Maintain records of the examinations the board or a
18 third party administers, including the number of persons
19 taking the examinations and the pass and fail rate;
- 20 (8) Hire, discharge, establish the job requirements and fix
21 the compensation of the executive director;
- 22 (9) Maintain an office, and hire, discharge, establish the
23 job requirements and fix the compensation of employees,
24 investigators/inspectors and contracted employees necessary
25 to enforce the provisions of this article: *Provided*, That any
26 investigator/inspector employed by the board on July 1,
27 2009, shall retain their coverage under the classified service,
28 including job classification, job tenure and salary, until that
29 person retires or is dismissed: *Provided, however*, That
30 nothing may prohibit the disciplining or dismissal of any
31 investigator/inspector for cause;
- 32 (10) Investigate alleged violations of the provisions of
33 this article, legislative rules, orders and final decisions of the
34 board;
- 35 (11) Establish the criteria for the training of
36 investigators/inspectors;

37 (12) Set the requirements for investigations and
38 inspections;

39 (13) Conduct disciplinary hearings of persons regulated
40 by the board;

41 (14) Determine disciplinary action and issue orders;

42 (15) Institute appropriate legal action for the enforcement
43 of the provisions of this article;

44 (16) Maintain an accurate registry of names and
45 addresses of all persons regulated by the board;

46 (17) Keep accurate and complete records of its
47 proceedings, and certify the same as may be necessary and
48 appropriate;

49 (18) Establish the continuing education requirements for
50 professional licensees and certificate holders;

51 (19) Issue, renew, combine, deny, suspend, revoke or
52 reinstate licenses, permits, certificates and registrations;

53 (20) Establish a fee schedule;

54 (21) Propose rules in accordance with the provisions of
55 article three, chapter twenty-nine-a of this code to implement
56 the provisions of this article; and

57 (22) Take all other actions necessary and proper to
58 effectuate the purposes of this article.

59 (c) The board may:

60 (1) Establish joint licenses;

61 (2) Contract with third parties to administer the
62 examinations required under the provisions of this article;

63 (3) Sue and be sued in its official name as an agency of
64 this state; and

65 (4) Confer with the Attorney General or his or her
66 assistant in connection with legal matters and questions.

§30-27-6. Rulemaking.

1 (a) The board shall propose rules for legislative approval,
2 in accordance with the provisions of article three, chapter
3 twenty-nine-a of this code, to implement the provisions of
4 this article, including:

5 (1) Standards and requirements for licenses, permits,
6 certificates and registrations;

7 (2) Procedures for examinations and reexaminations;

8 (3) Requirements for third parties to prepare and/or
9 administer examinations and reexaminations;

10 (4) Educational and experience requirements;

11 (5) The passing grade on the examinations;

12 (6) Standards for approval of courses and curriculum;

13 (7) Procedures for the issuance and renewal of licenses,
14 permits, certificates and registrations;

15 (8) A fee schedule;

16 (9) Continuing education requirements for professional
17 licensees and certificate holders;

18 (10) The procedures for denying, suspending, revoking,
19 reinstating or limiting the practice of licensees, permittees,
20 certificate holders and registrants;

21 (11) Designating the regions for investigators/inspectors;

22 (12) Criteria for the training of investigators/inspectors;

23 (13) Requirements for investigations and inspections;

24 (14) Requirements for inactive or revoked licenses,
25 permits, certificates and registrations;

26 (15) Establishing the training program and requirements
27 for instructors for schools licensed under this article;

28 (16) Establishing operating procedures for salons; and

29 (17) Any other rules necessary to effectuate the
30 provisions of this article.

31 (b) All of the board's rules in effect on July 1, 2009, shall
32 remain in effect until they are amended or repealed, and
33 references to provisions of former enactments of this article
34 are interpreted to mean provisions of this article.

35 (c) The board is authorized to file an emergency rule for
36 the implementation of its fee schedule in 2009.

§30-27-7. Fees; special revenue account; administrative fines.

1 (a) All fees in effect on January 1, 2009, shall remain in
2 effect until they are amended or repealed by legislative rule
3 or statute.

4 (b) All fees and other moneys, except administrative
5 fines, received by the board shall be deposited in a separate

6 special revenue fund in the State Treasury designated the
7 “Barbers and Beauticians Special Fund”, which is continued
8 and shall be known as the “Board of Barbers and
9 Cosmetologists Special Fund”. The fund is used by the board
10 for the administration of this article. Except as may be
11 provided in article one of this chapter, the board retains the
12 amount in the special revenue account from year to year. No
13 compensation or expense incurred under this article is a
14 charge against the General Revenue Fund.

15 (c) Any amount received as fines, imposed pursuant to
16 this article, shall be deposited into the General Revenue Fund
17 of the State Treasury.

§30-27-8. Professional license requirements.

1 (a) An applicant for a professional license to practice as
2 a aesthetician, barber, barber crossover, barber permanent
3 waviest, cosmetologist, cosmetologist crossover or nail
4 technician shall present satisfactory evidence that he or she:

5 (1) Is at least eighteen years of age;

6 (2) Is of good moral character;

7 (3) Has a high school diploma, a GED, or has passed the
8 “ability to benefit test” approved by the United States
9 Department of Education;

10 (4) Has graduated from a school which has been
11 approved by the board;

12 (5) Has passed an examination that tests the applicant’s
13 knowledge of subjects specified by the board: *Provided,*
14 That the board may recognize a certificate or similar license
15 in lieu of the examination or part of the examination that the
16 board requires;

17 (6) Has paid the applicable fee;

18 (7) Presents a certificate of health from a licensed
19 physician;

20 (8) Is a citizen of the United States or is eligible for
21 employment in the United States; and

22 (9) Has fulfilled any other requirement specified by the
23 board.

24 (b) A license to practice issued by the board prior to July
25 1, 2009, shall for all purposes be considered a professional
26 license issued under this article: *Provided*, That a person
27 holding a license issued prior to July 1, 2009, must renew the
28 license pursuant to the provisions of this article.

**§30-27-9. Professional license from another state; license to
practice in this state.**

1 (a) The board may issue a professional license to practice
2 to an applicant of good moral character who holds a valid
3 license or other authorization to practice in that particular
4 field from another state, if the applicant demonstrates that he
5 or she:

6 (1) Holds a license or other authorization to practice in
7 another state which was granted after completion of
8 educational requirements substantially equivalent to those
9 required in this state and passed an examination that is
10 substantially equivalent to the examination required in this
11 state;

12 (2) Does not have charges pending against his or her
13 license or other authorization to practice, and has never had
14 a license or other authorization to practice revoked;

15 (3) Has not previously failed an examination for
16 professional licensure in this state;

17 (4) Has paid the applicable fee;

18 (5) Is a citizen of the United States or is eligible for
19 employment in the United States;

20 (6) Has presented a certificate of health issued by a
21 licensed physician; and

22 (7) Has fulfilled any other requirement specified by the
23 board.

24 (b) In its discretion, the board may examine a person by
25 a written, oral or skills test for licensing under this section,
26 and may enter into agreements for reciprocal licensing with
27 other jurisdictions having substantially similar requirements
28 for licensure.

29 (c) The provisions of this section do not apply to nail
30 technicians or manicurists from another state or jurisdiction.
31 A nail technician or manicurist from another state or
32 jurisdiction is required to show that he or she has completed
33 the required curriculum and has successfully passed the
34 board's practical skills examination to apply for licensure
35 under the provisions of this article.

§30-27-10. Professional license and certificate renewal requirements.

1 (a) A professional licensee and certificate holder shall
2 annually or biennially on or before January 1, renew his or
3 her professional license or certificate by completing a form
4 prescribed by the board, paying the renewal fee and
5 submitting any other information required by the board.

6 (b) The board shall charge a fee for each renewal of a
7 license or certificate, and a late fee for any renewal not paid
8 by the due date.

9 (c) The board shall require as a condition of renewal of
10 a professional license or certificate that each licensee or
11 certificate holder complete continuing education.

12 (d) The board may deny an application for renewal for
13 any reason which would justify the denial of an original
14 application for a license or certificate.

§30-27-11. Work permit.

1 (a) The board may issue a work permit to practice to an
2 applicant who:

3 (1) Has graduated from a school approved by the board
4 or has completed the course requirements in a specific field;

5 (2) Is waiting to take the examination;

6 (3) Has employment in the field in which he or she
7 applied to take the examination and is working under the
8 general supervision of a professional licensee;

9 (4) Has paid the work permit fee;

10 (5) Has presented a certificate of health issued by a
11 licensed physician;

12 (6) Is a citizen of the United States or is eligible for
13 employment in the United States; and

14 (7) Meets all the other requirements specified by the
15 board.

16 (b) A work permit expires at the end of the month after
17 issuance following the next examination in the specific field.
18 A work permit may be renewed once.

19 (c) While in effect, a work permittee is subject to the
20 restrictions and requirements imposed by this article.

§30-27-12. Student registration.

1 (a) Prior to commencing studies in a school licensed
2 under the provisions of this article, a student shall acquire a
3 student registration issued by the board.

4 (b) An applicant for a student registration shall present
5 satisfactory evidence that he or she:

6 (1) Is a student in an approved school or enrolled in an
7 approved course;

8 (2) Is of good moral character;

9 (3) Has paid the required fee;

10 (4) Has presented a certificate of health issued by a
11 licensed physician; and

12 (5) Is a citizen of the United States or is eligible for
13 employment in the United States.

14 (c) The student registration is good during the prescribed
15 period of study for the student.

16 (d) The student may perform acts constituting barbering,
17 barber permanent waving, cosmetology, aesthetics or nail
18 care in a school under the general supervision of a master or
19 certified instructor.

§30-27-13. Display of professional license and permits.

1 (a) The board shall prescribe the form for a professional
2 license and work and student permits, including a
3 photograph, and may issue a duplicate license or permit,
4 upon payment of a fee.

5 (b) Every professional licensee and work permittee shall
6 display his or her license or permit in a conspicuous place at
7 his or her work station.

8 (c) Every student shall have available his or her student
9 permit and be able to produce it upon request.

10 (d) Every professional licensee, work permittee or student
11 must present such license, permit or registration to an
12 investigator/inspector or a board member upon request.

§30-27-14. Health certificate requirements.

1 (a) It is unlawful for a person to practice as a professional
2 licensee, be a permittee or be a certified instructor while
3 having an infectious, contagious or communicable disease.

4 (b) The board may, with cause, require a professional
5 licensee, permittee or certified instructor to submit to a
6 physical examination and file a certificate of health.

§30-27-15. School license requirements.

1 (a) Any person, firm or corporation, whether public or
2 private, and whether organized for profit or not, must have a
3 school license issued by the board to own and/or operate a
4 school.

5 (b) The board may issue a school license to own and/or
6 operate a school, if the applicant meets the following
7 requirements:

8 (1) A completed application in writing on forms
9 prescribed by the board, which forms have been signed and
10 verified by the applicant;

11 (2) Is professionally competent and financially
12 responsible;

13 (3) Posts a bond in an amount specified by the board;

14 (4) There is proof that adequate physical facilities will be
15 available for the school;

16 (5) The proposed school has been inspected by an
17 investigator/inspector to determine whether it is properly
18 fitted and equipped for instruction in the specific fields to be
19 offered;

20 (6) That persons teaching or instructing at the school are
21 certified by the board as fully qualified instructors; and

22 (7) Has paid the appropriate fees.

23 (c) If an applicant desires to own and/or operate more
24 than one school, a separate application shall be made and a
25 separate school license shall be issued for each school.

26 (d) The board may suspend, revoke or refuse to renew the
27 school license of any school failing to meet the minimum
28 standards and qualifications required for the issuance of an
29 original school license, as set out in this section.

30 (e) All school licenses must be renewed annually or
31 biennially on or before January 1 and pay a renewal fee.

32 (f) A license to operate a school issued by the board prior
33 to January 1, 2009, shall for all purposes be considered a
34 school license issued under this article: *Provided*, That a
35 person holding a school license issued prior to January 1,
36 2009, must renew the license pursuant to the provisions of
37 this article.

38 (g) The school license shall be permanently displayed in
39 the school, and a suitable sign shall be displayed at the main
40 entrance of the school plainly indicating what type of school
41 is being operated.

§30-27-16. Certification requirements to be an instructor in a school.

1 (a) The board may issue a certificate to be an instructor
2 in a school to an applicant who meets the following
3 requirements:

4 (1) Meets the educational requirements established by the
5 board;

6 (2) Has completed the required instructor's training;

7 (3) Has passed the instructor examination;

8 (4) Has paid the appropriate fees;

9 (5) Presents a certificate of health from a licensed
10 physician;

11 (6) Is a citizen of the United States or is eligible for
12 employment in the United States; and

13 (7) Has fulfilled any other requirement specified by the
14 board.

15 (b) All instructor certifications must be renewed annually
16 or biennially on or before January 1, and pay a renewal fee.

17 (c) A certification to be an instructor issued by the board
18 prior to January 1, 2009, shall for all purposes be considered
19 a certification issued under this article: *Provided*, That a
20 person holding a certification issued prior to January 1, 2009,
21 must renew the certification pursuant to the provisions of this
22 article.

23 (d) An instructor with an expired certificate must comply
24 with the following to renew his or her certificate:

25 (1) Notify the board that he or she wants to be placed on
26 inactive status; or

27 (2) Pay all lapsed renewal fees;

28 (3) Present a new certificate of health; and

29 (4) Meet the qualifications for certification set out in this
30 article.

31 (e) A certified instructor is not required to have an active
32 professional license, unless the instructor is in fact practicing
33 outside the scope of his or her employment as an instructor.

§30-27-17. Salon license requirements.

1 (a) Prior to opening a salon, any person, firm or
2 corporation owning and/or operating a salon, and any person,
3 firm or corporation practicing in a field authorized by this
4 article, shall meet the following requirements to acquire a
5 salon license to do business:

6 (1) The salon has been approved by the board as having
7 met all the requirements and qualifications for the place of
8 business as are required by this article;

9 (2) Notify the board, in writing, at least twenty days
10 before the proposed opening date, so there can be an
11 inspection of the salon: *Provided*, That if an inspection is not
12 made within ten days of the opening of the salon, or a salon
13 license to open has not been granted or refused, then the
14 salon may open provisionally subject to a later inspection and
15 to all other provisions and rules provided for in this article;

16 (3) Pay all applicable fees;

17 (4) All rooms, facilities, bathrooms, toilets and adjoining
18 rooms used in the place of business are kept clean, sanitary,
19 well lighted and ventilated at all times. The use of chunk
20 alum, powder puffs and styptic pencils in any shop is
21 prohibited;

22 (5) Every professional licensee or permittee in the place
23 of business thoroughly cleans his or her hands with soap and
24 water immediately before serving any patron; and

25 (6) Every patron is served with clean, freshly laundered
26 linen that is kept in a closed cabinet used for that purpose
27 only. All linens, immediately after being used, must be
28 placed in a receptacle used for that purpose only.

29 (b) All rules shall be kept posted in a conspicuous place
30 in each place of business.

31 (c) All salon licenses must be renewed annually or
32 biennially on or before July 1 and pay a renewal fee.

33 (d) A license to operate a salon issued by the board prior
34 to July 1, 2009, shall for all purposes be considered a salon
35 license issued under this article: *Provided*, That a person
36 holding a license issued prior to July 1, 2009, must renew the
37 license pursuant to the provisions of this article.

38 (e) The salon license shall be permanently displayed in
39 the salon, and a suitable sign shall be displayed at the main
40 entrance of the salon which shall plainly indicate what type
41 of salon is being operated.

§30-27-18. Salon management requirements.

1 (a) Every salon in this state offering the services set forth
2 in this article shall be operated under the supervision and
3 management of a professional licensee licensed under this
4 article.

5 (b) Any services set forth in this article may be conducted
6 within the same salon. A suitable sign shall be displayed at
7 the main entrance of all salons plainly indicating the business
8 conducted therein.

§30-27-19. Booth or chair rental registration requirements.

1 (a) Any professional licensee who elects to rent or lease
2 a booth or chair from a licensed salon owner and/or operator
3 must comply with the following to receive a registration from
4 the board:

5 (1) Register with the board;

6 (2) Register with the State Tax Division and present the
7 registration to the board;

8 (3) Pay a registration fee;

9 (4) Notify the board of the length of any rental or lease
10 agreement;

11 (5) State the name of the person or salon from which a
12 chair or booth is being rented or leased; and

13 (6) State the effective date of the rental or lease.

14 (b) If a person registered with the board pursuant to this
15 section elects to move from one salon to rent or lease a chair
16 or booth from another salon, then he or she must register
17 again with the board and pay a fee.

18 (c) Each licensed salon owner and/or operator who elects
19 to rent or lease chairs or booths shall notify the board in
20 writing of such rental or lease within ten days of the effective
21 date of the rental or lease.

22 (d) The board shall quarterly notify the State Tax
23 Commissioner of all persons registered pursuant to this
24 section during the previous quarter. Such notice shall be in
25 writing and shall include the following:

26 (1) The names of all the registered professional licensees;

27 (2) The names of the salons where space is being rented
28 or leased; and

29 (3) The length of time of each rental or lease agreement.

30 (e) All registrations must be renewed annually or
31 biennially on or before July 1 and pay a renewal fee.

32 (f) A registration to rent or lease a booth or chair issued
33 by the board prior to July 1, 2009, shall for all purposes be
34 considered a registration issued under this article: *Provided,*
35 That a person holding a registration to rent or lease a booth
36 or chair issued prior to July 1, 2009, must renew the
37 registration pursuant to the provisions of this article.

**§30-27-20. Complaints; investigations; due process procedure;
grounds for disciplinary action.**

1 (a) The board may upon its own motion based on credible
2 information, and shall upon the written complaint of any
3 person cause an investigation to be made to determine
4 whether grounds exist for disciplinary action under this
5 article or the legislative rules of the board.

6 (b) Upon initiation or receipt of the complaint, the board
7 shall provide a copy of the complaint to the licensee,
8 permittee, registrant or certificate holder.

9 (c) After reviewing any information obtained through an
10 investigation, the board shall determine if probable cause
11 exists that the licensee, permittee, registrant or certificate
12 holder has violated subsection (g) of this section or rules
13 promulgated pursuant to this article.

14 (d) Upon a finding that probable cause exists that the
15 licensee, permittee, registrant or certificate holder has
16 violated subsection (g) of this section or rules promulgated
17 pursuant to this article, the board may enter into a consent
18 decree or hold a hearing for the suspension or revocation of
19 the license, permit, registration or certification or the
20 imposition of sanctions against the licensee, permittee,
21 registrant or certificate holder. Any hearing shall be held in
22 accordance with the provisions of this article.

23 (e) Any member of the board or the executive director of
24 the board may issue subpoenas and subpoenas duces tecum
25 to obtain testimony and documents to aid in the investigation
26 of allegations against any person regulated by the article.

27 (f) Any member of the board or its executive director
28 may sign a consent decree or other legal document on behalf
29 of the board.

30 (g) The board may, after notice and opportunity for
31 hearing, deny or refuse to renew, suspend or revoke the

32 license, permit, registration or certification of, impose
33 probationary conditions upon or take disciplinary action
34 against, any licensee, permittee, registrant or certificate
35 holder for any of the following reasons once a violation has
36 been proven by a preponderance of the evidence:

37 (1) Obtaining a license, permit, registration or
38 certification by fraud, misrepresentation or concealment of
39 material facts;

40 (2) Being convicted of a felony or other crime involving
41 moral turpitude;

42 (3) Being guilty of unprofessional conduct which placed
43 the public at risk, as defined by legislative rule of the board;

44 (4) Intentional violation of a lawful order or legislative
45 rule of the board;

46 (5) Having had a license or other authorization revoked
47 or suspended, other disciplinary action taken, or an
48 application for licensure or other authorization revoked or
49 suspended by the proper authorities of another jurisdiction;

50 (6) Aiding or abetting unlicensed practice; or

51 (7) Engaging in an act while acting in a professional
52 capacity which has endangered or is likely to endanger the
53 health, welfare or safety of the public.

54 (h) For the purposes of subsection (g) of this section,
55 effective July 15, 2009, disciplinary action may include:

56 (1) Reprimand;

57 (2) Probation;

58 (3) Administrative fine, not to exceed \$1,000 per day per
59 violation;

60 (4) Mandatory attendance at continuing education
61 seminars or other training;

62 (5) Practicing under supervision or other restriction;

63 (6) Requiring the licensee, permittee, registrant or
64 certificate holder to report to the board for periodic
65 interviews for a specified period of time; or

66 (7) Other corrective action considered by the board to be
67 necessary to protect the public, including advising other
68 parties whose legitimate interests may be at risk.

§30-27-21. Procedures for hearing; right of appeal.

1 (a) Hearings shall be governed by the provisions of
2 section eight, article one of this chapter.

3 (b) The board may conduct the hearing or elect to have an
4 administrative law judge conduct the hearing.

5 (c) If the hearing is conducted by an administrative law
6 judge, at the conclusion of a hearing he or she shall prepare
7 a proposed written order containing findings of fact and
8 conclusions of law. The proposed order may contain
9 proposed disciplinary actions if the board so directs. The
10 board may accept, reject or modify the decision of the
11 administrative law judge.

12 (d) Any member or the executive director of the board
13 has the authority to administer oaths, examine any person
14 under oath and issue subpoenas and subpoenas duces tecum.

15 (e) If, after a hearing, the board determines the licensee,
16 permittee, registrant or certificate holder has violated

17 subsection (g) of this section or the board's rules, a formal
18 written decision shall be prepared which contains findings of
19 fact, conclusions of law and a specific description of the
20 disciplinary actions imposed.

§30-27-22. Judicial review.

1 Any licensee, permittee, registrant or certificate holder
2 adversely affected by a decision of the board entered after a
3 hearing may obtain judicial review of the decision in
4 accordance with section four, article five, chapter
5 twenty-nine-a of this code, and may appeal any ruling
6 resulting from judicial review in accordance with article six,
7 chapter twenty-nine-a of this code.

§30-27-23. Criminal proceedings; penalties.

1 (a) When, as a result of an investigation under this article
2 or otherwise, the board has reason to believe that a licensee,
3 permittee, registrant or certificate holder has committed a
4 criminal offense under this article, the board may bring its
5 information to the attention of an appropriate
6 law-enforcement official.

7 (b) Effective July 15, 2009, a person violating a provision
8 of this article is guilty of a misdemeanor and, upon
9 conviction thereof, shall be fined not less than \$500 nor more
10 than \$1,000 or confined in jail not more than six months, or
11 both fined and confined.

§30-27-24. Single act evidence of practice.

1 In any action brought or in any proceeding initiated under
2 this article, evidence of the commission of a single act
3 prohibited by this article is sufficient to justify a penalty,
4 injunction, restraining order or conviction without evidence
5 of a general course of conduct.

CHAPTER 176

**(Com. Sub. for H.B. 2309 - By Delegates Morgan, Martin,
Argento, Beach, Eldridge, Andes and C. Miller)**

[Passed April 11, 2009; in effect ninety days from passage.]

[Approved by the Governor on May 11, 2009.]

AN ACT to amend and reenact §30-28-1, §30-28-2, §30-28-3, §30-28-4, §30-28-5, §30-28-6, §30-28-7, §30-28-8, §30-28-9, §30-28-10, §30-28-11, §30-28-12, §30-28-13, §30-28-14, §30-28-15, §30-28-16, §30-28-17 and §30-28-18 of the Code of West Virginia, 1931, as amended; and to amend said article by adding thereto three new sections, designated §30-28-19, §30-28-20 and §30-28-21, all relating to the practice of occupational therapy; providing definitions; setting forth the scope of practice of occupational therapy; prohibiting practice or use of titles unless licensed; removing the requirement for referral by a physician or other health care practitioner; setting forth supervision requirements for assistants and aides; clarifying qualifications to serve as a board member; setting forth powers and duties of the board; providing exemptions from licensure; clarifying qualifications for licensure; setting forth examination requirements; providing for licensure for applicants from other jurisdictions; clarifying conditions of limited permits and temporary licenses; providing for renewal, suspension and revocation of licenses; providing for refusal to renew licenses; providing for reinstatement of lapsed licenses; setting forth complaint procedures; establishing grounds for disciplinary actions; providing for hearing procedures and rights of appeal; providing rulemaking authority; providing for criminal investigations, proceedings and penalties; establishing

that a single act may constitute evidence of practice; establishing special, retired, volunteer and inactive licenses; providing civil immunity for healthcare professionals donating their expertise for the care and treatment of indigent and needy patients in a clinic setting; and providing effective dates for certain provisions.

Be it enacted by the Legislature of West Virginia:

That §30-28-1, §30-28-2, §30-28-3, §30-28-4, §30-28-5, §30-28-6, §30-28-7, §30-28-8, §30-28-9, §30-28-10, §30-28-11, §30-28-12, §30-28-13, §30-28-14, §30-28-15, §30-28-16, §30-28-17 and §30-28-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto three new sections, designated §30-28-19, §30-28-20 and §30-28-21, all to read as follows:

ARTICLE 28. WEST VIRGINIA OCCUPATIONAL THERAPY PRACTICE ACT.

- §30-28-1. Short title.
- §30-28-2. Applicable law.
- §30-28-3. Definitions.
- §30-28-4. Scope of practice; license and supervision requirements.
- §30-28-5. West Virginia Board of Occupational Therapy.
- §30-28-6. Powers and duties of the board.
- §30-28-7. Rulemaking.
- §30-28-8. Fees; special revenue account; administrative fines.
- §30-28-9. Persons and practices not affected.
- §30-28-10. Qualifications of applicants for license.
- §30-28-11. Examination.
- §30-28-12. Licensees from other jurisdictions; internationally educated applicants.
- §30-28-13. Issuance of a license, limited permit and temporary license.
- §30-28-14. Renewal of license; renewal of lapsed license; suspension, revocation and refusal to renew; reinstatement of revoked license.
- §30-28-15. Special volunteer occupational therapist license; civil immunity for voluntary services rendered to indigents.
- §30-28-16. Complaints; investigations; due process procedure; grounds for disciplinary action.
- §30-28-17. Procedures for hearing; right to appeal.
- §30-28-18. Judicial review.
- §30-28-19. Criminal proceedings; penalties.
- §30-28-20. Single act evidence of practice.
- §30-28-21. Effective dates of certain provisions.

§30-28-1. Short title.

1 This article is known and may be cited as the “West
2 Virginia Occupational Therapy Practice Act.”

§30-28-2. Applicable law.

1 The practices licensed under the provisions of this article
2 and the West Virginia Board of Occupational Therapy are
3 subject to the provisions of article one of this chapter, the
4 provisions of this article, and any rules promulgated
5 hereunder.

§30-28-3. Definitions.

1 As used in this article, the following words and terms
2 have the following meanings, unless the context clearly
3 indicates otherwise:

4 (a) “Association” means the West Virginia Occupational
5 Therapy Association.

6 (b) “Board” means the West Virginia Board of
7 Occupational Therapy.

8 (c) “Business entity” means any firm, partnership,
9 association, company, corporation, limited partnership,
10 limited liability company or other entity doing business in the
11 State of West Virginia.

12 (d) “Client-related tasks” means tasks which are related
13 to treatment and which, when performed by an occupational
14 therapy aide, must be performed under direct supervision,
15 including routine transfers, routine care of a patient’s
16 personal needs during the course of treatment, execution of
17 an established routine activity or exercise, and assisting the
18 supervising occupational therapist or occupational therapy
19 assistant as directed during the course of treatment.

20 (e) “Direct supervision” means the actual physical
21 presence of a licensed supervising occupational therapist or
22 licensed occupational therapy assistant, and the specific
23 delineation of tasks and responsibilities for personally
24 reviewing and interpreting the results of any habilitative or
25 rehabilitative procedures conducted by the limited permit
26 holder, occupational therapy student, or aide. Direct
27 supervision includes direct close supervision and direct
28 continuous supervision.

29 (f) “Direct close supervision” means the licensed
30 supervising occupational therapist or licensed occupational
31 therapy assistant is in the building and has daily direct
32 contact at the site of work.

33 (g) “Direct continuous supervision” means the licensed
34 supervising occupational therapist or licensed occupational
35 therapy assistant is physically present and in direct line of
36 sight of the occupational therapy student or aide.

37 (h) “General supervision” means initial direction and
38 periodic inspection of the activities of a licensed occupational
39 therapist assistant by the supervising licensed occupational
40 therapist, but does not necessarily require constant physical
41 presence on the premises while the activities are performed.

42 (i) “License” means a valid and current license issued by
43 the board under the provisions of this article.

44 (j) “Nonclient-related tasks” means tasks which are not
45 related to treatment and do not require independent clinical
46 reasoning, including clerical and maintenance activities,
47 housekeeping, preparation of the work area or equipment,
48 transporting patients, and ordering supplies, and which, when
49 performed by an occupational therapy aide, must be
50 performed under general supervision.

51 (k) “Occupational Therapist” means a person licensed by
52 the board under the provisions of this article to engage in the
53 practice of occupational therapy.

54 (l) “Occupational Therapy Assistant” means a person
55 licensed by the board under the provisions of this article to
56 assist in the practice of occupational therapy under the
57 general supervision of an Occupational Therapist.

58 (m) “Occupational Therapy Aide” means a person who
59 may provide nonclient-related tasks under general
60 supervision, or specifically delegated client-related tasks,
61 subject to the conditions set forth in subsection (f), section
62 four of this article, under direct supervision of an
63 Occupational Therapist or an Occupational Therapy
64 Assistant, in accordance with the provisions of this article.

65 (n) “The practice of occupational therapy” means the
66 therapeutic use of everyday life activities or occupations to
67 address the physical, cognitive, psychosocial, sensory, and
68 other aspects of performance of individuals or groups of
69 individuals, including those who have or are at risk for
70 developing an illness, injury, disease, disorder, condition,
71 impairment, disability, activity limitation or participation
72 restriction, to promote health, wellness and participation in
73 roles and situations in home, school, workplace, community
74 and other settings.

§30-28-4. Scope of practice; license and supervision requirements.

1 (a) The scope of practice of occupational therapy
2 includes, but is not limited to:

3 (1) Methods or strategies selected to direct the process of
4 interventions such as:

5 (A) Establishment, remediation, or restoration of a skill
6 or ability that has not yet developed or is impaired;

7 (B) Compensation, modification, or adaptation of activity
8 or environment to enhance performance;

9 (C) Maintenance and enhancement of capabilities without
10 which performance in everyday life activities would decline;

11 (D) Health promotion and wellness to enable or enhance
12 performance in everyday life activities; and

13 (E) Prevention of barriers to performance, including
14 disability prevention.

15 (2) Evaluation of factors affecting activities of daily
16 living (ADL), instrumental activities of daily living (IADL),
17 education, work, play, leisure and social participation,
18 including:

19 (A) Client factors, including body functions and body
20 structures;

21 (B) Habits, routines, roles and behavior patterns;

22 (C) Cultural, physical, environmental, social and spiritual
23 contexts and activity that affect performance; and

24 (D) Performance skills, including motor, process and
25 communication/interaction skills.

26 (3) Interventions and procedures to promote or enhance
27 safety and performance in activities of daily living (ADL),
28 instrumental activities of daily living (IADL), education,
29 work, play, leisure and social participation, including:

30 (A) Therapeutic use of occupations and preparatory,
31 adjunctive and functional activities;

- 32 (B) Training in self-care, self-management home
33 management and community/work reintegration;
- 34 (C) Development, remediation, or compensation of
35 physical, cognitive, neuromuscular, sensory functions, visual,
36 vestibular and behavioral skills;
- 37 (D) Therapeutic use of self, including one's personality,
38 insights, perceptions and judgments, as part of the therapeutic
39 process;
- 40 (E) Education and training of individuals, including
41 family members, care givers and others;
- 42 (F) Care coordination, case management and transition
43 services;
- 44 (G) Consultative services to groups, programs,
45 organizations or communities;
- 46 (H) Modification of environments (home, work, school
47 or community) and adaptation of processes, including the
48 application of ergonomic principles;
- 49 (I) Assessment, design, fabrication, application, fitting
50 and training in assistive technology, adaptive devices,
51 orthotic devices and training in the use of prosthetic devices
52 to enhance occupational performance;
- 53 (J) Assessment, recommendation and training in
54 techniques to enhance functional mobility, including
55 wheelchair management;
- 56 (K) Community mobility and re-entry;
- 57 (L) Management of feeding, eating and swallowing to
58 enable eating and feeding performance; and

59 (M) Application of physical agent modalities, and use of
60 a range of specific therapeutic procedures and techniques to
61 enhance occupational performance skills. Use of physical
62 agent modalities by occupational therapy assistants must be
63 consistent with their education (e.g. superficial thermal and
64 mechanical modalities) and used under the general
65 supervision of an occupational therapist. The use of deep
66 thermal or electrical modalities may only be performed by
67 the occupational therapy assistant under the direct
68 supervision of an occupational therapist, until the board shall
69 promulgate rules as well as establish competency standards
70 for the use of the modalities.

71 (b) No person may engage in the practice of occupational
72 therapy or present herself or himself as an occupational
73 therapist or occupational therapy assistant in this state, or use
74 the words “occupational therapist,” “licensed occupational
75 therapist,” “occupational therapist registered,” “occupational
76 therapy assistant,” “licensed occupational therapy assistant,”
77 “certified occupational therapy assistant,” or “occupational
78 therapy aide,” or the letters “O.T.,” “L.O.T.,” “O.T.R.,”
79 “O.T.A.,” “L.O.T.A.,” “C.O.T.A.,” or any other words,
80 letters, abbreviations or insignia indicating or implying that
81 he or she is an occupational therapist or occupational therapy
82 assistant, unless he or she holds a valid, current license issued
83 in accordance with the provisions of this article, which has
84 not expired, been suspended or revoked.

85 (c) No business entity may advertise or otherwise offer to
86 provide or convey the impression that it is providing
87 occupational therapy unless an individual holding a current
88 valid license or permit under this article renders the
89 occupational therapy services to which reference is made.

90 (d) An occupational therapy assistant may assist in the
91 practice of occupational therapy under the general
92 supervision of an occupational therapist.

93 (e) An occupational therapist or an occupational therapy
94 assistant may delegate nonclient-related tasks to an
95 occupational therapy aide only under the following
96 conditions:

97 (1) The occupational therapy aide functions under the
98 general supervision of either the occupational therapist or the
99 occupational therapy assistant who is under the general
100 supervision of the occupational therapist; and

101 (2) The occupational therapy aide provides only tasks for
102 which he or she has been trained and has demonstrated
103 competence.

104 (f) An occupational therapist or an occupational therapy
105 assistant may delegate specifically selected client-related
106 tasks to an occupational therapy aide only under the
107 following conditions:

108 (1) The occupational therapy aide functions under the
109 direct continuous supervision of either the occupational
110 therapist or the occupational therapy assistant that is under
111 the general supervision of the occupational therapist;

112 (2) The occupational therapy aide provides only tasks for
113 which he or she has been trained and has demonstrated
114 competence;

115 (3) The outcome anticipated for the delegated task is
116 predictable;

117 (4) The client and the environment are stable and will not
118 require judgment, interpretation or adaptation by the
119 occupational therapy aide; and

120 (5) The supervising occupational therapist is responsible
121 for the tasks delegated to the occupational therapy aide.

§30-28-5. West Virginia Board of Occupational Therapy.

1 (a) The West Virginia Board of Occupational Therapy is
2 continued with the following five members appointed by the
3 governor by and with the advice and consent of the Senate:

4 (1) Three licensed occupational therapists;

5 (2) One licensed occupational therapy assistant; and

6 (3) One citizen member, who is not licensed under the
7 provisions of this article.

8 (b) The occupational therapist and occupational therapy
9 assistant members shall have been engaged in rendering
10 occupational therapy services to the public, teaching,
11 consulting or conducting research in occupational therapy for
12 at least three years immediately preceding their
13 appointments.

14 (c) No board member may serve as an officer of the West
15 Virginia Occupational Therapy Association concurrently
16 with his or her service on the board.

17 (d) The members of the board in office on December 31,
18 2008, shall, unless sooner removed, continue to serve until
19 their respective terms expire or their successors have been
20 appointed and qualified.

21 (e) The term shall be for three years commencing on
22 January 1. A member may not serve more than two
23 consecutive full terms. A member having served two
24 consecutive full terms may not be appointed for one year
25 after completion of his or her second full term. A member
26 may continue to serve until a successor has been appointed
27 and qualified.

28 (f) Each licensed member of the board, at the time of his
29 or her appointment, must have held a license in this state for
30 a period of not less than three years immediately preceding
31 the appointment.

32 (g) Each member of the board must be a resident of this
33 state during the appointment term.

34 (h) A vacancy on the board shall be filled by appointment
35 by the Governor for the unexpired term of the member whose
36 office is vacant and the appointment shall be made within
37 sixty days of the vacancy.

38 (i) The Governor may remove any member from the
39 board for neglect of duty, incompetency or official
40 misconduct.

41 (j) A member of the board immediately and automatically
42 forfeits membership to the board if his or her license to
43 practice is suspended or revoked, is convicted of a felony
44 under the laws of any jurisdiction, or becomes a nonresident
45 of this state.

46 (k) The board shall elect annually one of its members as
47 chairperson who serves at the will of the board.

48 (l) Each member of the board is entitled to compensation
49 and expense reimbursement in accordance with article one of
50 this chapter.

51 (m) A majority of the members of the board constitutes
52 a quorum.

53 (n) The board shall hold at least two annual meetings.
54 Other meetings may be held at the call of the chairperson or
55 upon the written request of two members, at the time and
56 place as designated in the call or request.

57 (o) Prior to commencing his or her duties as a member of
58 the board, each member shall take and subscribe to the oath
59 required by section five, article four of the Constitution of
60 this state.

§30-28-6. Powers and duties of the board.

1 (a) The board has all the powers and duties set forth in
2 this article, by legislative rule, in article one of this chapter
3 and elsewhere in law.

4 (b) The board shall:

5 (1) Hold meetings and conduct hearings;

6 (2) Establish requirements for licenses and permits;

7 (3) Establish procedures for submitting, approving and
8 rejecting applications for licenses and permits;

9 (4) Determine the qualifications of any applicant for a
10 license or permit;

11 (5) Propose rules for legislative approval relating to
12 professional conduct and ethical standards of practice;

13 (6) Communicate disciplinary actions to relevant state
14 and federal authorities, the National Board for Certification
15 in Occupational Therapy (NBCOT), the American
16 Occupational Therapy Association (AOTA) and other
17 applicable authorities when public safety is at risk;

18 (7) Maintain an office and hire, discharge, establish the job
19 requirements and fix the compensation of employees and
20 contracted employees necessary to enforce the provisions of this
21 article including, but not limited to, the executive secretary;

22 (8) Investigate alleged violations of the provisions of this
23 article, legislative rules, orders and final decisions of the
24 board;

25 (9) Conduct disciplinary hearings of persons regulated by
26 the board;

27 (10) Determine disciplinary action and issue orders;

28 (11) Institute appropriate legal action for the enforcement
29 of the provisions of this article;

30 (12) Maintain an accurate registry of names and
31 addresses of all persons regulated by the board;

32 (13) Keep accurate and complete records of its
33 proceedings, and certify the same as may be necessary and
34 appropriate;

35 (14) Establish by legislative rule the continuing education
36 and competency requirements for licensees;

37 (15) Issue, renew, combine, deny, suspend, revoke or
38 reinstate licenses and permits;

39 (16) Establish a fee schedule;

40 (17) Take all other actions necessary and proper to
41 effectuate the purposes of this article; and

42 (18) Propose rules in accordance with the provisions of
43 article three, chapter twenty-nine-a of this code to implement
44 the provisions of this article.

45 (c) The board may:

46 (1) Approve and contract with third parties to administer
47 the examinations required under the provisions of this article;

48 (2) Sue and be sued in its official name as an agency of
49 this state; and

50 (3) Confer with the Attorney General or his or her
51 assistants in connection with legal matters and questions.

§30-28-7. Rulemaking.

1 (a) The board shall propose rules for legislative approval,
2 in accordance with the provisions of article three, chapter
3 twenty-nine-a of this code, to implement the provisions of
4 this article, including:

5 (1) Standards and requirements for licenses and permits;

6 (2) Designate third parties to establish educational
7 requirements and to prepare and/or administer examinations
8 and reexaminations;

9 (3) Procedures for the issuance and renewal of a license,
10 temporary license and limited permit;

11 (4) A fee schedule;

12 (5) Continuing education and competency requirements
13 for licensees;

14 (6) Establishment of competency standards;

15 (7) The procedures for denying, suspending, revoking,
16 reinstating or limiting the practice of a licensee or permittee;

17 (8) Requirements for reinstatement of revoked licenses; and

18 (9) Any other rules necessary to effectuate the provisions
19 of this article.

20 (b) The board is authorized to promulgate emergency
21 rules in accordance with section fifteen, article three, chapter
22 twenty-nine-a of this code to establish competency standards
23 for advance treatment techniques as set forth in subdivision
24 six, subsection (a) of this section.

25 (c) All rules in effect on the effective date of this article
26 shall remain in effect until they are amended or repealed, and
27 references to provisions of former enactments of this article
28 are interpreted to mean provisions of this article.

§30-28-8. Fees; special revenue account; administrative fines.

1 (a) All fees and other moneys, except administrative
2 fines, received by the board shall be deposited in a separate
3 special revenue fund in the State Treasury designated the
4 “West Virginia Board of Occupational Therapy”, which is
5 continued. The fund is used by the board for the
6 administration of this article. Except as may be provided in
7 article one of this chapter, the board retains the amount in the
8 special revenue account from year to year. No compensation
9 or expense incurred under this article is a charge against the
10 General Revenue Fund.

11 (b) Any amount received as fines, imposed pursuant to
12 this article, shall be deposited into the General Revenue Fund
13 of the State Treasury.

§30-28-9. Persons and practices not affected.

1 This article does not prevent or restrict the practice,
2 services or activities of:

3 (1) Any person licensed under any other law of this state
4 performing services within the authorized scope of practice
5 for which he or she is licensed;

6 (2) Any person pursuing a course of study leading to a
7 degree in Occupational Therapy from an accredited
8 educational program if the person acts under the supervision
9 of a clinical supervisor or instructor of the accredited
10 education program and is designated by a title which clearly
11 indicates his or her status as a student; or

12 (3) Any person fulfilling the supervised fieldwork
13 experience requirements of section ten of this article.

§30-28-10. Qualifications of applicants for license.

1 To be eligible for a license to engage in the practice of
2 occupational therapy, the applicant must:

3 (1) Be of good moral character;

4 (2) Have successfully completed the academic
5 requirements of an educational program for Occupational
6 Therapists or Occupational Therapy Assistants that is
7 accredited by the American Occupational Therapy
8 Association's Accreditation Council for Occupational
9 Therapy Education (ACOTE) or its predecessor
10 organizations;

11 (3) Have successfully completed a period of supervised
12 fieldwork experience required by the recognized
13 educational institution where he or she met the academic
14 requirements;

15 (4) Have passed an examination approved by the board;

16 (5) Have filed an application on forms provided by the
17 board; and

18 (6) Have paid the applicable fee.

§30-28-11. Examination.

1 (a) A person who has met the requirements of subsections
2 (1), (2) and (3), section ten of this article, may make
3 application for examination.

4 (b) Each applicant for licensure shall be examined by
5 written or computerized examination to test his or her
6 knowledge of the basic and clinical sciences relating to
7 occupational therapy, and occupational therapy theory and
8 practice, including the professional skills and judgment of the
9 applicant in the utilization of occupational therapy techniques
10 and methods, and other subjects the board may require to
11 determine the fitness for practice of the applicant. The
12 examination may be administered by the National Board for
13 Certification in Occupational Therapy, Inc. (NBCOT) or
14 another nationally recognized credentialing body as approved
15 by the board.

§30-28-12. Licensees from other jurisdictions; internationally educated applicants.

1 (a) The board may issue a license to practice to any
2 applicant who presents proof of current licensure as an
3 occupational therapist or an occupational therapy assistant in
4 another jurisdiction which requires standards for licensure
5 considered by the board or by a board-approved credentialing
6 agency to be equivalent to the requirements for licensure in
7 this state and who meets the requirements of section ten of
8 this article.

9 (b) The board may grant a license to an applicant who
10 was educated outside of the United States or its territories in
11 an educational program whose standards are determined by
12 the board or by a board-approved credentialing agency to be
13 equivalent to the standards required for licensure in this state
14 and who meets the requirements of section ten of this article.

15 (c) In its discretion, the board may examine a person by
16 a written, oral or skills test for licensing under this section,
17 and may enter into agreements for reciprocal licensing with
18 other jurisdictions having substantially similar requirements
19 for licensure.

§30-28-13. Issuance of a license, limited permit and temporary license.

1 (a) The board shall issue a license to any person who
2 meets the requirements of this article upon payment of the
3 license fee prescribed.

4 (b) The board may issue a limited permit to persons who
5 have completed the education and fieldwork experience
6 requirements of this article. The holder of a limited permit
7 may practice occupational therapy only under the direct close
8 supervision of an occupational therapist who holds a current
9 license in this state. A limited permit is not renewable, and
10 is valid for ninety days: *Provided*, That the limited permit
11 expires immediately if the holder receives notification of a
12 failing score on the examination.

13 (c) The board may issue a temporary license to an
14 occupational therapist or an occupational therapy assistant who
15 is licensed and in good standing in a jurisdiction whose
16 standards are determined by the board or by a board-approved
17 credentialing agency to be equivalent to the standards required
18 for licensure in this state and who has submitted an application
19 and the required fee. The holder of a temporary license may
20 practice occupational therapy only in accordance with the
21 provisions of this article. A temporary license is nonrenewable
22 and is valid for thirty days.

23 (d) The board shall prescribe the form of licenses. The
24 licensee shall conspicuously display the license or a copy of
25 the license at his or her principal place of employment. The

26 licensee shall produce the original license upon the request of
27 the board.

§30-28-14. Renewal of license; renewal of lapsed license; suspension, revocation and refusal to renew; reinstatement of revoked license.

1 (a) Licenses may be renewed biennially upon
2 documentation of required continuing education and payment
3 of a renewal fee.

4 (b) A license which has lapsed may be renewed within
5 one year of its expiration date in the manner set by the board.
6 After the expiration of one year, a license may be renewed
7 only by complying with the requirements relating to the
8 issuance of an original license.

9 (c) The board may suspend, revoke or refuse to renew a
10 license for any reason which would justify the denial of an
11 original application for licensure.

12 (d) The board may consider the reinstatement of a license
13 which has been revoked upon a showing that the applicant
14 can resume practicing with reasonable skill and safety.

§30-28-15. Special volunteer occupational therapist license; civil immunity for voluntary services rendered to indigents.

1 (a) There is established a special volunteer occupational
2 therapist license for occupational therapists who are retired
3 or are retiring from the active practice of occupational
4 therapy and who wish to donate their expertise for the care
5 and treatment of indigent and needy patients in the clinical
6 setting of clinics organized, in whole or in part, for the
7 delivery of health care services without charge.

8 (b) The special volunteer occupational therapist license
9 shall be issued by the board to occupational therapists
10 licensed or otherwise eligible for licensure under this article
11 without the payment of an application fee, license fee or
12 renewal fee, and the initial license shall be issued for the
13 remainder of the licensing period, and renewed consistent
14 with the boards other licensing requirements.

15 (c) The board shall develop application forms for the
16 special license provided in this section which shall contain
17 the occupational therapist's acknowledgment that:

18 (1) The occupational therapist's practice under the special
19 volunteer occupational therapist license will be exclusively
20 devoted to providing occupational therapy care to needy and
21 indigent persons in West Virginia;

22 (2) The occupational therapist will not receive any
23 payment or compensation, either direct or indirect, or have
24 the expectation of any payment or compensation, for any
25 occupational therapy services rendered under the special
26 volunteer occupational therapist license;

27 (3) The occupational therapist will supply any supporting
28 documentation that the board may reasonably require; and

29 (4) The occupational therapist agrees to continue to
30 participate in continuing education as required by the board
31 for a special volunteer occupational therapists license.

32 (d) Any occupational therapist who renders any
33 occupational therapy service to indigent and needy patients
34 of a clinic organized, in whole or in part, for the delivery of
35 health care services without charge under a special volunteer
36 occupational therapist license authorized under this section
37 without payment or compensation or the expectation or
38 promise of payment or compensation is immune from

39 liability for any civil action arising out of any act or omission
40 resulting from the rendering of the occupational therapy
41 service at the clinic unless the act or omission was the result
42 of the occupational therapist's gross negligence or willful
43 misconduct. In order for the immunity under this subsection
44 to apply, before the rendering of any services by the
45 occupational therapist at the clinic, there must be a written
46 agreement between the occupational therapist and the clinic
47 stating that the occupational therapist will provide voluntary
48 uncompensated occupational therapy services under the
49 control of the clinic to patients of the clinic: *Provided*, That
50 any clinic entering into such written agreement is required to
51 maintain liability coverage of not less than one million
52 dollars per occurrence.

53 (e) Notwithstanding the provisions of subsection (d) of
54 this section, a clinic organized, in whole or in part, for the
55 delivery of health care services without charge is not relieved
56 from imputed liability for the negligent acts of an
57 occupational therapist rendering voluntary occupational
58 therapy services at or for the clinic under a special volunteer
59 occupational therapist license authorized under this section.

60 (f) For purposes of this section, "otherwise eligible for
61 licensure" means the satisfaction of all the requirements for
62 licensure in this article except the fee requirements.

63 (g) Nothing in this section may be construed as requiring
64 the board to issue a special volunteer occupational therapist
65 license to any occupational therapist whose occupational
66 therapist license is or has been subject to any disciplinary
67 action or to any occupational therapist who has surrendered
68 an occupational therapist license or caused such license to
69 lapse, expire and become invalid in lieu of having a
70 complaint initiated or other action taken against his or her
71 occupational therapist license, or who has elected to place an
72 occupational therapist license in inactive status in lieu of

73 having a complaint initiated or other action taken against his
74 or her occupational therapist license, or who has been denied
75 an occupational therapist license.

76 (h) Any policy or contract of liability insurance providing
77 coverage for liability sold, issued or delivered in this state to
78 any occupational therapist covered under the provisions of
79 this article shall be read so as to contain a provision or
80 endorsement whereby the company issuing such policy
81 waives or agrees not to assert as a defense on behalf of the
82 policyholder or any beneficiary thereof, to any claim covered
83 by the terms of such policy within the policy limits, the
84 immunity from liability of the insured by reason of the care
85 and treatment of needy and indigent patients by an
86 occupational therapist who holds a special volunteer
87 occupational therapist license.

**§30-28-16. Complaints; investigations; due process procedure;
grounds for disciplinary action.**

1 (a) The board may upon its own motion based on credible
2 information, and shall, upon the written complaint of any
3 person, cause an investigation to be made to determine
4 whether grounds exist for disciplinary action under this
5 article or the legislative rules of the board.

6 (b) Upon initiation or receipt of the complaint, the board
7 shall provide a copy of the complaint to the licensee or
8 permittee.

9 (c) After reviewing any information obtained through an
10 investigation, the board shall determine if probable cause
11 exists that the licensee or permittee has violated any
12 provision of subsection (g) of this section or rules
13 promulgated pursuant to this article.

14 (d) Upon a finding that probable cause exists that the
15 licensee or permittee has violated any provision of this
16 subsection (g) of this section or rules promulgated pursuant
17 to this article, the board may enter into a consent decree or
18 hold a hearing for the suspension or revocation of the license
19 or permit or the imposition of sanctions against the licensee
20 or permittee. Any hearing shall be held in accordance with
21 the provisions of this article.

22 (e) Any member of the board or the executive director of
23 the board may issue subpoenas and subpoenas duces tecum
24 to obtain testimony and documents to aid in the investigation
25 of allegations against any person regulated by the article.

26 (f) Any member of the board or its executive director
27 may sign a consent decree or other legal document on behalf
28 of the board.

29 (g) The board may, after notice and opportunity for
30 hearing, deny or refuse to renew, suspend or revoke the
31 license of, impose probationary conditions upon or take
32 disciplinary action against, any licensee for any of the
33 following reasons once a violation has been proven by a
34 preponderance of the evidence:

35 (1) Obtaining a license or permit by fraud,
36 misrepresentation or concealment of material facts;

37 (2) Being convicted of a felony or other crime involving
38 moral turpitude;

39 (3) Being guilty of unprofessional conduct as defined by
40 legislative rule of the board;

41 (4) A violation of a lawful order or legislative rule of the
42 board;

43 (5) Providing substandard care as an Occupation
44 Therapist due to a deliberate or negligent act or failure to
45 act regardless of whether actual injury to a patient is
46 established;

47 (6) Providing substandard care as an Occupational
48 Therapy Assistant, including exceeding the authority to
49 perform components of intervention selected and delegated
50 by the supervising Occupational Therapist regardless of
51 whether actual injury to a patient is established;

52 (7) Knowingly delegating responsibilities to an individual
53 who does not have the knowledge, skills or abilities to
54 perform those responsibilities;

55 (8) Failing to provide appropriate supervision to an
56 Occupational Therapy Assistant or Aide in accordance with
57 this article and legislative rules of the board;

58 (9) Practicing as an Occupational Therapist or
59 Occupational Therapy Assistant when competent services to
60 recipients may not be provided due to the therapist's own
61 physical or mental impairment;

62 (10) Having had an Occupational Therapist or
63 Occupational Therapy Assistant license revoked or
64 suspended, other disciplinary action taken, or an application
65 for licensure refused, revoked or suspended by the proper
66 authorities of another jurisdiction;

67 (11) Engaging in sexual misconduct. For the purposes of
68 this subdivision, sexual misconduct includes:

69 (A) Engaging in or soliciting sexual relationships,
70 whether consensual or nonconsensual, while an Occupational
71 Therapist or Occupational Therapy Assistant/patient
72 relationship exists with that person; or

73 (B) Making sexual advances, requesting sexual favors or
74 engaging in physical contact of a sexual nature with patients
75 or clients;

76 (12) Aiding or abetting a person who is not licensed as an
77 Occupational Therapist or Occupational Therapy Assistant in
78 this state and who directly or indirectly performs activities
79 requiring a license;

80 (13) Abandoning or neglecting a patient or client under
81 and in need of immediate professional care without making
82 reasonable arrangements for the continuation of care; or

83 (14) Engaging in any act which has endangered or is
84 likely to endanger the health, welfare or safety of the public.

85 (h) For the purposes of subsection (g) of this section,
86 effective July 15, 2009, disciplinary action may include:

87 (1) Reprimand;

88 (2) Probation;

89 (3) Administrative fine, not to exceed \$1,000 per day per
90 violation;

91 (4) Mandatory attendance at continuing education
92 seminars or other training;

93 (5) Practicing under supervision or other restriction;

94 (6) Requiring the licensee or permittee to report to the
95 board for periodic interviews for a specified period of time;
96 or

97 (7) Other disciplinary action considered by the board to
98 be necessary to protect the public, including advising other
99 parties whose legitimate interests may be at risk.

§30-28-17. Procedures for hearing; right of appeal.

1 (a) Hearings shall be governed by the provisions of
2 section eight, article one of this chapter.

3 (b) The board may conduct the hearing or elect to have an
4 administrative law judge conduct the hearing.

5 (c) If the hearing is conducted by an administrative law
6 judge, the administrative law judge shall prepare a proposed
7 written order at the conclusion of a hearing containing
8 findings of fact and conclusions of law. The proposed order
9 may contain proposed disciplinary actions if the board so
10 directs. The board may accept, reject or modify the decision
11 of the administrative law judge.

12 (d) Any member or the executive director of the board
13 has the authority to administer oaths, examine any person
14 under oath and issue subpoenas and subpoenas duces tecum.

15 (e) If, after a hearing, the board determines the licensee
16 or permittee has violated any provision of this article or the
17 board's rules, a formal written decision shall be prepared
18 which contains findings of fact, conclusions of law and a
19 specific description of the disciplinary actions imposed.

§30-28-18. Judicial review.

1 Any licensee or permittee adversely affected by a decision
2 of the board entered after a hearing may obtain judicial review
3 of the decision in accordance with section four, article five,
4 chapter twenty-nine-a of this code, and may appeal any ruling
5 resulting from judicial review in accordance with article six,
6 chapter twenty-nine-a of this code.

§30-28-19. Criminal proceedings; penalties.

1 (a) When, as a result of an investigation under this article
2 or otherwise, the board has reason to believe that a licensee
3 or permittee has committed a criminal offense under this
4 article, the board may bring the information to the attention
5 of an appropriate law-enforcement official.

6 (b) Effective July 15, 2009, a person violating a provision
7 of this article is guilty of a misdemeanor and, upon
8 conviction, shall be fined not less than \$500 nor more than
9 \$1,000 or confined in jail not more than six months, or both
10 fined and confined.

§30-28-20. Single act evidence of practice.

1 In any action brought or in any proceeding initiated under
2 this article, evidence of the commission of a single act
3 prohibited by this article is sufficient to justify a penalty,
4 injunction, restraining order or conviction without evidence
5 of a general course of conduct.

§30-28-21. Effective dates of certain provisions.

1 The provisions of this article as amended and reenacted
2 during the regular session of 2009, except for the provisions
3 of sections seven, sixteen and nineteen, are effective as of
4 July 1, 2009.

CHAPTER 177

(Com. Sub. for H.B. 2532 - By Delegates Morgan, Stephens, Martin and Swartzmiller)

[Passed April 10, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2009.]

AN ACT to repeal §30-31-7a of the Code of West Virginia, 1931, as amended; to amend and reenact §30-31-1, §30-31-2, §30-31-3, §30-31-4, §30-31-5, §30-31-6, §30-31-7, §30-31-8, §30-31-9, §30-31-10, §30-31-11, §30-31-12, §30-31-13, §30-31-14 and §30-31-15; and to amend said code by adding thereto two new sections, designated §30-31-16 and §30-31-17, all relating to the Board of Examiners of Counseling; prohibiting the practice of counseling and marriage and family therapy without a license; providing other applicable sections; providing definitions; providing for board composition; setting forth the powers and duties of the board; clarifying rulemaking authority; continuing a special revenue account; establishing license requirements; establishing renewal requirements; providing for exemptions from licensure; providing for licensure for persons licensed in another state; setting forth grounds for disciplinary actions; allowing for specific disciplinary actions; providing procedures for investigation of complaints; providing for judicial review and appeals of decisions; setting forth hearing and notice requirements; providing for civil causes of action; providing criminal penalties; providing for privileged communication and providing that a single act is evidence of practice.

Be it enacted by the Legislature of West Virginia:

That §30-31-7a of the Code of West Virginia, 1931, as amended, be repealed; that §30-31-1, §30-31-2, §30-31-3, §30-31-4, §30-31-5, §30-31-6, §30-31-7, §30-31-8, §30-31-9, §30-31-10, §30-31-11, §30-31-12, §30-31-13, §30-31-14 and §30-31-15, as amended, be amended and reenacted; and to amend said code by adding thereto two new sections, designated §30-31-16 and §30-31-17, all to read as follows:

ARTICLE 31. COUNSELORS.

- §30-31-1. License required.
- §30-31-2. Applicable law.
- §30-31-3. Definitions.
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§30-31-1. License required.

1 It is unlawful for any person to practice or offer to
2 practice professional counseling or marriage and family
3 therapy in this state without a license issued under the
4 provisions of this article, or advertise or use any title or
5 description tending to convey the impression that the person
6 is a licensed professional counselor or a licensed marriage
7 and family therapist unless the person has been licensed
8 under the provisions of this article, and the license has not
9 expired, been suspended, revoked or exempted.

§30-31-2. Applicable law.

1 The practices of professional counseling and marriage
2 and family therapy, and the Board of Examiners of
3 Counseling are subject to the provisions of article one of this
4 chapter, the provisions of this article and any rules
5 promulgated hereunder.

§30-31-3. Definitions.

1 As used in this article, the following words and terms
2 have the following meanings, unless the context clearly
3 indicates otherwise:

4 (a) "Applicant" means a person making an application for
5 a license or renewal under the provisions of this article.

6 (b) "Board" means the West Virginia Board of Examiners
7 in Counseling.

8 (c) "Clinical counseling procedures" means an approach
9 to counseling that emphasizes the counselor's role in
10 systematically assisting clients through all of the following
11 including, but are not limited to, observing, assessing and
12 analyzing background and current information; utilizing
13 assessment techniques useful in appraising aptitudes,
14 abilities, achievements, interests or attitudes; diagnosing; and
15 developing a treatment plan. The goal of these procedures is
16 the prevention or elimination of symptomatic, maladaptive,
17 or undesired behavior, cognitions, or emotions in order to
18 integrate a wellness, preventative, pathology and
19 multicultural model of human behavior to assist an
20 individual, couple, family, group of individuals, organization,
21 institution or community to achieve mental, emotional,
22 physical, social, moral, educational, spiritual, vocational or
23 career development and adjustment through the life span of
24 the individual, couple, family, group of individuals,
25 organization, institution or community.

26 (d) “Licensed professional counselor” means a person
27 licensed under the provisions of this article to practice
28 professional counseling.

29 (e) “Licensee” means a person holding a license issued
30 under the provisions of this article.

31 (f) “Licensed marriage and family therapist” means a
32 person licensed under the provisions of this article to practice
33 marriage and family therapy.

34 (g) “Marriage and family therapy” means the diagnosis
35 and treatment of mental and emotional disorders whether
36 cognitive, affective or behavioral, specifically within the
37 context of marriage and family systems, that involve the
38 professional application of theories and techniques to
39 individuals, couples and families, singly or in groups.

40 (h) “Professional counseling” means the assessment,
41 diagnosis, treatment and prevention of mental, emotional or
42 addiction disorders through the application of clinical
43 counseling procedures. Professional counseling includes the
44 use of psychotherapy, assessment instruments, counseling,
45 consultation, treatment planning, and supervision in the
46 delivery of services to individuals, couples, families and
47 groups.

§30-31-4. Board of Examiners in Counseling.

1 (a) The West Virginia Board of Examiners in Counseling
2 is continued. The members of the board in office on July 1,
3 2009, shall, unless sooner removed, continue to serve until
4 their respective terms expire and until their successors have
5 been appointed and qualified.

6 (b) To be effective on July 1, 2009, the Governor shall
7 appoint, by and with the advice and consent of the Senate, a
8 licensed marriage and family therapist from a list of three

9 nominees submitted by The West Virginia Association of
10 Marriage and Family Therapy, to replace the citizen member
11 whose term ends on June 30, 2009, and for any vacancy
12 thereafter.

13 (c) Commencing July 1, 2009, the board shall consist of
14 the following seven members:

15 (1) Two licensed professional counselors engaged in the
16 teaching of counseling at an accredited institution of higher
17 education;

18 (2) Three licensed professional counselors;

19 (3) One licensed marriage and family therapist; and

20 (4) One citizen, who is not licensed under the provisions
21 of this article and who does not perform any services related
22 to the practice of the professions regulated under the
23 provisions of this article.

24 (d) Each member shall be appointed by the Governor by
25 and with the advice and consent of the Senate. The term is
26 for five years.

27 (e) A member may not serve more than two consecutive
28 full terms. A member having served two consecutive full
29 terms may not be appointed for one year after completion of
30 his or her second full term. A member may continue to serve
31 until a successor has been appointed and has qualified.

32 (f) Each licensed member shall maintain an active license
33 with the board: *Provided*, That the initial marriage and
34 family therapist appointed to the board must qualify for
35 licensure under the provisions of section nine of this article.

36 (g) Each member of the board shall be a resident of West
37 Virginia during the appointment term.

38 (h) A vacancy on the board shall be filled by appointment
39 by the Governor for the unexpired term of the member whose
40 office is vacant and the appointment shall be made within
41 sixty days of the vacancy.

42 (i) The Governor may remove any member from the
43 board for neglect of duty, incompetency or official
44 misconduct.

45 (j) A member of the board immediately and automatically
46 forfeits membership to the board if his or her license to
47 practice is suspended or revoked, is convicted of a felony
48 under the laws of any jurisdiction, or becomes a nonresident
49 of this state.

50 (k) The board shall elect annually one of its members as
51 chairperson who serves at the will of the board.

52 (l) Each member of the board is entitled to compensation
53 and expense reimbursement in accordance with article one of
54 this chapter.

55 (m) A majority of the members of the board shall
56 constitute a quorum.

57 (n) The board shall hold at least two annual meetings.
58 Other meetings shall be held at the call of the chairperson or
59 upon the written request of two members, at the time and
60 place as designated in the call or request.

61 (o) Prior to commencing his or her duties as a member of
62 the board, each member shall take and subscribe to the oath
63 required by section five, article four of the Constitution of
64 this state.

§30-31-5. Powers and duties of the board.

1 (a) The board has all the powers and duties set forth in
2 this article, by rule, in article one of this chapter and
3 elsewhere in law.

4 (b) The board shall:

5 (1) Hold meetings, conduct hearings and administer
6 examinations;

7 (2) Establish requirements for licenses;

8 (3) Establish procedures for submitting, approving and
9 rejecting applications for a license;

10 (4) Determine the qualifications of any applicant for a
11 license;

12 (5) Prepare, conduct, administer and grade written, oral
13 or written and oral examinations for a license;

14 (6) Determine the passing grade for the examinations;

15 (7) Maintain records of the examinations the board or a
16 third party administers, including the number of persons
17 taking the examination and the pass and fail rate;

18 (8) Hire, discharge, establish the job requirements and fix
19 the compensation of the executive director;

20 (9) Maintain an office, and hire, discharge, establish the
21 job requirements and fix the compensation of employees and
22 contracted employees necessary to enforce the provisions of
23 this article;

24 (10) Investigate alleged violations of the provisions of
25 this article, legislative rules, orders and final decisions of the
26 board;

27 (11) Establish a fee schedule;

28 (12) Issue, renew, deny, suspend, revoke or reinstate a
29 license;

30 (13) Conduct disciplinary hearings of persons regulated
31 by the board;

32 (14) Determine disciplinary action and issue orders;

33 (15) Institute appropriate legal action for the enforcement
34 of the provisions of this article;

35 (16) Maintain an accurate registry of names and
36 addresses of all persons regulated by the board;

37 (17) Keep accurate and complete records of its
38 proceedings, and certify the same as may be necessary and
39 appropriate;

40 (18) Establish the continuing education requirements for
41 licensees;

42 (19) Propose rules in accordance with the provisions of
43 article three, chapter twenty-nine-a of this code to implement
44 the provisions of this article; and

45 (20) Take all other actions necessary and proper to
46 effectuate the purposes of this article.

47 (c) The board may:

48 (1) Contract with third parties to administer the
49 examinations required under the provisions of this article;

50 (2) Sue and be sued in its official name as an agency of
51 this state; and

52 (3) Confer with the Attorney General or his or her
53 assistant in connection with legal matters and questions.

§30-31-6. Rulemaking.

1 (a) The board shall propose rules for legislative approval,
2 in accordance with the provisions of article three, chapter
3 twenty-nine-a of this code, to implement the provisions of
4 this article, including:

5 (1) Standards and requirements for licenses to practice
6 professional counseling and marriage and family therapy;

7 (2) Procedures for examinations and reexaminations;

8 (3) Requirements for third parties to prepare and/or
9 administer examinations and reexaminations;

10 (4) Educational and experience requirements;

11 (5) The passing grade on the examination;

12 (6) Standards for approval of courses;

13 (7) Procedures for the issuance and renewal of a license;

14 (8) A fee schedule;

15 (9) Continuing education requirements for licensees;

16 (10) The procedures for denying, suspending, revoking,
17 reinstating or limiting the practice of a licensee;

18 (11) Requirements to reinstate a revoked license;

19 (12) Specific master's and doctoral degree programs
20 considered to be equivalent to a master's or doctoral degree
21 program required under this article;

22 (13) The nature of supervised professional experience
23 approved by the board for the purposes of licensure of this
24 article;

25 (14) A code of ethics; and

26 (15) Any other rules necessary to effectuate the
27 provisions of this article.

28 (b) All of the board's rules in effect on July 1, 2009, shall
29 remain in effect until they are amended or repealed, and
30 references to provisions of former enactments of this article
31 are interpreted to mean provisions of this article.

§30-31-7. Fees; special revenue account.

1 (a) All fees and other moneys, except administrative
2 fines, received by the board shall be deposited in a separate
3 special revenue fund in the State Treasury designated the
4 "Board of Examiners in Counseling Fund". The fund is used
5 by the board for the administration of this article. Except as
6 may be provided in article one of this chapter, the board
7 retains the amount in the special revenue account from year
8 to year. No compensation or expense incurred under this
9 article is a charge against the General Revenue Fund.

10 (b) Any amount received as fines, imposed pursuant to
11 this article, shall be deposited into the General Revenue Fund
12 of the State Treasury.

§30-31-8. Requirements for license to practice counseling.

1 (a) To be eligible for a license to practice professional
2 counseling, an applicant must:

3 (1) Be of good moral character;

4 (2) Be at least eighteen years of age;

5 (3) Be a citizen of the United States or be eligible for
6 employment in the United States;

7 (4) Pay the applicable fee;

8 (5)(A)(i) Have earned a master's degree in an accredited
9 counseling program or in a field closely related to an
10 accredited counseling program as determined by the board,
11 or have received training equivalent to such degree as may be
12 determined by the board; and

13 (ii) Have at least two years of supervised professional
14 experience in counseling of such a nature as is designated by
15 the board after earning a master's degree or equivalent; or

16 (B)(i) Have earned a doctorate degree in an accredited
17 counseling program or in a field closely related to an
18 accredited counseling program as determined by the board,
19 or have received training equivalent to such degree as may be
20 determined by the board; and

21 (ii) Have at least one year of supervised professional
22 experience in counseling of such a nature as is designated by
23 the board after earning a doctorate degree or equivalent;

24 (6) Have passed a standardized national certification
25 examination in counseling approved by the board;

26 (7) Not have been convicted of a felony or crime
27 involving moral turpitude under the laws of any jurisdiction:

28 (A) If the applicant has never been convicted of a felony
29 or a crime involving moral turpitude, the applicant shall
30 submit letters of recommendation from three persons not
31 related to the applicant and a sworn statement from the

32 applicant stating that he or she has never been convicted of
33 a felony or a crime involving moral turpitude; or

34 (B) If the applicant has been convicted of a felony or a
35 crime involving moral turpitude, it is a rebuttable
36 presumption that the applicant is unfit for licensure unless he
37 or she submits competent evidence of sufficient rehabilitation
38 and present fitness to perform the duties of a licensed
39 professional counselor as may be established by the
40 production of:

41 (i) Documentary evidence including a copy of the
42 relevant release or discharge order, evidence showing
43 compliance with all conditions of probation or parole,
44 evidence showing that at least one year has elapsed since
45 release or discharge without subsequent conviction, and
46 letters of reference from three persons who have been in
47 contact with the applicant since his or her release or
48 discharge; and

49 (ii) Any collateral evidence and testimony as may be
50 requested by the board which shows the nature and
51 seriousness of the crime, the circumstances relative to the
52 crime or crimes committed and any mitigating circumstances
53 or social conditions surrounding the crime or crimes and any
54 other evidence necessary for the board to judge present
55 fitness for licensure or whether licensure will enhance the
56 likelihood that the applicant will commit the same or similar
57 offenses;

58 (8) Not be an alcohol or drug abuser as these terms are
59 defined in section eleven, article one-a, chapter twenty-seven
60 of this code: *Provided*, That an applicant who has had at
61 least two continuous years of uninterrupted sobriety in an
62 active recovery process, which may, in the discretion of the
63 board, be evidenced by participation in a twelve-step

64 program or other similar group or process, may be
65 considered; and

66 (9) Has fulfilled any other requirement specified by the
67 board.

68 (b) A person who holds a license or other authorization
69 to practice counseling issued by another state, the
70 qualifications for which license or other authorization are
71 determined by the board to be at least substantially equivalent
72 to the license requirements in this article, is eligible for
73 licensure.

74 (c) A person seeking licensure under the provisions of
75 this section shall submit an application on a form prescribed
76 by the board and pay all applicable fees.

77 (d) A person who has been continually licensed under
78 this article since 1987, pursuant to prior enactments
79 permitting waiver of certain examination and other
80 requirements, is eligible for renewal under the provisions of
81 this article.

82 (e) A license to practice professional counseling issued
83 by the board prior to July 1, 2009, shall for all purposes be
84 considered a license issued under this article: *Provided*, That
85 a person holding a license issued prior to July 1, 2009, must
86 renew the license pursuant to the provisions of this article.

§30-31-9. Requirements for a license to practice marriage and family therapy.

1 (a) To be eligible for a license to practice marriage and
2 family therapy, an applicant must:

3 (1) Be of good moral character;

- 4 (2) Be at least eighteen years of age;
- 5 (3) Be a citizen of the United States or be eligible for
6 employment in the United States;
- 7 (4) Pay the applicable fee;
- 8 (5)(A)(i) Have earned a master's in marriage and family
9 therapy from a program accredited by the Commission on
10 Accreditation for Marriage and Family Therapy Education,
11 Council for Accreditation of Counseling and Related
12 Education Programs or a comparable accrediting body as
13 approved by the board or in a field closely related to an
14 accredited marriage and family therapy program as
15 determined by the board, or have received training equivalent
16 to such degree as may be determined by the board; and
- 17 (ii) Have at least two years of supervised professional
18 experience in marriage and family therapy of such a nature as
19 is designated by the board after earning a master's or
20 equivalent.
- 21 (B) (i) Have earned a doctorate degree in marriage and
22 family therapy from a program accredited by the Commission
23 on Accreditation for Marriage and Family Therapy
24 Education, the Council for Accreditation of Counseling and
25 Related Education Programs, or a comparable accrediting
26 body as approved by the board or in a field closely related to
27 an accredited marriage and family therapy program as
28 determined by the board, or have received training equivalent
29 to such degree as may be determined by the board; and
- 30 (ii) Have at least one year of supervised professional
31 experience in marriage and family therapy of such a nature as
32 is designated by the board after earning a doctorate or
33 equivalent.

34 (6) Have passed a standardized national certification
35 examination in marriage and family therapy as approved by
36 the board.

37 (7) Not have been convicted of a felony or crime
38 involving moral turpitude under the laws of any jurisdiction:

39 (A) If the applicant has never been convicted of a felony
40 or a crime involving moral turpitude, the applicant shall
41 submit letters of recommendation from three persons not
42 related to the applicant and a sworn statement from the
43 applicant stating that he or she has never been convicted of
44 a felony or a crime involving moral turpitude; or

45 (B) If the applicant has been convicted of a felony or a
46 crime involving moral turpitude, it is a rebuttable
47 presumption that the applicant is unfit for licensure unless he
48 or she submits competent evidence of sufficient rehabilitation
49 and present fitness to perform the duties of a licensed
50 professional counselor as may be established by the
51 production of:

52 (i) Documentary evidence including a copy of the
53 relevant release or discharge order, evidence showing
54 compliance with all conditions of probation or parole,
55 evidence showing that at least one year has elapsed since
56 release or discharge without subsequent conviction, and
57 letters of reference from three persons who have been in
58 contact with the applicant since his or her release or
59 discharge; and

60 (ii) Any collateral evidence and testimony as may be
61 requested by the board which shows the nature and
62 seriousness of the crime, the circumstances relative to the
63 crime or crimes committed and any mitigating circumstances
64 or social conditions surrounding the crime or crimes and any
65 other evidence necessary for the board to judge present

66 fitness for licensure or whether licensure will enhance the
67 likelihood that the applicant will commit the same or similar
68 offenses;

69 (8) Not be an alcohol or drug abuser as these terms are
70 defined in section eleven, article one-a, chapter twenty-seven
71 of this code: *Provided*, That an applicant who has had at
72 least two continuous years of uninterrupted sobriety in an
73 active recovery process, which may, in the discretion of the
74 board, be evidenced by participation in a twelve-step
75 program or other similar group or process, may be
76 considered; and

77 (9) Has fulfilled any other requirement specified by the
78 board.

79 (b) A person seeking licensure under the provisions of
80 this section shall submit an application on a form prescribed
81 by the board and pay all applicable fees.

82 (c) A person who is licensed for the five years prior to the
83 effective date of this section and has substantially similar
84 qualifications as required by subdivision (1), (2), (3),
85 (5)(A)(i), (5)(B)(i), (6) and (7) of subsection (a) of this
86 section is eligible for a license to practice marriage and
87 family therapy until July 1, 2013, and is eligible for renewal
88 under section ten.

§30-31-10. Renewal requirements.

1 (a) A licensed professional counselor and a licensed
2 marriage and family therapist shall annually or biennially
3 renew his or her license at a time determined by the board, by
4 completing a form prescribed by the board, paying the
5 renewal fee and submitting any other information required by
6 the board.

7 (b) The board shall charge a fee for each renewal of a
8 license and a late fee for any renewal not properly completed
9 and received with the appropriate fee by the board at the
10 appropriate date.

11 (c) The board shall require as a condition of renewal that
12 each licensee complete continuing education.

13 (d) The board may deny an application for renewal for
14 any reason which would justify the denial of an original
15 application for a license.

§30-31-11. Persons exempted from licensure.

1 (a) The following activities are exempt from the
2 provisions of this article:

3 (1) Teaching, lecturing or engaging in research in
4 professional counseling or marriage and family therapy so
5 long as such activities do not otherwise involve the practice
6 of professional counseling or marriage and family therapy
7 directly affecting the welfare of the person counseled;

8 (2) The official duties of persons employed as
9 professional counselors or marriage and family therapists by
10 the State of West Virginia or any of its departments,
11 agencies, divisions, bureaus or political subdivisions,
12 counties, county boards of education, regional education
13 service agencies, municipalities or any other facilities or
14 programs established, supported or funded, in whole or in
15 part, by the governmental entity;

16 (3) The official duties of persons employed as
17 professional counselors or marriage and family therapists by
18 any department, agency, division or bureau of the United
19 States of America;

20 (4) The official duties of persons serving as professional
21 counselors or marriage and family therapists, whether as
22 volunteers or for compensation or other personal gain, in any
23 public or private nonprofit corporations, organizations,
24 associations or charities;

25 (5) The official duties of persons who are employed by a
26 licensed professional counselor or licensed marriage and
27 family therapist, whose duties are supervised by a licensed
28 professional counselor or licensed marriage and family
29 therapists and who represent themselves by the title
30 provisionally licensed counselor or provisionally licensed
31 marriage and family therapist, and do not represent
32 themselves as licensed professional counselors or licensed
33 marriage and family therapists as defined in this article;

34 (6) The activities of a student of professional counseling
35 or marriage and family therapy which are part of the
36 prescribed course of study at an accredited educational
37 institution and are supervised by a licensed professional
38 counselor, licensed marriage and family therapist or by a
39 teacher, instructor or professor of counseling or marriage and
40 family therapy acting within the official duties or scope of
41 activities exempted by this section; or

42 (7) The activities and services of qualified members of
43 other recognized professions such as physicians,
44 psychologists, psychoanalysts, social workers, lawyers,
45 clergy, nurses or teachers performing counseling or marriage
46 and family therapy consistent with the laws of this state, their
47 training and any code of ethics of their professions so long as
48 such persons do not represent themselves as licensed
49 professional counselors or licensed marriage and family
50 therapists as defined by section three of this article.

51 (b) Nothing in the article requires licensing of the
52 following persons pursuant to this article:

53 (1) A school counselor who holds a school counseling
54 certificate issued by the West Virginia Department of
55 Education and who is engaged in counseling solely within the
56 scope of his or her employment with the department, a
57 county board of education or a regional education service
58 agency; or

59 (2) A nonresident professional counselor or marriage and
60 family therapist who holds a license or other authorization to
61 engage in the practice of professional counseling or marriage
62 and family therapy issued by another state, the qualifications
63 for which in the opinion of the board are at least as stringent
64 as those provided in section eight and section nine of this
65 article, and who renders counseling services in this state for
66 no more than thirty days in any calendar year.

67 (c) Nothing in this article permits a licensed professional
68 counselor or licensed marriage and family therapist to
69 administer or prescribe drugs or otherwise engage in the
70 practice of medicine as defined in articles three and fourteen
71 of chapter thirty of this code.

**§30-31-12. Complaints; investigations; due process procedure;
grounds for disciplinary action.**

1 (a) The board may upon its own motion based on credible
2 information, and shall upon the written complaint of any
3 person cause an investigation to be made to determine
4 whether grounds exist for disciplinary action under this
5 article or the legislative rules of the board.

6 (b) Upon initiation or receipt of the complaint, the board
7 shall provide a copy of the complaint to the licensee.

8 (c) After reviewing any information obtained through an
9 investigation, the board shall determine if probable cause
10 exists that the licensee has violated any provision of

11 subsection (g) of this section or rules promulgated pursuant
12 to this article.

13 (d) Upon a finding that probable cause exists that the
14 licensee has violated any provision of subsection (g) of this
15 section or rules promulgated pursuant to this article, the
16 board may enter into a consent decree or hold a hearing for
17 the suspension or revocation of the license or the imposition
18 of sanctions against the licensee. Any hearing shall be held
19 in accordance with the provisions of this article.

20 (e) Any member of the board or the executive director of
21 the board may issue subpoenas and subpoenas duces tecum
22 to obtain testimony and documents to aid in the investigation
23 of allegations against any person regulated by the article.

24 (f) Any member of the board or its executive director
25 may sign a consent decree or other legal document on behalf
26 of the board.

27 (g) The board may, after notice and opportunity for
28 hearing, deny or refuse to renew, suspend or revoke the
29 license of, impose probationary conditions upon or take
30 disciplinary action against, any licensee for any of the
31 following reasons once a violation has been proven by a
32 preponderance of the evidence:

33 (1) Obtaining a license by fraud, misrepresentation or
34 concealment of material facts;

35 (2) Being convicted of a felony or other crime involving
36 moral turpitude;

37 (3) Being guilty of unprofessional conduct as defined by
38 legislative rule of the board;

39 (4) A violation of a lawful order or rule of the board;

40 (5) Having had a license or other authorization revoked
41 or suspended, other disciplinary action taken, or an
42 application for licensure or other authorization revoked or
43 suspended by the proper authorities of another jurisdiction;

44 (6) Aiding or abetting unlicensed practice; or

45 (7) Engaging in an act which has endangered or is likely
46 to endanger the health, welfare or safety of the public.

47 (h) For the purposes of subsection (g) of this section,
48 effective July 15, 2009, disciplinary action may include:

49 (1) Reprimand;

50 (2) Probation;

51 (3) Administrative fine, not to exceed \$1,000 per day per
52 violation;

53 (4) Mandatory attendance at continuing education
54 seminars or other training;

55 (5) Practicing under supervision or other restriction;

56 (6) Requiring the licensee to report to the board for
57 periodic interviews for a specified period of time; or

58 (7) Other corrective action considered by the board to be
59 necessary to protect the public, including advising other
60 parties whose legitimate interests may be at risk.

§30-31-13. Procedures for hearing; right of appeal.

1 (a) Hearings shall be governed by the provisions of
2 section eight, article one of this chapter.

3 (b) The board may conduct the hearing or elect to have an
4 administrative law judge conduct the hearing.

5 (c) If the hearing is conducted by an administrative law
6 judge, at the conclusion of a hearing he or she shall prepare
7 a proposed written order containing findings of fact and
8 conclusions of law. The proposed order may contain
9 proposed disciplinary actions if the board so directs. The
10 board may accept, reject or modify the decision of the
11 administrative law judge.

12 (d) Any member or the executive director of the board
13 has the authority to administer oaths, examine any person
14 under oath and issue subpoenas and subpoenas duces tecum.

15 (e) If, after a hearing, the board determines the licensee
16 has violated any provision of this article or the board's rules,
17 a formal written decision shall be prepared which contains
18 findings of fact, conclusions of law and a specific description
19 of the disciplinary actions imposed.

§30-31-14. Judicial review.

1 Any licensee adversely affected by a decision of the
2 board entered after a hearing may obtain judicial review of
3 the decision in accordance with section four, article five,
4 chapter twenty-nine-a of this code, and may appeal any ruling
5 resulting from judicial review in accordance with article six,
6 chapter twenty-nine-a of this code.

§30-31-15. Criminal proceedings; penalties.

1 (a) When, as a result of an investigation under this article
2 or otherwise, the board has reason to believe that a licensee
3 has committed a criminal offense under this article, the board
4 may bring the information to the attention of an appropriate
5 law-enforcement official.

6 (b) Effective July 15, 2009, a person violating section one
7 of this article is guilty of a misdemeanor and, upon
8 conviction thereof, shall be fined not less than \$500 nor more
9 than \$1,000 or confined in jail not more than six months, or
10 both fined and confined.

§30-31-16. Disclosure.

1 All information communicated to or acquired by a
2 licensee while engaged in the practice of counseling or
3 marriage and family therapy with a client is privileged
4 information and may not be disclosed by the licensee except:

5 (a) With the written consent of the client, or in the case of
6 death or disability, with the written consent of a personal
7 representative or other person authorized to sue, or the
8 beneficiary of any insurance policy on the client's life, health
9 or physical condition;

10 (b) When a communication reveals the contemplation of
11 an act dangerous to the client or others; or

12 (c) When the client, or his or her personal representative,
13 waives the privilege by bringing charges against the licensee.

§30-31-17. Single act evidence of practice.

1 In any action brought or in any proceeding initiated under
2 this article, evidence of the commission of a single act
3 prohibited by this article is sufficient to justify a penalty,
4 injunction, restraining order or conviction without evidence
5 of a general course of conduct.

CHAPTER 178

**(Com. Sub. for H.B. 3120 - By Delegates Morgan, Marshall,
Talbot, Martin, Klempa and Paxton)**

[Amended and again passed May 27, 2009, as a result of the
objections of the Governor; in effect ninety days from passage.]

[Approved by the Governor on June 5, 2009.]

AN ACT to repeal §7-4-6a of the Code of West Virginia, 1931, as amended; and to amend and reenact §7-4-6 of said code, relating to the West Virginia Prosecuting Attorneys Institute; increasing the membership of the executive council; permitting the appointment of special prosecutors in matters of juvenile delinquency and child abuse and neglect; and repealing outdated section that continued the Prosecuting Attorneys Institute.

Be it enacted by the Legislature of West Virginia:

That §7-4-6a of the Code of West Virginia, 1931, as amended, be repealed, and that §7-4-6 of said code be amended and reenacted to read as follows:

**ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND
LEGAL ADVICE.**

§7-4-6. West Virginia Prosecuting Attorneys Institute.

- 1 (a) There is continued the West Virginia Prosecuting
- 2 Attorneys Institute, a public body whose membership shall
- 3 consist of the fifty-five elected county prosecuting attorneys

4 in the state. The Institute shall meet at least once each
5 calendar year and the presence of twenty-eight of the
6 fifty-five prosecutors at any meeting constitutes a quorum for
7 the conduct of the Institute's business.

8 (b) There is continued the Executive Council of the
9 West Virginia Prosecuting Attorneys Institute which shall
10 consist of seven prosecuting attorneys elected by the
11 membership of the West Virginia Prosecuting Attorneys
12 Institute at its annual meeting and two persons appointed
13 annually by the county commissioner's association of West
14 Virginia. The executive council shall elect one member of
15 the council to serve as chairman of the institute for a term of
16 one year without compensation. The executive council shall
17 serve as the regular executive body of the institute.

18 (c) There is continued the position of Executive Director
19 of the West Virginia Prosecuting Attorneys Institute to be
20 employed by the executive council of the institute. The
21 Executive Director of the West Virginia Prosecuting
22 Attorneys Institute shall serve at the will and pleasure of the
23 executive council of the institute. The executive director
24 shall be licensed to practice law in the State of West Virginia
25 and shall devote full time to his or her official duties and may
26 not engage in the private practice of law.

27 (d) The duties and responsibilities of the institute, as
28 implemented by and through its executive council and its
29 executive director, shall include the following:

30 (1) The provision for special prosecuting attorneys to
31 pursue a criminal matter, a juvenile delinquency matter or a
32 matter involving child abuse neglect pursuant to chapter
33 forty-nine of this code, or in any matter wherein a special
34 prosecutor previously appointed has failed to take any action
35 thereon within such time as the Executive Director deems
36 unreasonable, not to exceed three terms of court from the

37 date on which the special prosecutor was appointed:
38 *Provided*, That such replacement or original appointment
39 may be any attorney with a license in good standing in this
40 state in any county upon the request of a circuit court judge
41 of that county and upon the approval of the executive
42 council;

43 (2) The establishment and implementation of general
44 and specialized training programs for prosecuting attorneys,
45 their staffs and, where determined practical by the executive
46 council and executive director, all statutorily authorized
47 law-enforcement or investigative agencies of the state or its
48 political subdivisions;

49 (3) The provision of materials for prosecuting attorneys
50 and their staffs, including legal research, technical assistance
51 and technical and professional publications;

52 (4) The compilation and dissemination of information on
53 behalf of prosecuting attorneys and their staffs on current
54 developments and changes in the law and the administration
55 of criminal justice;

56 (5) The establishment and implementation of uniform
57 reporting procedures for prosecuting attorneys and their
58 professional staffs in order to maintain and to provide
59 accurate and timely data and information relative to criminal
60 prosecutorial matters;

61 (6) The acceptance and expenditure of grants, moneys
62 for reimbursement of expenses, gifts and acceptance of
63 services from any public or private source;

64 (7) The entering into of agreements and contracts with
65 public or private agencies, groups, organizations or
66 educational institutions;

67 (8) The identification of experts and other resources for
68 use by prosecutors in criminal matters;

69 (9) The recommendation to the Legislature or the
70 Supreme Court of Appeals of the State of West Virginia on
71 measures required, or procedural rules to be promulgated, to
72 make uniform the processing of juvenile cases in the
73 fifty-five counties of the state; and

74 (10) The development of a written handbook for
75 prosecutors and their assistants to use which delineates
76 relevant information concerning the elements of various
77 crimes in West Virginia and other information the institute
78 considers appropriate.

79 (e) Each prosecuting attorney is subject to appointment
80 by the institute to serve as a special prosecuting attorney in
81 any county where the prosecutor for that county or his or her
82 office has been disqualified from participating in a particular
83 criminal case, a juvenile delinquency matter or a matter
84 involving child abuse neglect pursuant to chapter forty-nine
85 of this code, or in any matter wherein a special prosecutor
86 previously appointed has failed to take any action thereon
87 within such time as the Executive Director deems
88 unreasonable, not to exceed three terms of court from the
89 date on which the special prosecutor was appointed:
90 *Provided*, That such replacement or original appointment
91 may be any attorney with a license in good standing in this
92 state. The circuit judge of any county of this state, who
93 disqualifies the prosecutor or his or her office from
94 participating in a particular criminal case, a juvenile
95 delinquency matter or a matter involving child abuse or
96 neglect pursuant to chapter forty-nine of this code in that
97 county, shall seek the appointment by the institute of a
98 special prosecuting attorney to substitute for the disqualified
99 prosecutor. The executive director of the institute shall, upon
100 written request to the institute by any circuit judge as a result

101 of disqualification of the prosecutor or for other good cause
102 shown, and upon approval of the executive council, appoint
103 a prosecuting attorney to serve as a special prosecuting
104 attorney. The special prosecuting attorney appointed shall
105 serve without any further compensation other than that paid
106 to him or her by his or her county, except that he or she is
107 entitled to be reimbursed for his or her legitimate expenses
108 associated with travel, mileage and room and board from the
109 county to which he or she is appointed as a prosecutor. The
110 county commission in which county he or she is special
111 prosecutor is responsible for all expenses associated with the
112 prosecution of the criminal action. No person who is serving
113 as a prosecuting attorney or an assistant prosecuting attorney
114 of any county is required to take an additional oath when
115 appointed to serve as a special prosecuting attorney.

116 (f) The executive director of the institute shall maintain
117 an appointment list that shall include the names of all
118 fifty-five prosecuting attorneys and that shall also include the
119 names of any assistant prosecuting attorney who wishes to
120 serve as a special prosecuting attorney upon the same terms
121 and conditions as set forth in this section. The executive
122 director of the institute, with the approval of the executive
123 council, shall appoint special prosecuting attorneys from the
124 appointment list for any particular matter giving due
125 consideration to the proximity of the proposed special
126 prosecuting attorney's home county to the county requesting
127 a special prosecutor and giving due consideration to the
128 expertise of the special prosecuting attorney.

129 (g) Each county commission shall pay, on a monthly
130 basis, a special prosecution premium to the Treasurer of the
131 state for the funding of the West Virginia Prosecuting
132 Attorneys Institute. The monthly premiums shall be paid
133 according to the following schedule:

134

MONTHLY PREMIUMS

135

Assessed Valuation of Property

136

of All Classes in the County

137	Category	Minimum	Maximum	Premium
138	A	\$1,500,000,000	Unlimited	\$400
139	B	\$1,000,000,000	\$1,499,999,000	\$375
140	C	\$ 800,000,000	\$ 999,999,000	\$350
141	D	\$ 700,000,000	\$ 799,999,000	\$325
142	E	\$ 600,000,000	\$ 699,999,000	\$300
143	F	\$ 500,000,000	\$ 599,999,000	\$250
144	G	\$ 400,000,000	\$ 499,999,000	\$200
145	H	\$ 300,000,000	\$ 399,999,000	\$150
146	I	\$ 200,000,000	\$ 299,999,000	\$100
147	J	-0-	\$ 199,999,000	\$ 50

148 (h) Upon receipt of a premium, grant, reimbursement or
149 other funding source, excluding federal funds as provided in
150 article two, chapter four of this code, the Treasurer shall
151 deposit the funds into a special revenue fund to be known as
152 the "West Virginia Prosecuting Attorneys Institute Fund".
153 All costs of operating the West Virginia Prosecuting
154 Attorneys Institute shall be paid from the West Virginia
155 Prosecuting Attorneys Institute Fund upon proper
156 authorization by the executive council or by the executive

157 director of the institute and subject to annual appropriation by
158 the Legislature of the amounts contained within the fund.

159 (i) The institute shall annually, by the first day of the
160 regular Legislative session, provide the Joint Committee on
161 Government and Finance with a report setting forth the
162 activities of the institute and suggestions for legislative
163 action.

164 (j) Neither the institute nor its employees acting in their
165 employment capacity shall engage in activities before
166 governmental bodies which advocate positions on issues
167 other than those issues consistent with the duties of the
168 institute set forth in subsection (d) of this section.



CHAPTER 179

**(Com. Sub. for S.B. 695 - By Senators Tomblin, Mr. President,
Helmick, Foster, McCabe and Kessler)**

[Amended and again passed May 28, 2009, as a result of the
objections of the Governor; in effect from passage.]

[Approved by the Governor on June 5, 2009.]

AN ACT to amend and reenact §5-5-6 of the Code of West Virginia, 1931, as amended, relating to payment for unused sick leave; limiting employees to a lifetime payment of \$25,000; providing caps on the amount the daily rate of pay is calculated by; removing eligibility of certain higher education employees to receive payment for unused sick leave; providing that payment may be made upon application and verification that the employee is eligible for payment; and specifying provisions to be applied retroactively.

Be it enacted by the Legislature of West Virginia:

That §5-5-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-6. Payment for unused sick leave.

1 (a) The Legislature declares that it is the purpose of this
2 section to create a fund to reduce the unfunded liability that
3 arises from the extended insurance coverage for eligible
4 employees under section thirteen, article sixteen of this
5 chapter, part of the West Virginia Public Employees
6 Insurance Act.

7 (b) Every eligible employee, as defined in section one of
8 this article, who is entitled upon retirement to credit his or her
9 accrued annual and sick leave for extended insurance
10 coverage as provided in section thirteen, article sixteen of this
11 chapter and who has accumulated at least sixty-five days of
12 unused sick leave may be paid, at his or her option, for
13 unused sick leave in an amount of days as designated by the
14 employee not to exceed the number of sick leave days that
15 would reduce an employee's sick leave balance to less than
16 fifty days: *Provided*, That any employee who applies for
17 payment under this section may not be paid more than a total
18 of \$25,000, either at one time or over the course of multiple
19 payments for unused sick leave.

20 (c) An employee who applies for payment under this
21 section shall be paid at a rate equal to one quarter of his or
22 her usual rate of daily pay during that calendar year.

23 (1) The "daily rate of pay" of an employee paid a
24 monthly salary is calculated by multiplying the monthly

25 salary by twelve and dividing that number by the number of
26 workdays for that calendar year: *Provided*, That for any
27 employee that falls under the provisions of subsection (d),
28 section thirteen, article sixteen of this chapter, the highest
29 monthly salary that the daily rate of pay shall be calculated
30 by is \$6,700. Any employee who falls under the provisions
31 of said subsection and is paid more than \$6,700 per month
32 shall receive payment for unused sick leave at a rate equal to
33 one quarter of the daily rate of pay of an employee paid a
34 monthly salary of \$6,700: *Provided, however*, That for any
35 employee that falls under the provisions of subsection (e),
36 section thirteen, article sixteen of this chapter, the highest
37 monthly salary that the daily rate of pay shall be calculated
38 by is \$4,200. Any employee who falls under the provisions
39 of said subsection and is paid more than \$4,200 per month
40 shall receive payment for unused sick leave at a rate equal to
41 one quarter of the daily rate of pay of an employee paid a
42 monthly salary of \$4,200: *Provided further*, That any
43 employee who falls under the provisions of subsection (g),
44 section thirteen, article sixteen of this chapter is not eligible
45 for payment under this section.

46 (2) As used in this section, “workday” does not include
47 weekends.

48 (3) Any payment for unused sick leave may not be a part
49 of final average salary computation.

50 (d) Payment for unused sick leave may be made upon
51 application and after the Secretary of the Department of
52 Administration verifies that the employee is eligible for
53 payment under this section. Payments shall be made out of
54 the fund established in subsection (g) of this section.

55 (e) Any eligible employee opting to receive payment in
56 exchange for unused sick leave must contract, in a form to be

57 prescribed by the Department of Administration, agreeing to
58 reimburse the fund for the amount exchanged plus twelve
59 percent per annum if the employee elects to separate from
60 employment within sixty months of the date of the exchange
61 pursuant to subsection (b) of this section. The Department of
62 Administration shall pursue collection of the obligation,
63 either by itself, or by contracting with a collection agency.
64 For purposes of this section, "separation" does not include
65 separation from employment by death or retirement, but does
66 refer to any other manner in which employment may be
67 terminated.

68 (f) Payments shall be made in the order that eligible
69 employees apply for the payments so long as funds are
70 available. In the event the fund is insufficient to pay all
71 employees who have applied for payment in a fiscal year,
72 employees who do not receive payment are eligible for
73 payment in the next fiscal year, are not required to reapply
74 and shall receive payment in the order in which they first
75 applied, unless the employee chooses to withdraw the
76 application prior to the next fiscal year.

77 (g) The special revenue account within the State
78 Treasury known as the State Employee Sick Leave Fund is
79 continued. The fund shall consist of moneys appropriated by
80 the Legislature, moneys deposited into the fund in
81 accordance with administrative rules of the Department of
82 Administration and any interest or other return to moneys in
83 the fund. The fund shall be administrated by the Secretary of
84 the Department of Administration.

85 (h) The secretary shall promulgate rules pursuant to
86 article three, chapter twenty-nine-a of this code to implement
87 the provisions of this section. The rules shall include, but not
88 be limited to, provisions for the application process and a rule
89 authorizing the secretary to obtain reimbursement, where

90 available and appropriate, to the State Employee Sick Leave
91 Fund from any spending unit for a pro rata share of payments
92 made under the provisions of this section to any employee
93 whose salary is paid, in whole or in part, from a funding
94 source other than the General Revenue Fund. The rules may
95 also include provisions to adjust, when necessary, the highest
96 monthly salary by which the daily rate of pay is calculated.

97 (i) Each spending unit, as defined in section one of this
98 article, shall verify to the secretary whether an employee is
99 eligible for payment under this section, shall verify the
100 funding source or sources of the employee's salary and shall
101 verify the total number of unused sick leave days for all
102 employees at least once per year. The secretary shall
103 maintain sick leave records for all spending units. All sick
104 leave days for which an employee is paid as provided in this
105 section shall be deducted from the employee's sick leave
106 balance by the secretary and the secretary shall verify to each
107 spending unit the amount of days that have been deducted
108 from an employee's sick leave balance. An employee shall
109 not be permitted to reacquire any sick leave days for which
110 he or she received payment under the provisions of this
111 section.

112 (j) The provisions of this section are retroactive to
113 December 1, 2008, to the extent that the provisions apply to
114 those employees who have previously applied for payment
115 for unused sick leave and have not been paid.

CHAPTER 180

(S.B. 481 - By Senators Minard, Green, Helmick and McCabe)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §5-16-12a of the Code of West Virginia, 1931, as amended, relating to the requirement that employers provide reasonable documentation to the Director of the Public Employees Insurance Agency.

Be it enacted by the Legislature of West Virginia:

That §5-16-12a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES
INSURANCE ACT.**

§5-16-12a. Inspections; violations and penalties.

1 (a) Employers participating in any of the Public
2 Employees Insurance Agency plans shall provide, to the
3 director, upon request, all documentation reasonably required
4 for the director to discharge the responsibilities under this
5 article. This documentation shall include employment
6 records sufficient to verify actual full-time employment of
7 the employer's employees who participate in the Public
8 Employees Insurance Agency plans.

9 (b) Upon a determination of the director or his or her
10 designated representative that there is probable cause to
11 believe that fraud, abuse or other illegal activities involving
12 transactions with the agency has occurred, the director or his
13 or her designated representative is authorized to refer the
14 alleged violations to the Insurance Commissioner for
15 investigation and, if appropriate, prosecution, pursuant to
16 article forty-one, chapter thirty-three of this code. For
17 purposes of this section, "transactions with the agency"
18 includes, but is not limited to, application by any insured or
19 dependent, any employer or any type of health care provider
20 for payment to be made to that person or any third party by
21 the agency.

22 (c) Any person who violates any provision of this article
23 for which no other penalty is specifically provided is guilty
24 of a misdemeanor and, upon conviction thereof, is subject to
25 a fine of not less than \$100 but not more than \$500, or
26 imprisonment for a period of not less than twenty-four hours
27 but not more than fifteen days, or both.

CHAPTER 181

(S.B. 492 - By Senators Minard, Helmick and McCabe)

[Passed April 11, 2009; in effect ninety days from passage.]

[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §5-16-13 of the Code of West Virginia, 1931, as amended, relating to the terms of participation in the Public Employees Insurance Agency of dependent children and employees hired on or after July 1, 2009, upon retirement.

Be it enacted by the Legislature of West Virginia:

That §5-16-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-13. Payment of costs by employer and employee; spouse and dependent coverage; involuntary employee termination coverage; conversion of annual leave and sick leave authorized for health or retirement benefits; authorization for retiree participation; continuation of health insurance for surviving dependents of deceased employees; requirement of new health plan, limiting employer contribution.

1 (a) *Cost-sharing*.-- The director shall provide under any
2 contract or contracts entered into under the provisions of this
3 article that the costs of any group hospital and surgical
4 insurance, group major medical insurance, group prescription
5 drug insurance, group life and accidental death insurance
6 benefit plan or plans shall be paid by the employer and
7 employee.

8 (b) *Spouse and dependent coverage*. -- Each employee
9 is entitled to have his or her spouse and dependents included
10 in any group hospital and surgical insurance, group major
11 medical insurance or group prescription drug insurance
12 coverage to which the employee is entitled to participate:
13 *Provided*, That the spouse and dependent coverage is limited
14 to excess or secondary coverage for each spouse and
15 dependent who has primary coverage from any other source.
16 For purposes of this section, the term "primary coverage"
17 means individual or group hospital and surgical insurance
18 coverage or individual or group major medical insurance
19 coverage or group prescription drug coverage in which the

20 spouse or dependent is the named insured or certificate
21 holder. For the purposes of this section, “dependent”
22 includes an eligible employee’s unmarried child or stepchild
23 under the age of twenty-five if that child or stepchild meets
24 the definition of a “qualifying child” or a “qualifying
25 relative” in Section 152 of the Internal Revenue Code. The
26 director may require proof regarding spouse and dependent
27 primary coverage and shall adopt rules governing the nature,
28 discontinuance and resumption of any employee’s coverage
29 for his or her spouse and dependents.

30 (c) *Continuation after termination.* -- If an employee
31 participating in the plan is terminated from employment
32 involuntarily or in reduction of work force, the employee’s
33 insurance coverage provided under this article shall continue
34 for a period of three months at no additional cost to the
35 employee and the employer shall continue to contribute the
36 employer’s share of plan premiums for the coverage. An
37 employee discharged for misconduct shall not be eligible for
38 extended benefits under this section. Coverage may be
39 extended up to the maximum period of three months, while
40 administrative remedies contesting the charge of misconduct
41 are pursued. If the discharge for misconduct be upheld, the
42 full cost of the extended coverage shall be reimbursed by the
43 employee. If the employee is again employed or recalled to
44 active employment within twelve months of his or her prior
45 termination, he or she shall not be considered a new enrollee
46 and may not be required to again contribute his or her share
47 of the premium cost, if he or she had already fully
48 contributed such share during the prior period of
49 employment.

50 (d) *Conversion of accrued annual and sick leave for*
51 *extended insurance coverage upon retirement for employees*
52 *who elected to participate in the plan before July, 1988.* --
53 Except as otherwise provided in subsection (g) of this
54 section, when an employee participating in the plan, who
55 elected to participate in the plan before July 1, 1988, is

56 compelled or required by law to retire before reaching the age
57 of sixty-five, or when a participating employee voluntarily
58 retires as provided by law, that employee's accrued annual
59 leave and sick leave, if any, shall be credited toward an
60 extension of the insurance coverage provided by this article,
61 according to the following formulae: The insurance coverage
62 for a retired employee shall continue one additional month
63 for every two days of annual leave or sick leave, or both,
64 which the employee had accrued as of the effective date of
65 his or her retirement. For a retired employee, his or her
66 spouse and dependents, the insurance coverage shall continue
67 one additional month for every three days of annual leave or
68 sick leave, or both, which the employee had accrued as of the
69 effective date of his or her retirement.

70 (e) *Conversion of accrued annual and sick leave for*
71 *extended insurance coverage upon retirement for employees*
72 *who elected to participate in the plan after June, 1988. --*
73 Notwithstanding subsection (d) of this section, and except as
74 otherwise provided in subsections (g) and (l) of this section
75 when an employee participating in the plan who elected to
76 participate in the plan on and after July 1, 1988, is compelled
77 or required by law to retire before reaching the age of
78 sixty-five, or when the participating employee voluntarily
79 retires as provided by law, that employee's annual leave or
80 sick leave, if any, shall be credited toward one half of the
81 premium cost of the insurance provided by this article, for
82 periods and scope of coverage determined according to the
83 following formulae: (1) One additional month of single
84 retiree coverage for every two days of annual leave or sick
85 leave, or both, which the employee had accrued as of the
86 effective date of his or her retirement; or (2) one additional
87 month of coverage for a retiree, his or her spouse and
88 dependents for every three days of annual leave or sick leave,
89 or both, which the employee had accrued as of the effective
90 date of his or her retirement. The remaining premium cost
91 shall be borne by the retired employee if he or she elects the
92 coverage. For purposes of this subsection, an employee who

93 has been a participant under spouse or dependent coverage
94 and who reenters the plan within twelve months after
95 termination of his or her prior coverage shall be considered
96 to have elected to participate in the plan as of the date of
97 commencement of the prior coverage. For purposes of this
98 subsection, an employee shall not be considered a new
99 employee after returning from extended authorized leave on
100 or after July 1, 1988.

101 (f) *Increased retirement benefits for retired employees*
102 *with accrued annual and sick leave.* -- In the alternative to
103 the extension of insurance coverage through premium
104 payment provided in subsections (d) and (e) of this section,
105 the accrued annual leave and sick leave of an employee
106 participating in the plan may be applied, on the basis of two
107 days' retirement service credit for each one day of accrued
108 annual and sick leave, toward an increase in the employee's
109 retirement benefits with those days constituting additional
110 credited service in computation of the benefits under any
111 state retirement system. However, the additional credited
112 service shall not be used in meeting initial eligibility for
113 retirement criteria, but only as additional service credited in
114 excess thereof.

115 (g) *Conversion of accrued annual and sick leave for*
116 *extended insurance coverage upon retirement for certain*
117 *higher education employees.* -- Except as otherwise provided
118 in subsection (l) of this section, when an employee, who is a
119 higher education full-time faculty member employed on an
120 annual contract basis other than for twelve months, is
121 compelled or required by law to retire before reaching the age
122 of sixty-five, or when such a participating employee
123 voluntarily retires as provided by law, that employee's
124 insurance coverage, as provided by this article, shall be
125 extended according to the following formulae: The insurance
126 coverage for a retired higher education full-time faculty
127 member, formerly employed on an annual contract basis

128 other than for twelve months, shall continue beyond the
129 effective date of his or her retirement one additional year for
130 each three and one-third years of teaching service, as
131 determined by uniform guidelines established by the
132 University of West Virginia Board of Trustees and the board
133 of directors of the state college system, for individual
134 coverage, or one additional year for each five years of
135 teaching service for "family" coverage.

136 (h) Any employee who retired prior to April 21, 1972,
137 and who also otherwise meets the conditions of the "retired
138 employee" definition in section two of this article, shall be
139 eligible for insurance coverage under the same terms and
140 provisions of this article. The retired employee's premium
141 contribution for any such coverage shall be established by the
142 finance board.

143 (i) *Retiree participation.* -- All retirees under the
144 provisions of this article, including those defined in section
145 two of this article; those retiring prior to April 21, 1972; and
146 those hereafter retiring are eligible to obtain health insurance
147 coverage. The retired employee's premium contribution for
148 the coverage shall be established by the finance board.

149 (j) *Surviving spouse and dependent participation.* -- A
150 surviving spouse and dependents of a deceased employee,
151 who was either an active or retired employee participating in
152 the plan just prior to his or her death, are entitled to be
153 included in any group insurance coverage provided under this
154 article to which the deceased employee was entitled, and the
155 spouse and dependents shall bear the premium cost of the
156 insurance coverage. The finance board shall establish the
157 premium cost of the coverage.

158 (k) *Elected officials.* -- In construing the provisions of
159 this section or any other provisions of this code, the
160 Legislature declares that it is not now nor has it ever been the

161 Legislature's intent that elected public officials be provided
162 any sick leave, annual leave or personal leave, and the
163 enactment of this section is based upon the fact and
164 assumption that no statutory or inherent authority exists
165 extending sick leave, annual leave or personal leave to
166 elected public officials and the very nature of those positions
167 preclude the arising or accumulation of any leave, so as to be
168 thereafter usable as premium paying credits for which the
169 officials may claim extended insurance benefits.

170 (1) *Participation of certain former employees.* -- An
171 employee, eligible for coverage under the provisions of this
172 article who has twenty years of service with any agency or
173 entity participating in the public employees insurance
174 program or who has been covered by the public employees
175 insurance program for twenty years may, upon leaving
176 employment with a participating agency or entity, continue
177 to be covered by the program if the employee pays one
178 hundred five percent of the cost of retiree coverage:
179 *Provided*, That the employee shall elect to continue coverage
180 under this subsection within two years of the date the
181 employment with a participating agency or entity is
182 terminated.

183 (m) *Prohibition on conversion of accrued annual and*
184 *sick leave for extended coverage upon retirement for new*
185 *employees who elect to participate in the plan after June,*
186 *2001.* -- Any employee hired on or after July 1, 2001, who
187 elects to participate in the plan may not apply accrued annual
188 or sick leave toward the cost of premiums for extended
189 insurance coverage upon his or her retirement. This
190 prohibition does not apply to the conversion of accrued
191 annual or sick leave for increased retirement benefits, as
192 authorized by this section: *Provided*, That any person who
193 has participated in the plan prior to July 1, 2001, is not a new
194 employee for purposes of this subsection if he or she
195 becomes reemployed with an employer participating in the
196 plan within two years following his or her separation from

197 employment and he or she elects to participate in the plan
198 upon his or her reemployment.

199 (n) *Prohibition on conversion of accrued years of*
200 *teaching service for extended coverage upon retirement for*
201 *new employees who elect to participate in the plan July,*
202 *2009. -- Any employee hired on or after July 1, 2009, who*
203 *elects to participate in the plan may not apply accrued years*
204 *of teaching service toward the cost of premiums for extended*
205 *insurance coverage upon his or her retirement.*

CHAPTER 182

**(H.B. 3047 - By Delegates White, Campbell, D. Poling
and Shook)**

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §5-16-16 of the Code of West Virginia, 1931, as amended, relating to the ability of Public Employees Insurance Agency to enter into capitated provider arrangements for the provision of primary health care services.

Be it enacted by the Legislature of West Virginia:

That §5-16-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-16. Preferred provider plan.

1 The director shall, on or before April 1, 1988, or as soon
2 as practicable, establish a preferred provider system for the
3 delivery of health care to plan participants by all health care
4 providers, which may include, but not be limited to, medical
5 doctors, chiropractors, physicians, osteopathic physicians,
6 surgeons, hospitals, clinics, nursing homes, pharmacies and
7 pharmaceutical companies.

8 The director shall establish the terms of the preferred
9 provider system and the incentives therefor. The terms and
10 incentives may include multi-year renewal options as are not
11 prohibited by the Constitution of this state and capitated
12 primary care arrangements which are not subject to the
13 provisions of article twenty-five-a of chapter thirty-three of
14 this code.

CHAPTER 183

**(S.B. 464 - By Senators Minard, Helmick,
McCabe and Chafin)**

[Passed April 10, 2009; in effect ninety days from passage.]

[Approved by the Governor on May 8, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-16-24a, relating to authorizing the Public Employees Insurance Agency to establish a fee for paper transactions that could be performed electronically.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-16-24a, to read as follows:

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES
INSURANCE ACT.****§5-16-24a. Paper transactions.**

1 The director may, by rule as authorized in section twenty-
2 four of this article, establish a fee not to exceed \$5 per
3 transaction which the Public Employees Insurance Agency
4 may charge to employers for performing business
5 transactions with the agency by paper when the transaction
6 could be performed electronically.

CHAPTER 184**(S.B. 756 - By Senators Wells, Caruth and Browning)**

[Passed April 11, 2009; in effect ninety days from passage.]

[Approved by the Governor on May 12, 2009.]

AN ACT to amend and reenact §15-1B-22 of the Code of West Virginia, 1931, as amended, relating to military facilities; security guards' qualifications, duties and powers; and authorizing National Guard firefighters to respond to accidents or emergencies in areas adjacent to military facilities.

Be it enacted by the Legislature of West Virginia:

That §15-1B-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1B. NATIONAL GUARD.

§15-1B-22. Military facilities; security guards; qualifications; duties; powers.

1 (a) Notwithstanding any provision of this code to the
2 contrary, bona fide members of the West Virginia National
3 Guard assigned by the Adjutant General to function as
4 security guards to safeguard military property of the state or
5 of the United States who have successfully completed a
6 training program in law enforcement approved by the
7 Adjutant General and the Superintendent of the West
8 Virginia Department of Public Safety shall be deemed to
9 have met all the requirements for certification as a law-
10 enforcement officer set forth in section five, article twenty-
11 nine, chapter thirty of this code. Those members of the West
12 Virginia National Guard who are so designated as security
13 guards and who have successfully completed such training
14 program are hereby empowered:

15 (1) To make arrests on military installations of the state
16 or of the United States for any violations of the law of this
17 state or of the United States occurring on any such military
18 installation;

19 (2) To patrol areas immediately adjacent to military
20 installations to provide for its security and to safeguard
21 military personnel, equipment and other government assets
22 located on said installation: *Provided*, That nothing in this
23 subparagraph shall confer upon security guards the right to
24 enter upon private property;

25 (3) To cooperate with state and local authorities in
26 detecting and apprehending any person or persons engaged
27 in or suspected of the commission of any crime,
28 misdemeanor or offense against the law of this state or of the
29 United States, or of any ordinance of any municipality of this

30 state, if such is committed or attempted to be committed on
31 or adjacent to a military installation in this state; and

32 (4) To respond to areas adjacent to military facilities and
33 installations at the request of state and local authorities to
34 provide support and mutual aid in the event of accidents,
35 emergency or otherwise.

36 (b) Any security guard, duly appointed by the Adjutant
37 General, knowing or having reasonable cause to believe that
38 a person has violated the law while situate on a military
39 installation, may make complaint in writing before any court
40 or officer having jurisdiction and procure a warrant for such
41 person.

42 (c) For the purposes of this section, the term "military
43 installation" shall mean a facility under the command of the
44 Adjutant General.

45 (d) Notwithstanding any provision of this code to the
46 contrary, bona fide members of the West Virginia National
47 Guard assigned by the Adjutant General to function as
48 firefighters to safeguard military property of the state or of
49 the United States are hereby empowered to respond to areas
50 adjacent to military facilities and installations at the request
51 of state and local authorities to provide support and mutual
52 aid in the event of accidents, emergency or otherwise.

CHAPTER 185

(Com. Sub. for S.B. 318 - By Senator Kessler)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §15-2D-3 of the Code of West Virginia, 1931, as amended, relating to the duties and powers of the director and officers of the West Virginia Division of Protective Services; extending division jurisdiction over state property throughout the state under certain circumstances; and clarifying that division has no responsibility for providing security for state facilities outside the Capitol Complex.

Be it enacted by the Legislature of West Virginia:

That §15-2D-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2D. PROTECTIVE SERVICES.

§15-2D-3. Duties and powers of the director and officers.

1 (a) The director is responsible for the control and
2 supervision of the division. The director and any officer of
3 the division specified by the director may carry designated
4 weapons and have the same powers of arrest and law
5 enforcement in Kanawha County as members of the West
6 Virginia State Police as set forth in subsections (b) and (d),
7 section twelve, article two of this chapter: *Provided*, That the
8 director and designated members shall have such powers

9 throughout the State of West Virginia in investigating and
10 performing law-enforcement duties for offenses committed
11 on the Capitol Complex or related to the division's security
12 and protection duties at the Capitol Complex: *Provided,*
13 *however,* That the director and designated members shall
14 have said powers throughout the state relating to offenses and
15 activities occurring on any property owned, leased or
16 operated by the State of West Virginia when undertaken at
17 the request of the agency occupying the property: *Provided*
18 *further,* That nothing in this article shall be construed as to
19 obligate the director or the division to provide or be
20 responsible for providing security at state facilities outside
21 the Capitol Complex.

22 (b) Any officer of the division shall be certified as a law-
23 enforcement officer by the Governor's Committee on Crime,
24 Delinquency and Correction or may be conditionally
25 employed as a law-enforcement officer until certified in
26 accordance with the provisions of section five, article twenty-
27 nine, chapter thirty of this code.

28 (c) The director may:

29 (1) Employ necessary personnel, all of whom shall be
30 classified exempt, assign them the duties necessary for the
31 efficient management and operation of the division and
32 specify members who may carry, without license, weapons
33 designated by the director;

34 (2) Contract for security and other services;

35 (3) Purchase equipment as necessary to maintain security
36 at the Capitol Complex and other state facilities as may be
37 determined by the Secretary of the Department of Military
38 Affairs and Public Safety;

39 (4) Establish and provide standard uniforms, arms,
40 weapons and other enforcement equipment authorized for use

41 by members of the division and shall provide for the periodic
42 inspection of the uniforms and equipment. All uniforms,
43 arms, weapons and other property furnished to members of
44 the division by the State of West Virginia is and remains the
45 property of the state;

46 (5) Appoint security officers to provide security on
47 premises owned or leased by the State of West Virginia;

48 (6) Upon request by the Superintendent of the West
49 Virginia State Police, provide security for the Speaker of the
50 West Virginia House of Delegates, the President of the West
51 Virginia Senate, the Governor or a justice of the West
52 Virginia Supreme Court of Appeals;

53 (7) Gather information from a broad base of employees
54 at and visitors to the Capitol Complex to determine their
55 security needs and develop a comprehensive plan to maintain
56 and improve security at the Capitol Complex based upon
57 those needs; and

58 (8) Assess safety and security needs and make
59 recommendations for safety and security at any proposed or
60 existing state facility as determined by the Secretary of the
61 Department of Military Affairs and Public Safety, upon
62 request of the secretary of the department to which the
63 facility is or will be assigned.

64 (d) The director shall:

65 (1) On or before July 1, 1999, propose legislative rules
66 for promulgation in accordance with the provisions of article
67 three, chapter twenty-nine-a of this code. The rules shall, at
68 a minimum, establish ranks and the duties of officers within
69 the membership of the division.

70 (2) On or before July 1, 1999, enter into an interagency
71 agreement with the Secretary of the Department of Military

72 Affairs and Public Safety and the Secretary of the
73 Department of Administration, which delineates their
74 respective rights and authorities under any contracts or
75 subcontracts for security personnel. A copy of the
76 interagency agreement shall be delivered to the Governor, the
77 President of the West Virginia Senate and the Speaker of the
78 West Virginia House of Delegates and a copy shall be filed
79 in the office of the Secretary of State and shall be a public
80 record.

81 (3) Deliver a monthly status report to the Speaker of the
82 West Virginia House of Delegates and the President of the
83 West Virginia Senate.



CHAPTER 186

**(Com. Sub. for S.B. 706 - By Senators Unger, Jenkins,
Green, Stollings, Foster, Prezioso, Plymale, Kessler,
Williams and McCabe)**

[Passed April 11, 2009; in effect July 1, 2009.]
[Approved by the Governor on May 7, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §15-2-53, relating
to the establishment of a leave donation program for the largest
statewide professional law-enforcement association
representing members of the West Virginia State Police.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new section, designated §15-2-53, to read as
follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.**§15-2-53. State law-enforcement association members annual leave program.**

1 (a) Notwithstanding any provision of this code to the
2 contrary, members of the largest statewide professional
3 law-enforcement association representing members of the
4 West Virginia State Police may donate annual leave time to
5 the president of the association. The president may designate
6 the vice president of the association or the chairman of the
7 association's board of directors to act on his or her behalf.
8 The West Virginia State Police will calculate the dollar value
9 of the donated leave based on the hourly rate of the donor
10 multiplied by the number of hours of annual leave to be
11 donated and the donee will use the annual leave at the present
12 dollar value of the donee's hourly rate. The donated annual
13 leave may be used by the president or designee in the
14 performance of his or her duties including: (1) Assistance to
15 members; and (2) the legislative session and legislative
16 meetings.

17 (b) When the president of the association or his or her
18 designee uses the donated annual leave he or she is
19 considered on personal annual leave of absence with pay just
20 as if he or she used his or her annual leave. While the
21 president of the association or his or her designee are using
22 donated annual leave, all payroll deductions and employee
23 status are maintained as if he or she had used his or her
24 regularly accrued annual leave. All donated leave that is not
25 used by July 1 of every year will be forfeited to the state and
26 no unused donated leave may be used to add to the
27 president's or his or her designee's retirement.

28 (c) No member of the association shall be considered
29 absent from service as a member of the West Virginia State
30 Police while serving as president of the association, or as his

31 or her designee in that capacity: *Provided*, That the period of
32 service credit granted for that service shall not exceed ten
33 years: *Provided, however*, That a member of the West
34 Virginia State Police Retirement System who is serving or
35 has served as president of the association, or as his or her
36 designee, shall make deposits to the West Virginia State
37 Police Retirement Fund, for the time of any absence, in an
38 amount equal to the sum of the amount which both the
39 employer and the employee would have contributed in his or
40 her regular assignment for a like period of time: *Provided*
41 *further*, That if the president of the association, or his or her
42 designee, is a member of the West Virginia State Police
43 Death, Disability and Retirement Fund, he or she may not
44 receive service credit for time spent serving as president or
45 the president's designee.

CHAPTER 187

(Com. Sub. for S.B. 694 - By Senators Kessler and White)

[Passed April 11, 2009; in effect from passage.]
[Approved by the Governor on May 4, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-5-28, relating to mutual aid agreements; establishing a statewide intrastate mutual aid system; setting forth legislative findings; authorizing the Director of the Division of Homeland Security and Emergency Management to propose a statewide mutual aid agreement; establishing procedures to allow local jurisdictions to elect not to participate; establishing procedures to amend the mutual aid agreement; creating a Statewide Intrastate Mutual

Aid Committee; and establishing procedures for comment for changes to the agreement and the reenactment of the agreement.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §15-5-28, to read as follows:

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.

§15-5-28. Statewide mutual aid system.

1 (a) The Legislature hereby finds that emergencies
2 transcend political jurisdictional boundaries and that
3 intergovernmental coordination is essential for the protection
4 of lives and property and for the best use of available assets,
5 both public and private. The purpose of this section is to
6 create a system of intrastate mutual aid between participating
7 political subdivisions in the state. The system shall provide
8 for mutual assistance among the participating political
9 subdivisions in the prevention of, response to and recovery
10 from any disaster that results in a formal state of emergency
11 in a participating political subdivision, subject to that
12 participating political subdivision's criteria for declaration.
13 The system shall provide for mutual cooperation among the
14 participating subdivisions in conducting disaster-related
15 exercises, testing or other training activities outside actual
16 declared emergency periods. This section provides no
17 immunity, rights or privileges for any individual responding
18 to a state of emergency that is not requested or authorized to
19 respond by a participating political subdivision. Participating
20 political subdivisions will be ensured, to the fullest extent
21 possible, eligibility for state and federal disaster funding.

22 (b) The Statewide Intrastate Mutual Aid Committee is
23 hereby created. The committee shall consist of eleven
24 members from various different public safety entities and
25 other governmental entities who shall be appointed by the
26 Governor. The Director of the Division of Homeland
27 Security and Emergency Management, or his or her designee,
28 shall chair the committee. This committee shall be
29 multidisciplinary and representative of emergency
30 management and response disciplines as well as local
31 government. It shall be the committee's responsibility to hold,
32 at a minimum, annual meetings to review the progress and
33 status of statewide mutual aid, assist in developing methods
34 to track and evaluate activation of the system and to examine
35 issues facing participating political subdivisions regarding the
36 implementation of this legislation. The committee may
37 prepare an annual report on the condition and effectiveness
38 of mutual aid in the state, make recommendations for
39 correcting any deficiencies and submit that report to the
40 appropriate legislative committee or other governing body.
41 Members of the committee shall serve a maximum two-year
42 term.

43 (c) Upon the enactment of this legislation, all political
44 subdivisions within the state are members of the statewide
45 mutual aid system: *Provided*, That a political subdivision
46 within the state may elect not to participate or to withdraw
47 from the system upon the enactment of an appropriate
48 resolution by its governing body declaring that it elects not to
49 participate in the statewide mutual aid system. A copy of any
50 such resolution shall be provided to the Division of
51 Homeland Security and Emergency Management.

52 (d) This section does not preclude participating political
53 subdivisions from entering into supplementary agreements
54 with another political subdivision and does not affect any
55 other agreement to which a political subdivision may
56 currently be a party to, or decide to be a party to.

57 (e) "Emergency responder", as used in this article, shall
58 mean anyone with special skills, qualifications, training,
59 knowledge and experience in the public or private sectors
60 that would be beneficial to a participating political
61 subdivision in response to a locally declared emergency as
62 defined in any applicable law or ordinance or authorized drill
63 or exercises; and who is requested and authorized to respond.
64 Under this definition, an emergency responder may be
65 required to possess a license, certificate, permit or other
66 official recognition for his or her expertise in a particular
67 field or area of knowledge. An emergency responder could
68 include, but is in no way limited to, the following:
69 Law-enforcement officers, firefighters, emergency medical
70 services personnel, physicians, nurses, other public health
71 personnel, emergency management personnel, public works
72 personnel, local emergency debris removal teams, those
73 persons with specialized equipment operations skills or
74 training or any other skills needed to provide aid in a
75 declared emergency.

76 (f) It shall be the responsibility of each participating
77 political subdivision with jurisdiction over and responsibility
78 for emergency management within that certain subdivision to
79 do all of the following:

80 (1) Identify potential hazards that could affect the
81 participant using an identification system common to all
82 participating jurisdictions.

83 (2) Conduct joint planning, intelligence sharing and threat
84 assessment development with contiguous participating
85 political subdivisions, and conduct joint training at least
86 biennially.

87 (3) Identify and inventory the current services,
88 equipment, supplies, personnel and other resources related to
89 planning, prevention, mitigation, response and recovery
90 activities of the participating political subdivision.

91 (4) Adopt and implement the National Incident
92 Management System approved by the State of West Virginia.

93 (g) A participating political subdivision may request
94 assistance of other participating political subdivisions in
95 preventing, mitigating, responding to and recovering from
96 disasters that result in locally declared emergencies or in
97 concert with authorized drills or exercises as allowed under
98 this section. Requests for assistance shall be made to the
99 Division of Homeland Security and Emergency Management
100 through the designated county emergency management
101 director by the chief executive officer of a participating
102 political subdivision, or his or her designee for response.
103 Requests may be verbal or in writing. Verbal requests will be
104 followed up with a written request as soon as is practical or
105 such number of days as the state, in its discretion, may
106 dictate.

107 (h) The obligation of a participating political subdivision
108 to provide assistance in the prevention of, response to and
109 recovery from a locally declared emergency or in authorized
110 drills or exercises is subject to the following conditions:

111 (1) A participating political subdivision requesting
112 assistance must have either declared a state of emergency in
113 the manner outlined in this section or authorized drills and
114 exercises;

115 (2) A responding participating political subdivision may
116 withhold resources to the extent necessary to provide
117 reasonable protection and services for its own jurisdiction;

118 (3) Emergency response personnel of a responding
119 participating political subdivision shall continue under the
120 command and control of their responding jurisdiction to
121 include medical protocols, standard operating procedures and
122 other protocols, but shall be under the operational control of

123 the appropriate officials within the National Incident
124 Management System of the participating political subdivision
125 receiving the assistance; and

126 (4) Assets and equipment of a responding participating
127 political subdivision shall continue under the control of the
128 responding jurisdiction, but shall be under the operational
129 control of the appropriate officials within the National
130 Incident Management System of the participating political
131 subdivision receiving the assistance.

132 (i) If a person or entity holds a license, certificate or other
133 permit issued by a participating political subdivision or the
134 state evidencing qualification in a professional, mechanical
135 or other skill and the assistance of that person or entity is
136 requested by a participating political subdivision, the person
137 or entity shall be deemed to be licensed, certified or
138 permitted in the political subdivision requesting assistance
139 for the duration of the declared emergency or authorized
140 drills or exercises and subject to any limitations and
141 conditions the chief executive of the participating political
142 subdivision receiving the assistance may prescribe by
143 executive order or otherwise.

144 (j) (1) Any requesting political subdivision shall
145 reimburse the participating political subdivision rendering aid
146 under this system and in accordance with procedures
147 developed by the Statewide Intrastate Mutual Aid
148 Committee, provided the request for aid is authorized by the
149 Division of Homeland Security and Emergency Management.
150 A participating political subdivision providing assistance may
151 determine to donate assets of any kind to a receiving
152 participating political subdivision. Requests for
153 reimbursement shall be in accordance with procedures
154 developed by the Statewide Intrastate Mutual Aid
155 Committee.

156 (2) Should a dispute arise between parties to the system
157 regarding reimbursement, involved parties will make every
158 effort to resolve the dispute within thirty days of written
159 notice of the dispute by the party asserting noncompliance. In
160 the event that the dispute is not resolved within ninety days
161 of the notice of the claim, either party may request the
162 dispute be solved through arbitration. Any arbitration under
163 this provision shall be conducted under the commercial
164 arbitration rules of the American Arbitration Association.

165 (k) The Statewide Intrastate Mutual Aid Committee shall
166 develop comprehensive guidelines and procedures that
167 address, including, but not limited to, the following:
168 Projected or anticipated costs, checklists for requesting and
169 providing assistance, recordkeeping for all participating
170 political subdivisions, reimbursement procedures and other
171 necessary implementation elements along with the necessary
172 forms for requests and other records documenting
173 deployment and return of assets.

174 (l) Personnel of a participating political subdivision
175 responding to or rendering assistance for a request who
176 sustain injury or death in the course of, and arising out of,
177 their employment are entitled to all applicable benefits
178 normally available to personnel while performing their duties
179 for their employer. Responders shall receive any additional
180 state and federal benefits that may be available to them for
181 line-of-duty deaths.

182 (m) All activities performed under this section are
183 deemed hereby to be governmental functions. For the
184 purposes of liability, all persons responding under the
185 operational control of the requesting political subdivision are
186 deemed to be employees of the requesting participating
187 political subdivision.

188 (n) Whenever the law-enforcement officials of any
189 political subdivision are rendering outside aid pursuant their
190 lawful authority, and with the approval of the Director of the

191 West Virginia Division of Homeland Security and
192 Emergency Management, and under the authority of a state
193 of emergency as officially proclaimed by the Governor, such
194 law-enforcement officials shall have the same authority,
195 powers, duties, rights, privileges and immunities as if they
196 were performing their law-enforcement duties in the political
197 subdivisions in which they are normally employed. The
198 authority vested in the law-enforcement official, in
199 accordance with this section, shall vest upon reporting in
200 person to the Emergency Management Agency official in
201 charge and on duty at the county or city of destination
202 assignment. The law-enforcement official shall act under the
203 authority, supervision and control of the highest ranking law-
204 enforcement official within the assigned outside jurisdiction.
205 Law enforcement and powers of arrest authority will not
206 attach to the law-enforcement official while in transit from
207 his or her jurisdiction of origin en route to his or her assigned
208 jurisdiction under intrastate mutual aid assistance.

CHAPTER 188

**(Com. Sub. for S.B. 279 - By Senators Tomblin,
Mr. President, and Caruth)
[By Request of the Executive]**

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 12, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §15-5B-3a, relating
generally to industrial and railroad accidents and emergencies;
providing definitions; requiring the reporting of certain
industrial emergencies to the Mine and Industrial Accident

Emergency Operations Center or local emergency telephone system operators; requiring industrial facilities to provide certain information to state and local emergency responders; requiring operators of railroad facilities in this state to provide certain information to state and local emergency responders in the event of a railroad accident or emergency; granting state and local officials access to the person or persons charged with managing an industrial or railroad emergency and certain areas affected by the emergency; requiring state and local officials to timely provide information related to public health, safety and welfare regarding hazardous waste releases and other emergency events; authorizing the Director of the Division of Homeland Security and Emergency Management to promulgate emergency legislative rules establishing a list of facilities subject to the requirements of this section and establishing procedures; providing for civil penalties; requiring the collected moneys to be deposited into the Hazardous Waste Emergency Response Fund; and authorizing the promulgation of legislative rules.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §15-5B-3a, to read as follows:

**ARTICLE 5B. MINE AND INDUSTRIAL ACCIDENT
RAPID RESPONSE SYSTEM.**

§15-5B-3a. Industrial facility emergency event notification and access.

1 (a) *Definitions.* -- Unless the context in which used
2 clearly requires a different meaning, the following words and
3 phrases as used in this section have the following meanings:

4 (1) “Industrial facility” means:

5 (A) Any facility that is required to submit a risk
6 management plan to the United States Environmental
7 Protection Agency pursuant to regulations promulgated under
8 Section 112(r) of the Clean Air Act of 1990, 42 U. S.
9 C.§7412(r), including the property upon which the facility is
10 located and any buildings appurtenant thereto or associated
11 therewith, including storage facilities; or

12 (B) A facility which is a factory, mill, plant or refinery,
13 other than a coal facility, including the property upon which
14 a factory, mill, plant or refinery is located and any buildings
15 appurtenant thereto or associated therewith, including storage
16 facilities, found by the director to be of a type to have a
17 reasonable potential to have an emergency event: *Provided,*
18 That before any facility may be subject to the provisions of
19 this section, the owner or operator of each facility must be
20 placed on actual written notice via certified mail, return
21 receipt requested, of the facility's inclusion thereon, as well
22 as the requirements imposed by the provisions of this section
23 and any rules promulgated thereunder: *Provided, however,*
24 That the list required by the provisions of this section shall be
25 filed with the President of the Senate and the Speaker of the
26 House of Delegates by the first day of the 2010 legislative
27 session.

28 (2) "Appropriate state and local officials" means the
29 Governor or his or her representative, the Director of the
30 Division of Homeland Security and Emergency Management,
31 a representative designated by the Director of the Division of
32 Homeland Security and Emergency Management who has
33 been trained and qualified by the Federal Emergency
34 Management Agency's (FEMA) National Incident
35 Management System (NIMS) program and/or a
36 representative of a local emergency management agency who
37 has been trained and qualified by FEMA's NIMS program.

38 (3) "Director" means the Director of the Division of
39 Homeland Security and Emergency Management.

40 (4) "Emergency event" means an unplanned event,
41 including, but not limited to, an explosion, a fire that cannot
42 be contained within fifteen minutes of discovery, the release
43 of a reportable quantity, as specified in 40 C. F. R. §302
44 (2009) or its successor, of an extremely hazardous substance
45 listed in the appendices to 40 C. F. R. §355 (2009) or its
46 successor, loss of life or serious personal injury at an
47 industrial facility: *Provided*, That the director may, by
48 promulgation of a legislative rule, establish a higher
49 threshold report level for a particular extremely hazardous
50 substance than is set in the aforementioned Code of Federal
51 Regulations citation.

52 (b) *Reporting requirement.*

53 (1) Within fifteen minutes of the industrial facility
54 ascertaining the occurrence of an emergency event at an
55 industrial facility, the industrial facility shall contact the Mine
56 and Industrial Accident Emergency Operations Center by
57 telephone at the statewide telephone number established by
58 the director or shall contact a local emergency telephone
59 system, as defined in article six, chapter twenty-four of this
60 code, by telephone at the number established by the system
61 to communicate the occurrence of the emergency event:
62 *Provided*, That if telephone communications fail for any
63 reason, the industrial facility shall contact local emergency
64 services in the most expeditious manner possible. The
65 industrial facility shall provide the following information:

66 (A) The name and title of the individual making the
67 report;

68 (B) The name and address of the facility; and

69 (C) Notification that an emergency event has occurred.

70 (2) If the caller has ready access to the following
71 information, he or she shall also provide:

72 (A) Then-available information concerning the nature and
73 extent of the emergency event, including any information that
74 concerns the existence or nonexistence of potential threats to
75 the public health;

76 (B) In the event of an unplanned fire that cannot be
77 contained within fifteen minutes, explosion or release as
78 defined in this section, preliminary information regarding the
79 type of substance involved and, if a release, the estimated
80 amount released, if known; and

81 (C) The name, title and contact information of the
82 individual designated to serve as a contact person on behalf
83 of the industrial facility.

84 (3) Any call made pursuant to this subsection may be
85 recorded by the agency receiving the call. In the event that
86 an industrial facility contacts a local emergency telephone
87 system to report an emergency event, the local emergency
88 telephone system shall immediately forward all information
89 received to the Mine and Industrial Accident Emergency
90 Operations Center.

91 (c) *Event communications.* -- As soon as practicable after
92 providing the notice required under subsection (b) of this
93 section, the industrial facility shall implement a
94 communications system designed to provide timely
95 information to appropriate state and local officials. At a
96 minimum, the industrial facility shall designate a person to
97 serve as a contact for state and local emergency responders.
98 Any person so designated shall, upon the request of an
99 appropriate state or local official, provide such additional
100 information known or subsequently known that may be
101 necessary to assess the extent of the emergency or to provide
102 appropriate public assistance.

103 (d) *Authorized access to public officials.* -- As soon as
104 practicable after the occurrence of an emergency event, the
105 industrial facility shall, upon request, provide appropriate
106 state and local officials with timely authorized access to the
107 person or persons charged with managing the event on behalf
108 of the facility and the area(s) where the emergency event is
109 being managed or the industrial facility's response to the
110 emergency event is being coordinated. The industrial facility
111 shall also provide appropriate state and local officials with
112 timely authorized access to any areas affected by the
113 emergency event: *Provided*, That the industrial facility has
114 determined those areas to be reasonably safe: *Provided*,
115 *however*, That within thirty minutes of obtaining information
116 that affects the public health, safety and welfare, state and
117 local officials shall notify the public of any hazardous
118 materials or events which may affect the area.

119 (e) *Civil penalties.* --

120 (1) The director shall impose a civil penalty of up to
121 \$100,000 on the industrial facility if he or she determines that
122 the industrial facility failed to comply with the reporting
123 requirement of subsection (b) of this section. No penalty
124 shall be imposed upon an industrial facility giving notice
125 pursuant to this section for unintentionally providing
126 inaccurate or incomplete preliminary information to the Mine
127 and Industrial Accident Emergency Operations Center or
128 local emergency telephone system: *Provided*, That the
129 industrial facility implemented reasonable efforts to provide
130 the most accurate and complete preliminary information
131 possible: *Provided, however*, That the industrial facility
132 implemented reasonable efforts to correct inaccurate or
133 incomplete preliminary information reported to the Mine and
134 Industrial Accident Emergency Operations Center or local
135 emergency telephone system once such information was
136 determined by the industrial facility to be inaccurate or
137 incomplete.

138 (2) The director shall impose a civil penalty on the
139 operator or operators of an industrial facility if he or she
140 determines that the industrial facility failed to comply with
141 the communication or access requirements of subsections (c)
142 and (d) of this section. Application of this subdivision and
143 amounts levied as civil penalties by the director shall be
144 determined in accordance with legislative rules promulgated
145 pursuant to article three, chapter twenty-nine-a of this code.

146 (3) The director may waive the imposition of a civil
147 penalty imposed under this section: *Provided*, That he or she
148 finds that the failure to comply with the requirements of this
149 section was caused by circumstances outside the control of
150 the industrial facility.

151 (4) All moneys collected pursuant to this section shall be
152 deposited in the Hazardous Waste Emergency Response
153 Fund, as established pursuant to section three, article
154 nineteen, chapter twenty-two of this code.

155 (f) Nothing in this section may be construed to:

156 (1) Relieve an industrial facility from any other reporting
157 or notification requirement imposed under state or federal
158 law;

159 (2) Limit in any way the jurisdiction of state and local
160 emergency responders;

161 (3) Limit the police power authority of the Governor; or

162 (4) Limit the authority of the State Fire Marshal.

163 (g) The director, working in cooperation with the
164 Department of Environmental Protection, the State Fire
165 Marshal and the State Emergency Response Commission,
166 shall promulgate legislative rules identifying a list of
167 industrial facilities that are subject to the requirements of this
168 section.

169 (h) The Division of Homeland Security and Emergency
170 Management is authorized to promulgate rules, including
171 emergency rules, pursuant to the provisions of article three,
172 chapter twenty-nine-a of this code to implement the
173 provisions of this section.

CHAPTER 189

**(Com. Sub. for S.B. 453 - By Senators Green, White, Laird,
Chafin, Yost, Minard, Unger, Kessler, Bowman, K. Facemyer,
D. Facemire and Plymale)**

[Passed April 3, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2009.]

AN ACT to amend and reenact §24-1-9 of the Code of West Virginia, 1931, as amended, relating to the Public Service Commission; recommended decisions by hearing commissioner, examiner or panel; service of decisions on parties, including by electronic transmission; and removing antiquated language.

Be it enacted by the Legislature of West Virginia:

That §24-1-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

§24-1-9. Recommended decision by hearing commissioner, hearing examiner or panel.

1 (a) Any order recommended by a single hearing
2 commissioner, a hearing examiner or a panel consisting of a
3 hearing examiner and a single commissioner with respect to
4 any matter referred for hearing shall be in writing and shall
5 set forth separately findings of fact and conclusions of law,
6 which findings of fact shall make specific reference to the
7 evidence in the record which supports such findings and shall
8 be filed with the commission. A copy of such recommended
9 order shall be served upon the parties who have appeared in
10 the proceeding.

11 (b) Before any order is recommended, the parties shall be
12 afforded an opportunity to submit, within the time prescribed
13 by the hearing commissioner, hearing examiner or panel,
14 proposed findings of fact and conclusions of law and briefs.

15 (c) The commission shall serve a copy of the
16 recommended order on the parties by one of the following
17 means:

18 (1) By certified U. S. mail, return receipt requested; or

19 (2) By electronic transmission: *Provided*, That the party
20 has the capability to receive the electronic transmission, has
21 furnished an electronic address and has agreed in writing to
22 accept recommended orders electronically. Electronic
23 transmissions shall contain a “return receipt” or “read
24 receipt” mechanism to assure that a recommended order was
25 received by the party: *Provided, however*, That if the
26 commission does not receive a confirmatory electronic
27 transmission acknowledging the recommended order was
28 received by the party, via return receipt, read receipt or
29 electronic mail, within three business days of service, the
30 commission shall serve the recommended order by certified
31 U. S. mail, return receipt requested.

32 (d) Service is complete when the recommended order is
33 placed in the mail or transmitted electronically to the party.

34 (e) Within the time prescribed, the parties shall be
35 afforded an opportunity to file exceptions to the
36 recommended order and a brief in support, provided the time
37 fixed is not less than fifteen days from the date of service of
38 such recommended order.

39 (f) In all proceedings in which exceptions have been filed
40 to a recommended order, the commission, before issuing its
41 final order, may afford the parties an opportunity for oral
42 argument. When exceptions are filed, the commission shall
43 consider the exceptions. If sufficient reason appears for the
44 exceptions, the commission may grant the review or make an
45 order or hold or authorize further hearings or proceedings.
46 The commission, after review, upon the whole record, or as
47 supplemented by a further hearing, shall decide the matter in
48 controversy and make appropriate order thereon.

49 (g) When no exceptions are filed within the time
50 specified, the recommended order shall become the order of
51 the commission five days following the expiration of the
52 period for filing exceptions unless the order is stayed or
53 postponed by the commission: *Provided*, That the
54 commission may, on its own motion before the order
55 becomes the order of the commission, review any matter and
56 take action as if exceptions had been filed.

57 (h) The commission, a hearing commissioner, a hearing
58 examiner or panel to whom a matter is referred may expedite
59 the hearing and decision of any case, if the public interest
60 requires, by the use of pretrial conferences, stipulations and
61 agreements, prepared testimony, depositions, daily transcripts
62 of evidence, trial briefs and oral argument in lieu of briefs.

●

CHAPTER 190

**(S.B. 306 - By Senators Green, White, Laird, Chafin,
Edgell, Yost, Minard, Bowman and Kessler)**

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §24B-5-3 of the Code of West Virginia, 1931, as amended, relating to pipeline companies paying a special license fee to the Public Service Commission; and increasing the maximum amount of revenue from \$300,000 per annum to \$315,000 per annum.

Be it enacted by the Legislature of West Virginia:

That §24B-5-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. EMPLOYEES OF COMMISSION; FUNDING.

§24B-5-3. Funding; property and revenue license fees.

1 (a) Every pipeline company shall pay a special license
2 fee in addition to those now required by law. The amount of
3 such fees shall be fixed by the Public Service Commission
4 and levied by it upon each of such pipeline companies
5 according to the number of three-inch equivalent pipeline
6 miles included in its pipeline facilities and shall be
7 apportioned among such pipeline companies upon the basis
8 of the pipeline companies' reports submitted to the
9 commission in such form as the commission may prescribe,

10 so as to produce a revenue of not more than \$315,000 per
11 annum, which fees shall be paid on or before July 1 in each
12 year.

13 (b) Such sums collected under subsection (a) of this
14 section shall be paid into the State Treasury and kept as a
15 special fund, designated the Public Service Commission
16 Pipeline Safety Fund, to be appropriated as provided by law
17 for the purpose of paying the salaries, compensation, costs
18 and expenses of its employees. Any balance in said fund at
19 the end of any fiscal year shall not revert to the treasury, but
20 shall remain in said fund and may be appropriated as
21 provided in this subsection. All funds which heretofore were
22 in the Public Service Commission Gas Pipeline Safety Fund
23 shall be transferred to the Public Service Commission
24 Pipeline Safety Fund.

CHAPTER 191

(S.B. 493 - By Senators Prezioso, Oliverio and Stollings)

[Passed April 8, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §18-10A-15 of the Code of West Virginia, 1931, as amended, relating to changing control of the central registry for severe head injuries from the Division of Vocational Rehabilitation to the Center for Excellence in Disabilities.

Be it enacted by the Legislature of West Virginia:

That §18-10A-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10A. REHABILITATION SERVICES.**§18-10A-15. Establishment of a central registry of traumatic head injury; acute care facility required to report head injury.**

1 (a) The Center for Excellence in Disabilities shall
2 maintain a central registry of persons who sustain severe
3 head injury other than through disease, whether or not
4 permanent disability results, in order to facilitate the
5 provision of appropriate services through referral and
6 collaboration with the division and other state agencies for
7 such persons.

8 (b) The current acute care facility shall report to the
9 Center for Excellence in Disabilities by the most expeditious
10 means within seven days after identification of any person
11 sustaining such an injury. The report shall contain the name
12 and residence of the person and the name of the current acute
13 care facility.

**CHAPTER 192****(Com. Sub. for H.B. 2702 - By Delegate Spencer)**

[Passed April 7, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2009.]

AN ACT to amend and reenact §7-14D-2, §7-14D-5, §7-14D-7, §7-14D-9c, §7-14D-13, §7-14D-14, §7-14D-15, §7-14D-16, §7-14D-23 and §7-14D-30 of the Code of West Virginia, 1931, as amended, all relating to the Deputy Sheriff Retirement System

Act; making technical changes, modifying definitions; clarifying when membership ceases; specifying procedures for the correction of errors; defining employer error; permitting rollovers of any dollar amount; clarifying loan offsets at time of withdrawal; providing onset date for receipt of disability benefits; providing for the termination of disability benefits when a retirant refuses to submit to a medical examination or provide certification from their physician of continued disability; removal of option for members with loans to purchase declining term insurance; permitting subsequent loans to members sixty days after full payment of an outstanding loan; and providing for the collection of fees from employers for untimely payment of contributions.

Be it enacted by the Legislature of West Virginia:

That §7-14D-2, §7-14D-5, §7-14D-7, §7-14D-9c, §7-14D-13, §7-14D-14, §7-14D-15, §7-14D-16, §7-14D-23 and §7-14D-30 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-2. Definitions.

§7-14D-5. Members.

§7-14D-7. Members' contributions; employer contributions.

§7-14D-9c. Direct rollovers.

§7-14D-13. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.

§7-14D-14. Awards and benefits for disability – Duty related.

§7-14D-15. Same – Due to other causes.

§7-14D-16. Same – Physical examinations; termination of disability.

§7-14D-23. Loans to members.

§7-14D-30. Limitation of county liability.

§7-14D-2. Definitions.

- 1 As used in this article, unless a federal law or regulation
- 2 or the context clearly requires a different meaning:

3 (a) "Accrued benefit" means on behalf of any member
4 two and one-quarter percent of the member's final average
5 salary multiplied by the member's years of credited service.
6 A member's accrued benefit may not exceed the limits of
7 Section 415 of the Internal Revenue Code and is subject to
8 the provisions of section nine-a of this article.

9 (b) "Accumulated contributions" means the sum of all
10 amounts deducted from the compensation of a member, or
11 paid on his or her behalf pursuant to article ten-c, chapter five
12 of this code, either pursuant to section seven of this article or
13 section twenty-nine, article ten, chapter five of this code as a
14 result of covered employment together with regular interest
15 on the deducted amounts.

16 (c) "Active member" means a member who is active and
17 contributing to the plan.

18 (d) "Active military duty" means full-time active duty
19 with any branch of the Armed Forces of the United States,
20 including service with the National Guard or reserve military
21 forces when the member has been called to active full-time
22 duty and has received no compensation during the period of
23 that duty from any board or employer other than the Armed
24 Forces.

25 (e) "Actuarial equivalent" means a benefit of equal value
26 computed upon the basis of the mortality table and interest
27 rates as set and adopted by the retirement board in
28 accordance with the provisions of this article.

29 (f) "Annual compensation" means the wages paid to the
30 member during covered employment within the meaning of
31 Section 3401(a) of the Internal Revenue Code, but
32 determined without regard to any rules that limit the
33 remuneration included in wages based upon the nature or
34 location of employment or services performed during the
35 plan year plus amounts excluded under Section 414(h)(2) of

36 the Internal Revenue Code and less reimbursements or other
37 expense allowances, cash or noncash fringe benefits or both,
38 deferred compensation and welfare benefits. Annual
39 compensation for determining benefits during any
40 determination period may not exceed \$150,000 as adjusted
41 for cost of living in accordance with Section 401(a)(17)(B)
42 of the Internal Revenue Code.

43 (g) "Annual leave service" means accrued annual leave.

44 (h) "Annuity starting date" means the first day of the first
45 calendar month following receipt of the retirement
46 application by the board: *Provided*, That the member has
47 ceased covered employment and reached early or normal
48 retirement age.

49 (i) "Base salary" means a member's cash compensation
50 exclusive of overtime from covered employment during the
51 last twelve months of employment. Until a member has
52 worked twelve months, annualized base salary is used as base
53 salary.

54 (j) "Board" means the Consolidated Public Retirement
55 Board created pursuant to article ten-d, chapter five of this
56 code.

57 (k) "County commission" has the meaning ascribed to it
58 in section one, article one, chapter seven of this code.

59 (l) "Covered employment" means either: (1)
60 Employment as a deputy sheriff and the active performance
61 of the duties required of a deputy sheriff; or (2) the period of
62 time which active duties are not performed but disability
63 benefits are received under section fourteen or fifteen of this
64 article; or (3) concurrent employment by a deputy sheriff in
65 a job or jobs in addition to his or her employment as a deputy
66 sheriff where the secondary employment requires the deputy
67 sheriff to be a member of another retirement system which is

68 administered by the Consolidated Public Retirement Board
69 pursuant to article ten-d, chapter five of this code: *Provided*,
70 That the deputy sheriff contributes to the fund created in
71 section six of this article the amount specified as the deputy
72 sheriff's contribution in section seven of this article.

73 (m) "Credited service" means the sum of a member's
74 years of service, active military duty, disability service and
75 annual leave service.

76 (n) "Deputy sheriff" means an individual employed as a
77 county law-enforcement deputy sheriff in this state and as
78 defined by section two, article fourteen of this chapter.

79 (o) "Dependent child" means either:

80 (1) An unmarried person under age eighteen who is:

81 (A) A natural child of the member;

82 (B) A legally adopted child of the member;

83 (C) A child who at the time of the member's death was
84 living with the member while the member was an adopting
85 parent during any period of probation; or

86 (D) A stepchild of the member residing in the
87 member's household at the time of the member's death;
88 or

89 (2) Any unmarried child under age twenty-three:

90 (A) Who is enrolled as a full-time student in an
91 accredited college or university;

92 (B) Who was claimed as a dependent by the member for
93 federal income tax purposes at the time of the member's
94 death; and

95 (C) Whose relationship with the member is described in
96 subparagraph (A), (B) or (C), paragraph (1) of this
97 subdivision.

98 (p) "Dependent parent" means the father or mother of the
99 member who was claimed as a dependent by the member for
100 federal income tax purposes at the time of the member's
101 death.

102 (q) "Disability service" means service received by a
103 member, expressed in whole years, fractions thereof or both,
104 equal to one half of the whole years, fractions thereof or both,
105 during which time a member receives disability benefits
106 under section fourteen or fifteen of this article.

107 (r) "Early retirement age" means age forty or over and
108 completion of twenty years of service.

109 (s) "Employer error" means an omission,
110 misrepresentation, or violation of relevant provisions of the
111 West Virginia Code or of the West Virginia Code of State
112 Regulations or the relevant provisions of both the West
113 Virginia Code and of the West Virginia Code of State
114 Regulations by the participating public employer that has
115 resulted in an underpayment or overpayment of contributions
116 required. A deliberate act contrary to the provisions of this
117 section by a participating public employer does not constitute
118 employer error.

119 (t) "Effective date" means July 1, 1998.

120 (u) "Final average salary" means the average of the
121 highest annual compensation received for covered
122 employment by the member during any five consecutive plan
123 years within the member's last ten years of service. If the
124 member did not have annual compensation for the five full
125 plan years preceding the member's attainment of normal

126 retirement age and during that period the member received
127 disability benefits under section fourteen or fifteen of this
128 article then "final average salary" means the average of the
129 monthly salary determined paid to the member during that
130 period as determined under section seventeen of this article
131 multiplied by twelve.

132 (v) "Fund" means the West Virginia Deputy Sheriff
133 Retirement Fund created pursuant to section six of this
134 article.

135 (w) "Hour of service" means:

136 (1) Each hour for which a member is paid or entitled to
137 payment for covered employment during which time active
138 duties are performed. These hours shall be credited to the
139 member for the plan year in which the duties are performed;
140 and

141 (2) Each hour for which a member is paid or entitled to
142 payment for covered employment during a plan year but
143 where no duties are performed due to vacation, holiday,
144 illness, incapacity including disability, layoff, jury duty,
145 military duty, leave of absence or any combination thereof
146 and without regard to whether the employment relationship
147 has terminated. Hours under this paragraph shall be
148 calculated and credited pursuant to West Virginia Division of
149 Labor rules. A member will not be credited with any hours
150 of service for any period of time he or she is receiving
151 benefits under section fourteen or fifteen of this article; and

152 (3) Each hour for which back pay is either awarded or
153 agreed to be paid by the employing county commission,
154 irrespective of mitigation of damages. The same hours of
155 service shall not be credited both under this paragraph and
156 paragraph (1) or (2) of this subdivision. Hours under this
157 paragraph shall be credited to the member for the plan year

158 or years to which the award or agreement pertains rather than
159 the plan year in which the award, agreement or payment is
160 made.

161 (x) "Member" means a person first hired as a deputy
162 sheriff after the effective date of this article, as defined in
163 subsection (r) of this section, or a deputy sheriff first hired
164 prior to the effective date and who elects to become a
165 member pursuant to section five or section seventeen of this
166 article. A member shall remain a member until the benefits
167 to which he or she is entitled under this article are paid or
168 forfeited or until cessation of membership pursuant to section
169 five of this article.

170 (y) "Monthly salary" means the portion of a member's
171 annual compensation which is paid to him or her per month.

172 (z) "Normal form" means a monthly annuity which is one
173 twelfth of the amount of the member's accrued benefit which
174 is payable for the member's life. If the member dies before
175 the sum of the payments he or she receives equals his or her
176 accumulated contributions on the annuity starting date, the
177 named beneficiary shall receive in one lump sum the
178 difference between the accumulated contributions at the
179 annuity starting date and the total of the retirement income
180 payments made to the member.

181 (aa) "Normal retirement age" means the first to occur of
182 the following: (1) Attainment of age fifty years and the
183 completion of twenty or more years of service; (2) while still
184 in covered employment, attainment of at least age fifty years
185 and when the sum of current age plus years of service equals
186 or exceeds seventy years; (3) while still in covered
187 employment, attainment of at least age sixty years and
188 completion of five years of service; or (4) attainment of age
189 sixty-two years and completion of five or more years of
190 service.

191 (bb) "Partially disabled" means a member's inability to
192 engage in the duties of deputy sheriff by reason of any
193 medically determinable physical or mental impairment that
194 can be expected to result in death or that has lasted or can be
195 expected to last for a continuous period of not less than
196 twelve months. A member may be determined partially
197 disabled for the purposes of this article and maintain the
198 ability to engage in other gainful employment which exists
199 within the state but which ability would not enable him or her
200 to earn an amount at least equal to two-thirds of the average
201 annual compensation earned by all active members of this
202 plan during the plan year ending as of the most recent June
203 30, as of which plan data has been assembled and used for
204 the actuarial valuation of the plan.

205 (cc) "Public Employees Retirement System" means the
206 West Virginia Public Employee's Retirement System created
207 by article ten, chapter five of this code.

208 (dd) "Plan" means the West Virginia Deputy Sheriff
209 Death, Disability and Retirement Plan established by this
210 article.

211 (ee) "Plan year" means the twelve-month period
212 commencing of July 1, of any designated year and ending the
213 following June 30.

214 (ff) "Regular interest" means the rate or rates of interest
215 per annum, compounded annually, as the board adopts in
216 accordance with the provisions of this article.

217 (gg) "Retirement income payments" means the annual
218 retirement income payments payable under the plan.

219 (hh) "Spouse" means the person to whom the member is
220 legally married on the annuity starting date.

221 (ii) "Surviving spouse" means the person to whom the
222 member was legally married at the time of the member's
223 death and who survived the member.

224 (jj) "Totally disabled" means a member's inability to
225 engage in substantial gainful activity by reason of any
226 medically determined physical or mental impairment that can
227 be expected to result in death or that has lasted or can be
228 expected to last for a continuous period of not less than
229 twelve months. For purposes of this subdivision:

230 (1) A member is totally disabled only if his or her
231 physical or mental impairment or impairments are so severe
232 that he or she is not only unable to perform his or her
233 previous work as a deputy sheriff but also cannot,
234 considering his or her age, education and work experience,
235 engage in any other kind of substantial gainful employment
236 which exists in the state regardless of whether: (A) The work
237 exists in the immediate area in which the member lives; (B)
238 a specific job vacancy exists; or (C) the member would be
239 hired if he or she applied for work.

240 (2) "Physical or mental impairment" is an impairment
241 that results from an anatomical, physiological or
242 psychological abnormality that is demonstrated by medically
243 accepted clinical and laboratory diagnostic techniques. A
244 member's receipt of social security disability benefits creates
245 a rebuttable presumption that the member is totally disabled
246 for purposes of this plan. Substantial gainful employment
247 rebuts the presumption of total disability.

248 (kk) "Year of service". -- A member shall, except in his
249 or her first and last years of covered employment, be credited
250 with year of service credit based upon the hours of service
251 performed as covered employment and credited to the
252 member during the plan year based upon the following
253 schedule:

254 Hours of Service Years of Service Credited

255 Less than 500 0

256 500 to 999 1/3

257 1,000 to 1,499 2/3

258 1,500 or more 1

259 During a member's first and last years of covered
 260 employment, the member shall be credited with one twelfth
 261 of a year of service for each month during the plan year in
 262 which the member is credited with an hour of service. A
 263 member is not entitled to credit for years of service for any
 264 time period during which he or she received disability
 265 payments under section fourteen or fifteen of this article.
 266 Except as specifically excluded, years of service include
 267 covered employment prior to the effective date. Years of
 268 service which are credited to a member prior to his or her
 269 receipt of accumulated contributions upon termination of
 270 employment pursuant to section thirteen of this article or
 271 section thirty, article ten, chapter five of this code, shall be
 272 disregarded for all purposes under this plan unless the
 273 member repays the accumulated contributions with interest
 274 pursuant to section thirteen of this article or had prior to the
 275 effective date made the repayment pursuant to section
 276 eighteen, article ten, chapter five of this code.

277 (II) "Required beginning date" means April 1, of the
 278 calendar year following the later of: (i) The calendar year in
 279 which the member attains age seventy and one-half; or (ii)
 280 the calendar year in which he or she retires or otherwise
 281 separates from covered employment.

§7-14D-5. Members.

1 (a) Any deputy sheriff first employed by a county in
2 covered employment after the effective date of this article
3 shall be a member of this retirement system and does not
4 qualify for membership in any other retirement system
5 administered by the board, so long as he or she remains
6 employed in covered employment.

7 The membership of any person in the plan ceases: (1)
8 Upon the withdrawal of accumulated contributions after the
9 cessation of service; (2) upon retirement; (3) at death; or (4)
10 upon the date, if any, when after the cessation of service, the
11 outstanding balance of any loan obtained by the member
12 pursuant to section twenty-three of the article, plus accrued
13 interest, equals or exceeds the accumulated contributions of
14 the member.

15 (b) Any deputy sheriff employed in covered employment
16 on the effective date of this article shall within six months of
17 that effective date notify in writing both the county
18 commission in the county in which he or she is employed and
19 the board, of his or her desire to become a member of the
20 plan: *Provided*, That this time period is extended to January
21 30, 1999, in accordance with the decision of the Supreme
22 Court of Appeals in *West Virginia Deputy Sheriffs'*
23 *Association, et al v. James L. Sims, et al*, No. 25212:
24 *Provided, however*, That any deputy sheriff employed in
25 covered employment on the effective date of this article has
26 an additional time period consisting of the ten-day period
27 following the day after which the amended provisions of this
28 section become law to notify in writing both the county
29 commission in the county in which he or she is employed and
30 the board of his or her desire to become a member of the
31 plan. Any deputy sheriff who elects to become a member of
32 the plan ceases to be a member or have any credit for covered
33 employment in any other retirement system administered by
34 the board and shall continue to be ineligible for membership
35 in any other retirement system administered by the board so

36 long as the deputy sheriff remains employed in covered
37 employment in this plan: *Provided further*, That any deputy
38 sheriff who elects during the time period from July 1, 1998
39 to January 30, 1999 or who so elects during the ten-day time
40 period occurring immediately following the day after the day
41 the amendments made during the 1999 legislative session
42 become law, to transfer from the Public Employees
43 Retirement System to the plan created in this article shall
44 contribute to the plan created in this article at the rate set
45 forth in section seven of this article retroactive to July 1,
46 1998. Any deputy sheriff who does not affirmatively elect to
47 become a member of the plan continues to be eligible for any
48 other retirement system as is from time to time offered to
49 other county employees but is ineligible for this plan
50 regardless of any subsequent termination of employment and
51 rehire.

52 (c) Any deputy sheriff employed in covered employment
53 on the effective date of this article who has timely elected to
54 transfer into this plan as provided in subsection (b) of this
55 section shall be given credited service at the time of transfer
56 for all credited service then standing to the deputy sheriff's
57 service credit in the Public Employees Retirement System
58 regardless of whether the credited service (as that term is
59 defined in section two, article ten, chapter five of this code)
60 was earned as a deputy sheriff. All the credited service
61 standing to the transferring deputy sheriff's credit in the
62 Public Employees Retirement Fund System at the time of
63 transfer into this plan shall be transferred into the plan
64 created by this article, and the transferring deputy sheriff
65 shall be given the same credit for the purposes of this article
66 for all service transferred from the Public Employees
67 Retirement System as that transferring deputy sheriff would
68 have received from the Public Employees Retirement System
69 as if the transfer had not occurred. In connection with each
70 transferring deputy sheriff receiving credit for prior
71 employment as provided in this subsection, a transfer from

72 the Public Employees Retirement System to this plan shall be
73 made pursuant to the procedures described in section eight of
74 this article: *Provided*, That a member of this plan who has
75 elected to transfer from the Public Employees Retirement
76 System into this plan pursuant to subsection (b) of this
77 section may not, after having transferred into and become an
78 active member of this plan, reinstate to his or her credit in
79 this plan any service credit relating to periods of nondeputy
80 sheriff service which were withdrawn from the Public
81 Employees Retirement System prior to his or her elective
82 transfer into this plan.

83 (d) Any deputy sheriff who was employed as a deputy
84 sheriff prior to the effective date of this article, but was not
85 employed as a deputy sheriff on the effective date of this
86 article, shall become a member upon rehire as a deputy
87 sheriff. For purposes of this subsection, the member's years
88 of service and credited service in the Public Employees
89 Retirement System prior to the effective date of this article
90 shall not be counted for any purposes under this plan unless:
91 (1) The deputy sheriff has not received the return of his or
92 her accumulated contributions in the Public Employees
93 Retirement System pursuant to section thirty, article ten,
94 chapter five of this code; or (2) the accumulated contributions
95 returned to the member from the Public Employees
96 Retirement System have been repaid pursuant to section
97 thirteen of this article. If the conditions of subdivision (1) or
98 (2) of this subsection are met, all years of the deputy sheriff's
99 covered employment shall be counted as years of service for
100 the purposes of this article.

101 (e) Once made, the election provided in this section is
102 irrevocable. All deputy sheriffs first employed after the
103 effective date and deputy sheriffs electing to become
104 members as described in this section shall be members as a
105 condition of employment and shall make the contributions
106 required by section seven of this article.

107 (f) Notwithstanding any other provisions of this article,
108 any individual who is a leased employee is not eligible to
109 participate in the plan. For purposes of this plan, a “leased
110 employee” means any individual who performs services as an
111 independent contractor or pursuant to an agreement with an
112 employee leasing organization or similar organization. If a
113 question arises regarding the status of an individual as a
114 leased employee, the board has final power to decide the
115 question.

§7-14D-7. Members’ contributions; employer contributions.

1 (a) There shall be deducted from the monthly salary of
2 each member and paid into the fund an amount equal to eight
3 and one-half percent of his or her monthly salary. An
4 additional amount shall be paid to the fund by the county
5 commission of the county in which the member is employed
6 in covered employment in an amount determined by the
7 board: *Provided*, That in no year may the total of the
8 contributions provided in this section, to be paid by the
9 county commission, exceed ten and one-half percent of the
10 total payroll for the members in the employ of the county
11 commission. If the board finds that the benefits provided by
12 this article can be actually funded with a lesser contribution,
13 then the board shall reduce the required member or employer
14 contributions or both. The sums withheld each calendar
15 month shall be paid to the fund no later than fifteen days
16 following the end of the calendar month.

17 (b) Any active member who has concurrent employment
18 in an additional job or jobs and the additional employment
19 requires the deputy sheriff to be a member of another
20 retirement system which is administered by the Consolidated
21 Public Retirement Board pursuant to article ten-d, chapter
22 five of this code shall make an additional contribution to the
23 fund of eight and one-half percent of his or her monthly
24 salary earned from any additional employment which

25 requires the deputy sheriff to be a member of another
26 retirement which is administered by the Consolidated Public
27 Retirement Board pursuant to article ten-d, chapter five of
28 this code. An additional amount shall be paid to the fund by
29 the concurrent employer for which the member is employed
30 in an amount determined by the board: *Provided*, That in no
31 year may the total of the contributions provided in this
32 section, to be paid by the concurrent employer, exceed ten
33 and one-half percent of the monthly salary of the employee.
34 If the board finds that the benefits provided by this article can
35 be funded with a lesser contribution, then the board shall
36 reduce the required member or employer contributions or
37 both. The sums withheld each calendar month shall be paid
38 to the fund no later than fifteen days following the end of the
39 calendar month.

40 (c) If any change or employer error in the records of any
41 participating public employer or the retirement system results
42 in any member receiving from the system more or less than
43 he or she would have been entitled to receive had the records
44 been correct, the board shall correct the error, and as far as is
45 practicable shall adjust the payment of the benefit in a
46 manner that the actuarial equivalent of the benefit to which
47 the member was correctly entitled shall be paid. Any
48 employer error resulting in an underpayment to the retirement
49 system may be corrected by the member remitting the
50 required employee contribution and the participating public
51 employer remitting the required employer contribution.
52 Interest shall accumulate in accordance with the retirement
53 board reinstatement interest as established in Legislative Rule
54 162 CSR 7, and any accumulating interest owed on the
55 employee and employer contributions resulting from the
56 employer error shall be the responsibility of the participating
57 public employer. The participating public employer may
58 remit total payment and the employee reimburse the
59 participating public employer through payroll deduction over
60 a period equivalent to the time period during which the
61 employer error occurred.

§7-14D-9c. Direct rollovers.

1 This section applies to distributions made on or after
2 January 1, 1993. Notwithstanding any provision of this
3 article to the contrary that would otherwise limit a
4 distributee's election under this plan, a distributee may elect,
5 at the time and in the manner prescribed by the board, to have
6 any portion of an eligible rollover distribution paid directly
7 to an eligible retirement plan specified by the distributee in
8 a direct rollover. For purposes of this section, the following
9 definitions apply:

10 (1) "Eligible rollover distribution" means any distribution
11 of all or any portion of the balance to the credit of the
12 distributee, except that an eligible rollover distribution does
13 not include any of the following: (A) Any distribution that is
14 one of a series of substantially equal periodic payments not
15 less frequently than annually made for the life or life
16 expectancy of the distributee or the joint lives or the joint life
17 expectancies of the distributee and the distributee's
18 designated beneficiary, or for a specified period of ten years
19 or more; (B) any distribution to the extent the distribution is
20 required under Section 401(a)(9) of the Internal Revenue
21 Code; (C) the portion of any distribution that is not
22 includable in gross income determined without regard to the
23 exclusion for net unrealized appreciation with respect to
24 employer securities; and (D) any hardship distribution
25 described in Section 401(k)(2)(B)(i)(iv) of the Internal
26 Revenue Code. For distributions after December 31, 2001,
27 a portion of a distribution shall not fail to be an eligible
28 rollover distribution merely because the portion consists of
29 after-tax employee contributions which are not includable in
30 gross income. However, this portion may be paid only to an
31 individual retirement account or annuity described in Section
32 408(a) or (b) of the Internal Revenue Code, or to a qualified
33 defined contribution plan described in Section 401(a) or
34 403(a) of the Internal Revenue Code that agrees to separately

35 account for amounts transferred, including separately
36 accounting for the portion of the distribution which is
37 includable in gross income and the portion of the distribution
38 which is not includable.

39 (2) "Eligible retirement plan" means an individual
40 retirement account described in Section 408(a) of the Internal
41 Revenue Code, an individual retirement annuity described in
42 Section 408(b) of the Internal Revenue Code, an annuity plan
43 described in Section 403(a) of the Internal Revenue Code or
44 a qualified plan described in Section 401(a) of the Internal
45 Revenue Code that accepts the distributee's eligible rollover
46 distribution: *Provided*, That in the case of an eligible
47 rollover distribution to the surviving spouse, an eligible
48 retirement plan is an individual retirement account or
49 individual retirement annuity. For distributions after
50 December 31, 2001, an eligible retirement plan also means an
51 annuity contract described in Section 403(b) of the Internal
52 Revenue Code and an eligible plan under Section 457(b) of
53 the Internal Revenue Code which is maintained by a state,
54 political subdivision of a state, or any agency or
55 instrumentality of a state or political subdivision of a state
56 and which agrees to separately account for amounts
57 transferred into the plan from this system.

58 (3) "Distributee" means an employee or former
59 employee. In addition, the employee's or former employee's
60 surviving spouse and the employee's or former employee's
61 spouse or former spouse who is the alternate payee under a
62 qualified domestic relations order, as defined in Section
63 414(p) of the Internal Revenue Code with respect to
64 governmental plans, are distributees with regard to the
65 interest of the spouse or former spouse.

66 (4) "Direct rollover" means a payment by the plan to the
67 eligible retirement plan.

§7-14D-13. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.

1 (a) Any member who terminates covered employment
2 and is not eligible to receive disability or retirement income
3 benefits under this article is, by written request filed with the
4 board, entitled to receive from the fund the member's
5 accumulated contributions after offset of any outstanding
6 loan balance, plus accrued interest, pursuant to section
7 twenty-three of this article. Except as provided in subsection
8 (b) of this section, upon withdrawal the member shall forfeit
9 his or her accrued benefit and cease to be a member.

10 (b) Any member of this plan who ceases employment in
11 covered employment and active participation in this plan, and
12 who thereafter becomes reemployed in covered employment
13 may not receive any credited service for any prior withdrawn
14 or offset accumulated contributions from either this plan or
15 the Public Employees Retirement System relating to the prior
16 covered employment unless following his or her return to
17 covered employment and active participation in this plan, the
18 member redeposits in this plan the amount of the withdrawn
19 accumulated contributions submitted on salary earned while
20 a deputy sheriff, together with interest on the accumulated
21 contributions at the rate determined by the board from the
22 date of withdrawal to the date of redeposit. Upon repayment
23 he or she shall receive the same credit on account of his or
24 her former service in covered employment as if no refund had
25 been made. The repayment authorized by this subsection
26 shall be made in a lump sum within sixty months of the
27 deputy sheriff's reemployment in covered employment or if
28 later, within sixty months of the effective date of this article.

29 (c) A member of this plan who has elected to transfer
30 from the Public Employees Retirement System into this plan
31 pursuant to subsection (b) of section five of this article may
32 not, after having transferred into and become an active

33 member of this plan, reinstate to his or her credit in this plan
34 any service credit relating to periods of nondeputy sheriff
35 service which were withdrawn from the Public Employees
36 Retirement System plan prior to his or her elective transfer
37 into this plan.

38 (d) Every member who completes sixty months of
39 covered employment is eligible, upon cessation of covered
40 employment, to either withdraw his or her accumulated
41 contributions in accordance with subsection (a) of this
42 section, or to choose not to withdraw his or her accumulated
43 contribution and to receive retirement income payments upon
44 attaining normal retirement age.

45 (e) Notwithstanding any other provision of this
46 article, forfeitures under the plan shall not be applied to
47 increase the benefits any member would otherwise
48 receive under the plan.

§7-14D-14. Awards and benefits for disability -- Duty related.

1 (a) Any member who after the effective date of this
2 article and during covered employment: (1) Has been or
3 becomes either totally or partially disabled by injury, illness
4 or disease; and (2) the disability is a result of an occupational
5 risk or hazard inherent in or peculiar to the services required
6 of members; or (3) the disability was incurred while
7 performing law-enforcement functions during either
8 scheduled work hours or at any other time; and (4) in the
9 opinion of the board, the member is by reason of the
10 disability unable to perform adequately the duties required of
11 a deputy sheriff, is entitled to receive and shall be paid from
12 the fund in monthly installments the compensation under
13 either subsection (b) or (c) of this section.

14 (b) If the member is totally disabled, the member shall
15 receive ninety percent of his or her average full monthly

16 compensation for the twelve-month contributory period
17 preceding the member's disability award, or the shorter
18 period if the member has not worked twelve months.

19 (c) If the member is partially disabled, the member shall
20 receive forty-five percent of his or her average full monthly
21 compensation for the twelve-month contributory period
22 preceding the member's disability award, or the shorter
23 period if the member has not worked twelve months.

24 (d) If the member remains partially disabled until
25 attaining sixty years of age, the member shall then receive the
26 retirement benefit provided in sections eleven and twelve of
27 this article.

28 (e) The disability benefit payments will begin the first
29 day of the month following termination of employment and
30 receipt of the disability retirement application by the
31 Consolidated Public Retirement Board.

§7-14D-15. Same -- Due to other causes.

1 (a) Any member who after the effective date of this
2 article and during covered employment: (1) Has been or
3 becomes totally or partially disabled from any cause other
4 than those set forth in section fourteen of this article and not
5 due to vicious habits, intemperance or willful misconduct on
6 his or her part; and (2) in the opinion of the board, he or she
7 is by reason of the disability unable to perform adequately the
8 duties required of a deputy sheriff, is entitled to receive and
9 shall be paid from the fund in monthly installments the
10 compensation set forth in either subsection (b) or (c) of this
11 section.

12 (b) If the member is totally disabled, he or she shall
13 receive sixty-six and two-thirds percent of his or her average
14 full monthly compensation for the twelve-month contributory

15 period preceding the disability award, or the shorter period,
16 if the member has not worked twelve months.

17 (c) If the member is partially disabled, he or she shall
18 receive thirty-three and one-third percent of his or her
19 average full monthly compensation for the twelve-month
20 contributory period preceding the disability award, or the
21 shorter period, if the member has not worked twelve months.

22 (d) If the member remains disabled until attaining sixty
23 years of age, then the member shall receive the retirement
24 benefit provided in sections eleven and twelve of this article.

25 (e) The board shall propose legislative rules for
26 promulgation in accordance with the provisions of article
27 three, chapter twenty-nine-a of this code concerning member
28 disability payments so as to ensure that the payments do not
29 exceed one hundred percent of the average current salary in
30 any given county for the position last held by the member.

31 (f) The disability benefit payments will begin the first day
32 of the month following termination of employment and
33 receipt of the disability retirement application by the
34 Consolidated Public Retirement Board.

§7-14D-16. Same -- Physical examinations; termination of disability.

1 (a) The board may require any member who has applied
2 for or is receiving disability benefits under this article to
3 submit to a physical examination, mental examination or
4 both, by a physician or physicians selected or approved by
5 the board and may cause all costs incident to the examination
6 and approved by the board to be paid from the fund. The
7 costs may include hospital, laboratory, X ray, medical and
8 physicians' fees. A report of the findings of any physician
9 shall be submitted in writing to the board for its

10 consideration. If, from the report, independent information,
11 or from the report and any hearing on the report, the board is
12 of the opinion and finds that: (1) The member has become
13 reemployed as a law-enforcement officer; (2) two physicians
14 who have examined the member have found that considering
15 the opportunities for law enforcement in West Virginia, the
16 member could be so employed as a deputy sheriff; or (3)
17 other facts exist to demonstrate that the member is no longer
18 totally disabled or partially disabled as the case may be, then
19 the disability benefits shall cease. If the member was totally
20 disabled and is found to have recovered, the board shall
21 determine whether the member continues to be partially
22 disabled. If the board finds that the member is no longer
23 totally disabled but is partially disabled, then the member
24 shall continue to receive partial disability benefits in
25 accordance with this article. Benefits shall cease once the
26 member has been found to be no longer either totally or
27 partially disabled: *Provided*, That the board shall require
28 recertification for each partial or total disability at regular
29 intervals as specified by the guidelines adopted by the Public
30 Employees Retirement System.

31 (b) If a retirant refuses to submit to a medical
32 examination or submit a statement by his or her physician
33 certifying continued disability in any period, his or her
34 disability annuity may be discontinued by the board until the
35 retirant complies. If the refusal continues for one year, all the
36 retirants rights in and to the annuity may be revoked by the
37 board.

§7-14D-23. Loans to members.

1 (a) A member who is not yet receiving disability or
2 retirement income benefits from the plan may borrow from
3 the plan no more than one time in any year an amount up to
4 one half of his or her accumulated contributions, but not less
5 than \$500 nor more than \$8,000: *Provided*, That the

6 maximum amount of any loan shall not exceed the lesser of
7 the following: (1) \$8,000; or (2) fifty percent of his or her
8 accumulated contributions. No member is eligible for more
9 than one outstanding loan at any time. No loan may be made
10 from the plan if the board determines that the loans constitute
11 more than fifteen percent of the amortized cost value of the
12 assets of the plan as of the last day of the preceding plan year.
13 The board may discontinue the loans any time it determines
14 that cash flow problems might develop as a result of the
15 loans. Each loan shall be repaid through monthly installments
16 over periods of six through sixty months and carry interest on
17 the unpaid balance and an annual effective interest rate that
18 is two hundred basis points higher than the most recent rate
19 of interest used by the board for determining actuarial
20 contributions levels: *Provided, however,* That interest
21 charged shall be commercially reasonable in accordance with
22 the provisions of Section 72(p)(2) of the Internal Revenue
23 Code and federal regulations issued thereunder. Monthly
24 loan payments shall be calculated to be as nearly equal as
25 possible with all but the final payment being an equal
26 amount. An eligible member may make additional loan
27 payments or pay off the entire loan balance at any time
28 without incurring any interest penalty. Upon full payment of
29 the loan, a member may apply for a subsequent loan after
30 sixty days beginning the first day of the month following
31 receipt of final payment.

32 (b) If a withdrawal of accumulated contributions is
33 payable to the borrower or his or her beneficiary before he or
34 she repays the loan with interest, the loan balance due with
35 interest to date shall be deducted from the withdrawal.

36 (c) A member with an unpaid loan balance who wishes to
37 retire or who becomes eligible to receive disability benefits
38 under any provisions of this article may have the loan repaid
39 in full by accepting retirement income or disability payments
40 reduced by deducting from the actuarial reserve for the

41 accrued benefit the amount of the unpaid balance plus
42 accrued interest, if any, and then converting the remaining of
43 the reserve to a monthly pension or disability benefit payable
44 in the form of the annuity desired by the member: *Provided,*
45 That if payment of the member's monthly retirement income
46 or disability income is suspended or terminated for any
47 reason, upon recommencement of the payments, the actuarial
48 reduction in benefit may be recalculated for additional
49 interest accruals, to the extent determined necessary and
50 appropriate by the board.

51 (d) A member who ceases service with an unpaid loan
52 balance will no longer be a member when the unpaid loan
53 balance, plus accrued interest, equals or exceeds the
54 member's accumulated contributions.

55 (e) The entire unpaid balance of any loan, and interest
56 due thereon, shall at the option of the board become due and
57 payable without further notice or demand upon the
58 occurrence with respect to the borrowing member of any of
59 the following events of default: (1) Any payment of principal
60 and accrued interest on a loan remains unpaid after they
61 become due and payable under the terms of the loan or after
62 the grace period established in the discretion of the retirement
63 board; (2) the borrowing member attempts to make an
64 assignment for the benefit of creditors of his or her benefit
65 under the retirement system; or (3) any other event of default
66 set forth in rules promulgated by the board pursuant to the
67 authority granted in section one, article ten-d, chapter five of
68 this code: *Provided,* That any offset of an unpaid loan
69 balance shall be made only at such time as the member is
70 entitled to receive a distribution under the plan.

71 (f) Loans shall be evidenced by such form of obligations
72 and shall be made upon such additional terms as to default,
73 prepayment, security, and otherwise as the board may
74 determine.

75 (g) Notwithstanding anything in this section to the
76 contrary, the loan program authorized by this section shall
77 comply with the provisions of Section 72(p)(2) and Section
78 401 of the Internal Revenue Code and the federal regulations
79 issued thereunder. The board may: (1) Apply and construe
80 the provisions of this section and administer the plan loan
81 program in such a manner as to comply with the provisions
82 of Sections 72(p)(2) and Section 401 of the Internal Revenue
83 Code; (2) adopt plan loan policies or procedures consistent
84 with these federal law provisions; and (3) take any actions it
85 considers necessary or appropriate to administer the plan loan
86 program created under this section in accordance with these
87 federal law provisions. The board is further authorized in
88 connection with the plan loan program to take any actions
89 that may at any time be required by the Internal Revenue
90 Service regarding compliance with the requirements of
91 Section 72(p)(2) or Section 401 of the Internal Revenue
92 Code, notwithstanding any provision in this article to the
93 contrary.

94 (h) Notwithstanding anything in this article to the
95 contrary, the loan program authorized by this section shall
96 not be available to any deputy sheriff who becomes a
97 member of the Deputy Sheriff Retirement System on or after
98 July 1, 2005.

§7-14D-30. Limitation of county liability.

1 No county which has timely met all of its obligations
2 under this article is liable for any payments or contributions
3 to the deputy sheriff retirement plan which are owed to the
4 plan by another county or counties. No county commission
5 may deposit funds into the deputy sheriff retirement fund in
6 excess of the amount specified in section seven of this article,
7 the fees set forth in article fourteen-e of this chapter, the fees
8 set forth in subsection (f)(2), section one, article ten-d,

9 chapter five of this code, and the fees set forth in section
10 seventeen, article three, chapter seventeen-a of this code.

CHAPTER 193

(Com. Sub. for H.B. 2703 - By Delegate Spencer)

[Passed April 7, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2009.]

AN ACT to amend and reenact §18-7A-3, §18-7A-13, §18-7A-14, §18-7A-23, §18-7A-28c and §18-7A-34 of the Code of West Virginia, 1931, as amended, all relating to State Teachers Retirement System; making technical changes; modifying definitions; specifying cessation of membership; clarifying loan offsets at time of withdrawal; specifying procedures for the correction of errors; permitting rollovers of any dollar amount; and permitting loan borrowers to receive retirement income or disability payments when outstanding loan balance is deducted from the actuarial reserve of accrued benefit.

Be it enacted by the Legislature of West Virginia:

That §18-7A-3, §18-7A-13, §18-7A-14, §18-7A-23, §18-7A-28c and §18-7A-34 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-3. Definitions.

§18-7A-13. Membership in retirement system; cessation of membership; reinstatement of withdrawn service.

§18-7A-14. Contributions by members; contributions by employers; correction of errors.

§18-7A-23. Withdrawal and death benefits.

§18-7A-28c. Direct rollovers.

§18-7A-34. Loans to members.

§18-7A-3. Definitions.

1 As used in this article, unless the context clearly require
2 a different meaning:

3 (1) "Accumulated contributions" means all deposits and
4 all deductions from the gross salary of a contributor plus
5 regular interest.

6 (2) "Accumulated net benefit" means the aggregate
7 amount of all benefits paid to or on behalf of a retired
8 member.

9 (3) "Annuities" means the annual retirement payments for
10 life granted beneficiaries in accordance with this article.

11 (4) "Average final salary" means the average of the five
12 highest fiscal year salaries earned as a member within the last
13 fifteen fiscal years of total service credit, including military
14 service as provided in this article, or if total service is less
15 than fifteen years, the average annual salary for the period on
16 which contributions were made.

17 (5) "Beneficiary" means the recipient of annuity
18 payments made under the retirement system.

19 (6) "Contributor" means a member of the retirement
20 system who has an account in the Teachers Accumulation
21 Fund.

22 (7) "Deposit" means a voluntary payment to his or her
23 account by a member.

24 (8) "Employer" means the agency of and within the state
25 which has employed or employs a member.

26 (9) "Employer error" means an omission,
27 misrepresentation, or violation of relevant provisions of the
28 West Virginia Code or of the West Virginia Code of State
29 Regulations or the relevant provisions of both the West
30 Virginia Code and of the West Virginia Code of State
31 Regulations by the participating public employer that has
32 resulted in an underpayment or overpayment of contributions
33 required. A deliberate act contrary to the provisions of this
34 section by a participating public employer does not constitute
35 employer error.

36 (10) "Employment term" means employment for at least ten
37 months, a month being defined as twenty employment days.

38 (11) "Gross salary" means the fixed annual or periodic
39 cash wages paid by a participating public employer to a
40 member for performing duties for the participating public
41 employer for which the member was hired. Gross salary also
42 includes retroactive payments made to a member to correct
43 a clerical error, or made pursuant to a court order or final
44 order of an administrative agency charged with enforcing
45 federal or state law pertaining to the member's rights to
46 employment or wages, with all retroactive salary payments to
47 be allocated to and considered paid in the periods in which
48 the work was or would have been done. Gross salary does
49 not include lump sum payments for bonuses, early retirement
50 incentives, severance pay, or any other fringe benefit of any
51 kind including, but not limited to, transportation allowances,
52 automobiles or automobile allowances, or lump sum
53 payments for unused, accrued leave of any type or character.

54 (12) "Internal Revenue Code" means the Internal
55 Revenue Code of 1986, as it has been amended.

56 (13) "Member" means any person who has accumulated
57 contributions standing to his or her credit in the Teachers

58 Retirement System. A member shall remain a member until
59 the benefits to which he or she is entitled under this article
60 are paid or forfeited, or until cessation of membership
61 pursuant to section thirteen of this article.

62 (14) "Members of the administrative staff of the public
63 schools" means deans of instruction, deans of men, deans of
64 women, and financial and administrative secretaries.

65 (15) "Members of the extension staff of the public
66 schools" means every agricultural agent, boys' and girls' club
67 agent and every member of the agricultural extension staff
68 whose work is not primarily stenographic, clerical or
69 secretarial.

70 (16) "New entrant" means a teacher who is not a present
71 teacher.

72 (17) "Nonteaching member" means any person, except a
73 teacher member, who is regularly employed for full-time
74 service by: (A) Any county board of education, (B) the State
75 Board of Education, (C) the Higher Education Policy
76 Commission, (D) the West Virginia Council for Community
77 and Technical College Education, or (E) a governing board,
78 as defined in section two, article one, chapter eighteen-b of
79 this code: *Provided*, That any person whose employment
80 with the Higher Education Policy Commission, the West
81 Virginia Council for Community and Technical College
82 Education or a governing board commences on or after July
83 1, 1991, is not considered a nonteaching member.

84 (18) "Plan year" means the twelve-month period
85 commencing on July 1 and ending the following June 30 of
86 any designated year.

87 (19) "Present member" means a present teacher who is a
88 member of the retirement system.

89 (20) "Present teacher" means any person who was a
90 teacher within the thirty-five years beginning July 1, 1934,
91 and whose membership in the retirement system is currently
92 active.

93 (21) "Prior service" means all service as a teacher
94 completed prior to July 1, 1941, and all service of a present
95 member who was employed as a teacher, and did not
96 contribute to a retirement account because he or she was
97 legally ineligible for membership during the service.

98 (22) "Public schools" means all publicly supported
99 schools, including colleges and universities in this state.

100 (23) "Refund beneficiary" means the estate of a deceased
101 contributor or a person he or she has nominated as
102 beneficiary of his or her contributions by written designation
103 duly executed and filed with the retirement board.

104 (24) "Refund interest" means interest compounded,
105 according to the formula established in legislative rules,
106 series seven of the Consolidated Public Retirement Board,
107 162 CSR 7.

108 (25) "Regular interest" means interest at four percent
109 compounded annually, or a higher earnable rate if set forth in
110 the formula established in legislative rules, series seven of the
111 Consolidated Public Retirement Board, 162 CSR 7.

112 (26) "Regularly employed for full-time service" means
113 employment in a regular position or job throughout the
114 employment term regardless of the number of hours worked
115 or the method of pay.

116 (27) "Required beginning date" means April 1 of the
117 calendar year following the later of: (A) The calendar year
118 in which the member attains age seventy and one-half years;

119 or (B) the calendar year in which the member retires or
120 ceases covered employment under the system after having
121 attained the age of seventy and one-half years.

122 (28) "Retirement system" means the State Teachers
123 Retirement System established by this article.

124 (29) "Teacher member" means the following persons, if
125 regularly employed for full-time service: (A) Any person
126 employed for instructional service in the public schools of
127 West Virginia; (B) principals; (C) public school librarians;
128 (D) superintendents of schools and assistant county
129 superintendents of schools; (E) any county school attendance
130 director holding a West Virginia teacher's certificate; (F) the
131 executive director of the retirement board; (G) members of
132 the research, extension, administrative or library staffs of the
133 public schools; (H) the State Superintendent of Schools,
134 heads and assistant heads of the divisions under his or her
135 supervision, or any other employee under the State
136 Superintendent performing services of an educational nature;
137 (I) employees of the state Board of Education who are
138 performing services of an educational nature; (J) any person
139 employed in a nonteaching capacity by the State Board of
140 Education, any county board of education, the State
141 Department of Education or the Teachers Retirement Board,
142 if that person was formerly employed as a teacher in the
143 public schools; (K) all classroom teachers, principals and
144 educational administrators in schools under the supervision
145 of the Division of Corrections, the Division of Health or the
146 Division of Human Services; (L) an employee of the state
147 Board of School Finance, if that person was formerly
148 employed as a teacher in the public schools; and (M) any
149 person designated as a 21st Century Learner Fellow pursuant
150 to section eleven, article three, chapter eighteen-a of this code
151 who elects to remain a member of the Teachers Retirement
152 System provided in this article.

153 (30) "Total service" means all service as a teacher while
154 a member of the retirement system since last becoming a
155 member and, in addition thereto, credit for prior service, if
156 any.

157 Age in excess of seventy years shall be considered to be
158 seventy years.

§18-7A-13. Membership in retirement system; cessation of membership; reinstatement of withdrawn service.

1 The membership of the retirement system shall consist of
2 the following:

3 (a) New entrants, whose membership in the system is
4 compulsory upon employment as teachers and nonteachers.

5 (b) The membership of the retirement system shall not
6 include any person who is an active member of or who has
7 been retired by the West Virginia Public Employees
8 Retirement System, the judge's retirement system, or the
9 retirement system of the West Virginia State Police or the
10 supplemental retirement system as provided in section four-a,
11 article twenty-three of this chapter. The membership of any
12 person in the retirement system ceases:

13 (1) Upon the withdrawal of accumulated contributions
14 after the cessation of service; or (2) upon effective retirement
15 date; or (3) at death; or (4) upon the date, if any, when after
16 the cessation of service, the outstanding balance of any loan
17 obtained by the member pursuant to section thirty-four of this
18 article or section five, article seven-d of this chapter, plus
19 accrued interest, equals or exceeds the member's
20 accumulated contributions.

21 (c) Any former member of the retirement system who has
22 withdrawn accumulated contributions but subsequently

23 reenters the retirement system may repay to the retirement
24 fund the amount withdrawn, plus interest at a rate set by the
25 board, compounded annually from the date of withdrawal to
26 the date of repayment: *Provided*, That no repayment may be
27 made until the former member has completed two years of
28 contributory service after reentry; and the member shall be
29 accorded all the rights to prior service and experience as were
30 held at the time of withdrawal of the accumulated
31 contributions: *Provided, however*, That no withdrawn
32 service may be reinstated that has been transferred to another
33 retirement system from which the member is currently or will
34 in the future draw benefits based on the same service. The
35 interest paid shall be deposited in the reserve fund.

36 (d) No member is eligible for prior service credit unless
37 he or she is eligible for prior service pension, as prescribed
38 by section twenty-two of this article; however, a new entrant
39 who becomes a present teacher as provided in this
40 subdivision shall be considered eligible for prior service
41 pension upon retirement.

42 (e) Any individual who is a leased employee is not
43 eligible to participate in the system. For purposes of this
44 system, a "leased employee" means any individual who
45 performs services as an independent contractor or pursuant to
46 an agreement with an employee leasing organization or other
47 similar organization. If a question arises regarding the status
48 of an individual as a leased employee, the board has final
49 power to decide the question.

**§18-7A-14. Contributions by members; contributions by
employers; correction of errors.**

1 (a) At the end of each month every member of the
2 retirement system shall contribute six percent of that
3 member's monthly gross salary to the retirement board:
4 *Provided*, That any member employed by a state institution

5 of higher education shall contribute on the member's full
6 earnable compensation, unless otherwise provided in section
7 fourteen-a of this article. The sums are due the Teachers
8 Retirement System at the end of each calendar month in
9 arrears and shall be paid not later than fifteen days following
10 the end of the calendar month. Each remittance shall be
11 accompanied by a detailed summary of the sums withheld
12 from the compensation of each member for that month on
13 forms, either paper or electronic, provided by the Teachers
14 Retirement System for that purpose.

15 (b) Annually, the contributions of each member shall be
16 credited to the member's account in the Teachers' Retirement
17 System Fund. The contributions shall be deducted from the
18 salaries of the members as prescribed in this section, and
19 every member shall be considered to have given consent to
20 the deductions. No deductions, however, shall be made from
21 the earnable compensation of any member who retired
22 because of age or service, and then resumed service unless as
23 provided in section thirteen-a of this article.

24 (c) The aggregate of employer contributions, due and
25 payable under this article, shall equal annually the total
26 deductions from the gross salary of members required by this
27 section. Beginning July 1, 1994, the rate shall be seven and
28 one-half percent; beginning July 1, 1995, the rate shall be
29 nine percent; beginning July 1, 1996, the rate shall be ten and
30 one-half percent; beginning July 1, 1997, the rate shall be
31 twelve percent; beginning July 1, 1998, the rate shall be
32 thirteen and one-half percent; and beginning July 1, 1999,
33 and thereafter, the rate shall be fifteen percent: *Provided,*
34 That the rate shall be seven and one-half percent for any
35 individual who becomes a member of the Teachers
36 Retirement System for the first time on or after July 1, 2005,
37 or any individual who becomes a member of the Teachers
38 Retirement System as a result of the voluntary transfer
39 contemplated in article seven-d of this chapter.

40 (d) Payment by an employer to a member of the sum
41 specified in the employment contract minus the amount of
42 the employee's deductions shall be considered to be a full
43 discharge of the employer's contractual obligation as to
44 earnable compensation.

45 (e) Each contributor shall file with the retirement board
46 or with the employer to be forwarded to the retirement board
47 an enrollment form showing the contributor's date of birth
48 and other data needed by the retirement board.

49 (f) If any change or employer error in the records of any
50 participating public employer or the retirement system results
51 in any member receiving from the system more or less than
52 he or she would have been entitled to receive had the records
53 been correct, the board shall correct the error, and as far as is
54 practicable shall adjust the payment of the benefit in a
55 manner that the actuarial equivalent of the benefit to which
56 the member was correctly entitled shall be paid. Any
57 employer error resulting in an underpayment to the retirement
58 system may be corrected by the member remitting the
59 required employee contribution and the participating public
60 employer remitting the required employer contribution.
61 Interest shall accumulate in accordance with the Legislative
62 Rule, Retirement Board Reinstatement Interest, 162 CSR 7,
63 and any accumulating interest owed on the employee and
64 employer contributions resulting from the employer error
65 shall be the responsibility of the participating public
66 employer. The participating public employer may remit total
67 payment and the employee reimburse the participating public
68 employer through payroll deduction over a period equivalent
69 to the time period during which the employer error occurred.

§18-7A-23. Withdrawal and death benefits.

1 (a) Benefits upon withdrawal from service prior to
2 retirement under the provisions of this article shall be as
3 follows:

4 (1) A contributor who withdraws from service for any
5 cause other than death, disability or retirement shall, upon
6 application, be paid his or her accumulated contributions up
7 to the end of the fiscal year preceding the year in which
8 application is made, after offset of any outstanding loan
9 balance, plus accrued interest, pursuant to section thirty-four
10 of this article, but in no event shall interest be paid beyond
11 the end of five years following the year in which the last
12 contribution was made: *Provided*, That the contributor, at the
13 time of application, is then no longer under contract, verbal
14 or otherwise, to serve as a teacher; or

15 (2) If the contributor has completed twenty years of total
16 service, he or she may elect to receive at retirement age an
17 annuity which shall be computed as provided in this article:
18 *Provided*, That if the contributor has completed at least five,
19 but fewer than twenty, years of total service in this state, he
20 or she may elect to receive at age sixty-two an annuity which
21 shall be computed as provided in this article. The contributor
22 must notify the retirement board in writing concerning the
23 election. If the contributor has completed fewer than five
24 years of service in this state, he or she shall be subject to the
25 provisions as outlined in subdivision (1) of this subsection.

26 (b) Benefits upon the death of a contributor prior to
27 retirement under the provisions of this article shall be paid as
28 follows:

29 (1) If the contributor was at least fifty years old and if his
30 or her total service as a teacher was at least twenty-five years
31 at the time of his or her death, then the surviving spouse of
32 the deceased, provided the spouse is designated as the sole
33 refund beneficiary, is eligible for an annuity computed as
34 though the deceased were actually a retired teacher at the
35 time of death and had selected a survivorship option which
36 pays the spouse the same monthly amount which would have
37 been received by the deceased; or

38 (2) If the facts do not permit payment under subdivision
39 (1) of this subsection, then the following sum shall be paid to
40 the refund beneficiary of the contributor: The contributor's
41 accumulated contributions up to the year of his or her death
42 plus an amount equal to his or her employee contributions.
43 The latter sum shall emanate from the Employer's
44 Accumulation Fund.

§18-7A-28c. Direct rollovers.

1 (a) This section applies to distributions made on or after
2 January 1, 1993. Notwithstanding any provision of this
3 article to the contrary that would otherwise limit a
4 distributee's election under this system, a distributee may
5 elect, at the time and in the manner prescribed by the board,
6 to have any portion of an eligible rollover distribution paid
7 directly to an eligible retirement plan specified by the
8 distributee in a direct rollover. For purposes of this section,
9 the following definitions apply:

10 (1) "Eligible rollover distribution" means any distribution
11 of all or any portion of the balance to the credit of the
12 distributee, except that an eligible rollover distribution does
13 not include any of the following: (A) Any distribution that is
14 one of a series of substantially equal periodic payments not
15 less frequently than annually made for the life or life
16 expectancy of the distributee or the joint lives or the joint life
17 expectancies of the distributee and the distributee's
18 designated beneficiary, or for a specified period of ten years
19 or more; (B) any distribution to the extent the distribution is
20 required under Section 401(a)(9) of the Internal Revenue
21 Code; (C) the portion of any distribution that is not
22 includable in gross income determined without regard to the
23 exclusion for net unrealized appreciation with respect to
24 employer securities; and (D) any hardship distribution
25 described in Section 401(k)(2)(B)(i)(iv) of the Internal
26 Revenue Code. For distributions after December 31, 2001,

27 a portion of a distribution shall not fail to be an eligible
28 rollover distribution merely because the portion consists of
29 after-tax employee contributions which are not includable in
30 gross income. However, this portion may be paid only to an
31 individual retirement account or annuity described in Section
32 408(a) or (b) of the Internal Revenue Code, or to a qualified
33 defined contribution plan described in Section 401(a) or
34 403(a) of the Internal Revenue Code that agrees to separately
35 account for amounts transferred, including separately
36 accounting for the portion of the distribution which is
37 includable in gross income and the portion of the distribution
38 which is not includable.

39 (2) "Eligible retirement plan" means an individual
40 retirement account described in Section 408(a) of the Internal
41 Revenue Code, an individual retirement annuity described in
42 Section 408(b) of the Internal Revenue Code, an annuity plan
43 described in Section 403(a) of the Internal Revenue Code, or
44 a qualified plan described in Section 401(a) of the Internal
45 Revenue Code, that accepts the distributee's eligible rollover
46 distribution: *Provided*, That in the case of an eligible
47 rollover distribution to the surviving spouse, an eligible
48 retirement plan is an individual retirement account or
49 individual retirement annuity. For distributions after
50 December 31, 2001, an eligible retirement plan also means an
51 annuity contract described in Section 403(b) of the Internal
52 Revenue Code and an eligible plan under Section 457(b) of
53 the Internal Revenue Code which is maintained by a state,
54 political subdivision of a state, or any agency or
55 instrumentality of a state or political subdivision of a state
56 and which agrees to separately account for amounts
57 transferred into the plan from this system.

58 (3) "Distributee" means an employee or former
59 employee. In addition, the employee's or former employee's
60 surviving spouse and the employee's or former employee's
61 spouse or former spouse who is the alternate payee under a

62 qualified domestic relations order, as defined in Section
63 414(p) of the Internal Revenue Code, as applicable to
64 governmental plans, are distributees with regard to the
65 interest of the spouse or former spouse.

66 (4) "Direct rollover" means a payment by the system to
67 the eligible retirement plan.

68 (b) Nothing in this section may be construed as
69 permitting rollovers into this system or any other retirement
70 system administered by the board.

§18-7A-34. Loans to members.

1 (a) An actively contributing member of the retirement
2 system upon written application may borrow from his or her
3 individual account in the Teachers Retirement System,
4 subject to these restrictions:

5 (1) Loans shall be made in multiples of \$10, the minimal
6 loan being \$100 and the maximum being \$8,000: *Provided,*
7 That the maximum amount of any loan when added to the
8 outstanding balance of all other loans granted under this
9 section shall not exceed the lesser of the following: (A)
10 \$8,000 reduced by the excess, if any, of the highest
11 outstanding balance of loans during the one-year period
12 ending on the day before the date on which the loan is made,
13 over the outstanding balance of loans to the member on the
14 date on which the loan is made; or (B) fifty percent of the
15 member's contributions to his or her individual account in the
16 Teachers Retirement System: *Provided, however,* That if the
17 total amount of loaned money outstanding exceeds \$40
18 million, the maximum shall not exceed \$3,000 until the
19 retirement board determines that loans outstanding have been
20 reduced to an extent that additional loan amounts are again
21 authorized: *Provided further,* That the amount of any loan
22 made pursuant to article seven-d of this chapter is not

23 included for the purposes of determining if the \$40 million
24 threshold has been exceeded.

25 (2) Interest charged on the amount of the loan shall be six
26 percent per annum, or a higher rate as set by the board:
27 *Provided*, That interest charged shall be commercially
28 reasonable in accordance with the provisions of Section
29 72(p)(2) of the Internal Revenue Code, and the federal
30 regulations issued thereunder. If repayable in installments,
31 the interest shall not exceed the annual rate so established
32 upon the principal amount of the loan, for the entire period of
33 the loan, and the charge shall be added to the principal
34 amount of the loan. The minimal interest charge shall be for
35 six months.

36 (3) No member is eligible for more than one outstanding
37 loan at any time: *Provided*, That the foregoing provision
38 does not apply to any loan made pursuant to article seven-d
39 of this chapter. Upon full payment of a loan, a member may
40 apply for a subsequent loan after sixty days beginning the
41 first day of the month following receipt of final payment.

42 (4) If a refund of accumulated contributions is payable to
43 the borrower or his or her beneficiary before he or she repays
44 the loan with interest, the balance due with interest to date
45 shall be deducted from the refund. A member with an unpaid
46 loan balance who wishes to retire or becomes eligible to
47 receive disability benefits under any provision of this article
48 may have the loan repaid in full by accepting retirement
49 income or disability payments reduced by deducting from the
50 actuarial reserve for the accrued benefit the amount of the
51 unpaid balance plus accrued interest, if any, and then
52 converting the remaining of the reserve to a monthly pension
53 or disability benefit payable in the form of the annuity
54 desired by the member.

55 (5) From his or her monthly salary as a teacher or a
56 nonteacher the member shall pay the loan and interest by

57 deductions which will pay the loan and interest in
58 substantially level payments in not more than sixty nor less
59 than six months. Upon notice of loan granted and payment
60 due, the employer is responsible for making the salary
61 deductions and reporting them to the retirement board. At
62 the option of the board, loan deductions may be collected as
63 prescribed herein for the collection of members' contribution,
64 or may be collected through issuance of warrant by employer.
65 If the borrower is no longer employed as a teacher or
66 nonteaching member, the borrower must make monthly loan
67 payments directly to the Consolidated Public Retirement
68 Board and the board must accept the payments.

69 (6) The entire unpaid balance of any loan, and interest
70 due thereon, shall, at the option of the board, become due and
71 payable without further notice or demand upon the
72 occurrence with respect to the borrowing member of any of
73 the following events of default: (A) Any payment of
74 principal and accrued interest on a loan remains unpaid after
75 it becomes due and payable under the terms of the loan or
76 after the grace period established in the discretion of the
77 board; (B) the borrowing member attempts to make an
78 assignment for the benefit of creditors of his or her refund or
79 benefit under the retirement system; or (C) any other event of
80 default set forth in rules promulgated by the board in
81 accordance with the authority granted pursuant to section
82 one, article ten-d, chapter five of this code: *Provided*, That
83 any refund or offset of an unpaid loan balance shall be made
84 only at the time the member is entitled to receive a
85 distribution under the retirement system.

86 (7) Loans shall be evidenced by such form of obligations
87 and shall be made upon such additional terms as to default,
88 prepayment, security, and otherwise as the board determines.

89 (8) Notwithstanding anything herein to the contrary, the
90 loan program authorized by this section shall comply with the
91 provisions of Section 72(p)(2) and Section 401 of the Internal

92 Revenue Code, and the federal regulations issued thereunder,
93 and accordingly, the retirement board is authorized to: (A)
94 Apply and construe the provisions of this section and
95 administer the plan loan program in such a manner as to
96 comply with the provisions of Section 72(p)(2) and Section
97 401 of the Internal Revenue Code and the federal regulations
98 issued thereunder; (B) adopt plan loan policies or procedures
99 consistent with these federal law provisions; and (C) take
100 such actions as it considers necessary or appropriate to
101 administer the plan loan program created hereunder in
102 accordance with these federal law provisions. The retirement
103 board is further authorized in connection with the plan loan
104 program to take any actions that may at any time be required
105 by the Internal Revenue Service regarding compliance with
106 the requirements of Section 72(p)(2) or Section 401 of the
107 Internal Revenue Code, and the federal regulations issued
108 thereunder, notwithstanding any provision in this article to
109 the contrary.

110 (b) Notwithstanding anything in this article to the
111 contrary, the loan program authorized by this section shall
112 not be available to any teacher or nonteacher who becomes
113 a member of the Teachers Retirement System on or after July
114 1, 2005: *Provided*, That a member is eligible for a loan under
115 article seven-d of this chapter to pay all or part of the
116 Actuarial Reserve, or if available in accordance with the
117 provisions of subsection (d), section six, article seven-d of
118 this chapter, the one and one-half percent contribution for
119 service in the Teachers' Defined Contribution System for the
120 purpose of receiving additional service credit in the State
121 Teachers Retirement System pursuant to section six, article
122 seven-d, of this chapter.

123 (c) A member who ceases service with an unpaid loan
124 balance will no longer be a member when the unpaid loan
125 balance, plus accrued interest, equals or exceeds the
126 member's accumulated contributions.

CHAPTER 194

**(Com. Sub. for H.B. 2870 - By Delegates Paxton, Stowers,
Perry, Caputo, Boggs, Pethtel, Fragale, M. Poling, Duke,
Campbell and Spencer)**

[Passed April 11, 2009; in effect from passage.]
[Approved by the Governor on April 22, 2009.]

AN ACT to amend and reenact §18-7D-5 and §18-7D-6 of the Code of West Virginia, 1931, as amended, relating to extending the deadline of the buyback provision provided under the Teachers' Defined Contribution Retirement System to the State Teachers Retirement System; and similarly extending the time for loans for such buyback.

Be it enacted by the Legislature of West Virginia:

That §18-7D-5 and §18-7D-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 7D. VOLUNTARY TRANSFER FROM
TEACHERS' DEFINED
CONTRIBUTION RETIREMENT
SYSTEM TO STATE TEACHERS
RETIREMENT SYSTEM.**

§18-7D-5. Conversion of assets from Defined Contribution Retirement System to State Teachers Retirement System; contributions; loans.

§18-7D-6. Service credit in State Teachers Retirement System following transfer; conversion of assets; adjustments.

§18-7D-5. Conversion of assets from Defined Contribution Retirement System to State Teachers Retirement System; contributions; loans.

1 (a) If at least sixty-five percent of actively contributing
2 members of the Teachers' Defined Contribution Retirement
3 System affirmatively elect to transfer to the State Teachers
4 Retirement System within the period provided in section
5 seven of this article, then the Consolidated Public Retirement
6 Board shall transfer the members and all properties held in
7 the Teachers' Defined Contribution Retirement System's
8 Trust Fund in trust for those members who affirmatively
9 elected to do so during that period to the State Teachers
10 Retirement System, effective on the first day of July, two
11 thousand eight: *Provided*, That the board shall, for any
12 member whose election to transfer was received by the board
13 after the twelfth day of May, two thousand eight, but on or
14 before the twentieth day of May, two thousand eight, and has
15 not been certified as accepted by the board on or before the
16 effective date of the amendments to this section enacted
17 during the second extraordinary session of the Legislature,
18 two thousand eight, effectuate the transfer as provided in this
19 subsection on the first day of August, two thousand eight.

20 (b) The board shall make available to each member a loan
21 for the purpose of paying all or part of the Actuarial Reserve,
22 or if available in accordance with the provisions of
23 subsection (d), section six of this article, the one and one-half
24 percent contribution for service in the Teachers' Defined
25 Contribution System to receive additional service credit in
26 the State Teachers Retirement System for service in the
27 Teachers' Defined Contribution Retirement System pursuant
28 to section six of this article. The loan shall be offered in
29 accordance with the provisions of section thirty-four, article
30 seven-a of this chapter.

31 (1) Notwithstanding any provision of this code, rule or
32 policy of the board to the contrary, the interest rate on any

33 loan may not exceed seven and one-half percent per annum.
34 The total amount borrowed may not exceed forty thousand
35 dollars: *Provided*, That the loan may not exceed the
36 limitations of the Internal Revenue Code Section 72(p).

37 (2) In the event a loan made pursuant to this section is
38 used to pay the Actuarial Reserve or the one and one-half
39 percent contribution, as the case may be, the board shall
40 make any necessary adjustments at the time the loan is made.

41 (3) The board shall make this loan available to any
42 member who has provided to the board by the effective date
43 of the amendments to this section enacted in the 2009 regular
44 legislative session a signed verification of cost for service
45 credit purchase form until the thirtieth day of June, two
46 thousand nine, or no later than ninety days after the
47 postmarked date on a final and definitive contribution
48 calculation from the board, whichever is later.

49 (c) The board shall develop and institute a payroll
50 deduction program for repayment of the loan established in
51 this section.

52 (d) If at least sixty-five percent of actively contributing
53 members of the Teachers' Defined Contribution Retirement
54 System affirmatively elect to transfer to the State Teachers
55 Retirement System within the period provided in section
56 seven of this article:

57 (1) As of the first day of July, two thousand eight, or the
58 first day of August, two thousand eight, as the case may be,
59 the transferred members' contribution rate becomes six
60 percent of his or her salary or wages; and

61 (2) All transferred members who work one hour or more
62 and who make a contribution into the State Teachers
63 Retirement System on or after the first day of July, two

64 thousand eight, are governed by the provisions of article
65 seven-a of this chapter, subject to the provisions of this
66 article.

67 (e) Subject to the provisions of subdivision (1) of this
68 subsection, if a member has withdrawn or cashed out part of
69 his or her assets, that member will not receive credit for those
70 moneys cashed out or withdrawn. The board shall make a
71 determination as to the amount of credit a member loses
72 based on the periods of time and the amounts he or she has
73 withdrawn or cashed out, which shall be expressed as a loss
74 of service credit.

75 (1) A member may repay those amounts he or she
76 previously cashed out or withdrew, along with interest as
77 determined by the board, and receive the same credit as if the
78 withdrawal or cash-out never occurred. To receive full credit
79 for the cashed-out or withdrawn amounts being repaid to the
80 State Teachers Retirement System, the member also shall pay
81 the actuarial reserve, or the one and one-half percent
82 contribution, as the case may be, pursuant to section six of
83 this article.

84 (2) The loan provided in this section is not available to
85 members to repay previously cashed out or withdrawn
86 moneys.

87 (3) If the repayment occurs five or more years following
88 the cash-out or withdrawal, the member also shall repay any
89 forfeited employer contribution account balance along with
90 interest determined by the board.

91 (f) Notwithstanding any provision of subsection (e) to the
92 contrary, if a member has cashed out or withdrawn any of his
93 or her assets after the last day of June, two thousand three,
94 and that member chooses to repurchase that service after the
95 thirtieth day of June, two thousand eight, the member shall

96 repay the previously distributed amounts and any applicable
97 interest to the State Teachers Retirement System.

98 (g) Any service in the State Teachers Retirement System
99 a member has before the date of the transfer is not affected by
100 the provisions of this article.

101 (h) The board shall take all necessary steps to see that the
102 voluntary transfers of persons and assets authorized by this
103 article do not affect the qualified status with the Internal
104 Revenue Service of either retirement plan.

**§18-7D-6. Service credit in State Teachers Retirement System
following transfer; conversion of assets;
adjustments.**

1 (a) Any member who has affirmatively elected to transfer
2 to the State Teachers Retirement System within the period
3 provided in section seven of this article whose assets have
4 been transferred from the Teachers' Defined Contribution
5 Retirement System to the State Teachers Retirement System
6 pursuant to the provisions of this article and who has not
7 made any withdrawals or cash-outs from his or her assets is,
8 depending upon the percentage of actively contributing
9 members affirmatively electing to transfer, entitled to service
10 credit in the State Teachers Retirement System in accordance
11 with the provisions of subsection (c) of this section.

12 (b) Any such member who has made withdrawals or
13 cash-outs will receive service credit based upon the amounts
14 transferred. The board shall make the appropriate adjustment
15 to the service credit the member will receive.

16 (c) More than seventy-five percent of actively
17 contributing members of the Teachers' Defined Contribution
18 Retirement System affirmatively elected to transfer to the
19 State Teachers Retirement System within the period provided

20 in section seven of this article. Therefore, any member of the
21 Defined Contribution Retirement System who decides to
22 transfer to the State Teachers Retirement System, calculates
23 his or her service credit in the State Teachers Retirement
24 System as follows:

25 (1) For any member affirmatively electing to transfer, the
26 member's State Teachers Retirement System credit shall be
27 seventy-five percent of the member's Teachers' Defined
28 Contribution Retirement System service credit, less any
29 service previously withdrawn by the member or due to a
30 qualified domestic relations order and not repaid;

31 (2) To receive full credit in the State Teachers Retirement
32 System for service in the Teachers' Defined Contribution
33 Retirement System for which assets are transferred, members
34 who affirmatively elected to transfer and who provided to the
35 board a signed verification of cost for service credit purchase
36 form by the effective date of the amendments to this section
37 enacted in the 2009 regular legislative session shall pay into
38 the State Teachers Retirement System a one and one-half
39 percent contribution by no later than June 30, 2009, or no
40 later than ninety days after the postmarked date on a final and
41 definitive contribution calculation from the board, whichever
42 is later. This contribution shall be calculated as one and
43 one-half percent of the member's estimated total earnings for
44 which assets are transferred, plus interest of four percent per
45 annum accumulated from the date of the member's initial
46 participation in the Defined Contribution Retirement System
47 through June 30, 2009.

48 (A) For a member contributing to the Defined
49 Contribution Retirement System at any time during the 2008
50 fiscal year and commencing membership in the State
51 Teachers Retirement System on July 1, 2008, or August 1,
52 2008, as the case may be:

53 (i) The estimated total earnings shall be calculated based
54 on the member's salary and the member's age nearest birthday
55 on June 30, 2008;

56 (ii) This calculation shall apply both an annual backward
57 salary scale from that date for prior years' salaries and a
58 forward salary scale for the salary for the 2008 fiscal year.

59 (B) The calculations in paragraph (A) of this subdivision
60 are based upon the salary scale assumption applied in the
61 West Virginia Teachers Retirement System actuarial
62 valuation as of July 1, 2007, prepared for the Consolidated
63 Public Retirement Board. This salary scale shall be applied
64 regardless of breaks in service.

65 (d) All service previously transferred from the State
66 Teachers Retirement System to the Teachers' Defined
67 Contribution Retirement System is considered Teachers'
68 Defined Contribution Retirement System service for the
69 purposes of this article.

70 (e) Notwithstanding any provision of this code to the
71 contrary, the retirement of a member who becomes eligible
72 to retire after the member's assets are transferred to the State
73 Teachers Retirement System pursuant to the provisions of
74 this article may not commence prior to September 1, 2008:
75 *Provided*, That the Consolidated Public Retirement Board
76 may not retire any member who is eligible to retire during the
77 calendar year 2008 unless the member has provided a written
78 notice to his or her county board of education by July 1,
79 2008, of his or her intent to retire.

80 (f) The provisions of section twenty-eight-e, article
81 seven-a of this chapter do not apply to the amendments to
82 this section enacted during the 2009 regular legislative
83 session.

CHAPTER 195**(H.B. 2734 - By Delegate Spencer)**

[Passed April 8, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §18-7D-11 of the Code of West Virginia, 1931, as amended, relating to the minimum guarantees provided to members who elected to transfer from the Teachers' Defined Contribution System to the Teachers' Retirement System.

Be it enacted by the Legislature of West Virginia:

That §18-7D-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 7D. VOLUNTARY TRANSFER FROM
TEACHERS' DEFINED
CONTRIBUTION RETIREMENT
SYSTEM TO STATE TEACHERS
RETIREMENT SYSTEM.**

§18-7D-11. Minimum guarantees.

- 1 (a) Any member of the Teachers' Defined Contribution
- 2 Retirement System who works one hour or more and who has
- 3 made a contribution to the State Teachers Retirement System
- 4 after his or her assets are transferred to the State Teachers
- 5 Retirement System pursuant to this article, is guaranteed a
- 6 minimum benefit equal to his or her member contributions
- 7 plus the vested portion of employer contributions made on
- 8 his or her behalf to the Teachers' Defined Contribution
- 9 Retirement System, plus any earnings thereon, as of June 30,
- 10 2008, as stated by the board.

11 (b) A member of the Teachers' Defined Contribution
12 Retirement System who works one hour or more and who has
13 made contributions to the State Teachers Retirement System
14 after his or her assets are transferred to the State Teachers
15 Retirement System, upon eligibility to receive a distribution
16 under article seven-a of this chapter, shall have at a minimum
17 the following two options:

18 (1) The right to receive an annuity from the State
19 Teachers Retirement System based upon the provisions of
20 article seven-a of this chapter; or

21 (2) The right to withdraw from the State Teachers
22 Retirement System and receive his or her member
23 accumulated contributions in the State Teachers Retirement
24 System, plus refund interest thereon, as set forth in article
25 seven-a of this chapter and the right to withdraw and receive
26 his or her member contributions plus the vested portion of
27 employer contributions made on his or her behalf to the
28 Teachers' Defined Contribution Retirement System, plus any
29 earnings thereon as of the date his or her assets are
30 transferred to the State Teachers Retirement System pursuant
31 to this article, as determined by the board pursuant to the
32 vesting provisions of article seven-a of this chapter. This
33 amount shall be distributed in a lump sum.

34 (c) Any member of the Teachers' Defined Contribution
35 Retirement System who does not work one hour or more and
36 who makes no contribution to the State Teachers Retirement
37 System after his or her assets are transferred to the State
38 Teachers Retirement System pursuant to this article, is
39 guaranteed the receipt of the amount in his or her total vested
40 account in the Teachers' Defined Contribution Retirement
41 System on the date of the transfer, plus interest thereon, at
42 four percent accruing from the date of the transfer. This
43 amount shall be distributed in a lump sum: *Provided*, That
44 no benefits may be obtained under this subsection solely by
45 the reciprocity provisions of sections three, four and six,
46 article thirteen, chapter five of this code.



CHAPTER 196

(Com. Sub. for H.B. 3194 - By Delegates Ferro and Hamilton)

[Amended and again passed May 27, 2009, as a result of the
objections of the Governor; in effect ninety days from passage.]
[Approved by the Governor on June 5, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31B-1-114, relating to the creation of a criminal penalty for knowingly filing materially false information regarding a limited liability company with the Secretary of State.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §31B-1-114, to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

§31B-1-114. Penalty for signing false document.

1 Any person who signs a document required to be filed
2 with the Secretary of State by this chapter which he or she
3 knows is false in any material respect is guilty of a
4 misdemeanor and, upon conviction thereof, shall be fined not
5 more than \$1,000 or confined in jail not more than one year,
6 or both fined and confined.

CHAPTER 197

(Com. Sub. for H.B. 2504 - By Delegates Williams, Boggs, Argento, D. Poling, Pethtel, Marshall, Butcher, Ennis, Rowan and Manypenny)

[Passed April 10, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2009.]

AN ACT to amend and reenact §15-3A-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §15-3B-1, §15-3B-2, §15-3B-3, §15-3B-4, §15-3B-5 and §15-3B-6 of said code, all relating to the establishment of an alert system for missing cognitively impaired persons; providing for the use of video image recording devices for search purposes during a Silver Alert; providing legislative findings; providing criteria for the activation of a Silver Alert; providing for notice and broadcasting of a Silver Alert; and providing immunity for individuals providing information pursuant to a Silver Alert in good faith.

Be it enacted by the Legislature of West Virginia:

That §15-3A-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be further amended by adding thereto a new article, designated §15-3B-1, §15-3B-2, §15-3B-3, §15-3B-4, §15-3B-5, and §15-3B-6, all to read as follows:

Article

- 3A. Amber Alert Plan.**
- 3B. Silver Alert Plan.**

ARTICLE 3A. AMBER ALERT PLAN.**§15-3A-7. Providing for the use of video image recording devices for search purposes during an Amber Alert or Silver Alert Activation.**

1 (a) The State Police and the Division of Highways shall
2 coordinate a process to utilize all available video recording
3 and monitoring devices for the purpose of monitoring Amber
4 Alert or Silver Alert suspect vehicles. This program shall be
5 called the “Guardian Angel Video Monitoring” Program.

6 (b) The Secretary of Military Affairs and Public Safety
7 shall also develop a plan to provide for the State Police to
8 monitor and utilize video recording and monitoring devices
9 during an Amber Alert or Silver Alert. This “Guardian
10 Angel Video Monitoring” implementation plan shall include
11 at a minimum, the following:

12 (1) Utilization of any state or local video recording and
13 monitoring devices upon agreement with the department,
14 agency or political subdivision in control of the video
15 recording device; and

16 (2) Development of policies and initiatives relating to
17 facilitating sharing of information with neighboring states
18 wherein suspect vehicles in Amber Alerts or Silver Alerts
19 may be crossing state lines.

20 (c) The secretary shall submit the plan to the Joint
21 Committee on Government and Finance no later than
22 December 1, 2008. The plan shall include an analysis of all
23 related costs for equipping and using a statewide video
24 recording and monitoring system during the duration of an
25 Amber Alert and recommendations for any additional
26 legislation or actions necessary to further facilitate the
27 implementation of the “Guardian Angel Video Monitoring”
28 program.

ARTICLE 3B. SILVER ALERT PLAN.

§15-3B-1. Short title.

§15-3B-2. Findings and declarations relative to "Silver Alert Plan".

§15-3B-3. Establishment of "Silver Alert" program.

§15-3B-4. Activation of Silver Alert.

§15-3B-5. Notice to participating media; broadcast of alert.

§15-3B-6. Aid to missing cognitively impaired adult; immunity from civil or criminal liability.

§15-3B-1. Short title.

1 This article shall be known and may be cited as "Silver
2 Alert Plan".

§15-3B-2. Findings and declarations relative to "Silver Alert Plan".

1 (a) The Legislature finds that:

2 (1) Public alerts can be one of the most effective tools in
3 locating missing cognitively impaired persons;

4 (2) Law-enforcement officers and other professionals
5 specializing in the field of missing persons agree that the
6 most critical moments in the search for a missing cognitively
7 impaired person are the first few hours immediately
8 following the discovery that the individual is missing,
9 asserting that if he or she is not found within twenty -four
10 hours, it is unlikely that he or she will be found alive or
11 without serious injury. The rapid dissemination of
12 information, including a description of the missing
13 cognitively impaired person, details of how he or she became
14 missing, and of any vehicle involved, to the citizens of the
15 affected community and region is, therefore, critical;

16 (3) Alerted to the situation, the citizenry become an
17 extensive network of eyes and ears serving to assist law
18 enforcement in quickly locating and safely recovering the
19 missing cognitively impaired person;

20 (4) The most effective method of immediately notifying
21 the public of a missing cognitively impaired person is
22 through the broadcast media; and

23 (5) All forms of developing technologies are required to
24 assist law enforcement in rapidly responding to these alerts
25 and are an additional tool for assuring the well being and
26 safety of our cognitively impaired citizenry. Thus, the use of
27 traffic video recording and monitoring devices for the
28 purpose of surveillance of a suspect vehicle adds yet another
29 set of eyes to assist law enforcement and aid in the safe
30 recovery of the cognitively impaired person.

31 (b) The Legislature declares that given the successes
32 other states and regions have experienced in using broadcast
33 media alerts to quickly locate and safely recover missing
34 cognitively impaired persons, and, with the recent
35 development of highway video recording and monitoring
36 systems, it is altogether fitting and proper, and within the
37 public interest, to establish these programs for West Virginia.

§15-3B-3. Establishment of “Silver Alert” program.

1 (a) The Secretary of the Department of Military Affairs
2 and Public Safety shall establish “Silver Alert”, a program
3 authorizing the broadcast media, upon notice from the State
4 Police, to broadcast an alert to inform the public of a missing
5 cognitively impaired person. The program shall be a
6 voluntary, cooperative effort between state law-enforcement
7 and the broadcast media.

8 (b) For the purposes of this article, the term “cognitively
9 impaired” means a person having a deficiency in his or her
10 short-term or long-term memory, orientation as to person,
11 place, and time, deductive or abstract reasoning, or judgment
12 as it relates to safety: *Provided*, That the cognitive
13 impairment is not caused by the use of alcohol or drugs not
14 legally prescribed by a physician.

15 (c) The secretary shall notify the broadcast media serving
16 the State of West Virginia of the establishment of “Silver
17 Alert” program and invite their voluntary participation.

18 (d) The secretary shall submit a plan to the Joint
19 Committee on Government and Finance no later than
20 December 1, 2009. The plan shall include “Silver Alert”
21 activation protocols, evaluation of first responder training
22 requirements and needs as related to cognitively impaired
23 persons, coordination and utilization of established programs
24 and analysis of any costs. The secretary shall also make
25 recommendations for any additional legislation or actions
26 necessary to further facilitate the implementation of the
27 “Silver Alert” program.

§15-3B-4. Activation of Silver Alert.

1 The following criteria shall be met before the State Police
2 activate the Silver Alert:

3 (1) A person is believed to be cognitively impaired;

4 (2) The person is believed to be missing, regardless of
5 circumstance;

6 (3) A person who has knowledge that the cognitively
7 impaired person is missing has submitted a missing person’s
8 report to the State Police or other appropriate law-
9 enforcement agency;

10 (4) The missing person may be in danger of death or
11 serious bodily injury;

12 (5) The missing person is domiciled or believed to be
13 located in the State of West Virginia;

14 (6) The missing person is, or is believed to be, at a
15 location that cannot be determined by an individual familiar

16 with the missing person, and the missing person is incapable
17 of returning to the missing person's residence without
18 assistance; and

19 (7) There is sufficient information available to indicate
20 that a Silver Alert would assist in locating the missing
21 person.

§15-3B-5. Notice to participating media; broadcast of alert.

1 (a) To participate, the media may agree, upon notice from
2 the State Police via email or facsimile, to transmit
3 information to the public about a missing cognitively
4 impaired person that has occurred within their broadcast
5 service region.

6 (b) The alerts shall include a description of the missing
7 cognitively impaired person, such details of the circumstance
8 surrounding him or her becoming missing, as may be known,
9 and such other information as the State Police may deem
10 pertinent and appropriate. The State Police shall in a timely
11 manner update the broadcast media with new information
12 when appropriate concerning the missing cognitively
13 impaired person.

14 (c) The alerts also shall provide information concerning
15 how those members of the public who have information
16 relating to the missing cognitively impaired person may
17 contact the State Police or other appropriate law-enforcement
18 agency.

19 (d) Concurrent with the notice provided to the broadcast
20 media, the State Police shall also notify the Department of
21 Transportation, the Division of Highways and the West
22 Virginia Turnpike Commission of the "Silver Alert" so that
23 the department and the affected authorities may, if possible,
24 through the use of their variable message signs, inform the
25 motoring public that a "Silver Alert" is in progress and may

26 provide information relating to the missing cognitively
27 impaired person and how motorists may report any
28 information they have to the State Police or other appropriate
29 law-enforcement agency.

30 (e) The alerts shall terminate upon notice from the State
31 Police.

32 (f) The secretary shall develop and undertake a campaign
33 to inform law-enforcement agencies about the “Silver Alert”
34 program established under this article.

**§15-3B-6. Aid to missing cognitively impaired adult; immunity
from civil or criminal liability.**

1 No person or entity who in good faith follows and abides
2 by the provisions of this article is liable for any civil or
3 criminal penalty as the result of any act or omission in the
4 furtherance thereof unless it is alleged and proven that the
5 information disclosed was false and disclosed with the
6 knowledge that the information was false.



CHAPTER 198

(H.B. 3155 - By Delegates Campbell, White and Kominar)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 6, 2009.]

AN ACT to amend and reenact §12-1A-4 and §12-1A-6 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §12-1A-7 and

§12-1A-8, all relating to the renewal of the West Virginia Small Business Linked Deposit Program; limiting liability of certain state agencies; penalties for violation; and updating certain language within the code.

Be it enacted by the Legislature of West Virginia:

That §12-1A-4 and §12-1A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §12-1A-7 and §12-1A-8, all to read as follows:

ARTICLE 1A. WEST VIRGINIA SMALL BUSINESS LINKED DEPOSIT PROGRAM.

§12-1A-4. Applications for loan priority; loan package; counseling.

§12-1A-6. Certification and monitoring of compliance; accountability and reporting.

§12-1A-7. Liability of state.

§12-1A-8. Penalties for violation of article.

§12-1A-4. Applications for loan priority; loan package; counseling.

1 (a) An eligible lending institution that desires to
2 participate in the linked deposit program shall accept and
3 review loan applications from eligible small businesses that
4 have been prepared with the advice of the Small Business
5 Development Center. The lending institution shall apply all
6 usual lending standards to determine the credit worthiness of
7 each eligible small business and whether the loan application
8 meets the criteria established in this article.

9 (b) An eligible small business shall certify on its loan
10 application that: (1) The small business is in good standing
11 with the State Tax Division, an authorized workers'
12 compensation insurance carrier and WORKFORCE West
13 Virginia as of the date of the application; (2) the linked deposit
14 loan will be used to create new jobs or preserve existing jobs
15 and employment opportunities; and (3) the linked deposit loan
16 shall not be used to refinance an existing debt.

17 (c) In considering which eligible small businesses should
18 receive linked deposit loans, the eligible lending institution
19 shall give priority to the economic needs of the area in which
20 the business is located, the number of jobs to be created and
21 preserved by the receipt of the loan, the reasonable ability of
22 the small business to repay the loan and other factors
23 considered appropriate by the eligible financial institution.

24 (d) A small business receiving a linked deposit loan shall
25 receive counseling provided by the small business
26 development center when applying for the loan. The services
27 available from the Small Business Development Center
28 include eligibility certification, business planning, quarterly
29 financial statement review and loan application assistance.
30 The State Tax Division, WORKFORCE West Virginia and
31 the authorized workers' compensation insurance carrier shall
32 provide the Small Business Development Center with
33 information as to the standing of each small business loan
34 applicant. The Small Business Development Center shall
35 include these certifications with the loan application.

36 (e) After all approvals of the Small Business
37 Development Center and the financial institution have been
38 given for a linked deposit loan, the Small Business
39 Development Center and the financial institution shall
40 forward to the Treasurer a linked deposit loan request in the
41 form and manner prescribed by the Treasurer. The Treasurer
42 shall notify the Small Business Development Center when
43 the linked deposit is made.

**§12-1A-6. Certification and monitoring of compliance;
accountability and reporting.**

1 (a) Upon the placement of a linked deposit with an
2 eligible lending institution, the institution shall lend the funds
3 to the approved eligible small business listed in the linked
4 deposit loan package. A certification of compliance with this

5 section shall be sent to the Small Business Development
6 Center by the eligible lending institution.

7 (b) As a condition of remaining in good standing with the
8 lending institution and the state and as a condition of having
9 the loan for up to seven years, the loan recipient shall receive
10 counseling provided by the Small Business Development
11 Center. Eligible small businesses shall also grant the lending
12 institution the right to provide information on the status of the
13 loan to the Small Business Development Center so as to
14 assist the small business.

15 (c) The Small Business Development Center shall take
16 any and all steps necessary to implement, advertise and
17 monitor compliance with the linked deposit program.

18 (d) By January 31 of each year, the Small Business
19 Development Center shall report on the linked deposit
20 program for the preceding calendar year to the West Virginia
21 Development Office, which shall then report to the Joint
22 Committee on Government and Finance. The reports shall
23 set forth the name of the small business, terms, delinquency
24 and default rates, job growth, gross income evaluation and
25 amounts of the loans upon which the linked deposits were
26 based.

§12-1A-7. Liability of state.

1 The state, the Treasurer, the Department of Commerce,
2 the West Virginia Development Office and the Small
3 Business Development Center and their employees are not
4 liable to any eligible lending institution in any manner for
5 payment of the principal or interest on the loan to an eligible
6 small business. Any delay in payment or default on the part
7 of an eligible small business does not in any manner affect
8 the deposit agreement between the eligible lending institution
9 and the Treasurer.

§12-1A-8. Penalties for violation of article.

1 (a) Any person who knowingly makes a false statement
2 concerning an application or violates another provision of
3 this article is guilty of a misdemeanor and, upon conviction
4 thereof, shall be fined not less than \$100 nor more than \$500
5 or confined in jail not less than one month nor more than one
6 year.

7 (b) In addition to the criminal penalties provided in this
8 section, no person who is convicted of a violation of
9 subsection (a) of this section is eligible to participate in the
10 linked deposit program.

CHAPTER 199

**(Com. Sub. for S.B. 641 - By Senators K. Facemyer
and Prezioso)**

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24A-2-4b, relating generally to disclosures regarding the origin of solid wastes deposited in commercial landfills and transfer stations in this state; requiring the operator-driver of every solid waste motor carrier who deposits solid waste in a commercial landfill or transfer station to declare in writing, under oath, and to provide to certain entities, the name of the county and state of origin of the solid waste being deposited at the commercial landfill or transfer station; and providing criminal penalties

against an operator-driver or owner of a solid waste motor carrier.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §24A-2-4b, to read as follows:

ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.

§24A-2-4b. Motor carriers transporting solid waste; origin of waste disclosure; penalties.

1 (a) The operator-driver of every solid waste motor carrier
2 vehicle which arrives at a commercial solid waste facility,
3 including, but not limited to, commercial landfills and
4 transfer stations, in this state is required to declare, in writing
5 and under oath, the name of the county and state of origin of
6 the solid waste being deposited at the commercial solid waste
7 facility. The operator-driver of the solid waste motor carrier
8 vehicle shall give a copy of this completed declaration form
9 to the operator of the commercial landfill or of the transfer
10 station, to the West Virginia Public Service Commission and
11 to the county solid waste authority.

12 (b) The Public Service Commission shall prepare and
13 provide commercial solid waste facility operators with a
14 uniform disclosure form for use in effecting this provision.

15 (c) Any operator-driver of a solid waste motor carrier
16 vehicle who violates this section is guilty of a misdemeanor
17 and, upon conviction thereof, shall be fined not less than \$50
18 nor more than \$500.

19 (d) Any owner of a solid waste motor carrier vehicle
20 which deposits solid waste in violation of this section is
21 guilty of a misdemeanor and, upon conviction thereof, shall
22 be fined \$1,000.

CHAPTER 200

**(Com. Sub. for H.B. 2976 - By Mr. Speaker, Mr. Thompson,
and Delegate Armstead)
[By Request of the Executive]**

[Passed April 11, 2009; in effect from passage.]
[Approved by the Governor on May 7, 2009.]

AN ACT to amend and reenact §29-3-5b of the Code of West Virginia, 1931, as amended, relating to the State Building Code; and requiring the State Fire Commission to promulgate rules pertaining to the State Building Code that are in accordance with certain national and international building codes and standards.

Be it enacted by the Legislature of West Virginia:

That §29-3-5b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-5b. Promulgation of rules and statewide building code.

1 (a) The State Fire Commission shall propose rules for
2 legislative approval in accordance with the provisions of
3 article three, chapter twenty-nine-a of this code to safeguard
4 life and property and to ensure the quality of construction of
5 all structures erected or renovated throughout this state
6 through the adoption of a state building code. The rules shall
7 be in accordance with standard safe practices so embodied in
8 widely recognized standards of good practice for building

9 construction and all aspects related thereto and have force
10 and effect in those counties and municipalities adopting the
11 state building code: *Provided*, That each county or
12 municipality may adopt the code to the extent that it is only
13 prospective and not retroactive in its application.

14 (b) The State Fire Commission has authority to propose
15 rules for legislative approval in accordance with the
16 provisions of article three, chapter twenty-nine-a of this code,
17 regarding building construction, renovation and all other
18 aspects as related to the construction and mechanical
19 operations of a structure. The rules shall be known as the
20 “State Building Code.”

21 (c) The State Fire Commission shall propose a rule for
22 legislative approval in accordance with the provisions of
23 article three, chapter twenty-nine-a of this code to include the
24 following building energy codes in the State Building Code:

25 (1) The 2009 edition of the International Energy
26 Conservation Code for residential buildings or other building
27 energy code or codes for residential buildings that meets or
28 exceeds equivalent energy savings; and

29 (2) The ANSI/ASHRAE/IESNA Standard 90.1-2007
30 building energy code for commercial buildings or other
31 building energy code or codes for commercial buildings that
32 meets or exceeds equivalent energy savings.

33 (d) The State Fire Commission has authority to propose
34 rules for legislative approval, in accordance with the
35 provisions of article three, chapter twenty-nine-a, establishing
36 state standards and fee schedules for the licensing,
37 registration, certification, regulation and continuing
38 education of persons which will conduct inspections relating
39 to the State Building Code, which include, but are not limited
40 to, building code officials, inspectors, plans examiners and
41 home inspectors.

42 (e) The State Fire Commission has authority to establish
43 advisory boards as it deems appropriate to encourage
44 representative participation in subsequent rule-making from
45 groups or individuals with an interest in any aspect of the
46 State Building Code or related construction or renovation
47 practices.

48 (f) For the purpose of this section, the term “building
49 code” is intended to include all aspects of safe building
50 construction and mechanical operations and all safety aspects
51 related thereto. Whenever any other state law, county or
52 municipal ordinance or regulation of any agency thereof is
53 more stringent or imposes a higher standard than is required
54 by the State Building Code, the provisions of the state law,
55 county or municipal ordinance or regulation of any agency
56 thereof governs if they are not inconsistent with the laws of
57 West Virginia and are not contrary to recognized standards
58 and good engineering practices. In any question, the decision
59 of the State Fire Commission determines the relative priority
60 of any such state law, county or municipal ordinance or
61 regulation of any agency thereof and determines compliance
62 with State Building Code by officials of the state, counties,
63 municipalities and political subdivisions of the state.

64 (g) Enforcement of the provisions of the State Building
65 Code is the responsibility of the respective local jurisdiction.
66 Also, any county or municipality may enter into an
67 agreement with any other county or municipality to provide
68 inspection and enforcement services: *Provided*, That any
69 county or municipality may adopt the State Building Code
70 with or without adopting the BOCA National Property
71 Maintenance Code.

72 (h) After the State Fire Commission has promulgated
73 rules as provided in this section, each county or municipality
74 intending to adopt the State Building Code shall notify the
75 State Fire Commission of its intent.

76 (i) The State Fire Commission may conduct public
77 meetings in each county or municipality adopting the State
78 Building Code to explain the provisions of the rules.

79 (j) The provisions of the State Building Code relating to
80 the construction, repair, alteration, restoration and movement
81 of structures are not mandatory for existing buildings and
82 structures identified and classified by the State Register of
83 Historic Places under the provisions of section eight, article
84 one of this chapter or the National Register of Historic
85 Places, pursuant to 16 U.S.C. §470a. Prior to renovations
86 regarding the application of the State Building Code, in
87 relation to historical preservation of structures identified as
88 such, the authority having jurisdiction shall consult with the
89 Division of Culture and History, State Historic Preservation
90 Office. The final decision is vested in the State Fire
91 Commission. Additions constructed on a historic building
92 are not excluded from complying with the State Building
93 Code.



CHAPTER 201

**(Com. Sub. for H.B. 2968 - By Delegates Mahan, Sumner,
Moye, Wooton and Susman)**

[Passed April 11, 2009; in effect from passage.]
[Approved by the Governor on May 18, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto two new sections, designated §29-3-5c and
§29-3-16d, all relating to requiring the State Fire Commission
to establish safety standards for fuel gas systems; requiring the

State Fire Commission to establish safety standards for liquefied petroleum gas systems; and requiring the State Fire Commission to establish safety standards for non-owner or occupant installation, maintenance or service of fuel gas systems in one or two family dwellings.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto two new sections, designated §29-3-5c and §29-3-16d, all to read as follows:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-5c. Liquefied petroleum gas systems.

§29-3-16d. Performance of installation of propane gas system.

§29-3-5c. Liquefied petroleum gas systems.

1 (a) The State Fire Commission shall, on or before July
2 1, 2009, propose rules for legislative approval in accordance
3 with the provisions of article three, chapter twenty-nine-a of
4 this code to provide:

5 (1) Standard safe practices for the design, construction,
6 location, installation, maintenance and operation of liquefied
7 petroleum gas systems, as established by the National Fire
8 Protection Association Standard 58; and

9 (2) Training standards and qualifications for persons
10 who install or maintain liquefied petroleum gas systems as
11 established by the National Propane Gas Association's
12 Certified Employee Training Program.

13 (b) The State Fire Commission may establish work
14 groups and seek input in the rulemaking process from groups
15 or individuals with an interest in any aspect of the operation
16 or use of liquefied petroleum gas systems.

§29-3-16d. Performance of installation of propane gas systems.

1 (a) Notwithstanding any statutory or regulatory
2 provisions to the contrary, any person who installs, fuels,
3 maintains or services any fuel gas system to a one or two
4 family dwelling shall comply with this article and the rules
5 promulgated under this article relating to fuel gas systems.

6 (b) This section does not apply to any person who
7 performs this work on a single family dwelling owned or
8 leased, and occupied by that person. The personal exemption
9 provided in this subsection is the same as the personal
10 exemption provided in the Supervision of Fire Protection
11 Work Act, §29-3D-1, et seq.

CHAPTER 202

(S.B. 587 - By Senator Bowman)

[Passed April 6, 2009; in effect ninety days from passage.]

[Approved by the Governor on April 20, 2009.]

AN ACT to repeal §29-6-9a of the Code of West Virginia, 1931, as amended; and to amend and reenact §29-6-2 of said code, relating to abolishing the State Personnel Advisory Council.

Be it enacted by the Legislature of West Virginia:

That §29-6-9a of the Code of West Virginia, 1931, as amended, be repealed; and that §29-6-2 of said code be amended and reenacted to read as follows:

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-2. Definition of terms.

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

3 (a) "Administrator" means any person who fills a
4 statutorily created position within or related to an agency or
5 board (other than a board member) and who is designated by
6 statute as commissioner, deputy commissioner, assistant
7 commissioner, director, chancellor, chief, executive director,
8 executive secretary, superintendent, deputy superintendent or
9 other administrative title, however designated;

10 (b) "Agency" means any administrative unit of state
11 government, including any authority, board, bureau,
12 commission, committee, council, division, section or office;

13 (c) "Appointing authority" means a person or group of
14 persons authorized by an agency to make appointments to
15 positions in the classified or classified-exempt service;

16 (d) "Board" means the State Personnel Board created by
17 section six of this article;

18 (e) "Class" or "class of positions" means a group of
19 positions sufficiently similar in duties, training, experience
20 and responsibilities, as determined by specifications, that the
21 same qualifications, the same title and the same schedule of
22 compensation and benefits may be equitably applied to each
23 position in the group;

24 (f) "Classification plan" means the plan by which
25 positions in the classified service and classified-exempt
26 service have been allocated by class;

27 (g) "Classified-exempt service" means an employee
28 whose position satisfies the definitions for "class" and
29 "classify" but who is not covered under the civil service
30 system or employed by the higher education governing
31 boards;

32 (h) "Classified service" means an employee whose job
33 satisfies the definitions for "class" and "classify" and who is
34 covered under the civil service system;

35 (i) "Classify" means to group all positions in classes and
36 to allocate every position to the appropriate class in the
37 classification plan;

38 (j) "Director" means the head of the Division of
39 Personnel as appointed by section seven of this article;

40 (k) "Division" means the Division of Personnel herein
41 created;

42 (l) "Policy-making position" means a position in which
43 the person occupying it: (1) Acts as an advisor to or
44 formulates plans for the implementation of broad goals for an
45 administrator or the Governor; (2) is in charge of a major
46 administrative component of the agency; and (3) reports
47 directly and is directly accountable to an administrator or the
48 Governor;

49 (m) "Position" means a particular job which has been
50 classified based on specifications;

51 (n) "Secretary" means the Secretary of the Department of
52 Administration created in section two, article one, chapter
53 five-f of this code;

54 (o) "Specification" means a description of a class of
55 position which defines the class, provides examples of work

56 performed and the minimum qualifications required for
57 employment;

58 (p) "Veteran" means any person who has served in the
59 armed forces of the United States of America during World
60 War I (April 6, 1917--November 11, 1918), World War II
61 (December 7, 1941--December 31, 1946), the Korean
62 Conflict (June 27, 1950--January 31, 1955), the Vietnam
63 Conflict (August 5, 1964--May 7, 1975) or in a campaign,
64 expedition or conflict for which a campaign badge has been
65 authorized and received by such person and who has received
66 a discharge under honorable conditions from such service.



CHAPTER 203

**(Com. Sub. for S.B. 382 - By Senators Unger, Caruth,
Hall and Snyder)**

[Passed April 10, 2009; in effect ninety days from passage.]

[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §29-18-6 of the Code of West Virginia, 1931, as amended, relating to the amount of expenditure for rolling stock; and granting additional authority regarding the Maryland Area Regional Commuter.

Be it enacted by the Legislature of West Virginia:

That §29-18-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.

§29-18-6. Powers, duties and responsibilities of authority generally.

1 The West Virginia State Rail Authority is hereby granted,
2 has and may exercise all powers necessary or appropriate to
3 carry out and effectuate its corporate purpose.

4 (a) The authority may:

5 (1) Adopt and, from time to time, amend and repeal
6 bylaws necessary and proper for the regulation of its affairs
7 and the conduct of its business and propose rules for
8 legislative approval in accordance with the provisions of
9 article three, chapter twenty-nine-a of this code to implement
10 and make effective its powers and duties.

11 (2) Adopt an official seal.

12 (3) Maintain a principal office and, if necessary, regional
13 suboffices at locations properly designated or provided.

14 (4) Sue and be sued in its own name and plead and be
15 impleaded in its own name and particularly to enforce the
16 obligations and covenants made under sections ten, eleven
17 and sixteen of this article. Any actions against the authority
18 shall be brought in the circuit court of Kanawha County. The
19 location of the principal office of the authority shall be
20 determined by the Governor.

21 (5) Make loans and grants to governmental agencies and
22 persons for carrying out railroad projects by any
23 governmental agency or person and, in accordance with
24 chapter twenty-nine-a of this code, propose rules for
25 legislative approval and procedures for making such loans
26 and grants.

27 (6) Acquire, construct, reconstruct, enlarge, improve,
28 furnish, equip, maintain, repair, operate, lease or rent to or

29 contract for operation by a governmental agency or person,
30 railroad projects and, in accordance with chapter
31 twenty-nine-a of this code, propose legislative rules for the
32 use of these projects.

33 (7) Make available the use or services of any railroad
34 project to one or more persons, one or more governmental
35 agencies or any combination thereof.

36 (8) Issue Railroad Maintenance Authority bonds and
37 notes and refunding bonds of the state, payable solely from
38 revenues as provided in section ten of this article unless the
39 bonds are refunded by refunding bonds for the purpose of
40 paying any part of the cost of one or more railroad projects or
41 parts thereof.

42 (9) Acquire, by gift or purchase, hold and dispose of real
43 and personal property in the exercise of its powers and the
44 performance of its duties as set forth in this article.

45 (10) Acquire in the name of the state, by purchase or
46 otherwise, on terms and in the manner it considers proper, or
47 by the exercise of the right of eminent domain in the manner
48 provided in chapter fifty-four of this code, rail properties and
49 appurtenant rights and interests necessary for carrying out
50 railroad projects.

51 (11)(A) Make and enter into all contracts and agreements
52 and execute all instruments necessary or incidental to the
53 performance of its duties and the execution of its powers
54 including, but not limited to, the power to make contracts and
55 agreements in accordance with the provisions set forth in
56 paragraph (B) of this subdivision.

57 (B) Make and enter into contracts and agreements to
58 acquire rolling stock or equipment with a value of \$500,000
59 or less exempt from the provisions of article three, chapter
60 five-a of this code.

61 The authority shall propose rules for legislative approval
62 in accordance with the provisions of article three, chapter
63 twenty-nine-a of this code which set forth the methods for
64 determining value of rolling stock or equipment to be
65 purchased in accordance with the provisions of paragraph (B)
66 of this subdivision.

67 (C) Where rolling stock, equipment or trackage of the
68 authority is in need of immediate maintenance, repair or
69 reconstruction in order to avoid a cessation of its operations,
70 economic loss, the inability to provide essential service to
71 customers or danger to authority personnel or the public, the
72 following requirements and procedures for entering into the
73 contract or agreement to remedy the condition shall be in lieu
74 of those provided in article three, chapter five-a of this code
75 or any legislative rule promulgated pursuant thereto:

76 (i) If the cost under the contract or agreement involves an
77 expenditure of more than \$1,000, but \$10,000 or less, the
78 authority shall award the contract to or enter into the
79 agreement with the lowest responsible bidder based upon at
80 least three oral bids made pursuant to the requirements of the
81 contract or agreement.

82 (ii) If the cost under the contract or agreement, other than
83 one for compensation for personal services, involves an
84 expenditure of more than \$10,000, but \$100,000 or less, the
85 authority shall award the contract to or enter into the
86 agreement with the lowest responsible bidder based upon at
87 least three bids, submitted to the authority in writing on
88 letterhead stationery, made pursuant to the requirements of
89 the contract or agreement.

90 (D) Notwithstanding any other provision of this code to
91 the contrary, a contract or lease for the operation of a railroad
92 project constructed and owned by the authority or an
93 agreement for cooperation in the acquisition or construction

94 of a railroad project pursuant to section sixteen of this article
95 is not subject to the provisions of article three, chapter five-a
96 of this code or any legislative rule promulgated pursuant
97 thereto and the authority may enter into the contract or lease
98 or the agreement pursuant to negotiation and upon such terms
99 and conditions and for a period of time as it finds to be
100 reasonable and proper under the circumstances and in the
101 best interests of proper operation or of efficient acquisition or
102 construction of the railroad project.

103 (E) The authority may reject any and all bids. A bond
104 with good and sufficient surety, approved by the authority, is
105 required of all contractors in an amount equal to at least fifty
106 percent of the contract price, conditioned upon the faithful
107 performance of the contract.

108 (12) Appoint a director and employ managers,
109 superintendents and other employees and retain or contract
110 with consulting engineers, financial consultants, accountants,
111 attorneys and other consultants and independent contractors
112 as are necessary in its judgment to carry out the provisions of
113 this article and fix the compensation or fees thereof. All
114 expenses thereof are payable from the proceeds of Railroad
115 Maintenance Authority revenue bonds or notes issued by the
116 authority, from revenues and funds appropriated for this
117 purpose by the Legislature or from grants from the federal
118 government which may be used for such purpose.

119 (13) Receive and accept from any state or federal agency
120 grants for or in aid of the construction of any railroad project
121 or for research and development with respect to railroads and
122 receive and accept aid or contributions from any source of
123 money, property, labor or other things of value, to be held,
124 used and applied only for the purposes for which the grants
125 and contributions are made.

126 (14) Engage in research and development with respect to
127 railroads.

128 (15) Purchase fire and extended coverage and liability
129 insurance for any railroad project and for the principal office
130 and suboffices of the authority, insurance protecting the
131 authority and its officers and employees against liability, if
132 any, for damage to property or injury to or death of persons
133 arising from its operations and be a member of, and to
134 participate in, the state workers' compensation program.

135 (16) Charge, alter and collect rates, rentals and other
136 charges for the use or services of any railroad project as
137 provided in this article.

138 (17) Do all acts necessary and proper to carry out the
139 powers expressly granted to the authority in this article.

140 (b) In addition, the authority has the power to:

141 (1) Acquire rail properties both within and not within the
142 jurisdiction of the Interstate Commerce Commission and rail
143 properties within the purview of the federal Regional Rail
144 Reorganization Act of 1973, any amendments to it and any
145 other relevant federal legislation.

146 (2) Enter into agreements with owners of rail properties
147 for the acquisition of rail properties or use, or both, of rail
148 properties upon the terms, conditions, rates or rentals that can
149 best effectuate the purposes of this article.

150 (3) Acquire rail properties and other property of a
151 railroad in concert with another state or states as is necessary
152 to ensure continued rail service in this state.

153 (4) Establish a state plan for rail transportation and local
154 rail services.

155 (5) Administer and coordinate the state plan.

156 (6) Provide in the state plan for the equitable distribution
157 of federal rail service continuation subsidies among state,
158 local and regional transportation authorities.

159 (7) Promote, supervise and support safe, adequate and
160 efficient rail services.

161 (8) Employ sufficiently trained and qualified personnel
162 for these purposes.

163 (9) Maintain adequate programs of investigation,
164 research, promotion and development in connection with the
165 purposes and to provide for public participation therein.

166 (10) Provide satisfactory assurances on behalf of the state
167 that fiscal control and fund accounting procedures will be
168 adopted by the state necessary to assure proper disbursement
169 of and accounting for federal funds paid to the state as rail
170 service continuation subsidies.

171 (11) Comply with the regulations of the Secretary of
172 Transportation of the United States Department of
173 Transportation affecting federal rail service continuation
174 programs.

175 (12) Do all things otherwise necessary to maximize
176 federal assistance to the state under Title IV of the federal
177 Regional Rail Reorganization Act of 1973 and to qualify for
178 rail service continuation subsidies pursuant to the federal
179 Regional Rail Reorganization Act of 1973.

180 (c) Additional authority in regard to the Maryland Area
181 Regional Commuter.

182 (1) The Rail Authority is hereby granted, has and may
183 exercise all aforementioned powers necessary or appropriate
184 to coordinate all activities with the Maryland Transit
185 Administration to assure the continued operation of the
186 Maryland Area Regional Commuter into the eastern
187 panhandle of the state.

●

CHAPTER 204

(Com. Sub. for H.B. 3074 - By Delegate Miley)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §11-6-23 of the Code of West Virginia, 1931, as amended, relating to notice of delinquent taxes by certified mail.

Be it enacted by the Legislature of West Virginia:

That §11-6-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. ASSESSMENT OF PUBLIC SERVICE BUSINESSES.

§11-6-23. Lien of taxes; notice; collection by suit.

1 (a) The amount of taxes and levies assessed under this
2 article shall constitute a debt due the state, county, district or
3 municipal corporation entitled thereto, and shall be a lien on
4 all property and assets of the taxpayer within the state.

5 (b) The lien shall attach December 31, following the
6 commencement of the assessment year, and shall be prior to
7 all other liens and charges.

8 (c) The auditor shall, between May 1 and May 15 of each
9 year, prepare a list of the taxpayers delinquent in the payment

10 of the taxes and levies, setting forth their respective addresses
11 and the amount of state, county, district and municipal taxes
12 due from each, which list shall be certified by the Auditor to
13 the Board of Public Works and filed in the office of the
14 Secretary of State.

15 (d) The Secretary of State shall preserve the list in his or
16 her office, and a certificate from him or her that any taxpayer
17 mentioned in the list is delinquent in the amount of taxes
18 assessed under this article shall be prima facie evidence
19 thereof.

20 (e) Within ten days after the filing of the list, the
21 Secretary of State shall give written notice of the delinquency
22 by registered or certified mail to each of the delinquent
23 taxpayers at his or her, or its, last known post-office address;
24 and upon the failure of any delinquent taxpayer to pay the
25 taxes within thirty days from the mailing of the notice.

26 (f) The Attorney General shall enforce the collection of
27 the taxes and levies, and for that purpose he or she may
28 distrain upon any personal property of the delinquent
29 taxpayer, or a sufficient amount thereof to satisfy the taxes,
30 including accrued interest, penalties and costs.

31 (g) The Attorney General may also enforce the lien
32 created by this section on the real estate of the delinquent
33 taxpayer by instituting a suit, or suits, in equity in the Circuit
34 Court of Kanawha County.

35 (h) In the bill filed in the suit it shall be sufficient to
36 allege that the defendant or defendants have failed to pay the
37 taxes and that each of them justly owes the amount of
38 property taxes, levies and penalties, which amount shall be
39 computed up to the first day of the month in which the bill
40 was filed.

41 (i) No defendant may plead that the Secretary of State
42 failed to give notice as prescribed by this section.

43 (j) If, upon the hearing of the suit, it shall appear to the
44 court that any defendant has failed to pay the taxes and
45 accrued penalties, the court shall enter a decree against the
46 defendant for the amount due, and if the decree is not paid
47 within ten days, the court shall enter a decree directing a sale
48 of the real estate subject to the lien, or so much as may be
49 necessary to satisfy the taxes, including interest, penalties and
50 costs.

51 (k) When two or more taxpayers are included in one suit,
52 the court shall apportion the cost among them as it may deem
53 just.

CHAPTER 205

(Com. Sub. for S.B. 540 - By Senators Helmick and McCabe)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 7, 2009.]

AN ACT to amend and reenact §11-6I-3 and §11-6I-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-10-5e of said code; to amend said code by adding thereto a new section, designated §11-10-25; to amend and reenact §11-13Q-22 of said code; to amend and reenact §11-15-3c of said code; to amend said code by adding thereto a new section, designated §11-15-9m; to amend and reenact §11-21-21, §11-21-22 and §11-21-23 of said code; to amend and reenact §11-24-3a and §11-24-4b of said code; to amend and reenact §18-9A-2a of

said code; and to amend and reenact §21A-6-1c of said code, all relating to taxation; specifying authority of the Tax Commissioner to designate Tax Division documents that may be sent by personal service, United States postal service, regular mail, certified mail or registered mail or other means; specifying statutory burden of proof and presumption against tax exemptions; specifying inflation adjustment for certain economic opportunity tax credit entitlement requirements; specifying exclusion of sales and use of certain motor vehicles and certain trailers and classes of vehicle and vehicular apparatus from state consumers sales and use tax on certain vehicles; specifying exclusion of sales and use of certain motor vehicles and certain trailers and classes of vehicle and vehicular apparatus from municipal and local consumers sales and service tax and use tax, or special downtown redevelopment district excise tax, or special district excise tax and other sales taxes; authorizing discretionary designation of per se exemptions from the consumers sales and service tax and use tax by the Tax Commissioner; specifying exclusion of federal alternative minimum income taxpayers from eligibility for property tax payment deferment and assessor's denial of deferment; disqualifying persons who pay the federal alternative minimum income tax in specified years from qualification for the senior citizens' tax credit; disqualifying persons who pay the federal alternative minimum income tax in specified years from qualification for the low-income family tax credit; disqualifying persons who pay the federal alternative minimum income tax in specified years from qualification for the refundable tax credit for real property taxes paid in excess of four percent of income; defining terms; specifying treatment of certain income and deduction items for certain regulated investment companies and real estate investment companies; delaying the effective date of alternative definition of levies for general current expenses purposes; authorizing state income tax withholding from the individual's payment of unemployment compensation; specifying*

[CLERK'S NOTE: The amendment to the title, heretofore filed with the Clerk, abruptly stops as printed herein.]

Be it enacted by the Legislature of West Virginia:

That §11-6I-3 and §11-6I-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-10-5e of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-10-25; that §11-13Q-22 of said code be amended and reenacted; that §11-15-3c of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-15-9m; that §11-21-21, §11-21-22 and §11-21-23 of said code be amended and reenacted; that §11-24-3a and §11-24-4b of said code be amended and reenacted; that §18-9A-2a of said code be amended and reenacted; and that §21A-6-1c of said code be amended and reenacted, all to read as follows:

Chapter

- 11. Taxation.
- 18. Education.
- 21A. Unemployment Compensation.

CHAPTER 11. TAXATION.

Article

- 6I. Senior Citizen Property Tax Payment Deferment Act.
- 10. Tax Procedure and Administration Act.
- 13Q. Economic Opportunity Tax Credit.
- 15. Consumers Sales and Service Tax.
- 21. Personal Income Tax.
- 24. Corporation Net Income Tax.

**ARTICLE 6I. SENIOR CITIZEN PROPERTY TAX
PAYMENT DEFERMENT ACT.**

§11-6I-3. Property tax payment deferment.

§11-6I-5. Determination; notice of denial of application for deferment.

§11-6I-3. Property tax payment deferment.

- 1 (a) The following homesteads shall qualify for the
- 2 deferment provided in subsection (c) of this section:

3 (1) Any homestead owned by an owner sixty-five years
4 of age or older and used and occupied exclusively for
5 residential purposes by the owner; and

6 (2) Any homestead that:

7 (A) Is owned by an owner sixty-five years of age or older
8 who, as a result of illness, accident or infirmity, is residing
9 with a family member or is a resident of a nursing home,
10 personal care home, rehabilitation center or similar facility;

11 (B) Was most recently used and occupied exclusively for
12 residential purposes by the owner or the owner's spouse; and

13 (C) Has been retained by the owner for noncommercial
14 purposes.

15 (b) A homestead which is owned, in whole or in part, by
16 any person who is required to pay the federal alternative
17 minimum income tax in the current tax year is disqualified
18 from the deferment provided in this article.

19 (c) (1) For tax years commencing on or after January 1,
20 2009, the owner of a homestead meeting the qualifications set
21 forth in subsection (a) of this section may apply for a
22 deferment in the payment of the tax increment of ad valorem
23 taxes assessed under the authority of article three of this
24 chapter on the homestead: *Provided*, That the deferment may
25 be authorized only when the tax increment is the greater of
26 \$300 or ten percent or more: *Provided, however*, That all
27 deferred taxes are not subject to any rate of interest.

28 (2) In lieu of the deferment of the tax increment
29 authorized pursuant to this article, a taxpayer entitled to the
30 deferment may elect to instead apply the senior citizen
31 property tax relief credit authorized under section twenty-
32 four, article twenty-one of this chapter. Any taxpayer

33 making such election shall be fully subject to the terms and
34 limitations set forth in section twenty-four, article twenty-one
35 of this chapter.

**§11-6I-5. Determination; notice of denial of application for
deferment.**

1 (a) The assessor shall, as soon as practicable after an
2 application for deferment is filed, review that application and
3 either approve or deny it. The assessor shall approve or
4 disapprove an application for deferment within thirty days of
5 receipt. Any application not approved or denied within thirty
6 days is deemed approved. If the application is denied, the
7 assessor shall promptly, but not later than January 1, serve
8 the owner with written notice explaining why the application
9 was denied and furnish a form for filing with the county
10 commission, should the owner desire to take an appeal. The
11 notice required or authorized by this section shall be served
12 on the owner or his or her authorized representative either by
13 personal service or by certified mail.

14 (b) In the event that the assessor has information
15 sufficient to form a reasonable belief that an owner, after
16 having been originally granted a deferment, is no longer
17 eligible for the deferment, he or she shall, within thirty days
18 after forming this reasonable belief, revoke the deferment and
19 serve the owner with written notice explaining the reasons for
20 the revocation and furnish a form for filing with the county
21 commission should the owner desire to take an appeal.

22 (c) The assessor shall deny any application made by or
23 for an owner who is required to pay the federal alternative
24 minimum income tax in the current tax year. The application
25 may contain an affirmation, prescribed by the Tax
26 Commissioner, whereby the applicant shall indicate whether
27 the applicant is required to pay the federal alternative
28 minimum income tax in the current tax year. Failure to

29 truthfully indicate whether the applicant is required to pay the
30 federal alternative minimum income tax in the current tax
31 year shall be subject to the applicable penalties of articles
32 nine and ten of this chapter.

ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-5e. Service of notice.

§11-10-25. Taxpayer must show tax exemption applies; presumption.

§11-10-5e. Service of notice.

1 Notwithstanding any other provision of this code, the Tax
2 Commissioner may designate those assessments, notices,
3 statements of account or other Tax Division documents
4 which shall be sent by personal service or United States
5 Postal Service regular mail, or certified mail or registered
6 mail or by any other means at the discretion of the Tax
7 Commissioner, pursuant to any provision of this chapter.
8 Any service of notice addressed by United States Postal
9 Service regular mail is presumed to be accepted upon mailing
10 unless proven otherwise by the taxpayer. Any service of
11 notice by certified mail shall be valid if accepted by the
12 taxpayer or if addressed to and mailed to the taxpayer's usual
13 place of business or usual place of abode or last known
14 address and accepted by any officer, partner, employee,
15 spouse or child of the taxpayer over the age of eighteen. Any
16 notice addressed and mailed in the above manner and
17 accepted by any person shall be presumed to be accepted by
18 such person unless proven otherwise by the taxpayer.

§11-10-25. Taxpayer must show tax exemption applies; presumption.

1 (a) The burden of proving that a tax exemption applies to
2 any tax administered by the Tax Commissioner shall be upon
3 the taxpayer. Tax exemptions administered by the Tax

4 Commissioner shall be strictly construed against the taxpayer
5 and for the payment of any applicable tax.

6 (b) To prevent evasion, it is presumed that a tax
7 exemption does not apply until the contrary is clearly
8 established by a preponderance of the evidence.

ARTICLE 13Q. ECONOMIC OPPORTUNITY TAX CREDIT.

§11-13Q-22. Credit available for taxpayers which do not satisfy the new jobs percentage requirement.

1 (a) Notwithstanding any provision of this article to the
2 contrary, a taxpayer engaged in one or more of the industries
3 or business activities specified in section nineteen of this
4 article which does not satisfy the new jobs percentage
5 requirement prescribed in subsection (c), section nine of this
6 article or, if the taxpayer is a small business as defined in
7 section ten of this article, does not create at least ten new jobs
8 within twelve months after placing qualified investment into
9 service as required by section ten of this article, but which
10 otherwise fulfills the requirements prescribed in this article,
11 is permitted to claim a credit against the taxes specified in
12 section seven of this article in the order so specified that are
13 attributable to and the consequence of the taxpayer's business
14 operations in this state which result in the creation of net new
15 jobs. Credit under this section is allowed in the amount of
16 \$3,000 per year, per new job created and filled by a new
17 employee, as those terms are defined in section three of this
18 article for a period of five consecutive years beginning in the
19 tax year when the new employee is first hired. In no case
20 may the number of new employees determined for purposes
21 of this section exceed the total net increase in the taxpayer's
22 employment in this state. Credit allowed under this section
23 shall be allowed beginning in the tax year when the new
24 employee is first hired: *Provided*, That each new job:

25 (1) Pays at least \$32,000 annually. Beginning January 1,
26 2010, and on January 1 of each year thereafter, the
27 commissioner shall prescribe an amount that shall apply in
28 lieu of the \$32,000 amount during that calendar year. This
29 amount is prescribed by increasing the \$32,000 figure by the
30 cost-of-living adjustment for that calendar year;

31 (2) Provides health insurance and may offer benefits
32 including child care, retirement or other benefits; and

33 (3) Is a full-time, permanent position, as those terms are
34 defined in section three of this article.

35 Jobs that pay less than \$32,000 annually, or less than the
36 amount prescribed by the commissioner pursuant to
37 subdivision (1) of this subsection, whichever is higher, or that
38 pay that salary but do not also provide benefits in addition to
39 the salary do not qualify for the credit authorized by this
40 section. Jobs that are less than full-time, permanent positions
41 do not qualify for the credit authorized by this section.

42 The employer having obtained entitlement to the credit
43 shall not be required to raise wages of employees currently
44 employed in jobs upon which the initial credit was based by
45 reason of the cost-of-living adjustment.

46 (b) For purposes of this section, the following definitions
47 apply:

48 (1) *Cost-of-living adjustment.* -- For purposes of
49 subsection (a) of this section, the cost-of-living adjustment
50 for any calendar year is the percentage (if any) by which the
51 consumer price index for the preceding calendar year exceeds
52 the consumer price index for the calendar year 2009.

53 (2) *Consumer price index for any calendar year.* -- For
54 purposes of subdivision (1) of this subsection, the consumer

55 price index for any calendar year is the average of the federal
56 consumer price index as of the close of the twelve-month
57 period ending on August 31 of that calendar year.

58 (3) *Consumer price index.* -- For purposes of subdivision
59 (2) of this subsection, the term "federal consumer price
60 index" means the most recent consumer price index for all
61 urban consumers published by the United States Department
62 of Labor.

63 (4) *Rounding.* -- If any increase under subdivision (1) of
64 this subsection is not a multiple of \$50, the increase shall be
65 rounded to the next lowest multiple of \$50.

66 (c) Unused credit remaining in any tax year after
67 application against the taxes specified in section seven of this
68 article is forfeited and does not carry forward to any
69 succeeding tax year and does not carry back to a prior tax
70 year.

71 (d) The tax credit authorized by this section may be taken
72 in addition to any credits allowable under article thirteen-c,
73 thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-j,
74 thirteen-r or thirteen-s of this chapter.

75 (e) *Reduction in number of employees credit forfeiture.*
76 -- If, during the year when a new job was created for which
77 credit was granted under this section or during any of the
78 next succeeding four tax years thereafter, net jobs that are
79 attributable to and the consequence of the taxpayer's business
80 operations in this state decrease, counting both new jobs for
81 which credit was granted under this section and preexisting
82 jobs, then the total amount of credit to which the taxpayer is
83 entitled under this section shall be decreased and forfeited in
84 the amount of \$3,000 for each net job lost.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-3c. Imposition of consumers sales tax on motor vehicle sales; rate of tax; use of motor vehicle purchased out of state; definition of sale; definition of motor vehicle; exemptions; collection of tax by Division of Motor Vehicles; dedication of tax to highways; legislative and emergency rules.

§11-15-9m. Discretionary designation of per se exemptions.

§11-15-3c. Imposition of consumers sales tax on motor vehicle sales; rate of tax; use of motor vehicle purchased out of state; definition of sale; definition of motor vehicle; exemptions; collection of tax by Division of Motor Vehicles; dedication of tax to highways; legislative and emergency rules.

1 (a) Notwithstanding any provision of this article or article
2 fifteen-a of this chapter to the contrary, beginning on July 1,
3 2008, all motor vehicle sales to West Virginia residents shall
4 be subject to the consumers sales tax imposed by this article.

5 (b) *Rate of tax on motor vehicles.* -- Notwithstanding any
6 provision of this article or article fifteen-a of this chapter to
7 the contrary, the rate of tax on the sale and use of a motor
8 vehicle shall be five percent of its sale price, as defined in
9 section two, article fifteen-b of this chapter: *Provided*, That
10 so much of the sale price or consideration as is represented
11 by the exchange of other vehicles on which the tax imposed
12 by this section or section four, article three, chapter
13 seventeen-a of this code has been paid by the purchaser shall
14 be deducted from the total actual sale price paid for the motor
15 vehicle, whether the motor vehicle be new or used.

16 (c) *Motor vehicles purchased out of state.* --
17 Notwithstanding this article or article fifteen-a to the
18 contrary, the tax imposed by this section shall apply to all
19 motor vehicles, used as defined by section one, article
20 fifteen-a of this chapter, within this state, regardless of
21 whether the vehicle was purchased in a state other than West
22 Virginia.

23 (d) *Definition of sale.* -- Notwithstanding any provision
24 of this article or article fifteen-a of this chapter to the
25 contrary, for purposes of this section, "sale", "sales" or
26 "selling" means any transfer or lease of the possession or
27 ownership of a motor vehicle for consideration, including
28 isolated transactions between individuals not being made in
29 the ordinary course of repeated and successive business and
30 also including casual and occasional sales between
31 individuals not conducted in a repeated manner or in the
32 ordinary course of repetitive and successive transactions.

33 (e) *Definition of motor vehicle.* -- For purposes of this
34 section, "motor vehicle" means every propellable device in or
35 upon which any person or property is or may be transported
36 or drawn upon a highway including, but not limited to:
37 Automobiles; buses; motor homes; motorcycles; motorboats;
38 all-terrain vehicles; snowmobiles; low-speed vehicles; trucks,
39 truck tractors and road tractors having a weight of less than
40 fifty-five thousand pounds; trailers, semitrailers, full trailers,
41 pole trailers and converter gear having a gross weight of less
42 than two thousand pounds; and motorboat trailers, fold-down
43 camping trailers, traveling trailers, house trailers and motor
44 homes; except that the term "motor vehicle" does not include:
45 Modular homes, manufactured homes, mobile homes, similar
46 nonmotive propelled vehicles susceptible of being moved
47 upon the highways but primarily designed for habitation and
48 occupancy; devices operated regularly for the transportation
49 of persons for compensation under a certificate of
50 convenience and necessity or contract carrier permit issued
51 by the Public Service Commission; mobile equipment as
52 defined in section one, article one, chapter seventeen-a of this
53 code; special mobile equipment as defined in section one,
54 article one, chapter seventeen-a of this code; trucks, truck
55 tractors and road tractors having a gross weight of fifty-five
56 thousand pounds or more; trailers, semitrailers, full trailers,
57 pole trailers and converter gear having weight of two
58 thousand pounds or greater: *Provided,* That notwithstanding

59 the provisions of section nine, article fifteen, chapter eleven
60 of this code, the exemption from tax under this section for
61 mobile equipment as defined in section one, article one,
62 chapter seventeen-a of this code; special mobile equipment
63 defined in section one, article one, chapter seventeen-a of this
64 code; Class B trucks, truck tractors and road tractors
65 registered at a gross weight of fifty-five thousand pounds or
66 more; and Class C trailers, semitrailers, full trailers, pole
67 trailers and converter gear having weight of two thousand
68 pounds or greater does not subject the sale or purchase of the
69 vehicle to the consumer sales and service tax imposed by
70 section three of this article.

71 (f) *Exemptions.* -- Notwithstanding any other provision
72 of this code to the contrary, the tax imposed by this section
73 shall not be subject to any exemption in this code other than
74 the following:

75 (1) The tax imposed by this section does not apply to any
76 passenger vehicle offered for rent in the normal course of
77 business by a daily passenger rental car business as licensed
78 under the provisions of article six-d, chapter seventeen-a of
79 this code. For purposes of this section, a daily passenger car
80 means a motor vehicle having a gross weight of eight
81 thousand pounds or less and is registered in this state or any
82 other state. In lieu of the tax imposed by this section, there
83 is hereby imposed a tax of not less than \$1 nor more than
84 \$1.50 for each day or part of the rental period. The
85 Commissioner of Motor Vehicles shall propose an
86 emergency rule in accordance with the provisions of article
87 three, chapter twenty-nine-a of this code to establish this tax.

88 (2) The tax imposed by this section does not apply where
89 the motor vehicle has been acquired by a corporation,
90 partnership or limited liability company from another
91 corporation, partnership or limited liability company that is
92 a member of the same controlled group and the entity

93 transferring the motor vehicle has previously paid the tax on
94 that motor vehicle imposed by this section. For the purposes
95 of this section, control means ownership, directly or
96 indirectly, of stock or equity interests possessing fifty percent
97 or more of the total combined voting power of all classes of
98 the stock of a corporation or equity interests of a partnership
99 or limited liability company entitled to vote or ownership,
100 directly or indirectly, of stock or equity interests possessing
101 fifty percent or more of the value of the corporation,
102 partnership or limited liability company.

103 (3) The tax imposed by this section does not apply where
104 motor vehicle has been acquired by a senior citizen service
105 organization which is exempt from the payment of income
106 taxes under the United States Internal Revenue Code, Title 26
107 U. S. C. §501(c)(3) and which is recognized to be a bona fide
108 senior citizen service organization by the Bureau of Senior
109 Services existing under the provisions of article five, chapter
110 sixteen of this code.

111 (4) The tax imposed by this section does not apply to any
112 active duty military personnel stationed outside of West
113 Virginia who acquires a motor vehicle by sale within nine
114 months from the date the person returns to this state.

115 (5) The tax imposed by this section does not apply to
116 motor vehicles acquired by registered dealers of this state for
117 resale only.

118 (6) The tax imposed by this section does not apply to
119 motor vehicles acquired by this state or any political
120 subdivision thereof or by any volunteer fire department or
121 duly chartered rescue or ambulance squad organized and
122 incorporated under the laws of this state as a nonprofit
123 corporation for protection of life or property.

124 (7) The tax imposed by this section does not apply to
125 motor vehicles acquired by an urban mass transit authority,

126 as defined in article twenty-seven, chapter eight of this code,
127 or a nonprofit entity exempt from federal and state income
128 tax under the Internal Revenue Code for the purpose of
129 providing mass transportation to the public at large or
130 designed for the transportation of persons and being operated
131 for the transportation of persons in the public interest.

132 (8) The tax imposed by this section does not apply to the
133 registration of a vehicle owned and titled in the name of a
134 resident of this state if the applicant:

135 (A) Was not a resident of this state at the time the
136 applicant purchased or otherwise acquired ownership of the
137 vehicle;

138 (B) Presents evidence as the Commissioner of Motor
139 Vehicles may require of having titled the vehicle in the
140 applicant's previous state of residence;

141 (C) Has relocated to this state and can present such
142 evidence as the Commissioner of Motor Vehicles may
143 require to show bona fide residency in this state; and

144 (D) Makes application to the Division of Motor Vehicles
145 for a title and registration and pays all other fees required by
146 chapter seventeen-a of this code within thirty days of
147 establishing residency in this state as prescribed in subsection
148 (a), section one-a of this article.

149 (9) On and after January 1, 2009, the tax imposed by this
150 section does not apply to Class B trucks, truck tractors and
151 road tractors registered at a gross weight of fifty-five
152 thousand pounds or more or to Class C trailers, semitrailers,
153 full trailers, pole trailers and converter gear having a weight
154 of two thousand pounds or greater. If an owner of a vehicle
155 has previously titled the vehicle at a declared gross weight of
156 fifty-five thousand pounds or more and the title was issued

157 without the payment of the tax imposed by this section, then
158 before the owner may obtain registration for the vehicle at a
159 gross weight less than fifty-five thousand pounds, the owner
160 shall surrender to the commissioner the exempted
161 registration, the exempted certificate of title and pay the tax
162 imposed by this section based upon the current market value
163 of the vehicle.

164 (10) The tax imposed by this section does not apply to
165 vehicles leased by residents of West Virginia. On or after
166 January 1, 2009, a tax is imposed upon the monthly payments
167 for the lease of any motor vehicle leased under a written
168 contract of lease by a resident of West Virginia for a
169 contractually specified continuous period of more than thirty
170 days, which tax is equal to five percent of the amount of the
171 monthly payment, applied to each payment, and continuing
172 for the entire term of the initial lease period. The tax shall be
173 remitted to the Division of Motor Vehicles on a monthly
174 basis by the lessor of the vehicle. Leases of thirty days or
175 less are taxable under the provisions of this article and article
176 fifteen-a of this chapter without reference to this section.

177 (g) *Division of Motor Vehicles to collect.--*
178 Notwithstanding any provision of this article, article fifteen-a
179 and article ten of this chapter to the contrary, the Division of
180 Motor Vehicles shall collect the tax imposed by this section:
181 *Provided*, That such tax is imposed upon the monthly
182 payments for the lease of any motor vehicle leased by a
183 resident of West Virginia, which tax is equal to five percent
184 of the amount of the monthly payment, applied to each
185 payment, and continuing for the entire term of the initial
186 lease period. The tax shall be remitted to the Division of
187 Motor Vehicles on a monthly basis by the lessor of the
188 vehicle.

189 (h) *Dedication of tax to highways.* -- Notwithstanding
190 any provision of this article or article fifteen-a of this chapter
191 to the contrary, all taxes collected pursuant to this section,

192 after deducting the amount of any refunds lawfully paid, shall
193 be deposited in the State Road Fund in the State Treasury and
194 expended by the Commissioner of Highways for design,
195 maintenance and construction of roads in the state highway
196 system.

197 (i) *Legislative rules; emergency rules.* --
198 Notwithstanding any provision of this article, article fifteen-a
199 and article ten of this chapter to the contrary, the
200 Commissioner of Motor Vehicles shall promulgate legislative
201 rules explaining and implementing this section, which rules
202 shall be promulgated in accordance with the provisions of
203 article three, chapter twenty-nine-a of this code and should
204 include a minimum taxable value and set forth instances
205 when a vehicle is to be taxed at fair market value rather than
206 its purchase price. The authority to promulgate rules includes
207 authority to amend or repeal those rules. If proposed
208 legislative rules for this section are filed in the State Register
209 before June 15, 2008, those rules may be promulgated as
210 emergency legislative rules as provided in article three,
211 chapter twenty-nine-a of this code.

212 (j) Notwithstanding any other provision of this code,
213 effective January 1, 2009, no municipal sales or use tax or
214 local sales or use tax or special downtown redevelopment
215 district excise tax or special district excise tax shall be
216 imposed under article twenty-two, chapter seven of this code
217 or article thirteen, chapter eight of this code or article
218 thirteen-b of said chapter or article thirty-eight of said chapter
219 or any other provision of this code, except this section, on
220 sales of motor vehicles as defined in this article or on any
221 tangible personal property excepted or exempted from tax
222 under this section. Nothing in this subsection shall be
223 construed to prevent the application of the municipal business
224 and occupation tax on motor vehicle retailers and leasing
225 companies.

§11-15-9m. Discretionary designation of per se exemptions.

1 Notwithstanding any other provision of this code, the Tax
2 Commissioner may, by rule, specify those exemptions
3 authorized in this article or in other provisions of this code or
4 applicable federal law for which exemption certificates or
5 direct pay permits are not required.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-21. Senior citizens' tax credit for property tax paid on first \$10,000 of taxable assessed value of a homestead in this state; tax credit for property tax paid on the first \$20,000 of value for property tax years after December 31, 2006.

§11-21-22. Low-income family tax credit.

§11-21-23. Refundable credit for real property taxes paid in excess of four percent of income.

§11-21-21. Senior citizens' tax credit for property tax paid on first \$10,000 of taxable assessed value of a homestead in this state; tax credit for property tax paid on the first \$20,000 of value for property tax years after December 31, 2006.

1 (a) *Allowance of credit.* --

2 (1) A low-income person who is allowed a \$20,000
3 homestead exemption from the assessed value of his or her
4 homestead for ad valorem property tax purposes, as provided
5 in section three, article six-b of this chapter, shall be allowed
6 a refundable credit against the taxes imposed by this article
7 equal to the amount of ad valorem property taxes paid on up
8 to the first \$10,000 of taxable assessed value of the
9 homestead for property tax years that begin on or after
10 January 1, 2003, except as provided in subdivision (2) of this
11 subsection.

12 (2) For tax years beginning on or after January 1, 2007,
13 a low-income person who is allowed a \$20,000 homestead
14 exemption from the assessed value of his or her homestead
15 for ad valorem property tax purposes, as provided in section

16 three, article six-b of this chapter, shall be allowed a
17 refundable credit against the taxes imposed by this article
18 equal to the amount of ad valorem property taxes paid on up
19 to the first \$20,000 of taxable assessed value of the
20 homestead for property tax years that begin on or after
21 January 1, 2007: *Provided*, That for tax years beginning on
22 and after January 1, 2009, any person who is required to pay
23 the federal alternative minimum income tax in the current tax
24 year is disqualified from receiving any tax credit provided
25 under this section.

26 (3) Due to the administrative cost of processing, the
27 refundable credit authorized by this section may not be
28 refunded if less than \$10.

29 (4) The credit for each property tax year shall be claimed
30 by filing a claim for refund within three years after the due
31 date for the personal income tax return upon which the credit
32 is first available.

33 (b) *Terms defined.* --

34 For purposes of this section:

35 (1) "Low income" means federal adjusted gross income
36 for the taxable year that is one hundred fifty percent or less
37 of the federal poverty guideline for the year in which
38 property tax was paid, based upon the number of individuals
39 in the family unit residing in the homestead, as determined
40 annually by the United States Secretary of Health and Human
41 Services.

42 (2) (A) For tax years beginning before January 1, 2007,
43 "taxes paid" means the aggregate of regular levies, excess
44 levies and bond levies extended against not more than
45 \$10,000 of the taxable assessed value of a homestead that are
46 paid during the calendar year determined after application of

47 any discount for early payment of taxes but before
48 application of any penalty or interest for late payment of
49 property taxes for a property tax year that begins on or after
50 January 1, 2003, except as provided in paragraph (B) of this
51 subdivision.

52 (B) For tax years beginning on or after January 1, 2007,
53 "taxes paid" means the aggregate of regular levies, excess
54 levies and bond levies extended against not more than
55 \$20,000 of the taxable assessed value of a homestead that are
56 paid during the calendar year determined after application of
57 any discount for early payment of taxes but before
58 application of any penalty or interest for late payment of
59 property taxes for a property tax year that begins on or after
60 January 1, 2007.

61 (c) *Legislative rule.* --

62 The Tax Commissioner shall propose a legislative rule
63 for promulgation as provided in article three, chapter twenty-
64 nine-a of this code to explain and implement this section.

65 (d) *Confidentiality.* --

66 The Tax Commissioner shall utilize property tax
67 information in the statewide electronic data processing
68 system network to the extent necessary for the purpose of
69 administering this section, notwithstanding any provision of
70 this code to the contrary.

§11-21-22. Low-income family tax credit.

1 In order to eliminate West Virginia personal income tax
2 on families with incomes below the federal poverty
3 guidelines and to reduce the West Virginia personal income
4 tax on families with incomes that are immediately above the
5 federal poverty guidelines, there is hereby created a

6 nonrefundable tax credit, to be known as the low-income
7 family tax credit, against the West Virginia personal income
8 tax. The low-income family tax credit is based upon family
9 size and the federal poverty guidelines. The low-income tax
10 credit reduces the tax imposed by the provisions of this
11 article on families with modified federal adjusted gross
12 income below or near the federal poverty guidelines:
13 *Provided*, That for tax years beginning on and after January
14 1, 2009, any person who is required to pay the federal
15 alternative minimum income tax in the current tax year is
16 disqualified from receiving any tax credit provided under this
17 section.

**§11-21-23. Refundable credit for real property taxes paid in
excess of four percent of income.**

1 (a) For the tax years beginning on or after January 1,
2 2008, any homeowner living in his or her homestead shall be
3 allowed a refundable credit against the taxes imposed by this
4 article equal to the amount of real property taxes paid in
5 excess of four percent of their income. If the refundable
6 credit provided in this section exceeds the amount of taxes
7 imposed by this article, the state Department of Revenue
8 shall refund that amount to the homeowner.

9 (b) Due to the administrative cost of processing, the
10 refundable credit authorized by this section may not be
11 refunded if less than \$10.

12 (c) The credit for each property tax year shall be claimed
13 by filing a claim for refund within twelve months after the
14 real property taxes are paid on the homestead.

15 (d) For the purposes of this section:

16 (1) "Gross household income" is defined as federal
17 adjusted gross income plus the sum of the following:

18 (A) Modifications in subsection (b), section twelve of this
19 article increasing federal adjusted gross income;

20 (B) Federal tax-exempt interest reported on federal tax
21 return;

22 (C) Workers' compensation and loss of earnings
23 insurance; and

24 (D) Nontaxable Social Security benefits; and

25 (2) For the tax years beginning before January 1, 2008,
26 "real property taxes paid" means the aggregate of regular
27 levies, excess levies and bond levies extended against the
28 homestead that are paid during the calendar year and
29 determined after any application of any discount for early
30 payment of taxes but before application of any penalty or
31 interest for late payment of property taxes for property tax
32 years that begin on or after January 1, 2008.

33 (e) A homeowner is eligible to benefit from this section
34 or section twenty-one of this article, whichever section
35 provides the most benefit as determined by the homeowner.
36 No homeowner may receive benefits under both this section
37 and section twenty-one of this article during the same taxable
38 year. For tax years beginning on and after January 1, 2009,
39 any person who is required to pay the federal alternative
40 minimum income tax in the current tax year is disqualified
41 from receiving any tax credit provided under this section.
42 Nothing in this section denies those entitled to the homestead
43 exemption provided in section three, article six-b of this
44 chapter.

45 (f) No homeowner may receive a refundable tax credit
46 imposed by this article in excess of \$1,000. This amount
47 shall be reviewed annually by the Legislature to determine if
48 an adjustment is necessary.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3a. Specific terms defined.

§11-24-4b. Dividends paid deduction to be added back in determining net income for captive real estate investment trusts and regulated investment companies; deductible intangible expenses and deductible interest paid to be added back in determining net income of certain entities.

§11-24-3a. Specific terms defined.

1 (a) For purposes of this article:

2 (1) *Aggregate effective rate of tax.*-- The term "aggregate
3 effective rate of tax" shall mean the sum of the effective rates
4 of tax imposed by a state or United States possession or any
5 combination thereof on a related member.

6 (2) *Business income.*-- The term "business income"
7 means income arising from transactions and activity in the
8 regular course of the taxpayer's trade or business and includes
9 income from tangible and intangible property if the
10 acquisition, management and disposition of the property or
11 the rendering of services in connection therewith constitute
12 integral parts of the taxpayer's regular trade or business
13 operations and includes all income which is apportionable
14 under the Constitution of the United States.

15 (3) *Captive real estate investment trust.* -- The term
16 "captive real estate investment trust" shall mean a real estate
17 investment trust, the shares or beneficial interests of which:

18 (A) Are not regularly traded on an established securities
19 market and:

20 (B) Are more than fifty percent of the voting power or
21 value of the beneficial interests or shares of which are owned
22 or controlled, directly or indirectly or constructively, by a
23 single entity that is:

24 (i) Treated as an association taxable as a corporation
25 under the Internal Revenue Code of 1986, as amended; and

26 (ii) Not exempt from federal income tax pursuant to the
27 provisions of Section 501(a) of the Internal Revenue Code of
28 1986, as amended;

29 (C) For purposes of applying subparagraph (i), paragraph
30 (B) of this subdivision, the following entities are not
31 considered an association taxable as a corporation:

32 (i) Any real estate investment trust as defined in Section
33 856 of the Internal Revenue Code of 1986, as amended, other
34 than a "captive real estate investment trust";

35 (ii) Any qualified real estate investment trust subsidiary
36 under Section 856(i) of the Internal Revenue Code of 1986,
37 as amended, other than a qualified real estate investment trust
38 subsidiary of a "captive real estate investment trust";

39 (iii) Any listed Australian property trust, meaning an
40 Australian unit trust registered as a "managed investment
41 scheme" under the Australian Corporations Act in which the
42 principal class of units is listed on a recognized stock
43 exchange in Australia and is regularly traded on an
44 established securities market, or an entity organized as a
45 trust, provided that a listed Australian property trust owns or
46 controls, directly or indirectly, seventy-five percent or more
47 of the voting power or value of the beneficial interests or
48 shares of the trust; or

49 (iv) Any qualified foreign entity, meaning a corporation,
50 trust, association or partnership organized outside the laws of
51 the United States and which satisfies the following criteria:

52 (1) At least seventy-five percent of the entity's total asset
53 value at the close of its taxable year is represented by real

54 estate assets as defined in Section 856(c)(5)(B) of the Internal
55 Revenue Code of 1986, as amended, thereby including shares
56 or certificates of beneficial interest in any real estate
57 investment trust, cash and cash equivalents and United States
58 government securities;

59 (2) The entity is not subject to tax on amounts distributed
60 to its beneficial owners or is exempt from entity-level
61 taxation;

62 (3) The entity distributes at least eighty-five percent of its
63 taxable income as computed in the jurisdiction in which it is
64 organized to the holders of its shares or certificates of
65 beneficial interest on an annual basis;

66 (4) Not more than ten percent of the voting power or
67 value in the entity is held directly or indirectly or
68 constructively by a single entity or individual or the shares or
69 beneficial interests of the entity are regularly traded on an
70 established securities market; and

71 (5) The entity is organized in a country which has a tax
72 treaty with the United States.

73 (D) A real estate investment trust that is intended to be
74 regularly traded on an established securities market, and that
75 satisfies the requirements of Section 856(a)(5) and (6) of the
76 U. S. Internal Revenue Code by reason of Section 856(h)(2)
77 of the Internal Revenue Code is not considered a captive real
78 estate investment trust within the meaning of this section.

79 (E) A real estate investment trust that does not become
80 regularly traded on an established securities market within
81 one year of the date on which it first becomes a real estate
82 investment trust is not considered not to have been regularly
83 traded on an established securities market, retroactive to the
84 date it first became a real estate investment trust, and shall

85 file an amended return reflecting the retroactive designation
86 for any tax year or part year occurring during its initial year
87 of status as a real estate investment trust. For purposes of
88 this section, a real estate investment trust becomes a real
89 estate investment trust on the first day that it has both met the
90 requirements of Section 856 of the Internal Revenue Code
91 and has elected to be treated as a real estate investment trust
92 pursuant to Section 856(c)(1) of the Internal Revenue Code.

93 (4) *Combined group.* -- The term "combined group"
94 means the group of all persons whose income and
95 apportionment factors are required to be taken into account
96 pursuant to subsection (j) or (k), section thirteen-a of this
97 article in determining the taxpayer's share of the net business
98 income or loss apportionable to this state.

99 (5) *Commercial domicile.*-- The term "commercial
100 domicile" means the principal place from which the trade or
101 business of the taxpayer is directed or managed: *Provided,*
102 That the commercial domicile of a financial organization,
103 which is subject to regulation as such, shall be at the place
104 designated as its principal office with its regulating authority.

105 (6) *Compensation.*-- The term "compensation" means
106 wages, salaries, commissions and any other form of
107 remuneration paid to employees for personal services.

108 (7) *Corporation.* -- "Corporation" means any corporation
109 as defined by the laws of this state or organization of any
110 kind treated as a corporation for tax purposes under the laws
111 of this state, wherever located, which if it were doing
112 business in this state would be subject to the tax imposed by
113 this article. The business conducted by a partnership which
114 is directly or indirectly held by a corporation shall be
115 considered the business of the corporation to the extent of the
116 corporation's distributive share of the partnership income,
117 inclusive of guaranteed payments to the extent prescribed by

118 regulation. The term "corporation" includes a joint-stock
119 company and any association or other organization which is
120 taxable as a corporation under the federal income tax law.

121 (8) *Delegate*.-- The term "delegate" in the phrase "or his
122 or her delegate", when used in reference to the Tax
123 Commissioner, means any officer or employee of the State
124 Tax Division duly authorized by the Tax Commissioner
125 directly, or indirectly by one or more redelegations of
126 authority, to perform the functions mentioned or described in
127 this article or regulations promulgated thereunder.

128 (9) *Domestic corporation*.-- The term "domestic
129 corporation" means any corporation organized under the laws
130 of West Virginia and certain corporations organized under
131 the laws of the state of Virginia before June 20, 1863. Every
132 other corporation is a foreign corporation.

133 (10) *Effective rate of tax*. -- The term "effective rate of
134 tax" means, as to any state or United States possession, the
135 maximum statutory rate of tax imposed by the state or
136 possession on a related member's net income multiplied by
137 the apportionment percentage, if any, applicable to the related
138 member under the laws of said jurisdiction. For purposes of
139 this definition, the effective rate of tax as to any state or
140 United States possession is zero where the related member's
141 net income tax liability in said jurisdiction is reported on a
142 combined or consolidated return including both the taxpayer
143 and the related member where the reported transactions
144 between the taxpayer and the related member are eliminated
145 or offset. Also, for purposes of this definition, when
146 computing the effective rate of tax for a jurisdiction in which
147 a related member's net income is eliminated or offset by a
148 credit or similar adjustment that is dependent upon the related
149 member either maintaining or managing intangible property
150 or collecting interest income in that jurisdiction, the
151 maximum statutory rate of tax imposed by said jurisdiction

152 shall be decreased to reflect the statutory rate of tax that
153 applies to the related member as effectively reduced by the
154 credit or similar adjustment.

155 (11) *Engaging in business.* -- The term "engaging in
156 business" or "doing business" means any activity of a
157 corporation which enjoys the benefits and protection of
158 government and laws in this state.

159 (12) *Federal Form 1120.* -- The term "Federal Form
160 1120" means the annual federal income tax return of any
161 corporation made pursuant to the United States Internal
162 Revenue Code of 1986, as amended, or in successor
163 provisions of the laws of the United States, in respect to the
164 federal taxable income of a corporation, and filed with the
165 federal Internal Revenue Service. In the case of a
166 corporation that elects to file a federal income tax return as
167 part of an affiliated group, but files as a separate corporation
168 under this article, then as to such corporation Federal Form
169 1120 means its pro forma Federal Form 1120.

170 (13) *Fiduciary.* -- The term "fiduciary" means, and
171 includes, a guardian, trustee, executor, administrator,
172 receiver, conservator or any person acting in any fiduciary
173 capacity for any person.

174 (14) *Financial organization.* -- The term "financial
175 organization" means:

176 (A) A holding company or a subsidiary thereof. As used
177 in this section "holding company" means a corporation
178 registered under the federal Bank Holding Company Act of
179 1956 or registered as a savings and loan holding company
180 other than a diversified savings and loan holding company as
181 defined in Section 408(a)(1)(F) of the federal National
182 Housing Act, 12 U. S. C. §1730(a)(1)(F);

183 (B) A regulated financial corporation or a subsidiary
184 thereof. As used in this section "regulated financial
185 corporation" means:

186 (i) An institution, the deposits, shares or accounts of
187 which are insured under the Federal Deposit Insurance Act or
188 by the federal Savings and Loan Insurance Corporation;

189 (ii) An institution that is a member of a federal home loan
190 bank;

191 (iii) Any other bank or thrift institution incorporated or
192 organized under the laws of a state that is engaged in the
193 business of receiving deposits;

194 (iv) A credit union incorporated and organized under the
195 laws of this state;

196 (v) A production credit association organized under 12 U.
197 S. C. §2071;

198 (vi) A corporation organized under 12 U. S. C. §611
199 through §631 (an Edge Act corporation); or

200 (vii) A federal or state agency or branch of a foreign bank
201 as defined in 12 U. S. C. §3101; or

202 (C) A corporation which derives more than fifty percent
203 of its gross business income from one or more of the
204 following activities:

205 (i) Making, acquiring, selling or servicing loans or
206 extensions of credit. Loans and extensions of credit include:

207 (I) Secured or unsecured consumer loans;

208 (II) Installment obligations;

209 (III) Mortgages or other loans secured by real estate or
210 tangible personal property;

211 (IV) Credit card loans;

212 (V) Secured and unsecured commercial loans of any type;
213 and

214 (VI) Loans arising in factoring;

215 (ii) Leasing or acting as an agent, broker or advisor in
216 connection with leasing real and personal property that is the
217 economic equivalent of an extension of credit as defined by
218 the Federal Reserve Board in 12 CFR 225.25(b)(5);

219 (iii) Operating a credit card business;

220 (iv) Rendering estate or trust services;

221 (v) Receiving, maintaining or otherwise handling
222 deposits;

223 (vi) Engaging in any other activity with an economic
224 effect comparable to those activities described in
225 subparagraph (i), (ii), (iii), (iv) or (v) of this paragraph.

226 (15) *Fiscal year*. -- The term "fiscal year" means an
227 accounting period of twelve months ending on any day other
228 than the last day of December and on the basis of which the
229 taxpayer is required to report for federal income tax purposes.

230 (16) *Includes and including*. -- The terms "includes" and
231 "including", when used in a definition contained in this
232 article, do not exclude other things otherwise within the
233 meaning of the term being defined.

234 (17) *Insurance company*. -- The term "insurance
235 company" means any corporation subject to taxation under

236 section twenty-two, article three, chapter twenty-nine of this
237 code or chapter thirty-three of this code or an insurance
238 carrier subject to the surcharge imposed by subdivision (1) or
239 (3), subsection (f), section three, article two-c, chapter
240 twenty-three of this code or any corporation that would be
241 subject to taxation under any of those provisions were its
242 business transacted in this state.

243 (18) *Intangible expense.* -- The term "intangible
244 expense" includes: (A) Expenses, losses and costs for, related
245 to or in connection directly or indirectly with the direct or
246 indirect acquisition, use, maintenance or management,
247 ownership, sale, exchange or any other disposition of
248 intangible property to the extent those amounts are allowed
249 as deductions or costs in determining taxable income before
250 operating loss deductions and special deductions for the
251 taxable year under the Internal Revenue Code; (B) amounts
252 directly or indirectly allowed as deductions under Section
253 163 of the Internal Revenue Code for purposes of
254 determining taxable income under the Internal Revenue Code
255 to the extent those expenses and costs are directly or
256 indirectly for, related to or in connection with the expenses,
257 losses and costs referenced in subdivision (A) of this
258 subsection; (C) losses related to, or incurred in connection
259 directly or indirectly with, factoring transactions or
260 discounting transactions; (D) royalty, patent, technical and
261 copyright fees; (E) licensing fees; and (F) other similar
262 expenses and costs.

263 (19) *Intangible property.* -- "Intangible property"
264 includes patents, patent applications, trade names,
265 trademarks, service marks, copyrights, mask works, trade
266 secrets and similar types of intangible assets.

267 (20) *Interest expense.* -- "Interest expense" means
268 amounts directly or indirectly allowed as deductions under
269 Section 163 of the Internal Revenue Code for purposes of

270 determining taxable income under the Internal Revenue
271 Code.

272 (21) "*Internal Revenue Code*" means the Internal
273 Revenue Code as defined in section three of this article, as
274 amended and in effect for the taxable year and without regard
275 to application of federal treaties unless expressly made
276 applicable to states of the United States.

277 (22) *Nonbusiness income*.-- The term "nonbusiness
278 income" means all income other than business income.

279 (23) *Ownership*. -- In determining the ownership of
280 stock, assets or net profits of any person, the constructive
281 ownership of Section 318(a) of the Internal Revenue Code of
282 1986, as amended, as modified by Section 856(d)(5) of the
283 Internal Revenue Code of 1986, as amended, shall apply.

284 (24) "Partnership" means a general or limited partnership
285 or organization of any kind treated as a partnership for tax
286 purposes under the laws of this state.

287 (25) *Person*. -- The term "person" is considered
288 interchangeable with the term "corporation" in this section.
289 The term "person" means any individual, firm, partnership,
290 general partner of a partnership, limited liability company,
291 registered limited liability partnership, foreign limited
292 liability partnership, association, corporation whether or not
293 the corporation is, or would be if doing business in this state,
294 subject to the tax imposed by this article, company,
295 syndicate, estate, trust, business trust, trustee, trustee in
296 bankruptcy, receiver, executor, administrator, assignee or
297 organization of any kind.

298 (26) *Pro forma return*. -- The term "pro forma return"
299 when used in this article means the return which the taxpayer
300 would have filed with the Internal Revenue Service had it not
301 elected to file federally as part of an affiliated group.

302 (27) *Public utility*. -- The term "public utility" means any
303 business activity to which the jurisdiction of the Public
304 Service Commission of West Virginia extends under section
305 one, article two, chapter twenty-four of this code.

306 (28) *Qualified regulated investment company*. -- The
307 term "qualified regulated investment company" means any
308 regulated investment company other than a regulated
309 investment company where more than fifty percent of the
310 voting power or value of the beneficial interests or share of
311 which are owned or controlled, directly or indirectly,
312 constructively or otherwise, by a single entity that is:

313 (A) Subject to the provision of subchapter C, chapter 1,
314 subtitle A, Title 26 of the United States Code, as amended;

315 (B) Not exempt from federal income tax pursuant to the
316 provision of Section 501 of the Internal Revenue Code of
317 1986, as amended; and

318 (C) Not a regulated investment company as defined in
319 Section 3 of the Investment Company Act of 1940, as
320 amended, 15 U. S. C.80a-3: *Provided*, That a regulated
321 invested company, the shares of which are held in a
322 segregated asset account of a life insurance corporation (as
323 described in Section 817 of the Internal Revenue Code of
324 1986, as amended), shall be treated as a qualified regulated
325 investment company.

326 (29) *Real estate investment trust*.-- The term "real estate
327 investment trust" has the meaning ascribed to such term in
328 Section 856 of the Internal Revenue Code of 1986, as
329 amended.

330 (30) *Regulated investment company*.-- The term
331 "regulated investment company" has the same meaning as
332 ascribed to such term in Section 851 of the Internal Revenue
333 Code of 1986, as amended.

334 (31) *Related entity*. -- "Related entity" means: (A) A
335 stockholder who is an individual or a member of the
336 stockholder's family set forth in Section 318 of the Internal
337 Revenue Code if the stockholder and the members of the
338 stockholder's family own, directly, indirectly, beneficially or
339 constructively, in the aggregate, at least fifty percent of the
340 value of the taxpayer's outstanding stock; (B) a stockholder,
341 or a stockholder's partnership, limited liability company,
342 estate, trust or corporation, if the stockholder and the
343 stockholder's partnerships, limited liability companies,
344 estates, trusts and corporations own directly, indirectly,
345 beneficially or constructively, in the aggregate, at least fifty
346 percent of the value of the taxpayer's outstanding stock; or
347 (C) a corporation, or a party related to the corporation in a
348 manner that would require an attribution of stock from the
349 corporation to the party or from the party to the corporation
350 under the attribution rules of the Internal Revenue Code if the
351 taxpayer owns, directly, indirectly, beneficially or
352 constructively, at least fifty percent of the value of the
353 corporation's outstanding stock. The attribution rules of the
354 Internal Revenue Code shall apply for purposes of
355 determining whether the ownership requirements of this
356 definition have been met.

357 (32) *Related member*. -- "Related member" means a
358 person that, with respect to the taxpayer during all or any
359 portion of the taxable year, is: (A) A related entity; (B) a
360 component member as defined in subsection (b), Section
361 1563 of the Internal Revenue Code; (C) a person to or from
362 whom there is attribution of stock ownership in accordance
363 with subsection (e), Section 1563 of the Internal Revenue
364 Code; or (D) a person that, notwithstanding its form or
365 organization, bears the same relationship to the taxpayer as
366 a person described in subdivisions (A) through (C), inclusive,
367 of this subsection.

368 (33) *Sales*.-- The term "sales" means all gross receipts of
369 the taxpayer that are "business income" as defined in this
370 section.

371 (34) *State*.-- The term "state" means any state of the
372 United States, the District of Columbia, the Commonwealth
373 of Puerto Rico, any territory or possession of the United
374 States and any foreign country or political subdivision
375 thereof.

376 (35) *Tax*.-- The term "tax" includes, within its meaning,
377 interest and additions to tax, unless the intention to give it a
378 more limited meaning is disclosed by the context.

379 (36) *Taxable year, tax year*. -- The term "taxable year"
380 or "tax year" means the taxable year for which the taxable
381 income of the taxpayer is computed under the federal income
382 tax law.

383 (37) *Tax Commissioner*.-- The term "Tax Commissioner"
384 means the Tax Commissioner of the State of West Virginia
385 or his or her delegate.

386 (38) *Tax haven*. -- The term "tax haven" means a
387 jurisdiction that, for a particular tax year in question: (A) Is
388 identified by the Organization for Economic Cooperation and
389 Development as a tax haven or as having a harmful
390 preferential tax regime; or (B) a jurisdiction that has no, or
391 nominal, effective tax on the relevant income and: (i) That
392 has laws or practices that prevent effective exchange of
393 information for tax purposes with other governments
394 regarding taxpayers subject to, or benefitting from, the tax
395 regime; (ii) that lacks transparency. For purposes of this
396 definition, a tax regime lacks transparency if the details of
397 legislative, legal or administrative provisions are not open to
398 public scrutiny and apparent or are not consistently applied
399 among similarly situated taxpayers; (iii) facilitates the

400 establishment of foreign-owned entities without the need for
401 a local substantive presence or prohibits these entities from
402 having any commercial impact on the local economy; (iv)
403 explicitly or implicitly excludes the jurisdiction's resident
404 taxpayers from taking advantage of the tax regime's benefits
405 or prohibits enterprises that benefit from the regime from
406 operating in the jurisdiction's domestic market; or (v) has
407 created a tax regime which is favorable for tax avoidance,
408 based upon an overall assessment of relevant factors,
409 including whether the jurisdiction has a significant untaxed
410 offshore financial or other services sector relative to its
411 overall economy. For purposes of this definition, the phrase
412 "tax regime" means a set or system of rules, laws, regulations
413 or practices by which taxes are imposed on any person,
414 corporation or entity, or on any income, property, incident,
415 indicia or activity pursuant to governmental authority.

416 (39) *Taxpayer*. -- The term "taxpayer" means any person
417 subject to the tax imposed by this article.

418 (40) *This code*. -- The term "this code" means the Code
419 of West Virginia, 1931, as amended.

420 (41) *This state*. -- The term "this state" means the State
421 of West Virginia.

422 (42) "United States" means the United States of America
423 and includes all of the states of the United States, the District
424 of Columbia and United States territories and possessions.

425 (43) "Unitary business" means a single economic
426 enterprise that is made up either of separate parts of a single
427 business entity or of a commonly controlled group of
428 business entities that are sufficiently interdependent,
429 integrated and interrelated through their activities so as to
430 provide a synergy and mutual benefit that produces a sharing
431 or exchange of value among them and a significant flow of

432 value to the separate parts. For purposes of this article and
433 article twenty-three of this chapter, any business conducted
434 by a partnership shall be treated as conducted by its partners,
435 whether directly held or indirectly held through a series of
436 partnerships, to the extent of the partner's distributive share
437 of the partnership's income, regardless of the percentage of
438 the partner's ownership interest or the percentage of its
439 distributive or any other share of partnership income. A
440 business conducted directly or indirectly by one corporation
441 through its direct or indirect interest in a partnership is
442 unitary with that portion of a business conducted by one or
443 more other corporations through their direct or indirect
444 interest in a partnership if there is a synergy and mutual
445 benefit that produces a sharing or exchange of value among
446 them and a significant flow of value to the separate parts and
447 the corporations are members of the same commonly
448 controlled group.

449 (44) *West Virginia taxable income.* -- The term "West
450 Virginia taxable income" means the taxable income of a
451 corporation as defined by the laws of the United States for
452 federal income tax purposes, adjusted, as provided in this
453 article: *Provided*, That in the case of a corporation having
454 income from business activity which is taxable without this
455 state, its "West Virginia taxable income" shall be the portion
456 of its taxable income as defined and adjusted as is allocated
457 or apportioned to this state under the provisions of this
458 article.

459 (45) *Valid business purpose.* -- "Valid business purpose"
460 means one or more business purposes, other than the
461 avoidance or reduction of taxation, which alone or in
462 combination constitute the primary motivation for a business
463 activity or transaction, which activity or transaction changes
464 in a meaningful way, apart from tax effects, the economic
465 position of the taxpayer. The economic position of the
466 taxpayer includes an increase in the market share of the

467 taxpayer or the entry by the taxpayer into new business
468 markets.

469 (b) *Effective date.* -- The amendments to this section
470 made in the year 2009 are retroactive and are effective for tax
471 years beginning on and after January 1, 2009.

**§11-24-4b. Dividends paid deduction to be added back in
determining net income for captive real estate
investment trusts and regulated investment
companies; deductible intangible expenses and
deductible interest paid to be added back in
determining net income of certain entities.**

1 (a) The dividend paid deduction otherwise allowed by
2 federal law in computing net income of a real estate
3 investment trust that is subject to federal income tax shall be
4 added back in computing the tax imposed by this article if the
5 real estate investment trust is a captive real estate investment
6 trust.

7 (b) The dividend paid deduction otherwise allowed by
8 federal law in computing net income of a regulated
9 investment company that is subject to federal income tax
10 shall be added back in computing the tax imposed by this
11 article unless the regulated investment company is a qualified
12 regulated investment company as defined in this article.

13 (c) *Intangible expenses otherwise deductible to be added*
14 *back for certain taxpayers.* --

15 (1) For purposes of computing its net income under this
16 chapter, a taxpayer shall add back otherwise deductible
17 intangible expense directly or indirectly paid, accrued or
18 incurred in connection with one or more direct or indirect
19 transactions with one or more related members.

20 (2) If the related member was subject to tax in this state
21 or another state or possession of the United States or a
22 foreign nation or some combination thereof on a tax base that
23 included the intangible expense paid, accrued or incurred by
24 the taxpayer, the taxpayer shall receive a credit against tax
25 due in this state in an amount equal to the higher of the tax
26 paid by the related member with respect to the portion of its
27 income representing the intangible expense paid, accrued or
28 incurred by the taxpayer, or the tax that would have been paid
29 by the related member with respect to that portion of its
30 income if: (A) That portion of its income had not been offset
31 by expenses or losses; or (B) the tax liability had not been
32 offset by a credit or credits. The credit determined shall be
33 multiplied by the apportionment factor of the taxpayer in this
34 state. However, in no case shall the credit exceed the
35 taxpayer's liability in this state attributable to the net income
36 taxed as a result of the adjustment required by subdivision (1)
37 of this subsection.

38 (3) (A) The adjustment required in subdivision (1) of this
39 subsection and the credit allowed in subdivision (2) of this
40 subsection shall not apply to the portion of the intangible
41 expense that the taxpayer establishes by clear and convincing
42 evidence meets both of the following requirements: (i) The
43 related member during the same taxable year directly or
44 indirectly paid, accrued or incurred a portion to a person that
45 is not a related member; and (ii) the transaction giving rise to
46 the intangible expense between the taxpayer and the related
47 member was undertaken for a valid business purpose.

48 (B) The adjustment required in subdivision (1) of this
49 subsection and the credit allowed in subdivision (2) of this
50 subsection shall not apply if the taxpayer establishes by clear
51 and convincing evidence of the type and in the form specified
52 by the Tax Commissioner that: (i) The related member was
53 subject to tax on its net income in this state or another state
54 or possession of the United States or some combination

55 thereof; (ii) the tax base for said tax included the intangible
56 expense paid, accrued or incurred by the taxpayer; and (iii)
57 the aggregate effective rate of tax applied to the related
58 member is no less than the tax rate imposed under this article.

59 (C) The adjustment required in subdivision (1) of this
60 subsection and the credit allowed in subdivision (2) of this
61 subsection shall not apply if the taxpayer establishes by clear
62 and convincing evidence of the type and in the form specified
63 by the commissioner that: (i) The intangible expense was
64 paid, accrued or incurred to a related member organized
65 under the laws of a country other than the United States; (ii)
66 the related member's income from the transaction was subject
67 to a comprehensive income tax treaty between that country
68 and the United States; (iii) the related member's income from
69 the transaction was taxed in that country at a tax rate at least
70 equal to that imposed by this state; and (iv) the intangible
71 expense was paid, accrued or incurred pursuant to a
72 transaction that was undertaken for a valid business purpose
73 and using terms that reflect an arm's length relationship.

74 (D) The adjustment required in subdivision (1) of this
75 subsection and the credit allowed in subdivision (2) of this
76 subsection shall not apply if the corporation and the
77 commissioner agree in writing to the application or use of
78 alternative adjustments or computations. The commissioner
79 may, in his or her discretion, agree to the application or use
80 of alternative adjustments or computations when he or she
81 concludes that in the absence of agreement the income of the
82 taxpayer would not be reflected accurately.

83 (d) *Interest expense otherwise deductible to be added*
84 *back for certain taxpayers. --*

85 (1) For purposes of computing its net income under this
86 chapter, a taxpayer shall add back otherwise deductible
87 interest paid, accrued or incurred to a related member during
88 the taxable year.

89 (2) If the related member was subject to tax in this state
90 or another state or possession of the United States or a
91 foreign nation or some combination thereof on a tax base that
92 included the interest expense paid, accrued or incurred by the
93 taxpayer, the taxpayer shall receive a credit against tax due in
94 this state equal to the higher of the tax paid by the related
95 member with respect to the portion of its income representing
96 the interest expense paid, accrued or incurred by the
97 taxpayer, or the tax that would have been paid by the related
98 member with respect to that portion of its income if: (A) That
99 portion of its income had not been offset by expenses or
100 losses; or (B) the tax liability had not been offset by a credit
101 or credits. The credit determined shall be multiplied by the
102 apportionment factor of the taxpayer in this state. However,
103 in no case shall the credit exceed the taxpayer's liability in
104 this state attributable to the tax imposed under this article as
105 a result of the adjustment required by subdivision (1) of this
106 subsection.

107 (3) (A) The adjustment required in subdivision (1) of this
108 subsection and the credit allowed in subdivision (2) of this
109 subsection shall not apply if the taxpayer establishes by clear
110 and convincing evidence, of the type and in the form
111 determined by the commissioner, that: (i) The transaction
112 giving rise to interest expense between the taxpayer and the
113 related member was undertaken for a valid business purpose;
114 and (ii) the interest expense was paid, accrued or incurred
115 using terms that reflect an arm's length relationship.

116 (B) The adjustment required in subdivision (1) of this
117 subsection and the credit allowed in subdivision (2) of this
118 subsection shall not apply if the taxpayer establishes by clear
119 and convincing evidence of the type and in the form specified
120 by the commissioner that: (i) The related member was subject
121 to tax on its net income in this state or another state or
122 possession of the United States or some combination thereof;
123 (ii) the tax base for said tax included the interest expense

124 paid, accrued or incurred by the taxpayer; and (iii) the
125 aggregate effective rate of tax applied to the related member
126 is no less than the statutory rate of tax applied to the taxpayer
127 under this chapter.

128 (C) The adjustment required in subdivision (1) of this
129 subsection and the credit allowed in subdivision (2) of this
130 subsection shall not apply if the taxpayer establishes by clear
131 and convincing evidence of the type and in the form specified
132 by the commissioner that: (i) The interest expense is paid,
133 accrued or incurred to a related member organized under the
134 laws of a country other than the United States; (ii) the related
135 member's income from the transaction is subject to a
136 comprehensive income tax treaty between that country and
137 the United States; (iii) the related member's income from the
138 transaction is taxed in that country at a tax rate at least equal
139 to that imposed by this state; and (iv) the interest expense
140 was paid, accrued or incurred pursuant to a transaction that
141 was undertaken for a valid business purpose and using terms
142 that reflect an arm's length relationship.

143 (D) The adjustment required in subdivision (1) of this
144 subsection and the credit allowed in subdivision (2) of this
145 subsection shall not apply if the corporation and the
146 commissioner agree in writing to the application or use of
147 alternative adjustments or computations. The commissioner
148 may, in his or her discretion, agree to the application or use
149 of alternative adjustments or computations when he or she
150 concludes that in the absence of agreement the income of the
151 taxpayer would not be properly reflected.

152 (e) Nothing in this subsection shall be construed to limit
153 or negate the commissioner's authority to otherwise enter into
154 agreements and compromises otherwise allowed by law.

155 (f) *Effective date.* -- The amendments to this section
156 made in the year 2009 are retroactive and are effective for tax
157 years beginning on and after January 1, 2009.

CHAPTER 18. EDUCATION.**ARTICLE 9A. PUBLIC SCHOOL SUPPORT.****§18-9A-2a. Definition of levies for general current expense purposes.**

1 (a) For the purposes of this section only, “property”
2 means only Classes II, III and IV properties exclusive of
3 natural resources property as defined in section ten, article
4 one-c, chapter eleven of this code, personal property,
5 farmland, managed timberland, public utility property or any
6 other centrally assessed property provided in paragraphs (A),
7 (B), (C) and (D), subdivision (2), subsection (a), section five,
8 article one-c, chapter eleven of this code: *Provided*, That
9 nothing in this subsection may be construed to require that
10 levies for general current expense purposes be applied only
11 to those properties that are included in this definition.

12 (b) For the purposes of this section only, the median ratio
13 of the assessed values to actual selling prices in the
14 assessment ratio study applicable to the immediately
15 preceding fiscal year shall be used as the indicator to
16 determine the percentage market value that properties are
17 being assessed at.

18 (c) Notwithstanding any other provision of this section or
19 section two of this article, effective July 1, 2013, for any
20 county that is not assessing property at least at fifty-four
21 percent of market value, “levies for general current expense
22 purposes” means ninety-eight percent of the levy rate for
23 county boards of education set by the Legislature pursuant to
24 section six-f, article eight, chapter eleven of this code.

25 (d) Any county that receives additional state aid due to its
26 using a percentage less than ninety-eight percent in the
27 calculation of levies for general current expense purposes,

28 shall report to the state board how the additional state aid was
29 used. The state board shall compile the reports from all the
30 county boards into a single report, and shall report to the
31 Legislative Oversight Commission on Education
32 Accountability how the county boards used this additional
33 state aid. The report shall be made annually as soon as
34 practical after the end of each fiscal year.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-1c. Voluntary withholding program.

1 (a) An individual filing a new claim for unemployment
2 compensation shall, at the time of filing the claim, be advised
3 by the appropriate bureau employee that:

4 (1) Unemployment compensation is subject to federal and
5 state income tax;

6 (2) Requirements exist pertaining to estimated tax
7 payments;

8 (3) The individual may elect to have federal and state
9 income tax deducted and withheld from the individual's
10 payment of unemployment compensation at the appropriate
11 federal and state withholding rate; and

12 (4) The individual may change a previously elected
13 withholding status.

14 (b) Amounts deducted and withheld from unemployment
15 compensation shall remain in the unemployment fund until
16 transferred to the appropriate federal or state taxing authority
17 as payment of income tax.

18 (c) The commissioner shall follow all procedures
19 specified by the United States Department of Labor, federal
20 Internal Revenue Service and the West Virginia State Tax
21 Division pertaining to the deducting and withholding of
22 income tax.

23 (d) Amounts shall be deducted and withheld in
24 accordance with the priorities established in rules developed
25 by the commissioner.

26 (e) *Effective date.* -- The amendments made to this
27 section regarding withholding for state income tax shall be
28 effective for payments made on and after January 1, 2010.

●

CHAPTER 206

**(Com. Sub. for S.B. 258 - By Senators Tomblin, Mr. President,
and Caruth)
[By Request of the Executive]**

[Passed April 11, 2009; in effect from passage.]

[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §11-8-26 of the Code of West Virginia, 1931, as amended, relating to unlawful expenditures by a local fiscal body; and clarifying that a local fiscal body or its duly authorized officials shall not be penalized for certain deficits relating to the unfunded actuarial accrued liability of the West Virginia Retiree Health Benefit Trust Fund and annual required employer contributions.

Be it enacted by the Legislature of West Virginia:

That §11-8-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. LEVIES.

§11-8-26. Unlawful expenditures by local fiscal body.

1 (a) Except as provided in sections fourteen-b, twenty-
2 five-a and twenty-six-a of this article, a local fiscal body shall
3 not expend money or incur obligations:

4 (1) In an unauthorized manner;

5 (2) For an unauthorized purpose;

6 (3) In excess of the amount allocated to the fund in the
7 levy order; or

8 (4) In excess of the funds available for current expenses.

9 (b) Notwithstanding the foregoing and any other
10 provision of law to the contrary, a local fiscal body or its duly
11 authorized officials may not be penalized for a casual deficit
12 which does not exceed its approved levy estimate by more
13 than three percent: *Provided*, That such casual deficit is
14 satisfied in the levy estimate for the succeeding fiscal year:
15 *Provided, however*, That in calculating a deficit for purposes
16 of this section, account shall not be taken of any amount for
17 which the local fiscal body may be liable for the unfunded
18 actuarial accrued liability of the West Virginia Retiree Health
19 Benefit Trust Fund or any amount allocated to the local fiscal
20 body as an employer annual required contribution that
21 exceeds the minimum annual employer payment component
22 of the contribution, all as provided under article sixteen-d,
23 chapter five of this code.

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CHAPTER 207

(H.B. 2931 - By Delegates White and Campbell)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 12, 2009.]

AN ACT to amend and reenact §11-13A-3b of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-13V-4 of said code, all relating to removing a severance tax on timber for tax years 2010 through 2012, inclusive.

Be it enacted by the Legislature of West Virginia:

That §11-13A-3b of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-13V-4 of said code be amended and reenacted, all to read as follows:

Article

13A. Severance Tax.

13V. Workers' Compensation Debt Reduction Act.

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-3b. Imposition of tax on privilege of severing timber.

1 (a) *Imposition of tax.* -- For the privilege of engaging or
2 continuing within this state in the business of severing timber
3 for sale, profit or commercial use, there is hereby levied and
4 shall be collected from every person exercising such privilege
5 an annual privilege tax.

6 (b) *Rate and measure of tax.* -- The tax imposed in
7 subsection (a) of this section shall be three and twenty-two

8 hundredths percent of the gross value of the timber produced,
9 as shown by the gross proceeds derived from the sale thereof
10 by the producer, except as otherwise provided in this article:
11 *Provided*, That as to timber produced after December 31,
12 2006 the rate of the tax imposed in subsection (a) of this
13 section shall be one and twenty-two hundredths percent of
14 the gross value of the timber produced, as shown by the gross
15 proceeds derived from the sale thereof by the producer,
16 except as otherwise provided in this article.

17 (c) *Tax in addition to other taxes.* -- The tax imposed by
18 this section shall apply to all persons severing timber in this
19 state and shall be in addition to all other taxes imposed by
20 law.

21 (d) *Elimination of tax.*-- Beginning in the tax year 2010
22 and continuing for two consecutive tax years thereafter, the
23 tax imposed by this section is discontinued.

ARTICLE 13V. WORKERS' COMPENSATION DEBT REDUCTION ACT.

§11-13V-4. Imposition of tax.

1 (a) *Imposition of additional tax on privilege of severing*
2 *coal.* -- Upon every person exercising the privilege of
3 engaging within this state in severing, extracting, reducing to
4 possession or producing coal for sale, profit or commercial
5 use, there is hereby imposed an additional annual severance
6 tax for exercising the privilege after November 30, 2005.
7 The tax shall be \$.56 per ton and the measure of the tax is
8 tons of clean coal severed or produced in this state by the
9 taxpayer after November 30, 2005, for sale, profit or
10 commercial use during the taxable year. When the person
11 mining the coal sells raw coal, the measure of tax shall be ton
12 of clean coal determined in accordance with rules
13 promulgated by the Tax Commissioner as provided in article
14 three, chapter twenty-nine-a of this code. If this rule is filed
15 for public comment before July 1, 2005, the rule may be

16 promulgated as an emergency legislative rule. This tax shall
17 be in addition to all taxes imposed with respect to the
18 severance and production of coal in this state including, but
19 not limited to, the taxes imposed by articles twelve-d and
20 thirteen-a of this chapter and the taxes imposed by sections
21 eleven and thirty-two, article three, chapter twenty-two of
22 this code, if applicable.

23 (b) *Imposition of additional tax on privilege of severing*
24 *natural gas.* -- For the privilege of engaging or continuing
25 within this state in the business of severing natural gas for
26 sale, profit or commercial use, there is hereby levied and
27 shall be collected from every person exercising this privilege
28 an additional annual privilege tax. The rate of this additional
29 tax shall be \$.047 per mcf of natural gas and the measure of
30 the tax is natural gas produced after November 30, 2005,
31 determined at the point where the production privilege ends
32 for purposes of the tax imposed by section three-a, article
33 thirteen-a of this chapter, and with respect to which the tax
34 imposed by section three-a of said article thirteen-a is paid.
35 The additional tax imposed by this subsection shall be
36 collected with respect to natural gas produced after
37 November 30, 2005.

38 (c) *Imposition of additional tax on privilege of severing*
39 *timber.* -- For the privilege of engaging or continuing within
40 this state in the business of severing timber for sale, profit or
41 commercial use, there is hereby levied and shall be collected
42 from every person exercising this privilege an additional
43 annual privilege tax equal to two and seventy-eight
44 hundredths percent of the gross value of the timber produced,
45 determined at the point where the production privilege ends
46 for purposes of the tax imposed by section three-b, article
47 thirteen-a of this chapter and upon which the tax imposed by
48 section three-b of said article thirteen-a is paid. The
49 additional tax imposed by this subsection shall be collected
50 with respect to timber produced after November 30, 2005:
51 *Provided,* That during the period of discontinuance of the tax
52 as provided in subsection (d), section three-b, article

53 thirteen-a of this chapter, the additional tax imposed by this
54 subsection shall be determined as provided in this subsection
55 in the same manner as if the tax described under section
56 three-b, article thirteen-a of this chapter is being imposed and
57 collected, subject to the provisions of subsection (g) of this
58 section.

59 (d) *No pyramiding of tax burden.* -- Each ton of coal and
60 each mcf of natural gas severed in this state after the effective
61 date of the taxes imposed by this section shall be included in
62 the measure of a tax imposed by this section only one time.

63 (e) *Effect on utility rates.* -- The Public Service
64 Commission shall, upon the application of any public utility
65 that, as of the effective date of the taxes imposed by this
66 section, is not currently making periodic adjustments to its
67 approved rates and charges to reflect changes in its fuel costs
68 because the mechanism historically used to make such
69 periodic adjustments is suspended by an order of the
70 commission, allow such utility to defer, for future recovery
71 from its customers, any increase in its costs attributable to the
72 taxes imposed by this section upon: Coal and natural gas
73 severed in this state and utilized in the production of
74 electricity generated or produced in this state and sold to
75 customers in this state; coal and natural gas severed in this
76 state and utilized in the production of electricity not
77 generated or produced in this state that is sold to customers
78 in this state; and natural gas severed in this state that is sold
79 to customers in this state.

80 (f) *Dedication of new taxes.* -- The net amount of all
81 moneys received by the Tax Commissioner from collection
82 of the taxes imposed by this section, including any interest,
83 additions to tax, or penalties collected with respect to these
84 taxes pursuant to article ten, chapter eleven of this code, shall
85 be deposited in the Workers' Compensation Debt Reduction
86 Fund created in article two-d, chapter twenty-three of this
87 code. As used in this section, "net amount of all taxes
88 received by the Tax Commissioner" means the gross amount

89 received by the Tax Commissioner less the amount of any
90 refunds paid for overpayment of the taxes imposed by this
91 article, including the amount of any interest on the
92 overpayment amount due the taxpayer under the provisions
93 of section fourteen, article ten of this chapter.

94 (g) *Sunset expiration date of taxes.* -- The new taxes
95 imposed by this section shall expire and not be imposed with
96 respect to privileges exercised on and after the first day of the
97 month following the month in which the Governor certifies
98 to the Legislature that: (1) The revenue bonds issued
99 pursuant to article two-d, chapter twenty-three of this code,
100 have been retired, or payment of the debt service provided
101 for; and (2) that an independent certified actuary has
102 determined that the unfunded liability of the old fund, as
103 defined in chapter twenty-three of this code, has been paid or
104 provided for in its entirety. Expiration of the taxes imposed
105 in this section as provided in this subsection shall not relieve
106 any person from payment of any tax imposed with respect to
107 privileges exercised before the expiration date.



CHAPTER 208

(Com. Sub. for H.B. 2535 - By Delegate Wooton)

[Amended and again passed May 27, 2009, as a result of the
objections of the Governor; in effect July 1, 2009.]
[Approved by the Governor on June 5, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new article, designated §11-13Z-1, §11-
13Z-2 and §11-13Z-3, all relating to providing for a tax credit
for solar energy systems; and requiring the Tax Commissioner
to promulgate rules for claiming and applying the tax credit.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §11-13Z-1, §11-13Z-2 and §11-13Z-3, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 13Z. RESIDENTIAL SOLAR ENERGY TAX CREDIT.

§11-13Z-1. Amount of credit.

§11-13Z-2. Restrictions.

§11-13Z-3. Carryover credit allowed; Tax Commissioner to promulgate rules.

§11-13Z-1. Amount of credit.

1 Any taxpayer who installs or causes to be installed a solar
2 energy system on property located in this state and owned by
3 the taxpayer and used as a residence after July 1, 2009, shall
4 be allowed a credit against the taxes imposed in article
5 twenty-one of this chapter in an amount equal to thirty
6 percent of the cost to purchase and install the system up to a
7 maximum amount of \$2,000.

§11-13Z-2. Restrictions.

1 In order to receive the credit for a solar energy system on
2 residential property, the system must use solar energy to:

3 (1) Generate electricity;

4 (2) Heat or cool a structure; or

5 (3) Provide hot water for use in the structure or to provide
6 solar process heat: *Provided*, That this does not include a
7 swimming pool, hot tub or any other energy storage medium
8 that has a function other than storage: *Provided, however*,
9 That the system used to provide hot water must derive at least
10 fifty percent of its energy to heat or cool from the sun.

§11-13Z-3. Carryover credit allowed; Tax Commissioner to promulgate rules.

1 If the amount of the credit exceeds the taxpayer's liability
2 for the taxable year, the amount which exceeds the tax
3 liability may be carried over and applied as a credit against
4 the tax liability of the taxpayer pursuant to the provisions of
5 article twenty-one of this chapter to each of the next taxable
6 years unless sooner used.

7 The State Tax Commissioner shall promulgate legislative
8 rules pursuant to the provisions of chapter twenty-nine-a of
9 this code regarding the applicability, method of claiming of
10 the credit, recapture of the credit and documentation
11 necessary to claim the credit allowed by this article. No
12 taxpayer shall take a credit pursuant to this article for a solar
13 energy system installed after July 1, 2013.

CHAPTER 209

**(Com. Sub. for H.B. 2999 - By Delegates White, Campbell,
Kominar, Doyle and Carmichael)**

[Passed April 11, 2009; in effect from passage.]

[Approved by the Governor on May 6, 2009.]

AN ACT to amend and reenact §11-15-6 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-15A-18 of said code; and to amend and reenact §11-15B-21, §11-15B-24, §11-15B-28 and §11-15B-32 of said code, all relating to the streamlined sales and use tax agreement and the West Virginia consumers sales and service tax and use tax; providing relief

from liability in specified circumstances; administrative exemptions; the requirements of certified service providers and the effective date.

Be it enacted by the Legislature of West Virginia:

That §11-15-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-15A-18 of said code be amended and reenacted; and that §11-15B-21, §11-15B-24, §11-15B-28 and §11-15B-32 of said code be amended and reenacted, all to read as follows:

Article

15. Consumers sales and service tax.

15A. Use tax.

15B. Streamlined sales and use tax administration act.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-6. Vendor must show sale or service exempt; presumption.

1 (a) The burden of proving that a sale or service was
2 exempt from the tax shall be upon the vendor, unless the
3 vendor takes from the purchaser an exemption certificate
4 signed by and bearing the address of the purchaser and
5 setting forth the reason for the exemption and substantially in
6 the form prescribed by the tax commissioner.

7 (b) To prevent evasion, it is presumed that all sales and
8 services are subject to the tax until the contrary is clearly
9 established.

ARTICLE 15A. USE TAX.

§11-15A-18. Seller must show sale not at retail; presumption.

1 (a) The burden of proving that a sale was not taxable
2 shall be upon the seller, unless, the seller, in good faith, takes

3 from the purchaser a certificate signed by and bearing the
4 address of the purchaser setting forth the reason for
5 exemption of the sale from imposition of the tax.

6 (b) Notwithstanding subsection (a) of this section, a seller
7 is relieved of the good faith requirement for the taking of an
8 exemption certificate in accordance with article fifteen-b of
9 this chapter, and any rule promulgated by the Tax
10 Commissioner.

11 (c) To prevent evasion it is presumed that all proceeds are
12 subject to the tax until the contrary is clearly established.

13 (d) This certificate shall be substantially in the form
14 prescribed by the Tax Commissioner.

ARTICLE 15B. STREAMLINED SALES AND USE TAX ADMINISTRATION ACT.

§11-15B-21. Notice for state tax changes.

§11-15B-24. Administration of exemptions.

§11-15B-28. Confidentiality and privacy protections under Model I.

§11-15B-32. Effective date.

§11-15B-21. Notice for state tax changes.

1 (a) *General.* -- The Tax Commissioner shall provide
2 sellers with as much advance notice as practicable of a rate
3 change for a tax levied by article fifteen or fifteen-a of this
4 chapter.

5 (b) *Effective date of rate changes.* -- Unless the
6 Legislature expressly provides a different effective date for
7 a rate change, the change shall take effect on the first day of
8 the calendar quarter that begins on or after the effective date
9 of the act of the Legislature that makes the rate change and
10 that is more than sixty days after passage of the bill making
11 the rate change.

12 (c) *Notification of changes to tax base.* -- The tax
13 commissioner shall make reasonable efforts to notify sellers
14 of legislative changes to the tax base and to amendments to
15 sales and use tax rules, as that term is defined in section two,
16 article one, chapter twenty-nine-a of this code.

17 (d) *Liability of seller.*

18 (1) Failure of a seller to receive notice or failure of the
19 state to provide notice of a rate change or a change in the tax
20 base, or to limit the effective date of a rate change, does not
21 relieve the seller of its obligation to collect sales or use taxes
22 for this state.

23 (2) Failure of the Tax Commissioner to provide for at
24 least thirty days between the enactment of the statute
25 providing for a rate change and the effective date of such rate
26 change shall relieve the seller of liability for failing to collect
27 tax at the new rate if:

28 (A) The seller collected tax at the immediately preceding
29 effective rate; and

30 (B) The seller's failure to collect at the newly effective
31 rate does not extend beyond thirty days after the date of the
32 enactment of the new rate.

33 (e) Notwithstanding subdivision (d)(2), if the seller
34 fraudulently failed to collect at the new rate or solicits
35 purchasers based on the immediately preceding effective rate
36 this relief does not apply.

§11-15B-24. Administration of exemptions.

1 (a) *General rules.* -- When a purchaser claims an
2 exemption from paying tax under article fifteen or fifteen-a
3 of this chapter:

4 (1) Sellers shall obtain identifying information of the
5 purchaser and the reason for claiming a tax exemption at the
6 time of the purchase, as determined by the governing board.

7 (2) A purchaser is not required to provide a signature to
8 claim an exemption from tax unless a paper exemption
9 certificate is used.

10 (3) The seller shall use the standard form for claiming an
11 exemption electronically that is adopted by the governing
12 board.

13 (4) The seller shall obtain the same information for proof
14 of a claimed exemption regardless of the medium in which
15 the transaction occurred.

16 (5) The Tax Commissioner may utilize a system wherein
17 the purchaser exempt from the payment of the tax is issued
18 an identification number that is presented to the seller at the
19 time of the sale.

20 (6) The seller shall maintain proper records of exempt
21 transactions and provide the records to the Tax
22 Commissioner or the Tax Commissioner's designee.

23 (7) The Tax Commissioner shall administer use-based
24 and entity-based exemptions when practicable through a
25 direct pay permit, an exemption certificate or another means
26 that does not burden sellers.

27 (8) After December 31, 2007, in the case of drop
28 shipments, a third-party vendor such as a drop shipper may
29 claim a resale exemption based on an exemption certificate
30 provided by its customer/reseller or any other acceptable
31 information available to the third-party vendor evidencing
32 qualification for a resale exemption, regardless of whether
33 the customer/reseller is registered to collect and remit sales

34 and use taxes in this state, when the sale is sourced to this
35 state.

36 (b) The Tax Commissioner shall relieve sellers that
37 follow the requirements of this section from the tax otherwise
38 applicable if it is determined that the purchaser improperly
39 claimed an exemption and shall hold the purchaser liable for
40 the nonpayment of tax. This relief from liability does not
41 apply:

42 (A) To a seller who fraudulently fails to collect the tax;

43 (B) To a seller who solicits purchasers to participate in
44 the unlawful claim of an exemption;

45 (C) To a seller who accepts an exemption certificate
46 when the purchaser claims an entity-based exemption when:
47 (i) The subject of the transaction sought to be covered by the
48 exemption certificate is actually received by the purchaser at
49 a location operated by the seller; and (ii) the state in which
50 that location resides provides an exemption certificate that
51 clearly and affirmatively indicates (graying out exemption
52 reason types on uniform form and posting it on a state's
53 website is an indicator) that the claimed exemption is not
54 available in that state.

55 (c) *Time within which seller must obtain exemption*
56 *certificates.* -- A seller is relieved from paying tax otherwise
57 applicable under article fifteen or fifteen-a of this chapter if
58 the seller obtains a fully completed exemption certificate or
59 captures the required data elements within ninety days
60 subsequent to the date of sale.

61 (1) If the seller has not obtained an exemption certificate
62 or all required data elements, the seller may, within one
63 hundred twenty days subsequent to a request for
64 substantiation by the Tax Commissioner, either prove that the

65 transaction was not subject to tax by other means or obtain a
66 fully completed exemption certificate from the purchaser,
67 taken in good faith. For purposes of this section, the Tax
68 Commissioner may continue to apply this State's standards of
69 good faith until a uniform standard for good faith is defined
70 in the Streamlined Sales and Use Tax Agreement.

71 (2) Nothing in this section shall affect the ability of the
72 Tax Commissioner to require purchasers to update exemption
73 certificate information or to reapply with the state to claim
74 certain exemptions.

75 (3) Notwithstanding the preceding provisions of this
76 section, when an exemption may be claimed by exemption
77 certificate, a seller is relieved from paying the tax otherwise
78 applicable if the seller obtains a blanket exemption certificate
79 from a purchaser with which the seller has a recurring
80 business relationship. The Tax Commissioner may not
81 request from the seller renewal of blanket certificates or
82 updates of exemption certificate information or data elements
83 when there is a recurring business relationship between the
84 buyer and seller. For purposes of this subdivision, a
85 recurring business relationship exists when a period of no
86 more than twelve months elapses between sales transactions.

87 (d) *Exception.* -- No exemption certificate or direct pay
88 permit number is required when the sale is exempt per se
89 from the taxes imposed by articles fifteen and fifteen-a of this
90 chapter.

§11-15B-28. Confidentiality and privacy protections under Model I.

1 (a) *Purpose.* -- The purpose of this section is to set forth
2 the policy of this State for the protection of the
3 confidentiality rights of all participants in the streamlined
4 sales and use tax administration and collection system and of

5 the privacy interests of consumers who deal with Model I
6 sellers.

7 (b) *Certain terms defined.* -- As used in this section:

8 (1) The term "confidential taxpayer information" means
9 all information that is protected under section five-d, article
10 ten of this chapter;

11 (2) The term "personally identifiable information" means
12 information that identifies a person; and

13 (3) The term "anonymous data" means information that
14 does not identify a person.

15 (c) *Certified service providers.* -- With very limited
16 exceptions, a certified service provider shall perform its tax
17 calculation, remittance and reporting functions without
18 retaining the personally identifiable information of
19 consumers.

20 (d) *Certification of service providers.* -- The governing
21 board may certify a service provider only if that certified
22 service provider certifies that:

23 (1) Its system has been designed and tested to ensure that
24 the fundamental precept of anonymity is respected;

25 (2) That personally identifiable information is only used
26 and retained to the extent necessary for the administration of
27 Model I with respect to exempt purchasers and proper
28 identification of taxing jurisdictions;

29 (3) It provides consumers clear and conspicuous notice of
30 its information practices, including what information it
31 collects, how it collects the information, how it uses the
32 information, how long, if at all, it retains the information and

33 whether it discloses the information to member states. This
34 notice is satisfied by a written privacy policy statement
35 accessible by the public on the official website of the
36 certified service provider;

37 (4) Its collection, use and retention of personally
38 identifiable information is limited to that required by the
39 states that are members of the Streamlined Sales and Use Tax
40 Agreement to ensure the validity of exemptions from taxation
41 that are claimed by reason of a consumer's status or the
42 intended use of the goods or services purchased and for
43 documentation of the correct assignment of taxing
44 jurisdictions; and

45 (5) It provides adequate technical, physical and
46 administrative safeguards as to protect personally identifiable
47 information from unauthorized access and disclosure.

48 (e) *State notification of privacy policy.* -- The Tax
49 Commissioner shall provide public notification to consumers,
50 including their exempt purchasers, of this state's practices
51 relating to the collection, use and retention of personally
52 identifiable information.

53 (f) *Destruction of confidential information.* -- When any
54 personally identifiable information that has been collected
55 and retained by the Tax Commissioner is no longer required
56 for the purposes set forth in subdivision (4), subsection (d) of
57 this section, the information shall no longer be retained by
58 the Tax Commissioner.

59 (g) *Review and correction by individuals.* -- When
60 personally identifiable information regarding an individual is
61 retained by or on behalf of the Tax Commissioner, the
62 commissioner shall provide reasonable access by an
63 individual to his or her own information in the
64 commissioner's possession and a right to correct any
65 inaccurately recorded information.

66 (h) *Discovery by other persons.* -- If anyone other than
67 the individual, or a person authorized in writing by the
68 individual, or by controlling law seeks to discover personally
69 identifiable information, the Tax Commissioner shall make
70 a reasonable and timely effort to notify the individual of the
71 request.

72 (i) *Enforcement.* -- This privacy policy shall be enforced
73 by the Tax Commissioner or the Attorney General of this
74 State.

75 (j) This section shall not be interpreted as limiting or
76 abrogating any other statutory or regulatory provision of this
77 State regarding the collection, use and maintenance of
78 confidential taxpayer information, which provisions remain
79 fully applicable and binding. This section and the
80 Streamlined Sales and Use Tax Agreement do not enlarge or
81 limit the authority of this State to:

82 (1) Conduct audits or other reviews as provided under the
83 Streamlined Sales and Use Tax Agreement and state law;

84 (2) Provide records pursuant to the Freedom of
85 Information Act, disclosure laws with governmental agencies
86 or other laws or regulations;

87 (3) Prevent, consistent with state law, disclosures of
88 confidential taxpayer information;

89 (4) Prevent, consistent with federal law, disclosures or
90 misuse of federal return information obtained under a
91 disclosure agreement with the Internal Revenue Service; or

92 (5) Collect, disclose, disseminate or otherwise use
93 anonymous data for governmental purposes.

94 (k) *Service provider's confidentiality policy may be more*
95 *restrictive.* -- This privacy policy does not preclude the
96 governing board from certifying a certified service provider
97 whose privacy policy is more protective of confidential
98 taxpayer information or personally identifiable information
99 than is required by the agreement or the laws of this state.

***§11-15B-32. Effective date.**

1 (a) The provisions of this article, as amended or added
2 during the regular legislative session in the year 2003, shall
3 take effect January 1, 2004, and apply to all sales made on or
4 after that date and to all returns and payments due on or after
5 that day, except as otherwise expressly provided in section
6 five of this article.

7 (b) The provisions of this article, as amended or added
8 during the second extraordinary legislative session in the year
9 2003, shall take effect January 1, 2004, and apply to all sales
10 made on or after that date.

11 (c) The provisions of this article, as amended or added by
12 Act of the Legislature in the year 2004, shall apply to all
13 sales made on or after the date of passage in the year 2004.

14 (d) The provisions of this article, as amended or added
15 during the regular legislative session in the year 2008, shall
16 apply to all sales made on or after the date of passage and to
17 all returns and payments due on or after that day, except as
18 otherwise expressly provided in this article.

19 (e) The provisions of this article, as amended or added
20 during the regular legislative session in the year 2009, shall
21 apply to all sales made on or after the date of passage and to
22 all returns and payments due on or after that day, except as
23 otherwise expressly provided in this article.

***CLERK'S NOTE:** This section was also amended by SB 533 (Chapter 210), which passed subsequent to this act.

●

CHAPTER 210

**(Com. Sub. for S.B. 533 - By Senators McCabe, Foster,
Unger and Kessler)**

[Passed April 11, 2009; in effect from passage.]
[Approved by the Governor on May 7, 2009.]

AN ACT to amend and reenact §11-15-9i of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-15B-2 and §11-15B-32 of said code, all relating to the definitions of “health care provider” and “drug”; and exempting from the consumers sales and service tax drugs purchased by veterinarians to be dispensed upon prescription for the medical treatment of animals.

Be it enacted by the Legislature of West Virginia:

That §11-15-9i of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-15B-2 and §11-15B-32 of said code be amended and reenacted, all to read as follows:

Article

- 15. Consumers Sales and Service Tax.**
- 15B. Sales and Use Tax Administration.**

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9i. Exempt drugs, durable medical goods, mobility enhancing equipment and prosthetic devices.

1 (a) Notwithstanding any provision of this article, article
2 fifteen-a or article fifteen-b of this chapter, the purchase by
3 a health care provider of drugs, durable medical goods,
4 mobility enhancing equipment and prosthetic devices, all as
5 defined in section two, article fifteen-b of this chapter, to be
6 dispensed upon prescription and intended for use in the
7 diagnosis, cure, mitigation, treatment or prevention of injury
8 or disease are exempt from the tax imposed by this article.

9 (b) For purposes of this exemption, "health care provider"
10 means any person licensed to prescribe drugs, durable
11 medical goods, mobility enhancing equipment and prosthetic
12 devices intended for use in the diagnosis, cure, mitigation,
13 treatment or prevention of injury or disease. For purposes of
14 this section, the term "health care provider" includes any
15 hospital, medical clinic, nursing home or provider of
16 inpatient hospital services and any provider of outpatient
17 hospital services, physician services, nursing services,
18 ambulance services, surgical services or veterinary services:
19 *Provided*, That the amendment to this subsection enacted
20 during the 2009 regular legislative session shall be effective
21 on or after July 1, 2009.

22 (c) This section shall be effective July 1, 2007.

ARTICLE 15B. SALES AND USE TAX ADMINISTRATION.

§11-15B-2 Definitions.

§11-15B-32. Effective date.

§11-15B-2. Definitions.

1 (a) *General.* -- When used in this article and articles
2 fifteen and fifteen-a of this chapter, words defined in
3 subsection (b) of this section shall have the meanings
4 ascribed to them in this section, except where a different
5 meaning is distinctly expressed or the context in which the
6 term is used clearly indicates that a different meaning is
7 intended by the Legislature.

8 (b) *Terms defined.* —

9 (1) "Agent" means a person appointed by a seller to
10 represent the seller before the member states.

11 (2) "Agreement" means the Streamlined Sales and Use
12 Tax Agreement as defined in section two-a of this article.

13 (3) "Alcoholic beverages" means beverages that are
14 suitable for human consumption and contain one half of one
15 percent or more of alcohol by volume.

16 (4) "Bundled transaction" means the retail sale of two or
17 more products, except real property and services to real
18 property, where: (i) The products are otherwise distinct and
19 identifiable; and (ii) the products are sold for one
20 nonitemized price. A "bundled transaction" does not include
21 the sale of any products in which the "sales price" varies, or
22 is negotiable, based on the selection by the purchaser of the
23 products included in the transaction.

24 (A) "Distinct and identifiable products" does not include:

25 (i) Packaging such as containers, boxes, sacks, bags and
26 bottles or other materials such as wrapping, labels, tags and
27 instruction guides that accompany the "retail sale" of the
28 products and are incidental or immaterial to the "retail sale"
29 thereof. Examples of packaging that are incidental or
30 immaterial include grocery sacks, shoe boxes, dry cleaning
31 garment bags and express delivery envelopes and boxes;

32 (ii) A product provided free of charge with the required
33 purchase of another product. A product is "provided free of
34 charge" if the "sales price" of the product purchased does not
35 vary depending on the inclusion of the product "provided free
36 of charge"; or

37 (iii) Items included in the member state's definition of
38 "sales price" as defined in this section.

39 (B) The term "one nonitemized price" does not include a
40 price that is separately identified by product on binding sales
41 or other supporting sales-related documentation made
42 available to the customer in paper or electronic form
43 including, but not limited to, an invoice, bill of sale, receipt,
44 contract, service agreement, lease agreement, periodic notice
45 of rates and services, rate card or price list.

46 (C) A transaction that otherwise meets the definition of
47 a "bundled transaction", as defined in this subdivision, is not
48 a "bundled transaction" if it is:

49 (i) The "retail sale" of tangible personal property and a
50 service where the tangible personal property is essential to
51 the use of the service and is provided exclusively in
52 connection with the service and the true object of the
53 transaction is the service; or

54 (ii) The "retail sale" of services where one service is
55 provided that is essential to the use or receipt of a second
56 service and the first service is provided exclusively in
57 connection with the second service and the true object of the
58 transaction is the second service; or

59 (iii) A transaction that includes taxable products and
60 nontaxable products and the "purchase price" or "sales price"
61 of the taxable products is de minimis;

62 (I) "De minimis" means the seller's "purchase price" or
63 "sales price" of the taxable products is ten percent or less of
64 the total "purchase price" or "sales price" of the bundled
65 products;

66 (II) Sellers shall use either the "purchase price" or the
67 "sales price" of the products to determine if the taxable

68 products are de minimis. Sellers may not use a combination
69 of the "purchase price" and "sales price" of the products to
70 determine if the taxable products are de minimis;

71 (III) Sellers shall use the full term of a service contract to
72 determine if the taxable products are de minimis; or

73 (iv) A transaction that includes products taxable at the
74 general rate of tax and food or food ingredients taxable at a
75 lower rate of tax and the "purchase price" or "sales price" of
76 the products taxable at the general sales tax rate is de
77 minimis. For purposes of this subparagraph, the term "de
78 minimis" has the same meaning as ascribed to it under
79 subparagraph (iii) of this paragraph;

80 (v) The "retail sale" of exempt tangible personal property,
81 or food and food ingredients taxable at a lower rate of tax,
82 and tangible personal property taxable at the general rate of
83 tax where:

84 (I) The transaction includes "food and food ingredients",
85 "drugs", "durable medical equipment", "mobility-enhancing
86 equipment", "over-the-counter drugs", "prosthetic devices"
87 or medical supplies, all as defined in this article; and

88 (II) Where the seller's "purchase price" or "sales price" of
89 the taxable tangible personal property taxable at the general
90 rate of tax is fifty percent or less of the total "purchase price"
91 or "sales price" of the bundled tangible personal property.
92 Sellers may not use a combination of the "purchase price"
93 and "sales price" of the tangible personal property when
94 making the fifty percent determination for a transaction.

95 (5) "Candy" means a preparation of sugar, honey or other
96 natural or artificial sweeteners in combination with chocolate,
97 fruits, nuts or other ingredients or flavorings in the form of
98 bars, drops or pieces. "Candy" shall not include any

99 preparation containing flour and shall require no
100 refrigeration.

101 (6) "Clothing" means all human wearing apparel suitable
102 for general use. The following list contains examples and is
103 not intended to be an all-inclusive list.

104 (A) "Clothing" shall include:

105 (i) Aprons, household and shop;

106 (ii) Athletic supporters;

107 (iii) Baby receiving blankets;

108 (iv) Bathing suits and caps;

109 (v) Beach capes and coats;

110 (vi) Belts and suspenders;

111 (vii) Boots;

112 (viii) Coats and jackets;

113 (ix) Costumes;

114 (x) Diapers, children and adult, including disposable
115 diapers;

116 (xi) Ear muffs;

117 (xii) Footlets;

118 (xiii) Formal wear;

119 (xiv) Garters and garter belts;

- 120 (xv) Girdles;
- 121 (xvi) Gloves and mittens for general use;
- 122 (xvii) Hats and caps;
- 123 (xviii) Hosiery;
- 124 (xix) Insoles for shoes;
- 125 (xx) Lab coats;
- 126 (xxi) Neckties;
- 127 (xxii) Overshoes;
- 128 (xxiii) Pantyhose;
- 129 (xxiv) Rainwear;
- 130 (xxv) Rubber pants;
- 131 (xxvi) Sandals;
- 132 (xxvii) Scarves;
- 133 (xxviii) Shoes and shoe laces;
- 134 (xxix) Slippers;
- 135 (xxx) Sneakers;
- 136 (xxxi) Socks and stockings;
- 137 (xxxii) Steel-toed shoes;
- 138 (xxxiii) Underwear;

- 139 (xxxiv) Uniforms, athletic and nonathletic; and
- 140 (xxxv) Wedding apparel.
- 141 (B) “Clothing” shall not include:
- 142 (i) Belt buckles sold separately;
- 143 (ii) Costume masks sold separately;
- 144 (iii) Patches and emblems sold separately;
- 145 (iv) Sewing equipment and supplies, including, but not
- 146 limited to, knitting needles, patterns, pins, scissors, sewing
- 147 machines, sewing needles, tape measures and thimbles; and
- 148 (v) Sewing materials that become part of “clothing”
- 149 including, but not limited to, buttons, fabric, lace, thread,
- 150 yarn and zippers.
- 151 (7) “Clothing accessories or equipment” means incidental
- 152 items worn on the person or in conjunction with “clothing”.
- 153 “Clothing accessories or equipment” are mutually exclusive
- 154 of and may be taxed differently than apparel within the
- 155 definition of “clothing”, “sport or recreational equipment”
- 156 and “protective equipment”. The following list contains
- 157 examples and is not intended to be an all-inclusive list.
- 158 “Clothing accessories or equipment” shall include:
- 159 (a) Briefcases;
- 160 (b) Cosmetics;
- 161 (c) Hair notions, including, but not limited to, barrettes,
- 162 hair bows and hair nets;
- 163 (d) Handbags;

- 164 (e) Handkerchiefs;
- 165 (f) Jewelry;
- 166 (g) Sunglasses, nonprescription;
- 167 (h) Umbrellas;
- 168 (i) Wallets;
- 169 (j) Watches; and
- 170 (k) Wigs and hair pieces.

171 (8) "Certified automated system" or "CAS" means
172 software certified under the agreement to calculate the tax
173 imposed by each jurisdiction on a transaction, determine the
174 amount of tax to remit to the appropriate state and maintain
175 a record of the transaction.

176 (9) "Certified service provider" or "CSP" means an agent
177 certified under the agreement to perform all of the seller's
178 sales and use tax functions other than the seller's obligation
179 to remit tax on its own purchases.

180 (10) "Computer" means an electronic device that accepts
181 information in digital or similar form and manipulates the
182 information for a result based on a sequence of instructions.

183 (11) "Computer software" means a set of coded
184 instructions designed to cause a "computer" or automatic data
185 processing equipment to perform a task.

186 (12) "Delivered" means delivered to the purchaser by
187 means other than tangible storage media.

188 (13) "Delivery charges" means charges by the seller of
189 personal property or services for preparation and delivery to
190 a location designated by the purchaser of personal property

191 or services including, but not limited to, transportation,
192 shipping, postage, handling, crating and packing.

193 (14) "Dietary supplement" means any product, other than
194 "tobacco", intended to supplement the diet that:

195 (A) Contains one or more of the following dietary
196 ingredients:

197 (i) A vitamin;

198 (ii) A mineral;

199 (iii) An herb or other botanical;

200 (iv) An amino acid;

201 (v) A dietary substance for use by humans to supplement
202 the diet by increasing the total dietary intake; or

203 (vi) A concentrate, metabolite, constituent, extract or
204 combination of any ingredient described in subparagraph (i)
205 through (v), inclusive, of this paragraph;

206 (B) And is intended for ingestion in tablet, capsule,
207 powder, softgel, gelcap or liquid form, or if not intended for
208 ingestion in such a form, is not represented as conventional
209 food and is not represented for use as a sole item of a meal or
210 of the diet; and

211 (C) Is required to be labeled as a dietary supplement,
212 identifiable by the "Supplemental Facts" box found on the
213 label as required pursuant to 21 CFR §101.36 or in any
214 successor section of the Code of Federal Regulations.

215 (15) "Direct mail" means printed material delivered or
216 distributed by United States mail or other delivery service to

217 a mass audience or to addressees on a mailing list provided
218 by the purchaser or at the direction of the purchaser when the
219 cost of the items are not billed directly to the recipients.
220 "Direct mail" includes tangible personal property supplied
221 directly or indirectly by the purchaser to the direct mail seller
222 for inclusion in the package containing the printed material.
223 "Direct mail" does not include multiple items of printed
224 material delivered to a single address.

225 (16) "Drug" means a compound, substance or
226 preparation, and any component of a compound, substance or
227 preparation, other than food and food ingredients, dietary
228 supplements or alcoholic beverages:

229 (A) Recognized in the official United States
230 Pharmacopoeia, official Homeopathic Pharmacopoeia of the
231 United States or official National Formulary, and supplement
232 to any of them;

233 (B) Intended for use in the diagnosis, cure, mitigation,
234 treatment or prevention of disease; or

235 (C) Intended to affect the structure or any function of the
236 body. The amendment to this subdivision enacted during the
237 2009 regular legislative session shall apply to sales made
238 after July 1, 2009.

239 (17) "Durable medical equipment" means equipment,
240 including repair and replacement parts for the equipment, but
241 does not include "mobility-enhancing equipment", which:

242 (A) Can withstand repeated use;

243 (B) Is primarily and customarily used to serve a medical
244 purpose;

245 (C) Generally is not useful to a person in the absence of
246 illness or injury; and

247 (D) Is not worn in or on the body.

248 (18) "Electronic" means relating to technology having
249 electrical, digital, magnetic, wireless, optical, electromagnetic
250 or similar capabilities.

251 (19) "Eligible property" means an item of a type, such as
252 clothing, that qualifies for a sales tax holiday exemption in
253 this state.

254 (20) "Energy Star qualified product" means a product that
255 meets the energy efficient guidelines set by the United States
256 Environmental Protection Agency and the United States
257 Department of Energy that are authorized to carry the Energy
258 Star label. Covered products are those listed at
259 www.energystar.gov or successor address.

260 (21) "Entity-based exemption" means an exemption
261 based on who purchases the product or service or who sells
262 the product or service. An exemption that is available to all
263 individuals shall not be considered an entity-based
264 exemption.

265 (22) "Food and food ingredients" means substances,
266 whether in liquid, concentrated, solid, frozen, dried or
267 dehydrated form, that are sold for ingestion or chewing by
268 humans and are consumed for their taste or nutritional value.
269 "Food and food ingredients" does not include alcoholic
270 beverages, prepared food or tobacco.

271 (23) "Food sold through vending machines" means food
272 dispensed from a machine or other mechanical device that
273 accepts payment.

274 (24) "Fur clothing means" "clothing" that is required to
275 be labeled as a fur product under the Federal Fur Products
276 Labeling Act (15 U. S. C. §69) and the value of the fur

277 components in the product is more than three times the value
278 of the next most valuable tangible component. "Fur clothing"
279 is human-wearing apparel suitable for general use but may be
280 taxed differently from "clothing". For the purposes of the
281 definition of "fur clothing", the term "fur" means any animal
282 skin or part thereof with hair, fleece or fur fibers attached
283 thereto, either in its raw or processed state, but shall not
284 include such skins that have been converted into leather or
285 suede, or which in processing the hair, fleece or fur fiber has
286 been completely removed.

287 (25) "Governing board" means the governing board of the
288 Streamlined Sales and Use Tax Agreement.

289 (26) "Grooming and hygiene products" are soaps and
290 cleaning solutions, shampoo, toothpaste, mouthwash,
291 antiperspirants and sun tan lotions and screens, regardless of
292 whether the items meet the definition of "over-the-counter
293 drugs".

294 (27) "Includes" and "including" when used in a definition
295 contained in this article is not considered to exclude other
296 things otherwise within the meaning of the term being
297 defined.

298 (28) "Layaway sale" means a transaction in which
299 property is set aside for future delivery to a customer who
300 makes a deposit, agrees to pay the balance of the purchase
301 price over a period of time and, at the end of the payment
302 period, receives the property. An order is accepted for
303 layaway by the seller when the seller removes the property
304 from normal inventory or clearly identifies the property as
305 sold to the purchaser.

306 (29) "Lease" includes rental, hire and license. "Lease"
307 means any transfer of possession or control of tangible
308 personal property for a fixed or indeterminate term for

309 consideration. A lease or rental may include future options
310 to purchase or extend.

311 (A) "Lease" does not include:

312 (i) A transfer of possession or control of property under
313 a security agreement or deferred payment plan that requires
314 the transfer of title upon completion of the required
315 payments;

316 (ii) A transfer or possession or control of property under
317 an agreement that requires the transfer of title upon
318 completion of required payments and payment of an option
319 price does not exceed the greater of one hundred dollars or
320 one percent of the total required payments; or

321 (iii) Providing tangible personal property along with an
322 operator for a fixed or indeterminate period of time. A
323 condition of this exclusion is that the operator is necessary
324 for the equipment to perform as designed. For the purpose of
325 this subparagraph, an operator must do more than maintain,
326 inspect or set-up the tangible personal property.

327 (iv) "Lease" or "rental" includes agreements covering
328 motor vehicles and trailers where the amount of consideration
329 may be increased or decreased by reference to the amount
330 realized upon sale or disposition of the property as defined in
331 26 U. S. C.7701(h)(1).

332 (B) This definition shall be used for sales and use tax
333 purposes regardless if a transaction is characterized as a lease
334 or rental under generally accepted accounting principles, the
335 Internal Revenue Code, the Uniform Commercial Code or
336 other provisions of federal, state or local law.

337 (30) "Load and leave" means delivery to the purchaser by
338 use of a tangible storage media where the tangible storage
339 media is not physically transferred to the purchaser.

340 (31) "Mobility-enhancing equipment" means equipment,
341 including repair and replacement parts to the equipment, but
342 does not include "durable medical equipment", which:

343 (A) Is primarily and customarily used to provide or
344 increase the ability to move from one place to another and
345 which is appropriate for use either in a home or a motor
346 vehicle;

347 (B) Is not generally used by persons with normal
348 mobility; and

349 (C) Does not include any motor vehicle or equipment on
350 a motor vehicle normally provided by a motor vehicle
351 manufacturer.

352 (32) "Model I seller" means a seller that has selected a
353 certified service provider as its agent to perform all the
354 seller's sales and use tax functions, other than the seller's
355 obligation to remit tax on its own purchases.

356 (33) "Model II seller" means a seller that has selected a
357 certified automated system to perform part of its sales and
358 use tax functions, but retains responsibility for remitting the
359 tax.

360 (34) "Model III seller" means a seller that has sales in at
361 least five member states, has total annual sales revenue of at
362 least five hundred million dollars, has a proprietary system
363 that calculates the amount of tax due each jurisdiction and
364 has entered into a performance agreement with the member
365 states that establishes a tax performance standard for the
366 seller. As used in this definition, a seller includes an
367 affiliated group of sellers using the same proprietary system.

368 (35) "Over-the-counter drug" means a drug that contains
369 a label that identifies the product as a drug as required by 21
370 CFR §201.66. The "over-the-counter drug" label includes:

371 (A) A "drug facts" panel; or

372 (B) A statement of the "active ingredient(s)" with a list of
373 those ingredients contained in the compound, substance or
374 preparation.

375 (36) "Person" means an individual, trust, estate, fiduciary,
376 partnership, limited liability company, limited liability
377 partnership, corporation or any other legal entity.

378 (37) "Personal service" includes those:

379 (A) Compensated by the payment of wages in the
380 ordinary course of employment; and

381 (B) Rendered to the person of an individual without, at
382 the same time, selling tangible personal property, such as
383 nursing, barbering, manicuring and similar services.

384 (38) (A) "Prepared food" means:

385 (i) Food sold in a heated state or heated by the seller;

386 (ii) Two or more food ingredients mixed or combined by
387 the seller for sale as a single item; or

388 (iii) Food sold with eating utensils provided by the seller,
389 including plates, knives, forks, spoons, glasses, cups, napkins
390 or straws. A plate does not include a container or packaging
391 used to transport the food.

392 (B) "Prepared food" in subparagraph (ii), paragraph (A)
393 of this subdivision does not include food that is only cut,

394 repackaged or pasteurized by the seller, and eggs, fish, meat,
395 poultry and foods containing these raw animal foods
396 requiring cooking by the consumer as recommended by the
397 Food and Drug Administration in Chapter 3, Part 401.11 of
398 its Food Code of 2001 so as to prevent food-borne illnesses.

399 (C) Additionally, "prepared food" as defined in this
400 subdivision does not include:

401 (i) Food sold by a seller whose proper primary NAICS
402 classification is manufacturing in Sector 311, except
403 Subsection 3118 (bakeries);

404 (ii) Food sold in an unheated state by weight or volume
405 as a single item; or

406 (iii) Bakery items, including bread, rolls, buns, biscuits,
407 bagels, croissants, pastries, donuts, danish, cakes, tortes, pies,
408 tarts, muffins, bars, cookies, tortillas.

409 (39) "Prescription" means an order, formula or recipe
410 issued in any form of oral, written, electronic or other means
411 of transmission by a duly licensed practitioner authorized by
412 the laws of this state to issue prescriptions.

413 (40) "Prewritten computer software" means "computer
414 software", including prewritten upgrades, which is not
415 designed and developed by the author or other creator to the
416 specifications of a specific purchaser.

417 (A) The combining of two or more prewritten computer
418 software programs or prewritten portions thereof does not
419 cause the combination to be other than prewritten computer
420 software.

421 (B) "Prewritten computer software" includes software
422 designed and developed by the author or other creator to the

423 specifications of a specific purchaser when it is sold to a
424 person other than the specific purchaser. Where a person
425 modifies or enhances computer software of which the person
426 is not the author or creator, the person is considered to be the
427 author or creator only of the person's modifications or
428 enhancements.

429 (C) "Prewritten computer software" or a prewritten
430 portion thereof that is modified or enhanced to any degree,
431 where the modification or enhancement is designed and
432 developed to the specifications of a specific purchaser,
433 remains prewritten computer software. However, where
434 there is a reasonable, separately stated charge or an invoice
435 or other statement of the price given to the purchaser for the
436 modification or enhancement, the modification or
437 enhancement does not constitute prewritten computer
438 software.

439 (41) "Product-based exemption" means an exemption
440 based on the description of the product or service and not
441 based on who purchases the product or service or how the
442 purchaser intends to use the product or service.

443 (42) "Prosthetic device" means a replacement, corrective
444 or supportive device, including repair and replacement parts
445 for the device worn on or in the body, to:

446 (A) Artificially replace a missing portion of the body;

447 (B) Prevent or correct physical deformity or malfunction
448 of the body; or

449 (C) Support a weak or deformed portion of the body.

450 (43) "Protective equipment" means items for human wear
451 and designed as protection of the wearer against injury or

452 disease or as protections against damage or injury of other
453 persons or property but not suitable for general use.

454 (44) "Purchase price" means the measure subject to the
455 tax imposed by article fifteen or fifteen-a of this chapter and
456 has the same meaning as sales price.

457 (45) "Purchaser" means a person to whom a sale of
458 personal property is made or to whom a service is furnished.

459 (46) "Registered under this agreement" means
460 registration by a seller with the member states under the
461 central registration system provided in article four of the
462 agreement.

463 (47) "Retail sale" or "sale at retail" means:

464 (A) Any sale, lease or rental for any purpose other than
465 for resale as tangible personal property, sublease or subrent;
466 and

467 (B) Any sale of a service other than a service purchased
468 for resale.

469 (48) (A) "Sales price" means the measure subject to the
470 tax levied under article fifteen or fifteen-a of this chapter and
471 includes the total amount of consideration, including cash,
472 credit, property and services, for which personal property or
473 services are sold, leased or rented, valued in money, whether
474 received in money or otherwise, without any deduction for
475 the following:

476 (i) The seller's cost of the property sold;

477 (ii) The cost of materials used, labor or service cost,
478 interest, losses, all costs of transportation to the seller, all

479 taxes imposed on the seller and any other expense of the
480 seller;

481 (iii) Charges by the seller for any services necessary to
482 complete the sale, other than delivery and installation
483 charges;

484 (iv) Delivery charges; and

485 (v) Installation charges.

486 (B) "Sales price" does not include:

487 (i) Discounts, including cash, term or coupons that are
488 not reimbursed by a third party that are allowed by a seller
489 and taken by a purchaser on a sale;

490 (ii) Interest, financing and carrying charges from credit
491 extended on the sale of personal property, goods or services,
492 if the amount is separately stated on the invoice, bill of sale
493 or similar document given to the purchaser; or

494 (iii) Any taxes legally imposed directly on the consumer
495 that are separately stated on the invoice, bill of sale or similar
496 document given to the purchaser.

497 (C) "Sales price" shall include consideration received by
498 the seller from third parties if:

499 (i) The seller actually receives consideration from a party
500 other than the purchaser and the consideration is directly
501 related to a price reduction or discount on the sale;

502 (ii) The seller has an obligation to pass the price
503 reduction or discount through to the purchaser;

504 (iii) The amount of the consideration attributable to the
505 sale is fixed and determinable by the seller at the time of the
506 sale of the item to the purchaser; and

507 (iv) One of the following criteria is met:

508 (I) The purchaser presents a coupon, certificate or other
509 documentation to the seller to claim a price reduction or
510 discount where the coupon, certificate or documentation is
511 authorized, distributed or granted by a third party with the
512 understanding that the third party will reimburse any seller to
513 whom the coupon, certificate or documentation is presented;

514 (II) The purchaser identifies himself or herself to the
515 seller as a member of a group or organization entitled to a
516 price reduction or discount (a "preferred customer" card that
517 is available to any patron does not constitute membership in
518 such a group); or

519 (III) The price reduction or discount is identified as a
520 third-party price reduction or discount on the invoice
521 received by the purchaser or on a coupon, certificate or other
522 documentation presented by the purchaser.

523 (49) "Sales tax" means the tax levied under article fifteen
524 of this chapter.

525 (50) "School art supply" means an item commonly used
526 by a student in a course of study for artwork. The term is
527 mutually exclusive of the terms "school supply", "school
528 instructional material" and "school computer supply" and
529 may be taxed differently. The following is an all-inclusive
530 list:

531 (A) Clay and glazes;

532 (B) Paints; acrylic, tempora and oil;

533 (C) Paintbrushes for artwork;

534 (D) Sketch and drawing pads; and

535 (E) Watercolors.

536 (51) "School instructional material" means written
537 material commonly used by a student in a course of study as
538 a reference and to learn the subject being taught. The term is
539 mutually exclusive of the terms "school supply", "school art
540 supply" and "school computer supply" and may be taxed
541 differently. The following is an all-inclusive list:

542 (A) Reference books;

543 (B) Reference maps and globes;

544 (C) Textbooks; and

545 (D) Workbooks.

546 (52) "School computer supply" means an item commonly
547 used by a student in a course of study in which a computer is
548 used. The term is mutually exclusive of the terms "school
549 supply", "school art supply" and "school instructional
550 material" and may be taxed differently. The following is an
551 all-inclusive list:

552 (A) Computer storage media; diskettes, compact disks;

553 (B) Handheld electronic schedulers, except devices that
554 are cellular phones;

555 (C) Personal digital assistants, except devices that are
556 cellular phones;

557 (D) Computer printers; and

558 (E) Printer supplies for computers; printer paper, printer
559 ink.

560 (53) "School supply" means an item commonly used by
561 a student in a course of study. The term is mutually
562 exclusive of the terms "school art supply", "school
563 instructional material" and "school computer supply" and
564 may be taxed differently. The following is an all-inclusive
565 list of school supplies:

566 (A) Binders;

567 (B) Book bags;

568 (C) Calculators;

569 (D) Cellophane tape;

570 (E) Blackboard chalk;

571 (F) Compasses;

572 (G) Composition books;

573 (H) Crayons;

574 (I) Erasers;

575 (J) Folders; expandable, pocket, plastic and manila;

576 (K) Glue, paste and paste sticks;

577 (L) Highlighters;

578 (M) Index cards;

579 (N) Index card boxes;

- 580 (O) Legal pads;
- 581 (P) Lunch boxes;
- 582 (Q) Markers;
- 583 (R) Notebooks;
- 584 (S) Paper; loose-leaf ruled notebook paper, copy paper,
585 graph paper, tracing paper, manila paper, colored paper,
586 poster board and construction paper;
- 587 (T) Pencil boxes and other school supply boxes;
- 588 (U) Pencil sharpeners;
- 589 (V) Pencils;
- 590 (W) Pens;
- 591 (X) Protractors;
- 592 (Y) Rulers;
- 593 (Z) Scissors; and
- 594 (AA) Writing tablets.
- 595 (54) "Seller" means any person making sales, leases or
596 rentals of personal property or services.
- 597 (55) "Service" or "selected service" includes all
598 nonprofessional activities engaged in for other persons for a
599 consideration which involve the rendering of a service as
600 distinguished from the sale of tangible personal property, but
601 does not include contracting, personal services, services
602 rendered by an employee to his or her employer, any service

603 rendered for resale or any service furnished by a business that
604 is subject to the control of the Public Service Commission
605 when the service or the manner in which it is delivered is
606 subject to regulation by the Public Service Commission of
607 this state. The term "service" or "selected service" does not
608 include payments received by a vendor of tangible personal
609 property as an incentive to sell a greater volume of such
610 tangible personal property under a manufacturer's,
611 distributor's or other third-party's marketing support program,
612 sales incentive program, cooperative advertising agreement
613 or similar type of program or agreement and these payments
614 are not considered to be payments for a "service" or "selected
615 service" rendered, even though the vendor may engage in
616 attendant or ancillary activities associated with the sales of
617 tangible personal property as required under the programs or
618 agreements.

619 (56) "Soft drink" means nonalcoholic beverages that
620 contain natural or artificial sweeteners. "Soft drinks" do not
621 include beverages that contain milk or milk products, soy,
622 rice or similar milk substitutes or greater than fifty percent of
623 vegetable or fruit juice by volume.

624 (57) "Sport or recreational equipment" means items
625 designed for human use and worn in conjunction with an
626 athletic or recreational activity that are not suitable for
627 general use. "Sport or recreational equipment" are mutually
628 exclusive of and may be taxed differently than apparel within
629 the definition of "clothing", "clothing accessories or
630 equipment" and "protective equipment". The following list
631 contains examples and is not intended to be an all-inclusive
632 list. "Sport or recreational equipment" shall include:

633 (A) Ballet and tap shoes;

634 (B) Cleated or spiked athletic shoes;

635 (C) Gloves, including, but not limited to, baseball,
636 bowling, boxing, hockey and golf;

637 (D) Goggles;

638 (E) Hand and elbow guards;

639 (F) Life preservers and vests;

640 (G) Mouth guards;

641 (H) Roller and ice skates;

642 (I) Shin guards;

643 (J) Shoulder pads;

644 (K) Ski boots;

645 (L) Waders; and

646 (M) Wetsuits and fins.

647 (58) "State" means any state of the United States, the
648 District of Columbia and the Commonwealth of Puerto Rico.

649 (59) "Tangible personal property" means personal
650 property that can be seen, weighed, measured, felt or touched
651 or that is in any manner perceptible to the senses. "Tangible
652 personal property" includes, but is not limited to, electricity,
653 steam, water, gas and prewritten computer software.

654 (60) "Tax" includes all taxes levied under articles fifteen
655 and fifteen-a of this chapter and additions to tax, interest and
656 penalties levied under article ten of this chapter.

657 (61) "Tax Commissioner" means the State Tax
658 Commissioner or his or her delegate. The term "delegate" in
659 the phrase "or his or her delegate", when used in reference to
660 the Tax Commissioner, means any officer or employee of the
661 State Tax Division duly authorized by the Tax Commissioner
662 directly, or indirectly by one or more redelegations of
663 authority, to perform the functions mentioned or described in
664 this article or rules promulgated for this article.

665 (62) "Taxpayer" means any person liable for the taxes
666 levied by articles fifteen and fifteen-a of this chapter or any
667 additions to tax penalties imposed by article ten of this
668 chapter.

669 (63) "Telecommunications service" or "telecommunication
670 service" when used in this article and articles fifteen and
671 fifteen-a of this chapter shall have the same meaning as that
672 term is defined in section two-b of this article.

673 (64) "Tobacco" means cigarettes, cigars, chewing or pipe
674 tobacco or any other item that contains tobacco.

675 (65) "Use tax" means the tax levied under article fifteen-a
676 of this chapter.

677 (66) "Use-based exemption" means an exemption based
678 on a specified use of the product or service by the purchaser.

679 (67) "Vendor" means any person furnishing services
680 taxed by article fifteen or fifteen-a of this chapter or making
681 sales of tangible personal property or custom software.
682 "Vendor" and "seller" are used interchangeably in this article
683 and in articles fifteen and fifteen-a of this chapter.

684 (c) *Additional definitions.* -- Other terms used in this
685 article are defined in articles fifteen and fifteen-a of this
686 chapter, which definitions are incorporated by reference into

687 this article. Additionally, other sections of this article may
688 define terms primarily used in the section in which the term
689 is defined.

***§11-15B-32. Effective date.**

1 (a) The provisions of this article, as amended or added
2 during the regular legislative session in the year 2003, shall
3 take effect January 1, 2004, and apply to all sales made on or
4 after that date and to all returns and payments due on or after
5 that day, except as otherwise expressly provided in section
6 five of this article.

7 (b) The provisions of this article, as amended or added
8 during the second extraordinary legislative session in the year
9 2003, shall take effect January 1, 2004, and apply to all sales
10 made on or after that date.

11 (c) The provisions of this article, as amended or added by
12 act of the Legislature in the year 2004 shall apply to all sales
13 made on or after the date of passage in the year 2004.

14 (d) The provisions of this article, as amended or added
15 during the regular legislative session in the year 2008, shall
16 apply to all sales made on or after the date of passage and to
17 all returns and payments due on or after that day, except as
18 otherwise expressly provided in this article.

19 (e) The provisions of this article, as amended or added
20 during the 2009 regular legislative session, shall apply to all
21 sales made on or after the date of passage and to all returns
22 and payments due on or after that day, except as otherwise
23 expressly provided in this article.

*CLERK'S NOTE: This section was also amended by HB 2999 (Chapter 209),
which passed prior to this act.

CHAPTER 211

(Com. Sub. for H.B. 3017 - By Delegates Campbell and Canterbury)

[Passed April 10, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 6, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-15-91, relating to exempting tax-exempt organizations engaged in retail sales of clothing and clothing accessories from the consumers sales tax; authorizing the Tax Commissioner to designate the exemption as a per se exemption, thus exemption certificates would not be required.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-15-91, to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-91. Exemption for Sales of clothing and clothing accessories by tax-exempt organizations.

1 (a) Sales of clothing and clothing accessories by
2 organizations that are exempt from federal income taxes
3 under Section 501(c)(3) or Section 501(c)(4) of the Internal
4 Revenue Code of 1986, as amended, and that have annual
5 revenue obtained from the sales of less than \$40,000, are

6 exempt from the tax imposed under this article and article
7 fifteen-a of this chapter: *Provided*, That the purpose of the
8 sale is to obtain revenue for the activities and functions of the
9 organization, and the revenue obtained is exempt from
10 federal income tax and actually expended for that purpose:
11 *Provided*, however, That the clothing and clothing
12 accessories sold are acquired or obtained by donation only,
13 without compensation, remuneration or consideration to the
14 donor. The Tax Commissioner may, by rule, specify the
15 exemption authorized in this section to be a "per se"
16 exemption for which exemption certificates are not required.



CHAPTER 212

**(Com. Sub. for H.B. 2401 - By Mr. Speaker, Mr. Thompson,
and Delegate Armstead)
[By Request of the Executive]**

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2009.]

AN ACT to amend and reenact §11-21-3 of the Code of West Virginia, 1931, as amended, relating to the expiration of the alternative minimum tax; and providing for the expiration of the alternative minimum tax for tax years beginning on and after January 1, 2010.

Be it enacted by the Legislature of West Virginia:

That §11-21-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.**§11-21-3. Imposition of tax; persons subject to tax.**

1 (a) *Imposition of tax.*

2 (1) *Primary tax.* -- A tax determined in accordance with
3 the rates hereinafter set forth in this article is hereby imposed
4 for each taxable year on the West Virginia taxable income of
5 every individual, estate and trust.

6 (2) *Minimum tax.* -- In addition to the primary tax
7 imposed by this section, there is imposed a minimum tax,
8 which shall be the excess, if any, by which an amount equal
9 to twenty-five percent of any federal minimum tax or
10 alternative minimum tax for the taxable year exceeds the
11 primary tax imposed by this section for the taxable year.

12 (3) *Effective date.* -- The minimum tax herein imposed
13 and made effective on and after April 1, 1983, shall expire,
14 be nullified and of no further force or effect whatsoever for
15 tax years beginning on and after January 1, 2010.

16 (b) *Partners and partnerships.* -- A partnership as such
17 shall not be subject to tax under this article. Persons carrying
18 on business as partners shall be liable for tax under this
19 article only in their separate or individual capacities.

20 (c) *Associations taxable as corporations.* -- An
21 association, trust or other unincorporated organization which
22 is taxable as a corporation for federal income tax purposes,
23 shall not be subject to tax under this article.

24 (d) *Exempt trusts and organizations.* -- A trust or other
25 unincorporated organization which by reason of its purposes
26 or activities is exempt from federal income tax shall be
27 exempt from tax under this article (regardless of whether

28 subject to federal income tax on unrelated business taxable
29 income).

30 (e) *Cross references.* -- For definitions of West Virginia
31 taxable income of:

32 (1) Resident individual, see section eleven.

33 (2) Resident estate or trust, see section eighteen.

34 (3) Nonresident individual, see section thirty.

35 (4) Nonresident estate or trust, see section thirty-eight.

CHAPTER 213

**(S.B. 329 - By Senators Tomblin, Mr. President,
and Caruth)**

[By Request of the Executive]

[Passed March 23, 2009; in effect from passage.]
[Approved by the Governor on April 1, 2009.]

AN ACT to amend and reenact §11-21-9 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of "federal adjusted gross income" and certain other terms in the West Virginia Personal Income Tax Act in order for the definitions to conform with the Internal Revenue Code's definitions.

Be it enacted by the Legislature of West Virginia:

That §11-21-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

1 (a) Any term used in this article has the same meaning as
2 when used in a comparable context in the laws of the United
3 States relating to income taxes, unless a different meaning is
4 clearly required. Any reference in this article to the laws of
5 the United States means the provisions of the Internal
6 Revenue Code of 1986, as amended, and any other provisions
7 of the laws of the United States that relate to the
8 determination of income for federal income tax purposes. All
9 amendments made to the laws of the United States after
10 December 31, 2007, but prior to February 18, 2009, shall be
11 given effect in determining the taxes imposed by this article
12 to the same extent those changes are allowed for federal
13 income tax purposes, whether the changes are retroactive or
14 prospective, but no amendment to the laws of the United
15 States made on or after February 18, 2009, shall be given any
16 effect.

17 (b) *Medical savings accounts.* -- The term "taxable trust"
18 does not include a medical savings account established
19 pursuant to section twenty, article fifteen, chapter thirty-three
20 of this code or section fifteen, article sixteen of said chapter.
21 Employer contributions to a medical savings account
22 established pursuant to said sections are not "wages" for
23 purposes of withholding under section seventy-one of this
24 article.

25 (c) *Surtax.* -- The term "surtax" means the twenty percent
26 additional tax imposed on taxable withdrawals from a
27 medical savings account under section twenty, article fifteen,
28 chapter thirty-three of this code and the twenty percent
29 additional tax imposed on taxable withdrawals from a
30 medical savings account under section fifteen, article sixteen

31 of said chapter which are collected by the Tax Commissioner
32 as tax collected under this article.

33 (d) *Effective date.* -- The amendments to this section
34 enacted in the year 2009 are retroactive to the extent
35 allowable under federal income tax law. With respect to
36 taxable years that began prior to January 1, 2010, the law in
37 effect for each of those years shall be fully preserved as to
38 that year, except as provided in this section.

39 (e) For purposes of the refundable credit allowed to a low
40 income senior citizen for property tax paid on his or her
41 homestead in this state, the term "laws of the United States"
42 as used in subsection (a) of this section means and includes
43 the term "low income" as defined in subsection (b), section
44 twenty-one of this article and as reflected in the poverty
45 guidelines updated periodically in the federal register by the
46 U. S. Department of Health and Human Services under the
47 authority of 42 U. S. C. §9902(2).

CHAPTER 214

**(S.B. 410 - By Senators Tomblin, Mr. President,
and Caruth)**

[By Request of the Executive]

[Passed March 23, 2009; in effect from passage.]
[Approved by the Governor on April 1, 2009.]

AN ACT to amend and reenact §11-24-3 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of "federal taxable income" and certain other terms used in the West Virginia Corporation Net Income Tax Act in order for the

definitions to conform with the Internal Revenue Code's definitions.

Be it enacted by the Legislature of West Virginia:

That §11-24-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

1 (a) Any term used in this article has the same meaning as
2 when used in a comparable context in the laws of the United
3 States relating to federal income taxes, unless a different
4 meaning is clearly required by the context or by definition in
5 this article. Any reference in this article to the laws of the
6 United States means the provisions of the Internal Revenue
7 Code of 1986, as amended, and any other provisions of the
8 laws of the United States that relate to the determination of
9 income for federal income tax purposes. All amendments
10 made to the laws of the United States after December 31,
11 2007, but prior to February 18, 2009, shall be given effect in
12 determining the taxes imposed by this article to the same
13 extent those changes are allowed for federal income tax
14 purposes, whether the changes are retroactive or prospective,
15 but no amendment to the laws of the United States made on
16 or after February 18, 2009, shall be given any effect.

17 (b) The term "Internal Revenue Code of 1986" means the
18 Internal Revenue Code of the United States enacted by the
19 federal Tax Reform Act of 1986 and includes the provisions
20 of law formerly known as the Internal Revenue Code of
21 1954, as amended, and in effect when the federal Tax Reform
22 Act of 1986 was enacted that were not amended or repealed
23 by the federal Tax Reform Act of 1986. Except when

24 inappropriate, any reference in any law, executive order or
25 other document:

26 (1) To the Internal Revenue Code of 1954 includes a
27 reference to the Internal Revenue Code of 1986; and

28 (2) To the Internal Revenue Code of 1986 includes a
29 reference to the provisions of law formerly known as the
30 Internal Revenue Code of 1954.

31 (c) *Effective date.* -- The amendments to this section
32 enacted in the year 2009 are retroactive to the extent
33 allowable under federal income tax law. With respect to
34 taxable years that began prior to January 1, 2010, the law in
35 effect for each of those years shall be fully preserved as to
36 that year, except as provided in this section.

CHAPTER 215

**(Com. Sub. for S.B. 724 - By Senators Helmick, McCabe,
Plymale and Kessler)**

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 12, 2009.]

AN ACT to amend and reenact §11-27-16 of the Code of West Virginia, 1931, as amended, relating to the health care provider tax; providing a definition of the term “physicians’ services”; and specifying legislative intent as to activities that qualify as physicians’ services.

Be it enacted by the Legislature of West Virginia:

That §11-27-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-16. Imposition of tax on providers of physicians' services.

1 (a) *Imposition of tax.* -- For the privilege of engaging or
2 continuing within this state in the business of providing
3 physicians' services, there is hereby levied and shall be
4 collected from every person rendering such service an annual
5 broad-based health care-related tax.

6 (b) *Rate and measure of tax.* -- The tax imposed in
7 subsection (a) of this section shall be two percent of the gross
8 receipts derived by the taxpayer from furnishing physicians'
9 services in this state.

10 (c) *Definitions.* --

11 (1) "Gross receipts" means the amount received or
12 receivable, whether in cash or in kind, from patients, third-
13 party payors and others for physicians' services furnished by
14 the provider, including retroactive adjustments under
15 reimbursement agreements with third-party payors, without
16 any deduction for any expenses of any kind: *Provided*, That
17 accrual basis providers shall be allowed to reduce gross
18 receipts by their contractual allowances, to the extent such
19 allowances are included therein, and by bad debts, to the
20 extent the amount of such bad debts was previously included
21 in gross receipts upon which the tax imposed by this section
22 was paid.

23 (2) "Contractual allowances" means the difference
24 between revenue (gross receipts) at established rates and

25 amounts realizable from third-party payors under contractual
26 agreements.

27 (3) "Physicians' services" means and is limited to those
28 services furnished by a physician within the scope of the
29 practice of medicine or osteopathy, as defined by the laws of
30 this state, whether furnished in the physician's office, the
31 recipient's home, a hospital, a skilled nursing facility or any
32 other location.

33 (A) The term "physicians' services" includes those
34 professional services directly furnished by a physician in the
35 scope of his or her employment by a hospital. Other services
36 rendered in conjunction with hospital-employed physicians'
37 services, such as the use of hospital facilities, staff,
38 equipment, drugs and supplies ordinarily furnished by a
39 hospital, are not considered physicians' services pursuant to
40 this section: *Provided*, That hospitals that own and operate
41 freestanding physician offices or primary care clinics in
42 office buildings or other locations separate and apart from a
43 hospital whereby employed physicians provide services
44 ordinarily provided by physicians in a freestanding
45 physician's office may class all revenue from such services as
46 physicians' services. The status of a physician as a hospital
47 employee shall be determined in accordance with criteria
48 established under the United States Internal Revenue Code
49 and United States Treasury regulations issued pursuant
50 thereto.

51 (B) Any other service provided by a hospital may not be
52 classified as physicians' services, notwithstanding the fact
53 that such services are provided under the direct or indirect
54 supervision of a physician who is not an employee of the
55 hospital or provided or performed by a physician who holds
56 privileges at the hospital or who works as an independent
57 contractor for the hospital or for any other entity for the
58 provision of health care services.

59 (C) The amendment to this definition enacted during the
60 2009 regular legislative session is intended to clarify the
61 intent of the Legislature as to the activities that qualify as
62 physicians' services.

63 (d) *Effective date.* -- The tax imposed by this section
64 shall apply to gross receipts received or receivable by
65 providers after May 31, 1993.

CHAPTER 216

**(Com. Sub. for S.B. 600 - By Senators Green, Deem,
McCabe, Foster, Kessler and Plymale)**

[Passed April 10, 2009; in effect July 1, 2009.]
[Approved by the Governor on May 4, 2009.]

AN ACT to amend and reenact §22-3-11 of the Code of West Virginia, 1931, as amended, relating to continuing and reimposing a special reclamation tax on clean coal mined; and providing for legislative review of the tax every two years.

Be it enacted by the Legislature of West Virginia:

That §22-3-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and funds; prohibited acts; period of bond liability.

1 (a) After a surface mining permit application has been
2 approved pursuant to this article, but before a permit has been
3 issued, each operator shall furnish a penal bond, on a form to
4 be prescribed and furnished by the secretary, payable to the
5 State of West Virginia and conditioned upon the operator
6 faithfully performing all of the requirements of this article
7 and of the permit. The penal amount of the bond shall be not
8 less than \$1,000 nor more than \$5,000 for each acre or
9 fraction of an acre: *Provided*, That the minimum amount of
10 bond furnished for any type of reclamation bonding shall be
11 \$10,000. The bond shall cover: (1) The entire permit area; or
12 (2) that increment of land within the permit area upon which
13 the operator will initiate and conduct surface mining and
14 reclamation operations within the initial term of the permit.
15 If the operator chooses to use incremental bonding, as
16 succeeding increments of surface mining and reclamation
17 operations are to be initiated and conducted within the permit
18 area, the operator shall file with the secretary an additional
19 bond or bonds to cover the increments in accordance with
20 this section: *Provided, however*, That once the operator has
21 chosen to proceed with bonding either the entire permit area
22 or with incremental bonding, the operator shall continue
23 bonding in that manner for the term of the permit.

24 (b) The period of liability for bond coverage begins with
25 issuance of a permit and continues for the full term of the
26 permit plus any additional period necessary to achieve
27 compliance with the requirements in the reclamation plan of
28 the permit.

29 (c)(1) The form of the bond shall be approved by the
30 secretary and may include, at the option of the operator,
31 surety bonding, collateral bonding (including cash and
32 securities), establishment of an escrow account, self-bonding
33 or a combination of these methods. If collateral bonding is
34 used, the operator may elect to deposit cash or collateral

35 securities or certificates as follows: Bonds of the United
36 States or its possessions of the Federal Land Bank or of the
37 Homeowners' Loan Corporation; full faith and credit general
38 obligation bonds of the State of West Virginia or other states
39 and of any county, district or municipality of the State of
40 West Virginia or other states; or certificates of deposit in a
41 bank in this state, which certificates shall be in favor of the
42 department. The cash deposit or market value of the
43 securities or certificates shall be equal to or greater than the
44 penal sum of the bond. The secretary shall, upon receipt of
45 any deposit of cash, securities or certificates, promptly place
46 the same with the Treasurer of the State of West Virginia
47 whose duty it is to receive and hold the deposit in the name
48 of the state in trust for the purpose for which the deposit is
49 made when the permit is issued. The operator making the
50 deposit is entitled, from time to time, to receive from the
51 State Treasurer, upon the written approval of the secretary,
52 the whole or any portion of any cash, securities or certificates
53 so deposited, upon depositing with him or her in lieu thereof
54 cash or other securities or certificates of the classes specified
55 in this subsection having value equal to or greater than the
56 sum of the bond.

57 (2) The secretary may approve an alternative bonding
58 system if it will: (A) Reasonably assure that sufficient funds
59 will be available to complete the reclamation, restoration and
60 abatement provisions for all permit areas which may be in
61 default at any time; and (B) provide a substantial economic
62 incentive for the permittee to comply with all reclamation
63 provisions.

64 (d) The secretary may accept the bond of the applicant
65 itself without separate surety when the applicant
66 demonstrates to the satisfaction of the secretary the existence
67 of a suitable agent to receive service of process and a history

68 of financial solvency and continuous operation sufficient for
69 authorization to self-insure.

70 (e) It is unlawful for the owner of surface or mineral
71 rights to interfere with the present operator in the discharge
72 of the operator's obligations to the state for the reclamation of
73 lands disturbed by the operator.

74 (f) All bond releases shall be accomplished in accordance
75 with the provisions of section twenty-three of this article.

76 (g) The Special Reclamation Fund previously created is
77 continued. The Special Reclamation Water Trust Fund is
78 created within the State Treasury into and from which
79 moneys shall be paid for the purpose of assuring a reliable
80 source of capital to reclaim and restore water treatment
81 systems on forfeited sites. The moneys accrued in both
82 funds, any interest earned thereon and yield from investments
83 by the State Treasurer or West Virginia Investment
84 Management Board are reserved solely and exclusively for
85 the purposes set forth in this section and section seventeen,
86 article one of this chapter. The funds shall be administered
87 by the secretary who is authorized to expend the moneys in
88 both funds for the reclamation and rehabilitation of lands
89 which were subjected to permitted surface mining operations
90 and abandoned after August 3, 1977, where the amount of the
91 bond posted and forfeited on the land is less than the actual
92 cost of reclamation, and where the land is not eligible for
93 abandoned mine land reclamation funds under article two of
94 this chapter. The secretary shall develop a long-range
95 planning process for selection and prioritization of sites to be
96 reclaimed so as to avoid inordinate short-term obligations of
97 the assets in both funds of such magnitude that the solvency
98 of either is jeopardized. The secretary may use both funds
99 for the purpose of designing, constructing and maintaining
100 water treatment systems when they are required for a

101 complete reclamation of the affected lands described in this
102 subsection. The secretary may also expend an amount not to
103 exceed ten percent of the total annual assets in both funds to
104 implement and administer the provisions of this article and,
105 as they apply to the Surface Mine Board, articles one and
106 four, chapter twenty-two-b of this code.

107 (h)(1) For tax periods commencing on and after July 1,
108 2009, every person conducting coal surface mining shall
109 remit a special reclamation tax of fourteen and four-tenths
110 cents per ton of clean coal mined, the proceeds of which shall
111 be allocated by the secretary for deposit in the Special
112 Reclamation Fund and the Special Reclamation Water Trust
113 Fund. The tax shall be levied upon each ton of clean coal
114 severed or clean coal obtained from refuse pile and slurry
115 pond recovery or clean coal from other mining methods
116 extracting a combination of coal and waste material as part of
117 a fuel supply. Beginning with the tax period commencing on
118 July 1, 2009, and every two years thereafter, the special
119 reclamation tax shall be reviewed by the Legislature to
120 determine whether the tax should be continued: *Provided*,
121 That the tax may not be reduced until the Special
122 Reclamation Fund and Special Reclamation Water Trust
123 Fund have sufficient moneys to meet the reclamation
124 responsibilities of the state established in this section.

125 (2) In managing the Special Reclamation Program, the
126 secretary shall: (A) Pursue cost-effective alternative water
127 treatment strategies; and (B) conduct formal actuarial studies
128 every two years and conduct informal reviews annually on
129 the Special Reclamation Fund and Special Reclamation
130 Water Trust Fund.

131 (3) Prior to December 31, 2008, the secretary shall:

132 (A) Determine the feasibility of creating an alternate
133 program, on a voluntary basis, for financially sound operators

134 by which those operators pay an increased tax into the
135 Special Reclamation Fund in exchange for a maximum per-
136 acre bond that is less than the maximum established in
137 subsection (a) of this section;

138 (B) Determine the feasibility of creating an incremental
139 bonding program by which operators can post a reclamation
140 bond for those areas actually disturbed within a permit area,
141 but for less than all of the proposed disturbance and obtain
142 incremental release of portions of that bond as reclamation
143 advances so that the released bond can be applied to
144 approved future disturbance; and

145 (C) Determine the feasibility for sites requiring water
146 reclamation by creating a separate water reclamation security
147 account or bond for the costs so that the existing reclamation
148 bond in place may be released to the extent it exceeds the
149 costs of water reclamation.

150 (4) If the secretary determines that the alternative
151 program, the incremental bonding program or the water
152 reclamation account or bonding programs reasonably assure
153 that sufficient funds will be available to complete the
154 reclamation of a forfeited site and that the Special
155 Reclamation Fund will remain fiscally stable, the secretary is
156 authorized to propose legislative rules in accordance with
157 article three, chapter twenty-nine-a of this code to implement
158 an alternate program, a water reclamation account or bonding
159 program or other funding mechanisms or a combination
160 thereof.

161 (I) This special reclamation tax shall be collected by the
162 State Tax Commissioner in the same manner, at the same
163 time and upon the same tonnage as the minimum severance
164 tax imposed by article twelve-b, chapter eleven of this code
165 is collected: *Provided*, That under no circumstance shall the

166 special reclamation tax be construed to be an increase in
167 either the minimum severance tax imposed by said article or
168 the severance tax imposed by article thirteen of said chapter.

169 (j) Every person liable for payment of the special
170 reclamation tax shall pay the amount due without notice or
171 demand for payment.

172 (k) The Tax Commissioner shall provide to the secretary
173 a quarterly listing of all persons known to be delinquent in
174 payment of the special reclamation tax. The secretary may
175 take the delinquencies into account in making determinations
176 on the issuance, renewal or revision of any permit.

177 (l) The Tax Commissioner shall deposit the moneys
178 collected with the Treasurer of the State of West Virginia to
179 the credit of the Special Reclamation Fund and Special
180 Reclamation Water Trust Fund.

181 (m) At the beginning of each quarter, the secretary shall
182 advise the State Tax Commissioner and the Governor of the
183 assets, excluding payments, expenditures and liabilities, in
184 both funds.

185 (n) To the extent that this section modifies any powers,
186 duties, functions and responsibilities of the department that
187 may require approval of one or more federal agencies or
188 officials in order to avoid disruption of the federal-state
189 relationship involved in the implementation of the federal
190 Surface Mining Control and Reclamation Act, 30 U. S. C.
191 §1270 by the state, the modifications will become effective
192 upon the approval of the modifications by the appropriate
193 federal agency or official.

●

CHAPTER 217

(H.B. 3295 - By Delegate White)

[Passed April 11, 2009; in effect from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §18-30-6 of the Code of West Virginia, 1931, as amended; to amend and reenact §36-8-13 of said code; and to amend and reenact §44-1-28 of said code, all relating to the West Virginia State Treasurer's Office; transferring a one time sum of \$8 million from the Unclaimed Property Trust Fund to the Prepaid Tuition Trust Escrow Fund; setting \$1 million as the amount to be transferred annually from the Unclaimed Property Trust Fund to the Prepaid Tuition Trust Fund until the actuary certifies there are sufficient funds to pay out all contracts; authorizing investment of the Unclaimed Property Trust Fund; and facilitating payments by the state where the owner has died.

Be it enacted by the Legislature of West Virginia:

That §18-30-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §36-8-13 of said code be amended and reenacted; and that §44-1-28 of said code be amended and reenacted, all to read as follows:

Chapter

18. Education.

36. Estates and Property.

44. Administration of Estates and Trusts.

CHAPTER 18. EDUCATION.

**ARTICLE 30. WEST VIRGINIA COLLEGE PREPAID
TUITION AND SAVINGS PROGRAM
ACT.**

§18-30-6. West Virginia prepaid tuition trust.

1 (a) The "Prepaid Tuition Trust Fund" is continued within
2 the accounts held by the State Treasurer for administration by
3 the board.

4 (b) The Prepaid Tuition Trust Fund shall continue to
5 receive all payments from account owners on behalf of
6 beneficiaries of prepaid tuition contracts or from any other
7 source, public or private. Earnings derived from the
8 investment of moneys in the Prepaid Tuition Trust Fund shall
9 remain in the Prepaid Tuition Trust Fund held in trust in the
10 same manner as payments, except as refunded, applied for
11 purposes of the beneficiaries, and applied for purposes of
12 maintaining and administering the prepaid tuition plan.

13 (c) The corpus, assets and earnings of the Prepaid Tuition
14 Trust Fund do not constitute public funds of the state and are
15 available solely for carrying out the purposes of this article.
16 Any contract entered into by or any obligation of the board
17 on behalf of and for the benefit of the Prepaid Tuition Plan
18 does not constitute a debt of the state, but is solely an
19 obligation of the Prepaid Tuition Trust Fund. The state has
20 no obligation to any designated beneficiary or any other
21 person as a result of the Prepaid Tuition Plan. All amounts
22 payable from the Prepaid Tuition Trust Fund are limited to
23 amounts available in the Prepaid Tuition Trust Fund.

24 (d) Nothing in this article or in any prepaid tuition
25 contract is a promise or guarantee of admission to, continued
26 enrollment in, or graduation from an eligible educational
27 institution.

28 (e) The requirements of the provisions of chapter
29 thirty-two of this code do not apply to the sale of a prepaid
30 tuition contract by the board, its employees and agents.

31 (f) The Prepaid Tuition Plan and the Prepaid Tuition
32 Trust Fund shall continue in existence until terminated by the
33 Legislature as it determines or by the board upon determining
34 that continued operation is infeasible. Upon termination of
35 the plan and after payment of all fees, charges, expenses and
36 penalties, the assets of the Prepaid Tuition Trust Fund are
37 paid to current account owners, to the extent possible, on a
38 pro rata basis as their interests may appear, and any assets
39 presumed abandoned are reported and remitted to the
40 unclaimed property administrator in accordance with the
41 Uniform Unclaimed Property Act in article eight, chapter
42 thirty-six of this code. Any assets then remaining in the
43 Prepaid Tuition Trust Fund shall revert to the State General
44 Revenue Fund.

45 (g) Effective March 8, 2003, the prepaid tuition plan is
46 closed to new contracts until the Legislature authorizes the
47 plan to reopen. Closing the plan to new contracts does not
48 mean the Prepaid Tuition Plan is closed and does not affect
49 any Prepaid Tuition Plan contracts in effect on March 8,
50 2003. All contract owners shall continue to pay any amounts
51 due, including without limitation monthly installments,
52 penalties and fees. Earnings derived from the investment of
53 moneys in the Prepaid Tuition Trust Fund shall continue to
54 accrue to the fund until the fund is closed in accordance with
55 this article.

56 (h) The board shall continue to have the actuarial
57 soundness of the Prepaid Tuition Trust Fund evaluated
58 annually.

59 (i)(1) On or before December 1, 2003, and each year
60 thereafter, the chairperson of the board shall submit to the

61 Governor, the President of the Senate, the Speaker of the
62 House of Delegates, Joint Committee on Government and
63 Finance and the unclaimed property administrator a report
64 certified by an actuary of the actuarial status of the Prepaid
65 Tuition Trust Fund at the end of the fiscal year immediately
66 preceding the date of the report.

67 (2) The Prepaid Tuition Trust Escrow Fund is continued
68 in the State Treasury to guarantee payment of Prepaid Tuition
69 Plan contracts. The board shall invest the Prepaid Tuition
70 Trust Escrow Fund in accordance with the provisions of this
71 article in fixed income securities, and all earnings of the
72 escrow fund shall accrue to the escrow fund and be available
73 for expenditure in accordance with this section.

74 (A) On July 1, 2009, the unclaimed property
75 administrator shall transfer the amount of \$8 million from the
76 Unclaimed Property Trust Fund to the Prepaid Tuition Trust
77 Escrow Fund.

78 (B) On or before December 15 of each fiscal year and
79 continuing until the actuary certifies there are sufficient funds to
80 pay out all contracts, the unclaimed property administrator shall
81 transfer the amount of \$1 million from the Unclaimed Property
82 Trust Fund to the Prepaid Tuition Trust Escrow Fund.

83 (3) In the event the money in the Prepaid Tuition Trust
84 Fund is insufficient to cover the amount of money needed
85 to meet the current obligations of the Prepaid Tuition Trust
86 Fund, the board may withdraw from the Prepaid Tuition
87 Trust Escrow Fund the amount of money needed to meet
88 current obligations of the Prepaid Tuition Trust Fund.

89 (4) Notwithstanding any provision of this code to the
90 contrary, the Governor, after consultation with the Budget
91 Office of the Department of Revenue, may request an
92 appropriation to the board in the amount of the deficiency to

93 meet the current obligations of the Prepaid Tuition Trust
94 Fund, in the budget presented to the next session of the
95 Legislature for its consideration. The Legislature is not
96 required to make any appropriation pursuant to this
97 subsection, and the amount of the deficiency is not a debt or
98 a liability of the state.

99 (5) As used in this section, "current obligations of the
100 Prepaid Tuition Trust Fund" means amounts required for the
101 payment of contract distributions or other obligations of the
102 Prepaid Tuition Trust Fund, the maintenance of the fund, and
103 operating expenses for the current fiscal year.

104 (6) Nothing in this subsection creates an obligation of
105 state general revenue funds or requires any level of funding
106 by the Legislature.

107 (7) After the Prepaid Tuition Trust Fund has been closed
108 and all moneys paid in accordance with this section, any
109 moneys remaining in the Prepaid Tuition Trust Escrow Fund
110 shall be transferred to the General Revenue Fund and the
111 account closed.

112 (j) To fulfill the charitable and public purpose of this
113 article, neither the earnings nor the corpus of the Prepaid
114 Tuition Trust Fund is subject to taxation by the state or any
115 of its political subdivisions.

116 (k) Notwithstanding any provision of this code to the
117 contrary, money in the Prepaid Tuition Trust Fund is exempt
118 from creditor process and not subject to attachment,
119 garnishment or other process; is not available as security or
120 collateral for any loan, or otherwise subject to alienation,
121 sale, transfer, assignment, pledge, encumbrance or charge;
122 and is not subject to seizure, taking, appropriation or
123 application by any legal or equitable process or operation of
124 law to pay any debt or liability of any account owner,
125 beneficiary or successor in interest.

126 (1) The provisions of this section may not be construed to
127 interfere with the operation of the savings plan authorized
128 under this article.

CHAPTER 36. ESTATES AND PROPERTY.

ARTICLE 8. UNIFORM UNCLAIMED PROPERTY ACT.

§36-8-13. Deposit of funds.

1 (a) The administrator shall record the name and last
2 known address of each person appearing from the holders
3 reports to be entitled to the property and the name and last
4 known address of each insured person or annuitant and
5 beneficiary and with respect to each policy or annuity listed
6 in the report of an insurance company, its number, the name
7 of the company and the amount due.

8 (b) The Unclaimed Property Fund is continued. The
9 administrator shall deposit all funds received pursuant to this
10 article in the Unclaimed Property Fund, including the proceeds
11 from the sale of abandoned property under section twelve of this
12 article. In addition to paying claims of unclaimed property duly
13 allowed, the administrator may deduct the following expenses
14 from the Unclaimed Property Fund:

15 (1) Expenses of the sale of abandoned property;

16 (2) Expenses incurred in returning the property to
17 owners, including without limitation the costs of mailing and
18 publication to locate owners;

19 (3) Reasonable service charge; and

20 (4) Expenses incurred in examining records of holders of
21 property and in collecting the property from those holders.

22 (c) The Unclaimed Property Trust Fund is continued
23 within the State Treasury. The administrator may invest the
24 Unclaimed Property Trust Fund with the West Virginia
25 Board of Treasury Investments and all earnings shall accrue
26 to the fund and are available for expenditure in accordance
27 with this article. After deducting the expenses specified in
28 subsection (b) of this section and maintaining a sum of
29 money from which to pay claims duly allowed, the
30 administrator shall transfer the remaining moneys in the
31 Unclaimed Property Fund to the Unclaimed Property Trust
32 Fund.

33 (d) (1) On July 1, 2009, the unclaimed property
34 administrator shall transfer the amount of \$8 million from the
35 Unclaimed Property Trust Fund to the Prepaid Tuition Trust
36 Escrow Fund.

37 (2) On or before December 15 of each year,
38 notwithstanding any provision of this code to the contrary,
39 the administrator shall transfer the sum of \$1 million from the
40 Unclaimed Property Trust Fund to the Prepaid Tuition Trust
41 Escrow Fund, until the actuary certifies there are sufficient
42 funds to pay out all contracts.

43 (e) On or before June 1, 2007, the unclaimed property
44 administrator shall transfer the amount of \$2 million from the
45 Unclaimed Property Trust Fund to the Deferred
46 Compensation Matching Fund for operation of the deferred
47 compensation matching program for state employees. On or
48 before June 1, 2008, the unclaimed property administrator
49 shall transfer the amount of \$1 million from the Unclaimed
50 Property Trust Fund to the Deferred Compensation Matching
51 Fund for operation of the matching program.

52 (f) After transferring any money required by subsections
53 (d) and (e) of this section, the administrator shall transfer
54 moneys remaining in the Unclaimed Property Trust Fund to
55 the General Revenue Fund.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-28. Payment of small sums due employees to distributees of decedents upon whose estates there have been no qualifications.

1 (a) When the State of West Virginia, any of its political
2 subdivisions, the United States or any employer owes wages,
3 salary, pension payments or money allowed for burial
4 expenses to a decedent, upon whose estate there has been no
5 qualification, and the amount owed does not exceed \$5,000,
6 the State of West Virginia, any of its political subdivisions,
7 the United States or the decedent's employer, after one
8 hundred and twenty days from the death of the decedent, may
9 pay the amount owed to the decedent's surviving spouse, if
10 any; and if no spouse survived the decedent, then to the
11 distributees of the decedent under the laws of the State of
12 West Virginia.

13 (b) When the State Treasurer holds property in
14 accordance with article eight, chapter thirty-six of this code
15 on behalf of a decedent upon whose estate there has been no
16 qualification, and the amount of the property is \$5,000 or
17 less, the Treasurer may remit the property to the surviving
18 spouse of the decedent, if any; and if no spouse survives the
19 decedent, then to the distributees of the decedent under the
20 laws of the State of West Virginia. When the State Treasurer
21 holds property in accordance with article eight, chapter
22 thirty-six of this code on behalf of a decedent whose estate is
23 closed or has no present qualification and a valid will or an
24 affidavit naming the decedent's distributees has been filed
25 with the appropriate probate jurisdiction, the Treasurer may
26 remit the property to the distributees as reflected in the will,
27 or in the absence of a will, as established by the affidavit, in
28 accordance with the laws of descent and distribution.

29 (c) Payment in accordance with this section is in full
30 discharge and acquittance to all persons whomsoever on
31 account of the property.

CHAPTER 218

**(Com. Sub. for S.B. 246 - By Senators Tomblin, Mr. President,
and Caruth)
[By Request of the Executive]**

[Passed April 11, 2009; in effect from passage.]
[Approved by the Governor on May 11, 2009.]

AN ACT to amend and reenact §21A-1-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §21A-1A-5, §21A-1A-6, §21A-1A-7 and §21A-1A-28 of said code; to amend and reenact §21A-6-1, §21A-6-3 and §21A-6-10 of said code; and to amend and reenact §23-2C-3 of said code, all relating generally to unemployment compensation; requiring establishment of employer violator system; providing for notice and due process; defining certain terms; providing that the maximum weekly benefit rate shall not increase or decrease under certain circumstances; providing for an alternative base wage and authorizing benefits thereunder; requiring notice to employer when employee quits for health reasons; requiring written certification from physician within thirty days; classifying certain conduct as gross misconduct; providing that an employee who voluntarily retires is not eligible for unemployment; requiring the Insurance Commissioner transfer certain funds for the benefit of the Unemployment Trust Fund; and authorizing the transfer of certain funds by the Insurance Commissioner.

Be it enacted by the Legislature of West Virginia:

That §21A-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §21A-1A-5, §21A-1A-6, §21A-1A-7 and §21A-1A-28 of said code be amended and reenacted; that §21A-6-1, §21A-6-3 and §21A-6-10 of said code be amended and reenacted; and that §23-2C-3 of said code be amended and reenacted, all to read as follows:

Chapter

- 21A. Unemployment Compensation.**
- 23. Workers' Compensation.**

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

Article

- 1. Unemployment Compensation.**
- 1A. Definitions.**
- 6. Employee Eligibility; Benefits.**

ARTICLE 1. UNEMPLOYMENT COMPENSATION.

§21A-1-4. Workforce West Virginia created; divisions within Workforce West Virginia created; certain terms defined; employer violator system.

- 1 (a) There is continued an agency designated Workforce
- 2 West Virginia, composed of:
 - 3 (1) Division of Unemployment Compensation;
 - 4 (2) Division of Employment Service;
 - 5 (3) Division of Workforce Development;
 - 6 (4) Division of Research, Information and Analysis; and
 - 7 (5) Any other divisions or units that the executive
 - 8 director determines are necessary.

9 (b) Wherever within this chapter the term "department",
10 "bureau" or "fund" is used, it shall be taken to mean
11 Workforce West Virginia unless otherwise indicated. Any
12 reference in this code to the Bureau of Employment
13 Programs means Workforce West Virginia. Any reference in
14 this code to the Commissioner of the Bureau of Employment
15 Programs or Employment Security means the Executive
16 Director of Workforce West Virginia.

17 (c) Workforce West Virginia shall be administered
18 pursuant to subsection (b), section one, article two, chapter
19 five-f of this code.

20 (d) The Executive Director of Workforce West Virginia
21 shall establish an employer violator system to identify
22 individuals and employers who are in default on any
23 assessment, surcharge, tax or penalty owed to the fund. The
24 employer violator system shall prohibit violators who own,
25 control or have a ten percent or more ownership interest, or
26 other ownership interest as may be defined by the executive
27 director, in any company from obtaining or maintaining any
28 license, certificate or permit issued by the state until the
29 violator has paid all moneys owed to the fund or has entered
30 into and remains in compliance with a repayment agreement.
31 The employer violator system shall work cooperatively with
32 all state agencies to maintain an accurate, up-to-date list of
33 violators which shall be available in electronic format and
34 online for agencies and the public. Before an employer is
35 added to the violator list, he or she shall be given notice and
36 an opportunity for an expedited administrative hearing. The
37 executive director shall propose for promulgation emergency
38 and legislative rules to effectuate this subsection.

ARTICLE 1A. DEFINITIONS.

- §21A-1A-5. Base period; alternative base period.
- §21A-1A-6. Base period employer; alternative base period employer.
- §21A-1A-7. Base period wages; alternative base period wages.
- §21A-1A-28. Wages; average annual wage; threshold wage.

§21A-1A-5. Base period; alternative base period.

1 (a) "Base period" means the first four out of the last five
2 completed calendar quarters immediately preceding the first
3 day of the individual's benefit year.

4 (b) "Alternative base period" means the last four
5 completed calendar quarters immediately preceding the first
6 day of the individual's benefit year.

§21A-1A-6. Base period employer; alternative base period employer.

1 "Base period employer" and "alternative base period
2 employer" mean any employer who in the base period or
3 alternative base period for any benefit year paid wages to an
4 individual who filed claim for unemployment compensation
5 within such benefit year.

§21A-1A-7. Base period wages; alternative base period wages.

1 "Base period wages" and "alternative base period wages"
2 mean wages paid to an individual during the base period or
3 alternative base period by all the individual's base period or
4 alternative base period employers.

§21A-1A-28. Wages; average annual wage; threshold wage.

1 (a) "Wages" means all remuneration for personal service,
2 including commissions, gratuities customarily received by an
3 individual in the course of employment from persons other
4 than the employing unit, as long as such gratuities equal or
5 exceed an amount of not less than \$20 each month and which
6 are required to be reported to the employer by the employee,
7 bonuses and the cash value of all remuneration in any
8 medium other than cash except for agricultural labor and
9 domestic service. The term "wages" includes remuneration

10 for service rendered to the state as a member of the state
11 National Guard or Air National Guard only when serving on
12 a temporary basis pursuant to a call made by the Governor
13 under sections one and two, article one-d, chapter fifteen of
14 this code.

15 (b) The term "wages" does not include:

16 (1) That part of the remuneration which, after
17 remuneration equal to \$8,000 or, after the amendment and
18 reenactment of this section during the 2009 legislative
19 session, the threshold wage is paid during a calendar year to
20 an individual by an employer or his or her predecessor with
21 respect to employment during any calendar year, is paid to
22 such individual by such employer during such calendar year
23 unless that part of the remuneration is subject to a tax under
24 a federal law imposing a tax against which credit may be
25 taken for contributions required to be paid into a state
26 unemployment fund. For the purposes of this section, the
27 term "employment" includes service constituting employment
28 under any unemployment compensation law of another state;
29 or which as a condition for full tax credit against the tax
30 imposed by the federal Unemployment Tax Act is required to
31 be covered under this chapter; and, except that for the
32 purposes of sections one, ten, eleven and thirteen, article six
33 of this chapter, all remuneration earned by an individual in
34 employment shall be credited to the individual and included
35 in his or her computation of base period wages: *Provided,*
36 That the remuneration paid to an individual by an employer
37 with respect to employment in another state or other states
38 upon which contributions were required of and paid by such
39 employer under an unemployment compensation law of such
40 other state or states shall be included as a part of the
41 remuneration equal to the amounts of \$8,000 or, after the
42 amendment and reenactment of this section during the 2009
43 legislative session, the threshold wage herein referred to. In
44 applying such limitation on the amount of remuneration that

45 is taxable, an employer shall be accorded the benefit of all or
46 any portion of such amount which may have been paid by its
47 predecessor or predecessors: *Provided, however,* That if the
48 definition of the term "wages" as contained in Section
49 3306(b) of the Internal Revenue Code of 1954, as amended,
50 is amended to include remuneration in excess of \$8,000 or,
51 after the amendment and reenactment of this section during
52 the 2009 legislative session, the threshold wage paid to an
53 individual by an employer under the federal Unemployment
54 Tax Act during any calendar year, wages for the purposes of
55 this definition shall include remuneration paid in a calendar
56 year to an individual by an employer subject to this chapter
57 or his or her predecessor with respect to employment during
58 any calendar year up to an amount equal to the amount of
59 remuneration taxable under the federal Unemployment Tax
60 Act;

61 (2) The amount of any payment made (including any
62 amount paid by an employer for insurance or annuities, or
63 into a fund, to provide for any such payment) to, or on behalf
64 of, an individual in its employ or any of his or her
65 dependents, under a plan or system established by an
66 employer which makes provision for individuals in its
67 employ generally (or for such individuals and their
68 dependents), or for a class or classes of such individuals (or
69 for a class or classes of such individuals and their
70 dependents) on account of: (A) Retirement; or (B) sickness
71 or accident disability payments made to an employee under
72 an approved state workers' compensation law; or (C) medical
73 or hospitalization expenses in connection with sickness or
74 accident disability; or (D) death;

75 (3) Any payment made by an employer to an individual
76 in its employ (including any amount paid by an employer for
77 insurance or annuities, or into a fund, to provide for any such
78 payment) on account of retirement;

79 (4) Any payment made by an employer on account of
80 sickness or accident disability, or medical or hospitalization
81 expenses in connection with sickness or accident disability
82 to, or on behalf of, an individual in its employ after the
83 expiration of six calendar months following the last calendar
84 month in which such individual worked for such employer;

85 (5) Any payment made by an employer to, or on behalf
86 of, an individual in its employ or his or her beneficiary: (A)
87 From or to a trust described in Section 401(a) which is
88 exempt from tax under Section 501(a) of the federal Internal
89 Revenue Code at the time of such payments unless such
90 payment is made to such individual as an employee of the
91 trust as remuneration for services rendered by such individual
92 and not as a beneficiary of the trust; or (B) under or to an
93 annuity plan which, at the time of such payment, is a plan
94 described in Section 403(a) of the federal Internal Revenue
95 Code;

96 (6) The payment by an employer of the tax imposed upon
97 an employer under Section 3101 of the federal Internal
98 Revenue Code with respect to remuneration paid to an
99 employee for domestic service in a private home or the
100 employer of agricultural labor;

101 (7) Remuneration paid by an employer in any medium
102 other than cash to an individual in its employ for service not
103 in the course of the employer's trade or business;

104 (8) Any payment (other than vacation or sick pay) made
105 by an employer to an individual in its employ after the month
106 in which he or she attains the age of sixty-five if he or she did
107 not work for the employer in the period for which such
108 payment is made;

109 (9) Payments, not required under any contract of hire,
110 made to an individual with respect to his or her period of

111 training or service in the armed forces of the United States by
112 an employer by which such individual was formerly
113 employed; and

114 (10) Vacation pay, severance pay or savings plans
115 received by an individual before or after becoming totally or
116 partially unemployed but earned prior to becoming totally or
117 partially unemployed: *Provided*, That the term totally or
118 partially unemployed does not include: (A) Employees who
119 are on vacation by reason of the request of the employees or
120 their duly authorized agent, for a vacation at a specific time,
121 and which request by the employees or their agent is acceded
122 to by their employer; (B) employees who are on vacation by
123 reason of the employer's request provided they are so
124 informed at least ninety days prior to such vacation; or (C)
125 employees who are on vacation by reason of the employer's
126 request where such vacation is in addition to the regular
127 vacation and the employer compensates such employee at a
128 rate equal to or exceeding their regular daily rate of pay
129 during the vacation period.

130 (c) The reasonable cash value of remuneration in any
131 medium other than cash shall be estimated and determined in
132 accordance with rules prescribed by the commissioner,
133 except for remuneration other than cash for services
134 performed in agricultural labor and domestic service.

135 (d) "Average annual wage" means the state's average
136 annual wage which is computed on or before September 30
137 of the year immediately preceding the rate year and is the
138 total remuneration paid by employers as reported on
139 contribution reports on or before that date with respect to all
140 employment during the four consecutive calendar quarters
141 ending on June 30 of that year divided by the average
142 monthly number of individuals performing services in
143 employment during the same four calendar quarters as
144 reported on the contribution reports.

145 “Threshold wage” means the wage amount the employer
146 pays unemployment taxes on for each person in his or her
147 employ during a calendar year. On and after the effective
148 date of the amendment and reenactment of this chapter by the
149 Legislature in 2009, the threshold wage will be \$12,000:
150 *Provided*, That when the moneys in the unemployment fund
151 reach \$220 million on February 15 of any year, the threshold
152 wage thereafter will be reduced to \$9,000: *Provided*,
153 *however*, That each year thereafter the threshold wage shall
154 increase or decrease by the same percentage that the state’s
155 average wage increases or decreases.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-1. Eligibility qualifications.

§21A-6-3. Disqualification for benefits.

§21A-6-10. Benefit rate-Total unemployment; annual computation and publication of rates.

§21A-6-1. Eligibility qualifications.

1 An unemployed individual shall be eligible to receive
2 benefits only if the commissioner finds that:

3 (1) He or she has registered for work at and thereafter
4 continues to report at an employment office in accordance
5 with the regulations of the commissioner;

6 (2) He or she has made a claim for benefits in accordance
7 with the provisions of article seven of this chapter and has
8 furnished his or her Social Security number, or numbers if he
9 or she has more than one such number;

10 (3) He or she is able to work and is available for full-time
11 work for which he or she is fitted by prior training or
12 experience and is doing that which a reasonably prudent
13 person in his or her circumstances would do in seeking work;

14 (4) He or she has been totally or partially unemployed
15 during his or her benefit year for a waiting period of one

16 week prior to the week for which he or she claims benefits
17 for total or partial unemployment;

18 (5) He or she has within his or her base period been paid
19 wages for employment equal to not less than \$2,200 and must
20 have earned wages in more than one quarter of his or her base
21 period or, if he or she is not eligible under his or her base
22 period, has within his or her alternative base period been paid
23 wages for employment equal to not less than \$2,200 and must
24 have earned wages in more than one quarter of his or her
25 alternative base period; and

26 (6) He or she participates in reemployment services, such
27 as job search assistance services, if the individual has been
28 determined to be likely to exhaust regular benefits and needs
29 reemployment services pursuant to a profiling system
30 established by the commissioner, unless the commissioner
31 determines that:

32 (a) The individual has completed such services; or

33 (b) There is justifiable cause for the claimant's failure to
34 participate in such services.

§21A-6-3. Disqualification for benefits.

1 Upon the determination of the facts by the commissioner,
2 an individual shall be disqualified for benefits:

3 (1) For the week in which he or she left his or her most
4 recent work voluntarily without good cause involving fault
5 on the part of the employer and until the individual returns to
6 covered employment and has been employed in covered
7 employment at least thirty working days.

8 For the purpose of this subdivision, an individual shall
9 not be deemed to have left his or her most recent work

10 voluntarily without good cause involving fault on the part of
11 the employer, if such individual leaves his or her most recent
12 work with an employer and if he or she in fact, within a
13 fourteen-day calendar period, does return to employment
14 with the last preceding employer with whom he or she was
15 previously employed within the past year prior to his or her
16 return to workday, and which last preceding employer, after
17 having previously employed such individual for thirty
18 working days or more, laid off such individual because of
19 lack of work, which layoff occasioned the payment of
20 benefits under this chapter or could have occasioned the
21 payment of benefits under this chapter had such individual
22 applied for such benefits. It is the intent of this paragraph to
23 cause no disqualification for benefits for such an individual
24 who complies with the foregoing set of requirements and
25 conditions. Further, for the purpose of this subdivision, an
26 individual shall not be deemed to have left his or her most
27 recent work voluntarily without good cause involving fault
28 on the part of the employer, if such individual was compelled
29 to leave his or her work for his or her own health-related
30 reasons and notifies the employer prior to leaving the job or
31 within two business days after leaving the job or as soon as
32 practicable and presents written certification from a licensed
33 physician within thirty days of leaving the job that his or her
34 work aggravated, worsened or will worsen the individual's
35 health problem.

36 (2) For the week in which he or she was discharged from
37 his or her most recent work for misconduct and the six weeks
38 immediately following such week; or for the week in which
39 he or she was discharged from his or her last thirty-day
40 employing unit for misconduct and the six weeks
41 immediately following such week. Such disqualification
42 shall carry a reduction in the maximum benefit amount equal
43 to six times the individual's weekly benefit. However, if the
44 claimant returns to work in covered employment for thirty
45 days during his or her benefit year, whether or not such days

46 are consecutive, the maximum benefit amount shall be
47 increased by the amount of the decrease imposed under the
48 disqualification; except that:

49 If he or she were discharged from his or her most recent
50 work for one of the following reasons, or if he or she were
51 discharged from his or her last thirty days employing unit for
52 one of the following reasons: Gross misconduct consisting of
53 willful destruction of his or her employer's property; assault
54 upon the person of his or her employer or any employee of
55 his or her employer; if such assault is committed at such
56 individual's place of employment or in the course of
57 employment; reporting to work in an intoxicated condition,
58 or being intoxicated while at work; reporting to work under
59 the influence of any controlled substance, as defined in
60 chapter sixty-a of this code without a valid prescription, or
61 being under the influence of any controlled substance, as
62 defined in said chapter without a valid prescription, while at
63 work; adulterating or otherwise manipulating a sample or
64 specimen in order to thwart a drug or alcohol test lawfully
65 required of an employee; refusal to submit to random testing
66 for alcohol or illegal controlled substances for employees in
67 safety sensitive positions as defined in section two, article
68 one-d, chapter twenty-one of this code; arson, theft, larceny,
69 fraud or embezzlement in connection with his or her work; or
70 any other gross misconduct, he or she shall be and remain
71 disqualified for benefits until he or she has thereafter worked
72 for at least thirty days in covered employment: *Provided,*
73 *That for the purpose of this subdivision, the words "any other*
74 *gross misconduct" shall include, but not be limited to, any act*
75 *or acts of misconduct where the individual has received prior*
76 *written warning that termination of employment may result*
77 *from such act or acts.*

78 (3) For the week in which he or she failed without good
79 cause to apply for available, suitable work, accept suitable
80 work when offered, or return to his or her customary

81 self-employment when directed to do so by the
82 commissioner, and for the four weeks which immediately
83 follow for such additional period as any offer of suitable
84 work shall continue open for his or her acceptance. Such
85 disqualification shall carry a reduction in the maximum
86 benefit amount equal to four times the individual's weekly
87 benefit amount.

88 (4) For a week in which his or her total or partial
89 unemployment is due to a stoppage of work which exists
90 because of a labor dispute at the factory, establishment or
91 other premises at which he or she was last employed, unless
92 the commissioner is satisfied that he or she: (1) Was not
93 participating, financing or directly interested in such dispute;
94 and (2) did not belong to a grade or class of workers who
95 were participating, financing or directly interested in the
96 labor dispute which resulted in the stoppage of work. No
97 disqualification under this subdivision shall be imposed if the
98 employees are required to accept wages, hours or conditions
99 of employment substantially less favorable than those
100 prevailing for similar work in the locality, or if employees are
101 denied the right of collective bargaining under generally
102 prevailing conditions, or if an employer shuts down his or her
103 plant or operation or dismisses his or her employees in order
104 to force wage reduction, changes in hours or working
105 conditions. For the purpose of this subdivision if any
106 stoppage of work continues longer than four weeks after the
107 termination of the labor dispute which caused stoppage of
108 work, there shall be a rebuttable presumption that part of the
109 stoppage of work which exists after a period of four weeks
110 after the termination of the labor dispute did not exist because
111 of the labor dispute; and in that event the burden shall be
112 upon the employer or other interested party to show
113 otherwise.

114 (5) For a week with respect to which he or she is
115 receiving or has received:

116 (a) Wages in lieu of notice;

117 (b) Compensation for temporary total disability under the
118 workers' compensation law of any state or under a similar
119 law of the United States; or

120 (c) Unemployment compensation benefits under the laws
121 of the United States or any other state.

122 (6) For the week in which an individual has voluntarily
123 quit employment to marry or to perform any marital, parental
124 or family duty, or to attend to his or her personal business or
125 affairs and until the individual returns to covered
126 employment and has been employed in covered employment
127 at least thirty working days.

128 (7) Benefits shall not be paid to any individual on the
129 basis of any services, substantially all of which consist of
130 participating in sports or athletic events or training or
131 preparing to so participate, for any week which commences
132 during the period between two successive sport seasons (or
133 similar periods) if such individual performed such services in
134 the first of such seasons (or similar periods) and there is a
135 reasonable assurance that such individual will perform such
136 services in the later of such seasons (or similar periods).

137 (8)(a) Benefits shall not be paid on the basis of services
138 performed by an alien unless such alien is an individual who
139 was lawfully admitted for permanent residence at the time
140 such services were performed, was lawfully present for
141 purposes of performing such services or was permanently
142 residing in the United States under color of law at the time
143 such services were performed (including an alien who is
144 lawfully present in the United States as a result of the
145 application of the provisions of Section 203(a)(7) or Section
146 212(d)(5) of the Immigration and Nationality Act): *Provided*,
147 That any modifications to the provisions of Section

148 3304(a)(14) of the federal Unemployment Tax Act as
149 provided by Public Law 94-566 which specify other
150 conditions or other effective date than stated herein for the
151 denial of benefits based on services performed by aliens and
152 which modifications are required to be implemented under
153 state law as a condition for full tax credit against the tax
154 imposed by the federal Unemployment Tax Act shall be
155 deemed applicable under the provisions of this section;

156 (b) Any data or information required of individuals
157 applying for benefits to determine whether benefits are not
158 payable to them because of their alien status shall be
159 uniformly required from all applicants for benefits;

160 (c) In the case of an individual whose application for
161 benefits would otherwise be approved, no determination that
162 benefits to such individual are not payable because of his or
163 her alien status shall be made except upon a preponderance
164 of the evidence.

165 (9) For each week in which an individual is unemployed
166 because, having voluntarily left employment to attend a
167 school, college, university or other educational institution, he
168 or she is attending such school, college, university or other
169 educational institution, or is awaiting entrance thereto or is
170 awaiting the starting of a new term or session thereof, and
171 until the individual returns to covered employment.

172 (10) For each week in which he or she is unemployed
173 because of his or her request, or that of his or her duly
174 authorized agent, for a vacation period at a specified time that
175 would leave the employer no other alternative but to suspend
176 operations.

177 (11) In the case of an individual who accepts an early
178 retirement incentive package, unless he or she: (i) Establishes
179 a well-grounded fear of imminent layoff supported by

180 definitive objective facts involving fault on the part of the
181 employer; and (ii) establishes that he or she would suffer a
182 substantial loss by not accepting the early retirement
183 incentive package.

184 (12) For each week with respect to which he or she is
185 receiving or has received benefits under Title II of the Social
186 Security Act or similar payments under any act of Congress,
187 or remuneration in the form of an annuity, pension or other
188 retirement pay from a base period employer or chargeable
189 employer or from any trust or fund contributed to by a base
190 period employer or chargeable employer or any combination
191 of the above, the weekly benefit amount payable to such
192 individual for such week shall be reduced (but not below
193 zero) by the prorated weekly amount of said benefits,
194 payments or remuneration: *Provided*, That if such amount of
195 benefits is not a multiple of \$1, it shall be computed to the
196 next lowest multiple of \$1: *Provided, however*, That there
197 shall be no disqualification if in the individual's base period
198 there are no wages which were paid by the base period
199 employer or chargeable employer paying such remuneration,
200 or by a fund into which the employer has paid during said
201 base period: *Provided further*, That notwithstanding any
202 other provision of this subdivision to the contrary, the weekly
203 benefit amount payable to such individual for such week
204 shall not be reduced by any retirement benefits he or she is
205 receiving or has received under Title II of the Social Security
206 Act or similar payments under any act of Congress. Claimant
207 may be required to certify as to whether or not he or she is
208 receiving or has been receiving remuneration in the form of
209 an annuity, pension or other retirement pay from a base
210 period employer or chargeable employer or from a trust fund
211 contributed to by a base period employer or chargeable
212 employer.

213 (13) For each week in which and for fifty-two weeks
214 thereafter, beginning with the date of the decision, if the

215 commissioner finds such individual who within twenty-four
216 calendar months immediately preceding such decision, has
217 made a false statement or representation knowing it to be
218 false or knowingly fails to disclose a material fact, to obtain
219 or increase any benefit or payment under this article:
220 *Provided*, That disqualification under this subdivision shall
221 not preclude prosecution under section seven, article ten of
222 this chapter.

**§21A-6-10. Benefit rate -- Total unemployment; annual
computation and publication of rates.**

1 (a) Each eligible individual who is totally unemployed in
2 any week shall be paid benefits with respect to that week at
3 the weekly rate appearing in Column (C) in the benefit table
4 in this section, on the line on which in Column (A) there is
5 indicated the employee's wage class, except as otherwise
6 provided under the term "total and partial unemployment" in
7 section twenty-seven, article one-a of this chapter. The
8 employee's wage class shall be determined by his or her base
9 period wages as shown in Column (B) in the benefit table.
10 The right of an employee to receive benefits shall not be
11 prejudiced nor the amount thereof be diminished by reason
12 of failure by an employer to pay either the wages earned by
13 the employee or the contribution due on such wages. An
14 individual who is totally unemployed but earns in excess
15 of \$60 as a result of odd job or subsidiary work, or is paid a
16 bonus in any benefit week shall be paid benefits for such
17 week in accordance with the provisions of this chapter
18 pertaining to benefits for partial unemployment.

19 (b) (1) The maximum benefit for each wage class shall be
20 equal to twenty-six times the weekly benefit rate.

21 (2) The maximum benefit rate shall be sixty-six and two-
22 thirds percent of the average weekly wage in West Virginia.

23 (c) On July 1 of each year, the commissioner shall
24 determine the maximum weekly benefit rate upon the basis
25 of the formula set forth above and shall establish wage
26 classes as are required, increasing or decreasing the amount
27 of the base period wages required for each wage class by
28 \$150, establishing the weekly benefit rate for each wage class
29 by rounded dollar amount to be fifty-five percent of one fifty-
30 second of the median dollar amount of wages in the base
31 period for such wage class and establishing the maximum
32 benefit for each wage class as an amount equal to twenty-six
33 times the weekly benefit rate: *Provided*, That the
34 commissioner shall not increase or decrease the maximum
35 weekly benefit rate for the period beginning on the effective
36 date of the amendment and reenactment of this section in the
37 regular session of the legislature in 2009 until the threshold
38 wage is reduced to \$9,000, as required by subsection (d),
39 section twenty-eight, article one-a of this chapter. The
40 maximum weekly benefit rate, when computed by the
41 commissioner, in accordance with the foregoing provisions,
42 shall be rounded to the next lowest multiple of \$1.

43 (d) After he or she has established such wage classes, the
44 commissioner shall prepare and publish a table setting forth
45 such information.

46 (e) Average weekly wage shall be computed by dividing
47 the number of employees in West Virginia earning wages in
48 covered employment into the total wages paid to employees
49 in West Virginia in covered employment, and by further
50 dividing said result by fifty-two, and shall be determined
51 from employer wage and contribution reports for the previous
52 calendar year which are furnished to the department on or
53 before June 1 following such calendar year. The average
54 weekly wage, as determined by the commissioner, shall be
55 rounded to the next higher dollar.

56 (f) The computation and determination of rates as
57 aforesaid shall be completed annually before July 1 and any

58 such new wage class, with its corresponding wages in base
 59 period, weekly benefit rate and maximum benefit in a benefit
 60 year established by the commissioner in the foregoing
 61 manner effective on July 1 shall apply only to a new claim
 62 established by a claimant on and after July 1, and does not
 63 apply to continued claims of a claimant based on his or her
 64 new claim established before said July 1.

65 **BENEFIT TABLE**

66	A	B	C	
67	WAGE	WAGES IN	WEEKLY	MAXIMUM
68	CLASS	BASE PERIOD	BENEFIT	BENEFIT
			RATE	RATE
		Under \$ 2,200.00	Ineligible	
69	1	\$ 2,200.00 - 2,359.99	24.00	624.00
70	2	2,350.00 - 2,499.99	25.00	650.00
71	3	2,500.00 - 2,649.99	27.00	702.00
72	4	2,650.00 - 2,799.99	28.00	728.00
73	5	2,800.00 - 2,949.99	30.00	780.00
74	6	2,950.00 - 3,099.99	31.00	806.00
75	7	3,100.00 - 3,249.99	33.00	858.00
76	8	3,250.00 - 3,399.99	35.00	910.00
77	9	3,400.00 - 3,549.99	36.00	936.00
78	10	3,550.00 - 3,699.99	38.00	988.00
79	11	3,700.00 - 3,849.99	39.00	1,014.00
80	12	3,850.00 - 3,999.99	41.00	1,066.00
81	13	4,000.00 - 4,149.99	43.00	1,118.00
82	14	4,150.00 - 4,299.99	44.00	1,144.00
83	15	4,300.00 - 4,449.99	46.00	1,196.00
84	16	4,450.00 - 4,599.99	47.00	1,222.00
85	17	4,600.00 - 4,749.99	49.00	1,274.00
86	18	4,750.00 - 4,899.99	51.00	1,326.00
87	19	4,900.00 - 5,049.99	52.00	1,352.00
88	20	5,050.00 - 5,199.99	54.00	1,404.00

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89	21	5,200.00	- 5,349.99	55.00	1,430.00
90	22	5,350.00	- 5,499.99	57.00	1,482.00
91	23	5,500.00	- 5,649.99	58.00	1,508.00
92	24	5,650.00	- 5,799.99	60.00	1,560.00
93	25	5,800.00	- 5,949.99	62.00	1,612.00
94	26	5,950.00	- 6,099.99	63.00	1,638.00
95	27	6,100.00	- 6,249.99	65.00	1,690.00
96	28	6,250.00	- 6,399.99	66.00	1,716.00
97	29	6,400.00	- 6,549.99	68.00	1,768.00
98	30	6,550.00	- 6,699.99	70.00	1,820.00
99	31	6,700.00	- 6,849.99	71.00	1,846.00
100	32	6,850.00	- 6,999.99	73.00	1,898.00
101	33	7,000.00	- 7,149.99	74.00	1,924.00
102	34	7,150.00	- 7,299.99	76.00	1,976.00
103	35	7,300.00	- 7,449.99	78.00	2,028.00
104	36	7,450.00	- 7,599.99	79.00	2,054.00
105	37	7,600.00	- 7,749.99	81.00	2,106.00
106	38	7,750.00	- 7,899.99	82.00	2,132.00
107	39	7,900.00	- 8,049.99	84.00	2,184.00
108	40	8,050.00	- 8,199.99	85.00	2,210.00
109	41	8,200.00	- 8,349.99	87.00	2,262.00
110	42	8,350.00	- 8,499.99	89.00	2,314.00
111	43	8,500.00	- 8,649.99	90.00	2,340.00
112	44	8,650.00	- 8,799.99	92.00	2,392.00
113	45	8,800.00	- 8,949.99	93.00	2,418.00
114	46	8,950.00	- 9,099.99	95.00	2,470.00
115	47	9,100.00	- 9,249.99	97.00	2,522.00
116	48	9,250.00	- 9,399.99	98.00	2,548.00
117	49	9,400.00	- 9,549.99	100.00	2,600.00
118	50	9,550.00	- 9,699.99	101.00	2,626.00
119	51	9,700.00	- 9,849.99	103.00	2,678.00
120	52	9,850.00	- 9,999.99	104.00	2,704.00
121	53	10,000.00	- 10,149.99	106.00	2,756.00

122	54	10,150.00	- 10,299.99	108.00	2,808.00
123	55	10,300.00	- 10,449.99	109.00	2,834.00
124	56	10,450.00	- 10,599.99	111.00	2,886.00
125	57	10,600.00	- 10,749.99	112.00	2,912.00
126	58	10,750.00	- 10,899.99	114.00	2,964.00
127	59	10,900.00	- 11,049.99	116.00	3,016.00
128	60	11,050.00	- 11,199.99	117.00	3,042.00
129	61	11,200.00	- 11,349.99	119.00	3,094.00
130	62	11,350.00	- 11,499.99	120.00	3,120.00
131	63	11,500.00	- 11,649.99	122.00	3,172.00
132	64	11,650.00	- 11,799.99	124.00	3,224.00
133	65	11,800.00	- 11,949.99	125.00	3,250.00
134	66	11,950.00	- 12,099.99	127.00	3,302.00
135	67	12,100.00	- 12,249.99	128.00	3,328.00
136	68	12,250.00	- 12,399.99	130.00	3,380.00
137	69	12,400.00	- 12,549.99	131.00	3,406.00
138	70	12,550.00	- 12,699.99	133.00	3,458.00
139	71	12,700.00	- 12,849.99	135.00	3,510.00
140	72	12,850.00	- 12,999.99	136.00	3,536.00
141	73	13,000.00	- 13,149.99	138.00	3,588.00
142	74	13,150.00	- 13,299.99	139.00	3,614.00
143	75	13,300.00	- 13,449.99	141.00	3,666.00
144	76	13,450.00	- 13,599.99	143.00	3,718.00
145	77	13,600.00	- 13,749.99	144.00	3,744.00
146	78	13,750.00	- 13,899.99	146.00	3,796.00
147	79	13,900.00	- 14,049.99	147.00	3,822.00
148	80	14,050.00	- 14,199.99	149.00	3,874.00
149	81	14,200.00	- 14,349.99	150.00	3,900.00
150	82	14,350.00	- 14,499.99	152.00	3,952.00
151	83	14,500.00	- 14,649.99	154.00	4,004.00
152	84	14,650.00	- 14,799.99	155.00	4,030.00
153	85	14,800.00	- 14,949.99	157.00	4,082.00
154	86	14,950.00	- 15,099.99	158.00	4,108.00

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155	87	15,100.00	- 15,249.99	160.00	4,160.00
156	88	15,250.00	- 15,399.99	162.00	4,212.00
157	89	15,400.00	- 15,549.99	163.00	4,238.00
158	90	15,550.00	- 15,699.99	165.00	4,290.00
159	91	15,700.00	- 15,849.99	166.00	4,316.00
160	92	15,850.00	- 15,999.99	168.00	4,368.00
161	93	16,000.00	- 16,149.99	170.00	4,420.00
162	94	16,150.00	- 16,299.99	171.00	4,446.00
163	95	16,300.00	- 16,449.99	173.00	4,498.00
164	96	16,450.00	- 16,599.99	174.00	4,524.00
165	97	16,600.00	- 16,749.99	176.00	4,576.00
166	98	16,750.00	- 16,899.99	177.00	4,602.00
167	99	16,900.00	- 17,049.99	179.00	4,654.00
168	100	17,050.00	- 17,199.99	181.00	4,706.00
169	101	17,200.00	- 17,349.99	182.00	4,732.00
170	102	17,350.00	- 17,499.99	184.00	4,784.00
171	103	17,500.00	- 17,649.99	185.00	4,810.00
172	104	17,650.00	- 17,799.99	187.00	4,862.00
173	105	17,800.00	- 17,949.99	189.00	4,914.00
174	106	17,950.00	- 18,099.99	190.00	4,940.00
175	107	18,100.00	- 18,249.99	192.00	4,992.00
176	108	18,250.00	- 18,399.99	193.00	5,018.00
177	109	18,400.00	- 18,549.99	195.00	5,070.00
178	110	18,550.00	- 18,699.99	196.00	5,096.00
179	111	18,700.00	- 18,849.99	198.00	5,148.00
180	112	18,850.00	- 18,999.99	200.00	5,200.00
181	113	19,000.00	- 19,149.99	201.00	5,226.00
182	114	19,150.00	- 19,299.99	203.00	5,278.00
183	115	19,300.00	- 19,449.99	204.00	5,304.00
184	116	19,450.00	- 19,599.99	206.00	5,356.00
185	117	19,600.00	- 19,749.99	208.00	5,408.00
186	118	19,750.00	- 19,899.99	209.00	5,434.00
187	119	19,900.00	- 20,049.99	211.00	5,486.00

188	120	20,050.00	- 20,199.99	212.00	5,512.00
189	121	20,200.00	- 20,349.99	214.00	5,564.00
190	122	20,350.00	- 20,499.99	216.00	5,616.00
191	123	20,500.00	- 20,649.99	217.00	5,642.00
192	124	20,650.00	- 20,799.99	219.00	5,694.00
193	125	20,800.00	- 20,949.99	220.00	5,720.00
194	126	20,950.00	- 21,099.99	222.00	5,772.00
195	127	21,100.00	- 21,249.99	223.00	5,798.00
196	128	21,250.00	- 21,399.99	225.00	5,850.00
197	129	21,400.00	- 21,549.99	227.00	5,902.00
198	130	21,550.00	- 21,699.99	228.00	5,928.00
199	131	21,700.00	- 21,849.99	230.00	5,980.00
200	132	21,850.00	- 21,999.99	231.00	6,006.00
201	133	22,000.00	- 22,149.99	233.00	6,058.00
202	134	22,150.00	- 22,299.99	235.00	6,110.00
203	135	22,300.00	- 22,449.99	236.00	6,136.00
204	136	22,450.00	- 22,599.99	238.00	6,188.00
205	137	22,600.00	- 22,749.99	239.00	6,214.00
206	138	22,750.00	- 22,899.99	241.00	6,266.00
207	139	22,900.00	- 23,049.99	243.00	6,318.00
208	140	23,050.00	- 23,199.99	244.00	6,344.00
209	141	23,200.00	- 23,349.99	246.00	6,396.00
210	142	23,350.00	- 23,499.99	247.00	6,422.00
211	143	23,500.00	- 23,649.99	249.00	6,474.00
212	144	23,650.00	- 23,799.99	250.00	6,500.00
213	145	23,800.00	- 23,949.99	252.00	6,552.00
214	146	23,950.00	- 24,099.99	254.00	6,604.00
215	147	24,100.00	- 24,249.99	255.00	6,630.00
216	148	24,250.00	- 24,399.99	257.00	6,682.00
217	149	24,400.00	- 24,549.99	258.00	6,708.00
218	150	24,550.00	- 24,699.99	260.00	6,760.00
219	151	24,700.00	- 24,849.99	262.00	6,812.00
220	152	24,850.00	- 24,999.99	263.00	6,838.00

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221	153	25,000.00	- 25,149.99	265.00	6,890.00
222	154	25,150.00	- 25,299.99	266.00	6,916.00
223	155	25,300.00	- 25,449.99	268.00	6,968.00
224	156	25,450.00	- 25,599.99	269.00	6,994.00
225	157	25,600.00	- 25,749.99	271.00	7,046.00
226	158	25,750.00	- 25,899.99	273.00	7,098.00
227	159	25,900.00	- 26,049.99	274.00	7,124.00
228	160	26,050.00	- 26,199.99	276.00	7,176.00
229	161	26,200.00	- 26,349.99	277.00	7,202.00
230	162	26,350.00	- 26,499.99	279.00	7,254.00
231	163	26,500.00	- 26,649.99	281.00	7,306.00
232	164	26,650.00	- 26,799.99	282.00	7,332.00
233	165	26,800.00	- 26,949.99	284.00	7,384.00
234	166	26,950.00	- 27,099.99	285.00	7,410.00
235	167	27,100.00	- 27,249.99	287.00	7,462.00
236	168	27,250.00	- 27,399.99	289.00	7,514.00
237	169	27,400.00	- 27,549.99	290.00	7,540.00
238	170	27,550.00	- 27,699.99	292.00	7,592.00
239	171	27,700.00	- 27,849.99	293.00	7,618.00
240	172	27,850.00	- 27,999.99	295.00	7,670.00
241	173	28,000.00	- 28,149.99	296.00	7,696.00
242	174	28,150.00	- 28,299.99	298.00	7,748.00
243	175	28,300.00	- 28,449.99	300.00	7,800.00
244	176	28,450.00	- 28,599.99	301.00	7,826.00
245	177	28,600.00	- 28,749.99	303.00	7,878.00
246	178	28,750.00	- 28,899.99	304.00	7,904.00
247	179	28,900.00	- 29,049.99	306.00	7,956.00
248	180	29,050.00	- 29,199.99	308.00	8,008.00
249	181	29,200.00	- 29,349.99	309.00	8,034.00
250	182	29,350.00	- 29,499.99	311.00	8,086.00
251	183	29,500.00	- 29,649.99	312.00	8,112.00
252	184	29,650.00	- 29,799.99	314.00	8,164.00
253	185	29,800.00	- 29,949.99	315.00	8,190.00

254	186	29,950.00	- 30,099.99	317.00	8,242.00
255	187	30,100.00	- 30,249.99	319.00	8,294.00
256	188	30,250.00	- 30,399.99	320.00	8,320.00
257	189	30,400.00	- 30,549.99	322.00	8,372.00
258	190	30,550.00	- 30,699.99	323.00	8,398.00
259	191	30,700.00	- 30,849.99	325.00	8,450.00
260	192	30,850.00	- 30,999.99	327.00	8,502.00
261	193	31,000.00	- 31,149.99	328.00	8,528.00
262	194	31,150.00	- 31,299.99	330.00	8,580.00
263	195	31,300.00	- 31,449.99	331.00	8,606.00
264	196	31,450.00	- 31,599.99	333.00	8,658.00
265	197	31,600.00	- 31,749.99	335.00	8,710.00
266	198	31,750.00	- 31,899.99	336.00	8,736.00
267	199	31,900.00	- 32,049.99	338.00	8,788.00
268	200	32,050.00	- 32,199.99	339.00	8,814.00
269	201	32,200.00	- 32,349.99	341.00	8,866.00
270	202	32,350.00	- 32,499.99	342.00	8,892.00
271	203	32,500.00	- 32,649.99	344.00	8,944.00
272	204	32,650.00	- 32,799.99	346.00	8,996.00
273	205	32,800.00	- 32,949.99	347.00	9,022.00
274	206	32,950.00	- 33,099.99	349.00	9,074.00
275	207	33,100.00	- 33,249.99	350.00	9,100.00
276	208	33,250.00	- 33,399.99	352.00	9,152.00
277	209	33,400.00	- 33,549.99	354.00	9,204.00
278	210	33,550.00	-33,699.99	355.00	9,230.00
279	211	33,700.00	-33,849.99	357.00	9,282.00
280	212	33,850.00	-33,999.99	358.00	9,308.00
281	213	34,000.00	-34,149.99	360.00	9,360.00
282	214	34,150.00	-34,299.99	361.00	9,386.00
283	215	34,300.00	-34,449.99	363.00	9,438.00
284	216	34,450.00	-34,599.99	365.00	9,490.00
285	217	34,600.00	-34,749.99	366.00	9,516.00
286	218	34,750.00	-34,899.99	368.00	9,568.00

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UNEMPLOYMENT COMPENSATION

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287	219	34,900.00	-35,049.99	369.00	9,594.00
288	220	35,050.00	-35,199.99	371.00	9,646.00
289	221	35,200.00	-35,349.99	373.00	9,698.00
290	222	35,350.00	-35,499.99	374.00	9,724.00
291	223	35,500.00	-35,649.99	376.00	9,776.00
292	224	35,650.00	-35,799.99	377.00	9,802.00
293	225	35,800.00	-35,949.99	379.00	9,854.00
294	226	35,950.00	-36,099.99	381.00	9,906.00
295	227	36,100.00	-36,249.99	382.00	9,932.00
296	228	36,250.00	-36,399.99	384.00	9,984.00
297	229	36,400.00	-36,549.99	385.00	10,010.00
298	230	36,550.00	-36,699.99	387.00	10,062.00
299	231	36,700.00	-36,849.99	388.00	10,088.00
300	232	36,850.00	-36,999.99	390.00	10,140.00
301	233	37,000.00	-37,149.99	392.00	10,192.00
302	234	37,150.00	-37,299.99	393.00	10,218.00
303	235	37,300.00	-37,449.99	395.00	10,270.00
304	236	37,450.00	-37,599.99	396.00	10,296.00
305	237	37,600.00	-37,749.99	398.00	10,348.00
306	238	37,750.00	-37,899.99	400.00	10,400.00
307	239	37,900.00	-38,049.99	401.00	10,426.00
308	240	38,050.00	-38,199.99	403.00	10,478.00
309	241	38,200.00	-38,349.99	404.00	10,504.00
310	242	38,350.00	-38,499.99	406.00	10,556.00
311	243	38,500.00	-38,649.99	408.00	10,608.00
312	244	38,650.00	-38,799.99	409.00	10,634.00
313	245	38,800.00	-38,949.99	411.00	10,686.00
314	246	38,950.00	-39,099.99	412.00	10,712.00
315	247	39,100.00	-39,249.99	414.00	10,764.00
316	248	39,250.00	-39,399.99	415.00	10,790.00
317	249	39,400.00	-39,549.99	417.00	10,842.00
318	250	39,550.00	-39,699.99	419.00	10,894.00
319	251	39,700.00	-39,849.99	420.00	10,920.00

320	252	39,850.00	-39,999.99	422.00	10,972.00
321	253	40,000.00	-40,149.99	423.00	10,998.00
322	254	40,150.00	-and above	424.00	11,024.00

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.

§23-2C-3. Creation of employer mutual as successor organization of the West Virginia Workers' Compensation Commission.

1 (a) (1) On or before July 1, 2005, the executive director
2 may take such actions as are necessary to establish an
3 employers' mutual insurance company as a domestic, private,
4 nonstock, corporation to:

5 (A) Insure employers against liability for injuries and
6 occupational diseases for which their employees may be
7 entitled to receive compensation pursuant to this chapter and
8 federal Longshore and Harbor Workers' Compensation Act,
9 33 U. S. C. §901, *et seq.*;

10 (B) Provide employer's liability insurance incidental to
11 and provided in connection with the insurance specified in
12 paragraph (A) of this subdivision, including coal workers'
13 pneumoconiosis coverage and employer excess liability
14 coverage as provided in this chapter; and

15 (C) Transact other kinds of property and casualty
16 insurance for which the company is otherwise qualified under
17 the provisions of this code.

18 (2) The company may not sell, assign or transfer
19 substantial assets or ownership of the company.

20 (b) If the executive director establishes a domestic mutual
21 insurance company pursuant to subsection (a) of this section:

22 (1) As soon as practical, the company established
23 pursuant to the provisions of this article shall, through a vote
24 of a majority of its provisional board, file its corporate
25 charter and bylaws with the Insurance Commissioner and
26 apply for a license with the Insurance Commissioner to
27 transact insurance in this state. Notwithstanding any other
28 provision of this code, the Insurance Commissioner shall act
29 on the documents within fifteen days of the filing by the
30 company.

31 (2) In recognition of the workers' compensation insurance
32 liability insurance crisis in this state at the time of enactment
33 of this article and the critical need to expedite the initial
34 operation of the company, the Legislature authorizes the
35 Insurance Commissioner to review the documentation
36 submitted by the company and to determine the initial capital
37 and surplus requirements of the company, notwithstanding
38 the provisions of section five-b, article three, chapter
39 thirty-three of this code. The company shall furnish the
40 Insurance Commissioner with all information and cooperate
41 in all respects necessary for the Insurance Commissioner to
42 perform the duties set forth in this section and in other
43 provisions of this chapter and chapter thirty-three of this
44 code. The Insurance Commissioner shall monitor the
45 economic viability of the company during its initial operation
46 on not less than a monthly basis, until the commissioner, in
47 his or her discretion, determines that monthly reporting is not
48 necessary. In all other respects the company shall comply
49 with the applicable provisions of chapter thirty-three of this
50 code.

51 (3) Subject to the provisions of subdivision (4) of this
52 subsection, the Insurance Commissioner may waive other
53 requirements imposed on mutual insurance companies by the
54 provisions of chapter thirty-three of this code the Insurance
55 Commissioner determines are necessary to enable the
56 company to begin insuring employers in this state at the
57 earliest possible date.

58 (4) Within forty months of the date of the issuance of its
59 license to transact insurance, the company shall comply with
60 the capital and surplus requirements set forth in subsection
61 (a), section five-b, article three, chapter thirty-three of this
62 code in effect on the effective date of this enactment, unless
63 the deadline is extended by the Insurance Commissioner.

64 (c) For the duration of its existence, the company is not
65 a department, unit, agency or instrumentality of the state for
66 any purpose. All debts, claims, obligations and liabilities of
67 the company, whenever incurred, are the debts, claims,
68 obligations and liabilities of the company only and not of the
69 state or of any department, unit, agency, instrumentality,
70 officer or employee of the state.

71 (d) The moneys of the company are not part of the
72 General Revenue Fund of the state. The debts, claims,
73 obligations and liabilities of the company are not a debt of
74 the state or a pledge of the credit of the state.

75 (e) The company is not subject to provisions of article
76 nine-a, chapter six of this code; the provisions of article two,
77 chapter six-c of this code; the provisions of chapter
78 twenty-nine-b of this code; the provisions of article three,
79 chapter five-a of this code; the provisions of article six,
80 chapter twenty-nine of this code; or the provisions of chapter
81 twelve of this code.

82 (f) If the commission has been terminated, effective upon
83 the termination, private carriers, including the company, are
84 not subject to payment of premium taxes, surcharges and
85 credits contained in article three, chapter thirty-three of this
86 code on premiums received for coverage under this chapter.
87 In lieu thereof, the workers' compensation insurance market
88 is subject to the following:

89 (1) (A) Each fiscal year, the Insurance Commissioner
90 shall calculate a percentage surcharge to be collected by each

91 private carrier from its policyholders. The surcharge
92 percentage shall be calculated by dividing the previous fiscal
93 year's total premiums collected plus deductible payments by
94 all employers into the portion of the Insurance
95 Commissioner's budget amount attributable to regulation of
96 the private carrier market. This resulting percentage shall be
97 applied to each policyholder's premium payment and
98 deductible payments as a surcharge and remitted to the
99 Insurance Commissioner. Said surcharge shall be remitted
100 within ninety days of receipt of premium payments;

101 (B) With respect to fiscal years beginning on and after
102 July 1, 2008, in lieu of the surcharge set forth in the
103 preceding paragraph, each private carrier shall collect a
104 surcharge in the amount of five and five-tenths percent of the
105 premium collected plus the total of all premium discounts
106 based on deductible provisions that were applied: *Provided,*
107 That prior to June 30, 2013 and every five years thereafter,
108 the commissioner shall review the percentage surcharge and
109 determine a new percentage as he or she deems necessary.

110 (C) The amounts required to be collected under paragraph
111 (B) of this subdivision shall be remitted to the Insurance
112 Commissioner on or before the twenty-fifth day of the month
113 succeeding the end of the quarter in which they are collected,
114 except for the fourth quarter for which the surcharge shall be
115 remitted on or before March 1 of the succeeding year.

116 (2) Each fiscal year, the Insurance Commissioner shall
117 calculate a percentage surcharge to be remitted on a quarterly
118 basis by self-insured employers and said percentage shall be
119 calculated by dividing previous year's self-insured payroll in
120 the state into the portion of the Insurance Commissioner's
121 budget amount attributable to regulation of the self-insured
122 employer market. This resulting percentage shall be applied
123 to each self-insured employer's payroll and the resulting
124 amount shall be remitted as a regulatory surcharge by each
125 self-insured employer. The Industrial Council may

126 promulgate a rule for implementation of this section. The
127 company, all other private carriers and all self-insured
128 employers shall furnish the Insurance Commissioner with all
129 required information and cooperate in all respects necessary
130 for the Insurance Commissioner to perform the duties set
131 forth in this section and in other provisions of this chapter
132 and chapter thirty-three of this code. The surcharge shall be
133 calculated so as to only defray the costs associated with the
134 administration of this chapter and the funds raised shall not
135 be used for any other purpose except as set forth in
136 subdivision (4) of this subsection;

137 (3) (A) Each private carrier shall collect a premiums
138 surcharge from its policyholders as annually determined, by
139 May 1 of each year, by the Insurance Commissioner to
140 produce forty-five million dollars annually, of each
141 policyholder's periodic premium amount for workers'
142 compensation insurance: *Provided*, That the surcharge rate on
143 policies issued or renewed on or after July 1, 2008, shall be
144 nine percent of the premium collected plus the total of all
145 premium discounts based on deductible provisions that were
146 applied.

147 (B) By May 1 each year, the self-insured employer
148 community shall be assessed a cumulative total of nine
149 million dollars. The methodology for the assessment shall be
150 fair and equitable and determined by exempt legislative rule
151 issued by the Industrial Council. The amount collected
152 pursuant to this subdivision shall be remitted to the Insurance
153 Commissioner for deposit in the Workers' Compensation
154 Debt Reduction Fund created in section five, article two-d of
155 this chapter.

156 (4) On or before July 1, 2009, the Insurance
157 Commissioner shall make a one-time lump sum transfer of
158 \$40 million generated from the surcharges assessed pursuant
159 to paragraph (B), subdivision (1) of this subsection and
160 subdivision (2) of this subsection to the Bureau of

161 Employment Programs' Commissioner for deposit with the
162 Secretary of the Treasury of the United States as a credit of
163 this state in the Unemployment Trust Fund Account
164 maintained pursuant to section four, article eight, chapter
165 twenty-one-a of this code.

166 (g) The new premiums surcharge imposed by paragraphs
167 (A) and (B), subdivision (3), subsection (f) of this section
168 sunset and are not collectible with respect to workers'
169 compensation insurance premiums paid when the policy is
170 renewed on or after the first day of the month following the
171 month in which the Governor certifies to the Legislature that
172 the revenue bonds issued pursuant to article two-d of this
173 chapter have been retired and that the unfunded liability of
174 the Old Fund has been paid or has been provided for in its
175 entirety, whichever occurs last.

CHAPTER 219

**(Com. Sub. for H.B. 2685 - By Delegates Blair, Guthrie
and Walters)**

[Passed April 10, 2009; in effect ninety days from passage.]

[Approved by the Governor on April 24, 2009.]

AN ACT to amend and reenact §44B-4-409 of the Code of West Virginia, 1931, as amended; to amend and reenact §44B-5-505 of said code; and to amend said code by adding thereto a new section, designated §44B-6-606, all relating to amending the Uniform Principal and Income Act; complying with IRS comments regarding allocation of IRA distributions; clarifying the formula for calculating how much a trust needs to distribute

and how much it can use to pay taxes; and providing effective dates of amendments.

Be it enacted by the Legislature of West Virginia:

That §44B-4-409 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §44B-5-505 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §44B-6-606, all to read as follows:

Article

4. Allocation of Receipts During Administration of Trust.
5. Allocation of Disbursements During Administration of Trust.
6. Miscellaneous Provisions.

ARTICLE 4. ALLOCATION OF RECEIPTS DURING ADMINISTRATION OF TRUST.

PART 3--RECEIPTS NORMALLY APPORTIONED

§44B-4-409. Deferred compensation, annuities and similar payments.

1 (a) In this section:

2 (1) "Payment" means a payment that a trustee may
3 receive over a fixed number of years or during the life of one
4 or more individuals because of services rendered or property
5 transferred to the payer in exchange for future payments. The
6 term includes a payment made in money or property from the
7 payer's general assets or from a separate fund created by the
8 payer. For purposes of subsections (d), (e), (f), and (g), the
9 term also includes any payment from any separate fund,
10 regardless of the reason for the payment.

11 (2) "Separate fund" includes a private or commercial
12 annuity, an individual retirement account, and a pension,
13 profit-sharing, stock-bonus, or stock-ownership plan.

14 (b) To the extent that a payment is characterized as
15 interest, a dividend, or a payment made in lieu of interest or
16 a dividend, a trustee shall allocate the payment to income.
17 The trustee shall allocate to principal the balance of the
18 payment and any other payment received in the same
19 accounting period that is not characterized as interest, a
20 dividend, or an equivalent payment.

21 (c) If no part of a payment is characterized as interest, a
22 dividend, or an equivalent payment, and all or part of the
23 payment is required to be made, a trustee shall allocate to
24 income ten percent of the part that is required to be made
25 during the accounting period and the balance to principal. If
26 no part of a payment is required to be made or the payment
27 received is the entire amount to which the trustee is entitled,
28 the trustee shall allocate the entire payment to principal. For
29 purposes of this subsection, a payment is not required to be
30 made to the extent that it is made because the trustee
31 exercises a right of withdrawal.

32 (d) Except as otherwise provided in subsection (e),
33 subsections (f) and (g) apply, and subsections (b) and (c) do
34 not apply, in determining the allocation of a payment made
35 from a separate fund to:

36 (1) A trust to which an election to qualify for a marital
37 deduction under 26 U.S.C. § 2056(b)(7), as amended, has
38 been made; or

39 (2) A trust that qualifies for the marital deduction under
40 26 U.S.C. § 2056(b)(5), as amended.

41 (e) Subsections (d), (f), and (g) do not apply if and to the
42 extent that the series of payments would, without the
43 application of subsection (d), qualify for the marital
44 deduction under 26 U.S.C. § 2056(b)(7)(C), as amended.

45 (f) A trustee shall determine the internal income of each
46 separate fund for the accounting period as if the separate fund

47 were a trust subject to this chapter. Upon request of the
48 surviving spouse, the trustee shall demand that the person
49 administering the separate fund distribute the internal income
50 to the trust. The trustee shall allocate a payment from the
51 separate fund to income to the extent of the internal income
52 of the separate fund and distribute that amount to the
53 surviving spouse. The trustee shall allocate the balance of the
54 payment to principal. Upon request of the surviving spouse,
55 the trustee shall allocate principal to income to the extent the
56 internal income of the separate fund exceeds payments made
57 from the separate fund to the trust during the accounting
58 period.

59 (g) If a trustee cannot determine the internal income of a
60 separate fund but can determine the value of the separate
61 fund, the internal income of the separate fund is deemed to
62 equal four percent of the fund's value, according to the most
63 recent statement of value preceding the beginning of the
64 accounting period. If the trustee can determine neither the
65 internal income of the separate fund nor the fund's value, the
66 internal income of the fund is deemed to equal the product of
67 the interest rate and the present value of the expected future
68 payments, as determined under 26 U.S.C. § 7520, as
69 amended, for the month preceding the accounting period for
70 which the computation is made.

71 (h) This section does not apply to a payment to which
72 section four hundred ten of this article applies.

ARTICLE 5. ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST.

§44B-5-505. Income taxes.

1 (a) A tax required to be paid by a trustee based on
2 receipts allocated to income must be paid from income.

3 (b) A tax required to be paid by a trustee based on
4 receipts allocated to principal must be paid from principal,
5 even if the tax is called an income tax by the taxing authority.

6 (c) A tax required to be paid by a trustee on the trust's
7 share of an entity's taxable income must be paid:

8 (1) From income to the extent that receipts from the
9 entity are allocated only to income;

10 (2) From principal to the extent that receipts from the
11 entity are allocated only to principal;

12 (3) Proportionately from principal and income to the
13 extent that receipts from the entity are allocated to both
14 income and principal; and

15 (4) From principal to the extent that the tax exceeds the
16 total receipts from the entity.

17 (d) After applying subsections (a) through (c), the trustee
18 shall adjust income or principal receipts to the extent that the
19 trust's taxes are reduced because the trust receives a
20 deduction for payments made to a beneficiary.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§44B-6-606. Transitional Matters.

1 Section four hundred nine, article four of this chapter, as
2 amended during the regular session of the 2009 Legislature,
3 applies to a trust described in subsection (d) of section four
4 hundred nine, article four of this chapter on and after the
5 following dates:

6 (1) If the trust is not funded as of the effective date of the
7 amendments to this chapter enacted during the regular

8 session of the two thousand nine legislature, the date of the
9 decedent's death.

10 (2) If the trust is initially funded in the calendar year
11 beginning the first day of January, two thousand nine, the
12 date of the decedent's death.

13 (3) If the trust is not described in paragraph (1) or (2), the
14 first day of January, two thousand nine.

CHAPTER 220

**(S.B. 515 - By Senators Jenkins, Foster, Minard,
Stollings, Wells, Caruth, Sypolt and Kessler)**

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 7, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new chapter, designated §44C-1-1, §44C-1-2, §44C-1-3, §44C-1-4, §44C-1-5, §44C-1-6, §44C-2-1, §44C-2-2, §44C-2-3, §44C-2-4, §44C-2-5, §44C-2-6, §44C-2-7, §44C-2-8, §44C-3-1, §44C-3-2, §44C-4-1, §44C-4-2, §44C-4-3, §44C-5-1, §44C-5-2 and §44C-5-3, all relating to enactment of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act; defining terms; authorizing a court in this state to treat a foreign country as if it were a state; allowing communication and cooperation between courts for pending guardianship protective proceedings; providing for taking testimony of a witness in another state; establishing jurisdictional basis for guardianship and protective proceedings; providing guidance for

determination of jurisdiction between states; providing for special jurisdiction in certain situations; providing for exclusive and continuing jurisdiction for a court that appointed a guardian or issued a protective order; providing criteria for determining the appropriate forum for guardianship and protective proceedings; authorizing a court to decline jurisdiction because of unjustifiable conduct; providing for additional notice of proceedings between states; determining jurisdiction when there are proceedings in more than one state; providing for transfer of guardianship or conservatorship to another state; providing criteria for accepting transfer of guardianship or conservatorship from another state; providing for registration of guardianship and protective orders; providing that registration of a guardianship or protective order from another state allows the guardian or conservator to exercise his or her powers as allowed by law in this state; requiring consideration of the need to promote uniformity of the law when applying and construing this act; modifying, limiting and superceding certain provisions of the federal Electronic Signatures in Global and National Commerce Act; providing that this act applies to certain guardianship and protective proceedings begun on or after passage of the act; and providing that this act applies to certain guardianship and protective proceedings regardless of when they were begun.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new chapter, designated §44C-1-1, §44C-1-2, §44C-1-3, §44C-1-4, §44C-1-5, §44C-1-6, §44C-2-1, §44C-2-2, §44C-2-3, §44C-2-4, §44C-2-5, §44C-2-6, §44C-2-7, §44C-2-8, §44C-3-1, §44C-3-2, §44C-4-1, §44C-4-2, §44C-4-3, §44C-5-1, §44C-5-2 and §44C-5-3, all to read as follows:

**CHAPTER 44C. UNIFORM ADULT GUARDIANSHIP
AND PROTECTIVE PROCEEDINGS JURISDICTION
ACT.**

Article

1. **General Provisions.**
2. **Jurisdiction.**
3. **Transfer of Guardianship or Conservatorship.**
4. **Registration and Recognition of Orders from Other States.**
5. **Miscellaneous Provisions.**

ARTICLE 1. GENERAL PROVISIONS.

§44C-1-1. Short title.

§44C-1-2. Definitions.

§44C-1-3. International application.

§44C-1-4. Communication between courts.

§44C-1-5. Cooperation between courts.

§44C-1-6. Taking testimony in another state.

§44C-1-1. Short title.

- 1 This chapter may be cited as the Uniform Adult
- 2 Guardianship and Protective Proceedings Jurisdiction Act
- 3 and is cited in this chapter as “this act”.

§44C-1-2. Definitions.

- 1 For purposes of this chapter:

- 2 (1) “Adult” means an individual who has attained
- 3 eighteen years of age.

- 4 (2) “Conservator” means a person appointed by the court
- 5 to administer the property of an adult, including a person
- 6 appointed under section one, article one, chapter forty-four-a
- 7 of this code.

- 8 (3) “Emergency” means a circumstance that likely will
- 9 result in substantial harm to a respondent’s health, safety or
- 10 welfare and for which the appointment of a guardian is
- 11 necessary because no other person has authority and is
- 12 willing to act on the respondent’s behalf.

- 13 (4) “Guardian” means a person appointed by the court to
- 14 make decisions regarding the person of an adult, including a

15 person appointed under article two, chapter forty-four-a of
16 this code.

17 (5) “Guardianship order” means an order appointing a
18 guardian.

19 (6) “Guardianship proceeding” means a judicial
20 proceeding in which an order for the appointment of a
21 guardian is sought or has been issued.

22 (7) “Home state” means the state in which the respondent
23 was physically present, including any period of temporary
24 absence, for at least six consecutive months immediately
25 before the filing of a petition for a protective order or the
26 appointment of a guardian; or if none, the state in which the
27 respondent was physically present, including any period of
28 temporary absence, for at least six consecutive months
29 ending within the six months prior to the filing of the
30 petition.

31 (8) “Incapacitated person” means an adult for whom a
32 guardian has been appointed.

33 (9) “Party” means the respondent, petitioner, guardian,
34 conservator or any other person allowed by the court to
35 participate in a guardianship or protective proceeding.

36 (10) “Person”, except in the term “incapacitated person
37 or protected person”, means an individual, corporation,
38 business trust, estate, trust, partnership, limited liability
39 company, association, joint venture, public corporation,
40 government or governmental subdivision, agency, or
41 instrumentality, or any other legal or commercial entity.

42 (11) “Protected person”, for purposes of this chapter
43 only, means an adult for whom a protective order, as defined
44 in this section, has been issued. "Protected person", as used
45 in this chapter, has the meaning ascribed to it in subsection

46 thirteen-b, section four, article one, chapter forty-four-a of
47 this code.

48 (12) “Protective order,” for purposes of this chapter only
49 and notwithstanding the meaning which the term may have
50 outside of this chapter, means an order appointing a
51 conservator or other order related to management of an
52 adult’s property.

53 (13) “Protective proceeding” means a judicial proceeding
54 in which a protective order, as defined in this section, is
55 sought or has been issued.

56 (14) “Record” means information that is inscribed on a
57 tangible medium or that is stored in an electronic or other
58 medium and is retrievable in perceivable form.

59 (15) “Respondent” means an adult for whom a protective
60 order or the appointment of a guardian is sought.

61 (16) “Significant-connection state” means a state, other
62 than the home state, with which a respondent has a
63 significant connection other than mere physical presence and
64 in which substantial evidence concerning the respondent is
65 available. In determining whether a respondent has a
66 significant connection with a particular state, the court shall
67 consider:

68 (A) The location of the respondent’s family and other
69 persons required to be notified of the guardianship or
70 protective proceeding;

71 (B) The length of time the respondent at any time was
72 physically present in the state and the duration of any
73 absence;

74 (C) The location of the respondent’s property; and

75 (D) The extent to which the respondent has ties to the
76 state such as voting registration, state or local tax return
77 filing, vehicle registration, driver's license, social
78 relationship and receipt of services.

79 (17) "State" means a state of the United States, the
80 District of Columbia, Puerto Rico, the United States Virgin
81 Islands, a federally recognized Indian tribe or any territory or
82 insular possession subject to the jurisdiction of the United
83 States.

§44C-1-3. International application.

1 A court of this state may treat a foreign country as if it
2 were a state for the purpose of applying this act.

§44C-1-4. Communication between courts.

1 (a) A court of this state may communicate with a court in
2 another state concerning a proceeding arising under this act.
3 The court may allow the parties to participate in the
4 communication. Except as otherwise provided in subsection
5 (b) of this section, the court shall make a record of the
6 communication. The record may be limited to the fact that
7 the communication occurred.

8 (b) Courts may communicate concerning schedules,
9 calendars, court records and other administrative matters
10 without making a record.

§44C-1-5. Cooperation between courts.

1 (a) In a guardianship or protective proceeding in this
2 state, a court of this state may request the appropriate court
3 of another state to do any of the following:

4 (1) Hold an evidentiary hearing;

5 (2) Order a person in that state to produce evidence or
6 give testimony pursuant to procedures of that state;

7 (3) Order that an evaluation or assessment be made of the
8 respondent;

9 (4) Order any appropriate investigation of a person
10 involved in a proceeding;

11 (5) Forward to the court of this state a certified copy of
12 the transcript or other record of a hearing under subdivision
13 (1) of this subsection or any other proceeding, any evidence
14 otherwise produced under subdivision (2) of this subsection
15 and any evaluation or assessment prepared in compliance
16 with an order under subdivision (3) or (4) of this subsection;

17 (6) Issue any order necessary to assure the appearance in
18 the proceeding of a person whose presence is necessary for
19 the court to make a determination, including the respondent
20 or the incapacitated or protected person;

21 (7) Issue an order authorizing the release of medical,
22 financial, criminal or other relevant information in that state,
23 including protected health information as defined in 45 C. F.
24 R. Section 164.504, as amended.

25 (b) If a court of another state in which a guardianship or
26 protective proceeding is pending requests assistance of the
27 kind provided in subsection (a) of this section, a court of this
28 state has jurisdiction for the limited purpose of granting the
29 request or making reasonable efforts to comply with the
30 request.

§44C-1-6. Taking testimony in another state.

1 (a) In a guardianship or protective proceeding, in addition
2 to other procedures that may be available, testimony of a
3 witness who is located in another state may be offered by

4 deposition or other means allowable in this state for
5 testimony taken in another state. The court on its own
6 motion may order that the testimony of a witness be taken in
7 another state and may prescribe the manner in which and the
8 terms upon which the testimony is to be taken.

9 (b) In a guardianship or protective proceeding, a court in
10 this state may permit a witness located in another state to be
11 deposed or to testify by telephone or audiovisual or other
12 electronic means. A court of this state shall cooperate with
13 the court of the other state in designating an appropriate
14 location for the deposition or testimony.

15 (c) Documentary evidence transmitted from another state
16 to a court of this state by technological means that do not
17 produce an original writing may not be excluded from
18 evidence on an objection based on the best evidence rule.

ARTICLE 2. JURISDICTION.

§44C-2-1. Exclusive basis.

§44C-2-2. Determination of jurisdiction.

§44C-2-3. Special jurisdiction.

§44C-2-4. Exclusive and continuing jurisdiction.

§44C-2-5. Appropriate forum.

§44C-2-6. Jurisdiction declined by reason of conduct.

§44C-2-7. Notice of proceeding.

§44C-2-8. Proceedings in more than one state.

§44C-2-1. Exclusive basis.

1 Other provisions of this code notwithstanding, this article
2 provides the exclusive jurisdictional basis for a court of this
3 state to appoint a guardian or issue a protective order for an
4 adult.

§44C-2-2. Determination of jurisdiction.

1 A court of this state has jurisdiction to appoint a guardian
2 or issue a protective order for a respondent if:

3 (1) This state is the respondent's home state;

4 (2) On the date the petition is filed, this state is a
5 significant-connection state and:

6 (A) The respondent does not have a home state or a court
7 of the respondent's home state has declined to exercise
8 jurisdiction because this state is a more appropriate forum; or

9 (B) The respondent has a home state, a petition for an
10 appointment or order is not pending in a court of that state or
11 another significant-connection state and, before the court
12 makes the appointment or issues the order:

13 (i) A petition for an appointment or order is not filed in
14 the respondent's home state;

15 (ii) An objection to the court's jurisdiction is not filed by
16 a person required to be notified of the proceeding; and

17 (iii) The court in this state concludes that it is an
18 appropriate forum under the factors set forth in section five
19 of this article;

20 (3) This state does not have jurisdiction under either
21 subdivision (1) or (2) of this section, the respondent's home
22 state and all significant-connection states have declined to
23 exercise jurisdiction because this state is the more appropriate
24 forum and jurisdiction in this state is consistent with the
25 constitutions of this state and the United States; or

26 (4) The requirements for special jurisdiction under
27 section three of this article are met.

§44C-2-3. Special jurisdiction.

1 (a) A court of this state lacking jurisdiction under section
2 two of this article has special jurisdiction to do any of the
3 following:

4 (1) Appoint a guardian in an emergency for a term not
5 exceeding ninety days for a respondent who is physically
6 present in this state;

7 (2) Issue a protective order with respect to real or tangible
8 personal property located in this state;

9 (3) Appoint a guardian or conservator for an
10 incapacitated or protected person for whom a provisional
11 order to transfer the proceeding from another state has been
12 issued under procedures similar to those provided in section
13 one, article three of this chapter.

14 If a petition for the appointment of a guardian in an
15 emergency is brought in this state and this state was not the
16 respondent's home state on the date the petition was filed, the
17 court shall dismiss the proceeding at the request of the court
18 of the home state, if any, whether dismissal is requested
19 before or after the emergency appointment.

§44C-2-4. Exclusive and continuing jurisdiction.

1 Except as otherwise provided in section three of this
2 article, a court that has appointed a guardian or issued a
3 protective order consistent with this act has exclusive and
4 continuing jurisdiction over the proceeding until it is
5 terminated by the court or the appointment or order expires
6 by its own terms.

§44C-2-5. Appropriate forum.

1 (a) A court of this state having jurisdiction under section
2 one, article one, chapter forty-four-a of this code or section
3 two of this article to appoint a guardian or issue a protective
4 order may decline to exercise its jurisdiction if it determines
5 at any time that a court of another state is a more appropriate
6 forum.

7 (b) If a court of this state declines to exercise its
8 jurisdiction under subsection (a) of this section, it shall either
9 dismiss or stay the proceeding. The court may impose any
10 condition the court considers just and proper, including the
11 condition that a petition for the appointment of a guardian or
12 issuance of a protective order be filed promptly in another
13 state.

14 (c) In determining whether it is an appropriate forum, the
15 court shall consider all relevant factors, including:

16 (1) Any expressed preference of the respondent;

17 (2) Whether abuse, neglect or exploitation of the
18 respondent has occurred or is likely to occur and which state
19 could best protect the respondent from the abuse, neglect or
20 exploitation;

21 (3) The length of time the respondent was physically
22 present in or was a legal resident of this or another state;

23 (4) The distance of the respondent from the court in each
24 state;

25 (5) The financial circumstances of the respondent's
26 estate;

27 (6) The nature and location of the evidence;

28 (7) The ability of the court in each state to decide the
29 issue expeditiously and the procedures necessary to present
30 evidence;

31 (8) The familiarity of the court of each state with the facts
32 and issues in the proceeding; and

33 (9) If an appointment were made, the court's ability to
34 monitor the conduct of the guardian or conservator.

§44C-2-6. Jurisdiction declined by reason of conduct.

1 (a) If at any time a court of this state determines that it
2 acquired jurisdiction to appoint a guardian or issue a
3 protective order because of unjustifiable conduct, the court
4 may:

5 (1) Decline to exercise jurisdiction;

6 (2) Exercise jurisdiction for the limited purpose of
7 fashioning an appropriate remedy to ensure the health, safety
8 and welfare of the respondent or the protection of the
9 respondent's property or prevent a repetition of the
10 unjustifiable conduct, including staying the proceeding until
11 a petition for the appointment of a guardian or issuance of a
12 protective order is filed in a court of another state having
13 jurisdiction; or

14 (3) Continue to exercise jurisdiction after considering:

15 (A) The extent to which the respondent and all persons
16 required to be notified of the proceedings have acquiesced in
17 the exercise of the court's jurisdiction;

18 (B) Whether it is a more appropriate forum than the court
19 of any other state under the factors set forth in subsection (c),
20 section five of this article; and

21 (C) Whether the court of any other state would have
22 jurisdiction under factual circumstances in substantial
23 conformity with the jurisdictional standards of section two of
24 this article.

25 (b) If a court of this state determines that it acquired
26 jurisdiction to appoint a guardian or issue a protective order
27 because a party seeking to invoke its jurisdiction engaged in
28 unjustifiable conduct, it may assess against that party
29 necessary and reasonable expenses, including attorney's fees,

30 investigative fees, court costs, communication expenses,
31 witness fees and expenses, and travel expenses. The court
32 may not assess fees, costs or expenses of any kind against
33 this state or a governmental subdivision, agency or
34 instrumentality of this state unless authorized by law other
35 than this act.

§44C-2-7. Notice of proceeding.

1 If a petition for the appointment of a guardian or issuance
2 of a protective order is brought in this state and this state was
3 not the respondent's home state on the date the petition was
4 filed, in addition to complying with the notice requirements
5 of this state, notice of the petition must be given to those
6 persons who would be entitled to notice of the petition if a
7 proceeding were brought in the respondent's home state. The
8 notice must be given in the same manner as notice is required
9 to be given in this state.

§44C-2-8. Proceedings in more than one state.

1 Except for a petition for the appointment of a guardian in
2 an emergency or issuance of a protective order limited to
3 property located in this state under section three of this
4 article, if a petition for the appointment of a guardian or
5 issuance of a protective order is filed in this state and in
6 another state and neither petition has been dismissed or
7 withdrawn, the following rules apply:

8 (1) If the court in this state has jurisdiction under section
9 two of this article, it may proceed with the case unless a court
10 in another state acquires jurisdiction under provisions similar
11 to said section before the appointment or issuance of the
12 order.

13 (2) If the court in this state does not have jurisdiction
14 under section two of this article, whether at the time the
15 petition is filed or at any time before the appointment or

16 issuance of the order, the court shall stay the proceeding and
17 communicate with the court in the other state. If the court in
18 the other state has jurisdiction, the court in this state shall
19 dismiss the petition unless the court in the other state
20 determines that the court in this state is a more appropriate
21 forum.

ARTICLE 3. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP.

§44C-3-1. Transfer to another state.

§44C-3-2. Accepting guardianship or conservatorship transferred from another state.

§44C-3-1. Transfer to another state.

1 (a) A guardian or conservator appointed in this state may
2 petition the court to transfer the guardianship or
3 conservatorship to another state.

4 (b) Notice of a petition under subsection (a) of this
5 section must be given to the persons who would be entitled
6 to notice of a petition in this state for the appointment of a
7 guardian or conservator.

8 (c) On the court's own motion or on request of the
9 guardian or conservator, the incapacitated or protected
10 person, or other person required to be notified of the petition,
11 the court shall hold a hearing on a petition filed pursuant to
12 subsection (a) of this section.

13 (d) The court shall issue an order provisionally granting
14 a petition to transfer a guardianship and shall direct the
15 guardian to petition for guardianship in the other state if the
16 court is satisfied that the guardianship will be accepted by the
17 court in the other state and the court finds that:

18 (1) The incapacitated person is physically present in or is
19 reasonably expected to move permanently to the other state;

20 (2) An objection to the transfer has not been made or, if
21 an objection has been made, the objector has not established
22 that the transfer would be contrary to the interests of the
23 incapacitated person; and

24 (3) Plans for care and services for the incapacitated
25 person in the other state are reasonable and sufficient.

26 (e) The court shall issue a provisional order granting a
27 petition to transfer a conservatorship and shall direct the
28 conservator to petition for conservatorship or a protective
29 order in the other state if the court is satisfied that the
30 conservatorship will be accepted by the court of the other
31 state and the court finds that:

32 (1) The protected person is physically present in or is
33 reasonably expected to move permanently to the other state
34 or the protected person has a significant connection to the
35 other state;

36 (2) An objection to the transfer has not been made or, if
37 an objection has been made, the objector has not established
38 that the transfer would be contrary to the interests of the
39 protected person; and

40 (3) Adequate arrangements will be made for management
41 of the protected person's property.

42 (f) The court shall issue a final order confirming the
43 transfer and terminating the guardianship or conservatorship
44 upon its receipt of:

45 (1) A provisional order accepting the proceeding from the
46 court to which the proceeding is to be transferred which is
47 issued under provisions similar to section two of this article;
48 and

49 (2) The documents required to terminate a guardianship
50 or conservatorship in this state.

§44C-3-2. Accepting guardianship or conservatorship transferred from another state.

1 (a) To confirm transfer of a guardianship or
2 conservatorship transferred to this state under provisions
3 similar to section one of this article, the guardian or
4 conservator must petition the court in this state to accept the
5 guardianship or conservatorship. The petition must include
6 a certified copy of the other state's provisional order of
7 transfer.

8 (b) Notice of a petition under subsection (a) of this
9 section must be given to those persons that would be entitled
10 to notice if the petition were a petition for the appointment of
11 a guardian or issuance of a protective order in both the
12 transferring state and this state. The notice must be given in
13 the same manner as notice is required to be given in this
14 state.

15 (c) On the court's own motion or on request of the
16 guardian or conservator, the incapacitated or protected
17 person, or other person required to be notified of the
18 proceeding, the court shall hold a hearing on a petition filed
19 pursuant to subsection (a) of this section.

20 (d) The court shall issue an order provisionally granting
21 a petition filed under subsection (a) of this section unless:

22 (1) An objection is made and the objector establishes that
23 transfer of the proceeding would be contrary to the interests
24 of the incapacitated or protected person; or

25 (2) The guardian or conservator is ineligible for
26 appointment in this state.

27 (e) The court shall issue a final order accepting the
28 proceeding and appointing the guardian or conservator as
29 guardian or conservator in this state upon its receipt from the
30 court from which the proceeding is being transferred of a

31 final order issued under provisions similar to section one of
32 this article transferring the proceeding to this state.

33 (f) Not later than ninety days after issuance of a final
34 order accepting transfer of a guardianship or conservatorship,
35 the court shall determine whether the guardianship or
36 conservatorship needs to be modified to conform to the law
37 of this state.

38 (g) In granting a petition under this section, the court
39 shall recognize a guardianship or conservatorship or
40 protective order from the other state, including the
41 determination of the incapacitated or protected person's
42 incapacity and the appointment of the guardian or
43 conservator.

44 (h) The denial by a court of this state of a petition to
45 accept a guardianship or conservatorship transferred from
46 another state does not affect the ability of the guardian or
47 conservator to seek appointment as guardian or conservator
48 in this state under article two, chapter forty-four-a of this
49 code if the court has jurisdiction to make an appointment
50 other than by reason of the provisional order of transfer.

ARTICLE 4. REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES.

§44C-4-1. Registration of guardianship orders.

§44C-4-2. Registration of protective orders.

§44C-4-3. Effect of registration.

§44C-4-1. Registration of guardianship orders.

1 If a guardian has been appointed in another state and a
2 petition for the appointment of a guardian is not pending in
3 this state, the guardian appointed in the other state, after
4 giving notice to the appointing court of an intent to register,
5 may register the guardianship order in this state by filing as
6 a foreign judgment in a court, in any appropriate county of
7 this state, certified copies of the order and letters of office.

§44C-4-2. Registration of protective orders.

1 If a conservator has been appointed in another state and
2 a petition for a protective order is not pending in this state,
3 the conservator appointed in the other state, after giving
4 notice to the appointing court of an intent to register, may
5 register the protective order in this state by filing as a foreign
6 judgment in a court of this state, in any county in which
7 property belonging to the protected person is located,
8 certified copies of the order and letters of office and of any
9 bond.

§44C-4-3. Effect of registration.

1 (a) Upon registration of a guardianship or protective
2 order from another state, the guardian or conservator may
3 exercise in this state all powers authorized in the order of
4 appointment except as prohibited under the laws of this state,
5 including maintaining actions and proceedings in this state
6 and, if the guardian or conservator is not a resident of this
7 state, subject to any conditions imposed upon nonresident
8 parties.

9 (b) A court of this state may grant any relief available
10 under this act and other law of this state to enforce a
11 registered order.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§44C-5-1. Uniformity of application and construction.

§44C-5-2. Relation to Electronic Signatures in Global and National Commerce Act.

§44C-5-3. Transitional provision.

§44C-5-1. Uniformity of application and construction.

1 In applying and construing this uniform act,
2 consideration must be given to the need to promote
3 uniformity of the law with respect to its subject matter among
4 states that enact it.

§44C-5-2. Relation to Electronic Signatures in Global and National Commerce Act.

1 This act modifies, limits and supersedes the federal
2 Electronic Signatures in Global and National Commerce Act,
3 15 U. S. C. Section 7001, *et seq.*, but does not modify, limit
4 or supersede Section 101(c) of said act, 15 U. S. C. Section
5 7001(c), or authorize electronic delivery of any of the notices
6 described in Section 103(b) of said act, 15 U. S. C. Section
7 7003(b).

§44C-5-3. Transitional provision.

1 (a) This act applies to guardianship and protective
2 proceedings begun on or after the effective date of this
3 chapter as enacted by the seventy-ninth Legislature of West
4 Virginia in 2009.

5 (b) Articles one, three and four and sections five hundred
6 one and five hundred two of this article apply to proceedings
7 begun before the effective date, regardless of whether a
8 guardianship or protective order has been issued.



CHAPTER 221

**(Com. Sub. for H.B. 2863 - By Delegates Manchin, Perdue,
Schadler, White, Caputo, Morgan, M. Poling, Webster, Boggs
and Fragale)**

[Passed April 10, 2009; in effect from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §5G-1-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §22C-1-5 of

said code; to amend and reenact §24-2-11 of said code; to amend and reenact §31-15A-3 and §31-15A-6 of said code, all relating to construction of state utility projects; putting limitations on engineering design and construction inspection fees for state and state subdivision sponsored utility construction; requiring all Water Development Authority sponsored utility projects to get authorization prior to removal of proposed customers of a project; requiring the governmental agency administering the utility project to perform an annual maintenance audit of the utility; altering the number of customers or proposed customers protesting requiring a formal hearing; reducing time periods for the Public Service Commission to review and approve certain applications by public utilities for certificate of public convenience and necessity; and providing for additional members of the West Virginia Infrastructure and Jobs Development Council.

Be it enacted by the Legislature of West Virginia:

That §5G-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §22C-1-5 of said code be amended and reenacted; that §24-2-11 of said code be amended and reenacted; and that §31-15A-3 and §31-15A-6 of said code be amended and reenacted, all to read as follows:

Chapter

- 5G. Procurement of Architect-engineer Services by State and its Subdivisions.**
- 22C. Environmental Resources; Boards, Authorities, Commissions and Compacts.**
- 24. Public Service Commission.**
- 31. Corporations.**

**CHAPTER 5G. PROCUREMENT OF
ARCHITECT-ENGINEER SERVICES BY STATE AND
ITS SUBDIVISIONS.**

**ARTICLE 1. PROCUREMENT OF ARCHITECT-
ENGINEER SERVICES.**

§5G-1-3. Contracts for architectural and engineering services; selection process where total project costs are estimated to cost \$250,000 or more.

1 In the procurement of architectural and engineering
2 services for projects estimated to cost \$250,000 or more, the
3 director of purchasing shall encourage firms engaged in the
4 lawful practice of the profession to submit an expression of
5 interest, which shall include a statement of qualifications and
6 performance data, and may include anticipated concepts and
7 proposed methods of approach to the project. All jobs shall
8 be announced by public notice published as a Class II legal
9 advertisement in compliance with the provisions of article
10 three, chapter fifty-nine of this code. A committee of three to
11 five representatives of the agency initiating the request shall
12 evaluate the statements of qualifications and performance
13 data and other material submitted by interested firms and
14 select three firms which, in their opinion, are best qualified
15 to perform the desired service: *Provided*, That on projects
16 funded wholly or in part by school building authority
17 moneys, in accordance with sections fifteen and sixteen,
18 article nine-d, chapter eighteen of this code, two of said three
19 firms shall have had offices within this state for a period of
20 at least one year prior to submitting an expression of interest
21 regarding a project funded by school building authority
22 moneys. Interviews with each firm selected shall be
23 conducted and the committee shall conduct discussions
24 regarding anticipated concepts and proposed methods of
25 approach to the assignment. The committee shall then rank,
26 in order of preference, no less than three professional firms
27 deemed to be the most highly qualified to provide the
28 services required, and shall commence scope of service and
29 price negotiations with the highest qualified professional firm
30 for architectural or engineering services or both. Should the
31 agency be unable to negotiate a satisfactory contract with the
32 professional firm considered to be the most qualified, at a fee
33 determined to be fair and reasonable, price negotiations with

34 the firm of second choice shall commence. Failing accord
35 with the second most qualified professional firm, the
36 committee shall undertake price negotiations with the third
37 most qualified professional firm. Should the agency be
38 unable to negotiate a satisfactory contract with any of the
39 selected professional firms, it shall select additional
40 professional firms in order of their competence and
41 qualifications and it shall continue negotiations in accordance
42 with this section until an agreement is reached: *Provided,*
43 *however,* That county boards of education may either elect to
44 start the selection process over in the original order of
45 preference or it may select additional professional firms in
46 order of their competence and qualifications and it shall
47 continue negotiations in accordance with this section until an
48 agreement is reached: *Provided further,* That for any water or
49 wastewater construction project the engineering design and
50 construction inspection costs may not exceed the amount
51 calculated pursuant to the compensation curves for consulting
52 engineering services based upon project construction costs
53 published by the American Society of Civil Engineers
54 manual of practice, unless granted a variance by the
55 Infrastructure and Jobs Development Council established
56 pursuant to article fifteen-a, chapter thirty-one of this code.

**CHAPTER 22C. ENVIRONMENTAL RESOURCES;
BOARDS, AUTHORITIES, COMMISSIONS AND
COMPACTS.**

ARTICLE 1. WATER DEVELOPMENT AUTHORITY.

**§22C-1-5. Authority may construct, finance, maintain, etc.,
water development projects; loans to
governmental agencies are subject to terms of
loan agreements.**

1 To accomplish the public policies and purposes and to
2 meet the responsibility of the state as set forth in this article,

3 the water development authority may initiate, acquire,
4 construct, maintain, repair and operate water development
5 projects or cause the same to be operated pursuant to a lease,
6 sublease or agreement with any person or governmental
7 agency; may make loans and grants to governmental agencies
8 for the acquisition or construction of water development
9 projects by governmental agencies, which loans may include
10 amounts to refinance debt issued for existing water
11 development projects of the governmental agency when the
12 refinancing is in conjunction with the financing for a new
13 water development project regardless of the source of the
14 financing for the new project: *Provided*, That the amount of
15 the refinancing may not exceed 50% of the aggregate amount
16 of the refinancing of an existing project and the financing of
17 a new project; and may issue water development revenue
18 bonds of this state, payable solely from revenues, to pay the
19 cost of projects, or finance projects, in whole or in part, by
20 loans to governmental agencies. A water development
21 project may not be undertaken unless it has been determined
22 by the authority to be consistent with any applicable
23 comprehensive plan of water management approved by the
24 Secretary of the Department of Environmental Protection or
25 in the process of preparation by the secretary and to be
26 consistent with the standards set by the state environmental
27 quality board, for the waters of the state affected thereby.
28 Any resolution of the authority providing for acquiring or
29 constructing projects or for making a loan or grant for
30 projects shall include a finding by the authority that the
31 determinations have been made. A loan agreement shall be
32 entered into between the authority and each governmental
33 agency to which a loan is made for the acquisition or
34 construction of a water development project, which loan
35 agreement shall include, without limitation, the following
36 provisions:

37 (1) The cost of the project, the amount of the loan, the
38 terms of repayment of the loan and the security therefor,

39 which may include, in addition to the pledge of all revenues
40 from the project after a reasonable allowance for operation
41 and maintenance expenses, a deed of trust or other
42 appropriate security instrument creating a lien on the project;

43 (2) The specific purposes for which the proceeds of the
44 loan shall be expended including the refinancing of existing
45 water development project debt as provided above, the
46 procedures as to the disbursement of loan proceeds and the
47 duties and obligations imposed upon the governmental
48 agency in regard to the construction or acquisition of the
49 project, including engineering fees and other administrative
50 costs relating to development of the project;

51 (3) The agreement of the governmental agency to impose,
52 collect, and, if required to repay the obligations of the
53 governmental agency under the loan agreement, increase
54 service charges from persons using the project, which service
55 charges shall be pledged for the repayment of the loan
56 together with all interest, fees and charges thereon and all
57 other financial obligations of the governmental agency under
58 the loan agreement;

59 (4) The agreement of the governmental agency to
60 comply with all applicable laws, rules and regulations issued
61 by the authority or other state, federal and local bodies in
62 regard to the construction, operation, maintenance and use of
63 the project;

64 (5) The number of proposed customers and their physical
65 locations within the project, and providing as a condition of
66 the agreement, that no proposed customers listed in the
67 project application agreement may be removed from
68 inclusion in the project without prior authorization of the
69 board; and

70 (6) The agreement of the governmental agency to
71 perform an annual maintenance audit which maintenance
72 audit shall be submitted to the board and the Public Service
73 Commission of West Virginia.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-11. Requirements for certificate of public convenience and necessity.

1 (a) A public utility, person or corporation may not begin
2 the construction of any plant, equipment, property or facility
3 for furnishing to the public any of the services enumerated in
4 section one, article two of this chapter, nor apply for, nor
5 obtain any franchise, license or permit from any municipality
6 or other governmental agency, except ordinary extensions of
7 existing systems in the usual course of business, unless and
8 until it shall obtain from the Public Service Commission a
9 certificate of public convenience and necessity authorizing
10 such construction franchise, license or permit.

11 (b) Upon the filing of any application for the certificate,
12 and after hearing, the commission may, in its discretion, issue
13 or refuse to issue, or issue in part and refuse in part, the
14 certificate of convenience and necessity: *Provided*, That the
15 commission, after it gives proper notice and if no substantial
16 protest is received within thirty days after the notice is given,
17 may waive formal hearing on the application. Notice shall be
18 given by publication which shall state that a formal hearing
19 may be waived in the absence of substantial protest, made
20 within thirty days, to the application. The notice shall be
21 published as a Class I legal advertisement in compliance with
22 the provisions of article three, chapter fifty-nine of this code.
23 The publication area shall be the proposed area of operation.

24 (c) Any public utility, person or corporation subject to the
25 provisions of this section shall give the commission at least
26 thirty days' notice of the filing of any the application for a
27 certificate of public convenience and necessity under this
28 section: *Provided*, That the commission may modify or waive
29 the thirty-day notice requirement and shall waive the thirty-
30 day notice requirement for projects approved by the
31 Infrastructure and Jobs Development Council.

32 (d) The commission shall render its final decision on any
33 application filed under the provisions of this section or
34 section eleven-a of this article within two hundred seventy
35 days of the filing of the application and within ninety days
36 after final submission of any such application for decision
37 following a hearing: *Provided*, That if the application is for
38 authority to construct a water and sewer project and the
39 projected total cost is less than \$10 million, the Commission
40 shall render its final decision within two hundred twenty-five
41 days of the filing of the application.

42 (e) The commission shall render its final decision on any
43 application filed under the provisions of this section that has
44 received the approval of the Infrastructure and Jobs
45 Development Council pursuant to article fifteen-a, chapter
46 thirty-one of this code within one hundred eighty days after
47 filing of the application: *Provided*, That if a substantial
48 protest is received within thirty days after the notice is
49 provided pursuant to subsection (b) of this section, the
50 commission shall render its final decision within two hundred
51 seventy days or two hundred twenty-five days of the filing of
52 the application, whichever is applicable as determined in
53 subsection (d).

54 (f) If the projected total cost of a project which is the
55 subject of an application filed pursuant to this section or
56 section eleven-a of this article is greater than \$50 million, the
57 commission shall render its final decision on any such

58 application filed under the provisions of this section or
59 section eleven-a of this article within four hundred days of
60 the filing of the application and within ninety days after final
61 submission of any such application for decision after a
62 hearing.

63 (g) If a decision is not rendered within the, time-frames
64 established in this section, the commission shall issue a
65 certificate of convenience and necessity as applied for in the
66 application.

67 (h) The commission shall prescribe rules as it may deem
68 proper for the enforcement of the provisions of this section;
69 and, in establishing that public convenience and necessity do
70 exist, the burden of proof shall be upon the applicant.

71 (i) Pursuant to the requirements of this section, the
72 commission may issue a certificate of public convenience and
73 necessity to any intrastate pipeline, interstate pipeline or local
74 distribution company for the transportation in intrastate
75 commerce of natural gas used by any person for one or more
76 uses, as defined by rule, by the commission in the case of:

77 (1) Natural gas sold by a producer, pipeline or other seller
78 to the person; or

79 (2) Natural gas produced by the person.

80 (j) A public utility, including a public service district,
81 which has received a certificate of public convenience and
82 necessity after July 8, 2005, from the commission and has
83 been approved by the Infrastructure and Jobs Development
84 Council, is not required to, and cannot be compelled to,
85 reopen the proceeding if the cost of the project changes but
86 the change does not affect the rates established for the
87 project.

88 (k) Any public utility, person or corporation proposing
89 any electric power project that requires a certificate under
90 this section is not required to obtain such certificate before
91 applying for or obtaining any franchise, license or permit
92 from any municipality or other governmental agency.

CHAPTER 31. CORPORATIONS.

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

§31-15A-3. West Virginia Infrastructure and Jobs Development Council continued; members
of council; staff of council.

§31-15A-6. Powers, duties and responsibilities of the council generally; comprehensive assessment.

§31-15A-3. West Virginia Infrastructure and Jobs Development Council continued; members of council; staff of council.

1 (a) The West Virginia Infrastructure and Jobs
2 Development Council is continued. The council is a
3 governmental instrumentality of the state. The exercise by
4 the council of the powers conferred by this article and the
5 carrying out of its purpose and duties shall be considered and
6 held to be, and are determined to be, essential governmental
7 functions and for a public purpose.

8 (b) The council shall consist of thirteen members,
9 including:

10 (1) The Governor or designee;

11 (2) The Executive Director of the Housing Development
12 Fund or his or her designee;

13 (3) The Director of the Division of Environmental
14 Protection or his or her designee;

15 (4) The Director of the Economic Development Authority
16 or his or her designee;

17 (5) The Director of the Water Development Authority or
18 his or her designee;

19 (6) The Director of the Division of Health or his or her
20 designee;

21 (7) The Chairman of the Public Service Commission or
22 his or her designee; and

23 (8) Six members representing the general public:
24 *Provided*, That there shall be at least one member
25 representing the general public from each congressional
26 district. No more than one member representing the general
27 public may be a resident of the same county.

28 (c) The Governor shall appoint the public members of the
29 Council who shall serve three-year staggered terms.

30 (d) The Commissioner of the Division of Highways, the
31 Executive Director of the state rail authority, two members of
32 the West Virginia Senate, two members of the West Virginia
33 House of Delegates, the Chancellor of the Higher Education
34 Policy commission and the Chancellor of the West Virginia
35 Council for Community and Technical College Education
36 serve as advisory members of the council. The advisory
37 members shall be *ex officio*, nonvoting members of the
38 Council.

39 (e) The Governor shall appoint the legislative members
40 of the council: *Provided*, That no more than three of the
41 legislative members may be of the same political party.

42 (f) The Governor shall appoint the representatives of the
43 governing boards from a list of three names submitted by
44 each governing board.

45 (g) The Governor or designee shall serve as chairman and
46 the council shall annually appoint a vice chairperson and
47 shall appoint a secretary, who need not be a member of the
48 Council and who shall keep records of its proceedings.
49 Seven members of the Council shall constitute a quorum and
50 the affirmative vote of at least the majority of those members
51 present shall be necessary for any action taken by vote of the
52 Council. A vacancy in the membership of the council does
53 not impair the rights of a quorum by such vote to exercise all
54 the rights and perform all the duties of the council.

55 (h) A member of the council who serves by virtue of his
56 or her office does not receive compensation or
57 reimbursement of expenses for serving as a member. The
58 public members are reimbursed for actual expenses incurred
59 in the service of the council in a manner consistent with
60 guidelines of the travel management office of the Department
61 of Administration.

62 (i) The council meets at least monthly to review projects
63 and infrastructure projects requesting funding assistance and
64 otherwise to conduct its business and may meet more
65 frequently if necessary. Notwithstanding any other provision
66 of this article to the contrary, the Economic Development
67 Authority is not subject to council review with regard to any
68 action taken pursuant to the authority established in article
69 fifteen, chapter thirty-one of this code. The Governor's civil
70 contingent fund is not subject to council review with regard
71 to projects or infrastructure projects funded through the
72 Governor's Civil Contingent Fund.

73 (j) The Water Development Authority shall provide
74 office space for the council and each governmental agency
75 represented on the council shall provide staff support for the
76 council in the manner determined appropriate by the council.

77 (k) The council shall invite to each meeting one or more
78 representatives of the United States Department of

79 Agriculture, Rural Economic Community Development, the
80 United States Economic Development Agency and the United
81 States Army Corps of Engineers or any successors thereto.
82 The council shall invite other appropriate parties as is
83 necessary to effectuate the purposes of this article.

§31-15A-6. Powers, duties and responsibilities of the council generally; comprehensive assessment.

1 (a) In addition to the powers set forth elsewhere in this
2 article, the council is granted, has and may exercise all
3 powers necessary or appropriate to carry out and effectuate
4 the purposes and intent of this article. The council shall have
5 the power and capacity to:

6 (1) Provide consultation services to project sponsors in
7 connection with the planning, acquisition, improvement,
8 construction or development of any infrastructure project or
9 project;

10 (2) Periodically prepare a list of infrastructure projects or
11 projects which cannot meet the established funding
12 guidelines of the various state infrastructure agencies, other
13 than the Housing Development Fund, but which are
14 consistent with the mandates of this article and recommend
15 to the Water Development Authority that it make a grant or
16 loan to the project sponsors from the infrastructure fund to
17 finance the cost of one or more such projects or infrastructure
18 projects;

19 (3) Do all other acts necessary and proper to carry out the
20 powers expressly granted to the authority in this article; and

21 (4) Make and execute contracts, commitments and
22 obligations and other instruments necessary or convenient for
23 the exercise of its powers.

24 (b) The council shall develop a comprehensive statewide
25 inventory of water supply systems and sewage treatment

26 systems and an assessment of current and future needs. The
27 assessment shall identify the areas of the state which do not
28 have adequate public water or sewage systems and offer
29 recommendations for the construction of new facilities or the
30 extension or expansion of existing facilities to meet the
31 identified needs. The council shall include in the assessment
32 an identification of the obstacles, issues and problems which
33 prevent or inhibit development of adequate infrastructure
34 throughout the state, including financial, governmental,
35 physical, or geographical factors and make recommendation
36 as the council considers appropriate regarding the obstacles,
37 issues or problems identified. This comprehensive inventory
38 and assessment shall be updated at least once in every
39 three-year period after the initial assessment and inventory is
40 completed in 1996.

41 (c) The council shall study the viability of the
42 consolidation of public service districts throughout the state.
43 The council shall report their findings and conclusions on or
44 before January 16, 1995 to the Governor, Speaker of the
45 House of Delegates and President of the Senate.

CHAPTER 222

(Com. Sub. for S.B. 537 - By Senators Minard and McCabe)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 7, 2009.]

AN ACT to repeal §23-5-17 and §23-5-18 of the Code of West Virginia, 1931, as amended; to amend and reenact §23-2-1d of said code; to amend and reenact §23-2A-1 of said code; to amend and reenact §23-2C-8, §23-2C-15, §23-2C-17 and §23-

2C-21 of said code; to amend and reenact §23-4-1c, §23-4-6b, §23-4-8, §23-4-8c and §23-4-15b of said code; to amend said code by adding thereto a new section, designated §23-4-8d; to amend and reenact §23-5-1, §23-5-3 and §23-5-16 of said code; and to amend and reenact §33-2-22 of said code, all relating to workers' compensation; eliminating obsolete sunset provisions; redefining the responsibility of prime contractors to injured employees of their subcontractors; clarifying subrogation rights with respect to employees injured by third parties; authorizing negotiation of amount to accept as subrogation in Old Fund claims; deleting mandatory recovery fee to Insurance Commissioner in certain subrogation claims; providing for a unitary decision-making process in claims involving the Uninsured Employer Fund; changing date on which governmental bodies may purchase workers' compensation insurance in the private market and on which the employers' mutual insurance company may nonrenew such bodies; awarding attorney fees and costs if workers' compensation temporary disability benefits claim is unreasonably denied; extending the scope of permissible remedies to include those in the general insurance code; permitting the recovery of administrative costs in certain actions; authorizing expedited review by the Office of Judges when a request to reopen temporary total benefits is denied; eliminating mandatory allocation in hearing loss claims; providing that claims for medical benefits in occupational pneumoconiosis claims may be made at any time; clarifying that a sixty-day period applies to various protests; extending the jurisdiction of the Office of Judges to hear certain protests; clarifying permissible method of delivering payment of benefits; establishing reimbursement for certain claimant travel expenses; authorizing award of attorney fees in certain final settlements; clarifying licensing requirements for third-party administrators; mandating conditional payments in certain instances; authorizing the Insurance Commissioner to compromise and settle claims for moneys due the Old Fund and Uninsured Employer Fund; and requiring report to Legislature regarding settlements.

Be it enacted by the Legislature of West Virginia:

That §23-5-17 and §23-5-18 of the Code of West Virginia, 1931, as amended, be repealed; that §23-2-1d of said code be amended and reenacted; that §23-2A-1 of said code be amended and reenacted; that §23-2C-8, §23-2C-15, §23-2C-17 and §23-2C-21 of said code be amended and reenacted; that §23-4-1c, §23-4-6b, §23-4-8, §23-4-8c and §23-4-15b of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §23-4-8d; that §23-5-1, §23-5-3 and §23-5-16 of said code be amended and reenacted; and that §33-2-22 of said code be amended and reenacted, all to read as follows:

Chapter

- 23. **Workers' Compensation.**
- 33. **Insurance.**

CHAPTER 23. WORKERS' COMPENSATION.

Article

- 2. **Employers and Employees Subject to Chapter; Extraterritorial Coverage.**
- 2A. **Subrogation.**
- 2C. **Employers' Mutual Insurance Company.**
- 4. **Disability and Death Benefits.**
- 5. **Review.**

ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; EXTRATERRITORIAL COVERAGE.

§23-2-1d. Prime contractors and subcontractors liability.

- 1 (a) For the exclusive purposes of this section, the term
- 2 "employer" as defined in section one of this article includes
- 3 any primary contractor who regularly subcontracts with other
- 4 employers for the performance of any work arising from or
- 5 as a result of the primary contractor's own contract: *Provided,*
- 6 That a subcontractor does not include one providing goods
- 7 rather than services. For purposes of this subsection,
- 8 extraction of natural resources is a provision of services. In

9 the event that a subcontracting employer defaults on its
10 obligations to make payments to the commission, then the
11 primary contractor is liable for the payments. However,
12 nothing contained in this section shall extend or except to a
13 primary contractor or subcontractors the provisions of section
14 six, six-a or eight of this article. This section is applicable
15 only with regard to subcontractors with whom the primary
16 contractor has a contract for any work or services for a period
17 longer than sixty days: *Provided, however,* That this section
18 is also applicable to contracts for consecutive periods of work
19 that total more than sixty days. It is not applicable to the
20 primary contractor with regard to sub-subcontractors.
21 However, a subcontractor for the purposes of a contract with
22 the primary contractor can itself become a primary contractor
23 with regard to other employers with whom it subcontracts.
24 It is the intent of the Legislature that no contractor, whether
25 a primary contractor, subcontractor or sub-subcontractor,
26 escape or avoid liability for any workers' compensation
27 premium, assessment or tax. The executive director shall
28 propose for promulgation a rule to effect this purpose on or
29 before December 31, 2003.

30 (b) A primary contractor may avoid initial liability under
31 subsection (a) of this section if it obtains from the executive
32 director, prior to the initial performance of any work by the
33 subcontractor's employees, a certificate that the subcontractor
34 is in good standing with the Workers' Compensation Fund.

35 (1) Failure to obtain the certificate of good standing prior
36 to the initial performance of any work by the subcontractor
37 results in the primary contractor being equally liable with the
38 subcontractor for all delinquent and defaulted premium taxes,
39 premium deposits, interest and other penalties arising during
40 the life of the contract or due to work performed in
41 furtherance of the contract: *Provided,* That the commission
42 is entitled to collect only once for the amount of premiums,
43 premium deposits and interest due to the default, but the

44 commission may impose other penalties on the primary
45 contractor or on the subcontractor, or both.

46 (2) In order to continue avoiding liability under this
47 section, the primary contractor shall request that the
48 commission inform the primary contractor of any subsequent
49 default by the subcontractor. In the event that the
50 subcontractor does default, the commission shall notify the
51 primary contractor of the default by placing a notice in the
52 certified United States mail, postage prepaid, and addressed
53 to the primary contractor at the address furnished to the
54 commission by the primary contractor. The mailing is good
55 and sufficient notice to the primary contractor of the
56 subcontractor's default. However, the primary contractor is
57 not liable under this section until the first day of the calendar
58 quarter following the calendar quarter in which the notice is
59 given and then the liability is only for that following calendar
60 quarter and thereafter and only if the subcontract has not been
61 terminated: *Provided*, That the commission is entitled to
62 collect only once for the amount of premiums, premium
63 deposits and interest due to the default, but the commission
64 may impose other penalties on the primary contractor or on
65 the subcontractor, or both.

66 (c) In any situation where a subcontractor defaults with
67 regard to its payment obligations under this chapter or fails
68 to provide a certificate of good standing as provided in this
69 section, the default or failure is good and sufficient cause for
70 a primary contractor to hold the subcontractor responsible
71 and to seek reimbursement or indemnification for any
72 amounts paid on behalf of the subcontractor to avoid or cure
73 a workers' compensation default, plus related costs, including
74 reasonable attorneys' fees, and to terminate its subcontract
75 with the subcontractor notwithstanding any provision to the
76 contrary in the contract.

77 (d) The provisions of this section are applicable only to
78 those contracts entered into or extended on or after January
79 1, 1994.

80 (e) The commission may take any action authorized by
81 section five-a of this article in furtherance of its efforts to
82 collect amounts due from the primary contractor under this
83 section.

84 (f) Effective upon termination of the commission,
85 subsections (a) through (e), inclusive, of this section shall be
86 applicable only to unpaid premiums due the commission or
87 the Old Fund as provided in article two-c of this chapter.

88 (g) The Legislature finds that every prime contractor
89 should be responsible to ensure that any subcontractor with
90 which it directly contracts is either self-insured or maintains
91 workers' compensation coverage throughout the periods
92 during which the services of a subcontractor are used and,
93 further, if the subcontractor is neither self-insured nor
94 covered, then the prime contractor rather than the Uninsured
95 Employer Fund should be responsible for the payment of
96 statutory benefits. It is also the intent of the Legislature that
97 this section not be used as the basis for expanding the
98 liability of a prime contractor beyond the limited purpose of
99 providing coverage in the limited circumstances and in the
100 manner expressly addressed by this section: *Provided*, That
101 receipt by the prime contractor of a certificate of coverage
102 from a subcontractor shall be deemed to relieve the prime
103 contractor of responsibility regarding the subcontractor's
104 workers' compensation coverage.

105 (h) On after the effective date of the reenactment of this
106 section in 2009, if an employee of a subcontractor suffers an
107 injury or disease and, on the date of injury or last exposure,
108 his or her employer did not have workers' compensation
109 coverage or was not an approved self-insured employer, and

110 the prime contractor did not obtain certification of coverage
111 from the subcontractor, then that employee may file a claim
112 against the prime contractor for which the subcontractor
113 performed services on the date of injury or last exposure, and
114 such claim shall be administered in the same manner as
115 claims filed by injured employees of the prime contractor:
116 *Provided*, That a subcontractor that subcontracts with another
117 subcontractor shall, with respect to such subcontract, is the
118 prime contractor for the purposes of this section: *Provided*,
119 *however*, That the provisions of this subsection do not relieve
120 a subcontractor from any requirements of this chapter,
121 including the duty to maintain coverage on its employees.
122 The subcontractor shall provide proof of continuing coverage
123 to the prime contractor by providing a certificate showing
124 current as well as renewal or replacement coverage during
125 the term of the contract between the prime contractor and the
126 subcontractor. The subcontractor shall provide notice to the
127 prime contractor within two business days of cancellation of
128 expiration of coverage.

129 (i) Notwithstanding that an injured employee of a
130 subcontractor is eligible for workers' compensation benefits
131 pursuant to this section from the prime contractor's carrier or
132 the self-insured prime contractor, whichever is applicable, a
133 subcontractor who has failed to maintain workers'
134 compensation coverage on its employees:

135 (1) May not claim the exemption from liability provided
136 by sections six and six-a of this article;

137 (2) May be held liable to an injured employee pursuant to
138 the provisions of section eight of this article; and

139 (3) Is the designated employer for the purposes of any
140 "deliberate intention" action brought by the injured worker
141 pursuant to the provisions of section two, article four of this
142 chapter.

143 (j) If a claim of an injured employee of a subcontractor is
144 accepted or conditionally accepted into the Uninsured
145 Employer Fund, both the prime contractor and subcontractor
146 are jointly and severally liable for any payments made by the
147 fund, and the Insurance Commissioner may seek recovery of
148 the payments, plus administrative costs and attorneys' fees,
149 from the prime contractor, the subcontractor, or both:
150 *Provided*, That a prime contractor who is held liable pursuant
151 to this subsection for the payment of benefits to an injured
152 employee of a subcontractor may recover the amount of such
153 payments from the subcontractor, plus reasonable attorneys'
154 fee and costs: *Provided, however*, That if a prime contractor
155 has performed due diligence in all matters requiring an
156 verifying a subcontractor's maintenance of insurance
157 coverage, than the prime contractor is not liable for any claim
158 made hereunder against the subcontractor.

ARTICLE 2A. SUBROGATION.

§23-2A-1. Subrogation; limitations.

1 (a) Where a compensable injury or death is caused, in
2 whole or in part, by the act or omission of a third party, the
3 injured worker or, if he or she is deceased or physically or
4 mentally incompetent, his or her dependents or personal
5 representative are entitled to compensation under the
6 provisions of this chapter, and shall not by having received
7 compensation be precluded from making claim against the
8 third party.

9 (b) Notwithstanding the provisions of subsection (a) of
10 this section, if an injured worker, his or her dependents or his
11 or her personal representative makes a claim against the third
12 party and recovers any sum for the claim:

13 (1) With respect to any claim arising from a right of
14 action that arose or accrued, in whole or in part, on or after

15 January 1, 2006, the private carrier or self-insured employer,
16 whichever is applicable, shall be allowed statutory
17 subrogation with regard to indemnity and medical benefits
18 paid as of the date of the recovery.

19 (2) With respect to any claim arising from a right of
20 action that arose or accrued, in whole or in part, prior to
21 January 1, 2006, the Insurance Commissioner and the
22 successor to the commission shall be allowed statutory
23 subrogation with regard to only medical payments paid as of
24 the date of the recovery: *Provided*, That with respect to any
25 recovery arising out of a cause of action that arose or accrued
26 prior to July 1, 2003, any money received by the
27 commissioner or self-insured employer as subrogation to
28 medical benefits expended on behalf of the injured or
29 deceased worker shall not exceed fifty percent of the amount
30 received from the third party as a result of the claim made by
31 the injured worker, his or her dependents or personal
32 representative, after payment of attorneys' fee and costs, if
33 such exist.

34 (3) Notwithstanding the provisions of subdivisions (1)
35 and (2) of this subsection, the Insurance Commissioner,
36 acting as administrator of the Uninsured Employer Fund,
37 shall be allowed statutory subrogation with regard to
38 indemnity and medical benefits paid and to be paid from such
39 fund regardless of the date on which the cause of action
40 arose.

41 (c) For claims that arose or accrued, in whole or in part,
42 prior to the effective date of the reenactment of this section
43 in 2009, and all claims thereafter, the party entitled to
44 subrogation shall permit the deduction from the amount
45 received reasonable attorneys' fees and reasonable costs and
46 may negotiate the amount to accept as subrogation.

47 (d) In the event that an injured worker, his or her
48 dependents or personal representative makes a claim against

49 a third party, there shall be, and there is hereby created, a
50 statutory subrogation lien upon the moneys received which
51 shall exist in favor of the Insurance Commissioner, private
52 carrier or self-insured employer, whichever is applicable.

53 (e) It is the duty of the injured worker, his or her
54 dependents, his or her personal representative or his or her
55 attorney to give reasonable notice to the Insurance
56 Commissioner, private carrier or self-insured employer after
57 a claim is filed against the third party and prior to the
58 disbursement of any third-party recovery. The statutory
59 subrogation described in this section does not apply to
60 uninsured and underinsured motorist coverage or any other
61 insurance coverage purchased by the injured worker or on
62 behalf of the injured worker. If the injured worker obtains a
63 recovery from a third party and the injured worker, personal
64 representative or the injured worker's attorney fails to protect
65 the statutory right of subrogation created herein, the injured
66 worker, personal representative and the injured worker's
67 attorney shall lose the right to retain attorney fees and costs
68 out of the subrogation amount. In addition, such failure
69 creates a cause of action for the Insurance Commissioner,
70 private carrier or self-insured employer, whichever is
71 applicable, against the injured worker, personal
72 representative and the injured worker's attorney for the
73 amount of the full subrogation amount and the reasonable
74 fees and costs associated with any such cause of action.

ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.

§23-2C-8. Workers' Compensation Uninsured Employer Fund.

§23-2C-15. Mandatory coverage; changing of coverage.

§23-2C-17. Administration of a competitive system.

§23-2C-21. Limitation of liability of insurer or third-party administrator; administrative fines are exclusive remedies.

§23-2C-8. Workers' Compensation Uninsured Employer Fund.

1 (a) The Workers' Compensation Uninsured Employer
2 Fund shall be governed by the following:

3 (1) All money and securities in the fund must be held by
4 the State Treasurer as custodian thereof to be used solely as
5 provided in this article.

6 (2) The State Treasurer may disburse money from the
7 fund only upon written requisition of the Insurance
8 Commissioner.

9 (3) *Assessments.* -- The Insurance Commissioner shall
10 assess each private carrier and may assess self-insured
11 employers an amount to be deposited in the fund. The
12 assessment may be collected by each private carrier from its
13 policyholders in the form of a policy surcharge. To establish
14 the amount of the assessment, the Insurance Commissioner
15 shall determine the amount of money necessary to maintain
16 an appropriate balance in the fund for each fiscal year and
17 shall allocate a portion of that amount to be payable by each
18 of the groups subject to the assessment. After allocating the
19 amounts payable by each group, the Insurance Commissioner
20 shall apply an assessment rate to:

21 (A) Private carriers that reflects the relative hazard of the
22 employments covered by the private carriers, results in an
23 equitable distribution of costs among the private carriers and
24 is based upon expected annual premiums to be received;

25 (B) Self-insured employers, if assessed, that results in an
26 equitable distribution of costs among the self-insured
27 employers and is based upon expected annual expenditures
28 for claims; and

29 (C) Any other groups assessed that results in an equitable
30 distribution of costs among them and is based upon expected
31 annual expenditures for claims or premium to be received.

32 (4) The Industrial Council may adopt rules for the
33 establishment and administration of the assessment

34 methodologies, rates, payments and any penalties that it
35 determines are necessary to carry out the provisions of this
36 section.

37 (b) *Payments from the fund.* --

38 (1) Except as otherwise provided in this subsection, an
39 injured employee of any employer required to be covered
40 under this chapter who has failed to obtain coverage may
41 receive compensation from the Uninsured Employer Fund if
42 such employee meets all jurisdictional and entitlement
43 provisions of this chapter, files a claim with the Insurance
44 Commissioner and makes an irrevocable assignment to the
45 Insurance Commissioner of a right to be subrogated to the
46 rights of the injured employee.

47 (2) Employees who are injured while employed by a self-
48 insured employer are ineligible for benefits from the
49 Workers' Compensation Uninsured Employer Fund.

50 (c) *Initial determination upon receipt of a claim.* --

51 If a claim is filed against the Uninsured Employer Fund,
52 the Insurance Commissioner or his or her third-party
53 administrator shall: (1) Accept the claim into the fund if it is
54 determined that the employer was required to maintain
55 workers' compensation coverage with respect to the injured
56 worker but failed to do so; (2) reject the claim if it is
57 determined that the employer maintained such coverage or
58 was not required to do so; or (3) in a claim involving the
59 availability of benefits pursuant to section one-d, article two
60 of this chapter, either reject or conditionally accept the claim.
61 An aggrieved party may file a protest with the Office of
62 Judges to any decision by the Insurance Commissioner or the
63 third-party administrator to accept or reject a claim into the
64 fund, as well as to any claims decisions made with respect to
65 any claim accepted into the fund and such protests shall be
66 determined in the same manner as disputed claims are

67 determined pursuant to the provisions of article five of this
68 chapter: *Provided*, That in any proceeding before the Office
69 of Judges involving the decision to accept or refuse to accept
70 a claim into the fund, the employer has the burden of proving
71 that it either provided mandatory workers' compensation
72 insurance coverage or that it was not required to do so.

73 (d) *Employer liability.* --

74 (1) Any employer who has failed to provide mandatory
75 coverage required by the provisions of this chapter is liable
76 for all payments made and to be made on its behalf, including
77 any benefits, administrative costs and attorney's fees paid
78 from the fund or incurred by the Insurance Commissioner,
79 plus interest calculated in accordance with the provisions of
80 section thirteen, article two of this chapter.

81 (2) The Insurance Commissioner:

82 (A) May bring a civil action in a court of competent
83 jurisdiction to recover from the employer the amounts set
84 forth in subdivision (1) of this subsection. In any such
85 action, the Insurance Commissioner may also recover the
86 present value of the estimated future payments to be made on
87 the employer's behalf and administrative costs and attorney's
88 fees attributable to such claim: *Provided*, That the failure of
89 the Insurance Commissioner to include a claim for future
90 payments shall not preclude one or more subsequent actions
91 for such amounts;

92 (B) May enter into a contract with any person, including
93 the third-party administrator of the Uninsured Employer
94 Fund, to assist in the collection of any liability of an
95 uninsured employer; and

96 (C) In lieu of a civil action, may enter into an agreement
97 or settlement regarding the collection of any liability of an
98 uninsured employer.

99 (3) In addition to any other liabilities provided in this
100 section, the Insurance Commissioner may impose an
101 administrative penalty of not more than \$10,000 against an
102 employer if the employer fails to provide mandatory
103 coverage required by this chapter. All penalties and other
104 moneys collected pursuant to this section shall be deposited
105 into the Workers' Compensation Uninsured Employer Fund.

§23-2C-15. Mandatory coverage; changing of coverage.

1 (a) Effective upon termination of the commission, all
2 subscriber policies with the commission shall novate to the
3 company and all employers shall purchase workers'
4 compensation insurance from the company unless permitted
5 to self-insure their obligations. The company shall assume
6 responsibility for all new fund obligations of the subscriber
7 policies which novate to the company or which are issued
8 thereafter. Each subscriber whose policy novates to the
9 company shall also have its advanced deposit credited to its
10 account with the company. Each employer purchasing
11 workers' compensation insurance from the company has the
12 right to designate a representative or agent to act on its behalf
13 in any and all matters relevant to coverage and claims
14 administered by the company.

15 (b) Effective July 1, 2008, an employer may elect to: (1)
16 Continue to purchase workers' compensation insurance from
17 the company; (2) purchase workers' compensation insurance
18 from another private carrier licensed and otherwise
19 authorized to transact workers' compensation insurance in
20 this state; or (3) self-insure its obligations if it satisfies all
21 requirements of this code to so self-insure and is permitted to
22 do so: *Provided*, That all state and local governmental bodies,
23 including, but not limited to, all counties and municipalities
24 and their subdivisions and including all boards, colleges,
25 universities and schools, shall continue to purchase workers'
26 compensation insurance from the company through June 30,

27 2010: *Provided, however,* That the company may not cancel
28 or refuse to renew a policy of a state or local governmental
29 body prior to July 1, 2011, except for failure of consideration
30 to be paid by the policyholder or for refusal to comply with
31 a premium audit. The company and other private carriers are
32 permitted to sell workers' compensation insurance through
33 licensed agents in the state. To the extent that a private
34 carrier markets workers' compensation insurance through a
35 licensed agent, it is subject to all applicable provisions of
36 chapter thirty-three of this code.

37 (c) Every employer shall post a notice upon its premises
38 in a conspicuous place identifying its workers' compensation
39 insurer. The notice must include the name, business address
40 and telephone number of the insurer and of the person to
41 contact with questions about a claim. The employer shall at
42 all times maintain the notice provided for the information of
43 his or her employees. Release of employer policy
44 information and status by the Industrial Council and the
45 Insurance Commissioner shall be governed by section four,
46 article one of this chapter.

47 (d) Any rule promulgated by the Industrial Council
48 empowering agencies of this state to revoke or refuse to
49 grant, issue or renew any contract, license, permit, certificate
50 or other authority to conduct a trade, profession or business
51 to or with any employer whose account is in default with
52 regard to any liability under this chapter shall be fully
53 enforceable by the Insurance Commissioner against the
54 employer.

55 (e) Effective January 1, 2009, the company may decline
56 to offer coverage to any applicant. Private carriers and,
57 effective January 1, 2009, the company, may cancel a policy
58 upon the issuance of thirty days' written advance notice to the
59 policyholder and may refuse to renew a policy upon the
60 issuance of sixty days' written advance notice to the

61 policyholder: *Provided*, That cancellation of the policy by the
62 carrier for failure of consideration to be paid by the
63 policyholder or for refusal to comply with a premium audit
64 is effective after ten days' advance written notice of
65 cancellation to the policyholder.

66 (f) Every private carrier shall notify the Insurance
67 Commissioner as follows: (1) Of the issuance or renewal of
68 insurance coverage, within thirty days of: (A) The effective
69 date of coverage; or (B) the private carrier's receipt of notice
70 of the employer's operations in this state, whichever is later;
71 (2) of a termination of coverage by the private carrier due to
72 refusal to renew or cancellation, at least ten days prior to the
73 effective date of the termination; and (3) of a termination of
74 coverage by an employer, within ten days of the private
75 carrier's receipt of the employer's request for such
76 termination; the notifications shall be on forms developed or
77 in a manner prescribed by the Insurance Commissioner.

78 (g) For the purposes of subsections (e) and (f) of this
79 section, the transfer of a policyholder between insurance
80 companies within the same group is not considered a
81 cancellation or refusal to renew a workers' compensation
82 insurance policy.

§23-2C-17. Administration of a competitive system.

1 (a) Every policy of insurance issued by a private carrier:

2 (1) Shall be in writing;

3 (2) Shall contain the insuring agreements and exclusions;
4 and

5 (3) If it contains a provision inconsistent with this
6 chapter, it shall be deemed to be reformed to conform with
7 this chapter.

8 (b) The Industrial Council shall promulgate a rule which
9 prescribes the requirements of a basic policy to be used by
10 private carriers.

11 (c) A private carrier or self-insured employer may enter
12 into a contract to have its plan of insurance administered by
13 a third-party administrator if the administrator is licensed
14 with the Insurance Commissioner in accordance with article
15 forty-six, chapter thirty-three of this code. Notwithstanding
16 any other provision of this code to the contrary, any third-
17 party administrator who, directly or indirectly, underwrites or
18 collects charges or premiums from, or adjusts or settles
19 claims on residents of this state, in connection with workers'
20 compensation coverage offered or provided by a private
21 carrier or self-insured employer, is subject to the provisions
22 of article forty-six, chapter thirty-three of this code to the
23 same extent as those persons included in the definition set
24 forth in subsection (a), section two of said article. The
25 Insurance Commissioner shall propose rules, as provided in
26 section five, article two-c of this chapter, to regulate the use
27 of third-party administrators by private carriers and
28 self-insured employers, including rules setting forth
29 mandatory provisions for agreements between third-party
30 administrators and self-insured employers or private carriers.

31 (d) A self-insured employer or a private carrier may:

32 (1) Enter into a contract or contracts with one or more
33 organizations for managed care to provide comprehensive
34 medical and health care services to employees for injuries
35 and diseases that are compensable pursuant to this chapter.
36 The managed care plan must be approved pursuant to the
37 provisions of section three, article four of this chapter.

38 (2) Require employees to obtain medical and health care
39 services for their industrial injuries from those organizations
40 and persons with whom the self-insured employer or private

41 carrier has contracted or as the self-insured employer or
42 private carrier otherwise prescribes.

43 (3) Except for emergency care, require employees to
44 obtain the approval of the self-insured employer or private
45 carrier before obtaining medical and health care services for
46 their industrial injuries from a provider of health care who
47 has not been previously approved by the self-insured
48 employer or private carrier.

49 (e) A private carrier or self-insured employer may inquire
50 about and request medical records of an injured employee
51 that concern a preexisting medical condition that is
52 reasonably related to the industrial injury of that injured
53 employee.

54 (f) An injured employee must sign all medical releases
55 necessary for his or her self-insured employer or his or her
56 employer's private carrier to obtain information and records
57 about a preexisting medical condition that is reasonably
58 related to the industrial injury of the employee and that will
59 assist the insurer to determine the nature and amount of
60 workers' compensation to which the employee is entitled.

**§23-2C-21. Limitation of liability of insurer or third-party
administrator; administrative fines are exclusive
remedies.**

1 (a) No civil action may be brought or maintained by an
2 employee against a private carrier or a third-party
3 administrator, or any employee or agent of a private carrier
4 or third-party administrator, who violates any provision of
5 this chapter or chapter thirty-three of this code.

6 (b) Any administrative fines or remedies provided in this
7 chapter or chapter thirty-three of this code or rules
8 promulgated by the Workers' Compensation Commission or

9 the Insurance Commissioner are the exclusive civil remedies
10 for any violation of this chapter committed by a private
11 carrier or a third-party administrator or any agent or
12 employee of a private carrier or a third-party administrator.

13 (c) Upon a determination by the Office of Judges that a
14 denial of compensability, a denial of an award of temporary
15 total disability or a denial of an authorization for medical
16 benefits was unreasonable, reasonable attorney's fees and the
17 costs actually incurred in the process of obtaining a reversal
18 of the denial shall be awarded to the claimant and paid by the
19 private carrier or self-insured employer which issued the
20 unreasonable denial. A denial is unreasonable if, after
21 submission by or on behalf of the claimant, of evidence of the
22 compensability of the claim, the entitlement to temporary
23 total disability benefits or medical benefits, the private carrier
24 or self-insured employer is unable to demonstrate that it had
25 evidence or a legal basis supported by legal authority at the
26 time of the denial which is relevant and probative and
27 supports the denial of the award or authorization. Payment
28 of attorney's fees and costs awarded under this subsection
29 will be made to the claimant at the conclusion of litigation,
30 including all appeals, of the claimant's protest of the denial.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

- §23-4-1c. Payment of temporary total disability benefits directly to claimant; payment of medical benefits; payments of benefits during protest; right of commission, successor to the commission, private carriers and self-insured employers to collect payments improperly made.
- §23-4-6b. Occupational hearing loss claims.
- §23-4-8. Physical examination of claimant.
- §23-4-8c. Occupational Pneumoconiosis Board; reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon; limitations on refilings; consolidation of claims.
- §23-4-8d. Occupational pneumoconiosis claims never closed for medical benefits.
- §23-4-15b. Determination of nonmedical questions; claims for occupational pneumoconiosis; hearing.

§23-4-1c. Payment of temporary total disability benefits directly to claimant; payment of medical benefits; payments of benefits during protest; right of commission, successor to the commission, private carriers and self-insured employers to collect payments improperly made.

1 (a) In any claim for benefits under this chapter, the
2 Insurance Commissioner, private carrier or self-insured
3 employer, whichever is applicable, shall determine whether
4 the claimant has sustained a compensable injury within the
5 meaning of section one of this article and enter an order
6 giving all parties immediate notice of the decision.

7 (1) The Insurance Commissioner, private carrier or self-
8 insured employer, whichever is applicable, may enter an
9 order conditionally approving the claimant's application if it
10 finds that obtaining additional medical evidence or
11 evaluations or other evidence related to the issue of
12 compensability would aid the Insurance Commissioner,
13 private carrier or self-insured employer, whichever is
14 applicable, in making a correct final decision. Benefits shall
15 be paid during the period of conditional approval; however,
16 if the final decision is one that rejects the claim, the payments
17 shall be considered an overpayment. The Insurance
18 Commissioner, private carrier or self-insured employer,
19 whichever is applicable, may only recover the amount of the
20 overpayment as provided for in subsection (h) of this section.

21 (2) In making a determination regarding the
22 compensability of a newly filed claim or upon a filing for the
23 reopening of a prior claim pursuant to the provisions of
24 section sixteen of this article based upon an allegation of
25 recurrence, reinjury, aggravation or progression of the
26 previous compensable injury or in the case of a filing of a
27 request for any other benefits under the provisions of this
28 chapter, the Insurance Commissioner, private carrier or self-

29 insured employer, whichever is applicable, shall consider the
30 date of the filing of the claim for benefits for a determination
31 of the following:

32 (A) Whether the claimant had a scheduled shutdown
33 beginning within one week of the date of the filing;

34 (B) Whether the claimant received notice within sixty
35 days of the filing that his or her employment position was to
36 be eliminated, including, but not limited to, the claimant's
37 worksite, a layoff or the elimination of the claimant's
38 employment position;

39 (C) Whether the claimant is receiving unemployment
40 compensation benefits at the time of the filing; or

41 (D) Whether the claimant has received unemployment
42 compensation benefits within sixty days of the filing. In the
43 event of an affirmative finding upon any of these four factors,
44 the finding shall be given probative weight in the overall
45 determination of the compensability of the claim or of the
46 merits of the reopening request.

47 (3) Any party may object to the order of the Insurance
48 Commissioner, private carrier or self-insured employer,
49 whichever is applicable, and obtain an evidentiary hearing as
50 provided in section one, article five of this chapter: *Provided,*
51 That if the successor to the commissioner, other private
52 carrier or self-insured, whichever is applicable, fails to timely
53 issue a ruling upon any application or motion as provided by
54 law, or if the claimant files a timely protest to the ruling of a
55 self-insured employer, private carrier or other issuing entity,
56 denying the compensability of the claim, denying temporary
57 total disability benefits or denying medical authorization, the
58 Office of Judges shall provide a hearing on the protest on an
59 expedited basis as determined by rule of the Office of Judges.

60 (b) Where it appears from the employer's report, or from
61 proper medical evidence, that a compensable injury will
62 result in a disability which will last longer than three days as
63 provided in section five of this article, the Insurance
64 Commissioner, private carrier or self-insured employer,
65 whichever is applicable, may immediately enter an order
66 commencing the payment of temporary total disability
67 benefits to the claimant in the amounts provided for in
68 sections six and fourteen of this article, and the payment of
69 the expenses provided for in subsection (a), section three of
70 this article, relating to the injury, without waiting for the
71 expiration of the thirty-day period during which objections
72 may be filed to the findings as provided in section one, article
73 five of this chapter. The Insurance Commissioner, private
74 carrier or self-insured employer, whichever is applicable,
75 shall enter an order commencing the payment of temporary
76 total disability or medical benefits within fifteen working
77 days of receipt of either the employee's or employer's report
78 of injury, whichever is received sooner, and also upon receipt
79 of either a proper physician's report or any r information
80 necessary for a determination. The Insurance Commissioner,
81 private carrier or self-insured employer, whichever is
82 applicable, shall give to the parties immediate notice of any
83 order granting temporary total disability or medical benefits.
84 When an order granting temporary total disability benefits is
85 made, the claimant's return-to-work potential shall be
86 assessed. The Insurance Commissioner may schedule
87 medical and vocational evaluation of the claimant and assign
88 appropriate personnel to expedite the claimant's return to
89 work as soon as reasonably possible.

90 (c) The Insurance Commissioner, private carrier or self-
91 insured employer, whichever is applicable, may enter orders
92 granting temporary total disability benefits upon receipt of
93 medical evidence justifying the payment of the benefits. The
94 Insurance Commissioner, private carrier or self-insured
95 employer, whichever is applicable, may not enter an order

96 granting prospective temporary total disability benefits for a
97 period of more than ninety days: *Provided*, That when the
98 Insurance Commissioner, private carrier or self-insured
99 employer, whichever is applicable, determines that the
100 claimant remains disabled beyond the period specified in the
101 prior order granting temporary total disability benefits, the
102 Insurance Commissioner, private carrier or self-insured
103 employer shall enter an order continuing the payment of
104 temporary total disability benefits for an additional period not
105 to exceed ninety days and shall give immediate notice to all
106 parties of the decision.

107 (d) Upon receipt of the first report of injury in a claim,
108 the Insurance Commissioner, private carrier or self-insured
109 employer, whichever is applicable, shall request from the
110 employer or employers any wage information necessary for
111 determining the rate of benefits to which the employee is
112 entitled. If an employer does not furnish this information
113 within fifteen days from the date the Insurance
114 Commissioner, private carrier or self-insured employer,
115 whichever is applicable, received the first report of injury in
116 the case, the employee shall be paid temporary total disability
117 benefits for lost time at the rate the commission obtains from
118 reports made pursuant to subsection (b), section two, article
119 two of this chapter. If no wages have been reported, the
120 Insurance Commissioner, private carrier or self-insured
121 employer, whichever is applicable, shall make the payments
122 at the rate the Insurance Commissioner, private carrier or
123 self-insured employer, whichever is applicable, finds would
124 be justified by the usual rate of pay for the occupation of the
125 injured employee. The rate of benefits shall be adjusted both
126 retroactively and prospectively upon receipt of proper wage
127 information. The Insurance Commissioner shall have access
128 to all wage information in the possession of any state agency.

129 (e) Subject to the limitations set forth in section sixteen
130 of this article, upon a finding of the Insurance Commissioner,

131 private carrier or self-insured employer, whichever is
132 applicable, that a claimant who has sustained a previous
133 compensable injury which has been closed by order, or by the
134 claimant's return to work, suffers further temporary total
135 disability or requires further medical or hospital treatment
136 resulting from the compensable injury, payment of temporary
137 total disability benefits to the claimant in the amount
138 provided for in sections six and fourteen of this article shall
139 immediately commence, and the expenses provided for in
140 subsection (a), section three of this article, relating to the
141 disability, without waiting for the expiration of the thirty-day
142 period during which objections may be filed. Immediate
143 notice to the parties of the decision shall be given.

144 (f) The Insurance Commissioner, private carrier or self-
145 insured employer shall deliver amounts due for temporary
146 total disability benefits directly to the claimant.

147 (g) Where the employer has elected to carry its own risk
148 under section nine, article two of this chapter, and upon the
149 findings aforesaid, the self-insured employer shall
150 immediately pay the amounts due the claimant for temporary
151 total disability benefits. A copy of the notice shall be sent to
152 the claimant.

153 (h) In the event that an employer files a timely objection
154 to any order of the Insurance Commissioner, private carrier
155 or self-insured, whichever is applicable, with respect to
156 compensability, or any order denying an application for
157 modification with respect to temporary total disability
158 benefits, or with respect to those expenses outlined in
159 subsection (a), section three of this article, the division shall
160 continue to pay to the claimant such benefits and expenses
161 during the period of such disability. Where it is subsequently
162 found by the Insurance Commissioner, private carrier or self-
163 insured, whichever is applicable, that the claimant was not
164 entitled to receive such temporary total disability benefits or

165 expenses, or any part thereof, so paid, the Insurance
166 Commissioner, private carrier or self-insured, whichever is
167 applicable, shall credit said employer's account with the
168 amount of the overpayment. When the employer has
169 protested the compensability or applied for modification of
170 a temporary total disability benefit award or expenses and the
171 final decision in that case determines that the claimant was
172 not entitled to the benefits or expenses, the amount of
173 benefits or expenses is considered overpaid. For all awards
174 made or nonawarded partial benefits paid the Insurance
175 Commissioner, private carriers or self-insured employer may
176 recover the amount of overpaid benefits or expenses by
177 withholding, in whole or in part, future disability benefits
178 payable to the individual in the same or other claims and
179 credit the amount against the overpayment until it is repaid in
180 full.

181 (i) In the event that the Insurance Commissioner, private
182 carrier or self-insured employer, whichever is applicable,
183 finds that, based upon the employer's report of injury, the
184 claim is not compensable, the Insurance Commissioner,
185 private carrier or self-insured employer, whichever is
186 applicable, shall provide a copy of the employer's report to
187 the claimant in addition to the order denying the claim.

188 (j) If a claimant is receiving benefits paid through a wage
189 replacement plan, salary continuation plan or other benefit
190 plan provided by the employer to which the employee has not
191 contributed, and that plan does not provide an offset for
192 temporary total disability benefits to which the claimant is
193 also entitled under this chapter as a result of the same injury
194 or disease, the employer shall notify the Insurance
195 Commissioner, private carrier or self-insured of the
196 duplication of the benefits paid to the claimant. Upon receipt
197 of the notice, the Insurance Commissioner, private carrier or
198 self-insured employer, whichever is applicable, shall reduce
199 the temporary total disability benefits provided under this

200 chapter by an amount sufficient to ensure that the claimant
201 does not receive monthly benefits in excess of the amount
202 provided by the employer's plan or the temporary total
203 disability benefit, whichever is greater: *Provided*, That this
204 subsection does not apply to benefits being paid under the
205 terms and conditions of a collective bargaining agreement.

§23-4-6b. Occupational hearing loss claims.

1 (a) In all claims for occupational hearing loss caused by
2 either a single incident of trauma or by exposure to hazardous
3 noise in the course of and resulting from employment, the
4 degree of permanent partial disability, if any, shall be
5 determined in accordance with the provisions of this section
6 and awards made in accordance with the provisions of
7 section six of this article.

8 (b) The percent of permanent partial disability for a
9 monaural hearing loss shall be computed in the following
10 manner:

11 (1) The measured decibel loss of hearing due to injury at
12 the sound frequencies of five hundred, one thousand, two
13 thousand and three thousand hertz shall be determined for the
14 injured ear and the total shall be divided by four to ascertain
15 the average decibel loss;

16 (2) The percent of monaural hearing impairment for the
17 injured ear shall be calculated by multiplying by one and six-
18 tenths percent the difference by which the aforementioned
19 average decibel loss exceeds twenty-seven and one-half
20 decibels, up to a maximum of one hundred percent hearing
21 impairment, which maximum is reached at ninety decibels;
22 and

23 (3) The percent of monaural hearing impairment obtained
24 shall be multiplied by twenty-two and one-half to ascertain
25 the degree of permanent partial disability.

26 (c) The percent of permanent partial disability for a
27 binaural hearing loss shall be computed in the following
28 manner:

29 (1) The measured decibel loss of hearing due to injury at
30 the sound frequencies of five hundred, one thousand, two
31 thousand and three thousand hertz is determined for each ear
32 and the total for each ear shall be divided by four to ascertain
33 the average decibel loss for each ear;

34 (2) The percent of hearing impairment for each ear is
35 calculated by multiplying by one and six-tenths percent the
36 difference by which the aforementioned average decibel loss
37 exceeds twenty-seven and one-half decibels, up to a
38 maximum of one hundred percent hearing impairment, which
39 maximum is reached at ninety decibels;

40 (3) The percent of binaural hearing impairment shall be
41 calculated by multiplying the smaller percentage (better ear)
42 by five, adding this figure to the larger percentage (poorer
43 ear) and dividing the sum by six; and

44 (4) The percent of binaural hearing impairment obtained
45 shall be multiplied by fifty-five to ascertain the degree of
46 permanent partial disability.

47 (d) No permanent partial disability benefits shall be
48 granted for tinnitus, psychogenic hearing loss, recruitment or
49 hearing loss above three thousand hertz.

50 (e) An additional amount of permanent partial disability
51 shall be granted for impairment of speech discrimination, if
52 any, to determine the additional amount for binaural
53 impairment, the percentage of speech discrimination in each
54 ear shall be added together and the result divided by two to
55 calculate the average percentage of speech discrimination,
56 and the permanent partial disability shall be ascertained by

57 reference to the percentage of permanent partial disability in
 58 the table below on the line with the percentage of speech
 59 discrimination obtained. To determine the additional amount
 60 for monaural impairment, the permanent partial disability
 61 shall be ascertained by reference to the percentage of
 62 permanent partial disability in the table below on the line
 63 with the percentage of speech discrimination in the injured
 64 ear.

65 **TABLE**

66	% of Speech	% of Permanent
67	Discrimination	Partial Disability
68	90% and up to and including 100%	0%
69	80% and up to but not including 90%	1%
70	70% and up to but not including 80%	3%
71	60% and up to but not including 70%	4%
72	0% and up to but not including 60%	5%

73 (f) No temporary total disability benefits shall be granted
 74 for noise-induced hearing loss.

75 (g) An application for benefits alleging a noise-induced
 76 hearing loss shall set forth the name of the employer or
 77 employers and the time worked for each. The Insurance
 78 Commissioner may allocate to and divide any charges
 79 resulting from the claim among the employers with whom the
 80 claimant sustained exposure to hazardous noise for as much
 81 as sixty days during the period of three years immediately
 82 preceding the date of last exposure. The allocation is based
 83 upon the time of exposure with each employer. In
 84 determining the allocation, the Insurance Commissioner shall
 85 consider all the time of employment by each employer during
 86 which the claimant was exposed and not just the time within
 87 the three-year period under the same allocation as is applied
 88 in occupational pneumoconiosis cases.

89 (h) The employer against whom the claim is filed shall
90 provide for prompt referral the claims for evaluation, for all
91 medical reimbursement and for prompt authorization of
92 hearing enhancement devices.

§23-4-8. Physical examination of claimant.

1 (a) The Insurance Commissioner, private carrier or self-
2 insured employer, whichever is applicable, may, after due
3 notice to the claimant, whenever in its opinion it is necessary,
4 order a claimant of compensation for a personal injury other
5 than occupational pneumoconiosis to appear for examination
6 before a medical examiner or examiners selected by the
7 Insurance Commissioner, other private carrier or self-insured
8 employer, whichever is applicable; and the claimant and
9 employer each may select a physician of the claimant's or the
10 employer's own choosing and at the claimant's or the
11 employer's own expense to participate in the examination.
12 All examinations shall be performed in accordance with the
13 protocols and procedures established by rules of the
14 Insurance Commissioner: *Provided*, That the physician may
15 exceed these protocols when additional evaluation is
16 medically necessary. The claimant and employer shall be
17 furnished with a copy of the report of examination made by
18 the medical examiner or examiners. The physicians selected
19 by the claimant and employer have the right to submit a
20 separate report to, or concur in any report made by the
21 medical examiner or examiners selected by the Insurance
22 Commissioner, private carrier or self-insured employer, and
23 any separate report shall be considered in passing upon the
24 claim.

25 (b) If the compensation claimed is for occupational
26 pneumoconiosis, the Insurance Commissioner, private carrier
27 or self-insured employer, whichever is applicable, may, after
28 due notice to the employer, order a claimant to appear for
29 examination before the Occupational Pneumoconiosis Board
30 provided for in section eight-a of this article.

31 (c) Where the claimant is ordered to appear for an
32 examination by the Occupational Pneumoconiosis Board
33 pursuant to subsection (b) of this section or is required to
34 undergo a medical examination or examinations, pursuant to
35 subsection (a) of this section, the party that referred the
36 claimant to the Occupational Pneumoconiosis Board or
37 required the medical examination shall reimburse the
38 claimant for loss of wages and reasonable traveling expenses
39 as set forth in subsection (e) of this section and other
40 expenses in connection with the examination or
41 examinations.

42 (d) The claimant shall be reimbursed for reasonable
43 traveling expenses as set forth in subsection (e) of this
44 section incurred in connection with medical examinations,
45 appointments and treatments, including appointments with
46 the claimant's authorized treating physician.

47 (e) The claimant's traveling expenses include, at a
48 minimum, reimbursement for meals, lodging and milage.
49 Reimbursement for travel in a personal motor vehicle shall be
50 at the milage reimbursement rates contained in the
51 Department of Administration's Purchasing Division Travel
52 Rules as authorized by section eleven, article three, chapter
53 twelve of this code in effect at the time the treatment is
54 authorized.

**§23-4-8c. Occupational Pneumoconiosis Board; reports and
distribution thereof; presumption; findings
required of board; objection to findings;
procedure thereon; limitations on refilings;
consolidation of claims.**

1 (a) The Occupational Pneumoconiosis Board, as soon as
2 practicable, after it has completed its investigation, shall
3 make its written report, to the Insurance Commissioner,
4 private carrier or self-insured employer, whichever is

5 applicable, of its findings and conclusions on every medical
6 question in controversy and the board shall send one copy of
7 the report to the employee or claimant and one copy to the
8 employer. The board shall also return to and file with the
9 Insurance Commissioner, private carrier or self-insured
10 employer, whichever is applicable, all the evidence as well as
11 all statements under oath, if any, of the persons who appeared
12 before it on behalf of the employee or claimant, or employer,
13 and also all medical reports and X-ray examinations
14 produced by or on behalf of the employee or claimant, or
15 employer.

16 (b) If it can be shown that the claimant or deceased
17 employee has been exposed to the hazard of inhaling minute
18 particles of dust in the course of and resulting from his or her
19 employment for a period of ten years during the fifteen years
20 immediately preceding the date of his or her last exposure to
21 such hazard and that the claimant or deceased employee has
22 sustained a chronic respiratory disability, it shall be presumed
23 that the claimant is suffering or the deceased employee was
24 suffering at the time of his or her death from occupational
25 pneumoconiosis which arose out of and in the course of his
26 or her employment. This presumption is not conclusive.

27 (c) The findings and conclusions of the board shall set
28 forth, among other things, the following:

29 (1) Whether or not the claimant or the deceased employee
30 has contracted occupational pneumoconiosis and, if so, the
31 percentage of permanent disability resulting therefrom;

32 (2) Whether or not the exposure in the employment was
33 sufficient to have caused the claimant's or deceased
34 employee's occupational pneumoconiosis or to have
35 perceptibly aggravated an existing occupational
36 pneumoconiosis or other occupational disease; and

37 (3) What, if any, physician appeared before the board on
38 behalf of the claimant or employer and what, if any, medical
39 evidence was produced by or on behalf of the claimant or
40 employer.

41 (d) If either party objects to the whole or any part of the
42 findings and conclusions of the board, the party shall file
43 with the Office of Judges, within sixty days from receipt of
44 the copy to that party, unless for good cause shown the chief
45 administrative law judge extends the time, the party's
46 objections to the findings and conclusions of the board in
47 writing, specifying the particular statements of the board's
48 findings and conclusions to which such party objects. The
49 filing of an objection within the time specified is a condition
50 of the right to litigate the findings and therefore
51 jurisdictional. After the time has expired for the filing of
52 objections to the findings and conclusions of the board, the
53 commission or administrative law judge shall proceed to act
54 as provided in this chapter. If after the time has expired for
55 the filing of objections to the findings and conclusions of the
56 board no objections have been filed, the report of a majority
57 of the board of its findings and conclusions on any medical
58 question shall be taken to be plenary and conclusive evidence
59 of the findings and conclusions stated in the report. If
60 objection has been filed to the findings and conclusions of the
61 board, notice of the objection shall be given to the board and
62 the members of the board joining in the findings and
63 conclusions shall appear at the time fixed by the Office of
64 Judges for the hearing to submit to examination and cross-
65 examination in respect to the findings and conclusions. At
66 the hearing, evidence to support or controvert the findings
67 and conclusions of the board shall be limited to examination
68 and cross-examination of the members of the board and to the
69 taking of testimony of other qualified physicians and
70 roentgenologists.

71 (e) In the event that a claimant receives a final decision
72 that he or she has no evidence of occupational

73 pneumoconiosis, the claimant is barred for a period of three
74 years from the date of the Occupational Pneumoconiosis
75 Board's decision or until his or her employment with the
76 employer who employed the claimant at the time designated
77 as the claimant's last date of exposure in the denied claim has
78 terminated, whichever is sooner, from filing a new claim or
79 pursuing a previously filed, but unruled upon, claim for
80 occupational pneumoconiosis or requesting a modification of
81 any prior ruling finding him or her not to be suffering from
82 occupational pneumoconiosis. For the purposes of this
83 subsection, a claimant's employment shall be considered to
84 be terminated if, for any reason, he or she has not worked for
85 that employer for a period in excess of ninety days. Any
86 previously filed, but unruled upon, claim shall be
87 consolidated with the claim in which the board's decision is
88 made and shall be denied together with the decided claim.
89 The provisions of this subsection shall not be applied in any
90 claim where doing so would, in and of itself, later cause a
91 claimant's claim to be forever barred by the provisions of
92 section fifteen of this article.

93 (f) Effective upon termination of the commission, the
94 Insurance Commissioner shall assume all administrative
95 powers and responsibilities necessary to administer sections
96 eight-a, eight-b and eight-c of this article.

**§23-4-8d. Occupational pneumoconiosis claims never closed for
medical benefits.**

1 Notwithstanding the provisions of subdivision (4),
2 subsection (a), section sixteen of this article, a request for
3 medical services, durable medical goods or other medical
4 supplies in an occupational pneumoconiosis claim may be
5 made at any time.

**§23-4-15b. Determination of nonmedical questions; claims for
occupational pneumoconiosis; hearing.**

1 If a claim for occupational pneumoconiosis benefits is
2 filed by an employee within three years from and after the
3 last day of the last continuous period of sixty days' exposure
4 to the hazards of occupational pneumoconiosis, the Insurance
5 Commissioner, private carrier or self-insured employer,
6 whichever is applicable, shall determine whether the claimant
7 was exposed to the hazards of occupational pneumoconiosis
8 for a continuous period of not less than sixty days while in
9 the employ of the employer within three years prior to the
10 filing of his or her claim, whether in the State of West
11 Virginia the claimant was exposed to such hazard over a
12 continuous period of not less than two years during the ten
13 years immediately preceding the date of his or her last
14 exposure to the hazard and whether the claimant was exposed
15 to the hazard over a period of not less than ten years during
16 the fifteen years immediately preceding the date of his or her
17 last exposure to the hazard. If a claim for occupational
18 pneumoconiosis benefits is filed by an employee within three
19 years from and after the employee's occupational
20 pneumoconiosis was made known to the employee by a
21 physician, the Insurance Commissioner, private carrier or
22 self-insured employer, whichever is applicable, shall
23 determine whether the claimant filed his or her application
24 within that period and whether in the State of West Virginia
25 the claimant was exposed to the hazard over a continuous
26 period of not less than two years during the ten years
27 immediately preceding the date of last exposure to the hazard
28 and whether the claimant was exposed to the hazard over a
29 period of not less than ten years during the fifteen years
30 immediately preceding the date of last exposure to the
31 hazard. If a claim for occupational pneumoconiosis benefits
32 is filed by a dependent of a deceased employee, the Insurance
33 Commissioner, private carrier or self-insured employer,
34 whichever is applicable, shall determine whether the
35 deceased employee was exposed to the hazards of
36 occupational pneumoconiosis for a continuous period of not
37 less than sixty days while in the employ of the employer

38 within ten years prior to the filing of the claim, whether in the
39 State of West Virginia the deceased employee was exposed
40 to the hazard over a continuous period of not less than two
41 years during the ten years immediately preceding the date of
42 his or her last exposure to the hazard and whether the
43 claimant was exposed to the hazard over a period of not less
44 than ten years during the fifteen years immediately preceding
45 the date of his or her last exposure to the hazard. The
46 Insurance Commissioner, private carrier or self-insured
47 employer, whichever is applicable, shall also determine other
48 nonmedical facts that, in the opinion of the Insurance
49 Commissioner, private carrier or self-insured employer,
50 whichever is applicable, are pertinent to a decision on the
51 validity of the claim.

52 The Insurance Commissioner, private carrier or self-
53 insured employer, whichever is applicable, shall enter an
54 order with respect to nonmedical findings within ninety days
55 following receipt by the Insurance Commissioner, private
56 carrier or self-insured employer, whichever is applicable, of
57 both the claimant's application for occupational
58 pneumoconiosis benefits and the physician's report filed in
59 connection with the claimant's application and shall give each
60 interested party notice in writing of these findings with
61 respect to all the nonmedical facts. The findings and actions
62 of the Insurance Commissioner, private carrier or self-insured
63 employer, whichever is applicable, are final unless the
64 employer, employee, claimant or dependent, within sixty
65 days after receipt of the notice, objects to the findings and,
66 unless an objection is filed within the sixty-day period, the
67 findings are forever final, the time limitation is a condition of
68 the right to litigate the findings and therefore jurisdictional.
69 Upon receipt of an objection, the chief administrative law
70 judge shall set a hearing as provided in section nine, article
71 five of this chapter. In the event of an objection to the
72 findings by the employer, the claim shall, notwithstanding the
73 fact that one or more hearings may be held with respect to the

74 objection, mature for reference to the Occupational
75 Pneumoconiosis Board with like effect as if the objection had
76 not been filed. If the administrative law judge concludes
77 after the protest hearings that the claim should be dismissed,
78 a final order of dismissal shall be entered. The final order is
79 subject to appeal in accordance with the provisions of
80 sections ten and twelve, article five of this chapter. If the
81 administrative law judge concludes after the protest hearings
82 that the claim should be referred to the Occupational
83 Pneumoconiosis Board for its review, the order entered shall
84 be interlocutory only and may be appealed only in
85 conjunction with an appeal from a final order with respect to
86 the findings of the Occupational Pneumoconiosis Board.

ARTICLE 5. REVIEW.

§23-5-1. Notice by commission or self-insured employer of decision; procedures on claims; objections and hearing.

§23-5-3. Refusal to reopen claim; notice; objection.

§23-5-16. Fees of attorney for claimant; unlawful charging or receiving of attorney fees.

§23-5-1. Notice by commission or self-insured employer of decision; procedures on claims; objections and hearing.

1 (a) The Insurance Commissioner, private carriers and
2 self-insured employers may determine all questions within
3 their jurisdiction. In matters arising under subsection (c),
4 section eight, article two-c of this chapter, and under articles
5 three and four of this chapter, the Insurance Commissioner,
6 private carriers and self-insured employers shall promptly
7 review and investigate all claims. The parties to a claim are
8 the claimant and, if applicable, the claimant's dependants, and
9 the employer, and with respect to claims involving funds
10 created in article two-c of this chapter for which he or she has
11 been designated the administrator, the Insurance
12 Commissioner. In claims in which the employer had
13 coverage on the date of the injury or last exposure, the
14 employer's carrier has sole authority to act on the employer's

15 behalf in all aspects related to litigation of the claim. With
16 regard to any issue which is ready for a decision, the
17 Insurance Commissioner, private carrier or self-insured
18 employer, whichever is applicable, shall promptly send the
19 decision to all parties, including the basis of its decision. As
20 soon as practicable after receipt of any occupational
21 pneumoconiosis or occupational disease claim or any injury
22 claim in which temporary total benefits are being claimed,
23 the Insurance Commissioner, private carrier or self-insured
24 employer, whichever is applicable, shall send the claimant a
25 brochure approved by the Insurance Commissioner setting
26 forth the claims process.

27 (b) (1) Except with regard to interlocutory matters, upon
28 making any decision, upon making or refusing to make any
29 award or upon making any modification or change with
30 respect to former findings or orders, as provided by section
31 sixteen, article four of this chapter, the Insurance
32 Commissioner, private carrier or self-insured employer,
33 whichever is applicable, shall give notice, in writing, to the
34 parties to the claim of its action. The notice shall state the
35 time allowed for filing a protest to the finding. The action of
36 the Insurance Commissioner, private carrier or self-insured
37 employer, whichever is applicable, is final unless the decision
38 is protested within sixty days after the receipt of such
39 decision unless a protest is filed within the sixty-day period,
40 the finding or action is final. This time limitation is a
41 condition of the right to litigate the finding or action and
42 hence jurisdictional. Any protest shall be filed with the
43 Office of Judges with a copy served upon the parties to the
44 claim, and other parties in accordance with the procedures set
45 forth in sections eight and nine of this article. An employer
46 may protest decisions incorporating findings made by the
47 Occupational Pneumoconiosis Board, decisions made by the
48 Insurance Commissioner acting as administrator of claims
49 involving funds created in article two-c of this chapter or
50 decisions entered pursuant to subdivision (1), subsection (c),
51 section seven-a, article four of this chapter.

52 (2) (A) With respect to every application for benefits
53 filed on or after July 1, 2008, in which a decision to deny
54 benefits is protested and the matter involves an issue as to
55 whether the application was properly filed as a new claim or
56 a reopening of a previous claim, the party that denied the
57 application shall begin to make conditional payment of
58 benefits and must promptly give notice to the Office of
59 Judges that another identifiable person may be liable. The
60 Office of Judges shall promptly order the appropriate persons
61 be joined as parties to the proceeding: *Provided*, That at any
62 time during a proceeding in which conditional payments are
63 being made in accordance with the provisions of this
64 subsection, the Office of Judges may, pending final
65 determination of the person properly liable for payment of
66 the claim, order that such conditional payments of benefits be
67 paid by another party.

68 (B) Any conditional payment made pursuant to paragraph
69 (A) of this subdivision shall not be deemed an admission or
70 conclusive finding of liability of the person making such
71 payments. When the administrative law judge has made a
72 determination as to the party properly liable for payment of
73 the claim, he or she shall direct any monetary adjustment or
74 reimbursement between or among the Insurance
75 Commissioner, private carriers and self-insured employers as
76 is necessary.

77 (c) The Office of Judges may direct that:

78 (1) An application for benefits be designated as a petition
79 to reopen, effective as of the original date of filing;

80 (2) A petition to reopen be designated as an application
81 for benefits, effective as of the original date of filing; or

82 (3) An application for benefits or petition to reopen filed
83 with the Insurance Commissioner, private carrier or self-

84 insured employer be designated as an application or petition
85 to reopen filed with another private carrier, self-insured
86 employer or Insurance Commissioner, effective as of the
87 original date of filing.

88 (d) Where an employer protests a written decision entered
89 pursuant to a finding of the Occupational Pneumoconiosis
90 Board, a decision on a claim made by the Insurance
91 Commissioner acting as the administrator of a fund created
92 in article two-c of this chapter, or decisions entered pursuant
93 to subdivision (1), subsection (c), section seven-a, article four
94 of this chapter, and the employer does not prevail in its
95 protest, and in the event the claimant is required to attend a
96 hearing by subpoena or agreement of counsel or at the
97 express direction of the Office of Judges, then the claimant,
98 in addition to reasonable traveling and other expenses, shall
99 be reimbursed for loss of wages incurred by the claimant in
100 attending the hearing.

101 (e) The Insurance Commissioner, private carrier or self-
102 insured employer, whichever is applicable, may amend,
103 correct or set aside any order or decision on any issue entered
104 by it which, at the time of issuance or any time after that, is
105 discovered to be defective or clearly erroneous or the result
106 of mistake, clerical error or fraud, or with respect to any
107 order or decision denying benefits, otherwise not supported
108 by the evidence, but any protest filed prior to entry of the
109 amended decision is a protest from the amended decision
110 unless and until the administrative law judge before whom
111 the matter is pending enters an order dismissing the protest as
112 moot in light of the amendment. Jurisdiction to issue an
113 amended decision pursuant to this subsection continues until
114 the expiration of two years from the date of a decision to
115 which the amendment is made unless the decision is sooner
116 affected by an action of an administrative law judge or other
117 judicial officer or body: *Provided*, That corrective actions in
118 the case of fraud may be taken at any time.

§23-5-3. Refusal to reopen claim; notice; objection.

1 If it appears to the Insurance Commissioner, private
2 insurance carriers and self-insured employers, whichever is
3 applicable, that an application filed under section two of this
4 article fails to disclose a progression or aggravation in the
5 claimant's condition, or some other fact or facts which were
6 not previously considered in its former findings and which
7 would entitle the claimant to greater benefits than the
8 claimant has already received, the Insurance Commissioner,
9 private insurance carriers and self-insured employers,
10 whichever is applicable, shall, within a reasonable time,
11 notify the claimant and the employer that the application fails
12 to establish a prima facie cause for reopening the claim. The
13 notice shall be in writing stating the reasons for denial and
14 the time allowed for objection to the decision of the
15 commission. The claimant may, within sixty days after
16 receipt of the notice, object in writing to the finding. Unless
17 the objection is filed within the sixty-day period, no objection
18 shall be allowed. This time limitation is a condition of the
19 right to objection and hence jurisdictional. Upon receipt of
20 an objection, the Office of Judges shall afford the claimant an
21 evidentiary hearing as provided in section nine of this article.

§23-5-16. Fees of attorney for claimant; unlawful charging or receiving of attorney fees.

1 (a) No attorney's fee in excess of twenty percent of any
2 award granted shall be charged or received by an attorney for
3 a claimant or dependent. In no case shall the fee received by
4 the attorney of such claimant or dependent be in excess of
5 twenty percent of the benefits to be paid during a period of
6 two hundred eight weeks. The interest on disability or
7 dependent benefits as provided for in this chapter shall not be
8 considered as part of the award in determining any such
9 attorney's fee. However, any contract entered into in excess
10 of twenty percent of the benefits to be paid during a period of

11 two hundred eight weeks, as herein provided, shall be
12 unlawful and unenforceable as contrary to the public policy
13 of this state and any fee charged or received by an attorney in
14 violation thereof shall be deemed an unlawful practice and
15 render the attorney subject to disciplinary action.

16 (b) On a final settlement an attorney may charge a fee not
17 to exceed twenty percent of the total value of the medical and
18 indemnity benefits: *Provided*, That this attorney's fee, when
19 combined with any fees previously charged or received by
20 the attorney for permanent partial disability or permanent
21 total disability benefits may not exceed twenty percent of an
22 award of benefits to be paid during a period of two hundred
23 eight weeks.

CHAPTER 33. INSURANCE.

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-22. Authority of Insurance Commissioner regarding employers in default to workers' compensation funds; injunctions against defaulting employers.

1 (a) Upon termination of the Workers' Compensation
2 Commission, all of the powers and authority previously
3 conferred upon the Workers' Compensation Commission
4 pursuant to article two, chapter twenty-three of this code,
5 relating to employers in default to the Workers'
6 Compensation Fund, are hereby transferred to the Insurance
7 Commissioner and shall be applied by the commissioner to
8 those employers in default to the Old Fund or having liability
9 to the Uninsured Employer Fund or who are in policy default
10 or fail to maintain mandatory workers' compensation
11 coverage, all as defined in article two-c, chapter twenty-three
12 of this code.

13 (b) In any case in which an employer is in default to the
14 Old Fund or has liability to the Uninsured Employer Fund or
15 who is in default on a policy or otherwise fails to maintain
16 mandatory workers' compensation coverage, all as defined in
17 article two-c, chapter twenty-three of this code, the
18 commission may bring an action in the circuit court of
19 Kanawha County to enjoin the employer from continuing to
20 operate the employer's business: *Provided*, That the
21 commissioner may, in his or her sole discretion, and as an
22 alternative to this action pursuant to this subsection, require
23 the employer to file a bond, in the form prescribed by the
24 commissioner, with satisfactory surety in an amount not less
25 than one hundred fifty percent of the total payments, interest
26 and penalties due.

27 (c) In any action instituted pursuant to subsection (b) of
28 this section, the circuit court shall issue an injunction
29 prohibiting the employer from operating the employer's
30 business if the Insurance Commissioner proves by a
31 preponderance of the evidence, that the employer is in default
32 to the Old Fund or has liability to the uninsured fund or is in
33 policy default or has otherwise failed to maintain mandatory
34 workers' compensation coverage.

35 (d) Notwithstanding any provision of this code to the
36 contrary, the commissioner shall have the authority to waive
37 penalty and interest accrued on moneys due the Old Fund.
38 The enactment of the provisions of this subsection shall be
39 applied retrospectively to January 1, 2006, and may not be
40 construed to require the commissioner to adjust or otherwise
41 modify any agreements reached with regard to the payment
42 of penalty or interest since that date.

43 (e) Notwithstanding any provision of this code to the
44 contrary, the Insurance Commissioner may compromise and
45 settle any claims for moneys due to the Old Fund or the

46 Uninsured Employer Fund. Information regarding
47 settlements is subject to chapter twenty-nine-b of this code.
48 The commissioner shall submit to the President of the Senate,
49 the Speaker of the House of Delegates and the Legislative
50 Auditor an annual report summarizing the settlements into
51 which he or she has entered pursuant to this subsection. The
52 summary shall describe the parties involved, the total amount
53 owed and portions paid, and the terms of the settlement.

CHAPTER 223

(H.B. 2841 - By Delegates Talbott and Argento)

[Passed April 11, 2009; in effect from passage.]
[Approved by the Governor on May 4, 2009.]

AN ACT to extend the time for the city council of the City of Richwood, Nicholas County, to meet as a levying body for the purpose of presenting to the voters of the city an election to supplement current funds for general repair of existing streets and alleys, acquisition of rights-of-way and construction of new streets, for services related to the protection against loss by fire, street maintenance, and for police protection for the city of Richwood and for payment of any obligation by the city due to higher costs and for the purpose of paying all costs incurred in the laying of this additional levy from between the seventh and twenty-eighth days of March and the third Tuesday in April until May 31, 2009.

Be it enacted by the Legislature of West Virginia:

**THE CITY COUNCIL OF THE CITY OF RICHWOOD
MEETING AS A LEVYING BODY EXTENDED.**

§1. Extending time for the city council for the City of Richwood to meet as a levying body for an election to supplement current funds for general repair of existing streets and alleys, acquisition of rights-of-way and construction of new streets, for services related to the protection against loss by fire, street maintenance, and for police protection for the City of Richwood and for payment of any obligation by the city due to higher costs and for the purpose of paying all costs incurred in the laying of the additional levy.

1 Notwithstanding the provisions of article eight, chapter
2 eleven of the Code of West Virginia, 1931, as amended, the
3 city council of the City of Richwood, Nicholas County, is
4 authorized to extend the time for its meeting as a levying
5 body, setting the levy rate and certifying its actions to the
6 State Auditor and the State Tax Commissioner from between
7 the seventh and twenty-eighth days of March and the third
8 Tuesday in April until May 31, 2009, for the purpose of
9 submitting to the voters of the City of Richwood the question
10 of supplementing current funds for general repair of existing
11 streets and alleys, acquisition of rights-of-way and
12 construction of new streets, for services related to the
13 protection against loss by fire, street maintenance and for
14 police protection for the City of Richwood and for payment
15 of any obligation by the city due to higher costs and for the
16 purpose of paying all costs incurred in the laying of this
17 additional levy.

CHAPTER 224**(S.B. 490 - By Senators Caruth and Oliverio)**

[Passed April 10, 2009; in effect from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to authorize and empower the county commission of Mercer County to appoint an emergency operations center board to oversee the operation of the enhanced emergency telephone system serving Mercer County.

Be it enacted by the Legislature of West Virginia:

**EMERGENCY OPERATIONS CENTER BOARDS FOR
MERCER COUNTY.****§1. Mercer County authorized to appoint an emergency
operations center board.**

1 The county commission of Mercer County is hereby
2 authorized and empowered to appoint a board to be known as
3 the Emergency Operations Center Board with power to
4 oversee the operation of the enhanced emergency telephone
5 system serving Mercer County.

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 2009

CHAPTER 1

(H.B. 105 - By Mr. Speaker, Mr. Thompson)
[By Request of the Executive]

[Passed June 2, 2009; in effect from passage.]
[Approved by the Governor on June 16, 2009.]

AN ACT to amend and reenact §60-3A-2, §60-3A-2a, §60-3A-4, §60-3A-6, §60-3A-7, §60-3A-8, §60-3A-10, §60-3A-10b, §60-3A-11 and §60-3A-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §60-3A-10d, all relating to the issuance of retail licenses for the sale of liquor; classifying retail licenses for the sale of liquor; setting forth legislative findings; defining certain terms; authorizing the Alcohol Beverage Control Commissioner to issue retail licenses for the sale of liquor; establishing certain standards for the issuance of licenses within market zones; limiting the issuance of retail licenses to operate mixed retail liquor outlets; authorizing the commissioner to adopt certain standards for retail outlets; authorizing the Retail Liquor Licensing Board to consider certain factors when authorizing additional retail outlets; increasing the maximum percentage of retail licenses a person may own; setting forth bidding procedures; setting license fees; adding citizenship and character requirements for license

applicants; authorizing credit and background checks on license applicants; providing a purchase option for active retail licensees seeking to operate a freestanding liquor retail outlet; providing for financing for the purchase of a retail license for a freestanding liquor retail outlet; and authorizing legislative and emergency rules.

Be it enacted by the Legislature of West Virginia:

That §60-3A-2, §60-3A-2a, §60-3A-4, §60-3A-6, §60-3A-7, §60-3A-8, §60-3A-10, §60-3A-10b, §60-3A-11 and §60-3A-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §60-3A-10d, all to read as follows:

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

- §60-3A-2. Legislative findings and declarations; legislative purpose.
- §60-3A-2a. Further legislative findings, declarations and purpose.
- §60-3A-4. Definitions.
- §60-3A-6. General powers and duties of board and commissioner.
- §60-3A-7. Market zones; Class A and Class B retail licenses.
- §60-3A-8. Retail license application requirements; retail licensee qualifications.
- §60-3A-10. Bidding procedure.
- §60-3A-10b. Bidding procedure for licenses issued for the ten-year period beginning July 1, 2010; purchase options for bids beginning July 1, 2010; and licenses issued for each ten-year period thereafter.
- §60-3A-10d. Financing option for retail licensees purchasing Class A retail licenses.
- §60-3A-11. Bonding requirements.
- §60-3A-12. Annual retail license fee; expiration and renewal of retail licenses.

§60-3A-2. Legislative findings and declaration; legislative purpose.

- 1 (a) The Legislature hereby finds and declares that the sale
- 2 of liquor at retail should no longer be by the state, but rather
- 3 by retail licensees; that there is a need for the state to control
- 4 the wholesale sales of liquor; that the health and welfare of
- 5 the citizens of this state will be adequately protected by the
- 6 licensing and control of such retail licensees; that the sale of
- 7 liquor through retail licensees will satisfy reasonable
- 8 consumer concerns of availability and price; and that the

9 operation and efficiency of state government will be
10 improved by removing the state from the retail sale of liquor
11 and permitting sales of liquor by retail licensees under
12 licenses issued by the state together with strict enforcement
13 of laws and rules relating to the sale of liquor.

14 (b) It is the purpose of the Legislature in providing for
15 the retail sale of liquor to:

16 (1) Continue revenue to the state from the wholesale sale
17 of liquor by requiring all retail licensees to purchase all
18 liquor (other than wine) from the commissioner and by
19 further requiring all private clubs licensed under the
20 provisions of article seven of this chapter to purchase all
21 liquor (other than wine) from retail licensees;

22 (2) Provide a system of controls, through limitations on
23 the numbers of retail outlets and application of the police
24 power of the state, to discourage the intemperate use of
25 liquor;

26 (3) Preserve and continue the tax base of counties and
27 municipalities derived from the retail sale of liquor;

28 (4) Obtain revenue for the state from the issuance of
29 retail licenses;

30 (5) Facilitate the responsible marketing and growth of
31 existing retail outlets; and

32 (6) Encourage the sale of liquor in freestanding liquor
33 retail outlets that offer a wide variety of liquor at competitive
34 prices.

**§60-3A-2a. Further legislative findings, declarations and
purpose.**

1 (a) In addition to the findings and declarations set forth
2 in subsection (a), section two of this article, the Legislature
3 hereby finds and declares that:

4 (1) The provisions of this article as enacted during the
5 regular session of the Legislature in 1990 were intended to
6 require that all licenses issued for the retail sale of liquor
7 expire as of July 1, 2000, and that the issuance of retail
8 licenses for the ten-year period beginning July 1, 2000, and
9 for each ten-year period thereafter, be based on sealed
10 competitive bids except as provided in section ten-b of this
11 article;

12 (2) It is the intention of the Legislature to provide that all
13 retail licenses issued beginning July 1, 2000, expire ten years
14 from the date of issuance and that every ten years the
15 issuance of retail licenses be based on competitive bids,
16 except as provided in section ten-b of this article;

17 (3) The purposes set forth in subsection (b), section two
18 of this article remain the purposes of the Legislature;

19 (4) Many of those persons who currently hold retail
20 licenses have not only provided the services to the public
21 contemplated by this article, but in many instances have
22 provided employment, invested significant time and money
23 into their businesses and otherwise made substantial
24 contributions to the economic and civic development of the
25 communities in which they conduct business, and therefore,
26 current retail licensees should be afforded special
27 consideration if their bids for the licenses issued for the
28 ten-year period beginning July 1, 2000, and July 1 every ten
29 years thereafter, be unsuccessful;

30 (5) Those persons who are issued a retail license for the
31 ten-year period beginning on July 1, 2000, and for any ten-
32 year period thereafter should also be afforded special

33 consideration if they operate or seek to operate a freestanding
34 liquor retail outlet or if their bids for a retail license are
35 unsuccessful; and

36 (6) Further statutory changes are desirable to effect the
37 purposes set forth in subsection (b), section two of this
38 article.

39 (b) It is, therefore, the further purposes of the Legislature
40 in providing for the retail sale of liquor to:

41 (1) Require that all licenses issued for the ten-year period
42 beginning July 1, 2000, and for each ten-year period
43 thereafter be based on sealed competitive bids except as
44 provided in section ten-b of this article;

45 (2) Provide active retail licensees who operate or seek to
46 operate a freestanding liquor retail outlet the opportunity to
47 pay a purchase option for a Class A retail license or licenses
48 for the ten-year period beginning July 1, 2010, and for each
49 ten-year period thereafter;

50 (3) Provide current retail licensees who, having bid in a
51 manner consistent with the provisions of this article, fail to
52 submit the highest bid for licenses issued for the ten-year
53 period beginning July 1, 2010, and for each ten-year period
54 thereafter an additional opportunity to obtain the license; and

55 (4) Effect statutory changes to further the purposes
56 provided in this section and section two of this article.

§60-3A-4. Definitions.

1 (a) “Active retail license” means a current license for a
2 retail outlet that has been open and in continuous operation
3 for a period of not less than twelve months prior to July 1,
4 2010, or July 1 every ten years thereafter.

5 (b) "Active retail licensee" means a person who holds an
6 active retail license at the time of the effective date of the
7 amendments to this section during the first extraordinary
8 session of the Legislature in 2009 or that person's successor
9 or any person who holds an active retail license when it
10 expires at the end of a ten-year period.

11 (c) "Applicant" means any person who elects to pay a
12 purchase option for a Class A retail license, who bids for a
13 retail license or who seeks the commissioner's approval to
14 purchase or otherwise acquire a retail license from a retail
15 licensee, in accordance with the provisions of this article.

16 (d) "Application" means the form prescribed by the
17 commissioner which must be filed with the commissioner by
18 any person bidding for a retail license.

19 (e) "Board" means the Retail Liquor Licensing Board
20 created by this article.

21 (f) "Class A retail license" means a retail license
22 permitting the retail sale of liquor at a freestanding liquor
23 retail outlet.

24 (g) "Class B retail license" means a retail license
25 permitting the sale of liquor at a mixed retail liquor outlet.

26 (h) "Current retail licensee" means a person who holds a
27 retail license at the time of the effective date of the
28 amendments to this section during the first extraordinary
29 session of the Legislature in 2009 or that person's successor
30 or any person who holds a retail license when it expires at the
31 end of a ten-year period.

32 (i) "Designated areas" means one or more geographic
33 areas within a market zone designated as such by the board.

34 (j) "Executive officer" means the president or other
35 principal officer, partner or member of an applicant or retail

36 licensee, any vice president or other principal officer, partner
37 or member of an applicant or retail licensee in charge of a
38 principal business unit or division, or any other officer,
39 partner or member of an applicant or retail licensee who
40 performs a policy-making function.

41 (k) “Freestanding liquor retail outlet” means a retail
42 outlet that sells only liquor, beer, nonintoxicating beer and
43 other alcohol-related products, including tobacco-related
44 products.

45 (l) “Liquor” means alcoholic liquor as defined in section
46 five, article one of this chapter and also includes both wine
47 and fortified wines as those terms are defined in section two,
48 article eight of this chapter.

49 (m) “Market zone” means a geographic area designated
50 as such by the board for the purpose of issuing retail licenses.

51 (n) “Mixed retail liquor outlet” means a retail outlet that
52 sells liquor, beer, nonintoxicating beer and other alcohol-
53 related products, including tobacco-related products, in
54 addition to convenience and other retail products.

55 (o) “Person” means an individual, firm, corporation,
56 association, partnership, limited partnership, limited liability
57 company or other entity, regardless of its form, structure or
58 nature.

59 (p) “Retail license” means a license issued under the
60 provisions of this article permitting the sale of liquor at retail.

61 (q) “Retail licensee” means the holder of a retail license.

62 (r) “Retail outlet” means a specific location where liquor
63 may be lawfully sold by a retail licensee under the provisions
64 of this article.

§60-3A-6. General powers and duties of board and commissioner.

1 (a) The board shall create, based on economic and
2 demographic factors, market zones within the state for the
3 issuance of Class A and Class B retail licenses.

4 (b) The commissioner shall:

5 (1) Prescribe application forms for persons desiring to
6 acquire retail licenses and adopt an orderly procedure and
7 timetable for investigating, processing and approving
8 applications;

9 (2) Develop a form of retail license to be issued to each
10 retail licensee under the provisions of this article;

11 (3) Disseminate to the public information relating to the
12 issuance of retail licenses;

13 (4) Promulgate standards for advertising the sale,
14 availability, price and selection of liquor;

15 (5) Set minimum standards for retail outlets regarding the
16 amount and variety of liquor a licensee must offer for sale at
17 each retail outlet; the size, space and design of each retail
18 outlet; the amount of inventory and displayed inventory of
19 liquor in each retail outlet; order quantities sufficient to
20 qualify for delivery to each retail outlet; phone, computer and
21 Internet requirements for each retail outlet; the verification of
22 liquor orders; liquor delivery dates and routes for each retail
23 outlet; and such other requirements the commissioner deems
24 necessary;

25 (6) Set minimum standards for the display of inventory
26 in retail outlets operating pursuant to a Class A retail license
27 which shall include, without limitation, the requirement that
28 a minimum square footage of displayed inventory available

29 for retail purchase at the retail outlet be composed of liquor,
30 beer and nonintoxicating beer products and that liquor, beer
31 and nonintoxicating beer products available for sale are
32 placed for sale throughout the entire retail area of the retail
33 outlet including the retail floor space and shelving;

34 (7) Set minimum standards for the display of inventory
35 in retail outlets operating pursuant to a Class B retail license
36 which shall include, without limitation, the requirements that
37 a minimum square footage of the displayed inventory
38 available for purchase at the retail outlet be composed of
39 liquor products; that liquor available for sale in the retail
40 outlet is placed only in an area of the retail outlet that
41 prominently displays signage identifying the area as a
42 restricted liquor area and stating that no one under the age of
43 twenty-one may purchase liquor; and that the area is separate
44 from and not highly visible to persons outside of the
45 restricted liquor area.

46 (8) Enforce the provisions of this article;

47 (9) Impose civil penalties upon retail licensees;

48 (10) Enter the retail outlet of any retail licensee at
49 reasonable times for the purpose of inspecting the same, and
50 determining the compliance of such retail licensee with the
51 provisions of this article and any rules promulgated by the
52 board or the commissioner pursuant to the provisions of this
53 article; and

54 (11) Issue subpoenas and subpoenas duces tecum for the
55 purpose of conducting hearings under the provisions of
56 section twenty-six or section twenty-eight of this article,
57 which subpoenas and subpoenas duces tecum shall be issued
58 in the time, for the fees, and shall be enforced in the manner
59 specified in section one, article five, chapter twenty-nine-a of
60 this code with like effect as if such section was set forth in
61 extenso herein.

62 (c) The board and the commissioner shall each:

63 (1) Engage accounting, legal and other necessary
64 professional consultants to assist them in carrying out their
65 respective duties under this article;

66 (2) Adopt, promulgate, amend or repeal such procedural,
67 interpretive and legislative rules, consistent with the policy
68 and objectives of this article, as they may deem necessary or
69 desirable for the public interest in carrying out the provisions
70 of this article. Such rules shall be adopted, amended and
71 repealed in accordance with the provisions of chapter twenty-
72 nine-a of this code; and

73 (3) Notwithstanding any other provision of this code to
74 the contrary, proposed legislative rules for this article filed in
75 the State Register by September 1, 2009, may be filed as
76 emergency rules. Such emergency rules shall include the
77 standards, criteria and formulae or methodology utilized by
78 the board when establishing the minimum bid for each
79 license pursuant to section ten-b of this article.

§60-3A-7. Market zones; Class A and Class B retail licenses.

1 (a) The market zones established by the board for the
2 retail sale of liquor within this state under the enactment of
3 this section in 1990 may not be modified by the board unless
4 authorized by the Legislature. For each market zone
5 established by the board, the commissioner may issue one or
6 more Class A retail licenses and one or more Class B retail
7 licenses within the market zone: *Provided*, That the number
8 of Class B retail licenses to be issued by the commissioner
9 within a market zone shall not exceed one hundred fifty
10 percent of the number of Class A retail outlets authorized for
11 that market zone, except as otherwise authorized by
12 subsection (d) of this section or section twenty-seven-a of
13 this article: *Provided, however*, That, except as authorized
14 by subsection (d) of this section or section twenty-seven-a of

15 this article, in a market zone where the number of Class A
16 retail licenses issued by the commissioner is an odd number,
17 the number of Class B retail licenses which may be issued in
18 that market zone shall be rounded up to the next highest
19 whole number following that number which is equal to one
20 hundred fifty percent of the number of Class A retail licenses
21 issued by the commissioner: Provided that, for the ten-year
22 period beginning July 1, 2010, the number of Class B retail
23 licenses which are available for bid in a market zone shall not
24 be less than the number of mixed retail outlets located in that
25 market zone as of October 31, 2009.

26 (b) When authorizing Class B retail licenses for a market
27 zone, the board may create one or more designated areas
28 within the market zone and authorize one Class B retail
29 license for each designated area. For each market zone, the
30 commissioner may issue additional Class B retail licenses for
31 retail outlets to be located outside any designated area, but
32 the number of additional Class B retail licenses, when added
33 to the total number of Class B retail licenses issued for all
34 designated areas within the market zone, shall not exceed the
35 maximum number of Class B retail licenses permitted under
36 subsection (a) of this section for that market zone, except as
37 authorized by subsection (d) of this section or section twenty-
38 seven-a of this article.

39 (c) A person may hold one or more Class A retail
40 licenses and one or more Class B retail licenses in a market
41 zone or zones.

42 (d) Notwithstanding any provision of subsection (a) or
43 (b) of this section, no later than thirty days prior to the receipt
44 of the bids described in section ten-b of this article, the board
45 may authorize the commissioner to issue additional Class B
46 retail licenses in a market zone for the ten-year period which
47 begins next following July 1, where the board determines
48 that:

49 (1) Each retail outlet authorized to operate in the market
50 zone has been open and in operation for not less than one
51 year;

52 (2) Economic and demographic factors clearly
53 demonstrate the need for an additional retail outlet or outlets
54 within the market zone to meet consumer demand; and

55 (3) The issuance of an additional Class B license in the
56 market zone will not significantly impair the efforts to
57 procure the revenues described in subsection (b), section ten-
58 b of this article.

59 (e) The board shall establish the minimum bid for any
60 additional Class B retail licenses authorized under subsection
61 (d) of this section.

62 (f) No person may hold a combination of Class A or
63 Class B retail licenses that, in the aggregate, authorizes the
64 operation of more than thirty percent of the total number of
65 retail outlets authorized under the provisions of this article to
66 operate in this state.

§60-3A-8. Retail license application requirements; retail licensee qualifications.

1 (a) Prior to or simultaneously with the submission of a
2 bid for a retail license or the payment of a purchase option
3 for a Class A retail license, each applicant shall file an
4 application with the commissioner, stating under oath, the
5 following:

6 (1) If the applicant is an individual, his or her name and
7 residence address;

8 (2) If the applicant is other than an individual, the name
9 and business address of the applicant; the state of its
10 incorporation or organization; the names and residence

11 addresses of each executive officer and other principal
12 officer, partner or member of the entity; a copy of the entity's
13 charter or other agreement under which the entity operates;
14 and the names and residence addresses of any person owning,
15 directly or indirectly, at least twenty percent of the
16 outstanding stock, partnership or other interests in the
17 applicant;

18 (3) That the applicant has never been convicted in this
19 state or any other state of any felony or other crime involving
20 moral turpitude or convicted of any felony in this or any
21 other state court or any federal court for a violation of any
22 state or federal liquor law, and if the applicant is other than
23 an individual, that none of its executive officers, other
24 principal officers, partners or members, or any person
25 owning, directly or indirectly, at least twenty percent of the
26 outstanding stock, partnership or other interests in the
27 applicant, has been convicted; and

28 (4) That the applicant is a United States citizen of good
29 moral character and, if a naturalized citizen, when and where
30 naturalized; and, if a corporation organized and authorized to
31 do business under the laws of this state, when and where
32 incorporated, with the name and address of each officer; that
33 each officer is a citizen of the United States and a person of
34 good moral character; and if a firm, association, partnership
35 or limited partnership, that each member is a citizen of the
36 United States and, if a naturalized citizen, when and where
37 naturalized, each of whom must sign the application.

38 (b) An applicant shall provide the commissioner any
39 additional information requested by the commissioner
40 including, but not limited to, authorization to conduct a
41 criminal background and credit records check.

42 (c) Whenever a change occurs in any information
43 provided to the commissioner, the change shall immediately
44 be reported to the commissioner in the same manner as
45 originally provided.

46 (d) The commissioner shall disqualify each bid submitted
47 by an applicant under section ten of this article and no
48 applicant shall be issued or eligible to hold a retail license
49 under this article, if:

50 (1) The applicant has been convicted in this state of any
51 felony or other crime involving moral turpitude or convicted
52 of any felony in this or any other state court or any federal
53 court for a violation of any state or federal liquor law; or

54 (2) Any executive officer or other principal officer,
55 partner or member of the applicant, or any person owning,
56 directly or indirectly, at least twenty percent of the
57 outstanding stock, partnership, or other interests in the
58 applicant, has been convicted in this state of any felony or
59 other crime involving moral turpitude or convicted of any
60 felony in this or any other state court or any federal court for
61 a violation of any state or federal liquor law.

62 (e) The commissioner shall not issue a retail license to an
63 applicant which does not hold a license issued pursuant to
64 federal law to sell liquor at wholesale.

§60-3A-10. Bidding procedure.

1 (a) Except as provided in section ten-b of this article, bids
2 for licenses shall be governed by the provisions of this section.

3 (b) The issuance of retail licenses shall be based on
4 sealed competitive bids in accordance with the provisions of
5 this section. Bids for the issuance of retail licenses shall be
6 obtained by public notice published as a Class II-0 legal
7 advertisement in compliance with the provisions of article
8 three, chapter fifty-nine of this code, and the publication area
9 for the publication shall be each market zone within which a
10 retail outlet shall be located. The second publication of the
11 notice shall appear more than thirty days next preceding the
12 final day for submitting bids.

13 (c) Each bid shall indicate the market zone for which the
14 retail license is sought, whether the bid is for a Class A retail
15 license or Class B retail license, and, if the board has created
16 one or more designated areas for the market zone, whether
17 the bid is for a Class A or Class B retail license to be issued
18 for any designated area. No bid shall be altered or withdrawn
19 after the appointed hour for the opening of the bids. Subject
20 to the provisions of section ten-b of this article, each retail
21 license shall be awarded to the highest bidder. No bid shall
22 be considered unless the bond required under section eleven
23 of this article is submitted to the commissioner. All bids for
24 a retail license may be rejected by the board if the board
25 determines that the highest bid is inadequate, in which event
26 the commissioner shall begin anew the bidding process for
27 that retail license.

28 (d) Each person desiring to submit a bid shall file the bid
29 with the commissioner prior to the specified date and hour
30 for the bid openings. The failure to deliver or the nonreceipt
31 of a bid prior to the appointed date and hour constitutes
32 sufficient reason for the rejection of a bid. After the award
33 of the retail license, the commissioner shall indicate upon the
34 successful bid that it was the successful bid. Thereafter, a
35 copy of the bid and the bidder's application shall be
36 maintained as a public record, shall be open to public
37 inspection in the commissioner's office and shall not be
38 destroyed without the written consent of the Legislative
39 Auditor.

40 (e) Prior to the issuance of the retail license to the
41 successful bidder, the bid price and the annual retail license
42 fee, as specified in section twelve of this article, shall be paid
43 to the commissioner by money order, certified check or
44 cashier's check. All retail licenses shall be signed by the
45 commissioner in the name of the state.

46 (f) If the successful bidder fails to pay to the
47 commissioner the bid price and the annual retail license fee,

48 at the time specified by the commissioner, the bond provided
49 in section eleven of this article shall be forfeited and the
50 bidder shall not be issued the retail license. The
51 commissioner shall then issue the retail license to the next
52 highest bidder for the retail license or reject all bids and start
53 anew the bidding procedure for the retail license.

**§60-3A-10b. Bidding procedure for licenses issued for the
ten-year period beginning July 1, 2010;
purchase options for bids beginning July 1,
2010; and licenses issued for each ten-year
period thereafter.**

1 (a) The issuance of retail licenses for the ten-year period
2 beginning July 1, 2010, and for each ten-year period
3 thereafter, shall be based upon sealed competitive bid in
4 accordance with the provisions of section ten of this article
5 except as provided in this section.

6 (b) Prior to accepting bids for retail licenses to be issued
7 for the ten-year period beginning July 1, 2010, the board
8 shall determine the minimum bid for each license based upon
9 a review of inflation data, demographic data, the sales at each
10 retail outlet permitted to operate under the license and such
11 other factors as the board may determine to generate the
12 revenues from liquor license renewal projected by the
13 Governor's official revenue estimates for fiscal year 2009-
14 2010 as presented to the regular session of the Legislature in
15 2009.

16 (c) Prior to accepting bids for retail licenses to be issued
17 for the ten-year periods beginning July 1, 2010, and July 1
18 every ten years thereafter, the board shall determine the
19 minimum bid for each retail license based upon a review of
20 the sales at each retail outlet permitted to operate under the
21 retail license and such other factors as the board may
22 determine to generate the revenues from retail license

23 renewal projected by the Governor's official revenue
24 estimates for the fiscal year preceding the expiration of the
25 retail licenses.

26 (d)(1) Notwithstanding any provision of this article to the
27 contrary, prior to accepting bids for retail licenses to be
28 issued for the ten-year period beginning July 1, 2010, and
29 every ten-year period thereafter, each active retail licensee
30 operating or seeking to operate a freestanding liquor retail
31 outlet shall be eligible to purchase a Class A retail license or
32 licenses as provided in this subsection.

33 (2) At least sixty days prior to accepting bids for retail
34 licenses to be issued for the ten-year period beginning July 1,
35 2010, and July 1 every ten years thereafter, the board shall
36 provide notice to each eligible retail licensee of his or her
37 option to purchase a Class A retail license or licenses as
38 provided in this subsection. The board shall include with this
39 notice an explanation of the financing option provided in
40 section ten-d of this article and a financing application form
41 prepared by the commissioner.

42 (3) An eligible retail licensee may elect to pay a purchase
43 option or options for each retail outlet operating under an
44 active retail license currently held by the licensee. A retail
45 licensee may only exercise a purchase option for the lesser of
46 four Class A retail licenses or the number of active retail
47 licenses currently held by the licensee.

48 (4) Each eligible retail licensee who elects to pay a
49 purchase option shall, within thirty days prior to the
50 acceptance of bids for the ten-year period beginning July 1,
51 2010, and July 1 every ten years thereafter, pay to the
52 commissioner an amount equal to ten percent over and above
53 the minimum bid as determined by the board for each Class
54 A retail license the retail licensee wishes to purchase or, if
55 the retail licensee elects to take the financing option provided
56 in section ten-d of this article, a down payment, the amount

57 of which shall be calculated in accordance with the
58 provisions of that section. A retail licensee shall be awarded
59 a Class A retail license or licenses upon the commissioner's
60 receipt of his or her payment or down payment: *Provided,*
61 That the commissioner determines that the retail licensee is
62 in good standing with the state and meets all other
63 requirements imposed by the provisions of this article for the
64 issuance of a Class A retail license.

65 (5) A Class A retail license purchased in accordance with
66 this subsection shall be issued for the ten-year period
67 beginning July 1, 2010, or July 1 every ten years thereafter,
68 and shall expire on June 30, 2020, or on June 30 every ten
69 years thereafter.

70 (6) Nothing in this subsection may be interpreted as
71 affecting the ability of a retail licensee to bid for a retail
72 license or licenses as otherwise provided in this article:
73 *Provided,* That the retail licensee meets all other
74 requirements imposed by the provisions of this article for the
75 submission of bids.

76 (e) All bids for a retail license for the ten-year period
77 beginning July 1, 2010, or for any ten-year period thereafter
78 may be rejected by the board if the board determines that the
79 highest bid fails to meet the minimum bid. The board may
80 also reject any or all bids for a market zone where, in the
81 aggregate, the bids for all of the retail licenses in the market
82 zone fail to meet the minimum aggregate bid for that market
83 zone. Where the board determines the highest bid meets or
84 exceeds the minimum bid, the board shall determine whether,
85 at the time of the bid, the same retail license was held for the
86 period ending June 30, 2010, or for any ten-year period
87 thereafter, on June 30 preceding the expiration of the license.
88 If the current retail licensee holding the same retail license at
89 the time of submission of the bid for the period ending June
90 30, 2010, or for any ten-year period thereafter, on June 30
91 preceding the expiration of the retail license, submitted a bid

92 that was not less than the minimum bid and is, after
93 considering any preference applicable under the provisions
94 of section ten-a of this article, an unsuccessful bidder for the
95 retail license for the period beginning July 1, 2010, or for any
96 ten-year period thereafter, on July 1 when the retail license
97 expires, the commissioner shall notify the person that upon
98 paying the amount of the highest bid, subject to the
99 provisions of subsection (f) of this section, and upon
100 compliance with all other requirements imposed by the
101 provisions of this article for the issuance of the license, the
102 retail license for the ten-year period beginning July 1, 2010,
103 or for any ten-year period thereafter, shall be issued to the
104 current retail licensee. If, within the time determined by the
105 commissioner, the current retail licensee pays the amount to
106 the commissioner and complies with all other requirements
107 imposed by the provisions of this article for the issuance of
108 the retail license, the retail license for the ten-year period
109 beginning July 1, 2010, or for any ten-year period thereafter,
110 shall be issued to the current retail licensee.

111 (f) The board shall, in determining the amount a current
112 retail licensee who is an unsuccessful bidder shall pay as
113 described in subsection (e) of this section, afford the
114 unsuccessful bidder a preference. If the unsuccessful bidder
115 is a West Virginia resident as defined in section ten-a of this
116 article, the board shall afford the unsuccessful bidder a five
117 percent preference in addition to the five percent preference
118 afforded under section ten-a of this article. If the
119 unsuccessful bidder is not a West Virginia resident, the board
120 shall afford the unsuccessful bidder a five percent preference.
121 The preference shall be computed by subtracting the
122 preference percentage of the highest bid price from the
123 highest bid price: *Provided*, That under no circumstances
124 may the preference bring the price of the bid below the
125 minimum bid established by the board: *Provided, however*,
126 That a current retail licensee who is not operating any of the
127 retail outlets for which he or she is authorized under the

128 license is not eligible for the preference provided for under
129 this section.

130 (g) In the event all bids submitted for a retail license fail
131 to meet the minimum bid amount for the license as
132 determined by the board, the board may offer the license for
133 bid again after it determines a new minimum bid amount for
134 the retail license.

**§60-3A-10d. Financing option for retail licensees purchasing
Class A retail licenses.**

1 (a) The commissioner shall offer financing to each retail
2 licensee who elects to pay the purchase option for a Class A
3 retail license or licenses as provided in section ten-b of this
4 article: *Provided*, That the retail licensee is approved by the
5 commissioner for financing and otherwise complies with the
6 requirements of this section: *Provided, however*, That the
7 retail licensee agrees to enter a financing agreement with the
8 commissioner as provided in subsection (d) of this section.

9 (b) The commissioner shall prepare an application form
10 for retail licensees who desire to elect the financing option
11 provided in this section. The commissioner shall make the
12 form available to retail licensees in paper or electronic format
13 at least sixty days prior to the acceptance of bids for the ten-
14 year period beginning July 1, 2010, and July 1 every ten
15 years thereafter. At a minimum, the application form shall
16 require the following information:

17 (1) Certification that the applicant elects to pay the
18 purchase option for a Class A retail license or licenses as
19 provided in section ten-b of this article;

20 (2) Certification that the applicant is the current holder
21 and operator of an active retail license issued by the board;

22 (3) A description of the retail license or licenses currently
23 held by the applicant;

24 (4) Any information the commissioner requires to
25 evaluate the creditworthiness of the applicant, including
26 without limitation the applicant's authorization to perform a
27 criminal background and credit check; and

28 (5) Any additional information the commissioner requires
29 to effectuate the purposes of this section.

30 (c) For an applicant to be considered for financing, the
31 application required under subsection (b) of this section must
32 be submitted to the commissioner with a down payment of
33 fifty percent of the total amount due under the financing
34 agreement provided in subsection (d) of this section no later
35 than May 1, 2010, or, for subsequent retail license periods,
36 May 1 every ten years thereafter. The commissioner shall
37 make a determination as to the eligibility of an applicant for
38 financing and the issuance of a Class A retail license within
39 fifteen days of his or her receipt of the application. If the
40 commissioner determines that an applicant is ineligible for
41 financing, is not in good standing with the state or does not
42 otherwise meet the requirements of this article for the
43 issuance of a Class A retail license, the commissioner shall
44 notify the applicant that his or her application for financing
45 is denied and shall refund in full any moneys paid to the
46 commissioner as a down payment. If the applicant's
47 application for financing is denied for any reason other than
48 the fact that the applicant is not in good standing with the
49 state or is not otherwise eligible for the issuance of a Class A
50 retail license, the commissioner shall provide the applicant
51 the option of paying the full amount of a purchase option for
52 a Class A retail license or licenses as provided in subsection
53 (d), section ten-b of this article. At the request of the
54 applicant, the commissioner may credit any moneys received

55 as a down payment towards payment of the full amount of a
56 purchase option for a Class A retail license or licenses.

57 (d) The commissioner is hereby authorized to enter into
58 a financing agreement with each retail licensee meeting the
59 requirements of this section. The financing agreement shall
60 contain such terms and conditions as prescribed by the
61 commissioner, but at a minimum shall contain the following:

62 (1) The total amount due, including the required down
63 payment, which shall equal ten percent over and above the
64 minimum bid as determined by the board for each Class A
65 retail license the retail licensee wishes to purchase;

66 (2) The interest to be charged on the total amount due at
67 a rate of the adjusted prime lending rate minus one hundred
68 basis points. The interest rate shall be set on the date the
69 financing is approved by the commissioner;

70 (3) The total amount due, not including the required
71 down payment, to be payable to the commissioner in monthly
72 or quarterly installments over a period of sixty months. If a
73 retail licensee elects to pay in monthly installments, his or her
74 first payment is due on August 1 and successive payments
75 are due on the first day of each month thereafter until the
76 debt is retired. If a retail licensee elects to pay in quarterly
77 installments, his or her first payment is due on October 1 and
78 successive payments are due on the first day of every third
79 month thereafter until the debt is retired;

80 (4) The failure of a retail licensee to make a payment in
81 accordance with the terms of the financing agreement shall
82 result in the entire balance of the amount due becoming
83 immediately due and payable to the commissioner and shall
84 result in the forfeiture of the down payment and any moneys
85 paid to the commissioner in accordance with this section; and

86 (5) The failure of a retail licensee to make a payment in
87 accordance with the terms of the financing agreement within
88 thirty days of the day on which the payment was due shall
89 result in the immediate revocation of the Class A retail
90 license held by the licensee and the commissioner shall
91 reissue the license by sealed competitive bid in accordance
92 with section ten of this article. A retail licensee whose retail
93 license is revoked for failure to make payments as provided
94 in the financing agreement is deemed an unsuitable retail
95 licensee and shall be permanently prohibited from bidding on
96 a retail license under this article.

§60-3A-11. Bonding requirements.

1 Each applicant submitting a bid under section ten of this
2 article or electing to pay a purchase option for a Class A
3 license or licenses as provided in section ten-b of this article
4 shall furnish to the commissioner a bond at the time of
5 bidding, which bond shall guarantee the payment of twenty-
6 five percent of the price bid or paid for the retail license. The
7 bond required by this section shall be furnished in cash or
8 negotiable securities or shall be a surety bond issued by a
9 surety company authorized to do business with the state or an
10 irrevocable letter of credit issued by a financial institution
11 acceptable to the commissioner. If furnished in cash or
12 negotiable securities, the principal shall be deposited without
13 restriction in the State Treasurer's office and credited to the
14 commissioner, but any income shall inure to the benefit of
15 the applicant. For applicants bidding on a retail license, the
16 bond shall be returned to an applicant following the bidding
17 if such applicant is not the successful bidder for the retail
18 license, and, if an applicant is the successful bidder, the bond
19 shall be released after issuance of the retail license.

§60-3A-12. Annual retail license fee; expiration and renewal of retail licenses.

1 (a) The annual retail license period is from July 1 to June
2 30 of the following year. The annual retail license fee for a
3 Class A or Class B retail license is \$2,000. The annual retail
4 license fee for the initial year of issuance shall be prorated
5 based on the number of days remaining between the date of
6 issuance and the following June 30.

7 (b) All retail licenses expire on June 30 of each year and
8 may be renewed only upon the submission to the
9 commissioner of the same information required for the
10 issuance of the license and any additional information
11 requested by the commissioner on the forms and by the date
12 prescribed by the commissioner, together with the payment
13 to the commissioner of the applicable annual retail license fee
14 required under this section.

15 (c) No person may sell liquor at any retail outlet if the
16 retail license applicable to the outlet has been suspended or
17 revoked, or has expired.

18 (d) All retail licenses issued or renewed under the
19 provisions of this article for the period ending June 30, 2010,
20 or on June 30 for any ten-year period thereafter, expire and
21 are of no further force or effect as of July 1, 2010, or as of
22 July 1 every ten years thereafter.

23 (e) Notwithstanding any provision of section eighteen,
24 article four of this chapter to the contrary, a municipality may
25 invoke the authority granted by section four, article thirteen,
26 chapter eight of this code to require an annual license from
27 each retail licensee and require payment for the license in
28 amounts not to exceed the amounts provided in subsection
29 (a) of this section.

CHAPTER 2

**(S.B. 1014 - By Senators Tomblin, Mr. President,
and Caruth)**

[By Request of the Executive]

[Passed June 2, 2009; in effect from passage.]
[Approved by the Governor on June 5, 2009.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2009, in the amount of \$26,500,000 from the Revenue Shortfall Reserve Fund, fund 7005, organization 0701, and making a supplementary appropriation of public moneys out of the Treasury from the unappropriated surplus balance for the fiscal year ending June 30, 2009, to the Governor's office - Civil Contingent Fund, fund 0105, fiscal year 2009, organization 0100.

WHEREAS, The Legislature finds that it anticipates that the funds available to assist flood victims throughout the state will fall short of that needed during the fiscal year ending June 30, 2009; and

WHEREAS, The Revenue Shortfall Reserve Fund has a sufficient balance available for appropriation in the fiscal year ending June 30, 2009; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the Revenue Shortfall Reserve Fund, fund 7005, organization 0701, be decreased by expiring the amount of \$26,500,000 to the unappropriated surplus balance of the

State Fund, General Revenue, and that the total appropriation for fiscal year ending June 30, 2009, to fund 0105, fiscal year 2009, organization 0100, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II--APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 EXECUTIVE

4 7—Governor’s Office—
5 Civil Contingent Fund

6 (WV Code Chapter 5)

7 Fund 0105 FY 2009 Org 0100

8		General
9		Revenue
10	Activity	Fund

11	1a May 2009 Flood Recovery-	
12	Surplus	\$26,500,000

13 The above appropriation for May 2009 Flood Recovery-
14 Surplus (activity), is to be used exclusively for recovery
15 efforts necessitated by May 2009 flooding. Any federal
16 reimbursements received to remunerate disbursements from
17 this activity or funds transferred from this activity shall be
18 credited back to this activity.

19 The purpose of this bill is to expire the sum of
20 \$26,500,000 from the Revenue Shortfall Reserve Fund, fund
21 7005, organization 0701, and to supplement the Governor’s
22 office - Civil Contingent Fund, fund 0105, fiscal year 2009,
23 organization 0100, in the budget act for the fiscal year ending
24 June 30, 2009, for expenditure during the fiscal year 2009.

CHAPTER 3**(S.B. 1015 - By Senators Tomblin, Mr. President,
and Caruth)
[By Request of the Executive]**

[Passed June 2, 2009; in effect from passage.]
[Approved by the Governor on June 8, 2009.]

AN ACT making a supplementary appropriation from the State Fund, State Excess Lottery Revenue Fund, to the Lottery Commission - Excess Lottery Revenue Fund Surplus, fund 2422, fiscal year 2009, organization 0221, by supplementing and amending chapter 10, Acts of the Legislature, regular session, 2008, known as the Budget Bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 11, 2009, containing a Statement of the State Excess Lottery Revenue Fund, setting forth therein the cash balance as of July 1, 2008, and further included the estimate of revenue for fiscal year 2009, less regular appropriations for the fiscal year 2009; and

WHEREAS, It appears from the Governor's Statement of the State Excess Lottery Revenue Fund there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2009; therefore

Be it enacted by the Legislature of West Virginia:

That chapter 10, Acts of the Legislature, regular session, 2008, known as the Budget Bill, be supplemented and amended by adding to Title II, section 5 thereof, the following:

1 TITLE II--APPROPRIATIONS.

2 **Sec. 5. Appropriations from State Excess**
3 **Lottery Revenue Fund.**4 *266a-Public Defender Services*5 Fund 2422 FY 2009 Org 0221

6 1 Appointed Counsel Fees (R) 788 \$21,000,000

7 Any unexpended balance remaining in the appropriation
8 for Appointed Counsel Fees (fund 2422, activity 788) at the
9 close of the fiscal year 2009 is hereby reappropriated for
10 expenditure during the fiscal year 2010.

11 The purpose of this supplementary appropriation bill is to
12 supplement the accounts in the budget act for the fiscal year
13 ending June 30, 2009, by providing for a new item of
14 appropriation to be established therein to appropriate funds
15 to the designated spending unit for expenditure during the
16 fiscal year 2009.

CHAPTER 4

**(S.B. 1009 - By Senators Tomblin, Mr. President,
and Caruth)**
[By Request of the Executive]

[Passed June 2, 2009; in effect ninety days from passage.]

[Approved by the Governor on June 17, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §11-21-12i; and to

amend said code by adding thereto a new article, designated §44-16-1, §44-16-2, §44-16-3, §44-16-4, §44-16-5 and §44-16-6, all relating to the future support of children with autism; creating a personal income tax modification to adjusted gross income for parents and guardians contributing to a qualified trust fund; providing for limitations on amount of modification earned and taken; specifying modification carryforward and treatment of modification carryforward; specifying personal income tax treatment of deposits, earnings and withdrawals of trust funds; specifying effective date for tax modification; providing rule-making authority for use and administration of qualified trust funds and requirements for claiming the tax modification; specifying tax assessment for modification improperly taken; addressing statute of limitations; defining terms; specifying criteria for creating a qualified trust for a child with autism; establishing eligibility criteria; providing for creation of trust accounts for a child with autism; creating the West Virginia Children with Autism Trust Board; requiring board certification of certain information; setting forth membership of the board; setting forth duties and responsibilities of the board; granting rule-making authority to the board; providing for reimbursement of board members' expenses; exempting identities of trust fund beneficiaries, account owners or donors from chapter twenty-nine-b of said code; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-21-12i; and to amend said code by adding thereto a new article, designated §44-16-1, §44-16-2, §44-16-3, §44-16-4, §44-16-5 and §44-16-6, all to read as follows:

Chapter

11. Taxation

44. Administration of Estates and Trusts.

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.**§11-21-12i. Decreasing modification reducing federal adjusted gross income for qualifying contribution to a qualified trust maintained for the benefit of a child with autism; effective date.**

1 (a) In addition to amounts authorized to be subtracted
2 from federal adjusted gross income pursuant to section
3 twelve of this article, a modification reducing federal
4 adjusted gross income is hereby authorized in the amount of
5 any qualifying contribution to a qualified trust maintained for
6 the benefit of a child with autism by the parent or guardian of
7 a child with autism, up to a maximum of \$1,000 per year for
8 individual filers and persons who are married but filing
9 separately, and \$2,000 per year for persons who are married
10 and filing jointly, but only to the extent the amount is not
11 allowable as a deduction when arriving at the taxpayer's
12 federal adjusted gross income for the taxable year in which
13 the payment is made. This modification is available
14 regardless of the type of return form filed. The taxpayer may
15 elect to carry forward the modification over a period not to
16 exceed four tax years, beginning in the tax year in which the
17 payment was made: *Provided*, That the amount of the
18 decreasing modification, in combination with all other
19 decreasing modifications authorized pursuant to this article,
20 shall in no event reduce taxable income below zero. Any
21 unused decreasing modification carryforward amount
22 remaining after the four-year carryforward period is forfeited.
23 The accrued deposits and earnings on the qualified trust
24 account for a child with autism and the subsequent
25 withdrawal of funds from that trust account, made in
26 accordance with the provisions of article sixteen, chapter
27 forty-four of this code, shall not be treated as taxable income
28 to either the trust or the beneficiary. The provisions of this
29 section are effective for taxable years beginning on and after
30 January 1, 2011.

31 (b) The following definitions apply to this section:

32 (1) "Autism" means "autism" as that term is defined in
33 section one, article sixteen, chapter forty-four of this code.

34 (2) "Child with autism" means "child with autism" as that
35 term is defined in section one, article sixteen, chapter forty-
36 four of this code.

37 (3) "Guardian" means "guardian" as that term is defined
38 in section one, article sixteen, chapter forty-four of this code.

39 (4) "Parent" means a "parent" as that term is defined in
40 section one, article sixteen, chapter forty-four of this code.

41 (5) "Qualified trust for a child with autism" means
42 "qualified trust for a child with autism" as that term is
43 defined in section one, article sixteen, chapter forty-four of
44 this code.

45 (c) If it appears upon audit or otherwise that any person
46 or entity has taken the decreasing modification allowed under
47 this section and was not entitled to take the decreasing
48 modification, or has withdrawn funds from the qualified trust
49 for a child with autism in a way not consistent with the
50 requirements of article sixteen, chapter forty-four of this
51 code, then an assessment shall be made and the income tax
52 liability of the taxpayer shall be recomputed disallowing the
53 decreasing modification so taken. Such assessment shall not
54 be barred by any statute of limitations otherwise applicable
55 to the tax imposed pursuant to this article. Amended returns
56 shall be filed for any tax year for which the decreasing
57 modification was improperly taken. Any additional taxes due
58 under this chapter shall be remitted with the amended return
59 or returns filed with the Tax Commissioner, along with
60 interest, as provided in section seventeen, article ten of this
61 chapter and such other penalties and additions to tax as may
62 be applicable pursuant to the provisions of article ten of this
63 chapter.

64 (d) Married parents who qualify for the modification
65 provided under this section and who file separate state tax
66 returns shall each receive the modification provided in this
67 section in an amount equal to the amount of contributions
68 made by the parents into the trusts, not to exceed \$1,000
69 each.

70 (e) Joint guardians who qualify for the modification
71 provided under this section and who file separate state tax
72 returns shall each receive the modification provided in this
73 section, in an amount equal to the amount of contributions
74 made by the guardians into the trust, not to exceed \$1,000
75 each.

76 (f) In the event the parents or guardians of a child with
77 autism, claiming the modification provided under this
78 section, become divorced or legally separated, each party
79 shall be allowed to claim the amount of unused carryforward
80 modification that remains available under this section
81 according to the terms of an agreed property settlement
82 approved by the divorce court which specifically addresses
83 the unused carryforward modification. In the event that no
84 property settlement specifically addressing the unused
85 carryforward modification exists relating to the divorce or
86 legal separation, then any unused carryforward modification
87 remaining at the time of the divorce or legal separation is
88 granted shall be evenly divided between the parties.

89 (g) The Tax Commissioner may propose rules necessary
90 to carry out the provisions of this section and to provide
91 guidelines and requirements to ensure uniform administrative
92 practices statewide to effect the intent of this section, all in
93 accordance with the provisions of article three, chapter
94 twenty-nine-a of this code.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 16. TRUSTS FOR CHILDREN WITH AUTISM.

§44-16-1. Definitions.

§44-16-2. Creation of a qualified trust for a child with autism.

§44-16-3. West Virginia Children with Autism Trust Board; creation and composition of the trustee board; duties and responsibilities; reimbursement of expenses.

§44-16-4. Reports and account.

§44-16-5. Confidentiality.

§44-16-6. Effective date.

§44-16-1. Definitions.

1 For purposes of this article, the following terms have the
2 meanings ascribed to them, unless the context clearly
3 indicates otherwise:

4 (a) "Autism" means a complex developmental disability
5 and spectrum disorder, whose diagnosis must be clinically
6 confirmed by qualified physicians and psychiatrists after
7 extensive examination and testing, defined by a certain set of
8 behaviors and symptoms which affects a person's ability to
9 communicate and interact with others.

10 (b) "Board" means the West Virginia Children with
11 Autism Trust Board created in section three of this article.

12 (c) "Child with autism" means a child, under the age of
13 eighteen, who has been clinically diagnosed as having autism
14 to a degree to which it results in a moderate or severe
15 impairment in two or more areas of daily living, as the terms
16 "moderate impairment", "severe impairment" and "daily
17 living" are defined under Title II or Title XVI of the Social
18 Security Disability Act, or a child who has been clinically
19 diagnosed with autism and has been determined to be
20 disabled under either Title II or Title XVI of the Social
21 Security Disability Act for any reason.

22 (d) "Guardian" means a person lawfully invested with the
23 power and charged with the duty of taking care of another
24 person and managing the property and rights of another
25 person who for some peculiarity of status or defect of age,

26 understanding or self-control is considered incapable of
27 administering his or her own affairs.

28 (e) "Parent" means a person who is another person's
29 natural or adoptive mother or father or who has been granted
30 parental rights by valid court order and whose parental rights
31 have not been terminated by a court of law.

32 (f) "Qualified trust for a child with autism" means a trust
33 account for a child with autism that: (1) Is established at a
34 national bank, a state bank of a state of the United States or
35 a trust company that at all times is no less than adequately
36 capitalized as determined by standards adopted by United
37 States banking regulators and that is either regulated by state
38 banking laws of a state of the United States or is a member of
39 the Federal Reserve System; and (2) has been approved by
40 the West Virginia Children with Autism Trust Board in
41 accordance with this article.

42 (g) "Qualified trustee" means any person authorized by
43 the laws of this state or of the United States to act as a trustee
44 who has been approved by the board to serve as the trustee of
45 a qualified trust for a child with autism.

46 (h) "Tax Commissioner" means the same as that term is
47 used in section one, article one, chapter eleven of this code.

§44-16-2. Creation of a qualified trust for a child with autism.

1 (a) Any parent or guardian of a child with autism may
2 establish a qualified trust for a child with autism. No account
3 shall qualify as a qualified trust for a child with autism until
4 it has been approved as such by the West Virginia Children
5 with Autism Trust Board established in section three of this
6 article. The board shall certify the establishment of each
7 qualified trust to the Tax Commissioner.

8 (b) To qualify for the tax deduction established in section
9 twelve-i, article twenty-one, chapter eleven of this code, the

10 parent or guardian seeking the tax deduction shall provide to
11 the Tax Commissioner certification that the qualified trust
12 has been authorized by the board and any other
13 documentation required by the Tax Commissioner.

14 (c) The following types of expenses incurred to support
15 the designated beneficiary after the named beneficiary has
16 reached the age of eighteen or after the death of the parent or
17 guardian who established the trust account shall be allowable
18 if made for the benefit of the beneficiary of the trust.

19 (1) *Education.* -- Expenses for education, including
20 tuition for preschool through post-secondary education,
21 books, supplies and educational materials related to such
22 education, tutors and special education services.

23 (2) *Housing.* -- Expenses for housing maintained for the
24 beneficiary, separate and apart from the housing used by the
25 parent or guardian who established the trust account while
26 the parent or guardian is still alive, including rent, mortgage
27 payments, home improvements and modifications,
28 maintenance and repairs, real property taxes and utility
29 charges.

30 (3) *Transportation.* -- Expenses for transportation,
31 including the use of mass transit, the purchase or
32 modification of vehicles and moving expenses.

33 (4) *Employment support.* -- Expenses related to obtaining
34 and maintaining employment, including job-related training,
35 assistive technology and personal assistance supports.

36 (5) *Health, prevention and wellness.* -- Expenses for the
37 health and wellness, including premiums for health
38 insurance, medical, vision and dental expenses, habilitation
39 and rehabilitation services, durable medical equipment,
40 therapy, respite care, long-term services and supports, and
41 nutritional management.

42 (6) *Life necessities.* -- Expenses for life necessities,
43 including clothing, activities which are religious, cultural or
44 recreational, supplies and equipment for personal care,
45 community-based supports, communication services and
46 devices, adaptive equipment, assistive technology, personal
47 assistance supports, financial management and administrative
48 services, life and health insurance premiums, expenses for
49 oversight, monitoring or advocacy, and funeral and burial
50 expenses.

51 (7) *Assistive technology and personal support services.*
52 --Expenses for assistive technology and personal support
53 with respect to any item described in subparts (1) through (6)
54 above.

**§44-16-3. West Virginia Children with Autism Trust Board;
creation and composition of the trustee board;
duties and responsibilities; reimbursement of
expenses.**

1 (a) The West Virginia Children with Autism Trust Board
2 is created to qualify and oversee trust accounts created
3 pursuant to this article and held by approved banks or trust
4 companies for administration by qualified trustees.

5 (b) The West Virginia Children with Autism Trust Board
6 shall consist of the following governmental officials: The
7 Tax Commissioner or his or her designee, who shall serve as
8 the chair, the Secretary of the Department of Health and
9 Human Resources as set forth in article one, chapter five-f of
10 this code, or his or her designee, and the Commissioner of
11 Banking as set forth in article one, chapter thirty-one-a of this
12 code, or his or her designee. The board shall also consist of
13 the following six public members who shall be appointed by
14 the Governor with advice and consent of the Senate:

15 (1) An attorney at law, licensed to practice law in this
16 state pursuant to article two, chapter thirty of this code. The

17 attorney should have extensive knowledge and experience in
18 the creation, management and administration of trusts;

19 (2) A counselor licensed in this state pursuant to the
20 provisions of article thirty-one, chapter thirty of this code.
21 The counselor should have experience in the delivery of
22 vocational, rehabilitative or support services to persons with
23 disabilities;

24 (3) A physician or psychiatrist licensed in this state
25 pursuant to the provisions of article three, chapter thirty of
26 this code. Such physician or psychiatrist must have extensive
27 knowledge and experience in diagnosis and treatment of
28 persons with autism;

29 (4) One public member with a background in advocacy
30 on behalf of persons with disabilities; and

31 (5) Two citizen members.

32 (c) Each of the appointments shall be for a period of five
33 years and appointees are eligible for reappointment at the
34 expiration of their terms. Of the public members of the board
35 first appointed, one shall be appointed for a term ending June
36 30, 2012, and a second for a four-year term. The remainder
37 shall be appointed for the full five-year terms as provided in
38 this section. In the event of a vacancy among appointed
39 members, the Governor shall appoint a person representing
40 the same interests to fill the unexpired term.

41 (d) Members of the board may not be compensated in
42 their capacity as members, but shall be reimbursed for
43 reasonable expenses incurred in the performance of their
44 duties by the Department of Administration. Expense
45 payments are to be made at the same rate paid to state
46 employees.

47 (e) The board shall meet at least once per month to
48 review and recommend to the Tax Department approval of
49 proposed qualified trust funds or to conduct other business as

50 required by this article or section twelve-i, article twenty-one,
51 chapter eleven of this code. Board meetings shall be held in
52 person, by video conference or by teleconference, or a
53 combination thereof. Five members of the board shall
54 constitute a quorum.

55 (f) Notwithstanding the provision of section four, article
56 six, chapter six of this code, the Governor may remove any
57 board member for incompetence, misconduct, gross
58 immorality, misfeasance, malfeasance or nonfeasance in
59 office.

60 (g) The Department of Administration shall provide
61 support staff and office space for the board.

62 (h) Nothing in this section creates an obligation of State
63 General Revenue Funds: *Provided*, That funding for
64 expenses and offices of the West Virginia Children with
65 Autism Trust Board shall be paid, subject to appropriation.

66 (i) The board may propose rules for legislative approval
67 and may adopt procedural and interpretive rules in
68 accordance with the provisions of article three, chapter
69 twenty-nine-a of this code to carry out the provisions of this
70 article.

§44-16-4. Reports and account.

1 In addition to any other requirements of this article, the
2 board shall:

3 (a) Receive annual summary information on the financial
4 condition of qualified trust funds and statements on the
5 qualified trust funds and savings plan accounts from qualified
6 trustees; and

7 (b) Prepare, or have prepared, by January 1, each year, an
8 annual report on the status of the program, including a
9 summary of the qualified trust funds, and provide a copy of
10 the report to the Joint Committee on Government and

- 11 Finance and the Legislative Oversight Commission on Health
- 12 and Human Resources Accountability.

§44-16-5. Confidentiality.

1 Any information that would tend to disclose the identity
2 of a beneficiary, account owner or donor is exempt from the
3 provisions of the Freedom of Information Act, located in
4 chapter twenty-nine-b of this code. Nothing in this section
5 prohibits disclosure or publication of information in a
6 statistical or other form which does not identify the
7 individuals involved or provide personal information.
8 Account owners are permitted access to their own personal
9 information.

§44-16-6. Effective date.

1 This article is effective for years beginning on or after
2 January 1, 2011.

CHAPTER 5

**(S.B. 1010 - By Senators Tomblin, Mr. President,
and Caruth)
[By Request of the Executive]**

[Passed June 2, 2009; in effect from passage.]
[Approved by the Governor on June 17, 2009.]

AN ACT to amend and reenact §7-1-3jj of the Code of West Virginia, 1931, as amended, relating to ordinances; and providing certain county commissions with authority to regulate the location of businesses offering exotic entertainment.

Be it enacted by the Legislature of West Virginia:

That §7-1-3jj of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3jj. Authority of counties to enact ordinances restricting the location of businesses offering exotic entertainment.

1 (a) For the purposes of this section:

2 (1) “Exotic entertainment” means live entertainment,
3 dancing or other services conducted by persons while nude
4 or seminude in a commercial setting or for profit.

5 (2) “Seminude” means the appearance of:

6 (A) The female breast below a horizontal line across the
7 top of the areola at its highest point, including the entire
8 lower portion of the human female breast, but does not
9 include any portion of the cleavage of the human female
10 breast exhibited by a dress, blouse, skirt, leotard, bathing suit
11 or other wearing apparel provided the areola is not exposed,
12 in whole or in part;

13 (B) A human bare buttock, anus, anal cleft or cleavage,
14 pubic area, male genitals, female genitals or vulva, with less
15 than a fully opaque covering; or

16 (C) A human male genital in a discernibly turgid state
17 even if completely and opaquely covered.

18 (b) A county commission may, by order entered of
19 record, adopt an ordinance that limits the areas of the county
20 in which a business may offer “exotic entertainment”.

21 However, an ordinance enacted pursuant to this section may
22 not affect a business offering exotic entertainment prior to the
23 effective date of the ordinance.

24 (c) The ordinance is subject to the provisions of section
25 ten, article seven, chapter eight-a of this code: *Provided*, That
26 in the event of the partial or total loss of any existing
27 business structure due to fire, flood, accident or any other
28 unforeseen act, that business structure may be repaired or
29 replaced and the business use of that structure may continue
30 notwithstanding the existence of any ordinance authorized by
31 this section. Any repair or replacement is limited to restoring
32 or replacing the damaged or lost structure with one
33 reasonably similar, or smaller, in size as measured in square
34 footage, and any enlargement of the business structure
35 subjects the structure to any existing ordinance authorized by
36 this section.

37 (d) Notwithstanding any other provision of this code to
38 the contrary, no ordinance enacted pursuant to the provisions
39 of this section applies to or affects any municipal corporation
40 that either: (1) Has adopted and has in effect an ordinance
41 restricting the location of exotic entertainment or
42 substantially similar businesses pursuant to the authority
43 granted in article twelve, chapter eight of this code, or
44 chapter eight-a of this code; or (2) adopts an ordinance to
45 exempt itself from any county ordinance enacted pursuant to
46 this section.

47 (e) Any person adversely affected by an ordinance
48 enacted pursuant to the authority granted in subsection (b) of
49 this section is entitled to seek direct judicial review with
50 regard to whether the ordinance impermissibly burdens his or
51 her right to establish a business offering exotic entertainment.



CHAPTER 6

**(S.B. 1001 - By Senators Tomblin, Mr. President,
and Caruth)
[By Request of the Executive]**

[Passed June 2, 2009; in effect July 1, 2009.]
[Approved by the Governor on June 16, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2E-10, relating to critical skills instructional support programs for students in grades three and eight; setting forth legislative findings; providing for the promulgation of rules; establishing minimum provisions of rules; providing condition for promotion for certain students under certain circumstances; precluding county from charging tuition for program; requiring suitable facilities by county boards; preserving ability to retain students; preserving individualized education plans from effect of section; providing for county board preparation; providing that implementation is contingent upon funding; and requiring reports by State Board of Education.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-2E-10, to read as follows:

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-10. Critical skills instructional support programs for third and eighth graders.

1 (a) The Legislature finds that:

2 (1) In the early childhood through intermediate grade
3 levels, ensuring that each student masters the content and
4 skills needed for mastery at the next grade level is critically
5 important for student success;

6 (2) Students who do not demonstrate grade-level mastery
7 in reading, language arts and mathematics become
8 increasingly less likely to succeed at each successive grade
9 level;

10 (3) State board policy requires every school to establish
11 a student assistance team that reviews student academic
12 needs that have persisted despite being addressed by
13 instruction and intervention and requires every school to
14 implement, in an equitable manner, programs during and
15 after the instructional day at the appropriate instructional
16 levels that contribute to the success of students; and

17 (4) Grades three and eight are critical transition points for
18 additional intervention strategies that reinforce the
19 preparation of students who are not prepared fully for success
20 at the next grade level.

21 (b) The state board shall, in accordance with the
22 provisions of article three-b, chapter twenty-nine-a of this
23 code, promulgate legislative rules as necessary to effectuate
24 the provisions of this section. The rules shall provide for at
25 least the following:

26 (1) Encouraging and assisting county boards in
27 establishing and operating critical skills instructional support
28 programs during and after the instructional day and during
29 the summer for students in grades three and eight who, in the

30 judgment of the student assistance team or the student's
31 classroom teacher, are not mastering the content and skills in
32 reading, language arts and mathematics adequately for
33 success at the next grade level and who are recommended by
34 the student assistance team or the student's classroom teacher
35 for additional academic help through the programs;

36 (2) Maximizing parental involvement in supporting the
37 critical skills development of their children in reading,
38 language arts and mathematics through critical skills
39 instructional support programs;

40 (3) Ensuring the employment of qualified teachers and
41 service personnel in accordance with the provisions of
42 section thirty-nine, article five of this chapter and section
43 seven-c, article four, chapter eighteen-a of this code to
44 provide instruction to students enrolled in critical skills
45 instructional support programs;

46 (4) Creating a formula or grant-based program for the
47 distribution of funds appropriated specifically for the
48 purposes of this section or otherwise available for the support
49 of in-school, after-school and summer critical skills
50 instructional support programs;

51 (5) Providing transportation and healthy foods for
52 students required to attend after-school and summer critical
53 skills instructional support programs and supervision at the
54 school that accommodates the typical work schedules of
55 parents; and

56 (6) Receiving from county boards any applications and
57 annual reports required by rule of the state board.

58 (c) A student in grades three or eight who is
59 recommended by the student assistance team or the student's
60 classroom teacher for additional academic help in one or
61 more of the subjects of reading, language arts and

62 mathematics through a critical skills instructional support
63 program may be required to attend a summer critical skills
64 instructional support program as a condition for promotion if:

65 (1) The student has been provided additional academic
66 help through an in-school or after-school critical skills
67 instructional support program and, prior to the end of the
68 school year, the student assistance team or the student's
69 classroom teacher recommends that further additional
70 academic help is needed for the student to be successful at
71 the next grade level; and

72 (2) The county board has established a critical skills
73 instructional support program during the summer months for
74 the student's grade level.

75 (d) County boards shall provide suitable educational
76 facilities, equipment and services to support critical skills
77 instructional support programs established pursuant to this
78 section. Summer programs may be provided at a central
79 location for third and eighth graders who qualify for the
80 program.

81 (e) This section may not be construed to prohibit a
82 classroom teacher from recommending the grade level
83 retention of a student based upon the student's lack of
84 mastery of the subject matter and preparation for the subject
85 matter at the next grade level.

86 (f) This section may not be construed to affect the
87 individualized education plans of exceptional students.

88 (g) This section may not be construed to limit the
89 authority of the county board to establish a summer school
90 program in accordance with section thirty-nine, article five of
91 this chapter. County boards may not charge tuition for
92 enrollment in critical skills instructional support programs
93 established pursuant to this section.

94 (h) Each county board shall prepare to implement the
95 provisions of this section and the provisions of the state
96 board rule required by subsection (b) of this section. The
97 preparations shall at least include planning, ensuring the
98 student assistance teams are established as currently required
99 by state board policy and performing a needs assessment.

100 (i) The state board shall provide a report describing the
101 proposed implementation of the critical skills instructional
102 support program to be instituted for the summer of 2010 to
103 the Legislative Oversight Commission on Education
104 Accountability on or before May 1, 2010.

105 (j) The state board shall provide a comprehensive report
106 regarding the status of the critical skills instructional support
107 program to the Legislative Oversight Commission on
108 Education Accountability, the Joint Committee on
109 Government and Finance, and the Governor on November 1,
110 2010, and annually on November 1 on each year thereafter.
111 The report shall address, at a minimum, the progress of the
112 program throughout the state, its effect on student
113 achievement and the sources of the funding both available to
114 and used by the program.

115 (k) The provisions of this section shall be subject to the
116 availability of funds from legislative appropriation or other
117 sources specifically designated for the purposes of this
118 section. If a county board determines that adequate funds are
119 not available for full implementation of a critical skills
120 instructional support program in the county, the county board
121 may implement its program in phases by first establishing a
122 critical skills instructional support program in the third grade
123 and then establishing a critical skills instructional support
124 program for the eighth grade once the county board
125 determines that adequate funds are available.

CHAPTER 7

**(S.B. 1006 - By Senators Tomblin, Mr. President,
and Caruth)
[By Request of the Executive]**

[Passed June 2, 2009; in effect July 1, 2009.]
[Approved by the Governor on June 17, 2009.]

AN ACT to amend and reenact §18-5-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §18A-1-1 of said code; and to amend and reenact §18A-2-2, §18A-2-6, §18A-2-7 and §18A-2-8a of said code, all relating to the hiring, termination, transfer and reassignment of teachers and school personnel; revising definition of "long-term substitute"; revising certain dates upon which action must be taken with respect to the hiring, termination, resignation or transfer of teachers and school personnel; clarifying probationary professional employee contract; providing conditional contract of prospective and recent graduates and prospective employable professional personnel; revising dates regarding the early notification of retirement; providing for nonrevocation of early notification; and providing an economic hardship exception.

Be it enacted by the Legislature of West Virginia:

That §18-5-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18A-1-1 of said code be amended and reenacted; and that §18A-2-2, §18A-2-6, §18A-2-7 and

§18A-2-8a of said code be amended and reenacted, all to read as follows:

Chapter

18. Education.

18A. School Personnel.

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-4. Meetings; employment and assignment of teachers; budget hearing; compensation of members; affiliation with state and national associations.

1 (a) The county board shall meet on the first Monday in
2 July, and upon the dates provided by law for the laying of
3 levies, and at any other times the county board fixes upon its
4 records. Subject to adequate public notice, nothing in this
5 section prohibits the county board from conducting regular
6 meetings in facilities within the county other than the county
7 board office. At any meeting as authorized in this section
8 and in compliance with the provisions of chapter eighteen-a
9 of this code, the county board may employ qualified teachers,
10 or those who will qualify by the time they enter upon their
11 duties, necessary to fill existing or anticipated vacancies for
12 the current or next ensuing school year. Meetings of the
13 county board shall be held in compliance with the provisions
14 of chapter eighteen-a of this code for purposes relating to the
15 assignment, transfer, termination and dismissal of teachers
16 and other school employees.

17 (b) Special meetings may be called by the president or
18 any three members, but no business may be transacted other
19 than that designated in the call.

20 (c) In addition, a public hearing shall be held concerning
21 the preliminary operating budget for the next fiscal year not
22 fewer than ten days after the budget has been made available
23 to the public for inspection and within a reasonable time prior

24 to the submission of the budget to the state board for
25 approval. Reasonable time shall be granted at the hearing to
26 any person who wishes to speak regarding any part of the
27 budget. Notice of the hearing shall be published as a Class
28 I legal advertisement in compliance with the provisions of
29 article three, chapter fifty-nine of this code.

30 (d) A majority of the members of the county board
31 constitutes the quorum necessary for the transaction of
32 official business.

33 (e) Board members may receive compensation at a rate
34 not to exceed \$160 per meeting attended, but they may not
35 receive pay for more than fifty meetings in any one fiscal
36 year. Board members who serve on an administrative
37 council of a multicounty vocational center also may receive
38 compensation for attending up to twelve meetings of the
39 council at the same rate as for meetings of the county board.
40 Meetings of the council are not counted as board meetings
41 for purposes of determining the limit on compensable board
42 meetings.

43 (f) Members also shall be paid, upon the presentation of
44 an itemized sworn statement, for all necessary traveling
45 expenses, including all authorized meetings, incurred on
46 official business, at the order of the county board.

47 (g) When, by a majority vote of its members, a county
48 board considers it a matter of public interest, the county
49 board may join the West Virginia School Board Association
50 and the National School Board Association and may pay the
51 dues prescribed by the associations and approved by action
52 of the respective county boards. Membership dues and actual
53 traveling expenses incurred by board members for attending
54 meetings of the West Virginia School Board Association may
55 be paid by their respective county boards out of funds
56 available to meet actual expenses of the members, but no
57 allowance may be made except upon sworn itemized
58 statements.

CHAPTER 18A. SCHOOL PERSONNEL.**Article**

1. General Provisions.
2. School Personnel.

ARTICLE 1. GENERAL PROVISIONS.**§18A-1-1. Definitions.**

1 The definitions contained in section one, article one,
2 chapter eighteen of this code apply to this chapter. In
3 addition, the following words used in this chapter and in any
4 proceedings pursuant to this chapter have the meanings
5 ascribed to them unless the context clearly indicates a
6 different meaning;

7 (a) "School personnel" means all personnel employed by
8 a county board whether employed on a regular full-time
9 basis, an hourly basis or otherwise. "School personnel" is
10 comprised of two categories: Professional personnel and
11 service personnel;

12 (b) "Professional person" or "professional personnel"
13 means those persons or employees who meet the certification
14 requirements of the state, licensing requirements of the state,
15 or both, and includes a professional educator and other
16 professional employee;

17 (c) "Professional educator" has the same meaning as
18 "teacher" as defined in section one, article one, chapter
19 eighteen of this code. Professional educators are classified
20 as follows:

21 (1) "Classroom teacher" means a professional educator
22 who has a direct instructional or counseling relationship with
23 students and who spends the majority of his or her time in
24 this capacity;

25 (2) "Principal" means a professional educator who
26 functions as an agent of the county board and has
27 responsibility for the supervision, management and control
28 of a school or schools within the guidelines established by
29 the county board. The principal's major area of
30 responsibility is the general supervision of all the schools and
31 all school activities involving students, teachers and other
32 school personnel;

33 (3) "Supervisor" means a professional educator who is
34 responsible for working primarily in the field with
35 professional and other personnel in instructional and other
36 school improvement. This category includes other
37 appropriate titles or positions with duties that fit within this
38 definition; and

39 (4) "Central office administrator" means a
40 superintendent, associate superintendent, assistant
41 superintendent and other professional educators who are
42 charged with administering and supervising the whole or
43 some assigned part of the total program of the countywide
44 school system. This category includes other appropriate titles
45 or positions with duties that fit within this definition;

46 (d) "Other professional employee" means a person from
47 another profession who is properly licensed and who is
48 employed to serve the public schools. This definition
49 includes a registered professional nurse, licensed by the West
50 Virginia Board of Examiners for Registered Professional
51 Nurses, who is employed by a county board and has
52 completed either a two-year (sixty-four semester hours) or a
53 three-year (ninety-six semester hours) nursing program;

54 (e) "Service person" or "service personnel", whether
55 singular or plural, means a nonteaching school employee who
56 is not included in the meaning of "teacher" as defined in
57 section one, article one, chapter eighteen of this code and
58 who serves the school or schools as a whole, in a

59 nonprofessional capacity, including such areas as secretarial,
60 custodial, maintenance, transportation, school lunch and
61 aides. Any reference to "service employee" or "service
62 employees" in this chapter or chapter eighteen of this code
63 means service person or service personnel as defined in this
64 section;

65 (f) "Principals Academy" or "academy" means the
66 academy created pursuant to section two-b, article three-a of
67 this chapter;

68 (g) "Center for Professional Development" means the
69 center created pursuant to section one, article three-a of this
70 chapter;

71 (h) "Job-sharing arrangement" means a formal, written
72 agreement voluntarily entered into by a county board with
73 two or more of its employees who wish to divide between
74 them the duties and responsibilities of one authorized
75 full-time position;

76 (i) "Prospective employable professional person",
77 whether singular or plural, means a certified professional
78 educator who:

79 (1) Has been recruited on a reserve list of a county board;

80 (2) Has been recruited at a job fair or as a result of
81 contact made at a job fair;

82 (3) Has not obtained regular employee status through the
83 job posting process provided in section seven-a, article four
84 of this chapter; and

85 (4) Has obtained a baccalaureate degree from an
86 accredited institution of higher education within the past
87 year;

88 (j) "Dangerous student" means a student who is
89 substantially likely to cause serious bodily injury to himself,
90 herself or another individual within that student's educational
91 environment, which may include any alternative education
92 environment, as evidenced by a pattern or series of violent
93 behavior exhibited by the student, and documented in writing
94 by the school, with the documentation provided to the student
95 and parent or guardian at the time of any offense;

96 (k) "Alternative education" means an authorized
97 departure from the regular school program designed to
98 provide educational and social development for students
99 whose disruptive behavior places them at risk of not
100 succeeding in the traditional school structures and in adult
101 life without positive interventions; and

102 (l) "Long-term substitute" means a substitute employee
103 who fills a vacant position:

104 That the county superintendent expects to extend for at
105 least thirty consecutive days, and is either:

106 (A) Listed in the job posting as a long-term substitute
107 position of over thirty days; or

108 (B) Listed in a job posting as a regular, full-time position
109 and:

110 (i) Is not filled by a regular, full-time employee; and

111 (ii) Is filled by a substitute employee.

112 For the purposes of section two, article sixteen, chapter
113 five of this code, long-term substitute does not include a
114 retired employee hired to fill the vacant position.

ARTICLE 2. SCHOOL PERSONNEL.

- §18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof; written notice bonus for teachers and professional personnel.
- §18A-2-6. Continuing contract status for service personnel; termination.
- §18A-2-7. Assignment, transfer, promotion, demotion, suspension and recommendation of dismissal of school personnel by superintendent; preliminary notice of transfer; hearing on the transfer; proof required.
- §18A-2-8a. Notice to probationary personnel of rehiring or nonrehiring; hearing.

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof; written notice bonus for teachers and professional personnel.

1 (a) Before entering upon their duties, all teachers shall
2 execute a contract with their county boards, which shall state
3 the salary to be paid and shall be in the form prescribed by
4 the state superintendent. Each contract shall be signed by the
5 teacher and by the president and secretary of the county
6 board and shall be filed, together with the certificate of the
7 teacher, by the secretary of the office of the county board:
8 *Provided*, That when necessary to facilitate the employment
9 of employable professional personnel and prospective and
10 recent graduates of teacher education programs who have not
11 yet attained certification, the contract may be signed upon the
12 condition that the certificate is issued to the employee prior
13 to the beginning of the employment term in which the
14 employee enters upon his or her duties.

15 (b) Each teacher's contract, under this section, shall be
16 designated as a probationary or continuing contract. A
17 probationary teacher's contract shall be for a term of not less
18 than one nor more than three years, one of which shall be for
19 completion of a beginning teacher internship pursuant to the
20 provisions of section two-b, article three of this chapter, if
21 applicable. If, after three years of such employment, the
22 teacher who holds a professional certificate, based on at least
23 a bachelor's degree, has met the qualifications for a

24 bachelor's degree and the county board enter into a new
25 contract of employment, it shall be a continuing contract,
26 subject to the following:

27 (1) Any teacher holding a valid certificate with less than
28 a bachelor's degree who is employed in a county beyond the
29 three-year probationary period shall upon qualifying for the
30 professional certificate based upon a bachelor's degree, if
31 reemployed, be granted continuing contract status; and

32 (2) A teacher holding continuing contract status with one
33 county shall be granted continuing contract status with any
34 other county upon completion of one year of acceptable
35 employment if the employment is during the next succeeding
36 school year or immediately following an approved leave of
37 absence extending no more than one year.

38 (c) The continuing contract of any teacher shall remain in
39 full force and effect except as modified by mutual consent of
40 the school board and the teacher, unless and until terminated,
41 subject to the following:

42 (1) A continuing contract may not be terminated except:

43 (A) By a majority vote of the full membership of the
44 county board on or before February 1 of the then current
45 year, after written notice, served upon the teacher, return
46 receipt requested, stating cause or causes and an opportunity
47 to be heard at a meeting of the board prior to the board's
48 action on the termination issue; or

49 (B) By written resignation of the teacher on or before
50 February 1 to initiate termination of a continuing contract;

51 (2) The termination shall take effect at the close of the
52 school year in which the contract is terminated;

53 (3) The contract may be terminated at any time by mutual
54 consent of the school board and the teacher;

55 (4) This section does not affect the powers of the school
56 board to suspend or dismiss a principal or teacher pursuant to
57 section eight of this article;

58 (5) A continuing contract for any teacher holding a
59 certificate valid for more than one year and in full force and
60 effect during the school year 1984-1985 shall remain in full
61 force and effect;

62 (6) A continuing contract does not operate to prevent a
63 teacher's dismissal based upon the lack of need for the
64 teacher's services pursuant to the provisions of law relating
65 to the allocation to teachers and pupil-teacher ratios. The
66 written notification of teachers being considered for dismissal
67 for lack of need shall be limited to only those teachers whose
68 consideration for dismissal is based upon known or expected
69 circumstances which will require dismissal for lack of need.
70 An employee who was not provided notice and an
71 opportunity for a hearing pursuant to this subsection may not
72 be included on the list. In case of dismissal for lack of need,
73 a dismissed teacher shall be placed upon a preferred list in
74 the order of their length of service with that board. No
75 teacher may be employed by the board until each qualified
76 teacher upon the preferred list, in order, has been offered the
77 opportunity for reemployment in a position for which he or
78 she is qualified, not including a teacher who has accepted a
79 teaching position elsewhere. The reemployment shall be
80 upon a teacher's preexisting continuing contract and has the
81 same effect as though the contract had been suspended
82 during the time the teacher was not employed.

83 (d) In the assignment of position or duties of a teacher
84 under a continuing contract, the board may provide for
85 released time of a teacher for any special professional or
86 governmental assignment without jeopardizing the

87 contractual rights of the teacher or any other rights, privileges
88 or benefits under the provisions of this chapter. Released
89 time shall be provided for any professional educator while
90 serving as a member of the Legislature during any duly
91 constituted session of that body and its interim and statutory
92 committees and commissions without jeopardizing his or her
93 contractual rights or any other rights, privileges, benefits or
94 accrual of experience for placement on the state minimum
95 salary schedule in the following school year under the
96 provisions of this chapter, board policy and law.

97 (e) Any teacher who fails to fulfill his or her contract
98 with the board, unless prevented from doing so by personal
99 illness or other just cause or unless released from his or her
100 contract by the board, or who violates any lawful provision
101 of the contract, is disqualified to teach in any other public
102 school in the state for a period of the next ensuing school
103 year and the State Department of Education or board may
104 hold all papers and credentials of the teacher on file for a
105 period of one year for the violation: *Provided*, That marriage
106 of a teacher is not considered a failure to fulfill, or violation
107 of, the contract.

108 (f) Any classroom teacher, as defined in section one,
109 article one of this chapter, who desires to resign employment
110 with a county board or request a leave of absence, the
111 resignation or leave of absence to become effective on or
112 before July 15 of the same year and after completion of the
113 employment term, may do so at any time during the school
114 year by written notification of the resignation or leave of
115 absence and any notification received by a county board shall
116 automatically extend the teacher's public employee insurance
117 coverage until August 31 of the same year.

118 (g) (1) A classroom teacher who gives written notice to
119 the county board on or before December 1 of the school year
120 of his or her retirement from employment with the board at
121 the conclusion of the school year shall be paid \$500 from the

122 Early Notification of Retirement line item established for the
123 Department of Education for this purpose, subject to
124 appropriation by the Legislature. If the appropriations to the
125 Department of Education for this purpose are insufficient to
126 compensate all applicable teachers, the Department of
127 Education shall request a supplemental appropriation in an
128 amount sufficient to compensate all such teachers.
129 Additionally, if funds are still insufficient to compensate all
130 applicable teachers, the priority of payment is for teachers
131 who give written notice the earliest. This payment shall not
132 be counted as part of the final average salary for the purpose
133 of calculating retirement.

134 (2) The position of a classroom teacher providing written
135 notice of retirement pursuant to this subsection may be
136 considered vacant and the county board may immediately
137 post the position as an opening to be filled at the conclusion
138 of the school year. If a teacher has been hired to fill the
139 position of a retiring classroom teacher prior to the start of
140 the next school year, the retiring classroom teacher is
141 disqualified from continuing his or her employment in that
142 position. However, the retiring classroom teacher may be
143 permitted to continue his or her employment in that position
144 and forfeit the early retirement notification payment if, after
145 giving notice of retirement in accordance with this
146 subsection, he or she becomes subject to a significant
147 unforeseen financial hardship, including a hardship caused by
148 the death or illness of an immediate family member or loss of
149 employment of a spouse. Other significant unforeseen
150 financial hardships shall be determined by the county
151 superintendent on a case-by-case basis. This subsection does
152 not prohibit a county school board from eliminating the
153 position of a retiring classroom teacher.

**§18A-2-6. Continuing contract status for service personnel;
termination.**

1 After three years of acceptable employment, each service
2 personnel employee who enters into a new contract of
3 employment with the board shall be granted continuing
4 contract status: *Provided*, That a service personnel employee
5 holding continuing contract status with one county shall be
6 granted continuing contract status with any other county
7 upon completion of one year of acceptable employment if
8 such employment is during the next succeeding school year
9 or immediately following an approved leave of absence
10 extending no more than one year. The continuing contract of
11 any such employee shall remain in full force and effect
12 except as modified by mutual consent of the school board
13 and the employee, unless and until terminated with written
14 notice, stating cause or causes, to the employee, by a majority
15 vote of the full membership of the board before February 1
16 of the then current year, or by written resignation of the
17 employee on or before that date. The affected employee has
18 the right of a hearing before the board, if requested, before
19 final action is taken by the board upon the termination of
20 such employment.

21 Those employees who have completed three years of
22 acceptable employment as of the effective date of this
23 legislation shall be granted continuing contract status.

**§18A-2-7. Assignment, transfer, promotion, demotion,
suspension and recommendation of dismissal of
school personnel by superintendent;
preliminary notice of transfer; hearing on the
transfer; proof required.**

1 (a) The superintendent, subject only to approval of the
2 board, may assign, transfer, promote, demote or suspend
3 school personnel and recommend their dismissal pursuant to
4 provisions of this chapter. However, an employee shall be
5 notified in writing by the superintendent on or before
6 February 1 if he or she is being considered for transfer or to
7 be transferred. Only those employees whose consideration

8 for transfer or intended transfer is based upon known or
9 expected circumstances which will require the transfer of
10 employees shall be considered for transfer or intended for
11 transfer and the notification shall be limited to only those
12 employees. Any teacher or employee who desires to protest
13 the proposed transfer may request in writing a statement of
14 the reasons for the proposed transfer. The statement of
15 reasons shall be delivered to the teacher or employee within
16 ten days of the receipt of the request. Within ten days of the
17 receipt of the statement of the reasons, the teacher or
18 employee may make written demand upon the superintendent
19 for a hearing on the proposed transfer before the county
20 board of education. The hearing on the proposed transfer
21 shall be held on or before March 15. At the hearing, the
22 reasons for the proposed transfer must be shown.

23 (b) The superintendent at a meeting of the board on or
24 before March 15 shall furnish in writing to the board a list of
25 teachers and other employees to be considered for transfer
26 and subsequent assignment for the next ensuing school year.
27 An employee who was not provided notice and an
28 opportunity for a hearing pursuant to subsection (a) of this
29 section may not be included on the list. All other teachers
30 and employees not so listed shall be considered as reassigned
31 to the positions or jobs held at the time of this meeting. The
32 list of those recommended for transfer shall be included in
33 the minute record of the meeting and all those so listed shall
34 be notified in writing, which notice shall be delivered in
35 writing, by certified mail, return receipt requested, to the
36 persons' last known addresses within ten days following the
37 board meeting, of their having been so recommended for
38 transfer and subsequent assignment and the reasons therefor.

39 (c) The superintendent's authority to suspend school
40 personnel shall be temporary only pending a hearing upon
41 charges filed by the superintendent with the board of
42 education and the period of suspension may not exceed thirty
43 days unless extended by order of the board.

44 (d) The provisions of this section respecting hearing upon
45 notice of transfer is not applicable in emergency situations
46 where the school building becomes damaged or destroyed
47 through an unforeseeable act and which act necessitates a
48 transfer of the school personnel because of the
49 aforementioned condition of the building.

§18A-2-8a. Notice to probationary personnel of rehiring or nonrehiring; hearing.

1 The superintendent at a meeting of the board on or before
2 March 15 of each year shall provide in writing to the board
3 a list of all probationary teachers that he or she recommends
4 to be rehired for the next ensuing school year. The board
5 shall act upon the superintendent's recommendations at that
6 meeting in accordance with section one of this article. The
7 board at this same meeting shall also act upon the retention
8 of other probationary employees as provided in sections two
9 and five of this article. Any such probationary teacher or
10 other probationary employee who is not rehired by the board
11 at that meeting shall be notified in writing, by certified mail,
12 return receipt requested, to such persons' last known
13 addresses within ten days following said board meeting, of
14 their not having been rehired or not having been
15 recommended for rehiring.

16 Any probationary teacher who receives notice that he or
17 she has not been recommended for rehiring or other
18 probationary employee who has not been reemployed may
19 within ten days after receiving the written notice request a
20 statement of the reasons for not having been rehired and may
21 request a hearing before the board. The hearing shall be held
22 at the next regularly scheduled board of education meeting or
23 a special meeting of the board called within thirty days of the
24 request for hearing. At the hearing, the reasons for the
25 nonrehiring must be shown.

●

CHAPTER 8

**(H.B. 109 - By Mr. Speaker, Mr. Thompson,
and Delegate Armstead)
[By Request of the Executive]**

[Passed June 2, 2009; in effect July 1, 2009.]

[Approved by the Governor on June 16, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-5B-1, §18-5B-2, §18-5B-3, §18-5B-4, §18-5B-5, §18-5B-6, §18-5B-7, §18-5B-8 and §18-5B-9, all relating to school innovation zones; setting forth legislative findings, intent and purpose; authorizing state board to designate school innovation zones in schools, groups of schools and departments or subdivisions of a school or schools; establishing an application, plan review, approval and amendment process; authorizing exceptions to certain policies, rules, interpretations and statutes; providing for approval of the innovation zone plan by certain employees of a school; providing for revocation of designation and plan approval; requiring annual report by the state board; designating the order in which the state board must consider applications; providing for the voluntary transfer of employees; authorizing teacher job postings that exceed certain qualifications and requirements; providing that a state institution of higher education may establish a school designated as an innovation zone and that such school may not receive certain funds; providing the procedure in which a state institution of higher education may apply for and establish an innovation zone school; providing for the approval mechanism

for an innovation zone school established by a state institution of higher education by the county board and state board; and authorizing the State Board of Education to promulgate rules and emergency rules.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §18-5B-1, §18-5B-2, §18-5B-3, §18-5B-4, §18-5B-5, §18-5B-6, §18-5B-7, §18-5B-8 and §18-5B-9, all to read as follows:

ARTICLE 5B. SCHOOL INNOVATION ZONES ACT.

§18-5B-1. Title.

§18-5B-2. Legislative findings and purpose.

§18-5B-3. School innovation zones; application for designation; state board rule.

§18-5B-4. Innovation zones; required plans; plan approval; state board rule.

§18-5B-5. Approval of innovation zone plans; waiver of statutes, policies, rules or interpretations.

§18-5B-6. Employee approval of innovation plan application and plan; transfer of employees.

§18-5B-7. Progress reviews and annual reports.

§18-5B-8. Teacher vacancies in an innovation zone; job postings exceeding certain qualifications and requirements; approval of posting.

§18-5B-9. Establishment of new innovation zone schools by state institutions of higher education.

§18-5B-1. Title.

- 1 This article shall be known as the “School Innovation
- 2 Zones Act”.

§18-5B-2. Legislative findings and purpose.

- 1 (a) *Legislative findings.* -- The Legislature finds that:
 - 2 (1) Decades of school improvement literature substantiate
 - 3 that schools where the principal uses a collaborative and
 - 4 distributed approach to leadership and where the teachers
 - 5 have a unity of purpose, operate in a cohesive learning-
 - 6 centered culture and implement consistent, pervasive and
 - 7 research-based approaches to learning, can and do improve
 - 8 student learning;

9 (2) As in all enterprises, rules are established in public
10 education to manage the resources efficiently, allot time
11 among the activities and processes required and ensure
12 attention to the goals mandated, but rules, by their nature,
13 also limit the flexibility of professional educators to engage
14 in those activities and implement those approaches that may
15 best improve the learning of their students for the twenty-first
16 century;

17 (3) Allowing individual schools to seek and receive
18 exceptions from certain statutes, policies, rules and
19 interpretations through the creation of school innovation
20 zones will provide them greater control over important
21 educational factors that impact student achievement, such as
22 curriculum, personnel, organization of the school day,
23 organization of the school year, technology utilization and
24 the delivery of educational services to improve student
25 learning; and

26 (4) Providing greater flexibility at innovation zone
27 schools will enable school-level, professional educators to
28 exercise more fully their professional judgment to improve
29 student learning for the twenty-first century by instituting
30 creative and innovative practices.

31 (b) *Intent and purpose.* — The intent and purpose of this
32 article is to:

33 (1) Provide for the establishment of school innovation
34 zones to improve educational performance;

35 (2) Provide principals and teachers at schools approved
36 as innovation zones with greater flexibility and control to
37 meet the needs of a diverse population of students by
38 removing certain policy, rule, interpretive and statutory
39 constraints;

40 (3) Provide a testing ground for innovative educational
41 reform programs and initiatives to be applied on an
42 individual school level;

43 (4) Provide information regarding the effects of specific
44 innovations and policies on student achievement;

45 (5) Document educational strategies that enhance student
46 success; and

47 (6) Increase the accountability of the state's public
48 schools for student achievement as measured by the state
49 assessment programs and local assessment processes
50 identified by the schools.

**§18-5B-3. School innovation zones; application for designation;
state board rule.**

1 (a) A school, a group of schools, a subdivision or
2 department of a group of schools, or a subdivision or
3 department of a school may be designated as an innovation
4 zone in accordance with this article.

5 (b) The state board shall promulgate a rule, including an
6 emergency rule if necessary, in accordance with article three-
7 b, chapter twenty-nine-a of this code to implement the
8 provisions of this article. The rule shall include provisions
9 for at least the following:

10 (1) A process for a school, a group of schools, a
11 subdivision or department of a group of schools or a
12 subdivision or department of a school to apply for
13 designation as an innovation zone that encompasses at least
14 the following:

15 (A) The manner, time and process for the submission of
16 an innovation zone application;

17 (B) The contents of the application, which must include
18 a general description of the innovations the school or schools
19 seek to institute and an estimation of the employees who may
20 be affected by the implementation of the innovations; and

21 (C) Factors to be considered by the state board when
22 evaluating an application, which shall include, but are not
23 limited to, the following factors:

24 (i) The level of staff commitment to apply for designation
25 as an innovation zone as determined by a vote by secret
26 ballot at a special meeting of employees eligible to vote on
27 the plan, as provided in section six of this article;

28 (ii) Support from parents, students, the county board of
29 education, the local school improvement council and school
30 business partners; and

31 (iii) The potential for an applicant to be successful as an
32 innovation zone; and

33 (2) Standards for the state board to review applications
34 for designation as innovation zones and to make
35 determinations on the designation of innovation zones.

36 (c) The state board shall review innovation zone
37 applications in accordance with the standards adopted by the
38 board and shall determine whether to designate the applicant
39 as an innovation zone. The state board shall notify an
40 applicant of the board's determination within sixty days of
41 receipt of an innovation zone application.

42 When initially designating innovation zones after the
43 enactment of this article by the first extraordinary session of
44 the 2009 Legislature, the state board shall consider applicants
45 for designation in the following order: (1) A school and
46 groups of schools; (2) a group of schools seeking designation

47 across the same subdivision or department of the schools;
48 and (3) a school seeking designation of a subdivision or a
49 department.

**§18-5B-4. Innovation zones; required plans; plan approval;
state board rule.**

1 (a) The rule promulgated by the state board pursuant to
2 section three of this article also shall include at least the
3 following:

4 (1) Each school, group of schools, subdivision or
5 department of a group of schools or subdivision or
6 department of a school designated as an innovation zone or
7 seeking designation as an innovation zone in accordance with
8 this article shall develop an innovation zone plan;

9 (2) The innovation zone plan shall contain:

10 (A) A description of the programs, policies or initiatives
11 the school, group of schools, subdivision or department of a
12 group of schools or subdivision or department of a school
13 intends to implement as an innovative strategy to improve
14 student learning if the plan is approved in accordance with
15 section five of this article;

16 (B) A list of all county and state board rules, policies and
17 interpretations, and all statutes, if any, identified as
18 prohibiting or constraining the implementation of the plan,
19 including an explanation of the specific exceptions to the
20 rules, policies and interpretations and statutes required for
21 plan implementation. A school, a group of schools, a
22 subdivision or department of a group of schools or a
23 subdivision or department of a school may not request an
24 exception nor may an exception be granted from any of the
25 following:

26 (i) An assessment program administered by the West
27 Virginia Department of Education;

28 (ii) Any provision of law or policy required by the No
29 Child Left Behind Act of 2001, Public Law No. 107-110 or
30 other federal law; and

31 (iii) Section seven, article two and sections seven-a,
32 seven-b, eight and eight-b, article four, chapter eighteen-a of
33 this code, except as provided in section eight of this article;
34 and

35 (C) Any other information the state board requires.

36 (3) The innovation zone plan may include:

37 (A) An emphasis in the early childhood through
38 intermediate grade levels on ensuring that each student is
39 prepared fully at each grade level, including additional
40 intervention strategies at grade levels three and eight to
41 reinforce the preparation of students who are not prepared
42 fully for promotion, or an emphasis in the secondary grade
43 levels on ensuring that each student is prepared fully for
44 college or other post-secondary education, as applicable for
45 the school; and

46 (B) An emphasis on innovative strategies that allows
47 academically advanced students to pursue academic learning
48 above grade level or not available through the normal
49 curriculum at the school.

50 (b) Each school, group of schools, subdivision or
51 department of a group of schools or subdivision or
52 department of a school designated or seeking designation as
53 an innovation zone shall submit its innovation zone plan to
54 the school's employees, the county superintendent and
55 county board having jurisdiction over the school, the state

56 board, and the state superintendent in accordance with
57 section five of this article.

§18-5B-5. Approval of innovation zone plans; waiver of statutes, policies, rules or interpretations.

1 (a) Each school, group of schools, subdivision or
2 department of a group of schools or subdivision or
3 department of a school designated or seeking designation as
4 an innovation zone shall:

5 (1) Submit its innovation zone plan to each employee
6 regularly employed at the school if the employee's primary
7 job duties would be affected by the implementation of the
8 plan. An innovation zone plan is approved by school
9 employees when approved by a vote by secret ballot as
10 provided in section six of this article;

11 (2) Submit its innovation zone plan as approved by vote
12 of school employees to the county superintendent and board
13 for review. The county board shall within sixty days of
14 receipt of the plan review the plan and with recommendations
15 from the county superintendent report its support or
16 concerns, or both, and return the plan and report to the school
17 principal, faculty senate and local school improvement
18 council; and

19 (3) Submit its innovation zone plan as approved by vote
20 of the school employees eligible to vote on the plan along
21 with the report of the county board to the state board and
22 state superintendent for review. The county board shall be
23 given an opportunity to present its concerns with the plan, if
24 any, to the state board during its review. Except as provided
25 in subsection (c) of this section, the state board and state
26 superintendent shall approve or disapprove the plan within
27 sixty days of receipt, subject to the following:

28 (A) No exceptions to county or state board rules, policies
29 or interpretations are granted unless both the state
30 superintendent and the state board approve the plan at least
31 conditionally pursuant to subsections (b) and (c) of this
32 section; and

33 (B) If the plan is disapproved, the state superintendent,
34 the state board or both, as applicable, shall communicate the
35 reasons for the disapproval to the school, the group of
36 schools, the subdivision or department of a group of schools
37 or the subdivision or department of a school and shall make
38 recommendations for improving the plan. The school, the
39 group of schools, the subdivision or department of a group of
40 schools or the subdivision or department of a school may
41 amend the plan pursuant to subsection (d) of this section.

42 (b) Upon the approval of an innovation zone plan by the
43 state board and state superintendent, all exceptions to county
44 and state board rules, policies and interpretations listed
45 within the plan are granted, subject to the limitations
46 contained in subdivision (B), subparagraph (2), subsection
47 (a) of section four of this article.

48 (c) If an innovation zone plan, or a part thereof, may not
49 be implemented unless an exception to a statute is granted by
50 Act of the Legislature, the state board and state
51 superintendent may approve the plan, or the part thereof, only
52 upon the condition that the Legislature acts to grant the
53 exception. If the state board and state superintendent
54 approve a plan on that condition, the state board and state
55 superintendent shall submit the plan with the request for an
56 exception to a statute, along with supporting reasons, to the
57 Legislative Oversight Commission on Education
58 Accountability. The commission shall review the plan and
59 exemption request and make a recommendation to the
60 Legislature regarding the exception requested.

61 (d) The rule promulgated by the state board pursuant to
62 section three of this article shall include a process for
63 amending or revising an innovation zone plan. The process
64 shall require that any amendments or revisions to an
65 innovation zone plan are subject to the approval requirements
66 of subsection (a) of this section.

**§18-5B-6. Employee approval of innovation plan application
and plan; transfer of employees.**

1 (a) An employee shall be eligible to vote in accordance
2 with the provisions of this section if: (1) The employee is
3 regularly employed at the school; and (2) the employee's
4 primary job duties will be affected by the implementation of
5 the innovation zone plan. The panel created in subsection (c)
6 of this section and the principal shall determine which
7 employees are eligible to vote in accordance with this
8 subsection. No employee may be eligible to vote unless both
9 the panel and the principal determine that the employee is
10 eligible to vote.

11 (b) A secret ballot vote at a special meeting of all
12 employees regularly employed at the school who are eligible
13 to vote in accordance with this section shall be conducted to
14 determine the following:

15 (1) The level of employee commitment to apply for
16 designation as an innovation zone in accordance with section
17 three of this article; and

18 (2) The approval of an innovation zone plan as required
19 by section five of this article.

20 (c) A panel consisting of the elected officers of the
21 faculty senate of the school or schools, one representative of
22 the service personnel employed at the school and three parent
23 members appointed by the local school improvement council

24 shall call the meeting required in subsection (b) of this
25 section, conduct the votes and certify the results to the
26 principal, the county superintendent and the president of the
27 county board. The panel shall provide notice of the special
28 meeting to all employees eligible to vote at least two weeks
29 prior to the meeting and shall provide an absentee ballot to
30 each employee eligible to vote who cannot attend the meeting
31 to vote.

32 (d) At least eighty percent of the employees who are
33 eligible to vote in accordance with this section must vote to
34 apply for designation as an innovation zone and to approve
35 the school's innovation zone plan before the level of staff
36 commitment at the school is sufficient for the school to apply
37 for designation and before the plan is approved by the school.

38 (e) An employee regularly employed at a school applying
39 for or designated as an innovation zone whose job duties may
40 be affected by implementation of the innovation zone plan or
41 proposed plan may request a transfer to another school in the
42 school district. The county board shall make every
43 reasonable effort to accommodate the transfer.

§18-5B-7. Progress reviews and annual reports.

1 (a) At least annually, the state board or its designated
2 committee shall review the progress of the development or
3 implementation of an innovation zone plan. If, following
4 such a review, the state board determines that a designated
5 school, group of schools, subdivision or department of a
6 group of schools, subdivision or department of a school or a
7 school created by a state institution of higher education in
8 accordance with section nine of this article has not made
9 adequate progress toward developing or implementing its
10 plan, the board shall submit a report to the designated school,
11 group of schools, subdivision or department of a group of
12 schools, subdivision or department of a school or a school

13 created by a state institution of higher education in
14 accordance with section nine of this article identifying its
15 areas of concern. The state board or its designated committee
16 may conduct an additional review within six months of
17 submitting a report in accordance with this section. If,
18 following such additional review, the state board or its
19 designated committee determines that the designated school,
20 group of schools, subdivision or department of a group of
21 schools, subdivision or department of a school or a school
22 created by a state institution of higher education in
23 accordance with section nine of this article has not made
24 adequate progress toward developing or implementing its
25 innovation zone plan, the state board may revoke the
26 designation as an innovation zone or, if the innovation zone
27 plan has been approved in accordance with section five of
28 this article, rescind its approval of the plan.

29 (b) The state board shall provide an annual report on
30 innovation zones and the progress of innovation zone plans
31 to the Legislative Oversight Committee for Educational
32 Accountability.

**§18-5B-8. Teacher vacancies in an innovation zone; job postings
exceeding certain qualifications and requirements;
approval of postings.**

1 A school, group of schools, subdivision or department of
2 a group of schools, or a subdivision or department of a school
3 whose school innovation zone plan has been approved in
4 accordance with section five of this article may make a job
5 posting for a teacher vacancy at the school, the group of
6 schools, the subdivision or department of a group of schools,
7 or the subdivision or department of a school designated as an
8 innovation zone that sets forth standards or qualifications that
9 exceed the standards and qualifications provided in section
10 seven-a, article four, chapter eighteen-a of this code:

11 *Provided*, That teachers in the county approve the job posting
12 by majority vote: *Provided, however*, That the county
13 superintendent administers the vote and the record of the vote
14 remains on file in the personnel office of the county board
15 until the school group of schools, subdivision or department
16 of a group of schools, or a subdivision or department of a
17 school is no longer designated as an innovation zone.

**§18-5B-9. Establishment of new innovation zone schools by
state institutions of higher education.**

1 (a) A state institution of higher education may establish
2 a new innovation zone school subject to the following:

3 (1) The school will be under the jurisdiction of the state
4 institution of higher education;

5 (2) The county board with jurisdiction over the school
6 district in which the new school is planned to be located must
7 approve the establishment of the new innovation zone school;

8 (3) The state institution of higher education must enter
9 into cooperative agreements with the county board or county
10 boards whose students attend the new innovation zone
11 school. The agreements shall include at least required
12 reporting on student attendance, academic progress and any
13 other matters relating to the administration, operation and
14 support of the school agreed to by institution and the board
15 or boards;

16 (4) Students attending the school shall be enrolled in a
17 school in their county of residence subject to the policies of
18 the county. The students may participate in extracurricular
19 and cocurricular activities at the county school in which they
20 are enrolled and, subject to the cooperative agreement with
21 the state institution of higher education, participate in

22 curricular activities at the county school in which they are
23 enrolled;

24 (5) No funds provided to support the planning and
25 implementation of school innovation zones pursuant to this
26 article may be used for a state institution of higher education
27 to establish a new innovation zone school; and

28 (6) A school established in accordance with this section
29 may not be funded with: (1) Moneys appropriated by the
30 Legislature to fund the innovation zone program; or (2) state
31 or county moneys that result from the school aid formula.

32 (b) The state board shall promulgate a rule, including an
33 emergency rule if necessary, in accordance with article three-
34 b, chapter twenty-nine-a of this code for a state institution of
35 higher education to establish a new innovation zone school.
36 The rule shall include provisions for at least the following:

37 (1) A process for a state institution of higher education in
38 accordance with this section to apply for designation as
39 innovation zone and for approval of its innovation zone plan
40 that encompasses at least the following:

41 (A) The manner, time and process for the submission of
42 an application for innovation zone designation and for
43 approval of its innovation zone plan;

44 (B) The contents of the application; and

45 (C) Factors to be considered by the state board when
46 evaluating an application and plan, which shall include, but
47 are not limited to, support from parents, students, county
48 board or boards of education, the local school improvement
49 council or councils and school business partners and the
50 potential for a school to be successful as an innovation zone.

51 (2) A school created by state institution of higher
52 education designated as an innovation zone or seeking
53 designation as an innovation zone in accordance with this
54 section shall develop an innovation zone plan that includes at
55 least the following:

56 (A) A description of the programs, policies or initiatives
57 the state institution of higher education intends to implement
58 as an innovative strategy to improve student learning if the
59 plan is approved;

60 (B) The approval of the county board of education with
61 jurisdiction over the school district in which the new school
62 is planned to be or is located and the cooperative agreements
63 with the county board or county boards whose students
64 attend the new innovation zone school;

65 (C) A list of all county and state board rules, policies and
66 interpretations, and all statutes, if any, identified as
67 prohibiting or constraining the implementation of the plan,
68 including an explanation of the specific exceptions to the
69 rules, policies and interpretations and statutes required for
70 plan implementation;

71 (D) A policy under which the state institution of higher
72 education and participating county board or boards of
73 education agree to meet the accountability requirements for
74 student assessment under all applicable assessment programs
75 administered by the West Virginia Department of Education
76 and provisions of law or policy required by the No Child Left
77 Behind Act of 2001, Public Law No. 107-110 or other federal
78 law; and

79 (E) Any other information the state board requires.

80 (3) Standards for the state board to review applications
81 for designation as innovation zones and to make
82 determinations on the approval of innovation zone plans.

83 (c) The state board and state superintendent shall review
84 innovation zone applications and plans of a school created by
85 a state institution of higher education in accordance with the
86 standards adopted by the board and shall determine whether
87 to designate it as an innovation zone or approve it plan, as
88 applicable. The state board and state superintendent shall
89 notify an applicant of the board's determination within sixty
90 days of receipt of an innovation zone application and receipt
91 of an innovation zone plan. If the plan is disapproved, the
92 state board and state superintendent shall communicate the
93 reasons for the disapproval to the school and make
94 recommendations for improving the plan. The school may
95 amend and resubmit the plan to the state board.

96 (d) Upon the approval of an innovation zone plan by the
97 state board and state superintendent, all exceptions to county
98 and state board rules, policies and interpretations listed
99 within the plan are granted. If an innovation zone plan, or a
100 part thereof, may not be implemented unless an exception to
101 a statute is granted by Act of the Legislature, the state board
102 and state superintendent may approve the plan, or the part
103 thereof, only upon the condition that the Legislature acts to
104 grant the exception. If the state board and state
105 superintendent approve a plan on that condition, the state
106 board and state superintendent shall submit the plan with the
107 request for an exception to a statute, along with supporting
108 reasons, to the Legislative Oversight Commission on
109 Education Accountability. The commission shall review the
110 plan and request and make a recommendation to the
111 Legislature on the exception requested.

CHAPTER 9

**(H.B. 103 - By Mr. Speaker, Mr. Thompson,
and Delegate Armstead)
[By Request of the Executive]**

[Passed June 2, 2009; in effect July 1, 2009.]

[Approved by the Governor on June 17, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §24-2F-1, §24-2F-2, §24-2F-3, §24-2F-4, §24-2F-5, §24-2F-6, §24-2F-7, §24-2F-8, §24-2F-9, §24-2F-10, §24-2F-11 and §24-2F-12, all relating to an alternative and renewable energy portfolio standard; setting forth legislative findings; defining terms; establishing standards for the sale of electricity generated from alternative and renewable energy resources; providing for compliance assessments; creating a system of tradable alternative and renewable energy resource credits; providing for the awarding of credits based upon electricity generated or purchased from alternative and renewable energy resource facilities; providing for the awarding of credits for certain greenhouse emissions reduction and offset projects; providing for the awarding of credits for certain energy efficiency and demand-side energy initiative projects; requiring application to the Public Service Commission for approval of alternative and renewable energy portfolio standard compliance plans; setting forth minimum requirements for compliance plan applications; requiring Public Service Commission approval of compliance plan applications; requiring annual progress reports; providing for incentive rate making for investments in new alternative and renewable

energy resource facilities in West Virginia; requiring the Public Service Commission to adopt certain net metering and interconnection rules and standards; authorizing interagency agreements; requiring an ongoing assessment of alternative and renewable energy resources in West Virginia; requiring Public Service Commission to consider adopting portfolio standards for certain electric cooperatives and other electric facilities or utilities; requiring Public Service Commission to consider extending alternative and renewable resource credits to electric distribution companies or electric generation suppliers other than electric utilities; establishing the Alternative and Renewable Energy Resources Research Fund; providing for the awarding of matching grants for certain research projects; and authorizing the Public Service Commission to promulgate rules.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §24-2F-1, §24-2F-2, §24-2F-3, §24-2F-4, §24-2F-5, §24-2F-6, §24-2F-7, §24-2F-8, §24-2F-9, §24-2F-10, §24-2F-11 and §24-2F-12, all to read as follows:

ARTICLE 2F. ALTERNATIVE AND RENEWABLE ENERGY PORTFOLIO STANDARD.

- §24-2F-1. Short title.
- §24-2F-2. Legislative findings.
- §24-2F-3. Definitions.
- §24-2F-4. Awarding of alternative and renewable energy resource credits.
- §24-2F-5. Alternative and renewable energy portfolio standard; compliance assessments.
- §24-2F-6. Alternative and renewable energy portfolio standard compliance plan; application; approval; and progress report.
- §24-2F-7. Cost recovery and rate incentives for electric utility investment in alternative and renewable energy resources.
- §24-2F-8. Net metering and interconnection standards.
- §24-2F-9. Interagency agreements; alternative and renewable energy resource planning assessment.
- §24-2F-10. Portfolio requirements for rural electric cooperatives, municipality owned electric facilities or utilities serving less than thirty thousand residential customers in West Virginia; and alternative and renewable energy resource credits for nonutility generators.

§24-2F-11. Alternative and renewable energy resources grant program.

§24-2F-12. Rule-making authority.

§24-2F-1. Short title.

- 1 This article may be known and cited as the Alternative
- 2 and Renewable Energy Portfolio Act.

§24-2F-2. Legislative findings.

- 1 The Legislature finds that:

- 2 (1) West Virginia has served the nation for many years as
- 3 a reliable source of electrical power;

- 4 (2) The nation is on a rapid course of action to produce
- 5 electrical power with an ever decreasing amount of
- 6 emissions;

- 7 (3) To continue lowering the emissions associated with
- 8 electrical production, and to expand the state's economic
- 9 base, West Virginia should encourage the development of
- 10 more efficient, lower-emitting and reasonably priced
- 11 alternative and renewable energy resources;

- 12 (4) The development of a robust and diverse portfolio of
- 13 electric-generating capacity is needed for West Virginia to
- 14 continue its success in attracting new businesses and jobs.
- 15 This portfolio must include the use of alternative and
- 16 renewable energy resources at new and existing facilities;

- 17 (5) West Virginia has considerable natural resources that
- 18 could support the development of alternative and renewable
- 19 energy resource facilities at a reasonable price;

- 20 (6) Alternative and renewable energy resources can be
- 21 utilized now to meet state and federal environmental
- 22 standards, including those reasonably anticipated to be
- 23 mandated in the future; and

24 (7) It is in the public interest for the state to encourage
25 the construction of alternative and renewable energy resource
26 facilities that increase the capacity to provide for current and
27 anticipated electric energy demand at a reasonable price.

§24-2F-3. Definitions.

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

3 (1) “Advanced coal technology” means a technology that
4 is used in a new or existing energy generating facility to
5 reduce airborne carbon emissions associated with the
6 combustion or use of coal and includes, but is not limited to,
7 carbon dioxide capture and sequestration technology,
8 supercritical technology, ultrasupercritical technology and
9 pressurized fluidized bed technology.

10 (2) “Alternative and renewable energy portfolio
11 standard” or “portfolio standard” means a requirement in any
12 given year that requires an electric utility to own credits in an
13 amount equal to a certain percentage of electric energy sold
14 in the preceding calendar year by the electric utility to retail
15 customers in this state.

16 (3) “Alternative energy resources” means any of the
17 following resources, methods or technologies for the
18 production or generation of electricity:

19 (A) Advanced coal technology;

20 (B) Coal bed methane;

21 (C) Natural gas;

22 (D) Fuel produced by a coal gasification or liquefaction
23 facility;

- 24 (E) Synthetic gas;
- 25 (F) Integrated gasification combined cycle technologies;
- 26 (G) Waste coal;
- 27 (H) Tire-derived fuel;
- 28 (I) Pumped storage hydroelectric projects;
- 29 (J) Recycled energy, which means useful thermal,
30 mechanical or electrical energy produced from:(i) Exhaust
31 heat from any commercial or industrial process; (ii) waste
32 gas, waste fuel or other forms of energy that would otherwise
33 be flared, incinerated, disposed of or vented; and (iii)
34 electricity or equivalent mechanical energy extracted from a
35 pressure drop in any gas, excluding any pressure drop to a
36 condenser that subsequently vents the resulting heat; and
- 37 (K) Any other resource, method, project or technology
38 certified as an alternative energy resource by the Public
39 Service Commission.
- 40 (4) “Alternative and renewable energy resource credit” or
41 “credit” means a tradable instrument that is used to establish,
42 verify and monitor the generation of electricity from
43 alternative and renewable energy resource facilities, energy
44 efficiency or demand-side energy initiative projects or
45 greenhouse gas emission reduction or offset projects.
- 46 (5) “Alternative energy resource facility” means a facility
47 or equipment that generates electricity from alternative
48 energy resources.
- 49 (6) “Commission” or “Public Service Commission”
50 means the Public Service Commission of West Virginia as
51 continued pursuant to section three, article one of this
52 chapter.

53 (7) “Customer-generator” means an electric retail
54 customer who owns and operates a customer-sited generation
55 project utilizing an alternative or renewable energy resource
56 or a net metering system in this state.

57 (8) “Electric utility” means any electric distribution
58 company or electric generation supplier that sells electricity
59 to retail customers in this state. Unless specifically provided
60 for otherwise, for the purposes of this article, the term
61 “electric utility” may not include rural electric cooperatives,
62 municipally-owned electric facilities or utilities serving less
63 than thirty thousand residential electric customers in West
64 Virginia.

65 (9) “Energy efficiency or demand-side energy initiative
66 project” means a project in this state that promotes customer
67 energy efficiency or the management of customer
68 consumption of electricity through the implementation of:

69 (A) Energy efficiency technologies, equipment,
70 management practices or other strategies utilized by
71 residential, commercial, industrial, institutional or
72 government customers that reduce electricity consumption by
73 those customers;

74 (B) Load management or demand response technologies,
75 equipment, management practices, interruptible or curtailable
76 tariffs, energy storage devices or other strategies in
77 residential, commercial, industrial, institutional and
78 government customers that shift electric load from periods of
79 higher demand to periods of lower demand;

80 (C) Industrial by-product technologies consisting of the
81 use of a by-product from an industrial process, including, but
82 not limited to, the reuse of energy from exhaust gases or
83 other manufacturing by-products that can be used in the
84 direct production of electricity at the customer’s facility;

85 (D) Customer-sited generation, demand-response, energy
86 efficiency or peak demand reduction capabilities, whether
87 new or existing, that the customer commits for integration
88 into the electric utility's demand-response, energy efficiency
89 or peak demand reduction programs; or

90 (E) Infrastructure and modernization projects that help
91 promote energy efficiency, reduce energy losses or shift load
92 from periods of higher demand to periods of lower demand,
93 including the modernization of metering and communications
94 (also known as "smart grid"), distribution automation, energy
95 storage, distributed energy resources and investments to
96 promote the electrification of transportation.

97 (10) "Greenhouse gas emission reduction or offset
98 project" means a project to reduce or offset greenhouse gas
99 emissions from sources in this state other than the electric
100 utility's own generating and energy delivery operations.
101 Greenhouse gas emission reduction or offset projects include,
102 but are not limited to:

103 (A) Methane capture and destruction from landfills, coal
104 mines or farms;

105 (B) Forestation, afforestation or reforestation; and

106 (C) Nitrous oxide or carbon dioxide sequestration
107 through reduced fertilizer use or no-till farming.

108 (11) "Net metering" means measuring the difference
109 between electricity supplied by an electric utility and
110 electricity generated from an alternative or renewable energy
111 resource facility owned or operated by an electric retail
112 customer when any portion of the electricity generated from
113 the alternative or renewable energy resource facility is used
114 to offset part or all of the electric retail customer's
115 requirements for electricity.

116 (12) “Reclaimed surface mine” means a surface mine, as
117 that term is defined in section three, article three, chapter
118 twenty-two of this code, that is reclaimed or is being
119 reclaimed in accordance with state or federal law.

120 (13) “Renewable energy resource” means any of the
121 following resources, methods, projects or technologies for
122 the production or generation of electricity:

123 (A) Solar photovoltaic or other solar electric energy;

124 (B) Solar thermal energy;

125 (C) Wind power;

126 (D) Run of river hydropower;

127 (E) Geothermal energy, which means a technology by
128 which electricity is produced by extracting hot water or steam
129 from geothermal reserves in the earth’s crust to power steam
130 turbines that drive generators to produce electricity;

131 (F) Biomass energy, which means a technology by which
132 electricity is produced from a nonhazardous organic material
133 that is available on a renewable or recurring basis, including
134 pulp mill sludge;

135 (G) Biologically derived fuel including methane gas,
136 ethanol not produced from corn, or biodiesel fuel;

137 (H) Fuel cell technology, which means any
138 electrochemical device that converts chemical energy in a
139 hydrogen-rich fuel directly into electricity, heat and water
140 without combustion; and

141 (I) Any other resource, method, project or technology
142 certified by the commission as a renewable energy resource.

143 (14) “Renewable energy resource facility” means a
144 facility or equipment that generates electricity from
145 renewable energy resources.

146 (15) “Waste coal” means a technology by which
147 electricity is produced by the combustion of the by-product,
148 waste or residue created from processing coal (such as gob).

**§24-2F-4. Awarding of alternative and renewable energy
resource credits.**

1 (a) *Credits established.* -- The Public Service
2 Commission shall establish a system of tradable credits to
3 establish, verify and monitor the generation and sale of
4 electricity generated from alternative and renewable energy
5 resource facilities. The credits may be traded, sold or used to
6 meet the portfolio standards established in section five of this
7 article.

8 (b) *Awarding of credits.* -- Credits shall be awarded as
9 follows:

10 (1) An electric utility shall be awarded one credit for
11 each megawatt hour of electricity generated or purchased
12 from an alternative energy resource facility located within the
13 geographical boundaries of this state or located outside of the
14 geographical boundaries of this state but within the service
15 territory of a regional transmission organization, as that term
16 is defined in 18 C.F.R. §35.34, that manages the transmission
17 system in any part of this state;

18 (2) An electric utility shall be awarded two credits for
19 each megawatt hour of electricity generated or purchased
20 from a renewable energy resource facility located within the
21 geographical boundaries of this state or located outside of the
22 geographical boundaries of this state but within the service
23 territory of a regional transmission organization, as that term

24 is defined in 18 C.F.R. §35.34, that manages the transmission
25 system in any part of this state;

26 (3) An electric utility shall be awarded three credits for
27 each megawatt hour of electricity generated or purchased
28 from a renewable energy resource facility located within the
29 geographical boundaries of this state if the renewable energy
30 resource facility is sited upon a reclaimed surface mine; and

31 (4) A customer-generator shall be awarded one credit for
32 each megawatt hour of electricity generated from an
33 alternative energy resource facility and shall be awarded two
34 credits for each megawatt hour of electricity generated from
35 a renewable energy resource facility.

36 (c) *Acquiring of credits permitted.* --

37 (1) An electric utility may meet the alternative and
38 renewable energy portfolio standards set forth in this article
39 by purchasing additional credits. Credits may be bought or
40 sold by an electric utility or customer-generator or banked
41 and used to meet an alternative and renewable energy
42 portfolio standard requirement in a subsequent year.

43 (2) Each credit transaction shall be reported by the
44 selling entity to the Public Service Commission on a form
45 provided by the commission.

46 (3) As soon as reasonably possible after the effective
47 date of this section, the commission shall establish a registry
48 of data that shall track credit transactions and shall list the
49 following information for each transaction: (i) The parties to
50 the transaction; (ii) the number of credits sold or transferred;
51 and (iii) the price paid. Information contained in the registry
52 shall be available to the public.

53 (4) The commission may impose an administrative
54 transaction fee on a credit transaction in an amount not to

55 exceed the actual direct cost of processing the transaction by
56 the commission.

57 (d) *Credits for certain emission reduction or offset*
58 *projects.* --

59 (1) The commission may award credits to an electric
60 utility for greenhouse gas emission reduction or offset
61 projects. For each ton of carbon dioxide equivalent reduced
62 or offset as a result of an approved greenhouse gas emission
63 reduction project, the commission shall award an electric
64 utility one credit: *Provided*, That the emissions reductions
65 and offsets are verifiable and certified in accordance with
66 rules promulgated by the commission: *Provided, however*,
67 That the commission has previously approved the greenhouse
68 gas emission reduction and offset project for credit in
69 accordance with section six of this article.

70 (2) The commission shall consult and coordinate with
71 the Secretary of the Department of Environmental Protection
72 to verify and certify greenhouse gas emission reduction or
73 offset projects. The Secretary of the Department of
74 Environmental Protection shall provide assistance and
75 information to the Public Service Commission and may enter
76 into interagency agreements with the commission to
77 effectuate the purposes of this subsection.

78 (3) Notwithstanding the provisions of this subsection, an
79 electric utility may not be awarded credits for a greenhouse
80 gas emission reduction or offset project undertaken pursuant
81 to any obligation under any other state law, policy or
82 regulation.

83 (e) *Credits for certain energy efficiency and demand-*
84 *side energy initiative projects.* --

85 (1) The commission may award credits to an electric
86 utility for investments in energy efficiency and demand-side

87 energy initiative projects. For each megawatt hour of
88 electricity conserved as a result of an approved energy
89 efficiency or demand-side energy initiative project, the
90 commission shall award one credit: *Provided*, That the
91 amount of electricity claimed to be conserved is verifiable
92 and certified in accordance with rules promulgated by the
93 commission: *Provided, however*, That the commission has
94 approved the energy efficiency or demand-side energy
95 initiative project for credit in accordance with section six of
96 this article.

97 (2) Notwithstanding the provisions of this subsection, an
98 electric utility may not be awarded credit for an energy
99 efficiency or demand-side energy initiative project
100 undertaken pursuant to any obligation under any other state
101 or federal law, policy or regulation.

**§24-2F-5. Alternative and renewable energy portfolio standard;
compliance assessments.**

1 (a) *General rule.* -- Each electric utility doing business in
2 this state shall be required to meet the alternative and
3 renewable energy portfolio standards set forth in this section.
4 In order to meet these standards, an electric utility each year
5 shall own an amount of credits equal to a certain percentage
6 of electricity, as set forth in subsections (c) and (d) of this
7 section, sold by the electric utility in the preceding year to
8 retail customers in West Virginia.

9 (b) *Counting of credits towards compliance.* -- For the
10 purpose of determining an electric utility's compliance with
11 the alternative and renewable energy portfolio standards set
12 forth in subsections (c) and (d) of this section, each credit
13 shall equal one megawatt hour of electricity sold by an
14 electric utility in the preceding year to retail customers in
15 West Virginia. Furthermore, a credit may not be used more
16 than once to meet the requirements of this section. No more

17 than ten percent of the credits used each year to meet the
18 compliance requirements of this section may be credits
19 acquired from the generation or purchase of electricity
20 generated from natural gas.

21 (c) *Twenty-five percent by 2025.* -- On and after January
22 1, 2025, an electric utility shall each year own credits in an
23 amount equal to at least twenty-five percent of the electric
24 energy sold by the electric utility to retail customers in this
25 state in the preceding calendar year.

26 (d) *Interim portfolio standards.* --

27 (1) For the period beginning January 1, 2015, and ending
28 December 31, 2019, an electric utility shall each year own
29 credits in an amount equal to at least ten percent of the
30 electric energy sold by the electric utility to retail customers
31 in this state in the preceding calendar year; and

32 (2) For the period beginning January 1, 2020, and ending
33 December 31, 2024, an electric utility shall each year own
34 credits in an amount equal to at least fifteen percent of the
35 electric energy sold by the electric utility to retail customers
36 in this state in the preceding calendar year.

37 (e) *Double-counting of credits prohibited.* -- Any portion
38 of electricity generated from an alternative or renewable
39 energy resource facility that is used to meet another state's
40 alternative energy, advanced energy, renewable energy or
41 similar energy portfolio standard may not be used to meet the
42 requirements of this section. An electric utility that is subject
43 to an alternative energy, advanced energy, renewable energy
44 or similar energy portfolio standard in any other state shall
45 list, in the alternative and renewable energy portfolio
46 standard compliance plan required under section six of this
47 article, any such requirements and shall indicate how it
48 satisfied those requirements. The electric utility shall provide

49 in the annual progress report required under section six of
50 this article any additional information required by the
51 commission to prevent double-counting of credits.

52 (f) *Carryover.* -- An electric utility may apply any credits
53 that are in excess of the alternative and renewable energy
54 portfolio standard in any given year to the requirements for
55 any future year portfolio standard: *Provided*, That the
56 electric utility determines to the satisfaction of the
57 commission that such credits were in excess of the portfolio
58 standard in a given year and that such credits have not
59 previously been used for compliance with a portfolio
60 standard.

61 (g) *Compliance assessments.* --

62 (1) On or after January 1, 2015, and each year thereafter,
63 the commission shall determine whether each electric utility
64 doing business in this state is in compliance with this section.
65 If, after notice and a hearing, the commission determines that
66 an electric utility has failed to comply with an alternative and
67 renewable energy portfolio standard, the commission shall
68 impose a compliance assessment on the electric utility which
69 shall equal at least the lesser of the following:

70 (A) Fifty dollars multiplied by the number of additional
71 credits that would be needed to meet an alternative and
72 renewable energy portfolio standard in a given year; or

73 (B) Two hundred percent of the average market value of
74 credits sold in a given year multiplied by the number of
75 additional credits needed to meet the alternative and
76 renewable energy portfolio standard for that year.

77 (2) Compliance assessments collected by the commission
78 pursuant to this subsection shall be deposited into the
79 Alternative and Renewable Energy Resources Research Fund
80 established in section eleven of this article.

81 (h) *Force majeure*. --

82 (1) Upon its own initiative or upon the request of an
83 electric utility, the commission may modify the portfolio
84 standard requirements of an electric utility in a given year or
85 years or recommend to the Legislature that the portfolio
86 standard requirements be eliminated if the commission
87 determines that alternative or renewable energy resources are
88 not reasonably available in the marketplace in sufficient
89 quantities for the electric utility to meet the requirements of
90 this article.

91 (2) In making its determination, the commission shall
92 consider whether the electric utility made good faith efforts
93 to acquire sufficient credits to comply with the requirements
94 of this article. Such good faith efforts shall include, but are
95 not limited to, banking excess credits, seeking credits through
96 competitive solicitations and seeking to acquire credits
97 through long-term contracts. The commission shall assess
98 the availability of credits on the open market. The
99 commission may also require that the electric utility solicit
100 credits before a request for modification may be granted.

101 (3) If an electric utility requests a modification of its
102 portfolio standard requirements, the commission shall make
103 a determination as to the request within sixty days.

104 (4) Commission modification of an electric utility's
105 portfolio standard requirements shall apply only to the
106 portfolio standard in the year or years modified by the
107 commission. Commission modification may not
108 automatically reduce an electric utility's alternative and
109 renewable energy portfolio standard requirements in future
110 years.

111 (5) If the commission modifies an electric utility's
112 portfolio standard requirements, the commission may also

113 require the electric utility to acquire additional credits in
114 subsequent years equivalent to the requirements reduced by
115 the commission in accordance with this subsection.

116 (i) Termination - The provisions of this section shall have
117 no force and effect after June 30, 2026.

**§24-2F-6. Alternative and renewable energy portfolio standard
compliance plan; application; approval; and
progress report.**

1 (a) On or before January 1, 2011, each electric utility
2 subject to the provisions of this article shall prepare an
3 alternative and renewable energy portfolio standard
4 compliance plan and shall file an application with the
5 commission seeking approval of such plan.

6 (b) A portfolio standard compliance plan shall include:

7 (1) Statistics and information concerning the electric
8 utility's sales to retail customers in West Virginia during the
9 preceding ten calendar years;

10 (2) A calculation of the electric utility's projected yearly
11 sales to retail customers for the years 2011-2025;

12 (3) A calculation of the expected number of credits
13 required to meet the portfolio standards set forth in this
14 article;

15 (4) An anticipated time line for the development,
16 purchase or procurement of credits sufficient to meet the
17 portfolio standards set forth in this article;

18 (5) A nonbinding estimate of the costs to comply with the
19 portfolio standards set forth in this article;

20 (6) A description of any greenhouse gas emission
21 reduction or offset projects or energy efficiency and demand-
22 side energy initiative projects the electric utility proposes to
23 undertake for credit in accordance with this article;

24 (7) A list of any requirements and a description of how
25 the electric utility satisfied or will satisfy those requirements
26 if an electric utility is subject to an alternative energy,
27 advanced energy, renewable energy or similar energy
28 portfolio standard in any other state; and

29 (8) Such further information as required by the
30 commission.

31 (c) Upon the filing of an application for approval of a
32 portfolio standard compliance plan, and after hearing and
33 proper notice, the commission may, in its discretion, approve
34 or disapprove, or approve in part or disapprove in part, the
35 application: *Provided*, That the commission, after giving
36 proper notice and receiving no protest within thirty days after
37 the notice is given, may waive formal hearing on the
38 application. Notice shall be published as a Class I legal
39 advertisement in compliance with the provisions of article
40 three, chapter fifty-nine of this code, and shall be given in a
41 manner and in such form as may be prescribed by the
42 commission.

43 (d) The commission shall, following proper notice and
44 hearing, if any, render a final decision on any application
45 filed pursuant to this section within two hundred seventy
46 days of the filing of the application.

47 (e) If, and to the extent, the commission determines that
48 a portfolio standard compliance plan has a reasonable
49 expectation of achieving the portfolio standard requirements
50 at a reasonable cost to electric customers in this state, the
51 commission shall approve the plan. In establishing that the

52 requisite standard for approval of a portfolio standard
53 compliance plan is met, the burden of proof shall be upon the
54 applicant.

55 (f) In the event the commission disapproves of an
56 application filed pursuant to this section, in whole or in part,
57 the commission shall specify its reason or reasons for
58 disapproval. Any portion of the application not approved by
59 the commission shall be modified and resubmitted by the
60 applicant.

61 (g) Either upon an application of the electric utility, a
62 petition by a party or the commission's own motion, a
63 compliance plan proceeding may be reopened for the purpose
64 of considering and making, if appropriate, alterations to the
65 plan.

66 (h) Approval of the compliance plan does not eliminate
67 the need for an electric utility to otherwise obtain required
68 approvals, including, but not limited to, certificates to
69 construct, consent to enter into affiliated contracts and
70 recovery of compliance costs. Furthermore, nothing in this
71 article shall be interpreted to alter or amend the existing
72 power and authority of the commission.

73 (i) Approval of the compliance plan does not relieve an
74 electric utility from its obligation to pay a compliance
75 assessment pursuant to the provisions of section five of this
76 article if it fails to comply with the portfolio standards set
77 forth therein.

78 (j) Within a year of the commission's approval of an
79 electric utility's compliance plan, and every year thereafter,
80 the electric utility shall submit to the commission an annual
81 progress report. The progress report shall include the electric
82 utility's sales to retail customers in West Virginia during the

83 previous calendar year; the amount of energy the electric
84 utility has generated, purchased or procured from alternative
85 or renewable energy resources; a comparison of the budgeted
86 and actual costs as compared to the estimated cost of the
87 portfolio standard compliance plan; any information required
88 by the commission to prevent the double-counting of credits;
89 and any further information required by the commission.

90 (k) The commission shall impose a special assessment on
91 all electric utilities required to file a compliance plan. The
92 assessments shall be prorated among the covered electric
93 utilities on the basis of kilowatt hours of retail sales in West
94 Virginia and shall be due and payable on September 1 of
95 each year. The amount of revenue collected pursuant to this
96 subsection may not exceed \$200,000 in the first year
97 following the effective date of this article and may not
98 exceed \$100,000 in successive years. The funds generated
99 from the assessments shall be used exclusively to offset all
100 reasonable direct and indirect costs incurred by the
101 commission in administering the provisions of this article.

**§24-2F-7. Cost recovery and rate incentives for electric utility
investment in alternative and renewable energy
resources.**

1 (a) An electric utility shall have the right to recover the
2 costs of complying with the alternative and renewable energy
3 portfolio standards set forth in this article in a manner
4 prescribed by the commission. Although the commission
5 may approve costs that exceed the costs of current utility
6 generation or purchased power, the electric utility has the
7 burden to demonstrate that the costs are reasonable and
8 represent the least cost of compliance. Notwithstanding any
9 provision of this code to the contrary, an electric utility may
10 not recover in rates the costs of compliance assessments
11 imposed under this article.

12 (b) Upon a finding that it is in the public interest of this
13 state, as provided in section one, article one of this chapter,
14 the commission may authorize incentive rate-making
15 allowances for electric utility investment in the construction
16 of new alternative or renewable energy resource facilities in
17 West Virginia to encourage investments in the use and
18 development of alternative or renewable energy resource
19 facilities.

20 (c) The commission shall determine, at such time and in
21 such proceeding, form and manner as is considered
22 appropriate by the commission, the extent to which any
23 electric utility investment qualifies for the incentive rate
24 making pursuant to this section.

§24-2F-8. Net metering and interconnection standards.

1 (a) The commission shall adopt a rule requiring that all
2 electric utilities provide a rebate or discount at fair value, to
3 be determined by the commission, to customer-generators for
4 any electricity generation that is delivered to the utility under
5 a net metering arrangement.

6 (b) The commission shall also consider adopting, by rule,
7 a requirement that all sellers of electricity to retail customers
8 in the state, including rural electric cooperatives, municipally
9 owned electric facilities or utilities serving less than thirty
10 thousand residential electric customers in this state, offer net
11 metering rebates or discounts to customer-generators.

12 (c) The commission shall institute a general investigation
13 for the purpose of adopting rules pertaining to net metering
14 and the interconnection of eligible electric generating
15 facilities intended to operate in parallel with an electric
16 utility's system. As part of its investigation, the commission
17 shall take into consideration rules of other states within the

18 applicable region of the regional transmission organization,
19 as that term is defined in 18 C.F.R. §35.34, that manages a
20 utility's transmission system in any part of this state.
21 Furthermore, the commission shall consider increasing the
22 allowed kilowatt capacity for commercial customer-
23 generators to an amount not to exceed five hundred kilowatts
24 and for industrial customer-generators to an amount not to
25 exceed two megawatts. The commission shall further
26 consider interconnection standards for combined heat and
27 power.

28 (d) The commission shall promulgate these rules within
29 twelve months of the effective date of this article.

**§24-2F-9. Interagency agreements; alternative and renewable
energy resource planning assessment.**

1 (a) *Interagency agreements.* -- The commission may
2 enter into interagency agreements with the Department of
3 Environmental Protection and the Division of Energy to carry
4 out the responsibilities set forth in this article.

5 (b) *Alternative and renewable energy resource planning
6 assessment.* -- The commission, in cooperation with the
7 Department of Environmental Protection and the Division of
8 Energy, shall conduct an ongoing alternative and renewable
9 energy resource planning assessment for this state that shall,
10 at a minimum: (i) Identify current and operating alternative
11 and renewable energy resource facilities in this state; (ii)
12 assess the potential to add future generating capacity in this
13 state from alternative and renewable energy resource
14 facilities; (iii) assess the conditions of the alternative and
15 renewable energy resource marketplace, including costs
16 associated with alternative and renewable energy; (iv)
17 recommend methods to maintain or increase the relative
18 competitiveness of the alternative and renewable energy

19 resource market in this state; and (v) recommend to the
20 Legislature additional compliance goals for alternative and
21 renewable energy portfolio standards beyond 2025.

22 The commission shall report the initial results of its
23 assessment to the Governor, the President of the Senate and
24 the Speaker of the House of Delegates within three years of
25 the effective date of this article and shall report the ongoing
26 results of the assessment on a yearly basis thereafter, except
27 that on or before January 1, 2012, the commission, in
28 collaboration with the Public Energy Authority, shall report
29 the initial results of its assessment to the Joint Committee on
30 Government and Finance.

§24-2F-10. Portfolio requirements for rural electric cooperatives, municipally owned electric facilities or utilities serving less than thirty thousand residential electric customers in West Virginia; and alternative and renewable energy resource credits for nonutility generators.

1 (a) The commission shall consider adopting, by rule,
2 alternative and renewable energy portfolio requirements for
3 rural electric cooperatives, municipally owned electric
4 facilities or utilities serving less than thirty thousand
5 residential electric customers in this state. The commission
6 shall institute a general investigation for the purpose of
7 adopting such requirements.

8 (b) The commission shall consider extending, by rule, the
9 awarding of alternative and renewable energy resource
10 credits in accordance with the provisions of section four of
11 this article to electric distribution companies or electric
12 generation suppliers other than electric utilities. As part of its
13 investigation, the commission shall examine any
14 modifications to the statutory and regulatory structure

15 necessary to permit the participation of such non-utility
16 generators in the system of tradable credits authorized by this
17 article. If the commission determines that statutory
18 modifications to this article or other provisions of this code
19 are necessary to permit such participation, the commission
20 shall notify the Governor and the Legislature of the findings
21 of its investigation and proposed legislation necessary to
22 effectuate its recommendations.

§24-2F-11. Alternative and renewable energy resources grant program.

1 (a) There is hereby established in the State Treasury a
2 special revolving fund to be jointly administered by the
3 Public Service Commission and the Division of Energy
4 which shall be designated the "Alternative and Renewable
5 Energy Resources Research Fund." Moneys in the fund shall
6 be used to award matching grants for demonstration,
7 commercialization, research and development projects
8 relating to alternative and renewable energy resources and
9 energy efficiency technologies.

10 (b) The fund shall consist of any moneys appropriated by
11 the Legislature, any compliance assessments collected by the
12 commission, any gifts, bequests or other contributions to the
13 fund from private entities or electric customers and any
14 interest or other return on the moneys in the fund. Any
15 moneys remaining in the account at the end of a fiscal year,
16 including accrued interest, do not revert to the General
17 Revenue Fund and remain in the account.

18 (c) Any donations to the fund collected by an electric
19 generation supplier or electric distribution company shall be
20 forwarded to the Public Service Commission and the
21 commission shall deposit such moneys in the fund.

22 (d) The Division of Energy shall provide for the
23 distribution of moneys from the fund in the form of matching
24 grants to state institutions of higher education for
25 demonstration, commercialization, research and development
26 projects relating to alternative and renewable energy
27 resources and energy efficiency technologies. The Division
28 of Energy shall consult with and receive recommendations
29 from the Public Energy Authority, the Economic
30 Development Authority and the Department of
31 Environmental Protection to establish eligibility criteria for
32 the awarding of grant moneys under this section. The
33 Division of Energy may update said criteria as necessary to
34 comply with the requirements of this section.

35 (e) Within two years of the effective date of this section,
36 and each year thereafter, the Division of Energy shall file a
37 report with the Governor, the President of the Senate and the
38 Speaker of the House of Delegates containing, at a minimum:
39 (i) A description of all actions taken by the Division of
40 Energy pursuant to this section; (ii) an accounting of total
41 deposits into and expenditures from the fund during the
42 previous twelve months; and (iii) a description of any
43 projects that received a distribution from the fund during the
44 preceding twelve months, including the projects' objectives,
45 current status and results, if any.

§24-2F-12. Rule-making authority.

1 The commission shall promulgate rules in accordance
2 with section seven, article one, chapter twenty-four of this
3 code to effectuate the purposes of this article.



CHAPTER 10

**(H.B. 102 - By Mr. Speaker, Mr. Thompson)
[By Request of the Executive]**

[Passed June 2, 2009; in effect ninety days from passage.]
[Approved by the Governor on June 16, 2009.]

AN ACT to amend and reenact §29-22C-27 of the Code of West Virginia, 1931, as amended, relating to the allocation of adjusted gross receipts from pari-mutuel racetracks with West Virginia Lottery racetrack table games; increasing the share allocated to certain municipalities and counties after each pari-mutuel racetrack in the state is licensed to offer West Virginia Lottery racetrack table games; providing a corresponding adjustment of funds transferred to the state; providing for the allocation of funds in growth counties that have enacted the Local Powers Act; and increasing for two fiscal years the share allocated to the Lottery Commission for administration and enforcement upon the occurrence of certain conditions.

Be it enacted by the Legislature of West Virginia:

That §29-22C-27 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 22C. WEST VIRGINIA LOTTERY RACETRACK
TABLE GAMES ACT.**

**§29-22C-27. West Virginia Lottery Racetrack Table Games
Fund; Community-Based Service Fund; State
Debt Reduction Fund; distribution of funds.**

1 (a)(1) The special fund in the State Treasury known as
2 the West Virginia Lottery Racetrack Table Games Fund is
3 continued and all tax collected under this article shall be
4 deposited with the State Treasurer and placed in the West
5 Virginia Lottery Racetrack Table Games Fund. The fund
6 shall be an interest-bearing account with all interest or other
7 return earned on the money of the fund credited to and
8 deposited in the fund.

9 (2) Notwithstanding any provision of this article to the
10 contrary, all racetrack table games license fees received by
11 the commission pursuant to section eight of this article shall
12 be deposited into the Community-Based Service Fund which
13 is continued in the State Treasury. Moneys of the fund shall
14 be expended by the Bureau of Senior Services upon
15 appropriation of the Legislature solely for the purpose of
16 enabling the aged and disabled citizens of this state to
17 maintain their residency in the community-based setting
18 through the provision of home and community-based
19 services.

20 (b) From the gross amounts deposited into the Racetrack
21 Table Games Fund pursuant to subsection (a) of this section,
22 the commission shall:

23 (1) Retain an amount for the administrative expenses of
24 the commission as determined by the commission in
25 accordance with subsection (e) of this section;

26 (2) Transfer two and one-half percent of adjusted gross
27 receipts from all thoroughbred racetracks with West Virginia
28 Lottery table games to the special funds established by each
29 thoroughbred racetrack table games licensees for the payment
30 of regular racetrack purses, the amount being divided equally
31 between the special funds of each thoroughbred racetrack
32 table games licensee and transfer two and one-half percent of
33 adjusted gross receipts from all greyhound racetracks with

34 West Virginia Lottery table games to the special funds
35 established by each greyhound racetrack table games
36 licensees for the payment of regular racetrack purses, the
37 amount being divided equally between the special funds of
38 each greyhound racetrack table games licensee;

39 (3) Transfer two percent of the adjusted gross receipts
40 from all licensed racetracks to the West Virginia
41 Thoroughbred Development Fund created under section
42 thirteen-b, article twenty-three, chapter nineteen of this code
43 and the West Virginia Greyhound Breeding Development
44 Fund created under section ten, article twenty-three, chapter
45 nineteen of this code. The total amount transferred under this
46 subdivision shall be divided pro rata among the development
47 funds for each racetrack table games licensee based on
48 relative adjusted receipts from each racetrack. The amounts
49 transferred to these funds may not be used for the benefit of
50 any person or activity other than at or associated with a
51 racetrack table games licensee;

52 (4) Transfer one percent of the adjusted gross receipts
53 from each licensed racetrack to the county commissions of
54 the counties where racetracks with West Virginia Lottery
55 table games are located. The one percent transferred under
56 this subdivision shall be divided pro rata among the counties
57 with a racetrack with West Virginia Lottery table games
58 based on relative adjusted gross receipts from each county's
59 racetrack: *Provided*, That the county board of education of
60 a growth county, as that term is defined in section three,
61 article twenty, chapter seven of this code, which has enacted
62 the Local Powers Act, and in which county a racetrack is
63 located that has participated in the West Virginia
64 Thoroughbred Development Fund since on or before January
65 1, 1991, shall receive the one percent of adjusted gross
66 receipts as provided in this subdivision for the purpose of
67 capital improvements;

68 (5) Transfer two percent of the adjusted gross receipts
69 from each licensed racetrack to the governing bodies of
70 municipalities within counties where racetracks with West
71 Virginia Lottery table games are located, which shall be
72 allocated as follows:

73 (A) One half of the amounts transferred under this
74 subdivision shall be allocated to the municipalities within
75 each county having a racetrack table games licensee, based
76 on relative adjusted gross receipts from West Virginia
77 Lottery table games from those racetracks and the total
78 amount allocated to the municipalities within a county shall
79 be divided pro rata among the municipalities based on each
80 municipality's population determined at the most recent
81 United States decennial census of population: *Provided,*
82 That: (i) For each allocation, when a municipality is
83 physically located in two or more counties, only that portion
84 of its population residing in the county where the authorized
85 table games are located shall be considered; (ii) a single
86 municipality in a county where West Virginia Lottery
87 racetrack table games are played may not receive a total
88 share under this paragraph that is in excess of seventy-five
89 percent of the total distribution under this paragraph for the
90 county in which the municipality is located; and (iii) a
91 municipality receiving moneys under this paragraph may not
92 receive an amount which is less than that received by a
93 municipality under provisions of subdivision (4), subsection
94 (d) of this section; and

95 (B) One half of the amounts transferred under this
96 subdivision shall be allocated pro rata to the municipalities
97 within all the counties, having a racetrack table games
98 licensee based on each municipality's population determined
99 at the most recent United States decennial census of
100 population: *Provided,* That: (i) A municipality which
101 received funds above its pro rata share pursuant to subpart
102 (iii), paragraph (A) of this subdivision may not receive an
103 allocation under this paragraph; (ii) for each allocation, when

104 a municipality is physically located in two or more counties,
105 only that portion of its population residing in the county
106 where the authorized table games are located shall be
107 considered; and (iii) a single municipality in a county where
108 West Virginia Lottery racetrack games are played may not
109 receive a total share under this paragraph that is in excess of
110 twenty-five percent of the total transfers under this
111 paragraph: *Provided, however,* That the county board of
112 education of a growth county, as that term is defined in
113 section three, article twenty, chapter seven of this code,
114 which has enacted the Local Powers Act, and in which
115 county a racetrack is located that has participated in the West
116 Virginia Thoroughbred Development Fund since on or before
117 January 1, 1991, shall receive the two percent of adjusted
118 gross receipts as provided in this subdivision for the purpose
119 of capital improvements;

120 (6) Transfer one half of one percent of the adjusted gross
121 receipts to the governing bodies of municipalities in which a
122 racetrack table games licensee is located. The municipalities
123 shall each receive an equal share of the total amount
124 allocated under this subdivision: *Provided,* That distribution
125 under this subdivision may not be made to any municipality
126 which did not have a licensed racetrack within its municipal
127 boundaries as they existed on January 1, 2007: *Provided,*
128 *however,* That if no racetrack table games licensee is located
129 within a municipality, a transfer may not be made under this
130 subdivision; and

131 (7) Distribute the remaining amounts, hereinafter referred to
132 as the net amounts in the Racetrack Table Games Funds, in
133 accordance with the provisions of subsection (d) of this section.

134 (c) Beginning with the fiscal year following the licensing
135 of every licensed racetrack to offer West Virginia lottery
136 racetrack table games under this article, subsection (b) of this
137 section shall be superseded and replaced by this subsection
138 for distribution of the balances in the fund established by

139 subsection (a) of this section. From the gross amounts
140 deposited into the fund, the commission shall:

141 (1) Retain an amount for the administrative expenses of
142 the commission as determined by the commission in
143 accordance with subsection(e) of this section;

144 (2) Transfer two and one-half percent of adjusted gross
145 receipts from all thoroughbred racetracks with West Virginia
146 Lottery table games to the special funds established by each
147 thoroughbred racetrack table games licensee for the payment
148 of regular racetrack purses, the amount being divided equally
149 between the special funds of each thoroughbred racetrack
150 table games licensee and transfer two and one-half percent of
151 adjusted gross receipts from all greyhound racetracks with
152 West Virginia Lottery table games to the special funds
153 established by each greyhound racetrack table games licensee
154 for the payment of regular racetrack purses, the amount being
155 divided equally between the special funds of each greyhound
156 racetrack table games licensee;

157 (3) Transfer two percent of the adjusted gross receipts
158 from all licensed racetracks to the West Virginia
159 Thoroughbred Development Fund created under section
160 thirteen-b, article twenty-three, chapter nineteen of this code
161 and the West Virginia Greyhound Breeding Development
162 Fund created under section ten, article twenty-three, chapter
163 nineteen of this code. The total amount transferred under this
164 subdivision shall be divided pro rata among the development
165 funds for each racetrack table games licensee based on
166 relative adjusted receipts from each racetrack. The amounts
167 transferred to these funds may not be used for the benefit of
168 any person or activity other than at or associated with a
169 racetrack table games licensee;

170 (4) Transfer two percent of the adjusted gross receipts
171 from each licensed racetrack to the county commissions of
172 the counties where racetracks with West Virginia Lottery

173 table games are located. The money transferred under this
174 subdivision shall be divided pro rata among the counties with
175 a racetrack with West Virginia Lottery table games based on
176 relative adjusted gross receipts from each county's racetrack:
177 *Provided*, That the county board of education of a growth
178 county, as that term is defined in section three, article twenty,
179 chapter seven of this code, which has enacted the Local
180 Powers Act, and in which a racetrack is located that has
181 participated in the West Virginia Thoroughbred Development
182 Fund since on or before January 1, 1991, shall receive one
183 half of that county's share of adjusted gross receipts as
184 provided in this subdivision for the purpose of capital
185 improvements;

186 (5) Transfer three percent of the adjusted gross receipts
187 from each licensed racetrack to the governing bodies of
188 municipalities within counties where racetracks with West
189 Virginia Lottery table games are located, which shall be
190 allocated as follows:

191 (A) One half of the money transferred by this subdivision
192 shall be allocated to the municipalities within each county,
193 other than a county described in paragraph (C) of this
194 subdivision, having a racetrack table games licensee based on
195 relative adjusted gross receipts from West Virginia Lottery
196 table games from those racetracks and the total amount
197 allocated to the municipalities within a county shall be
198 divided pro rata among the municipalities based on each
199 municipality's population determined at the most recent
200 United States decennial census of population: *Provided*,
201 That: (i) For each allocation, when a municipality is
202 physically located in two or more counties, only that portion
203 of its population residing in the county where the authorized
204 table games are located shall be considered; (ii) a single
205 municipality in a county where West Virginia Lottery
206 racetrack table games are played may not receive a total
207 share under this paragraph that is in excess of seventy-five
208 percent of the total distribution under this paragraph for the

209 county in which the municipality is located; and (iii) a
210 municipality receiving moneys under this paragraph may not
211 receive an amount which is less than that received by a
212 municipality under provisions of subdivision (4), subsection
213 (d) of this section.

214 (B) One half of the money transferred under this
215 subdivision shall be allocated pro rata to the municipalities
216 within all the counties, other than a county described in
217 paragraph (C) of this subdivision, having a racetrack table
218 games licensee based on each municipality's population
219 determined at the most recent United States decennial census
220 of population: *Provided, That:* (i) A municipality which
221 received funds above its pro rata share pursuant to
222 subparagraph (iii), paragraph (A) of this subdivision shall not
223 receive an allocation under this paragraph; (ii) for each
224 allocation, when a municipality is physically located in two or
225 more counties, only that portion of its population residing in
226 the county where the authorized table games are located shall
227 be considered; and (iii) a single municipality in a county where
228 West Virginia Lottery racetrack games are played may not
229 receive a total share under this paragraph that is in excess of
230 twenty-five percent of the total transfers under this paragraph.

231 (C) Notwithstanding the provisions of paragraphs (A)
232 and (B) of this subdivision, when a racetrack is located in a
233 growth county, as that term is defined in section three, article
234 twenty, chapter seven of this code, which has enacted the
235 Local Powers Act, and in which county a racetrack is located
236 that has participated in the West Virginia Thoroughbred
237 Development Fund since on or before January 1, 1991, the
238 county board of education shall receive two thirds of the
239 share of adjusted gross receipts from West Virginia Lottery
240 table games from the racetrack in the county as provided in
241 this subdivision and the municipalities within the county
242 shall share the remaining one third of the total amount
243 allocated as provided in this paragraph. The municipal one-
244 third share shall be divided pro rata among the municipalities

245 based on each municipality's population determined at the
246 most recent United States decennial census of population.
247 All money transferred under this paragraph shall be used by
248 the county board of education and by the municipalities for
249 the purpose of capital improvements;

250 (6) Transfer one half of one percent of the adjusted gross
251 receipts to the governing bodies of municipalities in which a
252 racetrack table games licensee is located. The municipalities
253 shall each receive an equal share of the total amount
254 allocated under this subdivision: *Provided*, That distribution
255 under this subdivision may not be made to any municipality
256 that did not have a licensed racetrack within its municipal
257 boundaries as they existed on January 1, 2007: *Provided*,
258 *however*, That if no racetrack table games licensee is located
259 within a municipality, a transfer may not be made under this
260 subdivision; and

261 (7) Distribute the remaining amounts, hereinafter referred
262 to as the net amounts in the Racetrack Table Games Funds,
263 in accordance with the provisions of subsection (d) of this
264 section.

265 (d) From the net amounts in the Racetrack Table Games
266 Fund, the commission shall:

267 (1) Transfer seventy-six percent to the state Debt
268 Reduction Fund which is hereby continued in the State
269 Treasury. Moneys of the fund shall be expended solely for
270 the purpose of accelerating the reduction of existing
271 unfunded liabilities and existing bond indebtedness of the
272 state and shall be expended or transferred only upon
273 appropriation of the Legislature;

274 (2) Transfer four percent, divided pro rata based on
275 relative adjusted gross receipts from the individual licensed
276 racetracks for and on behalf of all employees of each licensed
277 racing association, into a special fund to be established by the

278 Racing Commission to be used for payment into the pension
279 plan for all employees of each licensed racing association;

280 (3) Transfer ten percent, to be divided and paid in equal
281 shares, to each county commission in the state that is not
282 eligible to receive a distribution under subdivision (4),
283 subsection (b) of this section: *Provided*, That funds transferred
284 to county commissions under this subdivision shall be used only
285 to pay regional jail expenses and the costs of infrastructure
286 improvements and other capital improvements; and

287 (4) Transfer ten percent, to be divided and paid in equal
288 shares, to the governing bodies of each municipality in the
289 state that is not eligible to receive a distribution under
290 subdivisions (5) and (6), subsection (b) of this section:
291 *Provided*, That funds transferred to municipalities under this
292 subdivision shall be used only to pay for debt reduction in
293 municipal police and fire pension funds and the costs of
294 infrastructure improvements and other capital improvements.

295 (e) All expenses of the commission incurred in the
296 administration and enforcement of this article shall be paid
297 from the Racetrack Table Games Fund, including
298 reimbursement of state law-enforcement agencies for services
299 performed at the request of the commission pursuant to this
300 article. The commission's expenses associated with a
301 particular racetrack with authorized table games under this
302 article may not exceed three percent of the total annual
303 adjusted gross receipts received from that licensee's operation
304 of table games under this article, including, but not limited to,
305 all license fees or other amounts attributable to the licensee's
306 operation of table games under this article, except as provided
307 in subdivision (2), subsection (a) of this section. However, for
308 the fiscal year following the licensing of every licensed
309 racetrack to offer West Virginia lottery racetrack table games
310 under this article and for the fiscal year thereafter, the
311 commission's expenses associated with a particular racetrack
312 with authorized table games under this article may not exceed

313 four percent of the total annual adjusted gross receipts received
314 from that licensee's operation of table games under this article,
315 including, but not limited to, all license fees or other amounts
316 attributable to the licensee's operation of table games under
317 this article, except as provided in subdivision (2), subsection
318 (a) of this section. These expenses shall either be allocated to
319 the racetrack with West Virginia Lottery table games for
320 which the expense is incurred, if practicable, or be treated as
321 general expenses related to all racetrack table games facilities
322 and be allocated pro rata among the racetrack table games
323 facilities based on the ratio that annual adjusted gross receipts
324 from operation of table games at each racetrack with West
325 Virginia Lottery table games bears to total annual adjusted
326 gross receipts from operation of table games at all racetracks
327 with West Virginia Lottery table games during the fiscal year
328 of the state. From this allowance, the commission shall
329 transfer at least \$100,000 but not more than \$500,000 into the
330 Compulsive Gambling Treatment Fund created in section
331 nineteen, article twenty-two-a of this chapter.



CHAPTER 11

**(S.B. 1003 - By Senators Tomblin, Mr. President,
and Caruth)**

[By Request of the Executive]

[Passed June 2, 2009; in effect July 1, 2009.]
[Approved by the Governor on June 17, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new article, designated §11-6J-1, §11-6J-2,
§11-6J-3, §11-6J-4, §11-6J-5, §11-6J-6 and §11-6J-7; and to

amend and reenact §11-15-8d and §11-15-9h of said code, all relating to establishing the High-Technology Business Property Valuation Act; defining terms; providing mandated salvage valuation of certain high-technology and internet advertising businesses' property; specifying method for valuation of certain property; providing for initial determination by county assessors of whether certain property is used in a high-technology business or an internet advertising business; specifying procedure for protest and appeal of determination by county assessor; requiring the West Virginia Development Office to report to the Joint Committee on Government and Finance on the economic impact of such valuation beginning in 2013; providing exceptions to limitations on right to assert exemptions; exempting certain items from consumers sales and service tax; specifying effective dates; and requiring reports to the Legislature.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §11-6J-1, §11-6J-2, §11-6J-3, §11-6J-4, §11-6J-5, §11-6J-6 and §11-6J-7; and that §11-15-8d and §11-15-9h of said code be amended and reenacted, all to read as follows:

Article

- 6J. Special Method for Valuation of Certain High-Technology Property.**
15. Consumers Sales and Service Tax.

**ARTICLE 6J. SPECIAL METHOD FOR VALUATION OF
CERTAIN HIGH-TECHNOLOGY
PROPERTY.**

- §11-6J-1. Short title.
§11-6J-2. Definitions.
§11-6J-3. Valuation of certain specialized high-technology property.
§11-6J-4. Initial determination by county assessor.
§11-6J-5. Protest and appeal.
§11-6J-6. Effective date.
§11-6J-7. Report on economic benefit.

§11-6J-1. Short title.

1 This article shall be known and cited as the High-
2 Technology Business Property Valuation Act.

§11-6J-2. Definitions.

1 For the purposes of this article:

2 (1) "Network" means a group of two or more computer
3 systems linked together;

4 (2) "Salvage value" means five percent of original cost;
5 and

6 (3) "Server" means a computer or device on a network
7 that manages network resources.

§11-6J-3. Valuation of certain specialized high-technology property.

1 Notwithstanding any other provision of this code to the
2 contrary, the value of servers directly used in a high-
3 technology business or in an internet advertising business, as
4 defined in section nine-h, article fifteen of this chapter, and the
5 value of tangible personal property directly used in a high-
6 technology business or in an internet advertising business, as
7 defined in said section, for the purpose of ad valorem property
8 taxation under this chapter and under article X of the
9 constitution of this state, shall be its salvage value.

§11-6J-4. Initial determination by county assessor.

1 The assessor of the county in which a server or specific
2 item of tangible personal property is located shall determine,
3 in writing, whether that server or specific item of tangible
4 personal property is directly used in a high-technology
5 business or an internet advertising business subject to
6 valuation in accordance with this article. Upon making a
7 determination that a taxpayer has a server or tangible
8 personal property directly used in a high-technology business

9 or an internet advertising business, the county assessor shall
10 notify the Tax Commissioner of that determination and shall
11 provide information to the Tax Commissioner as he or she
12 requires relating to that determination.

§11-6J-5. Protest and appeal.

1 At any time after the property is returned for taxation, but
2 prior to January 1 of the assessment year, any taxpayer may
3 apply to the county assessor for information regarding the
4 issue of whether any particular item or items of property
5 constitute property directly used in a high-technology
6 business or an internet advertising business under this article
7 which should be subject to valuation in accordance with this
8 article. If the taxpayer believes that some portion of the
9 taxpayer's property is subject to this article, the taxpayer
10 shall file objections in writing with the county assessor. The
11 county assessor shall decide the matter by either sustaining
12 the protest and making proper corrections, or by stating, in
13 writing if requested, the reasons for the county assessor's
14 refusal. The county assessor may, and if the taxpayer
15 requests, the county assessor shall, before January 1 of the
16 assessment year, certify the question to the Tax
17 Commissioner in a statement sworn to by both parties, or if
18 the parties are unable to agree, in separate sworn statements.
19 The sworn statement or statements shall contain a full
20 description of the property and any other information which
21 the Tax Commissioner may require.

22 The Tax Commissioner shall, as soon as possible on
23 receipt of the question, but in no case later than February 28
24 of the assessment year, instruct the county assessor as to how
25 the property shall be treated. The instructions issued and
26 forwarded by mail to the county assessor are binding upon
27 the county assessor, but either the county assessor or the
28 taxpayer may apply to the circuit court of the county for
29 review of the question of the applicability of this article to the
30 property in the same fashion as is provided for appeals from
31 the county commission in section twenty-five, article three of

32 this chapter. The Tax Commissioner shall prescribe forms on
33 which the questions under this section shall be certified and
34 the Tax Commissioner has the authority to pursue any
35 inquiry and procure any information necessary for
36 disposition of the matter.

§11-6J-6. Effective date.

1 This article shall be effective on and after July 1, 2009.

§11-6J-7. Report on economic benefit.

1 The West Virginia Development Office shall provide to
2 the Joint Committee on Government and Finance by March
3 1, 2013, and on March 1 of each of the two subsequent years,
4 a report detailing the economic benefit of the valuation
5 method specified in this article. The report shall include the
6 number of new jobs created due to the provisions of this
7 article and the ad valorem property tax impact.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-8d. Limitations on right to assert exemptions.

§11-15-9h. Exemptions for sales of computer hardware and software directly incorporated into manufactured products; certain leases; sales of electronic data processing service; sales of computer hardware and software directly used in communication; sales of educational software; sales of internet advertising; sales of high-technology business services directly used in fulfillment of a government contract; sales of tangible personal property for direct use in a high-technology business or internet advertising business; definitions.

§11-15-8d. Limitations on right to assert exemptions.

1 (a) Persons who perform “contracting” as defined in
2 section two of this article, or persons acting in an agency
3 capacity, may not assert any exemption to which the
4 purchaser of such contracting services or the principal is
5 entitled. Any statutory exemption to which a taxpayer may
6 be entitled shall be invalid unless the tangible personal
7 property or taxable service is actually purchased by such
8 taxpayer and is directly invoiced to and paid by such
9 taxpayer. This section shall not apply to purchases by an

10 employee for his or her employer; purchases by a partner for
11 his or her partnership; or purchases by a duly authorized
12 officer of a corporation, or unincorporated organization, for
13 his or her corporation or unincorporated organization so long
14 as the purchase is invoiced to and paid by the employer,
15 partnership, corporation or unincorporated organization.

16 (b) *Transition rule.* -- This section shall not apply to
17 purchases of tangible personal property or taxable services in
18 fulfillment of a purchasing agent or procurement agent
19 contract executed and legally binding on the parties thereto
20 prior to September 15, 1999: *Provided*, That this transition
21 rule shall not apply to any purchases of tangible personal
22 property or taxable services made under such a contract after
23 August 31, 1991; and this transition rule shall not apply if the
24 primary purpose of the purchasing agent or procurement
25 agent contract was to avoid payment of consumers sales and
26 use taxes. However, effective July 1, 2007, this section shall
27 not apply to purchases of services, machinery, supplies or
28 materials, except gasoline and special fuel, to be directly used
29 or consumed in the construction, alteration, repair or
30 improvement of a new or existing building or structure by a
31 person performing “contracting”, as defined in section two of
32 this article, if the purchaser of the “contracting” services
33 would be entitled to claim the refundable exemption under
34 subdivision (2), subsection (b), section nine of this article had
35 it purchased the services, machinery, supplies or materials.
36 Effective July 1, 2009, this section shall not apply to
37 purchases of services, computers, servers, building materials
38 and tangible personal property, except purchases of gasoline
39 and special fuel, to be installed into a building or facility or
40 directly used or consumed in the construction, alteration,
41 repair or improvement of a new or existing building or
42 structure by a person performing “contracting”, as defined in
43 section two of this article, if the purchaser of the
44 “contracting” services would be entitled to claim the
45 exemption under subdivision (7), subsection (a), section
46 nine-h of this article.

§11-15-9h. Exemptions for sales of computer hardware and software directly incorporated into manufactured products; certain leases; sales of electronic data processing service; sales of computer hardware and software directly used in communication; sales of educational software; sales of internet advertising; sales of high-technology business services directly used in fulfillment of a government contract; sales of tangible personal property for direct use in a high-technology business or internet advertising business; definitions.

1 (a) In order to modernize the exemptions from tax
2 contained in this article as a result of technological advances
3 in computers and the expanded role of computers, the
4 internet and global instant communications in business and
5 to encourage computer software developers, computer
6 hardware designers, systems engineering firms, electronic
7 data processing companies and other high-technology
8 companies to locate and expand their businesses in West
9 Virginia, the following sales of tangible personal property
10 and software are exempt:

11 (1) Sales of computer hardware or software (including
12 custom designed software) to be directly incorporated by a
13 manufacturer into a manufactured product. For purposes of
14 this subsection, the payment of licensing fees for the right to
15 incorporate hardware or software developed by persons other
16 than the manufacturer into a manufactured product is exempt
17 from the tax imposed by this article;

18 (2) Sales of computer hardware or software (including
19 custom designed software) directly used in communication
20 as defined in this article;

21 (3) Sales of electronic data processing services;

22 (4) Sales of educational software required to be used in
23 any of the public schools of this state or in any institution in

24 this state which qualifies as a nonprofit or educational
25 institution subject to administration, regulation, certification
26 or approval of the Department of Education, the Department
27 of Education and the Arts or the Higher Education Policy
28 Commission;

29 (5) Sales of internet advertising of goods and services;

30 (6) Sales of high-technology business services to high-
31 technology businesses which enter into contracts with this
32 state, its institutions and subdivisions, governmental units,
33 institutions or subdivisions of other states, or with the United
34 States, including agencies of federal, state or local
35 governments for direct use in fulfilling the government
36 contract; and

37 (7) Sales of prewritten computer software, computers,
38 computer hardware, servers and building materials and
39 tangible personal property to be installed into a building or
40 facility for direct use in a high-technology business or an
41 internet advertising business.

42 (b) *Definitions.* --

43 As used in this article, the following terms have the
44 following meanings:

45 (1) "Computer hardware" means a computer, as defined
46 in article fifteen-b of this chapter, and the directly and
47 immediately connected physical equipment involved in the
48 performance of data processing or communications
49 functions, including data input, data output, data processing,
50 data storage, and data communication apparatus that is
51 directly and immediately connected to the computer. The
52 term "computer hardware" does not include computer
53 software.

54 (2) "High-technology business" means and is limited to
55 businesses primarily engaged in the following activities:
56 Computer hardware design and development; computer

57 software design, development, customization and upgrade;
58 computer systems design and development; website design
59 and development; network design and development; design
60 and development of new manufactured products which
61 incorporate computer hardware and software; electronic data
62 processing; network management, maintenance, engineering,
63 administration and security services; website management,
64 maintenance, engineering, administration and security
65 services and computer systems management, maintenance,
66 engineering, administration and security services. High-
67 technology business as defined herein is intended to include
68 businesses which engage in the activities enumerated in this
69 definition as their primary business activity, and not as a
70 secondary or incidental activity and not as an activity in
71 support of or incidental to business activity not specifically
72 enumerated in this definition.

73 (3) “High-technology business services” means and is
74 limited to computer hardware design and development;
75 computer software design, development, customization and
76 upgrade; computer systems design and development; website
77 design and development; network design and development;
78 electronic data processing; computer systems management;
79 computer systems maintenance; computer systems
80 engineering; computer systems administration and computer
81 systems security services.

82 (4) “Internet advertising business” means a for-profit
83 business that is engaged, for monetary remuneration, in the
84 primary business activity of announcing, or calling public
85 attention to, goods or services in order to induce the public to
86 purchase those goods or services, and which uses the internet
87 as its sole advertising communications medium. For
88 purposes of this definition, internet advertising must be the
89 primary business activity of the business and not a secondary
90 or incidental activity and not an activity in support of or
91 incidental to other business activity.

92 (5) “Network” means a group of two or more computer
93 systems linked together.

94 (6) “Server” means a computer or device on a network
95 that manages network resources.

96 (c) The amendments to this section made in the first
97 extraordinary session of the Legislature in 2009 shall apply
98 to purchases made on and after July 1, 2009.

CHAPTER 12

**(S.B. 1002 - By Senator Tomblin, Mr. President,
and Caruth)
[By Request of the Executive]**

[Passed June 2, 2009; in effect ninety days from passage]
[Approved by the Governor on June 17, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-5-4a, all relating to salary enhancements for health care personnel at certain hospitals; establishing legislative findings; requiring the Division of Personnel and the Department of Health and Human Resources to develop pay rates and requirements for certain classified service positions at Mildred Mitchell-Bateman Hospital and William R. Sharpe, Jr. Hospital; authorizing the Department of Health and Human Resources to provide funding from legislative appropriations; exempting pay rates and employment requirements from grievance procedures; and declaring that the provisions do not give rise to any private cause of action.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-5-4a, to read as follows:

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-4a. Psychiatrists, nurses and aides classifications.

1 (a) The Legislature finds that Mildred Mitchell-Bateman
2 Hospital and William R. Sharpe, Jr. Hospital have extreme
3 difficulty in recruiting and retaining physicians, physician
4 specialists, nurses, nursing directors, health service workers,
5 health service assistants, health service associates and other
6 employees who assist in the direct provision of medical care
7 to patients in those facilities.

8 (b) The West Virginia Division of Personnel and the
9 Department of Health and Human Resources jointly shall
10 develop pay rates and employment requirements to support
11 the recruitment and retention of physicians, physician
12 specialists, nurses, nursing directors, health service workers,
13 health service assistants, health service associates or other
14 positions at Mildred Mitchell-Bateman Hospital and William
15 R. Sharpe, Jr. Hospital. Pay rates shall reflect the regional
16 market rates for relevant positions. The pay rates and
17 employment requirements shall be put into effect by July 1,
18 2009.

19 (c) Funding for the pay rates and employment
20 requirements shall be provided from the appropriation to the
21 Department of Health and Human Resources. Due to the
22 limits of funding, the implementation of the pay rates and
23 employment requirements shall not be subject to the
24 provisions of article two, chapter six-c of this code. The
25 provisions of this section are rehabilitative in nature and it is
26 the specific intent of the Legislature that no private cause of
27 action, either express or implied, shall arise pursuant to the
28 provisions or implementation of this section.

CHAPTER 13

**(S.B. 1011 - By Senator Tomblin, Mr. President,
and Caruth)**

[By Request of the Executive]

[Passed June 2, 2009; in effect from passage]
[Approved by the Governor on June 17, 2009.]

AN ACT to amend and reenact §5B-2A-3, §5B-2A-5, §5B-2A-6 and §5B-2A-9 of the Code of West Virginia, 1931, as amended; and to amend and reenact §22-3-10 of said code, all relating to ensuring the post-mine development of reclaimed surface mine property; defining certain terms; requiring certain counties to develop master land use plans for post-mine development; clarifying procedures relating to master land use plans and community impact statements; enhancing certain powers and responsibilities of the Office of Coalfield Community Development and the Department of Environmental Protection with respect to master land use plans; requiring surface mine reclamation plans to comport with approved master land use plans; and authorizing surface mine reclamation plans to contain alternative, noncomporting post-mining land uses under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §5B-2A-3, §5B-2A-5, §5B-2A-6 and §5B-2A-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §22-3-10 of said code be amended and reenacted, all to read as follows:

Chapter

5B. Economic Development Act of 1985.
22. Environmental Resources.

**CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF
1985.**

**ARTICLE 2A. OFFICE OF COALFIELD COMMUNITY
DEVELOPMENT.**

§5B-2A-3. Definitions.

§5B-2A-5. Powers and duties.

§5B-2A-6. Community impact statement.

§5B-2A-9. Securing developable land and infrastructure.

§5B-2A-3. Definitions.

1 (a) For the purpose of this article, the following terms
2 have the meanings ascribed to them:

3 (1) “Department” means the Department of
4 Environmental Protection established in article one, chapter
5 twenty-two of this code;

6 (2) “Office” means the Office of Coalfield Community
7 Development;

8 (3) “Operator” means the definition in section three,
9 article three, chapter twenty-two of this code; and

10 (4) “Renewable and alternative energy” means energy
11 produced or generated from natural or replenishable
12 resources other than traditional fossil fuels or nuclear
13 resources and includes, without limitation, solar energy, wind
14 power, hydropower, geothermal energy, biomass energy,
15 biologically derived fuels, energy produced with advanced
16 coal technologies, coalbed methane, fuel produced by a coal
17 gasification or liquefaction facility, synthetic gas, waste coal,
18 tire-derived fuel, pumped storage hydroelectric power or
19 similar energy sources.

20 (b) Unless used in a context that clearly requires a
21 different meaning or as otherwise defined herein, terms used
22 in this article shall have the definitions set forth in this
23 section.

§5B-2A-5. Powers and duties.

1 The office has and may exercise the following duties,
2 powers and responsibilities:

3 (1) To establish a procedure for developing a community
4 impact statement as provided in section six of this article and
5 to administer the procedure so established;

6 (2) To establish a procedure for determining the assets
7 that could be developed in and maintained by the community
8 to foster its long-term viability as provided in section eight of
9 this article and to administer the procedure so established;

10 (3) To establish a procedure for determining the land and
11 infrastructure needs in the general area of the surface mining
12 operations as provided in section nine of this article and to
13 administer the procedure so established;

14 (4) To establish a procedure to develop action reports and
15 annual updates as provided in section ten of this article and
16 to administer the procedure so established;

17 (5) To determine the need for meetings to be held among
18 the various interested parties in the communities impacted by
19 surface mining operations and, when appropriate, to facilitate
20 the meetings;

21 (6) To establish a procedure to assist property owners in
22 the sale of their property as provided in section eleven of this
23 article and to administer the procedure so established;

24 (7) In conjunction with the department, to maintain and
25 operate a system to receive and address questions, concerns
26 and complaints relating to surface mining; and

27 (8) On its own initiative or at the request of a community
28 in close proximity to a mining operation, or a mining
29 operation, offer assistance to facilitate the development of
30 economic or community assets. Such assistance shall include
31 the preparation of a master land use plan pursuant to the
32 provisions of section nine of this article.

§5B-2A-6. Community impact statement.

1 (a)(1) The operator shall develop a community impact
2 statement, as described in this section, which shall be
3 submitted to the office within sixty days of the filing of a
4 surface mining application pursuant to the provisions of
5 article three, chapter twenty-two of this code. Failure to
6 submit a community impact statement to the office shall be
7 considered a violation under the provisions of section
8 seventeen of said article; and

9 (2) The operator shall provide copies of the community
10 impact statement to the department's Office of Mining
11 Reclamation and Office of Explosives and Blasting and to the
12 county commissions, county clerks' offices and local, county
13 or regional development or redevelopment authorities of the
14 areas to be affected by the surface mining operations.

15 (b) The community impact statement, where practicable,
16 shall not be a highly technical or legalistic document, but
17 shall be written in a clear and concise manner understandable
18 to all citizens. The community impact statement shall
19 include the following:

20 (1) The amount and location of land to be mined or used
21 in the actual mining operations;

22 (2) The expected duration of the mining operations in
23 each area of the community;

24 (3) The extent of anticipated mining-related property
25 acquisitions, to the extent that such acquisitions are known or
26 knowable;

27 (4) The intentions of the surface and mineral owners
28 relative to the acquired property, to the extent that such
29 intentions are known or knowable;

30 (5) A statement of the post-mining land use for all land
31 within the permit boundary;

32 (6) The intended blasting plan and the expected time and
33 duration it will affect each community;

34 (7) Information concerning the extent and nature of
35 valley fills and the watersheds to be affected;

36 (8) Economic information, such as the number of jobs
37 created and annual coal production resulting from the surface
38 mining operation, the anticipated life of the mining operation
39 and such other information as may be deemed appropriate;
40 and

41 (9) An acknowledgment of the recommendations of any
42 approved master land use plan that pertains to the land
43 proposed to be mined, including an acknowledgment of the
44 infrastructure components needed to accomplish the
45 designated post-mine land use required by the plan.

46 (c) Where the operator makes any significant revision to
47 the permit application under section eighteen, article three,
48 chapter twenty-two of this code, which revision substantially
49 affects any of the information provided in subsection (b) of
50 this section, the operator shall revise the affected provisions
51 of its community impact statement and shall submit such
52 revisions as set forth in subsection (a) of this section.

53 (d) Within thirty days of receipt of a community impact
54 statement pursuant to subdivision (2), subsection (a) of this
55 section or a revised community impact statement pursuant to
56 subsection (c) of this section, the local, county or regional

57 development or redevelopment authorities of the areas to be
58 affected by the surface mining operations shall provide a
59 written acknowledgment of the receipt of this community
60 impact statement or revised community impact statement to
61 the department's Division of Mining Reclamation, to the
62 county commission or county commissions and to the office.

63 (e) The provisions of this section shall apply as follows:

64 (1) To all surface mining permits granted after June 11,
65 1999; and

66 (2) At the first renewal date of all previously issued
67 permits: *Provided*, That the permittee shall be afforded ninety
68 days from said date to comply with the provisions of this
69 section.

§5B-2A-9. Securing developable land and infrastructure.

1 (a) The office shall determine the land and infrastructure
2 needs in the general area of the surface mining operations.

3 (b) For the purposes of this section, the term "general
4 area" shall mean the county or counties in which the mining
5 operations are being conducted or any adjacent county.

6 (c) To assist the office the operator shall be required to
7 prepare and submit to the office the information set forth in
8 this subsection as follows:

9 (1) A map of the area for which a permit under article
10 three, chapter twenty-two of this code is being sought or has
11 been obtained;

12 (2) The names of the surface and mineral owners of the
13 property to be mined pursuant to the permit; and

14 (3) A statement of the post-mining land use for all land
15 which may be affected by the mining operations.

16 (d) In making a determination of the land and
17 infrastructure needs in the general area of the mining
18 operations, the office shall consider at least the following:

19 (1) The availability of developable land in the general
20 area;

21 (2) The needs of the general area for developable land;

22 (3) The availability of infrastructure, including, but not
23 limited to, access roads, water service, wastewater service
24 and other utilities;

25 (4) The amount of land to be mined and the amount of
26 valley to be filled;

27 (5) The amount, nature and cost to develop and maintain
28 the community assets identified in section eight of this
29 article; and

30 (6) The availability of federal, state and local grants and
31 low-interest loans to finance all or a portion of the acquisition
32 and construction of the identified land and infrastructure
33 needs of the general area.

34 (e) In making a determination of the land and
35 infrastructure needs in the general area of the surface mining
36 operations, the office shall give significant weight to
37 developable land on or near existing or planned multilane
38 highways.

39 (f) The office may secure developable land and
40 infrastructure for a development office or county through the
41 preparation of a master land use plan for inclusion into a

42 reclamation plan prepared pursuant to the provisions of
43 section ten, article three, chapter twenty-two of this code. No
44 provision of this section may be construed to modify
45 requirements of article three of said chapter.

46 (1) The county commission or other governing body for
47 each county in which there are surface mining operations that
48 are subject to this article shall determine land and
49 infrastructure needs within their jurisdictions through the
50 development of a master land use plan which incorporates
51 post-mining land use needs, including, but not limited to,
52 renewable and alternative energy uses, residential uses,
53 highway uses, industrial uses, commercial uses, agricultural
54 uses, public facility uses or recreational facility uses. A
55 county commission or other governing body of a county may
56 designate a local, county or regional development or
57 redevelopment authority to assist in the preparation of a
58 master land use plan. A county commission or other
59 governing body of a county may adopt a master land use plan
60 developed after July 1, 2009, only after a reasonable public
61 comment period;

62 (2) Upon the request of a county or designated
63 development or redevelopment authority, the office shall
64 assist the county or development or redevelopment authority
65 with the development of a master land use plan;

66 (3)(A) The Department of Environmental Protection and
67 the Office of Coalfield Community Development shall
68 review master land use plans existing as of July 1, 2009. If
69 the office determines that a master land use plan complies
70 with the requirements of this article and the rules
71 promulgated pursuant to this article, the office shall approve
72 the plan on or before July 1, 2010;

73 (B) Master land use plans developed after July 1, 2009,
74 shall be submitted to the department and the office for

75 review. The office shall determine whether to approve a
76 master land use plan submitted pursuant to this subdivision
77 within three months of submission. The office shall approve
78 the plan if it complies with the requirements of this article
79 and the rules promulgated pursuant to this article;

80 (C) The office shall review a master land use plan
81 approved under this section every three years. No later than
82 six months before the review of a master land use plan, the
83 county or designated development or redevelopment
84 authority shall submit an updated master land use plan to the
85 department and the office for review. The county may
86 submit its updated master land use plan only after a
87 reasonable public comment period. The office shall approve
88 the master land use plan if the updated plan complies with the
89 requirements of this article and the rules promulgated
90 pursuant to this article;

91 (D) If the office does not approve a master land use plan,
92 the county or designated development or redevelopment
93 authority shall submit a supplemental master land use plan to
94 the office for approval;

95 (4) The required infrastructure component standards
96 needed to accomplish the designated post-mining land uses
97 identified in a master land use plan shall be developed by the
98 county or its designated development or redevelopment
99 authority. These standards must be in place before the
100 respective county or development or redevelopment authority
101 can accept ownership of property donated pursuant to a
102 master land use plan. Acceptance of ownership of such
103 property by a county or development or redevelopment
104 authority may not occur unless it is determined that: (i) The
105 property use is compatible with adjacent land uses; (ii) the
106 use satisfies the relevant county or development or
107 redevelopment authority's anticipated need and market use;
108 (iii) the property has in place necessary infrastructure

109 components needed to achieve the anticipated use; (iv) the
110 use is supported by all other appropriate public agencies; (v)
111 the property is eligible for bond release in accordance with
112 section twenty-three, article three, chapter twenty-two of this
113 code; and (vi) the use is feasible. Required infrastructure
114 component standards require approval of the relevant county
115 commission, commissions or other county governing body
116 before such standards are accepted. County commission or
117 other county governing body approval may be rendered only
118 after a reasonable public comment period;

119 (5) The provisions of this subsection shall not take effect
120 until legislative rules are promulgated pursuant to paragraph
121 (C), subdivision (1), subsection (c), section twenty-three,
122 article three, chapter twenty-two of this code governing bond
123 releases which assure sound future maintenance by the local
124 or regional economic development, redevelopment or
125 planning agencies.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-10. Reclamation plan requirements.

1 (a) Each reclamation plan submitted as part of a surface
2 mining permit application shall include, in the degree of
3 detail necessary to demonstrate that reclamation required by
4 this article can be accomplished, a statement of:

5 (1) The identification of the lands subject to surface
6 mining over the estimated life of these operations and the
7 size, sequence and timing of the operations for which it is
8 anticipated that individual permits for mining will be sought;

9 (2) The condition of the land to be covered by the permit
10 prior to any mining, including: (A) The uses existing at the

11 time of the application and, if the land has a history of
12 previous mining, the uses which preceded any mining; (B)
13 the capability of the land prior to any mining to support a
14 variety of uses, giving consideration to soil and foundation
15 characteristics, topography and vegetation cover and, if
16 applicable, a soil survey prepared pursuant to subdivision
17 (15), subsection (a), section nine of this article; and (C) the
18 best information available on the productivity of the land
19 prior to mining, including appropriate classification as prime
20 farmlands and the average yield of food, fiber, forage or
21 wood products from the lands obtained under high levels of
22 management;

23 (3) The use which is proposed to be made of the land
24 following reclamation, including a discussion of the utility
25 and capacity of the reclaimed land to support a variety of
26 alternative uses, including, but not limited to, renewable and
27 alternative energy uses, residential uses, highway uses,
28 industrial uses, commercial uses, agricultural uses, public
29 facility uses or recreational facility uses, and the relationship
30 of the use to existing land use policies and plans and the
31 comments of any owner of the surface, other state agencies
32 and local governments which would have to initiate,
33 implement, approve or authorize the proposed use of the land
34 following reclamation;

35 (A) The post-mining land use proposed in any
36 reclamation plan for lands proposed to be mined by surface
37 mining methods shall comport with the land use that is
38 specified in the approved master land use plan for the area as
39 provided in section nine, article two-a, chapter five-b of this
40 code: *Provided*, That the secretary may approve an
41 alternative post-mining land use where the applicant
42 demonstrates that:

43 (i) The proposed post-mining land use is a higher and
44 better use than the land use specified in the approved master
45 land use plan;

46 (ii) Site-specific conditions make attainment of a post-
47 mining land use which comports with the land use that is
48 specified in the approved master land use plan for the area
49 impractical; or

50 (iii) The post-mining land use specified in the approved
51 master land use plan would substantially interfere with the
52 future extraction of a mineable coal bed, as that term is
53 defined in rules promulgated by the Tax Commissioner
54 relating to the valuation of active or reserve coal property for
55 ad valorem property tax purposes, 110 C. S. R. 11-3 or a
56 successor rule, from the land to be mined.

57 (B) Existing permits with approved reclamation plans
58 may be modified by the operator through an appropriate
59 permit revision to include a post-mining land use which
60 comports with the land use that is specified in the approved
61 master land use plan for the area as provided in section nine,
62 article two-a, chapter five-b of this code;

63 (C) By complying with a master land use plan that has
64 been approved in accordance with article two-a, chapter five-
65 b of this code, a post-mining land use satisfies the
66 requirements for an alternative post-mining land use and
67 satisfies the variance requirements set forth in subsection (c),
68 section thirteen, article three, chapter twenty-two of this code
69 if applicable to the proposed use;

70 (4) A detailed description of how the proposed post-
71 mining land use is to be achieved and the necessary support
72 activities which may be needed to achieve the proposed land
73 use;

74 (5) The engineering techniques proposed to be used in
75 mining and reclamation and a description of the major
76 equipment; a plan for the control of surface water drainage
77 and of water accumulation; a plan, where appropriate, for

78 backfilling, soil stabilization and compacting, grading,
79 revegetation and a plan for soil reconstruction, replacement
80 and stabilization pursuant to the performance standards in
81 subdivision (7), subsection (b), section thirteen of this article
82 for those food, forage and forest lands identified therein; and
83 a statement as to how the operator plans to comply with each
84 of the applicable requirements set out in section thirteen or
85 fourteen of this article;

86 (6) A detailed estimated timetable for the
87 accomplishment of each major step in the reclamation plan;

88 (7) The consideration which has been given to
89 conducting surface mining operations in a manner consistent
90 with surface owner plans and applicable state and local land
91 use plans and programs;

92 (8) The steps to be taken to comply with applicable air
93 and water quality laws and rules and any applicable health
94 and safety standards;

95 (9) The consideration which has been given to
96 developing the reclamation plan in a manner consistent with
97 local physical environmental and climatological conditions;

98 (10) All lands, interests in lands or options on the
99 interests held by the applicant or pending bids on interests in
100 lands by the applicant, which lands are contiguous to the area
101 to be covered by the permit;

102 (11) A detailed description of the measures to be taken
103 during the surface mining and reclamation process to assure
104 the protection of:

105 (A) The quality of surface and groundwater systems, both
106 on and off site, from adverse effects of the surface mining
107 operation;

108 (B) The rights of present users to the water; and

109 (C) The quantity of surface and groundwater systems,
110 both on and off site, from adverse effects of the surface
111 mining operation or to provide alternative sources of water
112 where the protection of quantity cannot be assured;

113 (12) The results of tests borings which the applicant has
114 made at the area to be covered by the permit or other
115 equivalent information and data in a form satisfactory to the
116 director, including the location of subsurface water and an
117 analysis of the chemical properties, including acid-forming
118 properties of the mineral and overburden: *Provided*, That
119 information which pertains only to the analysis of the
120 chemical and physical properties of the coal, except
121 information regarding the mineral or elemental contents
122 which are potentially toxic in the environment, shall be kept
123 confidential and not made a matter of public record;

124 (13) The consideration which has been given to
125 maximize the utilization and conservation of the solid fuel
126 resource being recovered so that re-affecting the land in the
127 future can be minimized; and

128 (14) Any other requirements as the director may
129 prescribe by rule.

130 (b) A reclamation plan pending approval as of the
131 effective date of this section may be amended by the operator
132 to provide for a post-mining land use that comports with a
133 master land use plan that has been approved in accordance
134 with article two-a, chapter five-b of this code.

135 (c) The reclamation plan shall be available to the public
136 for review except for those portions thereof specifically
137 exempted in subsection (a) of this section.

138 (d) The amendments to this section by the first
139 extraordinary session of the Legislature in 2009 are effective
140 upon the approval of the corresponding amendments to West
141 Virginia's state program, as that term is defined in the federal
142 Surface Mining Control and Reclamation Act of 1977, 30 U.
143 S. C. §1291, by the federal Office of Surface Mining
144 Reclamation and Enforcement.

CHAPTER 14

**(H.B. 113 - By Mr. Speaker, Mr. Thompson,
and Delegate Armstead)
[By Request of the Executive]**

[Passed June 2, 2009; in effect from passage]
[Approved by the Governor on June 17, 2009.]

AN ACT to amend and reenact §31-15-6 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §31-15-16a; to amend and reenact §18B-10-8 of said code; and to amend and reenact §29-22-18 of said code, all relating to providing funding for institutions of higher education, state parks, the state capitol complex, other state facilities or tourism sites; authorizing the Economic Development Authority to issue and refund revenue bonds from time to time for capital improvement projects; providing for bond amounts and maturity; allocating bond proceeds; establishing procedures for project selection; providing for the allocation of lottery revenues for the bond debt payments; and authorizing the use of moneys in the Community and Technical College Capital Improvement Fund for capital improvements and capital projects.

Be it enacted by the Legislature of West Virginia:

That §31-15-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §31-15-16a; that §18B-10-8 of said code be amended and reenacted; and that §29-22-18 of said code be amended and reenacted, all to read as follows:

Chapter

18B. Higher Education.

29. Miscellaneous Boards and Officers.

31. Corporations.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-6. General power of authority.

§31-15-16a. Bonds for capital improvements at institutions of higher education, state parks, the state capitol complex, other state facilities or tourism sites; limitations; authority to issue revenue bonds; use of funds to pay for projects.

§31-15-6. General powers of authority.

1 The authority, as a public corporation and governmental
2 instrumentality exercising public powers of the state, shall
3 have and may exercise all powers necessary or appropriate to
4 carry out the purposes of this article, including the power:

5 (a) To cooperate with industrial development agencies in
6 efforts to promote the expansion of industrial, commercial,
7 manufacturing and tourist activity in this state.

8 (b) To determine, upon the proper application of an
9 industrial development agency or an enterprise, whether the
10 declared public purposes of this article have been or will be
11 accomplished by the establishment by such agency or
12 enterprise of a project in this state.

13 (c) To conduct examinations and investigations and to
14 hear testimony and take proof, under oath or affirmation, at

15 public or private hearings, on any matter relevant to this
16 article and necessary for information on the establishment of
17 any project.

18 (d) To issue subpoenas requiring the attendance of
19 witnesses and the production of books and papers relevant to
20 any hearing before such authority or one or more members
21 appointed by it to conduct any hearing.

22 (e) To apply to the circuit court having venue of such
23 offense to have punished for contempt any witness who
24 refuses to obey a subpoena, to be sworn or affirmed or to
25 testify or who commits any contempt after being summoned
26 to appear.

27 (f) To authorize any member of the authority to conduct
28 hearings, administer oaths, take affidavits and issue
29 subpoenas.

30 (g) To financially assist projects by insuring obligations
31 in the manner provided in this article through the use of the
32 insurance fund.

33 (h) To finance any projects by making loans to industrial
34 development agencies or enterprises upon such terms as the
35 authority shall deem appropriate: *Provided*, That nothing
36 contained in this subsection (h) or under any other provision
37 in this article shall be construed as permitting the authority to
38 make loans for working capital: *Provided, however*, That
39 nothing contained in this article shall be construed as
40 prohibiting the authority from insuring loans for working
41 capital made to industrial development agencies or to
42 enterprises by financial institutions: *Provided further*, That
43 nothing contained in this subsection or any other provision of
44 this article shall be construed as permitting the authority to
45 refinance existing debt except when such refinancing will
46 result in the expansion of the enterprise whose debt is to be
47 refinanced or in the creation of new jobs.

48 (i) To issue revenue bonds or notes to fulfill the purposes
49 of this article, and to secure the payment of such bonds or
50 notes, all as hereinafter provided.

51 (j) To issue and deliver revenue bonds or notes in
52 exchange for a project.

53 (k) To borrow money for its purposes and issue bonds or
54 notes for the money and provide for the rights of the holders
55 of the bonds or notes or other negotiable instruments, to
56 secure the bonds or notes by a deed of trust on, or an
57 assignment or pledge of, any or all of its property and
58 property of the project, including any part of the security for
59 loans, and the authority may issue and sell its bonds and
60 notes, by public or private sale, in such principal amounts as
61 it shall deem necessary to provide funds for any purposes
62 under this article, including the making of loans for the
63 purposes set forth in this article.

64 (l) To maintain such sinking funds and reserves as the
65 board shall determine appropriate for the purposes of meeting
66 future monetary obligations and needs of the authority.

67 (m) To sue and be sued, implead and be impleaded, and
68 complain and defend in any court.

69 (n) To adopt, use and alter at will a corporate seal.

70 (o) To make, amend, repeal and adopt both bylaws and
71 rules and regulations for the management and regulation of
72 its affairs.

73 (p) To appoint officers, agents and employees and to
74 contract for and engage the services of consultants.

75 (q) To make contracts of every kind and nature to execute
76 all instruments necessary or convenient for carrying on its
77 business.

78 (r) To accept grants and loans from and enter into
79 contracts and other transactions with any federal agency.

80 (s) To take title by conveyance or foreclosure to any
81 project where acquisition is necessary to protect any loan
82 previously made by the authority and to sell, by public or
83 private sale, transfer, lease or convey such project to any
84 enterprise.

85 (t) To participate in any reorganization proceeding
86 pending pursuant to the United States Code (being the act of
87 Congress establishing a uniform system of bankruptcy
88 throughout the United States, as amended) or in any
89 receivership proceeding in a state or federal court for the
90 reorganization or liquidation of an enterprise. The authority
91 may file its claim against any such enterprise in any of the
92 foregoing proceedings, vote upon any questions pending
93 therein which requires the approval of the creditors
94 participating in any reorganization proceeding or
95 receivership, exchange any evidence of such indebtedness for
96 any property, security or evidence of indebtedness offered as
97 a part of the reorganization of such enterprise or of any other
98 entity formed to acquire the assets thereof and may
99 compromise or reduce the amount of any indebtedness owing
100 to it as a part of any such reorganization.

101 (u) To acquire, construct, maintain, improve, repair,
102 replace and operate projects within this state, as well as
103 streets, roads, alleys, sidewalks, crosswalks and other means
104 of ingress and egress to and from projects located within this
105 state.

106 (v) To acquire, construct, maintain, improve, repair and
107 replace and operate pipelines, electric transmission lines,
108 waterlines, sewer lines, electric power substations,
109 waterworks systems, sewage treatment and disposal facilities
110 and any combinations thereof for the use and benefit of any
111 enterprise located within this state.

112 (w) To acquire watersheds, water and riparian rights,
113 rights-of-way, easements, licenses and any and all other
114 property, property rights and appurtenances for the use and
115 benefit of any enterprise located within this state.

116 (x) To acquire, by purchase, lease, donation or eminent
117 domain, any real or personal property, or any right or interest
118 therein, as may be necessary or convenient to carry out the
119 purposes of the authority. Title to all property, property rights
120 and interests acquired by the authority shall be taken in the
121 name of the authority.

122 (y) To issue renewal notes, or security interests, to issue
123 bonds to pay notes or security interests and, whenever it
124 deems refunding expedient, to refund any bonds or notes by
125 the issuance of new bonds or notes, whether the bonds or
126 notes to be refunded have or have not matured and whether
127 or not the authority originally issued the bonds or notes to be
128 refunded.

129 (z) To apply the proceeds from the sale of renewal notes,
130 security interests or refunding bonds or notes to the purchase,
131 redemption or payment of the notes, security interests or
132 bonds or notes to be refunded.

133 (aa) To accept gifts or grants of property, funds, security
134 interests, money, materials, labor, supplies or services from
135 the United States of America or from any governmental unit
136 or any person, firm or corporation, and to carry out the terms
137 or provisions of, or make agreements with respect to, or
138 pledge, any gifts or grants, and to do any and all things
139 necessary, useful, desirable or convenient in connection with
140 the procuring, acceptance or disposition of gifts or grants.

141 (bb) To the extent permitted under its contracts with the
142 holders of bonds, security interests or notes of the authority,
143 to consent to any modification of the rate of interest, time of
144 payment of any installment of principal or interest, security
145 or any other term of any bond, security interests, note or

146 contract or agreement of any kind to which the authority is a
147 party.

148 (cc) To sell loans, security interests or other obligations
149 in the loan portfolio of the authority. Such security interests
150 shall be evidenced by instruments issued by the authority.
151 Proceeds from the sale of loans, security interests, or other
152 obligations may be used in the same manner and for the same
153 purposes as bond and note revenues.

154 (dd) To procure insurance against any losses in
155 connection with its property, operations or assets in such
156 amounts and from such insurers as the authority deems
157 desirable.

158 (ee) To sell, license, lease, mortgage, assign, pledge or
159 donate its property, both real and personal, or any right or
160 interest therein to another or authorize the possession,
161 occupancy or use of such property or any right or interest
162 therein by another, in such manner and upon such terms as it
163 deems appropriate.

164 (ff) To participate with the state and federal agencies in
165 efforts to promote the expansion of commercial and
166 industrial development in this state.

167 (gg) To finance, organize, conduct, sponsor, participate
168 and assist in the conduct of special institutes, conferences,
169 demonstrations and studies relating to the stimulation and
170 formation of business, industry and trade endeavors.

171 (hh) To conduct, finance and participate in technological,
172 business, financial and other studies related to business and
173 economic development.

174 (ii) To conduct, sponsor, finance, participate and assist
175 in the preparation of business plans, financing plans and
176 other proposals of new or established businesses suitable for
177 support by the authority.

178 (jj) To prepare, publish and distribute, with or without
179 charge as the authority may determine, such technical
180 studies, reports, bulletins and other materials as it deems
181 appropriate, subject only to the maintenance and respect for
182 confidentiality of client proprietary information.

183 (kk) To exercise such other and additional powers as
184 may be necessary or appropriate for the exercise of the
185 powers herein conferred.

186 (ll) To exercise all of the powers which a corporation
187 may lawfully exercise under the laws of this state.

188 (mm) To contract for the provision of legal services by
189 private counsel, and notwithstanding the provisions of article
190 three, chapter five, such counsel may, but is not limited to,
191 represent the authority in court, negotiate contracts and other
192 agreements on behalf of the authority, render advice to the
193 authority on any matter relating thereto, prepare contracts and
194 other agreements, and provide such other legal services as
195 may be requested by the authority.

196 (nn) To develop, maintain, operate and apply for the
197 establishment of foreign trade zones pursuant to and in
198 accordance with all applicable provisions of federal law.

199 (oo) To exercise the powers and responsibilities
200 previously vested in the state building commission by section
201 eleven-a, article six, chapter five including, but not limited to,
202 the authority to refund bonds issued in accordance with that
203 section.

§31-15-16a. Bonds for capital improvements at institutions of higher education, state parks, the state capitol complex, other state facilities or tourism sites; limitations; authority to issue revenue bonds; use of funds to pay for projects.

1 (a)(1) The economic development authority shall, in
2 accordance with the provisions of this article, issue revenue
3 bonds from time to time, to pay for a portion of the cost of
4 constructing, equipping, improving or maintaining capital
5 improvement projects under this section or to refund the
6 bonds, at the discretion of the authority. The principal
7 amount of the bonds issued under this section shall not
8 exceed, in the aggregate, \$150 million. Any revenue bonds
9 issued on or after the effective date of this section which are
10 secured by lottery proceeds shall mature at a time or times
11 not exceeding thirty years from their respective dates. The
12 principal of, and the interest and redemption premium, if any,
13 on the bonds shall be payable solely from the "Education,
14 Arts, Sciences and Tourism Debt Service Fund" established
15 in section eleven-a, article six, chapter five and continued by
16 this section.

17 (2) All amounts deposited in the fund shall be pledged to
18 the repayment of the principal, interest and redemption
19 premium, if any, on any revenue bonds or refunding revenue
20 bonds authorized by this section. The authority may further
21 provide in the trust agreement for priorities on the revenues
22 paid into the Education, Arts, Sciences and Tourism Debt
23 Service Fund as may be necessary for the protection of the
24 prior rights of the holders of bonds issued at different times
25 under the provisions of this section or section eleven-a,
26 article six, chapter five of this code. The bonds issued
27 pursuant to this section shall be separate from all other bonds
28 which may be or have been issued from time to time under
29 the provisions of section eleven-a, article six, chapter five of
30 this code. The Education, Arts, Sciences and Tourism Debt
31 Service Fund shall be pledged solely for the repayment of
32 bonds issued pursuant to this section and section eleven-a,
33 article six, chapter five of this code. On or prior to May 1 of
34 each year, commencing May 1, 2010, the authority shall
35 certify to the state lottery director the principal and interest
36 and coverage ratio requirements for the following fiscal year
37 on any revenue bonds or refunding revenue bonds issued

38 pursuant to this section, and for which moneys deposited in
39 the Education, Arts, Sciences and Tourism Debt Service
40 Fund have been pledged, or will be pledged, for repayment
41 pursuant to this section.

42 (3) After the authority has issued bonds authorized by
43 this section, and after the requirements of all funds have been
44 satisfied, including coverage and reserve funds established in
45 connection with the bonds issued pursuant to this section, any
46 balance remaining in the Education, Arts, Sciences and
47 Tourism Debt Service Fund may be used for the redemption
48 of any of the outstanding bonds issued under this section
49 which, by their terms, are then redeemable or for the
50 purchase of the outstanding bonds at the market price, but not
51 to exceed the price, if any, at which redeemable, and all
52 bonds redeemed or purchased shall be immediately canceled
53 and shall not again be issued.

54 (b) The authority shall expend sixty percent of the bond
55 proceeds, net of issuance costs, reserve funds and refunding
56 costs, for certified capital improvement projects at state
57 institutions of higher education. The Higher Education
58 Policy Commission shall submit a proposed list of projects
59 which will receive funds from the bond proceeds to the
60 Governor on or before January 1, 2010. Thereafter, the
61 Governor shall certify to the authority on or before February
62 1, 2010, a list of those capital improvement projects at state
63 institutions of higher education which will receive funds
64 from the proceeds of bonds issued pursuant to this section.
65 Once certified, the list may not thereafter be altered or
66 amended other than by legislative enactment.

67 (c) The authority shall expend the balance of the bond
68 proceeds for certified projects at state parks, the capitol
69 complex, other state facilities or tourism sites. The secretary
70 of the department of administration, the director of the
71 division of natural resources, the director of the West
72 Virginia development office and a representative of the

73 capitol building commission, other than the secretary of the
74 department of administration, who shall be selected by the
75 capitol building commission shall submit a proposed list of
76 projects which will receive funds from the bond proceeds to
77 the Governor on or before January 1, 2010. Thereafter, the
78 Governor shall certify to the authority on or before February
79 1, 2010, a list of those capital improvement projects at state
80 parks, the state capitol complex, other state facilities or
81 tourism sites which will receive funds from the proceeds of
82 bonds issued pursuant to this section. Once certified, the list
83 may not thereafter be altered or amended other than by
84 legislative enactment.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-8. **Collection; disposition and use of capital and auxiliary capital fees; creation of special capital and auxiliary capital improvements funds; revenue bonds.**

1 (a) This section and any rules adopted by the
2 commission, council or both, in accordance with this section
3 and article three-a, chapter twenty-nine-a of this code,
4 governs the collection, disposition and use of the capital and
5 auxiliary capital fees authorized by section one of this article.
6 The statutory provisions governing collection and disposition
7 of capital funds in place prior to the enactment of this section
8 remain in effect.

9 (b) *Fees for full-time students.* -- The governing boards
10 shall fix capital and auxiliary capital fees for full-time
11 students at each state institution of higher education per
12 semester. For institutions under its jurisdiction, a governing
13 board may fix the fees at higher rates for students who are
14 not residents of this state.

15 (c) *Fees for part-time students.* -- For all part-time
16 students and for all summer school students, the governing
17 boards shall impose and collect the fees in proportion to, but
18 not exceeding, the fees paid by full-time students. Refunds
19 of the fees may be made in the same manner as any other fee
20 collected at state institutions of higher education.

21 (d) There is continued in the State Treasury a special
22 capital improvements fund and special auxiliary capital
23 improvements fund for each state institution of higher
24 education and the commission into which shall be paid all
25 proceeds, respectively, of:

26 (1) The capital and auxiliary capital fees collected from
27 students at all state institutions of higher education pursuant
28 to this section; and

29 (2) The fees collected from the students pursuant to
30 section one of this article. The fees shall be expended by the
31 commission and governing boards for the payment of the
32 principal of or interest on any revenue bonds issued by the
33 board of regents or the succeeding governing boards for
34 which the fees were pledged prior to the enactment of this
35 section.

36 (e) The governing boards may make expenditures from
37 any of the special capital improvements funds or special
38 auxiliary capital improvement funds established in this
39 section to finance, in whole or in part, together with any
40 federal, state or other grants or contributions, for any one or
41 more of the following projects:

42 (1) The acquisition of land or any rights or interest in
43 land;

44 (2) The construction or acquisition of new buildings;

45 (3) The renovation or construction of additions to
46 existing buildings;

47 (4) The acquisition of furnishings and equipment for the
48 buildings; and

49 (5) The construction or acquisition of any other capital
50 improvements or capital education facilities at the state
51 institutions of higher education, including any roads, utilities
52 or other properties, real or personal, or for other purposes
53 necessary, appurtenant or incidental to the construction,
54 acquisition, financing and placing in operation of the
55 buildings, capital improvements or capital education
56 facilities, including student unions, dormitories, housing
57 facilities, food service facilities, motor vehicle parking
58 facilities and athletic facilities.

59 (f) The governing boards, in their discretion, may use the
60 moneys in the special capital improvements funds and special
61 auxiliary improvement funds to finance the costs of the
62 purposes set forth in this section on a cash basis. The
63 commission, when singly or jointly requested by the
64 governing boards, periodically may issue revenue bonds of
65 the state as provided in this section to finance all or part of
66 the purposes and pledge all or any part of the moneys in such
67 special funds for the payment of the principal of and interest
68 on the revenue bonds, and for reserves for the revenue bonds.
69 Any pledge of the special funds for the revenue bonds shall
70 be a prior and superior charge on the special funds over the
71 use of any of the moneys in the funds to pay for the cost of
72 any of the purposes on a cash basis. Any expenditures from
73 the special funds, other than for the retirement of revenue
74 bonds, may be made by the commission or governing boards
75 only to meet the cost of a predetermined capital
76 improvements program for one or more of the state
77 institutions of higher education, in the order of priority
78 agreed upon by the governing board or boards and the
79 commission and for which the aggregate revenue collections
80 projected are presented to the Governor for inclusion in the
81 annual budget bill, and are approved by the Legislature for
82 expenditure.

83 (g) The revenue bonds periodically may be authorized
84 and issued by the commission or governing boards to
85 finance, in whole or in part, the purposes provided in this
86 section in an aggregate principal amount not exceeding the
87 amount which the commission determines can be paid as to
88 both principal and interest and reasonable margins for a
89 reserve therefor from the moneys in the special funds.

90 (h) The issuance of the revenue bonds shall be authorized
91 by a resolution adopted by the governing board receiving the
92 proceeds and the commission and the revenue bonds shall
93 bear the date or dates; mature at such time or times not
94 exceeding forty years from their respective dates; be in such
95 form either coupon or registered, with such exchangeability
96 and interchangeability privileges; be payable in such medium
97 of payment and at such place or places, within or without the
98 state; be subject to such terms of prior redemption at such
99 prices not exceeding one hundred five per centum of the
100 principal amount thereof; and shall have the other terms and
101 provisions determined by the governing board receiving the
102 proceeds and the commission. The revenue bonds shall be
103 signed by the Governor and by the chancellor of the
104 commission or the chair of the governing boards authorizing
105 the issuance thereof, under the Great Seal of the State,
106 attested by the Secretary of State, and the coupons attached
107 to the revenue bonds shall bear the facsimile signature of the
108 chancellor of the commission or the chair of the appropriate
109 governing boards. The revenue bonds shall be sold in the
110 manner the commission or governing board determines is for
111 the best interests of the state.

112 (i) The commission or governing boards may enter into
113 trust agreements with banks or trust companies, within or
114 without the state, and in the trust agreements or the
115 resolutions authorizing the issuance of the bonds may enter
116 into valid and legally binding covenants with the holders of
117 the revenue bonds as to the custody, safeguarding and
118 disposition of the proceeds of the revenue bonds, the moneys

119 in the special funds, sinking funds, reserve funds or any other
120 moneys or funds; as to the rank and priority, if any, of
121 different issues of revenue bonds by the commission or
122 governing boards under the provisions of this section; as to
123 the maintenance or revision of the amounts of the fees; as to
124 the extent to which swap agreements, as defined in
125 subsection (h), section two, article two-g, chapter thirteen of
126 this code shall be used in connection with the revenue bonds,
127 including such provisions as payment, term, security, default
128 and remedy provisions as the commission shall consider
129 necessary or desirable, if any, under which the fees may be
130 reduced; and as to any other matters or provisions which are
131 considered necessary and advisable by the commission or
132 governing boards in the best interests of the state and to
133 enhance the marketability of the revenue bonds.

134 (j) After the issuance of any revenue bonds, the fees at
135 the state institutions of higher education pledged to the
136 payment thereof may not be reduced as long as any of the
137 revenue bonds are outstanding and unpaid except under
138 such terms, provisions and conditions as shall be contained
139 in the resolution, trust agreement or other proceedings
140 under which the revenue bonds were issued. The revenue
141 bonds are and constitute negotiable instruments under the
142 Uniform Commercial Code of this state; together with the
143 interest thereon, be exempt from all taxation by the State of
144 West Virginia, or by any county, school district,
145 municipality or political subdivision thereof; and the
146 revenue bonds may not be considered to be obligations or
147 debts of the state and the credit or taxing power of the state
148 may not be pledged therefor, but the revenue bonds shall be
149 payable only from the revenue pledged therefor as provided
150 in this section.

151 (k) Additional revenue bonds may be issued by the
152 commission or governing boards pursuant to this section and
153 financed by additional revenues or funds dedicated from
154 other sources. There is hereby created in the State Treasury

155 a special revenue fund known as the Community and
156 Technical College Capital Improvement Fund into which
157 shall be deposited the amounts specified in subsection (j),
158 section eighteen, article twenty-two, chapter twenty-nine of
159 this code. All amounts deposited in the fund shall be pledged
160 to the repayment of the principal, interest and redemption
161 premium, if any, on any revenue bonds or refunding revenue
162 bonds authorized by the commission for community and
163 technical college capital improvements or used by the
164 Council on a cash basis as provided under subdivision (4),
165 subsection (j), section eighteen, article twenty-two, chapter
166 twenty-nine of this code for community and technical college
167 capital improvements or capital projects.

168 (l) Funding of systemwide and campus-specific revenue
169 bonds under any other section of this code is continued and
170 authorized pursuant to the terms of this section. Revenues of
171 any state institution of higher education pledged to the
172 repayment of any revenue bonds issued pursuant to this code
173 shall remain pledged.

174 (m) Any revenue bonds for state institutions of higher
175 education proposed to be issued under this section or other
176 sections of this code first must be approved by the
177 commission.

178 (n) Revenue bonds issued pursuant to this code may be
179 issued by the commission or governing boards, either singly
180 or jointly.

181 (o) Fees pledged for repayment of revenue bonds issued
182 under this section or article twelve-b, chapter eighteen prior
183 to the effective date of this section shall be transferred to the
184 commission in a manner prescribed by the commission. The
185 commission may transfer funds from the accounts of
186 institutions pledged for the repayment of revenue bonds
187 issued prior to the effective date of this section or issued
188 subsequently by the commission upon the request of

189 institutions, if an institution fails to transfer the pledged
190 revenues to the commission in a timely manner.

191 (p) Effective July 1, 2004, the capital and auxiliary
192 capital fees authorized by this section and section one of this
193 article are in lieu of any other fees set out in this code for
194 capital and auxiliary capital projects to benefit public higher
195 education institutions. Notwithstanding any other provisions
196 of this code to the contrary, in the event any capital, tuition,
197 registration or auxiliary fees are pledged to the payment of
198 any revenue bonds issued pursuant to any general bond
199 resolutions of the commission, any of its predecessors or any
200 institution, adopted prior to the effective date of this section,
201 such fees shall remain in effect in amounts not less than the
202 amounts in effect as of that date, until the revenue bonds
203 payable from any of the fees have been paid or the pledge of
204 the fees is otherwise legally discharged.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18. State Lottery Fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; State Lottery Education Fund; State Lottery Senior Citizens Fund; allocation and appropriation of net profits.

1 (a) There is continued a special revenue fund in the State
2 Treasury which shall be designated and known as the State
3 Lottery Fund. The fund consists of all appropriations to the
4 fund and all interest earned from investment of the fund and
5 any gifts, grants or contributions received by the fund. All
6 revenues received from the sale of lottery tickets, materials
7 and games shall be deposited with the State Treasurer and

8 placed into the State Lottery Fund. The revenue shall be
9 disbursed in the manner provided in this section for the
10 purposes stated in this section and shall not be treated by the
11 Auditor and Treasurer as part of the general revenue of the
12 state.

13 (b) No appropriation, loan or other transfer of state funds
14 may be made to the commission or Lottery Fund after the
15 initial appropriation.

16 (c) A minimum annual average of forty-five percent of
17 the gross amount received from each lottery shall be
18 allocated and disbursed as prizes.

19 (d) Not more than fifteen percent of the gross amount
20 received from each lottery may be allocated to and may be
21 disbursed as necessary for fund operation and administration
22 expenses.

23 (e) The excess of the aggregate of the gross amount
24 received from all lotteries over the sum of the amounts
25 allocated by subsections (c) and (d) of this section shall be
26 allocated as net profit. In the event that the percentage
27 allotted for operations and administration generates a surplus,
28 the surplus shall be allowed to accumulate to an amount not
29 to exceed \$250,000. On a monthly basis, the director shall
30 report to the Joint Committee on Government and Finance of
31 the Legislature any surplus in excess of \$250,000 and remit
32 to the State Treasurer the entire amount of those surplus
33 funds in excess of \$250,000 which shall be allocated as net
34 profit.

35 (f) After first satisfying the requirements for funds
36 dedicated to the School Building Debt Service Fund in
37 subsection (h) of this section to retire the bonds authorized to
38 be issued pursuant to section eight, article nine-d, chapter
39 eighteen of this code, then satisfying the requirements for
40 funds dedicated to the Education, Arts, Sciences and Tourism
41 Debt Service Fund, in subsection (i) of this section to retire

42 the bonds authorized to be issued pursuant to section eleven-
43 a, article six, chapter five of this code and section sixteen-a,
44 article fifteen, chapter thirty-one of this code, and then
45 satisfying the requirements for funds dedicated to the
46 Community and Technical College Capital Improvement
47 Fund in subsection (j) of this section to retire the bonds for
48 community and technical college capital improvements
49 authorized to be issued pursuant to section eight, article ten,
50 chapter eighteen-b of this code, any and all remaining funds
51 in the State Lottery Fund shall be made available to pay debt
52 service in connection with any revenue bonds issued pursuant
53 to section eighteen-a of this article, if and to the extent
54 needed for such purpose from time to time. The Legislature
55 shall annually appropriate all of the remaining amounts
56 allocated as net profits in subsection (e) of this section, in
57 such proportions as it considers beneficial to the citizens of
58 this state, to: (1) The Lottery Education Fund created in
59 subsection (g) of this section; (2) the School Construction
60 Fund created in section six, article nine-d, chapter eighteen
61 of this code; (3) the Lottery Senior Citizens Fund created in
62 subsection (k) of this section; and (4) the Division of Natural
63 Resources created in section three, article one, chapter twenty
64 of this code and the West Virginia Development Office as
65 created in section one, article two, chapter five-b of this code,
66 in accordance with subsection (l) of this section. No transfer
67 to any account other than the School Building Debt Service
68 Fund, the Education, Arts, Sciences and Tourism Debt
69 Service Fund, the Community and Technical College Capital
70 Improvement Fund, the Economic Development Project Fund
71 created under section eighteen-a, article twenty-two, chapter
72 twenty-nine of this code, or any fund from which debt service
73 is paid under subsection (c), section eighteen-a of this article
74 may be made in any period of time in which a default exists
75 in respect to debt service on bonds issued by the School
76 Building Authority, the State Building Commission, the
77 Higher Education Policy Commission, the Economic
78 Development Authority or which are otherwise secured by
79 lottery proceeds. No additional transfer may be made to any

80 account other than the School Building Debt Service Account
81 and the Education, Arts, Sciences and Tourism Debt Service
82 Fund, and the Community and Technical College Capital
83 Improvement Fund, when net profits for the preceding twelve
84 months are not at least equal to one hundred fifty percent of
85 debt service on bonds issued by the School Building
86 Authority, the State Building Commission and the Higher
87 Education Policy Commission which are secured by net
88 profits.

89 (g) There is continued a special revenue fund in the State
90 Treasury which shall be designated and known as the Lottery
91 Education Fund. The fund shall consist of the amounts
92 allocated pursuant to subsection (f) of this section, which
93 shall be deposited into the Lottery Education Fund by the
94 State Treasurer. The Lottery Education Fund shall also
95 consist of all interest earned from investment of the Lottery
96 Education Fund and any other appropriations, gifts, grants,
97 contributions or moneys received by the Lottery Education
98 Fund from any source. The revenues received or earned by
99 the Lottery Education Fund shall be disbursed in the manner
100 provided below and may not be treated by the Auditor and
101 Treasurer as part of the general revenue of the state.
102 Annually, the Legislature shall appropriate the revenues
103 received or earned by the Lottery Education Fund to the state
104 system of public and higher education for these educational
105 programs it considers beneficial to the citizens of this state.

106 (h) On or before the twenty-eighth day of each month, as
107 long as revenue bonds or refunding bonds are outstanding,
108 the lottery director shall allocate to the School Building Debt
109 Service Fund created pursuant to the provisions of section
110 six, article nine-d, chapter eighteen of this code, as a first
111 priority from the net profits of the lottery for the preceding
112 month, an amount equal to one tenth of the projected annual
113 principal, interest and coverage ratio requirements on any and
114 all revenue bonds and refunding bonds issued, or to be
115 issued, on or after April 1, 1994, as certified to the lottery

116 director in accordance with the provisions of section six,
117 article nine-d, chapter eighteen of this code. In no event shall
118 the monthly amount allocated exceed \$1,800,000 nor may the
119 total allocation of the net profits to be paid into the School
120 Building Debt Service Fund, as provided in this section, in
121 any fiscal year exceed the lesser of the principal and interest
122 requirements certified to the lottery director or \$18 million.
123 In the event there are insufficient funds available in any
124 month to transfer the amount required to be transferred
125 pursuant to this subsection to the School Debt Service Fund,
126 the deficiency shall be added to the amount transferred in the
127 next succeeding month in which revenues are available to
128 transfer the deficiency. A lien on the proceeds of the State
129 Lottery Fund up to a maximum amount equal to the projected
130 annual principal, interest and coverage ratio requirements,
131 not to exceed \$27 million annually, may be granted by the
132 School Building Authority in favor of the bonds it issues
133 which are secured by the net lottery profits. When the school
134 improvement bonds, secured by profits from the lottery and
135 deposited in the School Debt Service Fund, mature, the
136 profits shall become available for debt service on additional
137 school improvement bonds as a first priority from the net
138 profits of the lottery or may at the discretion of the authority
139 be placed into the School Construction Fund created pursuant
140 to the provisions of section six, article nine-d, chapter
141 eighteen of this code.

142 (i) Beginning on or before July 28, 1996, and continuing
143 on or before the twenty-eighth day of each succeeding month
144 thereafter, as long as revenue bonds or refunding bonds
145 issued in accordance with section eleven-a, article six,
146 chapter five or section sixteen-a, article fifteen, chapter
147 thirty-one of this code are outstanding, the lottery director
148 shall allocate to the Education, Arts, Sciences and Tourism
149 Debt Service Fund, created pursuant to the provisions of
150 section eleven-a, article six, chapter five of this code, as a
151 second priority from the net profits of the lottery for the
152 preceding month, an amount equal to one tenth of the

153 projected annual principal, interest and coverage ratio
154 requirements on any and all revenue bonds and refunding
155 bonds issued, or to be issued, on or after April 1, 1996, as
156 certified to the lottery director in accordance with the
157 provisions of section eleven-a, article six, chapter five or
158 section sixteen-a, article fifteen, chapter thirty-one of this
159 code. In no event may the monthly amount allocated exceed
160 \$1 million nor may the total allocation paid into the
161 Education, Arts, Sciences and Tourism Debt Service Fund,
162 as provided in this section, in any fiscal year exceed the
163 lesser of the principal and interest requirements certified to
164 the lottery director or \$10 million. In the event there are
165 insufficient funds available in any month to transfer the
166 amount required pursuant to this subsection to the Education,
167 Arts, Sciences and Tourism Debt Service Fund, the
168 deficiency shall be added to the amount transferred in the
169 next succeeding month in which revenues are available to
170 transfer the deficiency. A second-in-priority lien on the
171 proceeds of the State Lottery Fund up to a maximum amount
172 equal to the projected annual principal, interest and coverage
173 ratio requirements, not to exceed \$15 million annually, may
174 be granted by the State Building Commission in favor of the
175 bonds it issues which are secured by the net lottery profits.

176 (j) Beginning on or before July 28, 2008, and continuing
177 on or before the twenty-eighth day of each succeeding month
178 thereafter, as long as revenue bonds or refunding bonds are
179 outstanding, the lottery director shall allocate to the
180 Community and Technical College Capital Improvement
181 Fund, created pursuant to section eight, article ten, chapter
182 eighteen-b of this code, as a third priority from net profits of
183 the lottery for the preceding month, an amount equal to one
184 tenth of the projected annual principal, interest and coverage
185 ratio requirements on any and all revenue bonds and
186 refunding bonds issued or to be issued, on or after April 1,
187 2008, as certified by the lottery director in accordance with
188 the provisions of that section. In no event may the monthly
189 amount allocated exceed \$500,000 nor may the total

190 allocation paid to the Community and Technical Capital
191 Improvement Fund, as provided in this section, in any fiscal
192 year exceed the lesser of the principal and interest
193 requirements certified to the lottery director or \$5 million. In
194 the event there are insufficient funds available in any month
195 to transfer the amount required pursuant to this subsection to
196 the Community and Technical College Capital Improvement
197 Fund, the deficiency shall be added to the amount transferred
198 in the next succeeding month in which revenues are available
199 to transfer the deficiency.

200 (1) A third-in-priority lien on the proceeds of the State
201 Lottery Fund up to a maximum amount equal to the projected
202 annual principal, interest and coverage ratio requirements,
203 not exceeding \$7,500,000 annually, may be granted by the
204 Higher Education Policy Commission in favor of the bonds
205 it issues which are secured by the net lottery profits.

206 (2) When the community and technical college capital
207 improvement bonds secured by profits from the lottery and
208 deposited in the Community and Technical College Capital
209 Improvement Fund mature, the profits shall become available
210 for debt service on additional community and technical
211 college capital improvement bonds as a second priority from
212 the net profits of the lottery.

213 (3) The Council for Community and Technical College
214 Education shall approve all community and technical college
215 capital improvement plans prior to the distribution of bond
216 proceeds.

217 (4) Prior to the issuance of community and technical
218 college revenue bonds pursuant to this subsection, the lottery
219 director shall transfer \$5 million to the Community and
220 Technical College Improvement Fund, less any amounts
221 needed for initial debt service payments, to be used on a cash
222 basis for community and technical college capital
223 improvements and capital projects.

224 (k) There is continued a special revenue fund in the State
225 Treasury which shall be designated and known as the Lottery
226 Senior Citizens Fund. The fund shall consist of the amounts
227 allocated pursuant to subsection (f) of this section, which
228 amounts shall be deposited into the Lottery Senior Citizens
229 Fund by the State Treasurer. The Lottery Senior Citizens
230 Fund shall also consist of all interest earned from investment
231 of the Lottery Senior Citizens Fund and any other
232 appropriations, gifts, grants, contributions or moneys
233 received by the Lottery Senior Citizens Fund from any
234 source. The revenues received or earned by the Lottery
235 Senior Citizens Fund shall be distributed in the manner
236 provided below and may not be treated by the Auditor or
237 Treasurer as part of the general revenue of the state.
238 Annually, the Legislature shall appropriate the revenues
239 received or earned by the Lottery Senior Citizens Fund to any
240 senior citizens medical care and other programs it considers
241 beneficial to the citizens of this state.

242 (l) The Division of Natural Resources and the West
243 Virginia Development Office, as appropriated by the
244 Legislature, may use the amounts allocated to them pursuant
245 to subsection (f) of this section for one or more of the
246 following purposes: (1) The payment of any or all of the
247 costs incurred in the development, construction,
248 reconstruction, maintenance or repair of any project or
249 recreational facility, as these terms are defined in section
250 four, article five, chapter twenty of this code, pursuant to the
251 authority granted to it under article five, chapter twenty of
252 this code; (2) the payment, funding or refunding of the
253 principal of, interest on or redemption premiums on any
254 bonds, security interests or notes issued by the parks and
255 recreation section of the Division of Natural Resources under
256 article five, chapter twenty of this code; or (3) the payment of
257 any advertising and marketing expenses for the promotion
258 and development of tourism or any tourist facility or
259 attraction in this state.

CHAPTER 15**(H.B. 104 By Mr. Speaker, Mr. Thompson,
and Delegate Armstead)
[By Request of the Executive]**

[Passed June 2, 2009; in effect from passage]
[Approved by the Governor on June 16, 2009.]

AN ACT to amend and reenact §11-14C-48 of the Code of West Virginia, 1931, as amended, all relating to the Motor Fuel Excise Tax Shortfall Reserve Fund; providing for continuation of the Motor Fuel Excise Tax Shortfall Reserve Fund; specifying termination of the Motor Fuel Excise Tax Shortfall Reserve Fund in 2013; and requiring the Commissioner of Highways to submit reports to the Joint Committee on Government and Finance for a specified time at specified intervals.

Be it enacted by the Legislature of West Virginia:

That §11-14C-48 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 14C. MOTOR FUEL EXCISE TAX.**§11-14C-48. Motor Fuel Excise Tax Shortfall State Road Fund support payment.**

- 1 (a) There is hereby created in the State Treasury a special
- 2 fund to be known and designated as the “Motor Fuel Excise
- 3 Tax Shortfall Reserve Fund” to be administered by the Tax
- 4 Commissioner for the purposes provided by this section. The

5 fund shall consist of moneys transferred to the General
6 Revenue Fund pursuant to appropriation of the Legislature.
7 At the end of each fiscal year, during the fund's existence,
8 the moneys in the fund shall not expire to the general fund,
9 but shall remain available for expenditure during the ensuing
10 fiscal year. The fund shall terminate on August 1, 2013.
11 Any moneys remaining in the fund on that termination date
12 shall be transferred to the General Revenue Fund. No
13 provision of this section may be construed to require funding
14 for the purposes of this section in excess of amounts
15 transferred to the fund pursuant to appropriation of the
16 Legislature.

17 (b) *Monthly shortfalls for fiscal years beginning on July*
18 *1, 2008, 2009, 2010, 2011 and 2012.* -- Beginning on July 31
19 of each fiscal year beginning in 2008, 2009, 2010, 2011 and
20 2012, and on the last day of each month of each specified
21 fiscal year until, and including, June 30, 2013, or as soon
22 after the last day of each month as is practicable, the Tax
23 Commissioner shall determine the amount of the monthly
24 motor fuel excise tax revenue shortfall that occurred for each
25 month. No such determination shall be made for any month
26 ending after June 30, 2013.

27 (1) *Transfer for monthly shortfall.* -- Within thirty days
28 after making the determination of the monthly motor fuel
29 excise tax revenue shortfall that occurred for each month, the
30 Tax Commissioner shall transfer moneys in an amount equal
31 to the amount of the motor fuel excise tax revenue shortfall
32 that occurred for each month from the Motor Fuel Excise Tax
33 Shortfall Reserve Fund to the State Road Fund: *Provided,*
34 *That the total amount of moneys transferred from the Motor*
35 *Fuel Excise Tax Shortfall Reserve Fund to the State Road*
36 *Fund in each specified fiscal year through total aggregate*
37 *monthly transfers shall not exceed the balance remaining in*
38 *the Motor Fuel Excise Tax Shortfall Reserve Fund. No such*
39 *transfer shall be made that is attributable to any month*
40 *beginning after June 30, 2013: Provided, however, That*

41 transfers attributable to the reconciliation for the period
42 beginning July 1, 2012, to June 30, 2013, mandated by
43 paragraph (2) of this subsection shall be made, if required.

44 (2) *Annual reconciliation.* -- On June 30 of each fiscal
45 year beginning in 2008, 2009, 2010, 2011 and 2012, or as
46 soon thereafter as is practicable, the Tax Commissioner shall
47 determine the amount of the annual motor fuel excise tax
48 revenue shortfall that occurred for each of the specified fiscal
49 years.

50 (A) *Transfer for annual reconciliation for the fiscal year.*
51 -- The amount of the annual motor fuel excise tax revenue
52 shortfall that occurred for each specified fiscal year shall be
53 compared to the total amount of moneys transferred from the
54 Motor Fuel Excise Tax Shortfall Reserve Fund to the State
55 Road Fund over the same fiscal year through total aggregate
56 monthly transfers. The resulting difference is the
57 reconciliation amount.

58 (B) *Net Shortfall.* -- If the total amount of moneys
59 transferred from the Motor Fuel Excise Tax Shortfall Reserve
60 Fund to the State Road Fund for each specified fiscal year
61 through total aggregate monthly transfers is less than the
62 amount of the annual motor fuel excise tax revenue shortfall
63 that occurred over the same fiscal year, then on or before
64 August 1 next succeeding the end of each such specified
65 fiscal year, an amount of money equal to the reconciliation
66 amount shall be transferred by the Tax Commissioner from
67 the Motor Fuel Excise Tax Shortfall Reserve Fund to the
68 State Road Fund: *Provided,* That the sum of the
69 reconciliation amount subject to transfer and the total amount
70 of moneys transferred from the Motor Fuel Excise Tax
71 Shortfall Reserve Fund to the State Road Fund in each such
72 fiscal year through total aggregate monthly transfers shall not
73 exceed the amount remaining in the Motor Fuel Excise Tax
74 Shortfall Reserve Fund.

75 (C) *Net Overage.* -- If the total amount of moneys
76 transferred from the Motor Fuel Excise Tax Shortfall Reserve
77 Fund to the State Road Fund for each specified fiscal year
78 through total aggregate monthly transfers is greater than the
79 amount of the annual motor fuel excise tax revenue shortfall
80 that occurred over the same fiscal year, then moneys equal to
81 the reconciliation amount shall be offset against amounts that
82 would have otherwise been transferred by the Tax
83 Commissioner from the Motor Fuel Excise Tax Shortfall
84 Reserve Fund to the State Road Fund under this section in the
85 next succeeding fiscal year, and moneys transferred shall
86 accordingly decrease.

87 (c) *Definitions.* --

88 (1) "Calendar year" means the year beginning on January
89 1 and ending on December 31.

90 (2) "Motor fuel excise tax revenue shortfall" means the
91 official West Virginia state revenue estimate for motor fuel
92 excise tax revenues for a designated period minus the amount
93 of motor fuel excise tax collected for the same period:
94 *Provided,* That if the motor fuel excise tax collected for the
95 designated period is greater than the official West Virginia
96 state revenue estimate for motor fuel excise tax revenues for
97 the same period, the motor fuel excise tax revenue shortfall
98 is zero for the period.

99 (d) *Reporting.* -- The Commissioner of Highways shall
100 submit a report to the Joint Committee on Government and
101 Finance not later than the last day of each month for the
102 period of July 1 2008 through June 30, 2013, providing an
103 analysis of the financial status of the State Road Fund and
104 funds for highway maintenance.

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND EXTRAORDINARY SESSION, 2009

CHAPTER 1

**(S.B. 2001 - By Senators Tomblin, Mr. President,
and Caruth)**

[By Request of the Executive]

[Passed June 17, 2009; in effect from passage.]

[Approved by the Governor on June 22, 2009.]

AN ACT making a supplementary appropriation of Lottery Net Profits from the balance of moneys remaining as an unappropriated balance in Lottery Net Profits to the State Department of Education, fund 3951, fiscal year 2009, organization 0402, to the Community and Technical College Capital Improvement Fund, fund 4908, fiscal year 2009, organization 0442, and to the Higher Education Policy Commission - Lottery Education - Higher Education Policy Commission - Control Account, fund 4925, fiscal year 2009, organization 0441, by supplementing and amending the appropriations for the fiscal year ending June 30, 2009.

WHEREAS, The Governor submitted to the Legislature on June 15, 2009, a Statement of Lottery Net Profits, setting forth therein the cash balance as of July 1, 2008, and further included the estimate of revenues for the fiscal year 2009, less regular appropriations for the fiscal year 2009; and

17 And that the total appropriation for the fiscal year ending
18 June 30, 2009, to fund 4908, fiscal year 2009, organization
19 0442, be supplemented and amended to read as follows:

20 TITLE II--APPROPRIATIONS.

21 **Sec. 4. Appropriations from Lottery Net Profits.**

22 *254-Community and Technical College*
23 *Capital Improvement Fund*

24 (WV Code Chapter 18B)

25 Fund 4908 FY 2009 Org 0442

26			Lottery
27		Activity	Funds

28	1 Capital Outlay and		
29	2 Improvements - Total (R)	. . . . 847	\$ 5,000,000

30 Any unexpended balance remaining in the appropriation
31 for Capital Outlay and Improvements - Total (fund 4908,
32 activity 847) at the close of fiscal year 2009 is hereby
33 reappropriated for expenditure during fiscal year 2010.

34 And that the total appropriation for the fiscal year ending
35 June 30, 2009, to fund 4925, fiscal year 2009, organization
36 0441, be supplemented and amended by adding new items of
37 appropriation as follows:

38 TITLE II--APPROPRIATIONS.

39 **Sec. 4. Appropriations from Lottery Net Profits.**

40 *255-Higher Education Policy Commission-*
41 *Lottery Education-*

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42 *Higher Education Policy Commission-*
43 *Control Account*

44 (WV Code Chapters 18B and 18C)

45 Fund 4925 FY 2009 Org 0441

46 **Lottery**
47 **Activity Funds**

48	15a	Unclassified (R)	099	\$ 2,000,000
49	23a	Higher Education -		
50	23b	Special Projects (R)	488	400,000

51 The purpose of this supplementary appropriation bill is to
52 supplement, amend, add and increase items of appropriation
53 in the aforesaid accounts for the designated spending units
54 for expenditure during fiscal year 2009.



CHAPTER 2

**(S.B. 2002 - By Senators Tomblin, Mr. President,
and Caruth)**

[By Request of the Executive]

[Passed June 17, 2009; in effect from passage.]
[Approved by the Governor on June 22, 2009.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Administration - Office of the Secretary,

fund 0186, fiscal year 2009, organization 0201, by supplementing and amending the appropriations for the fiscal year ending June 30, 2009.

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2009, to fund 0186, fiscal year 2009, organization 0201, be supplemented and amended by decreasing an existing item of appropriation as follows:

1 TITLE II--APPROPRIATIONS.

2 **Section 1. Appropriations from General Revenue.**

3 **DEPARTMENT OF ADMINISTRATION**

4 *18-Department of Administration-*
5 *Office of the Secretary*

6 (WV Code Chapter 5F)

7 Fund 0186 FY 2009 Org 0201

8		General
9		Revenue
10	Activity	Funds

11	9 Lease Rental Payments	516	\$ 853,728
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12 And that the total appropriation for the fiscal year ending
13 June 30, 2009, to fund 0186, fiscal year 2009, organization
14 0201, be supplemented and amended by creating a new item
15 of appropriation as follows:

16 TITLE II--APPROPRIATIONS.

17 **Section 1. Appropriations from General Revenue.**

18 **DEPARTMENT OF ADMINISTRATION**

1300, to the Secretary of State, fund 0155, fiscal year 2009, organization 1600, to the Department of Commerce - West Virginia Development Office, fund 0256, fiscal year 2009, organization 0307, to the Department of Education and the Arts - Division of Culture and History, fund 0293, fiscal year 2009, organization 0432, to the Department of Environmental Protection - Division of Environmental Protection, fund 0273, fiscal year 2009, organization 0313, to the Department of Health and Human Resources - Division of Health - Central Office, fund 0407, fiscal year 2009, organization 0506, to the Department of Health and Human Resources - Division of Human Services, fund 0403, fiscal year 2009, organization 0511, to the Department of Military Affairs and Public Safety - Division of Corrections - Correctional Units, fund 0450, fiscal year 2009, organization 0608, to the West Virginia Council for Community and Technical College Education - Control Account, fund 0596, fiscal year 2009, organization 0420, and to the Higher Education Policy Commission - System - Control Account, fund 0586, fiscal year 2009, organization 0442, by supplementing and amending the appropriations for the fiscal year ending June 30, 2009.

WHEREAS, The Governor submitted to the Legislature a Statement of the State Fund, General Revenue, dated June 15, 2009, setting forth therein the cash balance as of July 1, 2008, and further included the estimate of revenues for the fiscal year 2009, less net appropriation balances forwarded and regular appropriations for the fiscal year 2009; and

WHEREAS, It appears from the Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2009; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2009, to fund 0105, fiscal year 2009, organization 0100, be supplemented and amended by increasing an existing item of appropriation as follows:

1 TITLE II--APPROPRIATIONS.

2 Section 1. Appropriations of General Revenue.

3 EXECUTIVE

4 7-Governor's Office -
5 Civil Contingent Fund

6 (WV Code Chapter 5)

7 Fund 0105 FY 2009 Org 0100

8		General
9		Revenue
10	Activity	Funds

11	1a May 2009 Flood Recovery -		
12	Surplus(R)	236	\$ 3,800,000

13 Any unexpended balance remaining in the appropriation
14 for May 2009 Flood Recovery - Surplus (fund 0105, activity
15 236) at the close of the fiscal year 2009 is hereby
16 reappropriated for expenditure during the fiscal year 2010.

17 And that the total appropriation for the fiscal year ending
18 June 30, 2009, to fund 0126, fiscal year 2009, organization
19 1300, be supplemented and amended by increasing an
20 existing item of appropriation as follows:

21 TITLE II--APPROPRIATIONS.

22 Section 1. Appropriations of General Revenue.

23 EXECUTIVE

24 9 - Treasurer's Office

25 (WV Code Chapter 12)

26 Fund 0126 FY 2009 Org 1300

27		General
28		Revenue
29	Activity	Funds

30 8 Personal Finance Education

31 9 Program for 21st Century

32 Skills - Surplus (R) 340 \$ 250,000

33 Any unexpended balance remaining in the appropriations
34 for Personal Finance Education Program for 21st Century
35 Skills (fund 0126, activity 313), and Personal Finance
36 Education Program for 21st Century Skills - Surplus (fund
37 0126, activity 340) at the close of the fiscal year 2009 are
38 hereby reappropriated for expenditure during the fiscal year
39 2010.

40 And that the total appropriation for the fiscal year ending
41 June 30, 2009, to fund 0155, fiscal year 2009, organization
42 1600, be supplemented and amended by increasing an
43 existing item of appropriation as follows:

44 TITLE II--APPROPRIATIONS.

45 Section 1. Appropriations of General Revenue.

46 EXECUTIVE

47 16-Secretary of State

48 (WV Code Chapters 3, 5 and 59)

49 Fund 0155 FY 2009 Org 1600

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50 **General**
51 **Revenue**
52 **Activity Funds**

53 37 Unclassified - Surplus (R) 097 \$ 325,000

54 Any unexpended balance remaining in the appropriation
55 for Unclassified - Surplus (fund 0155, activity 097) at the
56 close of the fiscal year 2009 is hereby reappropriated for
57 expenditure during the fiscal year 2010.

58 And that the total appropriation for the fiscal year ending
59 June 30, 2009, to fund 0256, fiscal year 2009, organization
60 0307, be supplemented and amended by increasing an
61 existing item of appropriation as follows:

62 TITLE II--APPROPRIATIONS.

63 **Section 1. Appropriations of General Revenue.**

64 **DEPARTMENT OF COMMERCE**

65 *35 - West Virginia Development Office*

66 (WV Code Chapter 5B)

67 Fund 0256 FY 2009 Org 0307

68 **General**
69 **Revenue**
70 **Activity Funds**

71 7 Unclassified - Surplus (R) 097 \$ 100,000

72 And that the total appropriation for the fiscal year ending
73 June 30, 2009, to fund 0293, fiscal year 2009, organization
74 0432, be supplemented and amended by adding a new item
75 of appropriation as follows:

76 TITLE II--APPROPRIATIONS.

77 **Section 1. Appropriations of General Revenue.**

78 **DEPARTMENT OF EDUCATION AND THE ARTS**

79 *52 - Division of Culture and History*

80 (WV Code Chapter 29)

81 Fund 0293 FY 2009 Org 0432

82			General
83			Revenue
84		Activity	Funds

85	4a	Capital Outlay, Repairs &		
86	4b	Equipment - Surplus (R)	677	\$ 375,000

87 And that the total appropriation for the fiscal year ending
88 June 30, 2009, to fund 0273, fiscal year 2009, organization
89 0313, be supplemented and amended by increasing an
90 existing item of appropriation as follows:

91 TITLE II--APPROPRIATIONS.

92 **Section 1. Appropriations of General Revenue.**

93 **DEPARTMENT OF ENVIRONMENTAL**
94 **PROTECTION**

95 *57 - Division of Environmental Protection*

96 (WV Code Chapter 22)

97 Fund 0273 FY 2009 Org 0313

1994 APPROPRIATIONS [Ch. 3

98 **General**
99 **Revenue**
100 **Activity Funds**

101 4a Unclassified - Surplus (R) 097 \$ 250,000

102 Any unexpended balance remaining in the appropriation
103 for Unclassified - Surplus (fund 0273, activity 097) at the
104 close of the fiscal year 2009 is hereby reappropriated for
105 expenditure during the fiscal year 2010.

106 And that the total appropriation for the fiscal year ending
107 June 30, 2009, to fund 0407, fiscal year 2009, organization
108 0506, be supplemented and amended by increasing an
109 existing item of appropriation as follows:

110 TITLE II--APPROPRIATIONS.

111 **Section 1. Appropriations of General Revenue.**

112 **DEPARTMENT OF HEALTH AND**
113 **HUMAN RESOURCES**

114 *60--Division of Health-*

115 *Central Office*

116 (WV Code Chapter 16)

117 Fund 0407 FY 2009 Org 0506

118 **General**
119 **Revenue**
120 **Activity Funds**

121 35 Health Right Free Clinics -
122 Surplus (R) 728 \$ 300,000

123 Any unexpended balance remaining in the
124 appropriation for Health Right Free Clinics - Surplus (fund
125 0407, activity 728) at the close of the fiscal year 2009 is
126 hereby reappropriated for expenditure during the fiscal
127 year 2010.

128 And that the total appropriation for the fiscal year ending
129 June 30, 2009, to fund 0403, fiscal year 2009, organization
130 0511, be supplemented and amended by increasing existing
131 items of appropriation as follows:

132 TITLE II--APPROPRIATIONS.

133 Section 1. Appropriations of General Revenue.

134 DEPARTMENT OF HEALTH AND
135 HUMAN RESOURCES

136 64-Division of Human Services

137 (WV Code Chapters 9, 48 and 49)

138 Fund 0403 FY 2009 Org 0511

139 140 141	Activity	General Revenue Funds
142 24 In-Home Family Education -		
143 Surplus 700		\$ 300,000
144 34 Grants for Licensed Domestic		
145 35 Violence Programs and Statewide		
146 36 Prevention - Surplus (R) 866		1,000,000
147 40 Indigent Burials - Surplus (R) . . . 076		300,000

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148 Any unexpended balance remaining in the appropriations
 149 for Indigent Burials - Surplus (fund 0403, activity 076), and
 150 Grants for Licensed Domestic Violence Programs and
 151 Statewide Prevention - Surplus (fund 0403, activity 866) at
 152 the close of the fiscal year 2009 are hereby reappropriated for
 153 expenditure during the fiscal year 2010.

154 And that the total appropriation for the fiscal year ending
 155 June 30, 2009, to fund 0450, fiscal year 2009, organization
 156 0608, be supplemented and amended by increasing an
 157 existing item of appropriation as follows:

158 TITLE II--APPROPRIATIONS.

159 Section 1. Appropriations of General Revenue.

160 DEPARTMENT OF MILITARY AFFAIRS
 161 AND PUBLIC SAFETY

162 *71--Division of Corrections -*
 163 *Correctional Units*

164 (WV Code Chapters 25, 28, 49 and 62)

165 Fund 0450 FY 2009 Org 0608

166		General
167		Revenue
168	Activity	Funds

169	20	Stephens Correctional		
170	20a	Facility - Surplus (R)	..... 795	\$ 750,000

171 Any unexpended balance remaining in the appropriation
 172 for Stephens Correctional Facility - Surplus (fund 0450,
 173 activity 795) at the close of the fiscal year 2009 is hereby
 174 reappropriated for expenditure during the fiscal year 2010.

175 And that the total appropriation for the fiscal year ending
176 June 30, 2009, to fund 0596, fiscal year 2009, organization
177 0420, be supplemented and amended by adding new items of
178 appropriation as follows:

179 TITLE II--APPROPRIATIONS.

180 **Section 1. Appropriations of General Revenue.**

181 **HIGHER EDUCATION**

182 *89--West Virginia Council for*
183 *Community and Technical College Education-*
184 *Control Account*

185 (WV Code Chapter 18B)

186 Fund 0596 FY 2009 Org 0420

187		General
188		Revenue
189	Activity	Funds

190	2a	Unclassified - Surplus (R)	097	\$ 1,580,000
191	2b	Equipment - Surplus (R)	341	3,500,000

192 Any unexpended balance remaining in the appropriations
193 for Unclassified - Surplus (fund 0596, activity 097) and
194 Equipment - Surplus (fund 0596, activity 341) at the close of
195 the fiscal year 2009 are hereby reappropriated for
196 expenditure during the fiscal year 2010.

197 And that the total appropriation for the fiscal year ending
198 June 30, 2009, to fund 0586, fiscal year 2009, organization
199 0442, be supplemented and amended by adding a new item
200 of appropriation as follows:

1998 APPROPRIATIONS [Ch. 3

201 TITLE II--APPROPRIATIONS.

202 **Section 1. Appropriations of General Revenue.**

203 **HIGHER EDUCATION**

204 *91--Higher Education Policy Commission -*
205 *System-*
206 *Control Account*

207 (WV Code Chapter 18B)

208 Fund 0586 FY 2009 Org 0442

209		General
210		Revenue
211	Activity	Funds

212	2a	Unclassified - Surplus (R)	097	\$ 2,500,000
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213 Any unexpended balance remaining in the appropriation
214 for Unclassified - Surplus (fund 0586, activity 097) at the
215 close of the fiscal year 2009 is hereby reappropriated for
216 expenditure during the fiscal year 2010.

217 The purpose of this supplemental appropriation bill is to
218 supplement, amend, add and increase items of appropriation
219 in the aforesaid accounts for the designated spending units
220 for expenditure during the fiscal year 2009.

●

CHAPTER 4

**(S.B. 2004 - By Senators Tomblin, Mr. President,
and Caruth)
[By Request of the Executive]**

[Passed June 17, 2009; in effect from passage.]
[Approved by the Governor on June 22, 2009.]

AN ACT supplementing, amending and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2009, organization 0803, for the fiscal year ending June 30, 2009.

WHEREAS, The Governor submitted to the Legislature a Statement of the State Road Fund, dated May 26, 2009, setting forth therein the cash balances and investments as of July 1, 2008, and further included the estimate of revenues for the fiscal year 2009, less net appropriation balances forwarded and regular appropriations for the fiscal year 2009; and

WHEREAS, It thus appears from the Statement of the State Road Fund there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2009; therefore

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the State Road Fund, fund 9017, fiscal year 2009, organization 0803, be amended and increased in the line items as follows:

2000

APPROPRIATIONS

[Ch. 5

1 TITLE II--APPROPRIATIONS.

2 **Sec. 2. Appropriations from State Road Fund.**

3 **DEPARTMENT OF TRANSPORTATION**

4 *93-Division of Highways*

5 (WV Code Chapters 17 and 17C)

6 Fund 9017 FY 2009 Org 0803

7			State
8			Road
9		Activity	Fund

10 5 Bridge Repair and Replacement . . 273 \$ 4,000,000

11 9 Interstate Construction 278 11,000,000

12 The purpose of this supplemental appropriation bill is to
13 supplement, amend and increase items of appropriation in the
14 aforesaid account for the designated spending unit for
15 expenditure during the fiscal year ending June 30, 2009.



CHAPTER 5

**(S.B. 2005 - By Senators Tomblin, Mr. President,
and Caruth)
[By Request of the Executive]**

[Passed June 17, 2009; in effect from passage.]
[Approved by the Governor on June 23, 2009.]

AN ACT making a supplementary appropriation of public moneys
out of the Treasury from the balance of moneys remaining as

an unappropriated balance in the State Fund, General Revenue, to the Department of Education and the Arts - State Board of Rehabilitation - Division of Rehabilitation Services, fund 0310, fiscal year 2010, organization 0932, by supplementing and amending the appropriations for the fiscal year ending June 30, 2010.

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2010, to fund 0310, fiscal year 2010, organization 0932, be supplemented and amended by decreasing existing items of appropriation as follows:

1 TITLE II--APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 DEPARTMENT OF EDUCATION AND THE ARTS

4 55-State Board of Rehabilitation-
5 Division of Rehabilitation Services

6 (WV Code Chapter 18)

7 Fund 0310 FY 2010 Org 0932

8	9	10	General Revenue Funds
		Activity	
11	3	Independent Living Services (R) . . . 009	\$ 232,469
12	7	Supported Employment Extended	
13	8	Services 206	60,000
14	11	Employment Attendant Care Program 598	30,000

15 And that the total appropriation for the fiscal year ending
16 June 30, 2009, to fund 0310, fiscal year 2010, organization
17 0932, be supplemented and amended by increasing an
18 existing item of appropriation as follows:

19 TITLE II--APPROPRIATIONS.

20 Section 1. Appropriations from General Revenue.

21 DEPARTMENT OF EDUCATION AND THE ARTS

22 *55-State Board of Rehabilitation-*
23 *Division of Rehabilitation Services*

24 (WV Code Chapter 18)

25 Fund 0310 FY 2010 Org 0932

26	General
27	Revenue
28	Funds
Activity	
29 4 Employee Benefits 010	\$ 322,469

30 The purpose of this supplemental appropriation bill is to
31 supplement, amend, decrease and increase items of
32 appropriation in the aforesaid account for the designated
33 spending unit for expenditure during the fiscal year 2010
34 with no new money being appropriated.

CHAPTER 6**(S.B. 2006 - By Senators Tomblin, Mr. President,
and Caruth)
[By Request of the Executive]**

[Passed June 17, 2009; in effect from passage.]
[Approved by the Governor on June 22, 2009.]

AN ACT making a supplementary appropriation from the State Fund, State Excess Lottery Revenue Fund, to the State Department of Education, fund 3517, fiscal year 2010, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2010.

WHEREAS, The Governor submitted to the Legislature on June 15, 2009, a Statement of the State Excess Lottery Revenue Fund, setting forth therein the cash balance as of July 1, 2008, and further included the estimate of revenue for fiscal year 2009, less regular appropriations for the fiscal year 2009; and further included the estimate of revenue for fiscal year 2010, less regular appropriations for the fiscal year 2010; and

WHEREAS, It appears from the Governor's Statement of the State Excess Lottery Revenue Fund there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2010; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2010, to fund 3517, fiscal year 2010, organization 0402, be

supplemented and amended by increasing an item of appropriation as follows:

1 TITLE II--APPROPRIATIONS.

2 **Sec. 5. Appropriations from State**
3 **Excess Lottery Revenue Fund.**

4 *274-State Department of Education*

5 Fund 3517 FY 2010 Org 0402

6 1 Student Enrichment Program879 \$ 5,000,000

7 The purpose of this supplementary appropriation bill is
8 to supplement, amend and increase an item of appropriation
9 in the aforesaid account for the designated spending unit for
10 expenditure during the fiscal year 2010.

LEGISLATURE OF WEST VIRGINIA

ACTS

THIRD EXTRAORDINARY SESSION, 2009

CHAPTER 1

**(S.B. 3003 - By Senators Tomblin, Mr. President,
and Caruth)
[By Request of the Executive]**

[Passed August 12, 2009; in effect from passage.]
[Approved by the Governor on August 19, 2009.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2010, to the Department of Commerce - West Virginia Development Office - Broadband Deployment Fund, fund 3174, fiscal year 2010, organization 0307, by supplementing and amending chapter 10, Acts of the Legislature, regular session, 2009, known as the Budget Bill.

WHEREAS, The Governor has established that there remains an unappropriated balance in the Department of Commerce - West Virginia Development Office - Broadband Deployment Fund, fund 3174, fiscal year 2010, organization 0307, available for expenditure during the fiscal year ending June 30, 2010, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter 10, Acts of the Legislature, regular session, 2009, known as the Budget Bill, be supplemented and amended by adding to Title II, section three thereof, the following:

1 TITLE II--APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**

3 **DEPARTMENT OF COMMERCE**

4 *124a--West Virginia Development Office —*
5 *Broadband Deployment Fund*

6 (WV Code Chapter 31)

7 Fund 3174 FY 2010 Org 0307

8			Other
9		Activity	Funds

10	1	Unclassified - Total	096	\$ 5,000,000
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11 The purpose of this supplementary appropriation bill is
12 to supplement the accounts in the budget act for the fiscal
13 year ending June 30, 2010, by providing for a new item of
14 appropriation to be established therein to appropriate funds
15 for the designated spending unit for expenditure during the
16 fiscal year 2010.

CHAPTER 2

**(H.B. 301 - By Mr. Speaker, Mr. Thompson,
and Delegate Armstead)
[By Request of the Executive]**

[Passed August 12, 2009; in effect from passage.]
[Approved by the Governor on August 19, 2009.]

AN ACT to amend and reenact §21A-6A-1, §21A-6A-5 and §21A-6A-6 of the Code of West Virginia, 1931, as amended, all relating to extended unemployment compensation benefits; providing for a temporary “state ‘on’ indicator” based on the average rate of total unemployment; providing for temporary increases in the extended benefit period and total extended benefit amount during a high unemployment period; making technical amendments throughout; and correcting nomenclature throughout.

Be it enacted by the Legislature of West Virginia:

That §21A-6A-1, §21A-6A-5 and §21A-6A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6A. EXTENDED BENEFITS PROGRAM.

§21A-6A-1. Definitions.

§21A-6A-5. Total extended benefit amount.

§21A-6A-6. Beginning and termination of extended benefit period.

§21A-6A-1. Definitions.

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

3 (1) “Extended benefit period” means a period which:

4 (A) Begins with the third week after a week for which
5 there is a state “on” indicator; and

6 (B) Ends with either of the following weeks, whichever
7 occurs later:

8 (i) The third week after the first week for which there is
9 a state “off” indicator; or

10 (ii) The thirteenth consecutive week of such period.
11 However, for periods beginning in a “high unemployment
12 period,” as determined in accordance with subdivision (3),
13 section five of this article, paragraph (B)(ii) of this
14 subdivision shall be applied by substituting “twentieth” for
15 “thirteenth.”

16 Notwithstanding the foregoing provisions of this
17 subdivision, no extended benefit period may begin by reason
18 of a state “on” indicator before the fourteenth week following
19 the end of a prior extended benefit period which was in effect
20 with respect to this state.

21 (2) After September 25, 1982, there is a “state ‘on’
22 indicator” for this state for a week if the commissioner
23 determines, in accordance with the regulations of the United
24 States Secretary of Labor, that for the period consisting of
25 such week and the immediately preceding twelve weeks, the
26 rate of insured unemployment (not seasonally adjusted)
27 under this article:

28 (A) Equaled or exceeded one hundred twenty percent of
29 the average of such rates for the corresponding thirteen-week
30 period ending in each of the preceding two calendar years,
31 and

32 (B) Equaled or exceeded five percent.

33 (C) An extended benefit period shall be made hereunder
34 as if subdivision (2) did not contain paragraph (A) thereof,
35 but only if the commissioner determines that the rate of
36 insured unemployment (not seasonally adjusted) equals or
37 exceeds six percent.

38 (3) For weeks of unemployment beginning on or after
39 February 1, 2009, and ending on or before December 5,
40 2009, or, if the application of section 2005(a) of Title II of
41 Division B of the American Recovery and Reinvestment Act
42 of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (“ARRA”)
43 is extended by act of Congress, ending on or before a date to
44 be determined by the commissioner not to exceed the
45 extended application of section 2005(a) of the ARRA, there
46 is a “state ‘on’ indicator” for this state for a week if the
47 commissioner determines, in accordance with regulations of
48 the United States Secretary of Labor, that:

49 (A) The average rate of total unemployment (seasonally
50 adjusted) for the period consisting of the most recent three
51 months for which data for all states are published before the
52 close of such week equals or exceeds six and one-half
53 percent, and

54 (B) The average rate of total unemployment in the state
55 for the three-month period specified in paragraph (A) of this
56 subdivision equals or exceeds one hundred ten percent of
57 such average for either or both of the corresponding three-
58 month periods ending in the two preceding calendar years.

59 (4) There is a state “off” indicator for a week if, for the
60 period consisting of such week and the immediately
61 preceding twelve weeks, none of the options specified in
62 either subdivision (2) or subdivision (3) result in a “state ‘on’
63 indicator.”

64 (5) "Rate of insured unemployment" means the
65 percentage derived by dividing:

66 (A) The average weekly number of individuals filing
67 claims for regular compensation in this state for weeks of
68 unemployment with respect to the most recent thirteen-
69 consecutive-week period, as determined by the commissioner
70 on the basis of his or her reports to the United States
71 Secretary of Labor, by

72 (B) The average monthly employment covered under this
73 chapter for the first four of the most recent six completed
74 calendar quarters ending before the end of such thirteen-week
75 period.

76 (6) "Regular benefits" means benefits payable to an
77 individual under this chapter or under any other state law
78 (including benefits payable to federal civilian employees and
79 to ex-servicemen pursuant to 5 U.S.C., chapter 85) other than
80 extended benefits.

81 (7) "Extended benefits" means benefits (including
82 benefits payable to federal civilian employees and to ex-
83 servicemen pursuant to 5 U.S.C., chapter 85) payable to an
84 individual under the provisions of this article for weeks of
85 unemployment in his or her eligibility period.

86 (8) "Eligibility period" of an individual means the period
87 consisting of the weeks in his or her benefit year which begin
88 in an extended benefit period and, if his or her benefit year
89 ends within such extended benefit period, any weeks
90 thereafter which begin in such period. Notwithstanding any
91 provision of this code to the contrary, an individual's
92 eligibility period shall include any eligibility period provided
93 in section 2005(b) of the ARRA.

94 (9) "Exhaustee" means an individual who, with respect
95 to any week of unemployment in his or her eligibility period:

96 (A) Has received, prior to such week, all of the regular
97 benefits which were available to him or her under this
98 chapter or any other state law (including dependents'
99 allowances and benefits payable to federal civilian employees
100 and ex-servicemen under 5 U.S.C., chapter 85) in his or her
101 current benefit year that includes such week: *Provided*, That
102 for the purposes of this subdivision, an individual shall be
103 deemed to have received all of the regular benefits which
104 were available to him or her although (i) as a result of a
105 pending appeal with respect to wages or employment which
106 were not considered in the original monetary determination
107 in his or her benefit year, he or she may subsequently be
108 determined to be entitled to added regular benefits, or (ii) he
109 or she may be entitled to regular benefits with respect to
110 future weeks of unemployment, but such benefits are not
111 payable with respect to such week of unemployment by
112 reason of the provisions of section one-a, article six of this
113 chapter; or

114 (B) His or her benefit year having expired prior to such
115 week, has no, or insufficient, wages or employment on the
116 basis of which he or she could establish a new benefit year
117 which would include such week; and

118 (C) Has no right to unemployment benefits or
119 allowances, as the case may be, under the Railroad
120 Unemployment Insurance Act, 45 U.S.C., §361, *et seq.*, the
121 Trade Expansion Act of 1962, 19 U.S.C., §1801, *et seq.*, the
122 Automotive Products Trade Act of 1965, 19 U.S.C., §2001,
123 *et seq.*, and such other federal laws as are specified in
124 regulations issued by the United States Secretary of Labor;
125 and has not received and is not seeking unemployment
126 benefits under the unemployment compensation law of the
127 Virgin Islands or of Canada; but if he or she is seeking such
128 benefits and the appropriate agency finally determines that he
129 or she is not entitled to benefits under such law he or she is
130 considered an exhaustee.

131 (10) “State law” means the unemployment insurance law
132 of any state, approved by the United States Secretary of
133 Labor under 26 U.S.C., §3304.

134 (11) No individual shall be entitled to extended benefits
135 during a period of unemployment if he or she was
136 disqualified under the provisions of subdivision (1), (2) or (3)
137 of section three, article six of this chapter, which
138 disqualification shall not be terminated until such individual
139 has returned to covered employment and has been employed
140 in covered employment for at least thirty working days.

141 (12)(A) Notwithstanding any other provisions of this
142 section, an individual shall be ineligible for payment of
143 extended benefits for any week of unemployment in his or
144 her eligibility period if the commissioner finds that during
145 such period:

146 (i) He or she failed to accept an offer of suitable work or
147 failed to apply for suitable work (as defined under
148 subdivision (12)(C) of this section), to which he or she was
149 referred by the commissioner; or

150 (ii) He or she failed to actively engage in seeking work as
151 prescribed under subdivision (12)(E) of this section.

152 (B) An individual who has been found ineligible for
153 extended benefits by reason of the provisions in subdivision
154 (12)(A) of this section shall also be denied benefits beginning
155 with the first day of the week following the week in which
156 such failure occurred and until he or she has been employed
157 in each of four subsequent weeks (whether or not
158 consecutive) and has earned remuneration equal to not less
159 than four times the extended weekly benefit amount;

160 (C) For purposes of this subdivision the term “suitable
161 work” means, with respect to any individual, any work which

162 is within such individual's capabilities: *Provided*, That the
163 gross average weekly remuneration payable for the work
164 must exceed the sum of:

165 (i) The individual's average weekly benefit amount (as
166 determined under subdivision (12)(D) of this section) plus;

167 (ii) The amount, if any, of supplemental unemployment
168 benefits (as defined in 26 U.S.C., §501(c)(17)(D)) payable to
169 such individual for such week; and further,

170 (iii) Pays wages equal to the higher of:

171 (I) The minimum wages provided by 29 U.S.C.,
172 §206(a)(1), without regard to any exemption; or

173 (II) The state or local minimum wage;

174 (iv) Provided that no individual shall be denied extended
175 benefits for failure to accept an offer or referral to any job
176 which meets the definition of suitability as described above
177 if:

178 (I) The position was not offered to such individual in
179 writing and was not listed with the employment service; or

180 (II) Such failure could not result in a denial of benefits
181 under the definition of suitable work for regular benefit
182 claimants in section five, article six of this chapter, to the
183 extent that the criteria of suitability in that section are not
184 inconsistent with the provisions of this subdivision; or

185 (III) The individual furnishes satisfactory evidence to the
186 commissioner that his or her prospects for obtaining work in
187 his or her customary occupation within a reasonably short
188 period are good. If such evidence is deemed satisfactory for
189 this purpose, the determination of whether any work is

190 suitable with respect to such individual shall be made in
191 accordance with the definition of suitable work in section
192 five, article six of this chapter, without regard to the
193 definition specified in this subdivision.

194 (D) Notwithstanding the provisions of this section to the
195 contrary, no work shall be deemed to be suitable work for an
196 individual which does not accord with the labor standard
197 provisions required by 26 U.S.C., §3304(a)(5) and set forth
198 herein under subdivision (12)(C)(iii)(I) of this section.

199 (E) For the purposes of subdivision (12)(A)(ii) of this
200 section an individual shall be treated as actively engaged in
201 seeking work during any week if:

202 (i) The individual has engaged in a systematic and
203 sustained effort to obtain work during such week, and

204 (ii) The individual furnishes tangible evidence that he or
205 she has engaged in such effort during such week.

206 (F) The employment service shall refer any claimant
207 entitled to extended benefits under this article to any suitable
208 work which meets the criteria prescribed in subdivision
209 (12)(C) of this section.

210 (G) An individual shall not be eligible to receive
211 extended benefits with respect to any week of unemployment
212 in his or her eligibility period if such individual has been
213 disqualified for regular benefits under this chapter because he
214 or she voluntarily left work, was discharged for misconduct
215 or refused an offer of suitable work unless the
216 disqualification imposed for such reasons has been
217 terminated in accordance with specific conditions established
218 under this subdivision requiring the individual to perform
219 service for remuneration subsequent to the date of such
220 disqualification.

221 (13) Notwithstanding any other provisions of this
222 chapter, if the benefit year of any individual ends within an
223 extended benefit period, the remaining balance of extended
224 benefits that such individual would, but for this section, be
225 entitled to receive in that extended benefit period, with
226 respect to weeks of unemployment beginning after the end of
227 the benefit year, shall be reduced (but not below zero) by the
228 product of the number of weeks for which the individual
229 received any amounts as trade readjustment allowances
230 within that benefit year, multiplied by the individual's weekly
231 benefit amount for extended benefits.

232 (14) An unemployed individual shall be eligible to
233 receive benefits with respect to any week only if it has been
234 found that he or she has been paid wages by an employer
235 who was subject to the provisions of this chapter during the
236 base period of his or her current benefit year in an amount at
237 least equal to forty times his or her benefit rate for total
238 unemployment.

239 (15) The provisions of subdivisions (11) and (12) of this
240 section shall not apply at any time should such provisions be
241 temporarily or permanently suspended by federal law. If
242 these provisions are suspended by federal law, the provisions
243 of state law which apply to claims for and the payment of
244 regular benefits shall apply to claims for and the payment of
245 extended benefits.

§21A-6A-5. Total extended benefit amount.

1 The total extended benefit amount payable to an eligible
2 individual with respect to his or her applicable benefit year
3 shall be the least of the following amounts:

4 (1) Fifty percent of the total amount of regular benefits
5 which were payable to him or her under this chapter in his or
6 her applicable benefit year;

7 (2) Thirteen times his or her weekly benefit amount
8 which was payable to him or her under this chapter for a
9 week of total unemployment in the applicable benefit year:
10 *Provided*, That an individual filing for extended benefits
11 through the interstate benefit payment plan and residing in a
12 state where an extended benefit period is not in effect shall be
13 limited to payment for only the first two weeks of such
14 extended benefits: *Provided, however*, That during any fiscal
15 year in which federal payments to states under section 204 of
16 the Federal-State Extended Unemployment Compensation
17 Act of 1970 are reduced under an order issued under section
18 252 of the Balanced Budget and Emergency Deficit Control
19 Act of 1985, the total extended benefit amount payable to an
20 individual with respect to his or her applicable benefit year
21 shall be reduced by an amount equal to the aggregate of the
22 reductions under section four, article six-a of this chapter in
23 the weekly amounts paid to the individual.

24 (3)(A) For weeks beginning in a high unemployment
25 period, subdivision (1) of this section shall be applied by
26 substituting “eighty percent” for “fifty percent” and
27 subdivision (2) of this section shall be applied by substituting
28 “twenty” for “thirteen.”

29 (B) For the purposes of this article, the term “high
30 unemployment period” means any period during which the
31 provisions of subdivision (3), section one of this article
32 would result in a “state ‘on’ indicator” if subdivision (3),
33 section one of this article were applied by substituting “eight
34 percent” for “six and one-half percent.”

§21A-6A-6. Beginning and termination of extended benefit period.

1 (1) Whenever an extended benefit period is to become
2 effective in this state, or in all states, as a result of a state or
3 a national “on” indicator, or an extended benefit period is to

4 be terminated in this state as a result of a state “off” indicator
5 or state and national “off” indicators, the commissioner shall
6 make an appropriate public announcement.

7 (2) Computations required by the provisions of
8 subdivision (5), section one of this article shall be made by
9 the commissioner, in accordance with regulations prescribed
10 by the United States Secretary of Labor.

11 (3) Whenever, during a period when emergency
12 unemployment compensation benefits are being paid under
13 the provisions of the Emergency Unemployment
14 Compensation Act of 1991, as amended, or under any
15 subsequent extension or reenactment thereof, the state “on”
16 indicator as defined in subdivisions (2) or (3) of section one
17 of this article triggers on a period of extended benefits, the
18 Governor of this state may elect to not implement the state
19 statutory provision and continue the payment of benefits
20 under the Emergency Unemployment Compensation Act of
21 1991, as amended, to those individuals who have exhausted
22 their entitlement to regular unemployment compensation
23 under state law.

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2009

HOUSE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
2010	..... 10	2566	..... 55	2839	.... 171
2170	.... 151	2567	..... 1	2841	.... 223
2218	.... 149	2569	..... 27	2860	..... 97
2222	.... 147	2651	..... 37	2863	.... 221
2225	.... 145	2652	..... 36	2869	..... 94
2305	..... 51	2660	.... 138	2870	.... 194
2309	.... 176	2684	..... 79	2877	.... 156
2335	..... 86	2685	.... 219	2884	.... 153
2360	.... 116	2690	..... 3	2885	.... 110
2401	.... 212	2694	..... 72	2904	..... 87
2404	..... 45	2695	.... 126	2913	.... 127
2407	..... 40	2701	..... 61	2916	.... 113
2418	.... 105	2702	.... 192	2920	..... 66
2419	..... 44	2703	.... 193	2926	..... 47
2421	.... 163	2719	..... 20	2931	.... 207
2423	.... 174	2723	.... 161	2950	.... 119
2464	..... 90	2734	.... 195	2952	..... 63
2474	..... 6	2737	..... 53	2958	..... 59
2504	.... 197	2738	..... 75	2968	.... 201
2528	.... 173	2739	..... 74	2976	.... 200
2530	..... 82	2742	..... 38	2981	..... 92
2531	.... 175	2753	..... 71	2999	.... 209
2532	.... 177	2757	.... 140	3011	..... 35
2535	.... 208	2771	..... 7	3017	.... 211
2536	..... 58	2788	..... 56	3036	..... 67
2539	.... 168	2795	.... 125	3047	.... 182
2541	..... 4	2801	.... 169	3063	.... 124
2557	.... 158	2819	.... 150	3066	..... 95

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2009**HOUSE BILLS****Page Two**

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
3074	.... 204	3189	..... 24	3288	.... 129
3076	.... 142	3194	.... 196	3295	.... 217
3082	.... 104	3195	.... 109	3305	.... 167
3083	..... 21	3196	..... 32	3313	..... 81
3120	.... 178	3197	.... 160	3314	..... 64
3134	..... 91	3208	..... 80	3336	.... 115
3146	..... 83	3229	..... 88	3339	..... 99
3155	.... 198	3240	..... 8	3340	..... 85
3170	.... 107	3278	.... 139		

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2009**SENATE BILLS**

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
12	157	326	128	445	5
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Senate Bills = 2,3 Digits

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85 3340	109 3195	133 284
86 2335	110 2885	134 495
87 2904	111 321	135 552
88 3229	112 669	136 278
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91 3134	115 3336	139 3278
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93 764	117 687	141 408
94 2869	118 262	142 3076
95 3066	119 2950	143 172
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98 461	122 322	146 195
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165 470	190 306	215 724
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First Extraordinary Session, 2009**SENATE BILLS**

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First Extraordinary Session, 2009

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Senate Bills = 4 Digits

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