

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2006
First Extraordinary Session, 2006
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CHAPTER 140

**(Com. Sub. for S. B. 350 — By Senators Minard,
Fanning, Prezioso, Unger, Boley and Minear)**

[Passed March 9, 2006; in effect from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the Department of Health and Human Resources and the procedures relating thereto; 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; authorizing Department of Health and Human Resources to promulgate a legislative rule relating to assisted living residences; authorizing Department of Health and Human Resources to promulgate a legislative rule relating to Alzheimer's/dementia special care units and programs; authorizing Department of Health and Human Resources and the Insurance Commissioner to promulgate a legislative rule relating to hospital licensure; authorizing Department of Health and

Human Resources to promulgate a legislative rule relating to public water systems; authorizing Department of Health and Human Resources to promulgate a legislative rule relating to lead abatement licensing; authorizing Department of Health and Human Resources to promulgate a legislative rule relating to fees for permits; authorizing Department of Health and Human Resources to promulgate a legislative rule relating to cancer registry; authorizing Department of Health and Human Resources to promulgate a legislative rule relating to reportable diseases, events and conditions; and authorizing Department of Health and Human Resources to promulgate a legislative rule relating to regulation of opioid treatment programs.

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.

1 (a) The legislative rule filed in the State Register on the
2 twenty-seventh day of July, two thousand five, authorized under
3 the authority of section five, article five-d, chapter sixteen of
4 this code and of section five, article five-r of said chapter,
5 modified by the Department of Health and Human Resources
6 to meet the objections of the Legislative Rule-Making Review
7 Committee and refiled in the State Register on the twenty-first
8 day of December, two thousand five, relating to the Department
9 of Health and Human Resources (assisted living residences, 64
10 CSR 14), is authorized.

11 (b) The legislative rule filed in the State Register on the
12 twenty-fifth day of July, two thousand five, authorized under

13 the authority of section five, article five-r, chapter sixteen of
14 this code, modified by the Department of Health and Human
15 Resources to meet the objections of the Legislative Rule-
16 Making Review Committee and refiled in the State Register on
17 the twenty-first day of December, two thousand five, relating to
18 the Department of Health and Human Resources (Alzhei-
19 mer's/dementia special care units and programs, 64 CSR 85),
20 is authorized.

21 (c) The legislative rule filed in the State Register on the
22 nineteenth day of July, two thousand five, authorized under the
23 authority of section eight, article five-b, chapter sixteen of this
24 code, modified by the Department of Health and Human
25 Resources to meet the objections of the Legislative Rule-
26 Making Review Committee and refiled in the State Register on
27 the eighteenth day of January, two thousand six, relating to the
28 Department of Health and Human Resources (hospital
29 licensure, 64 CSR 12), is authorized.

30 (d) The legislative rule filed in the State Register on the
31 twenty-eighth day of July, two thousand five, authorized under
32 the authority of section nine-a, article one, chapter sixteen, of
33 this code, modified by the Department of Health and Human
34 Resources to meet the objections of the Legislative Rule-
35 Making Review Committee and refiled in the State Register on
36 the twenty-second day of December, two thousand five, relating
37 to the Department of Health and Human Resources (public
38 water systems, 64 CSR 3), is authorized.

39 (e) The legislative rule filed in the State Register on the
40 twenty-eighth day of July, two thousand five, authorized under
41 the authority of section four, article one, chapter sixteen of this
42 code, and of section four, article thirty-five of said code,
43 modified by the Department of Health and Human Resources
44 to meet the objections of the Legislative Rule-Making Review
45 Committee and refiled in the State Register on the twenty-

46 second day of December, two thousand five, relating to the
47 Department of Health and Human Resources (lead abatement
48 licensing, 64 CSR 45), is authorized.

49 (f) The legislative rule filed in the State Register on the
50 twenty-ninth day of July, two thousand five, authorized under
51 the authority of sections four and eleven, article one, chapter
52 sixteen of this code, modified by the Department of Health and
53 Human Resources to meet the objections of the Legislative
54 Rule-Making Review Committee and refiled in the State
55 Register on the twenty-second day of December, two thousand
56 five, relating to the Department of Health and Human Re-
57 sources (fees for permits, 64 CSR 30), is authorized, with the
58 following amendment:

59 On page three, subsection 3.12, by striking out the words
60 “two hundred fifty (250)” and inserting in lieu thereof the
61 words “five hundred (500)”;

62 On line twelve, subsection 3.12, after the word “people.”,
63 by inserting the following: “The term shall not include
64 assembly in any outdoor venue ordinarily used and equipped for
65 such events.”;

66 And,

67 On page seven, subsection 4.8, after the word “revision.”,
68 by inserting the following: “The Commissioner may not
69 approve any fees that exceed an increase of twenty-five percent
70 per year of the local board’s current fees, up to the maximum
71 amount permitted. In the event the local board is requesting a
72 fee for a service on which it does not currently impose a fee, the
73 Commissioner may approve a fee that is no greater than twenty-
74 five percent of the maximum amount.”

75 (g) The legislative rule filed in the State Register on the
76 twenty-ninth day of July, two thousand five, authorized under
77 the authority of section two-a, article five-a, chapter sixteen of
78 this code, modified by the Department of Health and Human
79 Resources to meet the objections of the Legislative Rule-
80 Making Review Committee and refiled in the State Register on
81 the twenty-second day of December, two thousand five, relating
82 to the Department of Health and Human Resources (cancer
83 registry, 64 CSR 68), is authorized.

84 (h) The legislative rule filed in the State Register on the
85 twenty-ninth day of July, two thousand five, authorized under
86 the authority of section four, article one, chapter sixteen of this
87 code, modified by the Department of Health and Human
88 Resources to meet the objections of the Legislative Rule-
89 Making Review Committee and refiled in the State Register on
90 the twenty-second day of December, two thousand five, relating
91 to the Department of Health and Human Resources (reportable
92 diseases, events and conditions, 64 CSR 7), is authorized.

93 (i) The legislative rule filed in the State Register on the
94 twenty-sixth day of July, two thousand five, authorized under
95 the authority of section four, article one, chapter sixteen of this
96 code, modified by the Department of Health and Human
97 Resources to meet the objections of the Legislative Rule-
98 Making Review Committee and refiled in the State Register on
99 the twenty-first day of December, two thousand five, relating to
100 the Department of Health and Human Resources (regulation of
101 opioid treatment programs, 64 CSR 90), is authorized.

CHAPTER 141

**(Com. Sub. for H. B. 4192 — By Delegates Mahan,
Palumbo, Cann, Pino, Armstead and Overington)**

[Passed March 11, 2006; in effect from passage.]

[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact article 6, chapter 64 of the Code of West Virginia, 1931, as amended, all 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 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; authorizing the State Fire Commission to promulgate a legislative rule relating to the State Fire Code; authorizing the State Fire Commission to promulgate a legislative rule relating to the State Building Code; authorizing the State Fire Commission to promulgate a legislative rule relating to the certification of home inspectors; authorizing the State Fire Commission to promulgate a legislative rule relating to standards for the certification and continuing education of municipal, county and other public sector building code officials,

building code inspectors and plans examiners; and authorizing the State Police to promulgate a legislative rule relating to the West Virginia State Police Grievance Procedure.

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 DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY TO PROMULGATE LEGISLATIVE RULES.

§64-6-1. State Fire Commission.

§64-6-2. State Police.

§64-6-1. State Fire Commission.

1 (a) The legislative rule filed in the state register on the
2 twentieth day of July, two thousand five, authorized under the
3 authority of section five, article three, chapter twenty-nine, of
4 this code, modified by the State Fire Commission to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the second day of November, two
7 thousand five, relating to the State Fire Commission (State Fire
8 Code, 87 CSR 1), is authorized, with the following amendment:

9 On page twenty-one, following subdivision 14.14.2., by
10 inserting a new subdivision 14.14.3, to read as follows:

11 Section 4.6.2 of the National Fire Protection Association
12 (NFPA) 495, Explosive Material Code, the provisions of which
13 are adopted by reference in subsection 4.4 of this rule, is
14 amended to provide that persons 18 years and older may be
15 issued a Class G Special "Helper" permit to use explosives.

16 (b) The legislative rule filed in the state register on the
17 twenty-sixth day of July, two thousand five, authorized under
18 the authority of section five-b, article three, chapter twenty-

19 nine, of this code, modified by the State Fire Commission to
20 meet the objections of the legislative rule-making review
21 committee and refiled in the state register on the eleventh day
22 of January, two thousand six, relating to the State Fire Commis-
23 sion (State Building Code, 87 CSR 4), is authorized, with the
24 following amendments:

25 On page two, subdivision 4.1.1, after the words ‘with the
26 following exceptions:’ by unstriking and restoring the words
27 ‘4.1.1.A. Provided; that the section entitled “Fire Prevention”
28 and identified as Section 101.4.6 is deleted and not considered
29 to be a part of this rule.’;

30 On page five, at the beginning of the second paragraph, by
31 unstriking and restoring the words ‘Section R311.4.3’;

32 On page five, by striking out the underlined words of the
33 fourth paragraph as follows:

34 ‘Section R311.5.3 Stair Tread and Risers

35 311.5.3.1 Riser Height - The maximum riser height shall be
36 eight and one-quarter (8 1/4) inches.

37 311.5.3.2 Tread Depth - The minimum tread depth shall be
38 nine (9) inches.’;

39 On page ten, at the top of the page, by inserting the
40 following words as underlined words:

41 ‘4.1.7.A. Chapter 11 of the 2003 edition of the International
42 Residential Code for One and Two Family Dwellings, Seventh
43 Printing, entitled “Energy Efficiency”, is deleted and not
44 considered to be a part of this rule. In lieu thereof, the following
45 standards are adopted and made a part of this rule:’

46 And,

47 On page seventeen, subsection 7.3, by striking out the word
48 ‘ordnance’ and inserting in lieu thereof the word ‘ordinance’.

49 (c) The legislative rule filed in the state register on the
50 twenty-ninth day of July, two thousand five, authorized under
51 the authority of section five-b, article three, chapter twenty-
52 nine, of this code, modified by the State Fire Commission to
53 meet the objections of the legislative rule-making review
54 committee and refiled in the state register on the twentieth day
55 of January, two thousand six, relating to the State Fire Commis-
56 sion (certification of home inspectors, 87 CSR 5), is authorized
57 with the following amendment:

58 On page four, subsection 5.2, after the word “qualifica-
59 tions” by striking out the words “and he or she” and inserting a
60 period and the words “The applicant”.

61 (d) The legislative rule filed in the state register on the
62 twenty-ninth day of July, two thousand five, authorized under
63 the authority of section five-b, article three, chapter
64 twenty-nine, of this code, modified by the State Fire Commis-
65 sion to meet the objections of the legislative rule-making
66 review committee and refiled in the state register on the third
67 day of January, two thousand six, relating to the State Fire
68 Commission (standards for the certification and continuing
69 education of municipal, county and other public sector building
70 code officials, building code inspectors and plans examiners, 87
71 CSR 7), is authorized.

§64-6-2. State Police.

1 The legislative rule filed in the state register on the
2 twenty-eighth day of July, two thousand five, authorized under
3 the authority of section six, article two, chapter fifteen, of this
4 code, relating to the State Police (West Virginia State Police
5 Grievance Procedure, 81 CSR 8), is authorized.

CHAPTER 142

**(Com. Sub. for S. B. 357 — By Senators Minard,
Fanning, Prezioso, Unger, Boley and Minear)**

[Passed March 11, 2006; in effect from passage.]

[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact article 7, chapter 64 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the Department of Revenue and the procedures relating thereto; 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; authorizing the Insurance Commissioner to promulgate a legislative rule relating to unfair trade practices; authorizing the Insurance Commissioner to promulgate a legislative rule relating to licensing and conduct of individual insurance producers, agencies and solicitors; authorizing the Insurance Commissioner to promulgate a legislative rule relating to the West Virginia Essential Property Insurance Association; authorizing the Insurance Commissioner to promulgate a legislative rule relating to Medicare supplement insurance;

authorizing the Insurance Commissioner to promulgate a legislative rule relating to nonrenewal of property insurance policies; authorizing the Insurance Commissioner to promulgate a legislative rule relating to private passenger automobile and property insurance - biannual rate filing requirements; authorizing the Insurance Commissioner to promulgate a legislative rule relating to replacement of life insurance policies and annuity contracts; authorizing the Racing Commission to promulgate legislative rule relating to greyhound racing; authorizing the Tax Commissioner to promulgate a legislative rule relating to business registration certificate - suspension for failure to pay personal property taxes; and authorizing the Tax Commissioner to promulgate a legislative rule relating to valuation of active and reserve coal for ad valorem property tax purposes.

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. Insurance Commissioner.

§64-7-2. Racing Commission.

§64-7-3. Tax Commissioner.

§64-7-1. Insurance Commissioner.

1 (a) The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand five, authorized under
3 the authority of section ten, article two, chapter thirty-three of
4 this code and section four-a, article eleven of said chapter,
5 modified by the Insurance Commissioner to meet the objections
6 of the Legislative Rule-Making Review Committee and refiled
7 in the State Register on the twentieth day of January, two
8 thousand six, relating to the Insurance Commissioner (unfair
9 trade practices, 114 CSR 14), is authorized, with the following
10 amendment:

11 On page two, subsection 2.3., by striking out the words “for
12 which premiums were paid by the claimant or on the claimant’s
13 behalf”;

14 On page two, subsection 2.8., by striking out the words “for
15 which premiums were not paid by the claimant or on the his or
16 her behalf”;

17 On page two, subsection 2.9., before the word “compensa-
18 tion”, by inserting the word “the”;

19 On page three, subsection 4.4., by striking out the words “in
20 the policy or set” and, after the words “statute or”, by inserting
21 the word “legislative”;

22 On page five, subsection 6.1, by adding the following
23 sentence: This section is not intended to conflict with the
24 statutory requirements of the Medical Professional Liability
25 Act, W. Va. Code §§55-7B-1 to 11, as the same relate to the
26 assertion and investigation of medical professional liability
27 claims.;

28 On page five, subsection 6.3, after the word “limits” by
29 inserting the words “and, with respect to medical professional
30 liability claims, subject to applicable statutory requirements set
31 forth in the Medical Professional Liability Act, W. Va. Code
32 §§55-7B-1 to 11,”;

33 On page five, subdivision 6.4.b., after the word “whether”,
34 by striking out the words “or not”;

35 On page eight, by striking out subsection 6.17. in its
36 entirety and by renumbering the subsequent subsection;

37 On page eight, after subsection 6.18., by adding a new
38 subsection, designated subsection 6.18, to read as follows:

39 6.18. Motor vehicle repair shops. — An insurer may furnish
40 to the claimant the names of one or more conveniently located
41 motor vehicle repair shops that will perform the repairs;
42 however no insurer may require the claimant to use a particular
43 repair shop or location to obtain the repairs.;

44 And,

45 On page eleven, subdivision 7.3., by striking out the words
46 “of the insurer’s choice” and inserting in lieu thereof the words
47 “recommended by the insurer”.

48 (b) The legislative rule filed in the State Register on the
49 twenty-ninth day of July, two thousand five, authorized under
50 the authority of section ten, article two, chapter thirty-three of
51 this code, modified by the Insurance Commissioner to meet the
52 objections of the Legislative Rule-Making Review Committee
53 and refiled in the State Register on the twentieth day of January,
54 two thousand six, relating to the Insurance Commissioner
55 (licensing and conduct of individual insurance producers,
56 agencies and solicitors, 114 CSR 2), is authorized.

57 (c) The legislative rule filed in the State Register on the
58 twenty-ninth day of July, two thousand five, authorized under
59 the authority of section ten, article two, chapter thirty-three of
60 this code and section three, article twenty-a of said chapter,
61 relating to the Insurance Commissioner (West Virginia
62 Essential Property Insurance Association, 114 CSR 21), is
63 authorized.

64 (d) The legislative rule filed in the State Register on the
65 twenty-ninth day of July, two thousand five, authorized under
66 the authority of section ten, article two, chapter thirty-three of
67 this code, section three-d, article sixteen of said chapter and
68 section five-b, article twenty-eight of said chapter, relating to
69 the Insurance Commissioner (Medicare supplement insurance,
70 114 CSR 24), is authorized.

71 (e) The legislative rule filed in the State Register on the
72 twenty-ninth day of July, two thousand five, authorized under
73 the authority of section ten, article two, chapter thirty-three of
74 this code and section four-a, article seventeen-a of said chapter,
75 relating to the Insurance Commissioner (nonrenewal of
76 property insurance policies, 114 CSR 74), is authorized.

77 (f) The legislative rule filed in the State Register on the
78 twenty-ninth day of July, two thousand five, authorized under
79 the authority of section four-a, article twenty, chapter thirty-
80 three of this code, relating to the Insurance Commissioner
81 (private passenger automobile and property insurance -
82 biannual rate filing requirements, 114 CSR 75), is authorized.

83 (g) The legislative rule filed in the State Register on the
84 twenty-ninth day of July, two thousand five, authorized under
85 the authority of section five-a, article eleven, chapter thirty-
86 three of this code, modified by the Insurance Commissioner to
87 meet the objections of the Legislative Rule-Making Review
88 Committee and refiled in the State Register on the twentieth day
89 of January, two thousand six, relating to the Insurance Commis-
90 sioner (replacement of life insurance policies and annuity
91 contracts, 114 CSR 8), is authorized.

§64-7-2. Racing Commission.

1 The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand five, authorized under
3 the authority of section six, article twenty-three, chapter
4 nineteen of this code, modified by the Racing Commission to
5 meet the objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the eighteenth
7 day of January, two thousand six, relating to the Racing
8 Commission (greyhound racing, 178 CSR 2), is authorized,
9 with the following amendment:

10 On page forty-two, subsection 51.6., by striking out the
11 words “were six (6) months of age. Provided, that effective
12 January 1, 2007, in order to participate in the West Virginia
13 Greyhound Breeding Development Fund, a greyhound born on
14 or after that date must be from a litter that was whelped in the
15 State of West Virginia and remained domiciled in West
16 Virginia at least until the puppies”;

17 On page forty-three, subdivision 51.7.7., by striking out the
18 words “six consecutive months of occupancy in West Virginia
19 starting from the date of whelping. Provided that effective
20 January 1, 2007, with regard to a greyhound born on or after
21 that date, affirm that the greyhound was whelped in West
22 Virginia and that the greyhound was not removed from West
23 Virginia to a place outside West Virginia at any time prior to
24 the completion of”;

25 On page forty-three, subsection 51.7.8., by striking out the
26 words “six (6) months of age, it is the owner’s or the lessee’s
27 responsibility to notify the Racing Commission within ten (10)
28 days of removal and that any West Virginia bred greyhound
29 that is removed to a location outside of West Virginia prior to
30 the completion of six consecutive months of occupancy in West
31 Virginia starting from the date of whelping shall be disqualified
32 by the Racing Commission from participation in the West
33 Virginia Greyhound Breeding Development Fund. Provided
34 that effective January 1, 2007, with regard to a greyhound born
35 on or after that date, affirm that the owner or lessee further
36 understands that if any West Virginia bred greyhound is
37 removed from West Virginia prior to”;

38 On page forty-four, subdivision 51.7.11., after the words
39 “State for”, by striking out the word “at”;

40 On page forty-eight, table 51.4., paragraph 4, by striking
41 out the word “Virgjnia” and inserting in lieu thereof the word
42 “Virginia”;

43 On page forty-eight, table 51.4., paragraph 5, by striking
44 out the words “both bred and”;

45 On page forty-eight, table 51.4., paragraph 5, by striking
46 out the words “six (6)” and inserting in lieu thereof the words
47 “twelve (12)”;

48 On page forty-nine, table 51.5., paragraph 5, by striking out
49 the words “both bred and”;

50 And,

51 On page forty-nine, table 51.5., paragraph 5, by striking out
52 the words “six (6)” and inserting in lieu thereof the words
53 “twelve (12)”.

§64-7-3. Tax Commissioner.

1 (a) The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand five, authorized under
3 the authority of section five, article twelve, chapter eleven of
4 this code, modified by the Tax Commissioner 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 December, two thousand five, relating to the Tax Commissioner
8 (business registration certificate - suspension for failure to pay
9 personal property taxes, 110 CSR 12D), is authorized.

10 (b) The legislative rule filed in the State Register on the
11 twenty-ninth day of July, two thousand five, authorized under
12 the authority of section eleven, article one-a, chapter eleven of
13 this code, relating to the Tax Commissioner (valuation of active
14 and reserve coal property for ad valorem property tax purposes,
15 110 CSR 11), is authorized, with the following amendment:

16 On page seventeen, subparagraph 4.2.3.16., by striking out
17 the words “that is above local drainage”.

CHAPTER 143

**(Com. Sub. for S. B. 353 — By Senators Minard,
Fanning, Prezioso, Unger, Boley and Minear)**

[Passed March 11, 2006; in effect from passage.]

[Approved by the Governor on April 5, 2006.]

AN ACT to amend and reenact article 8, chapter 64 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the Department of Transportation and the procedures relating thereto; 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; authorizing the Division of Highways to promulgate a legislative rule relating to use of state road rights-of-way and adjacent areas; authorizing Division of Highways promulgate a legislative rule relating to transportation of hazardous waste upon roads and highways; authorizing Division of Motor Vehicles promulgate legislative rule relating to denial, suspension, revocation, restriction or nonrenewal of driving privileges; and authorizing Division of Motor Vehicles promul-

gate legislative rule relating to motor vehicle dealers and other business regulated by the Division.

Be it enacted by the Legislature of West Virginia:

That article 8, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO PROMULGATE LEGISLATIVE RULES.

§64-8-1. Division of Highways.

§64-8-2. Division of Motor Vehicles.

§64-8-1. Division of Highways.

1 (a) The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand five, authorized under
3 the authority of section three, article seventeen-a, chapter
4 seventeen-c of this code, relating to the Division of Highways
5 (use of state roads' rights-of-way and adjacent areas, 157 CSR
6 6), is authorized with the following amendment:

7 On page two, after subsection 2.16., by inserting a new
8 subsection, designated subsection 2.17, to read as follows:

9 "2.17. 'Focal point' means the location from which an
10 LED, OLED or other illuminated message center, display or
11 sign appears brightest." and by renumbering the subsequent
12 subsections accordingly;

13 On page two, subsection 2.24, after the word "slats", by
14 inserting a comma and the words "or by LED, OLED or other
15 illuminated message center,";

16 On page two, subsection 2.24, by striking out the words
17 "lighting devices forming part of the message or border" and
18 inserting in lieu thereof the word "moving";

19 On page eighteen, paragraph 7.8.d.4., by striking out the
20 words “twenty-four (24) hours” and inserting in lieu thereof the
21 words “eight seconds”;

22 On page eighteen, paragraph 7.8.e.1., line two, by inserting
23 the following words: “For purposes of this section, the illumina-
24 tion of an advertising device containing a message center
25 display does not constitute the use of a flashing, intermittent or
26 moving light. No message center display may include an
27 illumination that is in motion or appears to be in motion or that
28 changes in intensity or exposes its message for less than eight
29 (8) seconds or that has an interval between messages of two (2)
30 seconds or less. No LED, OLED, illuminated message center
31 display or similar device may exceed the following brightness
32 limits measured as candelas per square feet at any focal point
33 on any roadway or berm or any vehicular approach to any
34 roadway:

35		Day	Night
36	Red	300	100
37	Green	600	200
38	Amber	450	150
39	Blue	800	350
40	White	550	50
41	All color	650	250”

42 and,

43 On page twenty-nine, by striking out section ten of the rule
44 in its entirety and by creating a new series, designated Title
45 157, Series 9 of the Code of State Rules, to read as follows:

46

“157 CSR 9

47

Title 157

48

Legislative Rule

49

Department of Transportation

50

Division of Highways

51

Series 9

52

Special Crossing Permits**§157-9-1. General**

1 1.1. Scope. - This legislative rule establishes the procedures
2 and standards for issuance of special crossing permits authoriz-
3 ing certain vehicles to operate or move a vehicle or combination
4 of vehicles which exceed the maximum weight allowance
5 specified in W. Va. Code §17C-17A-3 (120,000 pounds) on
6 limited sections of public highways. Special crossing permits
7 may be issued only for vehicles hauling coal or coal by-
8 products in the Coal Resource Transportation Road System.

9 1.2. Authority. - This rule is issued pursuant to the provi-
10 sions of W. Va. Code §17C-17A-3.

11 1.3. Filing Date. -

12 1.4. Effective Date. -

§157-9-2. Application for permit.

1 2.1. An applicant for a special crossing permit must
2 complete an application form developed by the Division of
3 Highways and submit it to a Highways District Permit Clerk
4 within the district wherein the road that will be crossed or
5 traveled is located or where it originates if the route lies within
6 two districts.

7 2.2. The application must be accompanied by:

8 2.2.a. A \$500 application fee;

9 2.2.b. A list of all vehicles or combinations of vehicles,
10 including axle weights and spacings and gross vehicle weights,
11 that will be moving on or crossing the highway for which the
12 permit is requested. If a vehicle will be hauling various
13 tonnages of loads, the maximum weights will be listed; and

14 2.2.c. An estimate of the number of times per day that each
15 listed vehicle or combination of vehicles will cross or travel the
16 route.

17 2.3. Prior to the issuance of the permit, the applicant must:

18 2.3.a. Agree, in writing, to pay the actual costs for any
19 necessary upgrading or repair of the public highway, including
20 any necessary traffic control, which the applicant seeks the
21 permit to cross;

22 2.3.b. Agree to post a bond in an amount of no less than
23 \$50,000, as recommended to and approved by the Commis-
24 sioner of Highways;

25 2.3.c. Furnish evidence of having at least the minimum
26 amounts of insurance required of “West Virginia Division of
27 Highways, Standard Specifications, Roads and Bridges,
28 Adopted 2000”, and supplements thereto;

29 2.3.d. Agree, in writing, to pay for the restoration of the
30 public highway to its original condition after the permit has
31 expired. The original condition of the highway may be
32 documented by the applicant and/or the Division of Highways
33 by photography, video recording, or any other means acceptable
34 to both parties.

§157-9-3. Vehicles.

1 3.1 No listed vehicle or combination of vehicles is permit-
2 ted to haul more than the manufacturer's weight rating.

3 3.2. Except as provided in the permit, all listed vehicles or
4 combinations of vehicles must be in compliance with all other
5 specifications given in W. Va. Code §17C.

6 3.3 All listed vehicles must be identified by vehicle
7 identification number or, if a vehicle identification number is
8 not available, by serial number.

9 3.4 If any vehicle is replaced during the course of a three
10 year permit period, the applicant must submit supplemental
11 information on each vehicle to the District Permit Clerk. The
12 District Maintenance Engineer and/or Bridge Engineer shall
13 review the supplemental information and may require addi-
14 tional route analysis, route upgrading, an increase in the bond
15 amount, or any other consideration deemed necessary.

§157-9-4. Evaluation of permit application.

1 4.1. Prior to the issuance of any Special Crossing Permit:

2 4.1.a. The District Maintenance Engineer(s) in the dis-
3 trict(s) in which the proposed route is located will initiate a
4 route analysis to determine the feasibility and potential costs
5 associated with the applicant being permitted to cross or travel
6 the route with any of the listed vehicles or combinations of
7 vehicles. Considerations will include the road surface and any
8 existing height or width restrictions, bridges, culverts, and
9 potential traffic or safety problems;

10 4.1.b. If there are bridges or culverts on the route, the
11 District Bridge Engineer(s) in the district(s) in which the route
12 is located will initiate a bridge analysis to determine whether
13 these structures can safely bear the weight of the listed vehicles
14 or combinations of vehicles, or whether any will require
15 reinforcement or replacement; and

16 4.1.c. The District Traffic Engineer(s) in the district(s) in
17 which the route is located will perform an analysis to evaluate
18 potential traffic and safety problems and recommend appropri-
19 ate traffic control actions and/or devices.

20 4.2. The Commissioner of Highways may require additional
21 evaluations or analyses in his or her discretion.

22 4.3. Once all of the necessary analyses have been per-
23 formed by the appropriate party(ies), all necessary conditions
24 and addendums required have been identified, and a proposed
25 bond amount has been agreed upon, the District Maintenance
26 Engineer will submit the application to the Commissioner of
27 Highways for approval.

§157-9-5. Approval or denial of permit application.

1 5.1. The Commissioner of Highways may deny the
2 application if there is an existing alternate off-road route
3 available, if the road or any bridge thereon is unsuitable for the
4 load, or if it is determined that the permit cannot be granted
5 without jeopardizing public safety.

6 5.1.a. The Commissioner of Highways may not approve an
7 application which, in combination with another permit or
8 permit application, would authorize a vehicle or combination of
9 vehicles to operate in excess of the maximum weight allowance
10 specified in W. Va. Code §17C-17A-3 on sections of public
11 highways longer than one-half mile.

12 5.1.b. In the event the application is denied, the Commis-
13 sioner of Highways may (at his or her discretion) refund any
14 unexpended portion of the application fee to the applicant.

15 5.2. The Commissioner of Highways may require additional
16 evaluations or agreements prior to approving any special
17 crossing permit application.

18 5.3. If the application for a special crossing permit is
19 approved by the Commissioner of Highways, the District
20 Maintenance Engineer(s) shall assure that all necessary
21 conditions and addendums are satisfied before delivering the
22 permit to the applicant.

23 5.4. Any special crossing permit approved by the Commis-
24 sioner of Highways must include requirement that any vehicle
25 or vehicles authorized to operate on limited sections of public
26 highways pursuant to this rule may not travel on the section of
27 public highway included in the special crossing permit until or
28 unless all other traffic on the public highway is stopped by
29 flaggers or traffic-control signals and that no other unauthorized
30 vehicles may access the section of public highway until all
31 authorized vehicles have exited the public highway.

§157-9-6. Duration, suspension, revocation or renewal of permit.

1 6.1. A special crossing permit is valid for three years from
2 the date of issuance.

3 6.2. While a special crossing permit is in effect, the permit
4 holder shall maintain the road in a condition that is passable to
5 the traveling public. The District Maintenance Engineer(s),
6 accompanied by a representative of the permit holder, shall
7 review the conditions of the approved route at least quarterly,
8 or more frequently, if deemed appropriate by the District
9 Maintenance Engineer(s), to assure the integrity of the roadway
10 and any structures adjacent thereto.

11 6.3. A special crossing permit may be suspended or revoked
12 by the Commissioner of Highways at any time if the permit
13 holder is found to be in violation of any of the conditions,
14 requirements, addendums or provisions of the permit or to have
15 maintained the roadway or crossing as required by the permit
16 or this rule.

17 6.4. At the end of three years, a permit holder may apply to
18 the Commissioner of Highways to renew the permit in the same
19 manner as an application for an initial permit. The renewal
20 application fee is \$500. The Commissioner of Highways may
21 require the same stipulations, conditions and requirements,
22 including the posting of a bond in excess of \$50,000, attendant
23 to the issuance of the original permit or may impose additional
24 stipulations, conditions or requirements as a condition of
25 renewal. The Commissioner of Highways may also, in his or
26 her discretion, require any or all of the route and safety
27 evaluations described in required for issuance of an initial
28 permit or require additional evaluations, analyses or require-
29 ments before renewing the permit.

30 6.5. The Commissioner may deny renewal of the permit for
31 any of the reasons for which an initial application for a permit
32 may be denied, if the permit holder failed to comply with any
33 of the conditions or requirements of the previous permit or if
34 the permit holder failed to satisfactorily maintain the highway
35 or protect public safety.”

36 (b) The legislative rule filed in the State Register on the
37 twenty-sixth day of July, two thousand five, authorized under
38 the authority of section seven, article eighteen, chapter twenty-
39 two of this code, relating to the Division of Highways (trans-
40 portation of hazardous wastes upon the roads and highways,
41 157 CSR 7), is authorized.

§64-8-2. Division of Motor Vehicles.

1 (a) The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand five, authorized under
3 the authority of section nine, article two, chapter seventeen-a of
4 this code, modified by the Division of Motor Vehicles to meet
5 the objections of the Legislative Rule-Making Review Commit-
6 tee and refiled in the State Register on the fifteenth day of

7 December, two thousand five, relating to the Division of Motor
8 Vehicles (denial, suspension, revocation, restriction or
9 nonrenewal of driving privileges, 91 CSR 5), is authorized with
10 the following amendment:

11 On page five, subsection 5.1., line one, after the word
12 “shall”, by inserting a comma;

13 On page five, subsection 5.1., by striking out the words
14 “time shall begin to toll from” and inserting in lieu thereof the
15 words “revocation shall begin on”;

16 On page five, subsection 5.2., by striking out the words
17 “time shall begin to toll from” and inserting in lieu thereof the
18 words “suspension shall begin on”;

19 On page six, subsection 7.2., after the words “disqualifica-
20 tion or”, by striking out the word “is” and inserting in lieu
21 thereof the words “the offense was”;

22 On page nine, subdivision 7.3.e., after the words “W. Va.
23 Code §17C-6-1” by striking out “(g) or (h)” and inserting in
24 lieu thereof “(i) or (j)” and a period;

25 • On page nine, subsection 7.4., after the words “involving a
26 conviction.”, by striking out the remainder of the subsection;

27 On page eleven, subsection 7.14., by striking out the words
28 “pertaining to a conviction for a”, and inserting in lieu thereof
29 a comma and the words “which exempt convictions for”;

30 On page eleven, subsection 7.14., the last line, by striking
31 out the word “does” and inserting in lieu thereof the words
32 “from being reported to the Division, do”;

33 On page fourteen, subdivision 9.4.d., by striking out the
34 word “shall” and inserting in lieu thereof the word “may”;

35 On page seventeen, subsection 12.1., after the words “W.
36 Va. Code §17B-3-6” by striking out “(10)” and inserting in lieu
37 thereof “(a)(9)”;

38 On page eighteen, subsection 12.3., by striking out the
39 words “Means v. Sidiropolis 401 S.E.2d. Page 447 (W. Va.
40 1990)” and inserting in lieu thereof the words “Means v.
41 Sidiropolis, 184 W. Va. 514, 401 S.E.2d 447 (1990)”;

42 On page eighteen, subsection 13.1., line five, after the
43 words “The Division”, by striking out the word “shall” and
44 inserting in lieu thereof the word “may”;

45 On page twenty, subsection 15.1., line one, after the words
46 “with the provisions of W. Va. Code”, by striking out “§48A-
47 5A-1 et seq.” and inserting in lieu thereof “§48-15-101 et seq.”;

48 On page twenty, subsection 15.1., line five, after the words
49 “The provisions of W. Va. Code”, by striking out “§48A-5A-
50 5c” and inserting in lieu thereof “48-15-101 et seq.”;

51 On page twenty, subsection 15.1., by striking out the words
52 “Dababnah v. West Virginia Board of Medicine, No. 27751 slip
53 op (W. Va. 2000)” and inserting in lieu thereof the words
54 “Dababnah v. West Virginia Board of Medicine, 207 W. Va.
55 621, 535 S.E.2d 20 (2000)”;

56 On page twenty, subsection 15.2., after the words “W. Va.
57 Code”, by striking out “§48A-5A-1 et seq.” and inserting in lieu
58 thereof “48-15-101 et seq.”;

59 On page twenty, subdivision 15.2.a., after the words “W.
60 Va. Code §17B-3-6” by inserting “(a)”;

61 On page twenty, subdivision 15.2.c., after the words “W.
62 Va. Code”, by striking out “§48-5A-5(a)” and inserting in lieu
63 thereof “§48-15-101 et seq.”;

64 On page twenty-one, paragraph 15.2.c.3., following
65 “Subsection” by striking out “5.6” and inserting in lieu thereof
66 “15.6”;

67 On page twenty-one, paragraph 15.2.c.4., after the word
68 “Subsection”, by striking out “5.7” and inserting in lieu thereof
69 “15.7”;

70 On page twenty-one, subsection 15.4., after the words “W.
71 Va. Code”, by striking out “§48A-5A-5(b)” and inserting in lieu
72 thereof “§48-15-302”;

73 On page twenty-one, subsection 15.5., after the words “W.
74 Va. Code”, by striking out “§48A-5A-5(a)” and inserting in lieu
75 thereof “§48-15-301(e)”;

76 On page twenty-two, paragraph 15.6.b.1., after the word
77 “Subsection”, by striking out “5.5” and inserting in lieu thereof
78 “15.5”;

79 On page nineteen, subsection 14.1, at the end of the
80 subsection by inserting the following sentence:

81 “For the purposes of this rule, a plea of nolo contendere
82 stands as neither an admission of guilt nor a conviction for
83 administrative revocation proceedings.”

84 On page twenty-two, subsection 15.7., after the words “W.
85 Va. Code”, by striking out “§48A-5A-5(b)” and inserting in lieu
86 thereof “§48-15-302”;

87 On page twenty-two, subdivision 16.2.c., after the word
88 “Commercial”, by inserting “Motor”; and,

89 On page twenty-five, subdivision 16.3.f., after the word
90 “subdivision”, by striking out “16.2.e.” and inserting in lieu
91 thereof “16.2.f.”

92 (b) The legislative rule filed in the State Register on the
93 twenty-fifth day of July, two thousand five, authorized under
94 the authority of section nine, article two, chapter seventeen-a of
95 this code, modified by the Division of Motor Vehicles to meet
96 the objections of the Legislative Rule-Making Review Commit-
97 tee and refiled in the State Register on the fifteenth day of
98 December, two thousand five, relating to the Division of Motor
99 Vehicles (motor vehicle dealers and other businesses regulated
100 by the Division of Motor Vehicles, 91 CSR 6), is authorized.

CHAPTER 144

**(Com. Sub. for S. B. 299 — By Senators Minard,
Fanning, Prezioso, Unger, Boley and Minear)**

[Passed March 11, 2006; in effect from passage.]

[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact article 9, chapter 64 of the Code of West Virginia, 1931, as amended, all 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 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; authorizing the Department of Agriculture to promulgate a legislative rule relating to animal disease control; authorizing the Department of Agriculture to promulgate a legislative rule relating to certified pesticide applicators; authorizing the Department of Agriculture to promulgate a legislative rule relating to integrated pest management programs in schools and day care centers/facilities; authorizing the Department of Agriculture to promulgate a legislative rule relating to voluntary farmland protection program; authorizing the State Auditor to promulgate a legislative rule relating to state purchasing card program; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to fees; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to the dental advertising; authorizing the Governor's Committee on Crime, Delinquency and Correction to promulgate a legislative rule relating to motor vehicle stop data collection standard for study of racial profiling; authorizing the Board of Examiners for Licensed Practical Nurses to promulgate a rule relating to policies regulating licensure of the licensed practical nurse; authorizing the Board of Occupational Therapy to promulgate a legislative rule relating to administrative rule of the Board of Occupational Therapy and licensure of occupational therapists and occupational therapy assistants; authorizing the Board of Optometry to promulgate a legislative rule relating to rules for the West Virginia Board of Optometry; authorizing the Board of Optometry to promulgate a legislative rule relating to schedule of fees; authorizing the Board of Osteopathy to promulgate a legislative rule relating to osteopathic physician assistants; authorizing the Board of Pharmacy to promulgate a legislative rule relating to ephedrine and pseudoephedrine control; authorizing the Board of Examiners of Psychologists to promulgate a legislative rule relating to qualifications for licensure as a psychologist or a school psychologist; authorizing the Radiologic Technology Board of Examiners to promulgate a legislative rule

relating to the board; authorizing the Radiologic Technology Board of Examiners to promulgate a legislative rule relating to standards of ethics; authorizing the Real Estate Appraiser Board to promulgate a legislative rule relating to requirements for licensure and certification; authorizing the Real Estate Appraiser Board to promulgate a legislative rule relating to renewal of licensure and certification; authorizing the Secretary of State to promulgate a legislative rule relating to loan program for purchase of voting equipment, software and services; authorizing the Secretary of State to promulgate a legislative rule relating to public testing of ballot-marking voting systems and precinct ballot-scanning devices; authorizing the Secretary of State to promulgate a legislative rule relating to use of digital signatures, state certificate authority and state repository; authorizing the Statewide Addressing and Mapping Board to promulgate a legislative rule relating to final distribution and use of the statewide addressing and mapping fund; authorizing the Statewide Addressing and Mapping Board to promulgate a legislative rule relating to standard fees for planimetric elevation data; authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to organization and operation; authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to certified animal euthanasia technicians; 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 9, 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. Commissioner of Agriculture.
- §64-9-2. State Auditor.
- §64-9-3. State Conservation Committee.
- §64-9-4. Board of Dental Examiners.

- §64-9-5. Governor's Committee on Crime, Delinquency and Correction.
- §64-9-6. Board of Examiners for Licensed Practical Nurses.
- §64-9-7. Board of Occupational Therapy.
- §64-9-8. Board of Optometry.
- §64-9-9. Board of Osteopathy.
- §64-9-10. Board of Pharmacy.
- §64-9-11. Board of Examiners of Psychologists.
- §64-9-12. Radiologic Technology Board of Examiners.
- §64-9-13. Real Estate Appraiser Licensure and Certification Board.
- §64-9-14. Secretary of State.
- §64-9-15. Statewide Addressing and Mapping Board.
- §64-9-16. Board of Veterinary Medicine.

§64-9-1. Commissioner of Agriculture.

1 (a) The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand five, authorized under
3 the authority of section two, article nine, chapter nineteen of
4 this code, modified by the Department of Agriculture to meet
5 the objections of the Legislative Rule-Making Review Commit-
6 tee and refiled in the State Register on the twenty-third day of
7 December, two thousand five, relating to the Department of
8 Agriculture (animal disease control, 61 CSR 1), is authorized.

9 (b) The legislative rule filed in the State Register on the
10 twenty-ninth day of July, two thousand five, authorized under
11 the authority of section four, article sixteen-a, chapter nineteen
12 of this code, modified by the Department of Agriculture to meet
13 the objections of the Legislative Rule-Making Review Commit-
14 tee and refiled in the State Register on the sixteenth day of
15 December, two thousand five, relating to the Department of
16 Agriculture (certified pesticide applicators, 61 CSR 12A), is
17 authorized.

18 (c) The legislative rule filed in the State Register on the
19 twenty-ninth day of July, two thousand five, authorized under
20 the authority of section four, article sixteen-a, chapter nineteen
21 of this code, modified by the Department of Agriculture to meet
22 the objections of the Legislative Rule-Making Review Commit-

23 tee and refiled in the State Register on the sixteenth day of
24 December, two thousand five, relating to the Department of
25 Agriculture (integrated pest management programs in schools
26 and day care centers/facilities, 61 CSR 12J), is authorized.

27 (d) The legislative rule filed in the State Register on the
28 twenty-second day of December, two thousand five, authorized
29 under the authority of section twenty, article twelve, chapter
30 eight-a of this code, modified by the Department of Agriculture
31 to meet the objections of the Legislative Rule-Making Review
32 Committee and refiled in the State Register on the thirteenth
33 day of January, two thousand six, relating to the Department of
34 Agriculture (voluntary farmland protection program, 61 CSR
35 26), is authorized.

§64-9-2. State Auditor.

1 The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand five, authorized under
3 the authority of section ten-a, article three, chapter twelve of
4 this code, modified by the Auditor to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in the
6 State Register on the twenty-first day of December, two
7 thousand five, relating to the Auditor (state Purchasing Card
8 Program, 155 CSR 7), is authorized.

§64-9-3. State Conservation Committee.

1 The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand five, authorized under
3 the authority of section four, article twenty-one-a, chapter
4 nineteen of this code, modified by the State Conservation
5 Committee to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the State Register on
7 the fourth day of January, two thousand six, relating to the State
8 Conservation Committee (State Conservation Committee, 63
9 CSR 1), is authorized.

§64-9-4. Board of Dental Examiners.

1 (a) The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand five, authorized under
3 the authority of section six, article four, chapter thirty of this
4 code, relating to the Board of Dental Examiners (fees estab-
5 lished by the board, 5 CSR 3), is authorized.

6 (b) The legislative rule filed in the State Register on the
7 twenty-eighth day of July, two thousand five, authorized under
8 the authority of section six, article four, chapter thirty of this
9 code, modified by the Board of Dental Examiners to meet the
10 objections of the Legislative Rule-Making Review Committee
11 and refiled in the State Register on the sixth day of January, two
12 thousand six, relating to the Board of Dental Examiners (dental
13 advertising, 5 CSR 8), is authorized.

§64-9-5. Governor's Committee on Crime, Delinquency and Correction.

1 The legislative rule filed in the State Register on the
2 twenty-third day of November, two thousand four, authorized
3 under the authority of section three, article two, chapter
4 seventeen-g of this code, modified by the Governor's Commit-
5 tee on Crime, Delinquency and Correction to meet the objec-
6 tions of the Legislative Rule-Making Review Committee and
7 refiled in the State Register on the thirteenth day of January,
8 two thousand six, relating to the Governor's Committee on
9 Crime, Delinquency and Correction (motor vehicles stop data
10 collection standards for the study of racial profiling, 149 CSR
11 5), is authorized with the following amendment:

TITLE 149
LEGISLATIVE RULE
GOVERNOR'S COMMITTEE ON CRIME,
DELINQUENCY AND CORRECTION

SERIES 5
MOTOR VEHICLE STOP DATA COLLECTION
STANDARDS FOR THE STUDY OF RACIAL PROFILING

§149-5-1. General.

1 1.1. Scope. — This legislative rule establishes standards for
2 the collection, reporting, compilation and analysis of data, for
3 the purpose of studying the possible practice of racial profiling
4 by law enforcement in West Virginia.

5 1.2. Authority. — W. Va. Code §17G-2-3.

6 1.3. Filing Date. —

7 1.4. Effective Date. —

§149-5-2. Definitions.

1 2.1. “Chief executive” means the Superintendent of the
2 State Police; the Chief Conservation Officer of the Division of
3 Natural Resources; the sheriff of any West Virginia county; any
4 administrative deputy appointed by the Chief Conservation
5 Officer of Natural Resources; the chief of any West Virginia
6 municipal law-enforcement agency; or the duly authorized
7 designee of any chief executive.

8 2.2. “Composition of patrol area” means the demographic
9 description of the population in the patrol area to include
10 elements of ethnicity, national origin, gender and age.

11 2.3. “County” means any one of the fifty-five major
12 political subdivisions of the state.

13 2.4. “Driver” or “operator” means the person who drives or
14 is in actual physical control of a motor vehicle upon a highway
15 or who is exercising control over or steering a vehicle being
16 towed by a motor vehicle.

17 2.5. “Governor’s Committee on Crime, Delinquency and
18 Correction” or “Governor’s committee” means the committee
19 established as a state planning agency pursuant to W. Va. Code
20 §15-9-1.

21 2.6. “Gross data” means aggregate data regarding the
22 information obtained pursuant to section 3 of this rule.

23 2.7. “Law-enforcement agency” means every West Virginia
24 state, county or municipal agency with officers who are
25 authorized to direct or regulate traffic or to make arrests or
26 issue citations or warnings for violations of traffic laws and
27 ordinances.

28 2.8. “Law-enforcement officer” or “officer” means any duly
29 authorized member of a law-enforcement agency who is
30 authorized to maintain public peace and order, prevent and
31 detect crime, make arrests and enforce the laws of the state or
32 any county or municipality of the state, including persons
33 employed as campus police officers at state institutions of
34 higher education and those persons employed as rangers by the
35 Hatfield-McCoy Regional Recreation Authority.

36 2.9. “Minority group” means individuals of any ethnic
37 descent, including, but not limited to, African-American,
38 Hispanic, Native American, Middle Eastern, Asian or Pacific
39 Islander.

40 2.10. “Municipality” means any incorporated town, village
41 or city whose boundaries lie within the geographic boundaries
42 of the state.

43 2.11. “Originating agency Identifier, or ORI Number”
44 means the standard identification number assigned by the
45 Federal Bureau of Investigation to law-enforcement and other
46 agencies that submit data required for criminal justice purposes.

47 2.12. “Patrol area” means a clearly defined geographic area,
48 identified by a number assigned by the chief law-enforcement
49 official, that is established for the general purpose of providing
50 a visible law enforcement presence in the area, in order to: (1)
51 Secure property and to protect the public from the risks of
52 damage or injury arising from criminal activity; (2) respond to
53 emergency and non-emergency demands of citizens in a timely
54 manner; (3) conduct prevention and other proactive patrol tasks
55 effectively; and (4) conduct all other patrol tasks effectively,
56 including traffic control and special missions work.

57 2.13. “West Virginia Motor Vehicle Stop Form”, or
58 “MVSF”, means the form developed by the Division of Motor
59 Vehicles for collecting and reporting data for the study of racial
60 profiling.

§149-5-3. Data collection.

1 3.1. Operator Information Collected.

2 3.1.a. Beginning January 1, 2007, each time a law-enforce-
3 ment officer stops the operator of a motor vehicle for a
4 violation of any motor vehicle statute or ordinance, the officer
5 shall record, on the West Virginia Motor Vehicle Stop Form
6 appended to this rule, the information required to be collected
7 pursuant to subsection 5 of this section. The officer may
8 complete the Motor Vehicle Stop Form during or immediately
9 after the stop, but must file the completed form with his or her
10 law-enforcement agency before the officer goes off duty.

11 3.1.b. A law-enforcement officer is required to record the
12 information required to be collected pursuant to subsection 5 of
13 this section only when the operator has been stopped for
14 violating a motor vehicle statute or ordinance. A law-enforce-
15 ment officer is not required to record such information as a
16 result of a nonviolation stop, even if the initial nonviolation
17 stop results in a citation or arrest.

18 3.2. Passenger Information Collected.

19 3.2.a. Beginning January 1, 2007, each time a law-enforce-
20 ment officer stops the operator of a motor vehicle for a
21 violation of any motor vehicle statute or ordinance, and as a
22 result, conducts a search of a passenger in the vehicle, the
23 officer shall record, on the West Virginia Motor Vehicle Stop
24 Form appended to this rule, the information required to be
25 collected pursuant to subsection 5 of this section. The officer
26 may complete the Motor Vehicle Stop Form during or immedi-
27 ately after the stop, but shall file the completed form with his or
28 her law-enforcement agency before the officer goes off duty.

29 3.2.b. A law-enforcement officer is required to record the
30 information required to be collected pursuant to subsection 5 of
31 this section with regard to a passenger who has been searched
32 only when the operator of the vehicle has been stopped for
33 violating a motor vehicle statute or ordinance. A law-enforce-
34 ment officer is not required to record such information as a
35 result of a nonviolation stop, even if the initial nonviolation
36 stop results in a citation or arrest.

37 3.3. West Virginia Motor Vehicle Stop Form (MVSF). —
38 The MVSF shall allow for the recording of all of the informa-
39 tion required to be collected by subsection 4 of this section and
40 at a minimum be developed in hard copy format; however,
41 nothing in this rule prohibits a law-enforcement agency from
42 completing and/or submitting the information required to be
43 collected in an electronic format, if a protocol for electronic
44 filing is developed by the Division of Motor Vehicles. This
45 form shall:

46 3.4. MVSF Components. — The MVSF shall allow a law-
47 enforcement officer to collect and record the following
48 information.

49 3.4.a. A unique identifier (i.e. numeric, alphanumeric,
50 barcode, etc.) which will distinguish one from all others.

51 3.4.b. The law-enforcement agency's complete Originating
52 Agency Identifier (ORI number), or an abbreviated version of
53 that identifier singularly unique to that particular law-enforce-
54 ment agency.

55 3.4.c. The identity of each individual law-enforcement
56 officer within his or her law-enforcement agency. The chief
57 executive of the law-enforcement agency shall assign a unique
58 four (4) digit identifier to each law-enforcement officer within
59 his or her agency for this purpose.

60 3.4.d. The month, day and year of the stop.

61 3.4.e. The approximate hour and minute of the stop.

62 3.4.f. The approximate duration of the stop in hours and
63 minutes.

64 3.4.i. The county in which the stop took place.

65 3.4.j. The location of stop by patrol area.

66 3.4.k. The traffic violation that was the primary reason for
67 the stop to be indicated as follows:

68 3.4.k.1. Code violations:

69 3.4.k.1.A. Red light/stop sign;

70 3.4.k.1.B. Speeding (<10mph over);

71 3.4.k.1.C. Speeding (>10mph over);

72 3.4.k.1.D. Lane violation/failure to signal;

73 3.4.k.1.E. Other moving violation; or,

- 74 3.4.k.1.F. Other nonmoving violation.
- 75 3.4.k.2. Penal code violations:
- 76 3.4.k.2.A. Nuisance/vice;
- 77 3.4.k.2.B. Suspicious circumstances;
- 78 3.4.k.2.C. Be on the lookout (BOLO)/wanted persons;
- 79 3.4.k.2.D. Property crime;
- 80 3.4.k.2.E. Violent crime; or,
- 81 3.4.k.2.F. Local ordinance.
- 82 3.4.l. Disposition. — One of the following dispositions of
83 the stop:
- 84 3.4.l.1. Citation
- 85 3.4.l.2. Warning
- 86 3.4.l.3. No action
- 87 3.4.m. The perceived identifying characteristics of the
88 operator stopped, including:
- 89 3.4.m.1. The age of the operator
- 90 3.4.m.2. Whether the operator was male or female.
- 91 3.4.m.3. Whether the operator was:
- 92 3.4.m.3.A. White (W);
- 93 3.4.m.3.B. Black/African American (B/AA);
- 94 3.4.m.3.C. Asian/Pacific Islander (A/PI);

- 95 3.4.m.3.D. Native American (NA);
- 96 3.4.m.3.E. Middle Eastern (ME); or,
- 97 3.4.m.3.F. Other (Oth).
- 98 3.4.m.4. Whether the operator was:
- 99 3.4.m.4.A. Hispanic/Latino (H/L); or,
- 100 3.4.m.4.B. Non-Hispanic/Latino (NH/L).
- 101 3.4.n. Whether a search was performed as a result of the
- 102 stop and, if so:
- 103 3.4.n.1. The authority for the search to be indicated as
- 104 follows:
- 105 3.4.n.1.A. Consent;
- 106 3.4.n.1.B. Reasonable Suspicion/Weapon;
- 107 3.4.n.1.C. Incident to Arrest;
- 108 3.4.n.1.D. Inventory;
- 109 3.4.n.1.E. Probable Cause;
- 110 3.4.n.1.F. Plain View;
- 111 3.4.n.1.G. Probation/Parole Waiver; and,
- 112 3.4.n.1.H. Other.
- 113 3.4.n.2. Whether the search involved:
- 114 3.4.n.2.A. Officer;
- 115 3.4.n.2.B. Canine Unit;

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116 3.4.n.2.C. Portable Breath Analyzer;

117 3.4.n.2.D. Drug Test Kit;

118 3.4.n.2.E. Warrant Check; and,

119 3.4.n.2.F. Other.

120 3.4.n.3. The persons/items searched, to be indicated as:

121 3.4.n.3.A. Vehicle;

122 3.4.n.3.B. Driver;

123 3.4.n.3.C. Passenger(s);

124 3.4.n.3.D. Personal Effects; and,

125 3.4.n.3.E. No Search Conducted.

126 3.4.n.4. The type of any contraband discovered or seized as
127 a result of the search, to be indicated as follows:

128 3.4.n.4.A. None;

129 3.4.n.4.B. Illegal Drugs;

130 3.4.n.4.C. Drug Paraphernalia;

131 3.4.n.4.D. Alcohol;

132 3.4.n.4.E. Firearm(s);

133 3.4.n.4.F. Other Weapon(s);

134 3.4.n.4.G. Currency;

135 3.4.n.4.H. Stolen Property; and,

136 3.4.n.4.I. Other.

137 3.4.n.5. If the search was of a passenger in the motor
138 vehicle, the age, gender and perceived race and ethnicity of the
139 passenger searched.

140 3.5. Instructions detailing how an individual law-enforce-
141 ment officer should complete and submit the form may be
142 included on the MVSF itself, or provided to law-enforcement
143 agencies or officers as an attachment.

§149-5-4. Designation of patrol area.

1 4.1. Patrol area of stop. The chief executive of every law-
2 enforcement agency in the state shall establish one or more
3 “patrol areas” as defined in section 2.9A of this rule. The
4 boundaries shall be easily recognizable to the law-enforcement
5 officer and the designation of the patrol area shall be identified
6 by up to a three digit number that shall be entered by the officer
7 on the Motor Vehicle Stop Form. The boundaries and designa-
8 tions of patrol areas shall be provided to all officers under the
9 control of the agency and forwarded to the Governor’s
10 Committee on Crime Delinquency and Correction for utiliza-
11 tion in preparing the report to the legislature required by West
12 Virginia Code.

13 4.2. Requirements for boundaries of patrol areas. The
14 boundaries of the patrol areas shall be drawn to allow the
15 determination of population demographics of the Patrol Area as
16 a whole. Patrol areas may include whole or partial census tracts
17 and whole census blocks. The maps provided to officers need
18 not show this specific information, but only the boundaries of
19 the patrol area using natural landmarks such as streets, streams,
20 railroad tracks, or other boundaries as may be generally known
21 to a community. Maps of patrol areas shall be forwarded to the
22 Governor’s committee for approval of conformance to this
23 subsection.

24 4.3. County level law-enforcement agencies in counties
25 with a population of 20,000 or fewer may designate the entire
26 county as one patrol area. Law-enforcement agencies in cities
27 or towns with a population of 5,000 or fewer may designate the
28 entire city or town as one patrol area. Law-enforcement
29 agencies with statewide jurisdiction shall utilize patrol areas
30 established by the county of the stop.

§149-5-5. Training.

1 The chief executive officer of an law-enforcement agency
2 shall, prior to January 1, 2007, provide to each law-enforcement
3 officer of his or her agency appropriate training on the proper
4 completion of the Motor Vehicle Stop Form. All training shall
5 be based on the instructions developed by the Division of Motor
6 Vehicles pursuant to subsection 3 of this rule. Additional and or
7 ongoing training may be required by the law-enforcement
8 agency if improper reporting is identified.

§149-5-6. Data reporting.

1 6.1. Beginning January 1, 2007, each law-enforcement
2 agency in this state shall submit completed MVSFs to the
3 Division of Motor Vehicles, via United States Postal Service or
4 by any other reputable mail delivery service, hand-delivery or
5 by electronic means, if authorized by the Division of Motor
6 Vehicles. MVSFs must be received by the Division of Motor
7 Vehicles no later than close of business, normal operating
8 hours, on the fifteenth (15th) day following the end of the
9 reporting calendar month during which the information
10 recorded on the form was collected.

11 6.2. All MVSFs shall be completed correctly, be free of dirt
12 and debris and be submitted in usable condition for the
13 purposes outlined in this rule. Incomplete or rejected MVSF's
14 will be returned to the law-enforcement agency for completion,
15 correction and resubmission.

16 6.3. In furtherance of his or her responsibility to ensure that
17 the requirements of this section are met, the chief executive
18 shall periodically audit and review MVSFs submitted by law-
19 enforcement officers within his or her agency to ensure that the
20 facts surrounding traffic stops are not being intentionally
21 misrepresented.

22 6.4. Failure to comply with the requirements of this section
23 may subject a law-enforcement agency to the sanctions
24 provided in West Virginia Code §17G-2-2.

§149-5-7. Receipt and retention of MVSF.

1 MVSF Receiving and Retaining. — The Division of Motor
2 Vehicles shall establish a written policy designed to address the
3 reasonably foreseeable complications which may arise as a
4 result of receiving and retaining MVSFs submitted by a law-
5 enforcement agency, whether in hard copy or electronic format.
6 This policy may change, from time to time, and at the discretion
7 of the Division of Motor Vehicles, as necessity dictates. This
8 policy shall include, but not be limited to:

9 7.1. A mechanism for identifying the time, day, date and
10 year the MVSF was received by the Division of Motor
11 Vehicles;

12 7.2. A mechanism for maintaining accurate and easily
13 accessible data regarding the reporting habits of individual law-
14 enforcement agencies; and,

15 7.3. The identification of an appropriate and logistically
16 feasible time period to retain MVSFs submitted in hard copy
17 format; as well as any data stored electronically as a result of
18 this rule.

§149-5-8. Data limitations and confidentiality.

1 8.1. Any and all data collected, reported, compiled and
2 analyzed pursuant to this rule may be used only for the
3 purposes outlined in this rule.

4 8.2. Except as provided for in section 8 of this rule, no
5 official of the Division of Motor Vehicles, the Governor's
6 committee or a law-enforcement agency may release informa-
7 tion from an MVSF regarding the identity of any individual
8 law-enforcement officer. The Governor's committee and the
9 chief executive of a law-enforcement agency shall make
10 appropriate safeguards to protect the identity of individual law-
11 enforcement officers collecting data required by this rule at all
12 times.

**§149-5-9. Individual law-enforcement agency data request and
release.**

1 9.1. The chief executive of a law-enforcement agency may
2 request from the Division of Motor Vehicles release of data
3 regarding his or her law-enforcement agency and law-enforce-
4 ment officers. The request must be in writing and must be
5 received by the Division of Motor Vehicles no sooner than
6 thirty (30) days after the end of the calendar month for which
7 the data is being requested.

8 9.2. At a minimum, the data shall be organized in such a
9 manner as to allow the chief executive to review the informa-
10 tion collected from the MVSF by his or her particular agency
11 and officers for a period of at least one calendar month.

§149-5-10. Division of Motor Vehicles responsibilities.

1 The Division of Motor Vehicles and the Governor's
2 Committee on Crime, Delinquency and Correction have
3 reduced to writing in a memorandum of understanding the
4 duties required of the DMV pursuant to §17G-2-3. This
5 memorandum contains the protocols by which the Division of

6 Motor vehicles will collect the data required and by which the
7 data will be conveyed to the Governor's committee for analysis
8 and preparation of its annual report.

**§149-5-11. Governor's Committee on Crime, Delinquency and
Correction Annual Report.**

1 The Governor's committee shall analyze and report its
2 finding pursuant to West Virginia Code §17G-2-3. The
3 Criminal Justice Statistical Analysis Center, a unit of the
4 Governor's committee, shall use its discretion to determine the
5 methodology necessary to meet the analytic reporting require-
6 ments of §17G-2-3 consistent with the data made available to
7 it.

§64-9-6. Board of Examiners for Licensed Practical Nurses.

1 The legislative rule filed in the State Register on the fifth
2 day of July, two thousand five, authorized under the authority
3 of section five, article seven-a, chapter thirty of this code,
4 modified by the State Board of Examiners for Licensed
5 Practical Nurses to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the State Register on
7 the first day of November, two thousand five, relating to the
8 State Board of Examiners for Licensed Practical Nurses
9 (policies regulating licensure of the licensed practical nurse, 10
10 CSR 2), is authorized, with the following amendment:

11 On page two, section 8, at the beginning of the second
12 sentence in the section, by striking out the words "If the board
13 participates" and inserting in lieu thereof the words "Should the
14 board participate"; and,

15 On page three, subsection 11.2, in the second sentence, by
16 striking out the words "marriage certificate or divorce decree"
17 and inserting in lieu thereof the words "marriage certificate,
18 divorce decree or an order of a court of competent jurisdiction".

§64-9-7. Board of Occupational Therapy.

1 The legislative rule filed in the State Register on the
2 twenty-seventh day of June, two thousand five, authorized
3 under the authority of section six, article twenty-eight, chapter
4 thirty of this code, modified by the Board of Occupational
5 Therapy to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the State Register on the
7 twenty-first day of November, two thousand five, relating to the
8 Board of Occupational Therapy (administrative rule of the
9 Board of Occupational Therapy and licensure of occupational
10 therapists and occupational therapy assistants, 13 CSR 1), is
11 authorized, with the following amendment:

12 On page two, subdivision 2.8.b, after the words “direct line
13 of” by striking out the word “site” and inserting in lieu thereof
14 the word “sight”;

15 On page three, subsection 3.4, by striking out the words
16 “one hundred dollars (\$100.00)” and inserting in lieu thereof
17 the words “fifty dollars (\$50.00)”;

18 On page six, subsection 9.2.a.1, by striking out the words
19 “for ninety (90) days from date of issuance of the limited
20 permit” and inserting in lieu thereof the words “until the date on
21 which the results of the next qualifying examination have been
22 made public”;

23 On page six, subsection 9.2.b.1, by striking out the words
24 “for ninety (90) days from the date of issuance of the limited
25 permit” and inserting in lieu thereof the words “one (1) year or
26 until eligibility to sit for the certification exam is withdrawn or
27 the results of the certification exam have been made public”;
28 and,

29 On page twelve, subsection 13.3, after the words “licensed
30 Occupational Therapist supervising” by striking out the word
31 “and” and inserting in lieu thereof the word “an”.

§64-9-8. Board of Optometry.

1 (a) The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand five, authorized under
3 the authority of section three, article eight, chapter thirty of this
4 code, relating to the Board of Optometry (rules for the West
5 Virginia Board of Optometry, 14 CSR 1), is authorized.

6 (b) The legislative rule filed in the State Register on the
7 twenty-ninth day of July, two thousand five, authorized under
8 the authority of section three, article eight, chapter thirty of this
9 code, relating to the Board of Optometry (schedule of fees, 14
10 CSR 5), is authorized.

§64-9-9. Board of Osteopathy.

1 The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand five, authorized under
3 the authority of section one, article fourteen-a, chapter thirty of
4 this code, modified by the Board of Osteopathy 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 six, relating to the Board of Osteopathy
8 (osteopathic physician assistants, 24 CSR 2), is authorized with
9 the following amendments:

10 On page four, subdivision 2.6.1, by striking the words
11 “three (3) physician assistants” and inserting in lieu thereof the
12 following “two (2) physician assistants”;

13 On page eleven, subdivision 2.12.8., line one, after the
14 word “assistant”, by inserting the word “not”;

15 On page sixteen, subdivision 2.14.1, by striking the
16 subdivision in its entirety and inserting in lieu thereof the
17 following:

18 “2.14.1 Each osteopathic physician assistant, as a condition
19 of biennial renewal of osteopathic physician assistant license,
20 shall provide written documentation of participation in and
21 successful completion of a minimum of twenty (20) hours of
22 continuing education, during each year of the two year period,
23 in courses approved by the Board for the purposes of continuing
24 education of osteopathic physician assistants.”.

§64-9-10. Board of Pharmacy.

1 The legislative rule filed in the State Register on the
2 seventh day of July, two thousand five, authorized under the
3 authority of sections six and seven, article ten, chapter sixty-a
4 of this code, modified by the Board of Pharmacy to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the State Register on the eleventh day of October,
7 two thousand five, relating to the Board of Pharmacy (ephed-
8 rine and pseudoephedrine control, 15 CSR 11), is authorized.

§64-9-11. Board of Examiners of Psychologists.

1 The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand five, authorized under
3 the authority of section six, article twenty-one, chapter thirty of
4 this code, modified by the Board of Examiners of Psychologists
5 to meet the objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the fourth day of
7 January, two thousand six, relating to the Board of Examiners
8 of Psychologists (qualifications for licensure as a psychologist
9 or a school psychologist, 17 CSR 3), is authorized, with the
10 following amendments:

11 On page one, subsection 2.2., by striking out the word
12 “institute” and inserting in lieu thereof the word “institution”;

13 On page five, subsection 8.4., after the word “as” by
14 striking out the word “a”;

15 On page seven, paragraph 12.1.d., by striking out “@” and
16 inserting in lieu thereof a quotation mark;

17 And,

18 On page seven, section 12.7., by striking out the word
19 “loner” and inserting in lieu thereof the word “longer”.

§64-9-12. Radiologic Technology Board of Examiners.

1 (a) The legislative rule filed in the State Register on the
2 twenty-first day of July, two thousand five, authorized under
3 the authority of section five, article twenty-three, chapter thirty
4 of this code, relating to the Radiologic Technology Board of
5 Examiners (rule of the West Virginia Radiologic Technology
6 Board of Examiners, 18 CSR 1), is authorized.

7 (b) The legislative rule filed in the State Register on the
8 twenty-eighth day of July, two thousand five, authorized under
9 the authority of section five, article twenty-three, chapter thirty
10 of this code, modified by the Radiologic Technology Board of
11 Examiners to meet the objections of the Legislative Rule-
12 Making Review Committee and refiled in the State Register on
13 the twenty-eighth day of December, two thousand five, relating
14 to the Radiologic Technology Board of Examiners (standard of
15 ethics, 18 CSR 5), is authorized, with the following amend-
16 ment:

17 On page two, at the end of section 4.1, after the words
18 “comfort of patients.” by inserting the words “The individual
19 shall.”;

20 On page two, subsection 4.1.1, by striking the words “The
21 individual shall”;

22 On page two, subsection 4.1.1, after the words “in a
23 professional manner,” by striking out the word “responds” and
24 inserting in lieu thereof the word “respond”;

25 On page two, subsection 4.1.1, after the words “to patient
26 needs and” by striking out the word “supports” and inserting in
27 lieu thereof the word “support”;

28 On page two, subsection 4.1.4, after the words “theoretical
29 knowledge and concepts,” by striking out the word “uses” and
30 inserting in lieu thereof the word “use”;

31 On page two, subsection 4.1.4, after the words “they were
32 designed, and” by striking out the word “employs” and
33 inserting in lieu thereof the word “employ”;

34 On page two, subsection 4.1.5, after the words “assess
35 situations;” by striking out the word “exercises” and inserting
36 in lieu thereof the word “exercise”;

37 On page two, subsection 4.1.5, after the words “discretion
38 and judgment;” by striking out the word “assumes” and
39 inserting in lieu thereof the word “assume”;

40 On page two, subsection 4.1.5, after the words “profes-
41 sional decisions; and” by striking out the word “acts” and
42 inserting in lieu thereof the word “act”;

43 On page two, subsection 4.1.6, after the words “treatment
44 of the patient and” by striking out the word “recognizes” and
45 inserting in lieu thereof the word “recognize”;

46 On page two, subsection 4.1.7, by striking out the first word
47 “uses” and inserting in lieu thereof the word “use”;

48 On page two, subsection 4.1.7, after the words “equipment
49 and accessories,” by striking out the word “employs” and
50 inserting in lieu thereof the word “employ”;

51 On page two, subsection 4.1.7, after the words “techniques
52 and procedures,” by striking out the word “performs” and
53 inserting in lieu thereof the word “perform”;

54 On page two, subsection 4.1.7, after the words “standard of
55 practice, and” by striking out the word “demonstrates” and
56 inserting in lieu thereof the word “demonstrate”;

57 On page two, subsection 4.1.8, after the words “appropriate
58 to the profession and” by striking out the word “protects” and
59 inserting in lieu thereof the word “protect”;

60 On page two, subsection 4.1.9, after the words “course of
61 professional practice,” by striking out the word “respects” and
62 inserting in lieu thereof the word “respect”;

63 On page three, section 5.1, after the words “for all present
64 Licensees,” by striking out the word “Permittee’s” and
65 inserting in lieu thereof the word “Permittees”;

66 On page three, at the end of section 5.1, after the words “An
67 individual” by striking out the word “shall” and inserting in lieu
68 thereof the word “may”;

69 On page three, subdivision 5.1.2(a), after the words
70 “examination of the Board;” and before the words “disclosing
71 information” by striking out the word “or”;

72 On page three, subdivision 5.1.2(a), after the words
73 “understood by the recipient as” by striking out the comma and
74 the words “any portion of or”;

75 On page four, subdivision 5.1.2(c), after the word “imper-
76 sonating” by striking out the word “a” and inserting in lieu
77 thereof the word “an”;

78 On page four, subdivision 5.1.5(a), after the words “rule or
79 regulation exists,” by inserting the words “a departure from or
80 failure to conform”;

81 On page four, subdivision 5.1.5(b), after the words “danger
82 to a” by striking out the word “patient’s” and inserting in lieu
83 thereof the word “patient’s”;

84 On page five, subsection 5.1.7, after the words “reasonable
85 skill and safety” by striking out the words “to patients”;

86 On page five, subsection 5.1.7, after the words “any other
87 material” by striking out the semicolon inserting in lieu thereof
88 a comma;

89 On page five, subsection 5.1.9, after the words “harm the
90 public; or” by striking out the word “demonstrating” and
91 inserting in lieu thereof the word “demonstrate”;

92 On page five, subsection 5.1.10, after the words “demean-
93 ing to a patient” by striking out the semicolon and inserting in
94 lieu thereof a comma;

95 On page five, subsection 5.1.10, after the words “to a
96 patient, or” by striking out the word “engaging” and inserting
97 in lieu thereof the word “engage”;

98 On page five, in the last sentence of subsection 5.1.10 after
99 the word “This” by inserting the word “subsection”;

100 On page five, subsection 5.1.12, after the words “or
101 otherwise” by striking out the word “participating” and
102 inserting in lieu thereof the word “participate”;

103 On page five, subsection 5.1.14, after the words “assist,
104 advise or” by striking out the word “allowing” and inserting in
105 lieu thereof the word “allow”;

106 On page five, subsection 5.1.14, after the words “appropri-
107 ate state permit” by striking out the comma;

108 On page six, section 5.2, by striking the words “Convic-
109 tions, criminal proceedings or military court-martials.” and
110 inserting in lieu thereof the words “An individual must report
111 convictions, criminal proceedings or military court-martials as
112 set forth in this section.”;

113 On page six, subsection 5.2.1, after the words “abuse
114 related violations” by striking out the words “must be re-
115 ported”;

116 On page six, subsection 5.2.2, after the words “nolo
117 contendere” by striking out the words “must be reported”; and,

118 On page six, subsection 5.2.3, after the words “patient-
119 related infractions” by striking out the words “must be
120 reported”.

§64-9-13. Real Estate Appraiser Licensure and Certification Board.

1 (a) The legislative rule filed in the State Register on the
2 eleventh day of July, two thousand five, authorized under the
3 authority of section seven, article thirty-eight, chapter thirty of
4 this code, modified by the Real Estate Appraiser Licensure and
5 Certification Board to meet the objections of the Legislative
6 Rule-Making Review Committee and refiled in the State
7 Register on the eighteenth day of January, two thousand six,
8 relating to the Real Estate Appraiser Licensure and Certification
9 Board (requirements for licensure and certification, 190 CSR
10 2), is authorized.

11 (b) The legislative rule filed in the State Register on the
12 eleventh day of July, two thousand five, authorized under the
13 authority of section nine, article thirty-eight, chapter thirty of
14 this code, relating to the Real Estate Appraiser Licensure and
15 Certification Board (renewal of licensure and certification, 190
16 CSR 3), is authorized.

§64-9-14. Secretary of State.

1 (a) The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand five, authorized under
3 the authority of section forty-eight, article one, chapter three of

4 this code, modified by the Secretary of State to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the State Register on the tenth day of January,
7 two thousand six, relating to the Secretary of State (loan
8 program for purchase of voting equipment, software and
9 services, 153 CSR 10), is authorized, with the following
10 amendment:

11 On page one, subsection 1.1., line one, after the words
12 “administration of the”, by inserting the words “County
13 Assistance Voting Equipment Fund (‘Fund’)”;

14 On page one, subsection 1.1., by striking out the words “S.
15 B. 3002” and inserting in lieu thereof the words “W. Va. Code
16 §3-1-48”;

17 On page one, section 2., by striking out the words “County
18 commissions” and inserting in lieu thereof the words “A county
19 commission”;

20 On page one, section 2., after the word “loan”, by inserting
21 the words “from the Fund”;

22 On page one, section 2., after the words “related services”,
23 by inserting a comma;

24 On page one, subsection 3.1., after the words “requesting a
25 loan”, by striking out the comma and inserting the words “from
26 the Fund”;

27 On page one, subdivision 3.2.a., by striking out the word
28 “County” and inserting in lieu thereof the word “county”;

29 On page one, subdivision 3.2.c., after the word “funds”, by
30 inserting a comma;

31 On page two, section 4.1, by striking out the words “County
32 commissions” and inserting in lieu thereof the words “A county
33 commission”;

34 On page two, section 4.1, after the words “obtain a loan”,
35 by inserting the words “from the Fund”;

36 On page two, subsection 4.2., after the words “fifty
37 percent” by inserting“(50%)”;

38 On page two, subsection 4.2., by striking out the words
39 “required by the county commission”;

40 On page two, subsection 4.2., after the words “Commission
41 that” by striking out the word “it” and inserting in lieu thereof
42 the words “the county commission”;

43 On page two, section 4.3, by striking out the words “County
44 commissions” and inserting in lieu thereof the words “A county
45 commission”;

46 On page two, section 5., by striking out the word “only”;

47 On page two, section 5., after the words “approved by the
48 State Election Commission”, by inserting the word “only”;

49 On page two, section 5., after the word “services”, by
50 inserting the words “and only”;

51 On page two, section 5., after the words “if certified”, by
52 inserting a comma and the words “when necessary,”;

53 On page two, section 5., by striking out the words “if
54 applicable”;

55 On page two, section 6., by striking out the word “con-
56 tracted” and inserting in lieu thereof the word “contract”;

57 On page three, section 6., after the word “county”, by
58 inserting a period, striking out the words “and the” and
59 inserting in lieu thereof the word “The”;

60 On page three, subsection 7.1., after the words “forty-five
61 days”, by striking out the words “of receipt”;

62 On page three, subsection 7.1., after the words “a denial”,
63 by striking out the words “shall have” and inserting in lieu
64 thereof the word “has”;

65 On page three, subsection 7.2., after the word “loan” by
66 striking out the colon and the words “Provided that” and
67 inserting in lieu thereof the word “if”;

68 On page three, subsection 7.3., by striking out the words “a
69 period not to exceed five years or”;

70 On page three, subsection 7.3., after the words “length of
71 the contract”, by inserting a comma and the words “not to
72 exceed five years”;

73 On page three, subsection 7.3., after the word “services”, by
74 inserting a period and striking out the remainder of the
75 sentence;

76 On page three, subsection 7.4., after the words “basis for”,
77 by striking out the word “repayment”;

78 On page three, subsection 7.4., after the word “allow”, by
79 inserting the word “a”;

80 On page three, subsection 7.4., by striking out the words
81 “continuation for a period of” and inserting in lieu thereof the
82 words “to continue for”;

83 On page three, subsection 7.4., by striking out the word
84 “total”;

85 On page three, section 8., after the words “one request” by
86 striking out the comma and the words “will be” and inserting in
87 lieu thereof the word “is”;

88 On page three, section 8., after the words “time of the
89 request” by changing the comma to a period, striking out the
90 word “the” and inserting in lieu thereof the word “The”;

91 On page three, section 8., line five, after the words
92 “presidential election”, by changing the colon to a period and
93 by striking out the remainder of the section;

94 On page three, section 9., after the words “The loan”, by
95 striking out the word “shall” and inserting in lieu thereof the
96 word “may”;

97 On page three, section 9., after the words “apply for”, by
98 striking out the words “matching funds” and inserting in lieu
99 thereof the words “a loan”;

100 On page four, section 10., after the words “voting system”
101 by striking out the comma and the words “shall be” and
102 inserting in lieu thereof the word “is”;

103 On page four, section 10., after the words “loan proceeds”,
104 by striking out the comma and the words “that will be available
105 to such counties under this loan program according to section
106 8 of this rule” and inserting in lieu thereof the words “available
107 to any such county”;

108 On page four, subsection 11.3., by placing quotation marks
109 around the words “Nonpayment of the loan installments” and
110 by striking out the words “shall mean” and inserting in lieu
111 thereof the word “means”;

112 On page four, subsection 11.4., by striking out the word
113 “Any” inserting in lieu thereof the word “The Secretary of State
114 will cease any”;

115 On page four, subsection 11.4., after the words “legal
116 action”, by striking out the words “will cease”; and,

117 On page four, subsection 11.4., by striking out the words
118 “shall be” and inserting in lieu thereof the word “is”.

119 (b) The legislative rule filed in the State Register on the
120 twenty-ninth day of July, two thousand five, authorized under
121 the authority of sections nine-a and nine-b, article four-a,
122 chapter three of this code, modified by the Secretary of State to
123 meet the objections of the Legislative Rule-Making Review
124 Committee and refiled in the State Register on the tenth day of
125 January, two thousand six, relating to the Secretary of State
126 (public testing of ballot-marking voting systems and precinct
127 ballot-scanning devices, 153 CSR 11), is authorized, with the
128 following amendment:

129 On page one, subsection 1.1., after the words “ballot
130 scanning”, by striking out the words “the approval and use of
131 various types of vote recording devices” and inserting in lieu
132 thereof the word “systems”;

133 On page one, subdivision 2.1.a., after the words “system
134 ballot”, by striking out the comma;

135 On page one, section 3., by striking out the word “will” and
136 inserting in lieu thereof the word “shall”; and,

137 On page one, subsection 5.1., by striking out the word
138 “annually” and inserting in lieu thereof the words “every two
139 years”.

140 (c) The legislative rule filed in the State Register on the
141 twenty-first day of June, two thousand five, authorized under
142 the authority of section three, article three, chapter thirty-nine-a
143 of this code, modified by the Secretary of State to meet the
144 objections of the Legislative Rule-Making Review Committee
145 and refiled in the State Register on the tenth day of January,
146 two thousand six, relating to the Secretary of State (use of
147 digital signatures, state certificate authority and state repository,
148 153 CSR 30), is authorized.

§64-9-15. Statewide Addressing and Mapping Board.

1 (a) The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand five, authorized under
3 the authority of section five, article one, chapter twenty-four-e
4 of this code, modified by the Statewide Addressing and
5 Mapping Board to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the State Register on
7 the seventeenth day of October, two thousand five, relating to
8 the Statewide Addressing and Mapping Board (final distribu-
9 tion and use of the statewide addressing and mapping fund, 169
10 CSR 3), is authorized, with the following amendment:

11 On page two, subsection 2.1, following the words “in the
12 fund” and the comma by striking the words “in the same
13 proportions and manner as wireless enhanced 911 fees are
14 distributed to county commissions under W.Va. Code §24-6-6b
15 for the year in which the remaining amounts from the fund are
16 distributed” and inserting the words “according to the formula
17 contained in W.Va. Code §24-6-6b(d)(1): *Provided*, That the
18 provisions of §24-6-6b(d)(1) by which a county may receive a
19 special eight and one half tenths of one percent because of the
20 date upon which it enacted its 911 ordinance are not applicable
21 to the apportionment of funds transferred pursuant to this rule.”.

22 (b) The legislative rule filed in the State Register on the
23 twenty-ninth day of July, two thousand five, authorized under
24 the authority of section nine, article one, chapter twenty-four-e
25 of this code, modified by the Statewide Addressing and
26 Mapping Board to meet the objections of the Legislative Rule-
27 Making Review Committee and refiled in the State Register on
28 the eleventh day of October, two thousand five, relating to the
29 Statewide Addressing and Mapping Board (standard fees for
30 planimetric elevation data, 169 CSR 4), is authorized, with the
31 following amendments:

32 On page three, subdivision 2.2.a., following the word
33 “Fund” and the period, by striking out the remainder of
34 subdivision 2.2.a.; and,

35 On page three, subdivision 2.2.b., following the word
36 “purposes” and the period, by striking out the remainder of
37 subdivision 2.2.b.

§64-9-16. Board of Veterinary Medicine.

1 (a) The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand five, authorized under
3 the authority of section four, article ten, chapter thirty of this
4 code, modified by the Board of Veterinary Medicine to meet
5 the objections of the Legislative Rule-Making Review Commit-
6 tee and refiled in the State Register on the seventh day of
7 October, two thousand five, relating to the Board of Veterinary
8 Medicine (organization and operation, 26 CSR 1), is authorized,
9 with the following amendments:

10 On page ten, subsection 9.4, by striking out the underlined
11 words “or any authorized reporting agent”;

12 On page eleven, subsection 9.5, by striking out the word
13 “investigation” and striking out the underlined words “legal
14 fees”; and,

15 On page eleven, subsection 9.5, by striking out the words
16 “to the veterinarian who was the subject of disciplinary action”
17 and inserting in lieu thereof the words “to a veterinarian against
18 whom disciplinary action was taken.”.

19 (b) The legislative rule filed in the State Register on the
20 twenty-ninth day of July, two thousand five, authorized under
21 the authority of section nine, article ten-a, chapter thirty of this
22 code, modified by the Board of Veterinary Medicine to meet
23 the objections of the Legislative Rule-Making Review Commit-

24 tee and refiled in the State Register on the seventh day of
25 October, two thousand five, relating to the Board of Veterinary
26 Medicine (certified animal euthanasia technicians, 26 CSR 5),
27 is authorized.

28 (c) The legislative rule filed in the State Register on the
29 twenty-ninth day of July, two thousand five, authorized under
30 the authority of section four, article ten, chapter thirty of this
31 code, relating to the Board of Veterinary Medicine (schedule of
32 fees, 26 CSR 6), is authorized.

CHAPTER 145

**(Com. Sub. for H. B. 4210 — By Delegates Mahan,
Palumbo, Cann, Pino, Armstead and Overington)**

[Passed March 10, 2006; in effect from passage.]

[Approved by the Governor on April 4, 2006.]

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 and the procedures relating thereto; 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; authorizing the Division of Forestry to promulgate a legislative rule relating to ginseng; authorizing the Office of Miners Health, Safety and Training to promulgate a legislative rule relating to safety provisions for clearing crews; authorizing the Division of Natural Resources to promulgate a legislative rule relating to commercial whitewater outfitters; 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 the rules governing the public use of West Virginia State Parks, State Forests and State Wildlife Management Areas under the Division; authorizing the Division of Natural Resources to promulgate a legislative rule relating to terms defining the terms to be used concerning all hunting and trapping rules; authorizing the Division of Natural Resources to promulgate a legislative rule relating to wild boar hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special waterfowl hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to falconry; 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 miscellaneous permits and licenses; 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 nurse overtime complaints; and 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.****PROMULGATE LEGISLATIVE RULES.**

§64-10-1. Division of Forestry.

§64-10-2. Office of Miners Health, Safety and Training.

§64-10-3. Division of Natural Resources.

§64-10-4. Division of Labor.

§64-10-5. Division of Tourism.

§64-10-1. Division of Forestry.

1 The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand five, authorized under
3 the authority of section three, article one-a, chapter nineteen of
4 this code, modified by the Division of Forestry 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 October, two thousand five, relating to the Division of Forestry
8 (Ginseng, 22 CSR 1), is authorized, with the following amend-
9 ment:

10 On page six, by striking out subsection 13.1 in its entirety
11 and renumbering the remaining subsections.

§64-10-2. Office of Miners Health, Safety and Training.

1 The legislative rule filed in the State Register on the
2 sixteenth day of March, two thousand five, authorized under the
3 authority of section six, article one, chapter twenty-two-a of this
4 code, modified by the Office of Miners Health, Safety and
5 Training to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the State Register on the tenth
7 day of June, two thousand five, relating to the Office of Miners
8 Health, Safety and Training (Safety provisions for clearing
9 crews, 56 CSR 2), is authorized, with the following amend-
10 ments:

11 On page twelve, section twenty-one, following subsection
12 21.2, by inserting the following:

13 “21.3. The employer shall provide annual continuing
14 training of at least eight hours covering the subjects listed in
15 subdivision 21.1.b for each employee, including supervisors, at
16 no cost to the employee.”

§64-10-3. Division of Natural Resources.

1 (a) The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand five, authorized under
3 the authority of section twenty-three-a, article two, chapter
4 twenty of this code, modified by the Division of Natural
5 Resources to meet the objections of the Legislative
6 Rule-Making Review Committee and refiled in the State
7 Register on the seventeenth day of October, two thousand five,
8 relating to the Division of Natural Resources (Commercial
9 whitewater outfitters, 58 CSR 12), is authorized.

10 (b) The legislative rule filed in the State Register on the
11 twenty-ninth day of July, two thousand five, authorized under
12 the authority of sections thirteen, twenty-two, twenty-two-a and
13 twenty-three, article seven, chapter twenty of this code,
14 modified by the Division of Natural Resources to meet the
15 objections of the Legislative Rule-Making Review Committee
16 and refiled in the State Register on the seventeenth day of
17 October, two thousand five, relating to the Division of Natural
18 Resources (Boating, 58 CSR 25), is authorized.

19 (c) The legislative rule filed in the State Register on the
20 twenty-ninth day of July, two thousand five, authorized under
21 the authority of section seven, article one, chapter twenty of this
22 code, modified by the Division of Natural Resources to meet
23 the objections of the Legislative Rule-Making Review
24 Committee and refiled in the State Register on the eighteenth
25 day of October, two thousand five, relating to the Division of

26 Natural Resources (Public use of West Virginia State Parks,
27 State Forests and State Wildlife Management Areas under the
28 Division of Natural Resources, 58 CSR 31), is authorized with
29 the amendments set forth below:

30 On page one, subsection 1.1, after the words, "Division of
31 Natural Resources" by inserting the words "Parks and
32 Recreation Section";

33 On page three, subsection 2.21, after the words "Chief
34 Logan," by changing the comma to a colon, striking out "except
35 in the" and inserting following: "*Provided*, That beer, wine and
36 alcoholic beverages may be served in the restaurant,";

37 On page three, subsection 2.21, after the words "conference
38 center" by inserting the words "without prior written authoriza-
39 tion from the Director";

40 And,

41 On page four, subsection 2.21, after the words "prohibited
42 by posted signs" by changing the period to a colon and inserting
43 the following: "*Provided*, That any person, group or association
44 sponsoring a private party at the multi-purpose log barn at
45 Prickett's Fort State Park may provide beer, wine, liquor and all
46 other alcoholic beverages for guests at a private party as long as
47 the party is not open to the general public."

48 (d) The legislative rule filed in the State Register on the
49 twenty-ninth day of July, two thousand five, authorized under
50 the authority of section seven, article one, chapter twenty of this
51 code, modified by the Division of Natural Resources to meet
52 the objections of the Legislative Rule-Making Review Commit-
53 tee and refiled in the State Register on the seventeenth day of
54 October, two thousand five, relating to the Division of Natural
55 Resources (Terms defining the terms to be used concerning all

56 hunting and trapping rules, 58 CSR 46), is authorized, with the
57 following amendment:

58 On page two, subsection 2.10, after the words “Individual
59 Permanently Disabled in the Lower Extremities” by striking out
60 the remainder of subsection 2.10 and inserting in lieu thereof
61 the following: “means an individual who is permanently and
62 totally disabled due to paralysis or disease in the lower half of
63 the body, which makes it impossible to ambulate successfully
64 more than two hundred feet without assistance”.

65 (e) The legislative rule filed in the State Register on the
66 twenty-ninth day of July, two thousand five, authorized under
67 the authority of section seven, article one, chapter twenty of this
68 code, relating to the Division of Natural Resources (Wild boar
69 hunting, 58 CSR 52), is authorized.

70 (f) The legislative rule filed in the State Register on the
71 twenty-ninth day of July, two thousand five, authorized under
72 the authority of section seven, article one, chapter twenty of this
73 code, relating to the Division of Natural Resources (Special
74 waterfowl hunting, 58 CSR 58), is authorized.

75 (g) The legislative rule filed in the State Register on the
76 twenty-ninth day of July, two thousand five, authorized under
77 the authority of section seven, article one, chapter twenty of this
78 code, relating to the Division of Natural Resources (Miscella-
79 neous permits and licenses, 58 CSR 64), is authorized, with the
80 following amendments:

81 On page four, subsection 3.6, by striking out the words “A
82 public hearing will be conducted” and inserting in lieu thereof
83 the words “The Division of Natural Resources will conduct a
84 public hearing”;

85 On page four, subsection 3.7, after the period, by inserting
86 the following: “If the chief accepts a recommendation to deny

87 the granting of a permit or license, he must notify the applicant
88 of the denial and the reasons therefor.” and by striking out
89 subdivision 3.7.1 in its entirety;

90 On page four, subsection 4.1, by striking out the words
91 “Except as provided in Section 4.1.1 of this rule, all” and
92 inserting in lieu thereof the words “A commercial shooting
93 preserve license issued under W. Va. Code §20-2-54 expires on
94 June 30 of the fiscal year of issue. All other”;

95 On page four, subsection 4.1, by striking out the word
96 “will”;

97 On page four, by striking out subdivision 4.1.1 in its
98 entirety;

99 On page five, subsection 5.3, by striking out the word “as”;

100 On page five, subsection 6.2, by striking out “A captive
101 deer facility must be inspected by both Division of Natural
102 Resources, Wildlife Resources and Law Enforcement personnel
103 and an inspection form completed.” and inserting in lieu thereof
104 the following: “Personnel from both the Division of Natural
105 Resources, Wildlife Resources Section and the Division of
106 Natural Resources, Law Enforcement Section will inspect
107 captive cervid facilities and complete an inspection form.”;

108 On page eleven, subsection 7.4, by striking out the word
109 “will”;

110 On page eleven, subsection 7.4, by striking out the words
111 “or not the license” and inserting in lieu thereof the word “it”;

112 On page eleven, subsection 7.4.1, by striking out “There
113 shall be a” and inserting in lieu thereof “The”;

114 On page eleven, subsection 7.4.1, by striking out “of” and
115 inserting in lieu thereof “is”;

116 On page eleven, subsection 7.4.1, by adding the following
117 sentence at the end of the subdivision: “The fee for renewal of
118 a captive cervid facility license is \$250.”;

119 On page eleven, subdivision 7.4.2, by striking out the words
120 “A public hearing will be conducted” and inserting in lieu
121 thereof the words “The Division of Natural Resources will
122 conduct a public hearing”;

123 On page eleven, by striking out subdivision 7.4.3 in its
124 entirety and inserting in lieu thereof the following:

125 “7.4.3. “A unique and permanent identifying license
126 number, corresponding to the number assigned to the premises
127 by the National Animal Identification System, shall be issued
128 to each licensed captive cervid facility. The applicant must
129 supply this number to the West Virginia Division of Natural
130 Resources with the application for a captive cervid facility
131 license.”;

132 On page eleven, subdivision 7.4.5, by striking out the words
133 “direct or”;

134 On pages eleven and twelve, by striking out all of subdivi-
135 sion 7.4.7 and by renumbering the remaining subdivisions;

136 On page twelve, subdivision 7.4.8, by striking out the
137 words “posts must be spaced at 20 feet maximum for T post or
138 30 feet maximum for rigid post; brace posts must be buried at
139 least 4 feet in rocky soil and 6 feet in sandy soil or concrete
140 must be used to provide equal stability; line posts must be
141 buried to 3 feet” and inserting in lieu thereof the words “posts
142 must be properly spaced and anchored”;

143 On page twelve, subdivision 7.4.13, by striking out the
144 word “daily”;

145 On page twelve, subdivision 7.4.13, after the word “pests”
146 by striking out the words “Food and water containers shall be
147 kept clean. Hay, straw or other bedding material must be
148 replaced as needed. All waste must be disposed of in a legal
149 manner.” and inserting in lieu thereof “and is in accordance
150 with best management practices”;

151 On page twelve, subdivision 7.4.14, by striking out the
152 word “state” and inserting in lieu thereof the words “West
153 Virginia”;

154 On page twelve, subdivision 7.4.14, by striking out the
155 word “accredited” and inserting in lieu thereof the words “West
156 Virginia licensed”;

157 On page twelve, at the end of subdivision 7.4.14, after the
158 words “brucellosis testing.” by inserting the following: “The
159 collection of samples for CWD testing shall be performed by
160 trained personnel within the West Virginia Division of Natural
161 Resources or by a trained veterinarian employed by the West
162 Virginia Department of Agriculture. For the purpose of
163 collecting tissue for CWD testing, the captive cervid facility
164 licensee has four options: (1) the licensee may deliver to a West
165 Virginia Division of Natural Resources District Office the head
166 of the cervid; (2) the licensee may deliver to a West Virginia
167 Division of Natural Resources District Office the entire cervid
168 with the head intact; (3) the licensee may contact the West
169 Virginia Division of Natural Resources and a trained represen-
170 tative of the West Virginia Division of Natural Resources
171 and/or a trained veterinarian employed by the West Virginia
172 Department of Agriculture shall go to the facility and obtain the
173 tissue samples; or (4) the licensee may deliver the entire cervid
174 with the head intact to the West Virginia Department of
175 Agriculture lab in Moorefield, West Virginia, and upon delivery
176 of the cervid carcass, the West Virginia Department of
177 Agriculture shall notify the West Virginia Division of Natural
178 Resources of the delivery. After the West Virginia Division of

179 Natural Resources and/or the West Virginia Department of
180 Agriculture have obtained sufficient and necessary tissue
181 samples, the remaining tissue may be shared with the captive
182 cervid facility licensee.”;

183 On page twelve, subdivision 7.4.15, by striking out “The
184 co-mingling of different Cervid species or Cervid species and
185 livestock will not be permitted in the same pens without written
186 approval of the Director. If different Cervid species are housed
187 at the same facility, they must be separated into different pens
188 that are double-fenced or otherwise prohibit contact between
189 the different species.” and inserting in lieu thereof the follow-
190 ing: “Co-mingling of different cervid species will be allowed if
191 the population density is at least 20,000 square feet per animal
192 and if all best management practices are followed by the captive
193 cervid facility.”;

194 On page twelve, subdivision 7.4.15, after the words
195 “material from” by striking out “different Cervid species” and
196 inserting in lieu thereof the words “captive cervids”;

197 On page twelve, subdivision 7.4.15, after the word “ex-
198 posed” by striking out “to other Cervids in separate pens or”;

199 On page thirteen, subdivision 7.4.16, by striking out the
200 word “shall” and inserting in lieu thereof the word “may”;

201 On page thirteen, subdivision 7.4.16, by striking out the
202 words “such verification”;

203 On page thirteen, subdivision 7.4.18, after the words “50
204 yards” by striking out the words “Except that a” and inserting
205 in lieu thereof the word “A”;

206 On page thirteen, subdivision 7.4.18, after the words “in the
207 ear” by striking out the word “shall” and inserting in lieu
208 thereof the word “is”;

209 On page thirteen, subdivision 7.4.19, by striking out the
210 word “An” and inserting in lieu thereof the words “A licensee
211 shall maintain an”;

212 On page thirteen, subdivision 7.4.19, by striking out the
213 words “will be maintained”;

214 On page thirteen, subdivision 7.4.19, after the word
215 “permits” by striking out the period and the words “Records
216 shall show” and inserting in lieu thereof the words “and shall
217 include”;

218 On page thirteen, subdivision 7.4.20, by striking out the
219 word “A” and inserting in lieu thereof the words “A licensee
220 shall forward a”;

221 On page thirteen, subdivision 7.4.20, by striking out the
222 words “shall be forwarded”;

223 On page thirteen, subdivision 7.4.20, by striking out the
224 words “Prior approval shall be obtained from the Director for
225 the movement of captive cervids, and shall be conditional on
226 negative test results and herd accreditation for TB and
227 brucellosis as defined by the USDA.” and inserting in lieu
228 thereof the following: “A licensee must obtain prior approval
229 from the Director to move captive cervids. The Director may
230 grant approval on a case-by-case basis. All captive cervid
231 facilities must enroll the cervid herds in accreditation programs
232 for brucellosis and TB as defined by the USDA: *Provided*, That
233 captive cervid facilities licensed after August 9, 2005 may only
234 accept cervids from TB accredited herds that also meet all
235 requirement of CWD monitoring and surveillance programs”;

236 On page thirteen, subdivision 7.4.20, after the words
237 “performed by” by striking out the words “an accredited” and
238 inserting in lieu thereof the words “a West Virginia licensed”;

239 On page thirteen, by striking out subdivision 7.4.21 in its
240 entirety and inserting in lieu thereof the following:

241 “7.4.20. A captive cervid facility licensed after August 9,
242 2005, may receive animals coming from a herd within the state
243 only if the proposed transfer is from a herd that has an ongoing
244 and appropriate CWD surveillance record for at least 60
245 months. If a licensee has a monitoring program which has been
246 in effect for at least 36 months, the Director may, after
247 reviewing the facility’s monitoring records, approve intra-state
248 movement of cervids from the facility’s herd: *Provided*, That
249 intra-state movement of captive cervids may be approved by the
250 Director on a case-by-case basis.”;

251 On page thirteen, by striking out subdivision 7.4.22 in its
252 entirety and inserting in lieu thereof the following:

253 “7.4.21. A captive cervid facility in this state may not
254 receive animals that have originated from or been housed with
255 animals originating from any state that has a confirmed CWD
256 or tuberculosis (TB) positive cervid in the last 60 months. A
257 captive cervid facility in this state may not receive genetic
258 material that originates from any state that has a confirmed
259 CWD or tuberculosis (TB) positive cervid in the last 60
260 months.”;

261 On page thirteen, subdivision 7.4.23, by striking out the
262 words “an accredited” and inserting in lieu thereof the words “a
263 West Virginia licensed”;

264 On page thirteen, at the end of subdivision 7.4.24, by
265 changing the period to a colon and adding the following
266 proviso: “*Provided*, That fawns below the age of six (6) months
267 may be moved or transferred if the fawn originates from a
268 certified tuberculous free herd and is tagged with a unique
269 marker visible from 50 yards.”;

270 On page fourteen, subdivision 7.4.25, by striking out the
271 word “Every” and inserting the word “A licensee will make
272 every”;

273 On page fourteen, subdivision 7.4.25, by striking out the
274 words “will be made”;

275 On page fourteen, subdivision 7.4.25, by striking out the
276 word “All” and inserting in lieu thereof the words “A licensee
277 shall report all known”;

278 On page fourteen, subdivision 7.4.25, by striking out the
279 words “shall be reported”;

280 On page fourteen, subdivision 7.4.25, by striking out “24”
281 and inserting in lieu thereof “8”;

282 On page fourteen, subdivision 7.4.25, after the word
283 “Captain” by changing the period to a comma and inserting the
284 following: “District WRS Game Biologist or the county
285 conservation officer.”;

286 On page fourteen, subdivision 7.4.25, after the words
287 “captive Cervid license” by striking out the remainder of the
288 subdivision and inserting in lieu thereof the following: “Any
289 negligent act that results in captive cervids escaping is a
290 violation of the license.”;

291 On page fourteen, subdivision 7.4.26, after the words
292 “transmissible diseases.” by striking out the remainder of the
293 subdivision and inserting in lieu thereof the following: “All
294 costs for killing an animal that escapes due to a negligent act,
295 including collecting samples and testing, are the responsibility
296 of the licensee.”;

297 On page fourteen, subdivision 7.4.27, by striking out
298 “shall” and inserting in lieu thereof the word “may”;

299 On page fourteen, subdivision 7.4.28, by striking out the
300 words “The” and inserting in lieu thereof the words “An
301 authorized representative of the Director shall periodically
302 inspect the”;

303 On page fourteen, subdivision 7.4.28, by striking out the
304 words “shall be periodically inspected by an authorized
305 representative of the Director”;

306 On page fourteen, subdivision 7.4.30, by striking out the
307 word “Any” and inserting in lieu thereof the words “The
308 licensee shall report any”;

309 On page fourteen, subdivision 7.4.30, by striking out the
310 words “shall be reported”;

311 On page fourteen, subdivision 7.4.31, by striking out the
312 word “Appropriate” and inserting in lieu thereof the words “The
313 licensee shall submit appropriate”;

314 On page fourteen, subdivision 7.4.31, by striking out the
315 word “must be submitted”;

316 On page fourteen, subdivision 7.4.31, by striking out the
317 words “may also be required.” and inserting in lieu thereof the
318 following: “is also required. Any captive cervid that is fourteen
319 months of age or older that dies or is slaughtered must be tested
320 for TB and brucellosis by a USDA certified, West Virginia
321 licensed veterinarian if sufficient samples are available. These
322 test results shall be made available to the West Virginia
323 Department of Agriculture and the West Virginia Division of
324 Natural Resources.”;

325 On page fourteen, subdivision 7.4.32, by striking out the
326 words “It shall be the licensee’s responsibility to ensure that”
327 and insert in lieu thereof “The licensee shall notify”;

328 On page fourteen, subdivision 7.4.32, by striking out the
329 words “is notified”;

330 On page fourteen, subdivision 7.4.33, after the words
331 “outside the infected captive Cervid facility.” by striking out
332 the remainder of the subdivision.

333 And,

334 On page fourteen, after subdivision 7.4.33, by adding a new
335 subdivision to read as follows:

336 “7.4.33. The West Virginia Department of Agriculture and
337 the West Virginia Division of Natural Resources shall work
338 together to develop accreditation programs for captive cervids
339 for diseases including Tuberculosis (TB), brucellosis, and
340 chronic wasting disease (CWD). Captive cervid facilities are
341 required to enroll their herds in the USDA-APHIS CWD herd
342 certification program, when the program becomes effective. In
343 addition, a herd plan shall be developed that minimally includes
344 actions described in the USDA-APHIS final rule, or if not
345 available the proposed rule, that apply to the positive herd,
346 epidemiologically linked herds, and the facility.”

347 (h) The legislative rule filed in the State Register on the
348 twenty-ninth day of July, two thousand five, authorized under
349 the authority of section seven, article one, chapter twenty of this
350 code, modified by the Division of Natural Resources to meet
351 the objections of the Legislative Rule-Making Review Commit-
352 tee and refiled in the State Register on the thirteenth day of
353 October, two thousand five, relating to the Division of Natural
354 Resources (Falconry, 58 CSR 65), is authorized.

355 (i) The legislative rule filed in the State Register on the
356 twenty-ninth day of July, two thousand five, authorized under
357 the authority of section seven, article two-b, chapter twenty of
358 this code, relating to the Division of Natural Resources

359 (Lifetime hunting, trapping and fishing licenses, 58 CSR 67), is
360 authorized.

§64-10-4. Division of Labor.

1 (a) The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand five, authorized under
3 the authority of section four, article nine, chapter twenty-one of
4 this code, modified by the Division of Labor to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the State Register on the first day of November, two
7 thousand five, relating to the Division of Labor (West Virginia
8 Manufactured Housing Construction and Safety Standards
9 Board, 42 CSR 19), is authorized, with the following amend-
10 ments:

11 On page thirteen, section ten-a, subsection two, subdivision
12 (a), paragraph (iii), by striking the words “American National
13 Standards Institute, A225.1 Installation Standard for Manufac-
14 tured Homes” and inserting in lieu thereof the words “National
15 Fire Protection Association 225 Model Manufactured Home
16 Installation Standard”;

17 On page nineteen, section fifteen, by striking subsection
18 15.1 in its entirety;

19 On page twenty, section fifteen, by striking subsections
20 15.4 and 15.5 in their entirety;

21 On page twenty-one, section fifteen, by striking subsection
22 15.12 in its entirety; and

23 By renumbering the remaining subsections in section
24 fifteen of the Legislative rule.

25 (b) The legislative rule filed in the State Register on the
26 tenth day of February, two thousand five, authorized under the
27 authority of section four, article five-f, chapter twenty-one of

28 this code, modified by the Division of Labor to meet the
29 objections of the legislative rule-making review committee and
30 refiled in the State Register on the eighteenth day of January,
31 two thousand six, relating to the Division of Labor (nurse
32 overtime complaints, 42 CSR 30), is authorized.

§64-10-5. Division of Tourism.

1 The legislative rule filed in the State Register on the
2 twenty-seventh day of July, two thousand five, authorized under
3 the authority of section nine, article two, chapter five-b of this
4 code, modified by the Division of Tourism to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the State Register on the eleventh day of January, two
7 thousand six, relating to the Division of Tourism (Direct
8 Advertising Grants Program, 144 CSR 1), is authorized, with
9 the following amendments:

10 On page one, following section 144-1-1, by striking out all
11 of section 144-1-2 and inserting in lieu thereof the following:

“§144-1-2. Definitions.

1 2.1 “Applicant” means a for profit or non-profit entity or
2 organization located within the state that promotes tourism
3 within the state and is also a destination. The term “applicant”
4 may not include vendors that would be supplying services paid
5 for out of grant funds, schools or camps.

6 2.2 “Application” means a written request for tourism
7 promotion funds pursuant to this rule containing all forms,
8 information and attachments executed by the applicant and all
9 partners, if applicable.

10 2.3. “Amenity” includes spa services, golf courses, full-
11 service restaurants, skiing or snow activities, tennis, horseback
12 riding, hiking trails, boating or fishing.

13 2.4. “Attraction” means an entity which is at least one of
14 the following:

15 2.4.1. A cultural or historic site or event which includes, but
16 is not limited to, fairs or festivals, heritage and historic sites and
17 museums;

18 2.4.2. Entertainment establishments which include, but are
19 not limited to, pari-mutuel gaming establishments, live
20 performing art centers, sporting organizations or arenas,
21 vineyards or wineries;

22 2.4.3. Scenic or natural areas such as show caves or
23 caverns;

24 2.4.4. Theme or Amusement Parks;

25 2.4.5. Zoos, Aquariums or Wild Animal Parks;

26 2.4.6. Recreational Activities, including but not limited to
27 whitewater rafting, skiing and snow activities, mountain biking,
28 hunting and fishing.

29 2.5. “Code” means the Code of West Virginia.

30 2.6. “Commission” means the Tourism Commission created
31 pursuant to §5B-2-8 of the Code.

32 2.7. “Destination” means one of the following:

33 2.7.1. A region or area located within the state containing
34 three or more attractions;

35 2.7.2. An independent activity located within the state;

36 2.7.3. A cultural or historic site or event which includes, but
37 is not limited to, fairs or festivals, heritage and historic sites and
38 museums;

39 2.7.4. Entertainment establishments which include, but are
40 not limited to, pari-mutuel gaming establishments, live
41 performing art centers, sporting organizations or arenas,
42 vineyards or wineries;

43 2.7.5. Scenic or natural sites such as show caves or caverns;

44 2.7.6. Theme or Amusement Parks; or

45 2.7.7. Zoos, Aquariums or Wild Animal Parks;

46 2.8. "Destination Inn -or Bed and Breakfast" means a
47 lodging facility located within the state whose recognized
48 reputation for service and amenities are the primary motivating
49 factor for visitors to travel to the area where it is located.

50 2.9. "Division" means the Division of Tourism created
51 pursuant to §5B-2-8 of the code.

52 2.10. "Fulfillment" means printed materials used to respond
53 to an inquiry requesting additional information generated by
54 direct advertising or printed materials provided to the division,
55 a state park, the national park service or other government
56 agency for direct advertising.

57 2.11. "Grant Period" means the twelve month period
58 running from the beginning project date through the ending
59 project date and any extensions granted by the commission
60 pursuant to subdivision 8.4.3. of this rule.

61 2.12. "Independent Activity" means an entity or organiza-
62 tion which attracts a minimum of eighty-five percent (85%) of
63 its visitors from outside the local market and is at least one of
64 the following:

65 2.12.1. An entity or organization which provides recre-
66 ational activities including, but not limited to, whitewater

67 rafting, skiing and snow activities, mountain biking, hunting
68 and fishing, bus tours, dinner cruises and sightseeing tours;

69 2.12.2. A Resort;

70 2.12.3. A Destination Inn or Bed and Breakfast;

71 2.12.4. An entity or organization offering vacation rentals;

72 or

73 2.12.5. Destination shopping.

74 2.13. "Local Market" means the geographic area within
75 fifty (50) miles of a destination.

76 2.14. "Partner" means an entity or organization located
77 within the state making a financial contribution toward the
78 applicant's match requirement for an application for grant funds
79 for a collaborative marketing program with a central advertising
80 message directing tourists to a destination being represented by
81 the applicant. The term "partner" may not include vendors that
82 would be supplying services paid for out of grant funds.

83 2.15. "Resort" means a full-service lodging facility that is
84 frequented for relaxation or recreational purposes and offers at
85 least two amenities.

86 2.16. "Return on Investment" means the measure of a
87 project's ability to use grant funds to generate additional value,
88 including, but not limited to additional bookings and reserva-
89 tions.

90 2.17. "Total project cost" means the total of all proposed
91 eligible expenditures contained within an application.

92 2.18. "Vacation Rental" means a lodging facility including
93 chalets, cabins or condominiums. The term "vacation rental"
94 may not include hotels or motels.";

95 On page two, subsection 3.2, following the word “destina-
96 tion” by striking “/attraction”;

97 On page two, subsection 3.7, following the word “destina-
98 tion” by striking the words “or attraction”;

99 On page four, subdivision 4.3.4., following the word
100 “funding” and the period, by adding the following:

101 “Applications for projects that include repeat marketing
102 efforts shall contain information demonstrating that such repeat
103 marketing efforts are in addition to regular ongoing advertising
104 activities.”;

105 On page four, following subdivision 4.3.9. by adding the
106 following:

107 “4.3.10. The project supports advertising activities that are
108 over and above regular ongoing advertising activities.”;

109 On page four, following section 144-1-5, by striking out all
110 of section 144-1-6 and inserting in lieu thereof the following:

“§144-1-6. Eligible and ineligible expenditures of grant funds.

1 6.1. Grant funds may only be used to pay for eligible
2 expenditures for direct advertising. Eligible expenses for direct
3 advertising include, but are not limited to the following:

4 6.1.1. The costs of advertising on television, radio, or other
5 telecommunications media, in newspapers, magazines or other
6 print media, direct mail advertising, and outdoor advertising or
7 any combination thereof;

8 6.1.2. The costs of purchasing and using mailing lists for
9 direct mail promotions;

10 6.1.3. The costs for United States postage used for direct
11 mail and fulfillment for direct advertising: Provided, That if

12 bulk mail is appropriate, the applicant must use bulk mail and
13 reimbursement will be limited to the bulk mail rate; and if bulk
14 mail is not appropriate, reimbursement will be limited to the
15 cost of United States mail first class postage;

16 6.1.4. The costs of printing travel related literature:
17 Provided, That sixty percent (60%) of such literature is used as
18 fulfillment for direct advertising within the approved applica-
19 tion or approved request for modification of an approved
20 application; or

21 6.1.5. Registration fees for consumer and trade shows:
22 Provided, That the participation in such shows is for the
23 purpose of attracting visitors to the state.

24 6.2. Eighty percent (80%) of a project's direct advertising
25 must be directed toward areas outside of the local market or in
26 major out-of-state markets, except for direct advertising for a
27 fair or festival grant authorized by subsection 7.3 of this rule.

28 6.3. Notwithstanding the provisions of subsection 6.2 of
29 this rule, all direct advertising in the form of billboards must be
30 directed toward areas outside of the local market or in major
31 out-of-state markets, except billboards for a fair or festival
32 grant authorized by subsection 7.3 of this rule.

33 6.4. All direct advertising in the form of billboards must have
34 a creative concept or layout approved by the Division in order for
35 any of its cost to be considered an eligible expenditure.

36 6.5. Any direct advertising related to real estate must be for
37 vacation rentals only. Any portion of direct advertising relating
38 to the sale of real estate must be pro-rated. A creative concept
39 must be submitted with any application or request for modifica-
40 tion of an approved application for direct advertising relating to
41 real estate. Advertisements for the sale of real estate in visitor
42 guides and brochures must be grouped on a specific page or

43 pages and those pages pro-rated from the grant at the time of
44 the submission of the application. (Example: CVB X has a 32
45 page visitor guide and has determined that area realtors will
46 take up 2 pages - CVB X must disclose this in its grant
47 application and media breakout and the totals must request
48 funding for only 30 pages.) No direct advertising for real estate
49 sales or realty agencies are permitted within cooperative
50 advertising, unless such ads are specifically and clearly
51 delineated as vacation rentals only.

52 6.6. Direct advertising may be in the form of cooperative
53 advertising which is advertising that represents a community,
54 region, county, multi-county or statewide organization and may
55 include tourism businesses or organizations that enhance the
56 destination for which the grant is to cover. Cooperative
57 advertising must be entirely directed toward areas outside the
58 local market or in major out-of-state markets. All cooperative
59 advertising must have a creative concept approved by the
60 Division in order for any of its cost to be considered an eligible
61 expenditure.

62 6.7. Eligible expenses may include production expenses for
63 direct advertising in the media categories provided in this
64 subsection. The total cost of such production expenses may not
65 exceed fifteen (15%) of the total cost of the direct advertising
66 and in no event may the total cost of such production expenses
67 exceed \$22,500, for any one of the following media categories:

68 6.7.1. Printed material, including the printing of direct mail
69 and travel related literature;

70 6.7.2. Print media;

71 6.7.3. Television and radio; and

72 6.7.4. Billboards.

73 6.8. Grant funds may not be used to pay for ineligible
74 expenditures. Ineligible expenditures include, but are not
75 limited to the following:

76 6.8.1. Regular and ordinary business costs of the applicant
77 including, but not limited to, supplies, personnel, phone, normal
78 postage, distribution and shipping expenses or travel costs;

79 6.8.2. Any costs associated with preparation of the direct
80 advertising grant application;

81 6.8.3. Costs for the rental or purchase of real estate;

82 6.8.4. Construction costs;

83 6.8.5. Costs of political or lobbying activities of any kind;

84 6.8.6. Membership fees or dues to any organization, or
85 solicitation of membership to any organization through
86 advertising within a grant program authorized by this rule;

87 6.8.7. Costs associated with the start up of any business or
88 publication even if the business or publication may be totally or
89 partially devoted to the promotion of tourism in the state;

90 6.8.8. The cost of purchase of audio/visual equipment;

91 6.8.9. Costs of alcoholic beverages;

92 6.8.10. Costs for any expenditure not identified in the
93 application, unless the Commission grants prior approval in
94 writing;

95 6.8.11. Costs of any public relations or research expense;

96 6.8.12. Costs for key rings, bumper stickers, mugs or any
97 other similar promotional item;

98 6.8.13. Event production expenses, including costs for
99 audio equipment, awards, entertainment, portable restrooms,
100 labor or refreshments;

101 6.8.14. Costs relating to fund-raising activities;

102 6.8.15. Costs associated with retail advertising, except for
103 destination shopping which is able to produce verification that
104 said destination attracts a minimum of eighty-five (85%) of its
105 visitors from outside the local market: Provided, That no retail
106 advertising may include price point advertising;

107 6.8.16. Costs of Tourist Oriented Directional Signs (TODS)
108 and logo signs for gas, food, lodging and camping;

109 6.8.17. Costs of sponsorships; or

110 6.8.18. Costs of items for resale.”;

111 On page six, in the fourth line of section 7.2, following the
112 word “exceed” by striking “2,500” and inserting in lieu thereof
113 “7,500”;

114 On page six, in the fourth line of section 7.2, following the
115 word “applicant” by striking “in any given quarter as defined
116 from time to time by the Division” and inserting in lieu thereof
117 “and no applicant shall receive more than two grants per fiscal
118 year”;

119 On page six, in the seventh line of section 7.2, following the
120 words “minimum of” by striking “50” and inserting in lieu
121 thereof “25”;

122 On page six, in the ninth line of section 7.2, following the
123 word “exceed” by striking “750,000” and inserting in lieu
124 thereof “2,000,000”;

125 On page six, in the fourteenth line of section 7.2, following
126 the word “date” and the period by inserting the following:

127 “No applicant who has received a grant larger than \$7,500
128 in any fiscal year may apply for a small grant under this section
129 during the same fiscal year: *Provided*, That a nonprofit entity
130 may apply for and receive small grants even if it has received
131 large grants in the same fiscal year.”

CHAPTER 146

**(H. B. 4698 — By Mr. Speaker, Mr. Kiss, and Delegates
Amores, Craig, Michael, Pino, Stemple,
Overington, Azinger and Hartman)**

[Passed March 9, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2006.]

AN ACT to amend and reenact §38-2-9 of the Code of West Virginia, 1931, as amended, relating to changing the filing time for a subcontractor’s lien to one hundred days rather than seventy-five days to be consistent with the filing time for a mechanic’s lien.

Be it enacted by the Legislature of West Virginia:

That §38-2-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. MECHANICS’ LIENS.

§38-2-9. Notice and recordation of subcontractor’s lien.

1 For the purpose of perfecting and preserving his or her lien,
2 every subcontractor mentioned in section two of this article
3 shall, within one hundred days after the completion of his or her
4 subcontract, give to the owner or his or her authorized agent, by
5 any of the methods provided by law for the service of a legal

6 notice or summons, a notice of lien, which notice shall be
7 sufficient if in form and effect as follows:

8 Notice of Mechanic's Lien.

9 To.....

10 You will please take notice that the undersigned
11 was and is subcontractor with who was and is
12 general contractor for the furnishing of materials and doing of
13 the work and labor, necessary to the completion of (here
14 describe the nature of the subcontract) on that certain building
15 (or other structure or improvement as the case may be), owned
16 by you and situate on lot number of block number as
17 shown on the official map of (or other definite and
18 ascertainable description of the real estate) and that the contract
19 price and value of said work and materials is \$..... You are
20 further notified that the undersigned has not been paid therefor
21 (or has been paid only \$..... thereof) and that he or she claims
22 and will claim a lien upon your interest in the said lot (or tract)
23 of land and upon the buildings, structures and improvements
24 thereon to secure the payment of the said sum.

25

26 State of West Virginia,

27 County of, being first duly sworn, upon his or
28 her oath says that the statements in the foregoing notice of
29 mechanic's lien are true, as he or she verily believes.

30 Taken, subscribed and sworn to before me this day
31 of, 20.....

32 My commission expires

33
34 (Official Capacity)

35 But the lien shall be discharged and avoided, unless, within
36 one hundred days after the completion of his or her subcontract
37 as aforesaid, the subcontractor shall cause to be recorded in the
38 office of the clerk of the county commission of the county
39 wherein the property is situate, a notice of the lien, which notice
40 shall be sufficient if in form and effect as that provided in
41 section eight of this article.

CHAPTER 147

(S. B. 627 — By Senators Helmick and Minard)

[Passed March 6, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 14, 2006.]

AN ACT to amend and reenact §38-10C-2 of the Code of West Virginia, 1931, as amended, relating to tax liens; allowing facsimile signatures while eliminating the requirement for notarization of notices of tax liens and releases of tax liens when facsimile signatures are used; and making technical changes to the requirements of recordation and release of tax liens.

Be it enacted by the Legislature of West Virginia:

That §38-10C-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10C. STATE AND LOCAL TAX LIENS.

§38-10C-2. Notices of liens of state, political subdivisions and municipalities to be filed; indexes; release.

1 It is the duty of the Tax Commissioner, or the proper
2 officers of the political subdivisions of the state for its subdivi-

3 sions and of the proper officers of the municipalities for the
4 municipalities, having liens, to file a notice thereof in the office
5 of the clerk of the county commission of the county in which
6 the property of the taxpayer against whom the lien is claimed,
7 is situate, stating in the notice what amount of money is owing
8 to the State of West Virginia, the political subdivision thereof
9 or the municipality therein, on account of the lien from the
10 taxpayer owing the same; and the clerk of the county commis-
11 sion of the county shall, upon the filing of notice, index the
12 same in the judgment or tax lien docket in his or her office as
13 a tax lien against the taxpayer in favor of the State of West
14 Virginia, the political subdivision thereof or the municipality
15 therein. Upon the satisfaction of the lien, a release thereof for
16 recordation shall be signed and delivered to the taxpayer by the
17 proper officer. The signature of the Tax Commissioner or the
18 Tax Commissioner's designee on the notice and on the release
19 may be either a properly acknowledged manual signature, or a
20 facsimile signature authenticated pursuant to the filing of an
21 affidavit and a manual signature with the Secretary of State in
22 the manners specified in section two, article fourteen, chapter six
23 of this code. The facsimile signature shall have the same legal
24 effect as the manual signature.

25 All acts or parts of acts inconsistent or in conflict herewith
26 are hereby repealed.

CHAPTER 148

**(S. B. 673 — By Senators Oliverio, Prezioso,
Minear, Hunter and Sprouse)**

[Passed March 8, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto fourteen new sections, designated §7-20-11, §7-20-12, §7-20-13, §7-20-14, §7-20-15, §7-20-16, §7-20-17, §7-20-18, §7-20-19, §7-20-20, §7-20-21, §7-20-22, §7-20-23 and §7-20-24, all relating generally to the Local Powers Act; giving counties plenary power and authority to impose, administer, collect and enforce payment of voter-approved service fees to pay for or finance cost of special infrastructure projects within their counties; defining certain terms; giving county commissions authority to issue revenue bonds to finance special infrastructure projects; and including authority to issue refunding bonds and to take other actions to finance and complete such projects as the county commission deems prudent or necessary.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto fourteen new sections, designated §7-20-11, §7-20-12, §7-20-13, §7-20-14, §7-20-15, §7-20-16, §7-20-17, §7-20-18, §7-20-19, §7-20-20, §7-20-21, §7-20-22, §7-20-23 and §7-20-24, all to read as follows:

ARTICLE 20. FEES AND EXPENDITURES FOR COUNTY DEVELOPMENT.

§7-20-11. Additional powers.

§7-20-12. Countywide service fees.

§7-20-13. Bonds issued to finance infrastructure project.

§7-20-14. Use of proceeds from sale of bonds.

§7-20-15. No contribution by county.

§7-20-16. Bonds made legal investments.

§7-20-17. Construction of article.

§7-20-18. No notice, consent or publication required.

§7-20-19. Public officials exempt from personal liability.

§7-20-20. Cooperation by public bodies.

§7-20-21. Relocation of public utility lines or facilities to accommodate special infrastructure project.

§7-20-22. Special infrastructure projects financed by service fee considered to be public improvements subject to prevailing wage, local labor preference and competitive bid requirements.

§7-20-23. Excess funds; termination of service fee.

§7-20-24. Severability.

§7-20-11. Additional powers.

1 (a) In addition to any other powers which a county may
2 now have and notwithstanding the provisions of section six of
3 this article, each county, by and through its county commission,
4 shall have the following powers:

5 (1) To acquire, whether by purchase, construction, gift,
6 lease or otherwise, one or more infrastructure projects, or
7 additions thereto, which shall be located within the county;

8 (2) To lease, lease with an option to purchase, sell, by
9 installment sale or otherwise, or otherwise dispose of, to others
10 any infrastructure projects for such rentals or amounts and upon
11 such terms and conditions as the county commission may deem
12 advisable;

13 (3) To establish a special infrastructure fund as a separate
14 fund into which all special service fees and other revenues
15 designated by the county commission shall be deposited, and
16 from which all project costs shall be paid, which may be
17 assigned to and held by a trustee for the benefit of bondholders
18 if special infrastructure revenue bonds are issued by the county
19 commission; and

20 (4) To impose a countywide service fee to pay the costs of
21 one or more infrastructure projects, including, but not limited
22 to, the payment of debt service on any revenue bonds issued
23 under section thirteen of this article.

24 (b) For purposes of this section and its implementation and
25 use:

26 (1) “Capital improvements” means the following public
27 facilities or assets that are owned, supported or established by
28 a county commission:

29 (A) Water treatment and distribution facilities;

30 (B) Wastewater treatment and disposal facilities;

31 (C) Sanitary sewers;

32 (D) Storm water, drainage and flood control facilities; and

33 (E) Public road systems, including, but not limited to,
34 rights-of-way, lighting, sidewalks and gutters.

35 “Capital improvements” as defined herein is limited to
36 those improvements that are treated as capitalized expenses
37 according to generally accepted governmental accounting
38 principles and that have an expected useful life of no less than
39 three years. “Capital improvement” does not include costs
40 associated with the operation, repair, maintenance or full
41 replacement of capital improvements. “Capital improvement”
42 does include reasonable costs for planning, design, engineering,
43 land acquisition and other costs directly associated with the
44 capital improvements described herein, whether incurred prior
45 to or subsequent to imposition of a countywide service fee. This
46 includes costs incurred by a developer prior to imposition of the
47 countywide service fee that would have been incurred by the
48 county commission as part of the cost of capital improvement,
49 provided such costs were not incurred more than thirty-six
50 months before the county commission adopts the order
51 imposing the countywide service fee, or such shorter period, as
52 determined to be reasonable in the sole discretion of the county
53 commission.

54 (2) “Plan” means the plan for special infrastructure projects
55 that includes one or more capital improvements, as defined in

56 this section that is adopted by a county commission in confor-
57 mity with the requirements of this article.

58 (c) Before commencing certain infrastructure projects, the
59 county commission shall obtain written confirmations from an
60 affected public utility or the West Virginia Department of
61 Transportation or other agency, as provided in this section:

62 (1) If the project includes water, wastewater or sewer
63 improvements, the county commission shall obtain from the
64 utility or utilities that provide service in the area or areas where
65 the improvements will be made that the utility or utilities:

66 (A) Currently has adequate capacity to provide service
67 without significant upgrades or modifications to its treatment,
68 storage or source of supply facilities;

69 (B) Will review and approve all plans and specifications for
70 the improvements to determine that the improvements conform
71 to the utility's reasonable requirements and, if the improvement
72 consists of water transmission or distribution facilities, that the
73 improvements provide for adequate fire protection for the
74 district; and

75 (C) If built in conformance with said plans and specifica-
76 tions, will accept the improvements following their completion,
77 unless the project will continue to be owned by the county
78 commission.

79 (2) If the special infrastructure project includes improve-
80 ments other than as set forth in subdivision (1), subsection (b)
81 of this section that will be transferred to the West Virginia
82 Department of Transportation or other governmental agency,
83 written evidence that the department or agency will accept the
84 transfer if the infrastructure project is built in conformance with
85 requirements of the Department of Transportation, or other
86 agency, pursuant to plans and specifications approved by the
87 department or other agency.

§7-20-12. Countywide service fees.

1 (a) Notwithstanding any provision of this code to the
2 contrary, every county shall have plenary power and authority
3 to impose a countywide service fee upon each employee and
4 self-employed individual for each week or part of a calendar
5 week the individual works within the county, subject to the
6 following:

7 (1) No individual shall pay the fee more than once for the
8 same week of employment within the county.

9 (2) The fee imposed pursuant to this section is in addition
10 to all other fees imposed by the jurisdiction within which the
11 individual is employed.

12 (3) The fee imposed pursuant to this section may not take
13 effect until the first day of a calendar month, as set forth in the
14 order of the county commission establishing the fee, that begins
15 at least thirty days after a majority of the registered voters of
16 the county voting on the question approve imposition of the
17 service fee, in a primary, general or a special election held in
18 the county.

19 (4) The order of the county commission shall provide for
20 the administration, collection and enforcement of the service
21 fee. Employers who have employees that work in the county
22 imposing the service fee shall withhold the fee from compensa-
23 tion paid to the employee and pay it over to the county as
24 provided in the order of the county commission. Self-employed
25 individuals shall pay the service fee to the county commission
26 in accordance with the order establishing the fee.

27 (5) The terms “employed”, “employee”, “employer” and
28 “self-employed” have the following meaning:

29 (A) “Employed” shall include an employee working for an
30 employer so as to be subject to any federal or state employment

31 or wage withholding requirement and a self-employed individ-
32 ual working as a sole proprietor or member of a firm so as to be
33 subject to self-employment tax. An employee shall be consid-
34 ered employed in a calendar week so long as the employee
35 remains on the current payroll of an employer deriving
36 compensation for such week and the employee has not been
37 permanently assigned to an office or place of business outside
38 the county. A self-employed individual shall be considered
39 employed in a calendar week so long as such individual has not
40 permanently discontinued employment within the county.

41 (B) "Employee" means any individual who is employed at
42 or physically reports to one or more locations within the county
43 and is on the payroll of an employer, on a full-time or part-time
44 basis or temporary basis, in exchange for salary, wages or other
45 compensation.

46 (C) "Employer" means any person, partnership, limited
47 partnership, limited liability company, association (unincorpor-
48 ated or otherwise), corporation, institution, trust, governmental
49 body or unit or agency, or any other entity (whether its principal
50 activity is for-profit or not-for-profit) situated, doing business,
51 or conducting its principal activity in the county and who
52 employs an employee, as defined in this section.

53 (D) "Self employed individual" means an individual who
54 regularly maintains an office or place of business for conduct-
55 ing any livelihood, job, trade, profession, occupation, business
56 or enterprise of any kind within the county's geographical
57 boundaries over the course of four or more calendar weeks,
58 which need not be consecutive, in any given calendar year.

59 (6) All revenues generated by the county service fee
60 imposed pursuant to this section shall be dedicated to and shall
61 be exclusively utilized for the purpose or purposes set forth in
62 the referendum approved by the voters, including, but not
63 limited to, the payment of debt service on any bonds issued

64 pursuant to section thirteen of this article and any costs related
65 to the administration, collection and enforcement of the service
66 fee.

67 (b) Any order entered by a county commission imposing a
68 countywide service fee pursuant to this part, or increasing or
69 decreasing a countywide service fee previously adopted
70 pursuant to this part, shall be published as a Class II legal
71 advertisement in compliance with the provisions of article
72 three, chapter fifty-nine of this code and the publication area for
73 the publication shall be the county. The order shall not become
74 effective until it is ratified by a majority of the lawful votes cast
75 thereon by the qualified voters of the county at a primary,
76 general or special election, as the county commission shall
77 direct. Voting thereon shall not take place until after notice of
78 the referendum shall have been given by publication as above
79 provided for the publication of the order after it is adopted by
80 the county commission. The notice of referendum shall at a
81 minimum include: (1) The date of the referendum; (2) the
82 amount of countywide service fee; (3) a general description of
83 the capital improvement or improvements included in the
84 special infrastructure project to be financed with the service fee;
85 (4) whether revenue bonds will be issued; and (5) if bonds are
86 to be issued, the estimated term of the revenue bonds. The
87 county commission may include additional information in the
88 notice of referendum.

§7-20-13. Bonds issued to finance infrastructure project.

1 (a) The county commission, in its discretion, may use the
2 moneys in such special infrastructure fund to finance the costs
3 of the special infrastructure projects on a cash basis. The county
4 commission periodically may issue special infrastructure
5 revenue bonds of the county as provided in this section to
6 finance all or part of such special infrastructure projects and
7 pledge all or any part of the moneys in such special infrastruc-

8 ture fund for the payment of the principal of and interest on
9 such special infrastructure revenue bonds and for reserves
10 therefor. Any pledge of the special infrastructure fund for
11 special infrastructure revenue bonds shall be a prior and
12 superior charge on the special infrastructure fund over the use
13 of any of the moneys in the fund to pay for the cost of any of
14 such purposes on a cash basis.

15 (b) Such special infrastructure revenue bonds periodically
16 may be authorized and issued by the county commission to
17 finance, in whole or in part, the special infrastructure projects
18 in an aggregate principal amount not exceeding the amount
19 which the county commission determines can be paid as to both
20 principal and interest and reasonable margins for a reserve
21 therefor from the moneys in such special infrastructure fund.

22 (c) The issuance of special infrastructure revenue bonds
23 shall be authorized by an order of the county commission and
24 such special infrastructure revenue bonds shall bear such date
25 or dates; mature at such time or times not exceeding forty years
26 from their respective dates; be in such denomination; be in
27 registered form, with such exchangeability and
28 interchangeability privileges; be payable in such medium of
29 payment and at such place or places, within or without the state;
30 be subject to such terms of prior redemption at such prices; and
31 shall have such other terms and provisions as determined by the
32 county commission. Such special infrastructure revenue bonds
33 shall be signed by the president of the county commission under
34 the seal of the county commission, attested by the clerk of the
35 county commission. Special infrastructure revenue bonds shall
36 be sold in such manner as the county commission determines is
37 for the best interests of the county.

38 (d) The county commission may enter into trust agreements
39 with banks or trust companies, within or without the state, and
40 in such trust agreements or the resolutions authorizing the
41 issuance of such bonds may enter into valid and legally binding

42 covenants with the holders of such special infrastructure
43 revenue bonds as to the custody, safeguarding and disposition
44 of the proceeds of such special infrastructure revenue bonds, the
45 moneys in such special infrastructure fund, sinking funds,
46 reserve funds or any other moneys or funds; as to the rank and
47 priority, if any, of different issues of special infrastructure
48 revenue bonds by the county commission under the provisions
49 of this section; as to the maintenance or revision of the amounts
50 of such fees; as to the extent to which swap agreements, as
51 defined in section two-h, article two-g, chapter thirteen of this
52 code, shall be used in connection with such special infrastruc-
53 ture revenue bonds, including such provisions as payment,
54 term, security, default and remedy provisions as the county
55 commission shall consider necessary or desirable, if any, under
56 which such fees may be reduced; and as to any other matters or
57 provisions which are considered necessary and advisable by the
58 county commission in the best interests of the county and to
59 enhance the marketability of such special infrastructure revenue
60 bonds.

61 (e) After the issuance of any of the special infrastructure
62 revenue bonds, the service fee pledged to the payment thereof
63 may not be reduced as long as any of the special infrastructure
64 revenue bonds are outstanding and unpaid except under such
65 terms, provisions and conditions as shall be contained in the
66 order, trust agreement or other proceedings under which the
67 special infrastructure revenue bonds were issued.

68 (f) The special infrastructure revenue bonds shall be and
69 constitute negotiable instruments under the Uniform Commer-
70 cial Code of this state; shall, together with the interest thereon,
71 be exempt from all taxation by the State of West Virginia, or by
72 any county, school district, municipality or political subdivision
73 thereof; and the special infrastructure revenue bonds may not be
74 considered to be obligations or debts of the state or of the
75 county issuing the bonds and the credit or taxing power of the

76 state or of the county issuing the bonds may not be pledged
77 therefor, but the special infrastructure revenue bonds shall be
78 payable only from the revenue pledged therefor as provided in
79 this section.

80 (g) A holder of the special infrastructure revenue bonds
81 shall have a lien against the special infrastructure fund for
82 payment of the special infrastructure revenue bond and the
83 interest thereon and may bring suit to enforce the lien.

84 (h) A county commission may issue and secure additional
85 bonds payable out of the special infrastructure fund which
86 bonds may rank on a parity with, or be subordinate or superior
87 to, other bonds issued by the county commission and payable
88 from the special infrastructure fund.

89 (i) For purposes of this article:

90 (1) "Special infrastructure revenue bonds" means bonds,
91 debentures, notes, certificates of participation, certificates of
92 beneficial interest, certificates of ownership or other evidences
93 of indebtedness or ownership that are issued by a county
94 commission, the proceeds of which are used directly or
95 indirectly to finance or refinance special infrastructure projects
96 within the county and financing costs and that are secured by or
97 payable from the special service fees;

98 (2) "Special infrastructure project" means "capital
99 improvements" as that term is defined in section eleven of this
100 article; and

101 (3) "Special infrastructure fund" means that fund estab-
102 lished and held by the sheriff of the county or a trustee for
103 bondholders, as the case may be, into which the special fees
104 imposed pursuant to section twelve of this article are deposited.

§7-20-14. Use of proceeds from sale of bonds.

1 (a) The proceeds from the sale of any bonds issued under
2 authority of this article shall be applied only for the purpose for
3 which the bonds were issued: *Provided*, That any accrued
4 interest and premium received in any such sale shall be applied
5 to the payment of the principal of or the interest on the bonds
6 sold. If for any reason any portion of the proceeds shall not be
7 needed for the purpose for which the bonds were issued, then
8 the unneeded portion of the proceeds shall be applied to the
9 purchase of bonds for cancellation or payment of the principal
10 of or the interest on the bonds, or held in reserve for the
11 payment thereof.

12 (b) The costs of acquiring any special infrastructure project
13 shall be deemed to include the following:

14 (1) Capital costs, including, but not limited to, the actual
15 costs of the construction of public works or improvements,
16 capital improvements and facilities, new buildings, structures
17 and fixtures, the demolition, alteration, remodeling, repair or
18 reconstruction of existing buildings, structures and fixtures,
19 environmental remediation, the acquisition of equipment and
20 site clearing, grading and preparation;

21 (2) Financing costs, including, but not limited to, an interest
22 paid to holders of evidences of indebtedness issued to pay for
23 project costs, all costs of issuance and any redemption premi-
24 ums, credit enhancement or other related costs;

25 (3) Real property acquisition costs;

26 (4) Professional service costs, including, but not limited to,
27 those costs incurred for architectural planning, engineering and
28 legal advice and services;

29 (5) Imputed administrative costs, including, but not limited
30 to, reasonable charges for time spent by county employees in
31 connection with the implementation of a project;

32 (6) Relocation costs, including, but not limited to, those
33 relocation payments made following condemnation and job
34 training and retraining;

35 (7) Organizational costs, including, but not limited to, the
36 costs of conducting environmental impact and other studies,
37 and the costs of informing the public with respect to the
38 implementation of project plans;

39 (8) Payments made, in the discretion of the county
40 commission, which are found to be necessary or convenient to
41 the implementation of project plans; and

42 (9) That portion of costs related to the construction of
43 environmental protection devices, storm or sanitary sewer lines,
44 water lines, amenities or streets or the rebuilding or expansion
45 of streets, or the construction, alteration, rebuilding or expan-
46 sion of which is necessitated by the project plan, whether or not
47 the construction, alteration, rebuilding or expansion is within
48 the area or on land contiguous thereto.

§7-20-15. No contribution by county.

1 (a) No county commission shall have the power to pay out
2 of its general funds, or otherwise contribute, any of the costs of
3 acquiring, constructing or financing a special infrastructure
4 project to be acquired, constructed or financed, in whole or in
5 part, out of the proceeds from the sale of revenue bonds issued
6 under the authority of this article: *Provided*, That this provision
7 shall not be construed to prevent a county from accepting
8 donations of property to be used as a part of an infrastructure
9 project or to be used for defraying any part of the cost of any
10 infrastructure project or from imposing a service fee as
11 provided in section twelve of this article, which is dedicated, in
12 whole or in part, to the infrastructure project or to payment of
13 debt service on revenue bonds issued pursuant to this article.

14 (b) The bonds issued pursuant to this article shall be
15 payable solely from: (1) The revenue derived from the infra-
16 structure project or the financing thereof; (2) the service fee
17 imposed pursuant to section twelve of this article; or (3) any
18 combination of these sources.

19 (c) No county commission shall have the authority under
20 this article to levy any taxes for the purpose of paying any part
21 of the cost of acquiring, constructing or financing an infrastruc-
22 ture project. However, all necessary preliminary expenses
23 actually incurred by a county commission in the making of
24 surveys, taking options, preliminary planning and all other
25 expenses necessary to be paid prior to the issuance, sale and
26 delivery of the revenue bonds, may be paid by the county
27 commission out of any surplus contained in any item of
28 budgetary appropriation or any revenues, including, but not
29 limited to, service fees, collected in excess of anticipated
30 revenues, which shall be reimbursed and repaid out of the
31 proceeds of the sale of the revenue bonds.

§7-20-16. Bonds made legal investments.

1 Bonds issued under the provisions of this article shall be
2 legal investments for banks, building and loan associations, and
3 insurance companies organized under the laws of this state and
4 for a business development corporation organized pursuant to
5 chapter thirty-one, article fourteen of this code.

§7-20-17. Construction of article.

1 Neither this article nor anything herein contained shall be
2 construed as a restriction or limitation upon any powers which
3 a county might otherwise have under any laws of this state, but
4 shall be construed as alternative or additional; and this article
5 shall not be construed as requiring an election on issuance of
6 the bonds by the voters of a county prior to the issuance of
7 bonds hereunder by the county commission and same shall not

8 be construed as requiring any proceeding under any law or
9 laws, other than that which is required by this article.

§7-20-18. No notice, consent or publication required.

1 No notice to or consent or approval by any other govern-
2 mental body or public officer shall be required as a prerequisite
3 to the issuance or sale of any bonds or the making of any
4 agreement, a mortgage or deed of trust under the authority of
5 this article. No publication or notice shall be necessary to the
6 validity of any resolution or proceeding had under this article,
7 except where publication or notice is expressly required by this
8 article.

§7-20-19. Public officials exempt from personal liability.

1 No member of a county commission or other county officer
2 shall be personally liable on any contract or obligation executed
3 pursuant to the authority contained in this article. Nor shall the
4 issuance of bonds under this article be considered as misfea-
5 sance in office.

§7-20-20. Cooperation by public bodies.

1 For the purpose of aiding and cooperating in the planning,
2 undertaking or carrying out of a special infrastructure project
3 located, in whole or in part, within the area in which it is
4 authorized to act, any public body may, upon such terms, with
5 or without consideration, as it may determine:

6 (1) Dedicate, sell, convey or lease any of its interest in any
7 property, or grant easements, licenses or any other rights or
8 privileges therein to an authority;

9 (2) Cause parks, playgrounds, recreational, community,
10 educational, water, sewer or drainage facilities, or any other
11 works which it is otherwise empowered to undertake, to be
12 furnished in connection with an infrastructure project;

13 (3) Furnish, dedicate, close, vacate, pave, install, grade,
14 regrade, plan or replan streets, roads, sidewalks, ways or other
15 places, which it is otherwise empowered to undertake;

16 (4) Plan or replan, zone or rezone any parcel of land within
17 the jurisdiction of the public body or make exceptions from
18 building regulations and ordinances if such functions are of the
19 character which the public body is otherwise empowered to
20 perform;

21 (5) Cause administrative and other services to be furnished
22 for the special infrastructure project of the character which the
23 public body is otherwise empowered to undertake or furnish for
24 the same or other purposes;

25 (6) Incur the entire expense of any public improvements
26 made by the public body in exercising the powers granted in
27 this section;

28 (7) Do any and all things necessary or convenient to aid and
29 cooperate in the planning or carrying out of a special infrastruc-
30 ture project that is, in whole or in part, located in its jurisdic-
31 tion;

32 (8) Lend, grant or contribute funds to a county commission
33 for purposes of a special infrastructure project; and

34 (9) Employ any funds belonging to or within the control of
35 the public body, including funds derived from the sale or
36 furnishing of property, service, or facilities to a county
37 commission for a special infrastructure project, in the purchase
38 of the bonds or other obligations of a county commission issued
39 under this article and, as the holder of such bonds or other
40 obligations, exercise the rights connected therewith.

**§7-20-21. Relocation of public utility lines or facilities to accom-
modate special infrastructure project.**

1 (a) In the event a county commission determines that any
2 public utility line or facility located upon, across or under any
3 portion of a street, avenue, highway, road or other public place
4 or way shall be temporarily or permanently readjusted,
5 removed, relocated, changed in grade or otherwise altered (each
6 and all hereinafter for convenience referred to as “relocation”)
7 in order to accommodate any infrastructure project undertaken
8 pursuant to the provisions of this article, the cost of the
9 relocation shall be borne by the county commission.

10 (b) For purposes of this section, the term “cost of reloca-
11 tion” shall include the entire amount paid by such utility,
12 exclusive of any right-of-way costs incurred by such utility,
13 properly attributable to such relocation after deducting
14 therefrom any increase in the value of the new line or facility
15 and salvage derived from the old line or facility.

16 (c) The cost of relocating utility lines or facilities, as
17 defined herein, in connection with any special infrastructure
18 project is hereby declared to be a cost of the project.

**§7-20-22. Special infrastructure projects financed by service fee
considered to be public improvements subject to
prevailing wage, local labor preference and
competitive bid requirements.**

1 (a) Any special infrastructure project acquired, constructed
2 or financed, in whole or in part, by service fees imposed by a
3 county commission under section twelve of this article shall be
4 considered to be a “public improvement” within the meaning of
5 the provisions of articles one-c and five-a, chapter twenty-one
6 of this code.

7 (b) The county commission shall, except as provided in
8 subsection (c) of this section, solicit or require solicitation of
9 competitive bids and require the payment of prevailing wage
10 rates as provided in article five-a, chapter twenty-one of this

11 code and compliance with article one-c of said chapter for any
12 special infrastructure project funded pursuant to section twelve
13 of this article exceeding twenty-five thousand dollars in total
14 cost.

15 (c) Following the solicitation of the bids, the construction
16 contract shall be awarded to the lowest qualified responsible
17 bidder, who shall furnish a sufficient performance and payment
18 bond: *Provided*, That the county commission or other person
19 soliciting the bids may reject all bids and solicit new bids on the
20 project.

21 (d) No officer or employee of this state or of any public
22 agency, public authority, public corporation or other public
23 entity and no person acting or purporting to act on behalf of
24 such officer or employee or public entity shall require that any
25 performance bond, payment bond or bid bond required or
26 permitted by this section be obtained from any particular surety
27 company, agent, broker or producer.

28 (e) This section does not:

29 (1) Apply to work performed on construction projects not
30 exceeding a total cost of fifty thousand dollars by regular
31 full-time employees of the county commission: *Provided*, That
32 no more than fifty thousand dollars shall be expended on an
33 individual project in a single location in a twelve-month period;

34 (2) Prevent students enrolled in vocational educational
35 schools from being used in construction or repair projects when
36 such use is a part of the students' training program;

37 (3) Apply to emergency repairs to building components and
38 systems: *Provided*, That the term "emergency repairs" means
39 repairs that, if not made immediately, will seriously impair the
40 use of the building components and systems or cause danger to
41 those persons using the building components and systems; or

42 (4) Apply to any situation where the county commission
43 comes to an agreement with volunteers, or a volunteer group,
44 by which the county commission will provide construction or
45 repair materials, architectural, engineering, technical or any
46 other professional services and the volunteers will provide the
47 necessary labor without charge to, or liability upon, the county
48 commission: *Provided*, That the total cost of the construction or
49 repair projects does not exceed fifty thousand dollars.

§7-20-23. Excess funds; termination of service fee.

1 (a) When revenue bonds have been issued as provided in
2 this article and the amount of service fees imposed pursuant to
3 section twelve of this article and collected by the sheriff, less
4 costs of administration, collection and enforcement, exceeds the
5 amount needed to pay project costs and annual debt service,
6 including the finding of required debt service and maintenance
7 reserves, the additional amount shall be set aside in a separate
8 fund and used to retire some or all of the outstanding revenue
9 bonds before their maturity date.

10 (b) Once the revenue bonds issued as provided in this
11 article are no longer outstanding or the county commission
12 determines that sufficient reserves have been or will be
13 accumulated as of a specified date to pay all future debt service
14 on the outstanding bonds, the service fee to payable services on
15 a subsequent issue of revenue bonds imposed pursuant to
16 section twelve of this article may not be imposed or collected
17 for subsequent weeks after that date. Termination of the service
18 fee as provided in this section shall not bar or otherwise prevent
19 the county commission from collecting service fees that
20 accrued before the termination date.

§7-20-24. Severability.

1 If any section, clause, provision or portion of this article
2 shall be held to be invalid or unconstitutional by any court of

3 competent jurisdiction, such holding shall not affect any other
4 section, clause or provision of this article which is not in and of
5 itself unconstitutional.

CHAPTER 149

(Com. Sub. for S. B. 47 — By Senators Prezioso, White and Foster)

[Passed March 9, 2006; in effect September 1, 2006.]

[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §8A-11-1 of the Code of West Virginia, 1931, as amended, relating to factory-built homes; updating compliance documentation for evidence in a court case; clarifying regulation by local governments; and requiring construction and installation to comply with federal regulations and applicable law.

Be it enacted by the Legislature of West Virginia:

That §8A-11-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11. SPECIAL PROVISIONS.

§8A-11-1. Standards for factory-built homes.

1 (a) Notwithstanding any existing provisions of law,
2 municipal or county ordinance or state building code, the
3 standards for factory-built homes, housing prototypes, subsys-
4 tems, materials and components certified as acceptable by the
5 federal Department of Housing and Urban Development are
6 considered acceptable and are approved for use in housing
7 construction in this state.

8 (b) Appropriate building code compliance documentation
9 attached to a factory-built home shall constitute prima facie
10 evidence that the products or materials contained therein are
11 acceptable.

12 (c) A governing body of a municipality or a county, when
13 enacting residential design standards for the purposes of
14 regulating the subdivision, development and use of land, shall
15 uniformly apply such design standards and associated review
16 and permitting procedures for factory-built and other single-
17 family constructed homes.

18 (d) Factory-built homes, like other types of homes, shall be
19 constructed and installed in conformity with the requirements
20 of 44 C. F. R. §60.3(1976) and any applicable statute or rule
21 relating to building in a flood zone.

CHAPTER 150

**(S. B. 539 — By Senators Kessler, Dempsey, Fanning,
Foster, Hunter, Jenkins, Minard, Oliverio, White,
Barnes, Deem, Harrison and Lanham)**

[Passed February 13, 2006; in effect from passage]

[Approved by the Governor on February 21, 2006.]

AN ACT to amend and reenact §22A-1-3 of the Code of West Virginia, 1931, as amended, relating to increasing the professional qualifications required for the position of Director of the office of Miners' Health, Safety and Training.

Be it enacted by the Legislature of West Virginia:

That §22A-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING;
ADMINISTRATION; ENFORCEMENT.**

***§22A-1-3. Director of the Office of Miners' Health, Safety and Training.**

1 (a) The Director of the Office of Miners' Health, Safety and
2 Training is responsible for surface and underground safety
3 inspections of coal mines and the administration of the office of
4 Miners' Health, Safety and Training.

5 (b) The director is the chief executive officer of the office.
6 Subject to provisions of law, he or she shall organize the office
7 into those offices, sections, agencies and other units of activity
8 found by the director to be desirable for the orderly, efficient
9 and economical administration of the office. The director may
10 appoint any other employees needed for the operation of the
11 office and may prescribe their powers and duties and fix their
12 compensation within amounts appropriated.

13 (c) The director shall be appointed by the Governor, by and
14 with the advice and consent of the Senate, and shall serve at the
15 will and pleasure of the Governor.

16 (d) The Director of the Office of Miners' Health, Safety and
17 Training shall be a citizen of West Virginia, shall be a compe-
18 tent person of good repute and temperate habits with a demon-
19 strated interest and five years' education, training or experience
20 in underground coal mining safety and shall have at least three
21 years of experience in a position of responsibility in at least one
22 discipline relating to the duties and responsibilities for which
23 the director will be responsible upon assumption of the office
24 of director. Special reference shall be given to his or her

* **CLERK'S NOTE:** This section was also amended by H. B. 4596 (Chapter 151), which passed subsequent to this act.

25 administrative experience and ability. The director shall devote
26 all of his or her time to the duties of the position of director and
27 shall not be directly interested financially in any mine in this or
28 any other state nor shall the director, either directly or indi-
29 rectly, be a majority owner of, or have control of or a control-
30 ling interest in, a mine in this or any other state. The director
31 shall not be a candidate for or hold any other public office, shall
32 not be a member of any political party committee and shall
33 immediately forfeit and vacate his or her office as director in
34 the event he or she becomes a candidate for or accepts appoint-
35 ment to any other public office or political party committee.

36 (e) The director shall be allowed and paid necessary
37 expenses incident to the performance of his or her official
38 duties. Prior to the assumption of his or her official duties, the
39 director shall take the oath required of public officials pre-
40 scribed by section five, article IV of the Constitution of West
41 Virginia and shall execute a bond, with surety approved by the
42 Governor, in the penal sum of ten thousand dollars. The
43 executed oath and bond shall be filed in the office of the
44 Secretary of State. Premiums on the bond shall be paid from
45 office funds.

CHAPTER 151

**(Com. Sub. for H. B. 4596 — By Mr. Speaker,
Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed March 10, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2006.]

AN ACT to amend and reenact §22A-1-3 of the Code of West Virginia, 1931, as amended, relating to the director of the Office

of Miners' Health, Safety and Training; providing the Secretary of the Department of Commerce as interim director; revising qualifications for the director; providing for appointment of an acting director; and establishing minimum qualifications for the acting director.

Be it enacted by the Legislature of West Virginia:

That §22A-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING;
ADMINISTRATION; ENFORCEMENT.**

***§22A-1-3. Director of the Office of Miners' Health, Safety and
Training.**

1 (a) The Director of the Office of Miners' Health, Safety and
2 Training is responsible for surface and underground safety
3 inspections of coal mines and the administration of the Office
4 of Miners' Health, Safety and Training.

5 (b) The director is the chief executive officer of the office.
6 Subject to provisions of law, he or she shall organize the office
7 into those offices, sections, agencies and other units of activity
8 found by the director to be desirable for the orderly, efficient
9 and economical administration of the office. The director may
10 appoint any other employees needed for the operation of the
11 office and may prescribe their powers and duties and fix their
12 compensation within amounts appropriated.

13 (c) The director shall be appointed by the Governor, by and
14 with the advice and consent of the Senate, and shall serve at the
15 will and pleasure of the Governor.

* **CLERK'S NOTE:** This section was also amended by S. B. 539 (Chapter 150), which passed prior to this act.

16 (d) The Director of the Office of Miners' Health, Safety and
17 Training shall be a citizen of West Virginia, shall be a compe-
18 tent person of good repute and temperate habits with a demon-
19 strated interest and five years' education or training in under-
20 ground mining safety, and three years' experience in under-
21 ground mining and shall have at least three years of experience
22 in a position of responsibility in at least one discipline relating
23 to the duties and responsibilities for which the director will be
24 responsible upon assumption of the office of director. Special
25 reference shall be given to his or her administrative experience
26 and ability. The director shall devote all of his or her time to the
27 duties of the position of director and shall not be directly
28 interested financially in any mine in this or any other state nor
29 shall the director, either directly or indirectly, be a majority
30 owner of, or have control of or a controlling interest in, a mine
31 in this or any other state. The director shall not be a candidate
32 for or hold any other public office, shall not be a member of any
33 political party committee and shall immediately forfeit and
34 vacate his or her office as director in the event he or she
35 becomes a candidate for or accepts appointment to any other
36 public office or political party committee: *Provided, That*, in
37 the event of a vacancy in the position of director, the Governor
38 may fill the director's position on an interim basis by appoint-
39 ing an acting director to exercise the powers of the director. The
40 acting director shall be a citizen of West Virginia, shall be a
41 competent person of good repute and temperate habits with a
42 demonstrated interest and five years' education, training or
43 experience in underground coal mining safety and shall have at
44 least three years of experience in a position of responsibility in
45 at least one discipline relating to the duties and responsibilities
46 for which the acting director will be responsible during his or
47 her interim service in the office of director. The interim service
48 appointment can not last for more than one year, after which a
49 permanent director must be appointed.

50 (e) The director shall be allowed and paid necessary
51 expenses incident to the performance of his or her official

52 duties. Prior to the assumption of his or her official duties, the
53 director shall take the oath required of public officials pre-
54 scribed by section five, article IV of the Constitution of West
55 Virginia and shall execute a bond, with surety approved by the
56 Governor, in the penal sum of ten thousand dollars. The
57 executed oath and bond shall be filed in the Office of the
58 Secretary of State. Premiums on the bond shall be paid from
59 office funds.

CHAPTER 152

(Com. Sub. for S. B. 439 — By Senators McKenzie and Bowman)

[Passed March 10, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 5, 2006.]

AN ACT to amend and reenact §24C-1-3 and §24C-1-5 of the Code of West Virginia, 1931, as amended, all relating to duties of operators of an underground facility; strengthening the one-call system requirements for persons excavating or performing demolition work in the vicinity of underground facilities by increasing the number of emergency response agencies to be notified in the event of resulting damage; defining emergencies; and providing criminal penalties for violating certain duties and responsibilities imposed in said article.

Be it enacted by the Legislature of West Virginia:

That §24C-1-3 and §24C-1-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. ONE-CALL SYSTEM.

§24C-1-3. Duties and responsibilities of operators of underground facilities; failure of operator to comply.

§24C-1-5. Duties and responsibilities of excavators; failure of excavator to comply; civil penalties.

§24C-1-3. Duties and responsibilities of operators of underground facilities; failure of operator to comply.

1 (a) Each operator of an underground facility in this state,
2 except any privately owned public water utility regulated by the
3 Public Service Commission, any state agency, any municipality
4 or county, or any municipal or county agency, shall be a
5 member of a one-call system for the area in which the under-
6 ground facility is located. Privately owned public water utilities
7 regulated by the Public Service Commission, state agencies,
8 municipalities and counties and municipal and county agencies
9 may be voluntary members of such a one-call system.

10 (b) Each member shall provide the following information
11 to the one-call system on forms developed and provided for that
12 purpose by the one-call system:

13 (1) The name of the member;

14 (2) The geographic location of the member's underground
15 facilities as prescribed by the one-call system; and

16 (3) The member's office address and telephone number to
17 which inquiries may be directed as to the locations of the
18 operator's underground facilities.

19 (c) Each member shall revise in writing the information
20 required by subsection (b) of this section as soon as reasonably
21 practicable, but not to exceed one hundred eighty days, after
22 any change.

23 (d) Within forty-eight hours, excluding Saturdays, Sundays
24 and legal federal or state holidays, after receipt of a notification

25 by the one-call system from an excavator of a specific area
26 where excavation or demolition will be performed, the operator
27 of underground facilities shall:

28 (1) Respond to such notification by providing to the
29 excavator the approximate location, within two feet horizontally
30 from the outside walls of such facilities, and type of under-
31 ground facilities at the site; and

32 (2) Use the color code prescribed in section six of this
33 article when providing temporary marking of the approximate
34 location of underground facilities; or

35 (3) Notify the excavator that the operator did not leave a
36 temporary marking of the location of underground facilities
37 because there are no lines in the area of the proposed excava-
38 tion or demolition.

39 (e) Failure of an operator who is required to be a member
40 to comply with the provisions of this article may not prevent the
41 excavator from proceeding but shall bar the operator from
42 recovery of any costs associated with damage to its under-
43 ground facilities resulting from such failure, except for damage
44 caused by the willful or intentional act of the excavator.

45 (f) Notwithstanding the provisions of subsection (e) of this
46 section, a member is not barred from recovery under said
47 subsection for failure to comply with subdivision (1), subsec-
48 tion (d) of this section, but shall have his or her right to recover,
49 if any, determined by common law, if the operator responded to
50 one-call notification in a timely manner, but was unable to
51 accurately locate lines because such lines were nonmetallic and
52 had no locating wire or other marker.

**§24C-1-5. Duties and responsibilities of excavators; failure of
excavator to comply; civil penalties.**

1 (a) Except as provided in section seven of this article, any
2 person who intends to perform excavation or demolition work
3 shall:

4 (1) Not less than forty-eight hours, excluding Saturdays,
5 Sundays and federal or state legal holidays, nor more than ten
6 work days prior to the beginning of such work, notify the one-
7 call system of the intended excavation or demolition and
8 provide the following information:

9 (A) Name of the individual making the notification;

10 (B) Company name;

11 (C) Telephone number;

12 (D) Company address;

13 (E) Work site location; including county, nearest city or
14 town, street location, nearest cross street and landmarks or other
15 location information;

16 (F) Work to be performed;

17 (G) Whether or not use of explosives is planned;

18 (H) Name and telephone number of individual to contact;
19 and

20 (I) Starting date and time;

21 (2) Notify the one-call system not less than twenty-four
22 hours, excluding Saturdays, Sundays and federal or state legal
23 holidays, in advance of any change in the starting date or time
24 of the intended work; and

25 (3) Instruct each equipment operator involved in the
26 intended work:

27 (A) To perform all excavation or demolition work in such
28 a manner as to avoid damage to underground facilities in the
29 vicinity of the intended work site, including hand digging, when
30 necessary;

31 (B) To report immediately any break or leak in under-
32 ground facilities, or any dent, gouge, groove or other damage to
33 such facilities, made or discovered in the course of the excava-
34 tion or demolition and to allow the operator a reasonable time
35 to accomplish necessary repairs before continuing the excava-
36 tion or demolition in the immediate area of such facilities;

37 (C) To immediately alert the public at or near the work site
38 as to any emergency created or discovered at or near such work
39 site;

40 (D) (i) To report immediately to the appropriate medical,
41 law-enforcement and fire prevention authorities any break or
42 leak in underground facilities, or any dent, gouge, groove or
43 other damage to such facilities, made or in the course of the
44 excavation or demolition which creates an "emergency" as
45 defined in subdivision (1), subsection (c), section two of this
46 article. For purposes of this subdivision, an excavator calling
47 the "911" emergency telephone number satisfies this require-
48 ment; or

49 (ii) To notify the one-call system, within twenty-four hours,
50 of any break or leak in underground facilities, or any dent,
51 gouge, groove or other damage to such facilities, made or in the
52 course of the excavation or demolition which does not create an
53 "emergency" as defined in subdivision (1), subsection (c),
54 section two of this article.

55 (E) To maintain a clearance between each underground
56 facility and the cutting edge or point of any powered equip-
57 ment, taking into account the known limit of control of such

58 cutting edge or point, as may be reasonably necessary for the
59 protection of such facility;

60 (F) To protect and preserve markers, stakes and other
61 designations identifying the location of underground facilities
62 at the work site; and

63 (G) To provide such support for underground facilities in
64 the location of the work site, including during backfilling
65 operations, as may be reasonably necessary for the protection
66 of such facilities. Temporary support and backfill shall provide
67 support for such facilities at least equivalent to the previously
68 existing support.

69 (b) If any underground facility is damaged by a person who
70 has failed to comply with any provision of this section, that
71 person is liable to the operator of the underground facility for
72 the total cost to repair the damage in an amount equal to that as
73 is normally computed by the operator, provided that the
74 operator:

75 (1) Is a member of the one-call system covering the area in
76 which the damage to the facility takes place; and

77 (2) Upon receiving the proper notice in accordance with
78 this article, has complied with the provisions of section three of
79 this article: *Provided*, That a member is not barred from
80 recovering costs solely for his or her own failure to comply
81 with subdivision (1), subsection (d) of said section, but shall
82 have his or her right to recover, if any, determined by common
83 law, if the conditions of subsection (f) of said section are met.

84 The liability of such person for such damage is not limited
85 by reason of this article.

86 (c) If any excavation or demolition causes damage to any
87 underground facilities owned by an operator who is not required

88 to be a member of a one-call system and who is not a member
89 of such a system at the time of damage, the liability of the
90 person causing damage shall be determined solely by applicable
91 principles of common law.

92 (d) If any excavation or demolition causes damage to any
93 other person or property, the liability of the person causing
94 damage shall be determined solely by applicable principles of
95 common law.

96 (e) Any person who fails to notify the one-call system prior
97 to performing any excavation or demolition, or fails to follow
98 the reporting provisions of this section, or who violates any
99 other provision of this section, shall be guilty of a misdemeanor
100 and, upon conviction thereof, shall be fined not more than five
101 thousand dollars.

102 (f) Nothing in this chapter may be construed to restrict or
103 expand the rights, duties and liabilities provided in common law
104 or by other provisions of this code of an operator who is not
105 required to be a member of a one-call system and who is not a
106 member of such a system.

CHAPTER 153

**(Com. Sub. for H. B. 4023 — By Delegates Brown, Amores,
Caputo, Hartman, Hrutkay and Rick Thompson)**

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §21-5C-2 of the Code of West
Virginia, 1931, as amended, relating to increasing the state

minimum and training wage; linking the state minimum and training wage to the federal minimum and training wage; making all departments and agencies of the State of West Virginia subject to the minimum wage established in this section regardless of federal law; and providing the minimum wage will not fall below the federal minimum wage.

Be it enacted by the Legislature of West Virginia:

That §21-5C-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS.

§21-5C-2. Minimum wages.

1 (a) *Minimum wage:*

2 (1) After the thirtieth day of June, two thousand six, every
3 employer shall pay to each of his or her employees wages at a
4 rate not less than five dollars and eighty-five cents per hour.

5 (2) After the thirtieth day of June, two thousand seven,
6 every employer shall pay to each of his or her employees wages
7 at a rate not less than six dollars and fifty-five cents per hour.

8 (3) After the thirtieth day of June, two thousand eight, every
9 employer shall pay to each of his or her employees wages at a
10 rate not less than seven dollars and twenty-five cents per hour.

11 (4) At such time as the federal minimum hourly wage as
12 prescribed by 29 U.S.C. § 206(a)(1) is equal to or greater than
13 the wage rate prescribed in subdivision (3) of this subsection,
14 every employer shall pay to each of his or her employees wages
15 at a rate of not less than the federal minimum hourly wage as
16 prescribed by 29 U.S.C. § 206(a)(1). The minimum wage rates
17 required under this subparagraph shall be thereafter adjusted in
18 accordance with adjustments made in the federal minimum

19 hourly rate. The adoption of the federal minimum wage
20 provided by this subdivision includes only the federal minimum
21 hourly rate prescribed in 29 U.S.C. § 206(a)(1) and does not
22 include other wage rates, or conditions, exclusions, or excep-
23 tions to the federal minimum hourly wage rate. In addition,
24 adoption of the federal minimum hourly wage rate does not
25 extend or modify the scope or coverage of the minimum wage
26 rate required under this subdivision.

27 (b) *Training wage:*

28 (1) Notwithstanding the provisions set forth in subsection
29 (a) of this section to the contrary, an employer may pay an
30 employee first hired after the thirtieth day of June, two thou-
31 sand six, a subminimum training wage not less than five dollars
32 and fifteen cents per hour.

33 (2) An employer may not pay the subminimum training
34 wage set forth in subdivision (1) of this subsection to any
35 individual:

36 (i) Who has attained or attains while an employee of the
37 employer, the age of twenty years; or

38 (ii) For a cumulative period of not more than ninety days
39 per employee: *Provided*, That if any business has not been in
40 operation for more than ninety days at the time the employer
41 hired the employee, the employer may pay the employee the
42 subminimum training wage set forth in subdivision (1) of this
43 subsection for an additional period not to exceed ninety days.

44 (3) At such time as the federal subminimum training wage
45 as prescribed by 29 U.S.C. § 206(g)(1) is equal to or greater
46 than the wage rate prescribed in subdivision (1) of this
47 subsection, every employer shall pay to each of his or her
48 employees wages at a rate of not less than the federal minimum
49 hourly wage as prescribed by 29 U.S.C. § 206(g)(1). The

50 minimum wage rates required under this subparagraph shall be
51 thereafter adjusted in accordance with adjustments made in the
52 federal minimum hourly rate. The adoption of the federal
53 minimum wage provided by this subdivision includes only the
54 federal minimum hourly rate prescribed in 29 U.S.C. §
55 206(g)(1) and does not include other wage rates, or conditions,
56 exclusions, or exceptions to the federal minimum hourly wage
57 rate. In addition, adoption of the federal minimum hourly wage
58 rate does not extend or modify the scope or coverage of the
59 minimum wage rate required under this subdivision.

60 (c) Notwithstanding any provision or definition to the
61 contrary, the wages established pursuant to this section shall be
62 applicable to all individuals employed by the State of West
63 Virginia, its agencies, and departments, regardless if such
64 employee or employer are subject to any federal act relating to
65 minimum wage: *Provided*, That at no time shall the minimum
66 wage established pursuant to this section fall below the federal
67 minimum hourly wage as prescribed by 29 U. S. C. §206(a)(1).

CHAPTER 154

**(Com. Sub. for S. B. 247 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed January 23, 2006; in effect from passage.]

[Approved by the Governor on January 26, 2006.]

AN ACT to repeal §22A-2-69 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §15-5B-1, §15-5B-2, §15-5B-3, §15-5B-4 and §15-5B-5; to amend and reenact §22A-2-55 and §22A-2-66 of said

code; and to amend said code by adding thereto a new section, designated §24-6-14, all relating to mine and industrial emergencies; creating the Mine and Industrial Accident Rapid Response System; providing requirements for protective equipment in underground mines; providing for criminal penalties for the unauthorized removal of or tampering with certain protective equipment; defining certain terms; providing for notification requirements in the event of an accident in or about any mine and imposing a civil administrative penalty for the failure to comply with such notification requirements; providing rule-making authority; and clarifying the responsibilities of county answering points.

Be it enacted by the Legislature of West Virginia:

That §22A-2-69 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new article, designated §15-5B-1, §15-5B-2, §15-5B-3, §15-5B-4 and §15-5B-5; that §22A-2-55 and §22A-2-66 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §24-6-14, all to read as follows:

Chapter

- 15. Public Safety.**
- 22A. Miners' Health, Safety and Training.**
- 24. Public Service Commission.**

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 5B. MINE AND INDUSTRIAL ACCIDENT RAPID RESPONSE SYSTEM.

- §15-5B-1. Legislative purpose; Mine and Industrial Accident Rapid Response System created.
- §15-5B-2. Mine and industrial accident emergency operations center.
- §15-5B-3. Emergency mine response.
- §15-5B-4. Study of other industrial emergencies.
- §15-5B-5. Rule-making authority.

§15-5B-1. Legislative purpose; Mine and Industrial Accident Rapid Response System created.

1 (a) The Legislature finds that the health and safety of
2 persons working in and around the mining industry and other
3 industries is of paramount concern to the people of West
4 Virginia and that deaths and serious injuries resulting from
5 dangerous working conditions cause grief and suffering to
6 workers and their families. The Legislature further finds that
7 there is an urgent need to provide more effective means and
8 measures for improving emergency response and communica-
9 tions for dealing with mine and industrial accidents. The
10 Legislature declares that it is in the best interest of the citizens
11 of West Virginia to designate an emergency telephone number
12 for mining or industrial personnel to initiate a rapid emergency
13 response to any mine or industrial accident. Provision of a
14 single, primary emergency number through which emergency
15 services can be quickly and efficiently obtained and through
16 which the response of various state agencies charged by law
17 with responding to mine and industrial emergencies can be
18 coordinated will significantly contribute to the public good. The
19 Mine and Industrial Accident Rapid Response System will
20 provide a vital resource to the citizens of West Virginia by
21 providing a critical connection between the Director of the
22 Office of Miners' Health, Safety and Training, the Division of
23 Homeland Security and Emergency Management, local and
24 regional emergency services organizations and other responsi-
25 ble agencies.

26 (b) The Mine and Industrial Accident Rapid Response
27 System is hereby created and shall consist of:

28 (1) The Mine and Industrial Accident Emergency Opera-
29 tions Center established in section two of this article; and

30 (2) The 24-hour-a-day statewide telephone number
31 established by the Director of the Division of Homeland
32 Security and Emergency Management.

§15-5B-2. Mine and industrial accident emergency operations center.

1 (a) The Director of the Division of Homeland Security and
2 Emergency Management, working in conjunction with the
3 Office of Miners' Health, Safety and Training, shall maintain
4 the Mine and Industrial Accident Emergency Operations
5 Center, which shall be the official and primary state govern-
6 ment 24-hour-a-day communications center for dealing with
7 mine and industrial accidents.

8 (b) The emergency operations center shall be operated
9 twenty-four hours a day, seven days a week by emergency
10 service personnel employed by the director to provide emer-
11 gency assistance and coordination to mine and industrial
12 accidents or emergencies.

13 (c) The emergency operations center shall be readily
14 accessible twenty-four hours a day at a statewide telephone
15 number established and designated by the director.

§15-5B-3. Emergency mine response.

1 (a) To assist the Division of Homeland Security and
2 Emergency Management in implementing and operating the
3 Mine and Industrial Accident Rapid Response System, the
4 Office of Miners' Health, Safety and Training shall, on a
5 quarterly basis, provide the emergency operations center with
6 a mine emergency contact list. In the event of any change in the
7 information contained in the mine emergency contact list, such
8 changes shall be provided immediately to the emergency
9 operations center. The mine emergency contact list shall
10 include the following information:

11 (1) The names and telephone numbers of the Director of the
12 Office of Miners' Health, Safety and Training, or his or her
13 designee, including at least one telephone number at which the
14 Director or designee may be reached at any time;

15 (2) The names and telephone numbers of all district mine
16 inspectors, including at least one telephone number for each
17 inspector at which each inspector may be reached at any time;

18 (3) A current listing of all regional offices or districts of the
19 Office of Miners' Health, Safety and Training, including a
20 detailed description of the geographical areas served by each
21 regional office or district; and

22 (4) The names, locations and telephone numbers of all mine
23 rescue stations, including at least one telephone number for
24 each station that may be called twenty-four hours a day and a
25 listing of all mines that each mine rescue station serves in
26 accordance with the provisions of section thirty-five, article
27 one, chapter twenty-two-a of this code.

28 (b) Upon the receipt of an emergency call regarding any
29 accident, as defined in section sixty-six, article two, chapter
30 twenty-two-a of this code, in or about any mine, the emergency
31 operations center shall immediately notify:

32 (1) The Director of the Office of Miners' Health, Safety and
33 Training or his or her designee;

34 (2) The district mine inspector assigned to the district or
35 region in which the accident occurred; and

36 (3) Local emergency service personnel in the area in which
37 the accident occurred.

38 (c) The director or his or her designee shall determine the
39 necessity for and contact all mine rescue stations that provide
40 rescue coverage to the mine in question.

41 (d) In the event that an emergency call regarding any
42 accident, as defined in section sixty-six, article two, chapter
43 twenty-two-a of this code, in or about any mine, is initially
44 received by a county answering point, as defined in article six,
45 chapter twenty-four of this code, the call shall be immediately
46 forwarded to the Mine and Industrial Accident Emergency
47 Operations Center.

48 (e) Nothing in this section shall be construed to relieve an
49 operator, as defined in section two, article one, chapter twenty-
50 two-a of this code, from any reporting or notification obligation
51 under federal law.

52 (f) The Mine and Industrial Accident Rapid Response
53 System and the emergency operations center are designed and
54 intended to provide communications assistance to emergency
55 responders and other responsible persons. Nothing in this
56 section shall be construed to conflict with the responsibility and
57 authority of an operator to provide mine rescue coverage in
58 accordance with the provisions of section thirty-five, article
59 one, chapter twenty-two-a of this code or the authority of the
60 Director of the Office of Miners' Health, Safety and Training
61 to assign mine rescue teams under the provisions of subsection
62 (d) of said section or to exercise any other authority provided in
63 chapter twenty-two-a of this code.

§15-5B-4. Study of other industrial emergencies.

1 The Director of the Division of Homeland Security and
2 Emergency Management shall immediately cause a study to be
3 conducted to determine the feasibility of providing emergency
4 coverage to other industrial, manufacturing, chemical or other
5 emergencies through the Mine and Industrial Accident Rapid
6 Response System. On or before the first day of November, two
7 thousand six, the director shall submit a report to the Governor,
8 the President of the Senate and the Speaker of the House of
9 Delegates setting forth the findings of his or her study and

10 recommendations for legislation consistent with the purposes of
11 this article.

§15-5B-5. Rule-making authority.

1 The Director of the Division of Homeland Security and
2 Emergency Management shall propose emergency and
3 legislative rules for promulgation in accordance with article
4 three, chapter twenty-nine-a of this code regarding the imple-
5 mentation and administration of the Mine and Industrial
6 Accident Rapid Response System. The requirements of this
7 article enacted during the regular session of the Legislature in
8 January, two thousand six, shall not be implemented until the
9 emergency rule authorized herein has been approved.

**CHAPTER 22A. MINERS' HEALTH,
SAFETY AND TRAINING.**

ARTICLE 2. UNDERGROUND MINES.

§22A-2-55. Protective equipment and clothing.

§22A-2-66. Accident; notice; investigation by Office of Miners' Health, Safety and
Training.

§22A-2-55. Protective equipment and clothing.

1 (a) Welders and helpers shall use proper shields or goggles
2 to protect their eyes. All employees shall have approved
3 goggles or shields and use the same where there is a hazard
4 from flying particles or other eye hazards.

5 (b) Employees engaged in haulage operations and all other
6 persons employed around moving equipment on the surface and
7 underground shall wear snug-fitting clothing.

8 (c) Protective gloves shall be worn when material which
9 may injure hands is handled, but gloves with gauntleted cuffs
10 shall not be worn around moving equipment.

11 (d) Safety hats and safety-toed shoes shall be worn by all
12 persons while in or around a mine: *Provided*, That metatarsal
13 guards are not required to be worn by persons when working in
14 those areas of underground mine workings which average less
15 than forty-eight inches in height as measured from the floor to
16 the roof of the underground mine workings.

17 (e) Approved eye protection shall be worn by all persons
18 while being transported in open-type man trips.

19 (f)(1) A self-contained self-rescue device approved by the
20 Director shall be worn by each person underground or kept
21 within his immediate reach and the device shall be provided by
22 the operator. The self-contained self-rescue device shall be
23 adequate to protect a miner for one hour or longer. Each
24 operator shall train each miner in the use of such device and
25 refresher training courses for all underground employees shall
26 be held during each calendar year.

27 (2) In addition to the requirements of subdivision (1) of this
28 subsection, the operator shall also provide caches of additional
29 self-contained self-rescue devices throughout the mine in
30 accordance with a plan approved by the director. Each addi-
31 tional self-contained self-rescue device shall be adequate to
32 protect a miner for one hour or longer. The total number of
33 additional self-contained self-rescue devices, the total number
34 of storage caches and the placement of each cache throughout
35 the mine shall be established by rule pursuant to subsection (i)
36 of this section. Intrinsically safe battery-powered strobe lights
37 shall be affixed to each cache and shall be capable of automatic
38 activation in the event of an emergency. A luminescent sign
39 with the words "SELF-CONTAINED SELF-RESCUER" or
40 "SELF-CONTAINED SELF-RESCUERS" shall be conspicu-
41 ously posted at each cache and luminescent direction signs shall
42 be posted leading to each cache. Lifeline cords or other similar
43 device, with reflective material at 25-foot intervals, shall be
44 attached to each cache from the last open crosscut to the

45 surface. The operator shall conduct weekly inspections of each
46 cache, the affixed strobe lights and each lifeline cord or other
47 similar device to ensure operability.

48 (3) Any person that, without the authorization of the
49 operator or the director, knowingly removes or attempts to
50 remove any self-contained self-rescue device or battery-
51 powered strobe light from the mine or mine site with the intent
52 to permanently deprive the operator of the device or light or
53 knowingly tampers with or attempts to tamper with such device
54 or light shall be guilty of a felony and, upon conviction thereof,
55 shall be imprisoned in a state correctional facility for not less
56 than one year nor more than ten years or fined not less than ten
57 thousand dollars nor more than one hundred thousand dollars,
58 or both.

59 (g)(1) A wireless emergency communication device
60 approved by the director and provided by the operator shall be
61 worn by each person underground. The wireless emergency
62 communication device shall, at a minimum, be capable of
63 receiving emergency communications from the surface at any
64 location throughout the mine. Each operator shall train each
65 miner in the use of the device and provide refresher training
66 courses for all underground employees during each calendar
67 year. The operator shall install in or around the mine any and all
68 equipment necessary to transmit emergency communications
69 from the surface to each wireless emergency communication
70 device at any location throughout the mine.

71 (2) Any person that, without the authorization of the
72 operator or the director, knowingly removes or attempts to
73 remove any wireless emergency communication device or
74 related equipment, from the mine or mine site with the intent to
75 permanently deprive the operator of the device or equipment or
76 knowingly tampers with or attempts to tamper with the device
77 or equipment shall be guilty of a felony and, upon conviction
78 thereof, shall be imprisoned in a state correctional facility for

79 not less than one year nor more than ten years or fined not less
80 than ten thousand dollars nor more than one hundred thousand
81 dollars, or both.

82 (h)(1) A wireless tracking device approved by the director
83 and provided by the operator shall be worn by each person
84 underground. In the event of an accident or other emergency,
85 the tracking device shall, at a minimum, be capable of provid-
86 ing real-time monitoring of the physical location of each person
87 underground: *Provided*, That no person shall discharge or
88 discriminate against any miner based on information gathered
89 by a wireless tracking device during nonemergency monitoring.
90 Each operator shall train each miner in the use of the device and
91 provide refresher training courses for all underground employ-
92 ees during each calendar year. The operator shall install in or
93 around the mine all equipment necessary to provide real-time
94 emergency monitoring of the physical location of each person
95 underground.

96 (2) Any person that, without the authorization of the
97 operator or the director, knowingly removes or attempts to
98 remove any wireless tracking device or related equipment,
99 approved by the director, from a mine or mine site with the
100 intent to permanently deprive the operator of the device or
101 equipment or knowingly tampers with or attempts to tamper
102 with the device or equipment shall be guilty of a felony and,
103 upon conviction thereof, shall be imprisoned in a state correc-
104 tional facility for not less than one year nor more than ten years
105 or fined not less than ten thousand dollars nor more than one
106 hundred thousand dollars, or both.

107 (i) The director may promulgate emergency and legislative
108 rules to implement and enforce this section pursuant to the
109 provisions of article three, chapter twenty-nine-a of this code.

110 (j) The penalties set forth in this article enacted during the
111 regular session of the Legislature in January, two thousand six,
112 shall become effective the first day of July, two thousand six.

§22A-2-66. Accident; notice; investigation by Office of Miners' Health, Safety and Training.

1 (a) For the purposes of this section, the term "accident"
2 means:

3 (1) The death of an individual at a mine;

4 (2) An injury to an individual at a mine which has a
5 reasonable potential to cause death;

6 (3) The entrapment of an individual;

7 (4) The unplanned inundation of a mine by a liquid or gas;

8 (5) The unplanned ignition or explosion of gas or dust;

9 (6) The unplanned ignition or explosion of a blasting agent
10 or an explosive;

11 (7) An unplanned fire in or about a mine not extinguished
12 within five minutes of ignition;

13 (8) An unplanned roof fall at or above the anchorage zone
14 in active workings where roof bolts are in use or an unplanned
15 roof or rib fall in active workings that impairs ventilation or
16 impedes passage;

17 (9) A coal or rock outburst that causes withdrawal of
18 miners or which disrupts regular mining activity for more than
19 one hour;

20 (10) An unstable condition at an impoundment, refuse pile
21 or culm bank which requires emergency action in order to
22 prevent failure, or which causes individuals to evacuate an area,
23 or the failure of an impoundment, refuse pile or culm bank;

24 (11) Damage to hoisting equipment in a shaft or slope
25 which endangers an individual or which interferes with use of
26 the equipment for more than thirty minutes; and

27 (12) An event at a mine which causes death or bodily injury
28 to an individual not at the mine at the time the event occurs.

29 (b) Whenever any accident occurs in or about any coal mine
30 or the machinery connected therewith, it is the duty of the
31 operator or the mine foreman in charge of the mine to give
32 notice, within fifteen minutes of ascertaining the occurrence of
33 an accident, to the Mine and Industrial Accident Emergency
34 Operations Center at the statewide telephone number estab-
35 lished by the Director of the Division of Homeland Security and
36 Emergency Management pursuant to the provisions of article
37 five-b, chapter fifteen of this code stating the particulars of the
38 accident: *Provided*, That the operator or the mine foreman in
39 charge of the mine may comply with this notice requirement by
40 immediately providing notice to the appropriate local organiza-
41 tion for emergency services as defined in section eight, article
42 five of said chapter, or the appropriate local emergency
43 telephone system operator as defined in article six, chapter
44 twenty-four of this code: *Provided, however*, That nothing in
45 this subsection shall be construed to relieve the operator from
46 any reporting or notification requirement under federal law.

47 (c) The Director of the Office of Miners' Health, Safety and
48 Training shall impose, pursuant to rules authorized in this
49 section, a civil administrative penalty of one hundred thousand
50 dollars on the operator if it is determined that the operator or
51 the mine foremen in charge of the mine failed to give immedi-
52 ate notice as required in this section: *Provided*, That the director
53 may waive imposition of the civil administrative penalty at any
54 time if he or she finds that the failure to give immediate notice
55 was caused by circumstances wholly outside the control of the
56 operator.

57 (d) If anyone is killed, the inspector shall immediately go
58 to the scene of the accident and make recommendations and
59 render assistance as he or she may deem necessary for the
60 future safety of the men and investigate the cause of the

61 explosion or accident and make a record. He or she shall
62 preserve the record with the other records in his or her office.
63 The cost of the investigation records shall be paid by the Office
64 of Miners' Health, Safety and Training. A copy shall be
65 furnished to the operator and other interested parties. To enable
66 him or her to make an investigation, he or she has the power to
67 compel the attendance of witnesses and to administer oaths or
68 affirmations. The director has the right to appear and testify and
69 to offer any testimony that may be relevant to the questions and
70 to cross-examine witnesses.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-14. Notification of mining accidents.

1 Each county answering point that receives a call reporting
2 an accident in or about any mine shall immediately route the
3 call to the Mine and Industrial Accident Emergency Operations
4 Center created pursuant to section two, article five-a, chapter
5 fifteen of this code.

CHAPTER 155

**(Com. Sub. for H. B. 4498 — By Delegates Ron Thompson, Beach,
Houston, Iaquina, H. White, Marshall and Kominar)**

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §32A-2-5 of the Code of West Virginia, 1931, as amended, relating to fees for licensing of money service businesses.

Be it enacted by the Legislature of West Virginia:

That §32A-2-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CHECKS AND MONEY ORDER SALES, MONEY TRANSMISSION SERVICES, TRANSPORTATION AND CURRENCY EXCHANGE.

§32A-2-5. Fees.

1 (a) The commissioner shall charge and collect the license
2 application fees, license fees, license renewal fees, and
3 examination fees in amounts reasonable and necessary to defray
4 the cost of administering this article as follows:

5 (1) For applying for a license, an application and licensing
6 fee of one thousand dollars, plus twenty dollars for each
7 location within the state at which the applicant and its autho-
8 rized delegates are conducting business or propose to conduct
9 business excepting the applicant's principal place of business.

10 (2) For renewal of a license, a fee of two hundred fifty
11 dollars plus twenty dollars for each location within the state at
12 which the licensee and its authorized delegates are conducting
13 business or propose to conduct business excepting the appli-
14 cant's principal place of business.

15 (3) The total of fees required by subdivisions (1) or (2) of
16 this subsection may not exceed ten thousand dollars for any one
17 application.

18 (4) For a change in address by the licensee of its principal
19 place of business, a fee of one hundred dollars.

20 (5) For failure to timely submit an application of renewal or
21 file audited financial statements required for renewal as set
22 forth in this article, a penalty fee of ten dollars per day for each

23 day late, unless an extension of time has been granted or the fee
24 waived by the commissioner.

25 (b) Beginning one year after the effective date of this
26 article, the commissioner may, by rules proposed for legislative
27 approval in accordance with the provisions of article three,
28 chapter twenty-nine-a of this code, amend the fees set forth in
29 this section and in subsection (b), section eleven of this article.

30 (c) Fees and moneys received and collected under this
31 article shall be paid into the special revenue account in the State
32 Treasury for the Division of Banking established in section
33 eight, article two, chapter thirty-one-a of this code.

CHAPTER 156

(Com. Sub. for S. B. 492 — By Senator Bailey)

[Passed March 10, 2006; in effect July 1, 2006.]

[Approved by the Governor on April 5, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24A-6-7, relating to providing that indemnity agreements in motor carrier transportation contracts are void and unenforceable as against public policy; and 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 §24A-6-7, to read as follows:

**ARTICLE 6. DUTIES AND PRIVILEGES OF MOTOR CARRIERS SUBJECT
TO REGULATION OF THE COMMISSION.**

**§24A-6-7. Indemnity agreement in motor carrier transportation
contracts void.**

1 (a) Notwithstanding any provision of law to the contrary, a
2 provision, clause, covenant or agreement contained in, collat-
3 eral to or affecting a motor carrier transportation contract
4 entered into on or after the first day of July, two thousand six,
5 that purports to indemnify, defend or hold harmless, or has the
6 effect of indemnifying, defending or holding harmless, the
7 promisee from or against any liability for loss or damage
8 resulting from the negligence or intentional acts or omissions
9 of the promisee is against the public policy of this state and is
10 void and unenforceable.

11 (b) In this section:

12 (1) "Motor carrier transportation contract" means a
13 contract, agreement or understanding covering:

14 (A) The transportation of property for compensation or hire
15 by the motor carrier;

16 (B) Entrance on property by the motor carrier for the
17 purpose of loading, unloading or transporting property for
18 compensation or hire; or

19 (C) A service incidental to activity described in paragraph
20 (A) or (B), including, but not limited to, storage of property.

21 (2) "Promisee" means the promisee and any agents,
22 employees, servants or independent contractors who are directly
23 responsible to the promisee except for motor carriers party to a
24 motor carrier transportation contract with promisee and such
25 motor carrier's agents, employees, servants or independent
26 contractors directly responsible to such motor carrier.

27 (3) The term “motor carrier transportation contract” shall
28 not include the Uniform Intermodal Interchange and Facilities
29 Access Agreement administered by the Intermodal Association
30 of North America, as that agreement may be amended by the
31 Intermodal Interchange Executive Committee, or other
32 agreements providing for the interchange, use or possession of
33 intermodal chassis, containers or other intermodal equipment.

CHAPTER 157

(S. B. 680 — By Senator McCabe)

[Passed March 10, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24A-6A-15, relating to granting the Public Service Commission authority and responsibilities under the Single State Registration System and the Unified Carrier Registration System with regard to motor carriers operating in interstate commerce.

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-6A-15, to read as follows:

ARTICLE 6A. REGISTRATION OF INTERSTATE COMMERCE COMMISSION AUTHORITY AND IDENTIFICATION OF VEHICLES TO BE OPERATED THEREUNDER.

§24A-6A-15. Unified Carrier Registration System.

1 (a) The Public Service Commission is designated as the
2 appropriate state agency to implement and enforce the Unified
3 Carrier Registration System established by the Federal Unified
4 Carrier Registration Act of 2005, 49 U. S. C. §14504a, as
5 amended.

6 (b) The commission is authorized to promulgate rules
7 pursuant to its general rule-making authority, if necessary,
8 including emergency rules, to implement the federal law and
9 regulations established under the Unified Carrier Registration
10 Act of 2005.

CHAPTER 158

(S. B. 605 — By Senator Plymale)

[Passed March 11, 2006; in effect from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §17A-3-3a of the Code of West Virginia, 1931, as amended; and to amend and reenact §20-7-12a of said code, all relating to proof of payment of personal property taxes as a prerequisite to registration or renewal of a vehicle or motorboat registration; providing for alternative methods of verification of tax payment; providing that current year tax receipt may substitute for previous calendar year tax receipt; and eliminating the requirement that registrant who renews for two years furnish two previous calendar year receipts.

Be it enacted by the Legislature of West Virginia:

That §17A-3-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §20-7-12a of said code be amended and reenacted, all to read as follows:

Chapter

17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.

20. Natural Resources.

**CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION,
REGISTRATION, CERTIFICATE OF TITLE, AND
ANTITHEFT PROVISIONS.**

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE
OF CERTIFICATES OF TITLE.**

**§17A-3-3a. Payment of personal property taxes and emergency
ambulance fees prerequisite to registration or
renewal; duties of assessors; schedule of automo-
bile values.**

1 (a) Certificates of registration and renewal of registration
2 of any vehicle or registration plates for any vehicle may not be
3 issued or furnished by the Division of Motor Vehicles, or any
4 other officer charged with the duty, unless the applicant for the
5 certificate or registration plate, except an applicant exempt from
6 payment of registration fees under section eight, article ten of
7 this chapter, has furnished the receipt provided in this section
8 or the division has received verification by electronic means to
9 show full payment of:

10 (1) The personal property taxes for the current calendar
11 year or the calendar year which immediately precedes the
12 calendar year in which application is made on all vehicles
13 which were registered with the Division of Motor Vehicles in
14 the applicant`s name on the tax day for the former calendar
15 year; and

16 (2) All emergency ambulance fees owed pursuant to section
17 seventeen, article fifteen, chapter seven of this code at the time
18 the receipt is prepared, except for any of the fees that are not yet
19 past due: *Provided*, That any county which does not impose

20 emergency ambulance fees or which chooses not to show
21 emergency ambulance fees on the personal property tax receipt
22 may issue a receipt without complying with this subdivision
23 and the Commissioner of Motor Vehicles may issue or renew
24 registration without regard to such fees.

25 (b) If the applicant contends that any registered vehicle was
26 not subject to personal property taxation for that year or that he
27 or she does not owe any emergency ambulance fees if a receipt
28 for fees are required by the county, he or she shall furnish the
29 information and evidence as the Commissioner of Motor
30 Vehicles may require to substantiate his or her contention.

31 (c) The assessor shall require any person having a duty to
32 make a return of property for taxation to him or her to furnish
33 information identifying each vehicle subject to the registration
34 provisions of this chapter. When the property taxes on any
35 vehicle have been paid, the officer to whom the payment was
36 made shall deliver to the person paying the taxes a written or
37 printed receipt for the payment and shall retain for his or her
38 records a duplicate of the receipt. It is the duty of the assessor
39 and sheriff, respectively, to see that the assessment records and
40 the receipts contain information adequately identifying the
41 vehicle as registered under the provisions of this chapter. The
42 officer receiving payment shall sign each receipt in his or her
43 own handwriting.

44 (d) Each receipt given to a taxpayer for payment of
45 personal property taxes on a vehicle may indicate on the receipt
46 whether the taxpayer has paid all emergency ambulance fees
47 owed pursuant to section seventeen, article fifteen, chapter
48 seven of this code at the time the receipt is prepared, except for
49 any of the fees that are not yet past due: *Provided*, That each
50 county shall include on the same notice of personal property
51 taxes due the additional amount due for all emergency ambu-
52 lance fees.

53 (e) The State Tax Commissioner shall annually compile a
54 schedule of automobile values based on the lowest values
55 shown in a nationally accepted used car guide. The State Tax
56 Commissioner shall furnish the schedule to each assessor and
57 it shall be used by him or her as a guide in placing the assessed
58 values on all automobiles in his or her county.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 7. LAW-ENFORCEMENT, MOTOR BOATING, LITTER.

§20-7-12a. Payment of personal property taxes prerequisite to application for certificate or renewal of number; duties of assessors; schedule of motorboat values.

1 Certificates of number and renewals therefor shall not be
2 issued or furnished by the Division of Motor Vehicles, or any
3 other officer charged with the duty, unless the applicant therefor
4 furnishes the receipt hereinafter provided to show full payment
5 of the personal property taxes for the current calendar year or
6 the calendar year which immediately precedes the calendar year
7 in which application is made on all motorboats which were
8 listed with the Division of Motor Vehicles in the applicant's
9 name on the tax day for the current or former calendar year or
10 the division has received verification of full payment of
11 personal property taxes by electronic means. If the applicant
12 contends that any motorboat so listed was not subject to
13 personal property taxation for that year, he or she shall furnish
14 the information and evidence as the Commissioner of Motor
15 Vehicles may require to substantiate his or her contention.

16 The assessor shall require any person having a duty to make
17 a return of property for taxation to him or her to furnish
18 information identifying each motorboat subject to the number-
19 ing provisions of this article. When the property taxes on the
20 motorboat have been paid, the officer to whom the payment was
21 made shall deliver to the person paying the taxes a written or

22 printed receipt therefor and shall retain for his or her records a
23 duplicate of the receipt. The assessor and sheriff, respectively,
24 shall see that the assessment records and the receipts contain
25 information adequately identifying the motorboat as registered
26 under the provisions of this article. The officer receiving
27 payment shall sign each receipt in his or her own handwriting.

28 The assessors shall commence their duties hereunder during
29 the tax year one thousand nine hundred eighty-nine and the
30 Division of Motor Vehicles shall commence its duties hereun-
31 der as of the first day of January, one thousand nine hundred
32 ninety.

33 The State Tax Commissioner shall annually compile a
34 schedule of motorboat values, based on the lowest values
35 shown in a nationally accepted used motorboat guide, which
36 schedule shall be furnished to each assessor and shall be used
37 by him or her as a guide in placing the assessed values on all
38 motorboats in his or her county.

CHAPTER 159

**(Com. Sub. for S. B. 183 — By Senators Facemyer,
McKenzie, Jenkins and Love)**

[Passed March 11, 2006; in effect from passage.]

[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §17A-3-4, §17A-3-14 and §17A-3-23 of the Code of West Virginia, 1931, as amended, all relating to motor vehicle registration generally; providing for the issuance of a special plate for recipients of the Armed Forces Air Medal; extending the time to comply with requirements for the issuance

of a special plate for members of the Knights of Columbus; providing for the issuance of a special Lions International membership license plate; providing for the issuance of a special plate recognizing organ and tissue donors; providing for the issuance of a special West Virginia Bar Association membership license plate; providing for the issuance of a special plate with the logo "SHARE THE ROAD"; providing for the issuance of a special plate honoring coal miners; providing for the issuance of special plates for present and former Boy Scouts and Eagle Scouts; providing for the issuance of a special plate memorializing victims of domestic violence; providing for the issuance of a special plate demonstrating association with or support of the University of Charleston; providing for the issuance of a special plate for members of the Sons of the American Revolution; providing for the issuance of a special plate for horse enthusiasts; providing for the issuance of a special plate for the next of kin of a member of the armed forces killed in combat; providing for the issuance of a special plate for retired or former Justices of the Supreme Court of Appeals of West Virginia; assessing a special initial application fee and a special annual fee therefor; revising the criteria before the commissioner may initiate the design and production of a special license plate; encouraging the commissioner to utilize technology in the design, production and issuance of registration plates, including offering internet renewal of vehicle registration; establishing a new license plate issued to a city or municipality for motor vehicles of a city or municipal law enforcement department; specifying the design and a one-time fee therefor; providing for the issuance of special license plates for certain vehicles titled in the name of the Division of Public Transit or a public transit authority to transport persons in the public interest, without charge therefor; providing for the design therefor; and exempting certain vehicles titled in the name of an urban mass transit authority and certain nonprofit entities from the tax imposed upon the privilege of certification of title of a vehicle by the Division of Motor Vehicles.

Be it enacted by the Legislature of West Virginia:

That §17A-3-4, §17A-3-14 and §17A-3-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-4. Application for certificate of title; tax for privilege of certification of title; exceptions; fee on payments for leased vehicles; penalty for false swearing.

§17A-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registration fees; special application fees; exemptions; commissioner to promulgate forms; suspension and nonrenewal.

§17A-3-23. Registration plates to state, county, municipal and other governmental vehicles; use for undercover activities.

§17A-3-4. Application for certificate of title; tax for privilege of certification of title; exceptions; fee on payments for leased vehicles; penalty for false swearing.

1 (a) Certificates of registration of any vehicle or registration
2 plates for the vehicle, whether original issues or duplicates, may
3 not be issued or furnished by the Division of Motor Vehicles or
4 any other officer or agent charged with the duty, unless the
5 applicant already has received, or at the same time makes
6 application for and is granted, an official certificate of title of
7 the vehicle in either an electronic or paper format. The
8 application shall be upon a blank form to be furnished by the
9 Division of Motor Vehicles and shall contain a full description
10 of the vehicle, which description shall contain a manufacturer's
11 serial or identification number or other number as determined
12 by the commissioner and any distinguishing marks, together
13 with a statement of the applicant's title and of any liens or
14 encumbrances upon the vehicle, the names and addresses of the

15 holders of the liens and any other information as the Division
16 of Motor Vehicles may require. The application shall be signed
17 and sworn to by the applicant. A duly certified copy of the
18 division's electronic record of a certificate of title is admissible
19 in any civil, criminal or administrative proceeding in this state
20 as evidence of ownership.

21 (b) A tax is imposed upon the privilege of effecting the
22 certification of title of each vehicle in the amount equal to five
23 percent of the value of the motor vehicle at the time of the
24 certification, to be assessed as follows:

25 (1) If the vehicle is new, the actual purchase price or
26 consideration to the purchaser of the vehicle is the value of the
27 vehicle. If the vehicle is a used or secondhand vehicle, the
28 present market value at time of transfer or purchase is the value
29 of the vehicle for the purposes of this section: *Provided*, That
30 so much of the purchase price or consideration as is represented
31 by the exchange of other vehicles on which the tax imposed by
32 this section has been paid by the purchaser shall be deducted
33 from the total actual price or consideration paid for the vehicle,
34 whether the vehicle be new or secondhand. If the vehicle is
35 acquired through gift or by any manner whatsoever, unless
36 specifically exempted in this section, the present market value
37 of the vehicle at the time of the gift or transfer is the value of
38 the vehicle for the purposes of this section.

39 (2) No certificate of title for any vehicle may be issued to
40 any applicant unless the applicant has paid to the Division of
41 Motor Vehicles the tax imposed by this section which is five
42 percent of the true and actual value of the vehicle whether the
43 vehicle is acquired through purchase, by gift or by any other
44 manner whatsoever, except gifts between husband and wife or
45 between parents and children: *Provided*, That the husband or
46 wife, or the parents or children, previously have paid the tax on
47 the vehicles transferred to the State of West Virginia.

48 (3) The Division of Motor Vehicles may issue a certificate
49 of registration and title to an applicant if the applicant provides
50 sufficient proof to the Division of Motor Vehicles that the
51 applicant has paid the taxes and fees required by this section to
52 a motor vehicle dealership that has gone out of business or has
53 filed bankruptcy proceedings in the United States bankruptcy
54 court and the taxes and fees so required to be paid by the
55 applicant have not been sent to the division by the motor
56 vehicle dealership or have been impounded due to the bank-
57 ruptcy proceedings: *Provided*, That the applicant makes an
58 affidavit of the same and assigns all rights to claims for money
59 the applicant may have against the motor vehicle dealership to
60 the Division of Motor Vehicles.

61 (4) The Division of Motor Vehicles shall issue a certificate
62 of registration and title to an applicant without payment of the
63 tax imposed by this section if the applicant is a corporation,
64 partnership or limited liability company transferring the vehicle
65 to another corporation, partnership or limited liability company
66 when the entities involved in the transfer are members of the
67 same controlled group and the transferring entity has previously
68 paid the tax on the vehicle transferred. For the purposes of this
69 section, control means ownership, directly or indirectly, of
70 stock or equity interests possessing fifty percent or more of the
71 total combined voting power of all classes of the stock of a
72 corporation or equity interests of a partnership or limited
73 liability company entitled to vote or ownership, directly or
74 indirectly, of stock or equity interests possessing fifty percent
75 or more of the value of the corporation, partnership or limited
76 liability company.

77 (5) The tax imposed by this section does not apply to
78 vehicles to be registered as Class H vehicles or Class M
79 vehicles, as defined in section one, article ten of this chapter,
80 which are used or to be used in interstate commerce. Nor does
81 the tax imposed by this section apply to the titling of Class B

82 vehicles registered at a gross weight of fifty-five thousand
83 pounds or more, or to the titling of Class C semitrailers, full
84 trailers, pole trailers and converter gear: *Provided*, That if an
85 owner of a vehicle has previously titled the vehicle at a declared
86 gross weight of fifty-five thousand pounds or more and the title
87 was issued without the payment of the tax imposed by this
88 section, then before the owner may obtain registration for the
89 vehicle at a gross weight less than fifty-five thousand pounds,
90 the owner shall surrender to the commissioner the exempted
91 registration, the exempted certificate of title and pay the tax
92 imposed by this section based upon the current market value of
93 the vehicle: *Provided, however*, That notwithstanding the
94 provisions of section nine, article fifteen, chapter eleven of this
95 code, the exemption from tax under this section for Class B
96 vehicles in excess of fifty-five thousand pounds and Class C
97 semitrailers, full trailers, pole trailers and converter gear does
98 not subject the sale or purchase of the vehicles to the consumers
99 sales and service tax.

100 (6) The tax imposed by this section does not apply to titling
101 of vehicles leased by residents of West Virginia. A tax is
102 imposed upon the monthly payments for the lease of any motor
103 vehicle leased by a resident of West Virginia, which tax is equal
104 to five percent of the amount of the monthly payment, applied
105 to each payment, and continuing for the entire term of the initial
106 lease period. The tax shall be remitted to the Division of Motor
107 Vehicles on a monthly basis by the lessor of the vehicle.

108 (7) The tax imposed by this section does not apply to titling
109 of vehicles by a registered dealer of this state for resale only,
110 nor does the tax imposed by this section apply to titling of
111 vehicles by this state or any political subdivision thereof, or by
112 any volunteer fire department or duly chartered rescue or
113 ambulance squad organized and incorporated under the laws of
114 the State of West Virginia as a nonprofit corporation for
115 protection of life or property. The total amount of revenue

116 collected by reason of this tax shall be paid into the state road
117 fund and expended by the Commissioner of Highways for
118 matching federal funds allocated for West Virginia. In addition
119 to the tax, there is a charge of five dollars for each original
120 certificate of title or duplicate certificate of title so issued:
121 *Provided*, That this state or any political subdivision of this
122 state or any volunteer fire department or duly chartered rescue
123 squad is exempt from payment of the charge.

124 (8) The certificate is good for the life of the vehicle, so long
125 as the vehicle is owned or held by the original holder of the
126 certificate and need not be renewed annually, or any other time,
127 except as provided in this section.

128 (9) If, by will or direct inheritance, a person becomes the
129 owner of a motor vehicle and the tax imposed by this section
130 previously has been paid to the Division of Motor Vehicles on
131 that vehicle, he or she is not required to pay the tax.

132 (10) A person who has paid the tax imposed by this section
133 is not required to pay the tax a second time for the same motor
134 vehicle, but is required to pay a charge of five dollars for the
135 certificate of retitle of that motor vehicle, except that the tax
136 shall be paid by the person when the title to the vehicle has
137 been transferred either in this or another state from the person
138 to another person and transferred back to the person.

139 (11) The tax imposed by this section does not apply to any
140 passenger vehicle offered for rent in the normal course of
141 business by a daily passenger rental car business as licensed
142 under the provisions of article six-d of this chapter. For
143 purposes of this section, a daily passenger car means a Class A
144 motor vehicle having a gross weight of eight thousand pounds
145 or less and is registered in this state or any other state. In lieu of
146 the tax imposed by this section, there is hereby imposed a tax
147 of not less than one dollar nor more than one dollar and fifty
148 cents for each day or part of the rental period. The commis-

149 sioner shall propose an emergency rule in accordance with the
150 provisions of article three, chapter twenty-nine-a of this code to
151 establish this tax.

152 (12) The tax imposed by this article does not apply to the
153 titling of any vehicle purchased by a senior citizen service
154 organization which is exempt from the payment of income
155 taxes under the United States Internal Revenue Code, Title 26
156 U. S. C. §501(c)(3) and which is recognized to be a bona fide
157 senior citizen service organization by the senior services bureau
158 existing under the provisions of article five, chapter sixteen of
159 this code.

160 (13) The tax imposed by this section does not apply to the
161 titling of any vehicle operated by an urban mass transit
162 authority as defined in article twenty-seven, chapter eight of
163 this code or a nonprofit entity exempt from federal and state
164 income tax under the Internal Revenue Code and whose
165 purpose is to provide mass transportation to the public at large
166 designed for the transportation of persons and being operated
167 for the transportation of persons in the public interest.

168 (c) Notwithstanding any provisions of this code to the
169 contrary, the owners of trailers, semitrailers, recreational
170 vehicles and other vehicles not subject to the certificate of title
171 tax prior to the enactment of this chapter are subject to the
172 privilege tax imposed by this section: *Provided*, That the
173 certification of title of any recreational vehicle owned by the
174 applicant on the thirtieth day of June, one thousand nine
175 hundred eighty-nine, is not subject to the tax imposed by this
176 section: *Provided, however*, That mobile homes, manufactured
177 homes, modular homes and similar nonmotive propelled
178 vehicles, except recreational vehicles and house trailers,
179 susceptible of being moved upon the highways but primarily
180 designed for habitation and occupancy, rather than for trans-
181 porting persons or property, or any vehicle operated on a

182 nonprofit basis and used exclusively for the transportation of
183 mentally retarded or physically handicapped children when the
184 application for certificate of registration for the vehicle is
185 accompanied by an affidavit stating that the vehicle will be
186 operated on a nonprofit basis and used exclusively for the
187 transportation of mentally retarded and physically handicapped
188 children, are not subject to the tax imposed by this section, but
189 are taxable under the provisions of articles fifteen and fifteen-a,
190 chapter eleven of this code.

191 (d) Any person making any affidavit required under any
192 provision of this section who knowingly swears falsely, or any
193 person who counsels, advises, aids or abets another in the
194 commission of false swearing, or any person, while acting as an
195 agent of the Division of Motor Vehicles, issues a vehicle
196 registration without first collecting the fees and taxes or fails to
197 perform any other duty required by this chapter to be performed
198 before a vehicle registration is issued is, on the first offense,
199 guilty of a misdemeanor and, upon conviction thereof, shall be
200 fined not more than five hundred dollars or be confined in jail
201 for a period not to exceed six months or, in the discretion of the
202 court, both fined and confined. For a second or any subsequent
203 conviction within five years, that person is guilty of a felony
204 and, upon conviction thereof, shall be fined not more than five
205 thousand dollars or be imprisoned in a state correctional facility
206 for not less than one year nor more than five years or, in the
207 discretion of the court, both fined and imprisoned.

208 (e) Notwithstanding any other provisions of this section,
209 any person in the military stationed outside West Virginia or his
210 or her dependents who possess a motor vehicle with valid
211 registration are exempt from the provisions of this article for a
212 period of nine months from the date the person returns to this
213 state or the date his or her dependent returns to this state,
214 whichever is later.

215 (f) No person may transfer, purchase or sell a factory-built
216 home without a certificate of title issued by the commissioner
217 in accordance with the provisions of this article:

218 (1) Any person who fails to provide a certificate of title
219 upon the transfer, purchase or sale of a factory-built home is
220 guilty of a misdemeanor and, upon conviction thereof, shall for
221 the first offense be fined not less than one hundred dollars nor
222 more than one thousand dollars, or be confined in jail for not
223 more than one year, or both fined and confined. For each
224 subsequent offense, the fine may be increased to not more than
225 two thousand dollars, with confinement in jail not more than
226 one year, or both fined and confined.

227 (2) Failure of the seller to transfer a certificate of title upon
228 sale or transfer of the factory-built home gives rise to a cause of
229 action, upon prosecution thereof, and allows for the recovery of
230 damages, costs and reasonable attorney fees.

231 (3) This subsection does not apply to a mobile or manufac-
232 tured home for which a certificate of title has been canceled
233 pursuant to section twelve-b of this article.

234 (g) Notwithstanding any other provision to the contrary,
235 whenever reference is made to the application for or issuance
236 of any title or the recordation or release of any lien, it includes
237 the application, transmission, recordation, transfer of ownership
238 and storage of information in an electronic format.

239 (h) Notwithstanding any other provision contained in this
240 section, nothing herein shall be considered to include modular
241 homes as defined in subsection (i), section two, article fifteen,
242 chapter thirty-seven of this code and built to the State Building
243 Code as established by legislative rules promulgated by the
244 State Fire Commission pursuant to section five-b, article three,
245 chapter twenty-nine of this code.

§17A-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registration fees; special application fees; exemptions; commissioner to promulgate forms; suspension and nonrenewal.

1 (a) The division upon registering a vehicle shall issue to the
2 owner one registration plate for a motorcycle, trailer,
3 semitrailer or other motor vehicle.

4 (b) Registration plates issued by the division shall meet the
5 following requirements:

6 (1) Every registration plate shall be of reflectorized material
7 and have displayed upon it the registration number assigned to
8 the vehicle for which it is issued; the name of this state, which
9 may be abbreviated; and the year number for which it is issued
10 or the date of expiration of the plate.

11 (2) Every registration plate and the required letters and
12 numerals on the plate shall be of sufficient size to be plainly
13 readable from a distance of one hundred feet during daylight:
14 *Provided*, That the requirements of this subdivision shall not
15 apply to the year number for which the plate is issued or the
16 date of expiration.

17 (3) Registration numbering for registration plates shall
18 begin with number two.

19 (c) The division may not issue, permit to be issued or
20 distribute any special registration plates except as follows:

21 (1) The Governor shall be issued two registration plates, on
22 one of which shall be imprinted the numeral one and on the
23 other the word one.

24 (2) State officials and judges may be issued special
25 registration plates as follows:

26 (A) Upon appropriate application, the division shall issue
27 to the Secretary of State, State Superintendent of Schools,
28 Auditor, Treasurer, Commissioner of Agriculture and the
29 Attorney General, the members of both houses of the Legisla-
30 ture, including the elected officials of both houses of the
31 Legislature, the justices of the Supreme Court of Appeals of
32 West Virginia, the representatives and senators of the state in
33 the Congress of the United States, the judges of the West
34 Virginia circuit courts, active and retired on senior status, the
35 judges of the United States district courts for the State of West
36 Virginia and the judges of the United States Court of Appeals
37 for the fourth circuit, if any of the judges are residents of West
38 Virginia, a special registration plate for a Class A motor vehicle
39 and a special registration plate for a Class G motorcycle owned
40 by the official or his or her spouse: *Provided*, That the division
41 may issue a Class A special registration plate for each vehicle
42 titled to the official and a Class G special registration plate for
43 each motorcycle titled to the official.

44 (B) Each plate issued pursuant to this subdivision shall bear
45 any combination of letters and numbers not to exceed an
46 amount determined by the commissioner and a designation of
47 the office. Each plate shall supersede the regular numbered
48 plate assigned to the official or his or her spouse during the
49 official's term of office and while the motor vehicle is owned
50 by the official or his or her spouse.

51 (C) The division shall charge an annual fee of fifteen
52 dollars for every registration plate issued pursuant to this
53 subdivision, which is in addition to all other fees required by
54 this chapter.

55 (3) The division may issue members of the National Guard
56 forces special registration plates as follows:

57 (A) Upon receipt of an application on a form prescribed by
58 the division and receipt of written evidence from the chief

59 executive officer of the Army National Guard or Air National
60 Guard, as appropriate, or the commanding officer of any United
61 States armed forces reserve unit that the applicant is a member
62 thereof, the division shall issue to any member of the National
63 Guard of this state or a member of any reserve unit of the
64: United States armed forces a special registration plate designed
65 by the commissioner for any number of Class A motor vehicles
66 owned by the member. Upon presentation of written evidence
67 of retirement status, retired members of this state's Army or Air
68 National Guard, or retired members of any reserve unit of the
69 United States armed forces, are eligible to purchase the special
70 registration plate issued pursuant to this subdivision.

71 (B) The division shall charge an initial application fee of
72 ten dollars for each special registration plate issued pursuant to
73 this subdivision, which is in addition to all other fees required
74 by this chapter. All initial application fees collected by the
75 division shall be deposited into a special revolving fund to be
76 used in the administration of this section.

77 (C) A surviving spouse may continue to use his or her
78 deceased spouse's National Guard forces license plate until the
79 surviving spouse dies, remarries or does not renew the license
80 plate.

81 (4) Specially arranged registration plates may be issued as
82 follows:

83 (A) Upon appropriate application, any owner of a motor
84 vehicle subject to Class A registration, or a motorcycle subject
85 to Class G registration, as defined by this article, may request
86 that the division issue a registration plate bearing specially
87 arranged letters or numbers with the maximum number of
88 letters or numbers to be determined by the commissioner. The
89 division shall attempt to comply with the request wherever
90 possible.

91 (B) The commissioner shall propose rules for legislative
92 approval in accordance with the provisions of chapter
93 twenty-nine-a of this code regarding the orderly distribution of
94 the plates: *Provided*, That for purposes of this subdivision, the
95 registration plates requested and issued shall include all plates
96 bearing the numbers two through two thousand.

97 (C) An annual fee of fifteen dollars shall be charged for
98 each special registration plate issued pursuant to this subdivi-
99 sion, which is in addition to all other fees required by this
100 chapter.

101 (5) The division may issue honorably discharged veterans
102 special registration plates as follows:

103 (A) Upon appropriate application, the division shall issue
104 to any honorably discharged veteran of any branch of the armed
105 services of the United States a special registration plate for any
106 number of vehicles titled in the name of the qualified applicant
107 with an insignia designed by the Commissioner of the Division
108 of Motor Vehicles.

109 (B) The division shall charge a special initial application
110 fee of ten dollars in addition to all other fees required by law.
111 This special fee is to compensate the Division of Motor
112 Vehicles for additional costs and services required in the
113 issuing of the special registration and shall be collected by the
114 division and deposited in a special revolving fund to be used for
115 the administration of this section: *Provided*, That nothing in this
116 section may be construed to exempt any veteran from any other
117 provision of this chapter.

118 (C) A surviving spouse may continue to use his or her
119 deceased spouse's honorably discharged veterans license plate
120 until the surviving spouse dies, remarries or does not renew the
121 license plate.

122 (6) The division may issue disabled veterans special
123 registration plates as follows:

124 (A) Upon appropriate application, the division shall issue
125 to any disabled veteran who is exempt from the payment of
126 registration fees under the provisions of this chapter a registra-
127 tion plate for a vehicle titled in the name of the qualified
128 applicant which bears the letters "DV" in red and also the
129 regular identification numerals in red.

130 (B) A surviving spouse may continue to use his or her
131 deceased spouse's disabled veterans license plate until the
132 surviving spouse dies, remarries or does not renew the license
133 plate.

134 (C) A qualified disabled veteran may obtain a second
135 disabled veterans license plate as described in this section for
136 use on a passenger vehicle titled in the name of the qualified
137 applicant. The division shall charge a one-time fee of ten
138 dollars to be deposited into a special revolving fund to be used
139 in the administration of this section, in addition to all other fees
140 required by this chapter, for the second plate.

141 (7) The division may issue recipients of the distinguished
142 Purple Heart medal special registration plates as follows:

143 (A) Upon appropriate application, there shall be issued to
144 any armed service person holding the distinguished Purple
145 Heart medal for persons wounded in combat a registration plate
146 for a vehicle titled in the name of the qualified applicant
147 bearing letters or numbers. The registration plate shall be
148 designed by the Commissioner of Motor Vehicles and shall
149 denote that those individuals who are granted this special
150 registration plate are recipients of the Purple Heart. All
151 letterings shall be in purple where practical.

152 (B) Registration plates issued pursuant to this subdivision
153 are exempt from all registration fees otherwise required by the
154 provisions of this chapter.

155 (C) A surviving spouse may continue to use his or her
156 deceased spouse's Purple Heart medal license plate until the
157 surviving spouse dies, remarries or does not renew the license
158 plate.

159 (D) A recipient of the Purple Heart medal may obtain a
160 second Purple Heart medal license plate as described in this
161 section for use on a passenger vehicle titled in the name of the
162 qualified applicant. The division shall charge a one-time fee of
163 ten dollars to be deposited into a special revolving fund to be
164 used in the administration of this section, in addition to all other
165 fees required by this chapter, for the second plate.

166 (8) The division may issue survivors of the attack on Pearl
167 Harbor special registration plates as follows:

168 (A) Upon appropriate application, the owner of a motor
169 vehicle who was enlisted in any branch of the armed services
170 that participated in and survived the attack on Pearl Harbor on
171 the seventh day of December, one thousand nine hundred forty-
172 one, the division shall issue a special registration plate for a
173 vehicle titled in the name of the qualified applicant. The
174 registration plate shall be designed by the Commissioner of
175 Motor Vehicles.

176 (B) Registration plates issued pursuant to this subdivision
177 are exempt from the payment of all registration fees otherwise
178 required by the provisions of this chapter.

179 (C) A surviving spouse may continue to use his or her
180 deceased spouse's survivors of the attack on Pearl Harbor
181 license plate until the surviving spouse dies, remarries or does
182 not renew the license plate.

183 (D) A survivor of the attack on Pearl Harbor may obtain a
184 second survivors of the attack on Pearl Harbor license plate as
185 described in this section for use on a passenger vehicle titled in
186 the name of the qualified applicant. The division shall charge a
187 one-time fee of ten dollars to be deposited into a special
188 revolving fund to be used in the administration of this section,
189 in addition to all other fees required by this chapter, for the
190 second plate.

191 (9) The division may issue special registration plates to
192 nonprofit charitable and educational organizations authorized
193 under prior enactment of this subdivision as follows:

194 (A) Approved nonprofit charitable and educational
195 organizations previously authorized under the prior enactment
196 of this subdivision may accept and collect applications for
197 special registration plates from owners of Class A motor
198 vehicles together with a special annual fee of fifteen dollars,
199 which is in addition to all other fees required by this chapter.
200 The applications and fees shall be submitted to the Division of
201 Motor Vehicles with the request that the division issue a
202 registration plate bearing a combination of letters or numbers
203 with the organizations' logo or emblem, with the maximum
204 number of letters or numbers to be determined by the commis-
205 sioner.

206 (B) The commissioner shall propose rules for legislative
207 approval in accordance with the provisions of article three,
208 chapter twenty-nine-a of this code regarding the procedures for
209 and approval of special registration plates issued pursuant to
210 this subdivision.

211 (C) The commissioner shall set an appropriate fee to defray
212 the administrative costs associated with designing and manufac-
213 turing special registration plates for a nonprofit charitable or
214 educational organization. The nonprofit charitable or educa-

215 tional organization shall collect this fee and forward it to the
216 division for deposit in a special revolving fund to pay the
217 administrative costs. The nonprofit charitable or educational
218 organization may also collect a fee for marketing the special
219 registration plates.

220 (D) The commissioner may not approve or authorize any
221 additional nonprofit charitable and educational organizations to
222 design or market special registration plates.

223 (10) The division may issue specified emergency or
224 volunteer registration plates as follows:

225 (A) Any owner of a motor vehicle who is a resident of the
226 State of West Virginia and who is a certified paramedic or
227 emergency medical technician, a member of a paid fire
228 department, a member of the State Fire Commission, the State
229 Fire Marshal, the State Fire Marshal's assistants, the State Fire
230 Administrator and voluntary rescue squad members may apply
231 for a special license plate for any number of Class A vehicles
232 titled in the name of the qualified applicant which bears the
233 insignia of the profession, group or commission. Any insignia
234 shall be designed by the commissioner. License plates issued
235 pursuant to this subdivision shall bear the requested insignia in
236 addition to the registration number issued to the applicant
237 pursuant to the provisions of this article.

238 (B) Each application submitted pursuant to this subdivision
239 shall be accompanied by an affidavit signed by the fire chief or
240 department head of the applicant stating that the applicant is
241 justified in having a registration with the requested insignia;
242 proof of compliance with all laws of this state regarding
243 registration and licensure of motor vehicles; and payment of all
244 required fees.

245 (C) Each application submitted pursuant to this subdivision
246 shall be accompanied by payment of a special initial application

247 fee of ten dollars, which is in addition to any other registration
248 or license fee required by this chapter. All special fees shall be
249 collected by the division and deposited into a special revolving
250 fund to be used for the purpose of compensating the Division of
251 Motor Vehicles for additional costs and services required in the
252 issuing of the special registration and for the administration of
253 this section.

254 (11) The division may issue specified certified firefighter
255 registration plates as follows:

256 (A) Any owner of a motor vehicle who is a resident of the
257 State of West Virginia and who is a certified firefighter may
258 apply for a special license plate which bears the insignia of the
259 profession, for any number of Class A vehicles titled in the
260 name of the qualified applicant. Any insignia shall be designed
261 by the commissioner. License plates issued pursuant to this
262 subdivision shall bear the requested insignia pursuant to the
263 provisions of this article. Upon presentation of written evidence
264 of certification as a certified firefighter, certified firefighters are
265 eligible to purchase the special registration plate issued
266 pursuant to this subdivision.

267 (B) Each application submitted pursuant to this subdivision
268 shall be accompanied by an affidavit stating that the applicant
269 is justified in having a registration with the requested insignia;
270 proof of compliance with all laws of this state regarding
271 registration and licensure of motor vehicles; and payment of all
272 required fees. The firefighter certification department, section
273 or division of the West Virginia University fire service
274 extension shall notify the commissioner in writing immediately
275 when a firefighter loses his or her certification. If a firefighter
276 loses his or her certification, the commissioner may not issue
277 him or her a license plate under this subsection.

278 (C) Each application submitted pursuant to this subdivision
279 shall be accompanied by payment of a special initial application

280 fee of ten dollars, which is in addition to any other registration
281 or license fee required by this chapter. All special fees shall be
282 collected by the division and deposited into a special revolving
283 fund to be used for the purpose of compensating the Division of
284 Motor Vehicles for additional costs and services required in the
285 issuing of the special registration and for the administration of
286 this section.

287 (12) The division may issue special scenic registration
288 plates as follows:

289 (A) Upon appropriate application, the commissioner shall
290 issue a special registration plate displaying a scenic design of
291 West Virginia which displays the words "Wild Wonderful" as
292 a slogan.

293 (B) The division shall charge a special one-time initial
294 application fee of ten dollars in addition to all other fees
295 required by this chapter. All initial application fees collected by
296 the division shall be deposited into a special revolving fund to
297 be used in the administration of this chapter.

298 (13) The division may issue honorably discharged Marine
299 Corps league members special registration plates as follows:

300 (A) Upon appropriate application, the division shall issue
301 to any honorably discharged Marine Corps league member a
302 special registration plate for any number of vehicles titled in the
303 name of the qualified applicant with an insignia designed by the
304 Commissioner of the Division of Motor Vehicles.

305 (B) The division may charge a special one-time initial
306 application fee of ten dollars in addition to all other fees
307 required by this chapter. This special fee is to compensate the
308 Division of Motor Vehicles for additional costs and services
309 required in the issuing of the special registration and shall be
310 collected by the division and deposited in a special revolving

311 fund to be used for the administration of this section: *Provided*,
312 That nothing in this section may be construed to exempt any
313 veteran from any other provision of this chapter.

314 (C) A surviving spouse may continue to use his or her
315 deceased spouse's honorably discharged Marine Corps league
316 license plate until the surviving spouse dies, remarries or does
317 not renew the license plate.

318 (14) The division may issue military organization registra-
319 tion plates as follows:

320 (A) The division may issue a special registration plate for
321 the members of any military organization chartered by the
322 United States Congress upon receipt of a guarantee from the
323 organization of a minimum of one hundred applicants. The
324 insignia on the plate shall be designed by the commissioner.

325 (B) Upon appropriate application, the division may issue
326 members of the chartered organization in good standing, as
327 determined by the governing body of the chartered organiza-
328 tion, a special registration plate for any number of vehicles
329 titled in the name of the qualified applicant.

330 (C) The division shall charge a special one-time initial
331 application fee of ten dollars for each special license plate in
332 addition to all other fees required by this chapter. All initial
333 application fees collected by the division shall be deposited into
334 a special revolving fund to be used in the administration of this
335 chapter: *Provided*, That nothing in this section may be con-
336 strued to exempt any veteran from any other provision of this
337 chapter.

338 (D) A surviving spouse may continue to use his or her
339 deceased spouse's military organization registration plate until
340 the surviving spouse dies, remarries or does not renew the
341 special military organization registration plate.

342 (15) The division may issue special nongame wildlife
343 registration plates and special wildlife registration plates as
344 follows:

345 (A) Upon appropriate application, the division shall issue
346 a special registration plate displaying a species of West Virginia
347 wildlife which shall display a species of wildlife native to West
348 Virginia as prescribed and designated by the commissioner and
349 the Director of the Division of Natural Resources.

350 (B) The division shall charge an annual fee of fifteen
351 dollars for each special nongame wildlife registration plate and
352 each special wildlife registration plate in addition to all other
353 fees required by this chapter. All annual fees collected for
354 nongame wildlife registration plates and wildlife registration
355 plates shall be deposited in a special revenue account desig-
356 nated the nongame wildlife fund and credited to the Division of
357 Natural Resources.

358 (C) The division shall charge a special one-time initial
359 application fee of ten dollars in addition to all other fees
360 required by this chapter. All initial application fees collected by
361 the division shall be deposited in a special revolving fund to be
362 used in the administration of this chapter.

363 (16) The division may issue members of the Silver Haired
364 Legislature special registration plates as follows:

365 (A) Upon appropriate application, the division shall issue
366 to any person who is a duly qualified member of the Silver
367 Haired Legislature a specialized registration plate which bears
368 recognition of the applicant as a member of the Silver Haired
369 Legislature.

370 (B) A qualified member of the Silver Haired Legislature
371 may obtain one registration plate described in this subdivision
372 for use on a passenger vehicle titled in the name of the qualified

373 applicant. The division shall charge an annual fee of fifteen
374 dollars, in addition to all other fees required by this chapter, for
375 the plate. All annual fees collected by the division shall be
376 deposited in a special revolving fund to be used in the adminis-
377 tration of this chapter.

378 (17) Upon appropriate application, the commissioner shall
379 issue to a classic motor vehicle or classic motorcycle as defined
380 in section three-a, article ten of this chapter, a special registra-
381 tion plate designed by the commissioner. An annual fee of
382 fifteen dollars, in addition to all other fees required by this
383 chapter, shall be charged for each classic registration plate.

384 (18) Honorably discharged veterans may be issued special
385 registration plates for motorcycles subject to Class G registra-
386 tion as follows:

387 (A) Upon appropriate application, there shall be issued to
388 any honorably discharged veteran of any branch of the armed
389 services of the United States a special registration plate for any
390 number of motorcycles subject to Class G registration titled in
391 the name of the qualified applicant with an insignia designed by
392 the Commissioner of the Division of Motor Vehicles.

393 (B) A special initial application fee of ten dollars shall be
394 charged in addition to all other fees required by law. This
395 special fee is to compensate the Division of Motor Vehicles for
396 additional costs and services required in the issuing of the
397 special registration and shall be collected by the division and
398 deposited in a special revolving fund to be used for the
399 administration of this section: *Provided*, That nothing in this
400 section may be construed to exempt any veteran from any other
401 provision of this chapter.

402 (C) A surviving spouse may continue to use his or her
403 deceased spouse's honorably discharged veterans license plate
404 until the surviving spouse dies, remarries or does not renew the
405 license plate.

406 (19) Racing theme special registration plates:

407 (A) The division may issue a series of special registration
408 plates displaying national association for stock car auto racing
409 themes.

410 (B) An annual fee of twenty-five dollars shall be charged
411 for each special racing theme registration plate in addition to all
412 other fees required by this chapter. All annual fees collected for
413 each special racing theme registration plate shall be deposited
414 into a special revolving fund to be used in the administration of
415 this chapter.

416 (C) A special application fee of ten dollars shall be charged
417 at the time of initial application as well as upon application for
418 any duplicate or replacement registration plate, in addition to all
419 other fees required by this chapter. All application fees shall be
420 deposited into a special revolving fund to be used in the
421 administration of this chapter.

422 (20) The division may issue recipients of the Navy Cross,
423 Distinguished Service Cross, Distinguished Flying Cross, Air
424 Force Cross, Bronze Star, Silver Star or Air Medal special
425 registration plates as follows:

426 (A) Upon appropriate application, the division shall issue
427 to any recipient of the Navy Cross, Distinguished Service
428 Cross, Distinguished Flying Cross, Air Force Cross, Silver Star,
429 Bronze Star or Air Medal, a registration plate for any number
430 of vehicles titled in the name of the qualified applicant bearing
431 letters or numbers. A separate registration plate shall be
432 designed by the Commissioner of Motor Vehicles for each
433 award that denotes that those individuals who are granted this
434 special registration plate are recipients of the Navy Cross,
435 Distinguished Service Cross, Distinguished Flying Cross, Air
436 Force Cross, Silver Star or Bronze Star, as applicable.

437 (B) The division shall charge a special initial application
438 fee of ten dollars in addition to all other fees required by law.
439 This special fee is to compensate the Division of Motor
440 Vehicles for additional costs and services required in the
441 issuing of the special registration and shall be collected by the
442 division and deposited in a special revolving fund to be used for
443 the administration of this section: *Provided*, That nothing in this
444 section exempts the applicant for a special registration plate
445 under this subdivision from any other provision of this chapter.

446 (C) A surviving spouse may continue to use his or her
447 deceased spouse's Navy Cross, Distinguished Service Cross,
448 Distinguished Flying Cross, Air Force Cross, Silver Star,
449 Bronze Star or Air Medal special registration plate until the
450 surviving spouse dies, remarries or does not renew the special
451 registration plate.

452 (21) The division may issue honorably discharged veterans
453 special registration plates as follows:

454 (A) Upon appropriate application, the division shall issue
455 to any honorably discharged veteran of any branch of the armed
456 services of the United States with verifiable service during
457 World War II, the Korean War, the Vietnam War, the Persian
458 Gulf War or the War against Terrorism a special registration
459 plate for any number of vehicles titled in the name of the
460 qualified applicant with an insignia designed by the commis-
461 sioner denoting service in the applicable conflict.

462 (B) The division shall charge a special one-time initial
463 application fee of ten dollars in addition to all other fees
464 required by law. This special fee is to compensate the Division
465 of Motor Vehicles for additional costs and services required in
466 the issuing of the special registration and shall be collected by
467 the division and deposited in a special revolving fund to be used
468 for the administration of this section: *Provided*, That nothing

469 contained in this section may be construed to exempt any
470 veteran from any other provision of this chapter.

471 (C) A surviving spouse may continue to use his or her
472 deceased spouse's honorably discharged veterans registration
473 plate until the surviving spouse dies, remarries or does not
474 renew the special registration plate.

475 (22) The division may issue special volunteer firefighter
476 registration plates as follows:

477 (A) Any owner of a motor vehicle who is a resident of West
478 Virginia and who is a volunteer firefighter may apply for a
479 special license plate for any Class A vehicle titled in the name
480 of the qualified applicant which bears the insignia of the
481 profession in white letters on a red background. The insignia
482 shall be designed by the commissioner and shall contain a
483 fireman's helmet insignia on the left side of the license plate.

484 (B) Each application submitted pursuant to this subdivision
485 shall be accompanied by an affidavit signed by the applicant's
486 fire chief, stating that the applicant is a volunteer firefighter and
487 justified in having a registration plate with the requested
488 insignia. The applicant must comply with all other laws of this
489 state regarding registration and licensure of motor vehicles and
490 must pay all required fees.

491 (C) Each application submitted pursuant to this subdivision
492 shall be accompanied by payment of a special one-time initial
493 application fee of ten dollars, which is in addition to any other
494 registration or license fee required by this chapter. All applica-
495 tion fees shall be deposited into a special revolving fund to be
496 used in the administration of this chapter.

497 (23) The division may issue special registration plates
498 which reflect patriotic themes, including the display of any

499 United States symbol, icon, phrase or expression which evokes
500 patriotic pride or recognition.

501 (A) Upon appropriate application, the division shall issue
502 to an applicant a registration plate of the applicant's choice,
503 displaying a patriotic theme as provided in this subdivision, for
504 a vehicle titled in the name of the applicant. A series of
505 registration plates displaying patriotic themes shall be designed
506 by the Commissioner of Motor Vehicles for distribution to
507 applicants.

508 (B) The division shall charge a special one-time initial
509 application fee of ten dollars in addition to all other fees
510 required by law. This special fee is to compensate the Division
511 of Motor Vehicles for additional costs and services required in
512 the issuing of the special registration and shall be collected by
513 the division and deposited in a special revolving fund to be used
514 for the administration of this section.

515 (24) Special license plates bearing the American flag and
516 the logo "9/11/01".

517 (A) Upon appropriate application, the division shall issue
518 special registration plates which shall display the American flag
519 and the logo "9/11/01".

520 (B) An annual fee of fifteen dollars shall be charged for
521 each plate in addition to all other fees required by this chapter.

522 (C) A special application fee of ten dollars shall be charged
523 at the time of initial application as well as upon application for
524 any duplicate or replacement registration plate, in addition to all
525 other fees required by this chapter. All application fees shall be
526 deposited into a special revolving fund to be used in the
527 administration of this chapter.

528 (25) The division may issue a special registration plate
529 celebrating the centennial of the 4-H youth development

530 movement and honoring the Future Farmers of America
531 organization as follows:

532 (A) Upon appropriate application, the division may issue a
533 special registration plate depicting the symbol of the 4-H
534 organization which represents the head, heart, hands and health
535 as well as the symbol of the Future Farmers of America
536 organization which represents a cross section of an ear of corn
537 for any number of vehicles titled in the name of the qualified
538 applicant.

539 (B) The division shall charge a special initial application
540 fee of ten dollars in addition to all other fees required by law.
541 This special fee is to compensate the Division of Motor
542 Vehicles for additional costs and services required in the
543 issuing of the special registration and shall be collected by the
544 division and deposited in a special revolving fund to be used for
545 the administration of this section.

546 (C) The division shall charge an annual fee of fifteen
547 dollars for each special 4-H Future Farmers of America
548 registration plate in addition to all other fees required by this
549 chapter.

550 (26) The division may issue special registration plates to
551 educators in the state's elementary and secondary schools and
552 in the state's institutions of higher education as follows:

553 (A) Upon appropriate application, the division may issue a
554 special registration plate designed by the commissioner for any
555 number of vehicles titled in the name of the qualified applicant.

556 (B) The division shall charge a special initial application
557 fee of ten dollars in addition to all other fees required by law.
558 This special fee is to compensate the Division of Motor
559 Vehicles for additional costs and services required in the
560 issuing of the special registration and shall be collected by the

561 division and deposited in a special revolving fund to be used for
562 the administration of this section.

563 (C) The division shall charge an annual fee of fifteen
564 dollars for each special educator registration plate in addition
565 to all other fees required by this chapter.

566 (27) The division may issue special registration plates to
567 members of the Nemesis Shrine as follows:

568 (A) Upon appropriate application, the division may issue a
569 special registration plate designed by the commissioner for any
570 number of vehicles titled in the name of the qualified applicant.
571 Persons desiring the special registration plate shall offer
572 sufficient proof of membership in Nemesis Shrine.

573 (B) The division shall charge a special initial application
574 fee of ten dollars in addition to all other fees required by law.
575 This special fee is to compensate the Division of Motor
576 Vehicles for additional costs and services required in the
577 issuing of the special registration and shall be collected by the
578 division and deposited in a special revolving fund to be used for
579 the administration of this section.

580 (C) An annual fee of fifteen dollars shall be charged for
581 each plate in addition to all other fees required by this chapter.

582 (D) Notwithstanding the provisions of subsection (d) of this
583 section, the time period for the Nemesis Shrine to comply with
584 the minimum one hundred prepaid applications is hereby
585 extended to the fifteenth day of January, two thousand five.

586 (28) The division may issue volunteers and employees of
587 the American Red Cross special registration plates as follows:

588 (A) Upon appropriate application, the division shall issue
589 to any person who is a duly qualified volunteer or employee of
590 the American Red Cross a specialized registration plate which

591 bears recognition of the applicant as a volunteer or employee of
592 the American Red Cross for any number of vehicles titled in the
593 name of the qualified applicant.

594 (B) The division shall charge a special initial application
595 fee of ten dollars in addition to all other fees required by law.
596 This special fee is to compensate the Division of Motor
597 Vehicles for additional costs and services required in the
598 issuing of the special registration and shall be collected by the
599 division and deposited in a special revolving fund to be used for
600 the administration of this section.

601 (C) An annual fee of fifteen dollars shall be charged for
602 each plate in addition to all other fees required by this chapter.

603 (29) The division shall issue special registration plates to
604 individuals who have received either the Combat Infantry
605 Badge or the Combat Medic Badge as follows:

606 (A) Upon appropriate application, the division shall issue
607 a special registration plate designed by the commissioner for
608 any number of vehicles titled in the name of the qualified
609 applicant. Persons desiring the special registration plate shall
610 offer sufficient proof that they have received either the Combat
611 Infantry Badge or the Combat Medic Badge.

612 (B) The division shall charge a special initial application
613 fee of ten dollars in addition to all other fees required by law.
614 This special fee is to compensate the Division of Motor
615 Vehicles for additional costs and services required in the
616 issuing of the special registration and shall be collected by the
617 division and deposited in a special revolving fund to be used for
618 the administration of this section.

619 (30) The division may issue special registration plates to
620 members of the Knights of Columbus as follows:

621 (A) Upon appropriate application, the division shall issue
622 a special registration plate designed by the commissioner for
623 any number of vehicles titled in the name of the qualified
624 applicant. Persons desiring the special registration plate shall
625 offer sufficient proof of membership in the Knights of Colum-
626 bus.

627 (B) The division shall charge a special initial application
628 fee of ten dollars in addition to all other fees required by law.
629 This special fee is to compensate the Division of Motor
630 Vehicles for additional costs and services required in the
631 issuing of the special registration and shall be collected by the
632 division and deposited in a special revolving fund to be used for
633 the administration of this section.

634 (C) An annual fee of fifteen dollars shall be charged for
635 each plate in addition to all other fees required by this chapter.

636 (D) Notwithstanding the provisions of subsection (d) of this
637 section, the time period for the Knights of Columbus to comply
638 with the minimum one hundred prepaid applications is hereby
639 extended to the fifteenth day of January, two thousand seven.

640 (31) The division may issue special registration plates to
641 former members of the Legislature as follows:

642 (A) Upon appropriate application, the division shall issue
643 a special registration plate designed by the commissioner for
644 any number of vehicles titled in the name of the qualified
645 applicant. Persons desiring the special registration plate shall
646 offer sufficient proof of former service as an elected or
647 appointed member of the West Virginia House of Delegates or
648 the West Virginia Senate.

649 (B) The division shall charge a special initial application
650 fee of ten dollars in addition to all other fees required by law.
651 This special fee is to compensate the Division of Motor

652 Vehicles for additional costs and services required in the
653 issuing of the special registration and shall be collected by the
654 division and deposited in a special revolving fund to be used for
655 the administration of this section. The design of the plate shall
656 indicate total years of service in the Legislature.

657 (C) An annual fee of fifteen dollars shall be charged for
658 each plate in addition to all other fees required by this chapter.

659 (32) Democratic state or county executive committee
660 member special registration plates:

661 (A) The division shall design and issue special registration
662 plates for use by democratic state or county executive commit-
663 tee members. The design of the plates shall include an insignia
664 of a donkey and shall differentiate by wording on the plate
665 between state and county executive committee members.

666 (B) An annual fee of twenty-five dollars shall be charged
667 for each democratic state or county executive committee
668 member registration plate in addition to all other fees required
669 by this chapter. All annual fees collected for each special plate
670 issued under this subdivision shall be deposited into a special
671 revolving fund to be used in the administration of this chapter.

672 (C) A special application fee of ten dollars shall be charged
673 at the time of initial application as well as upon application for
674 any duplicate or replacement registration plate, in addition to all
675 other fees required by this chapter. All application fees shall be
676 deposited into a special revolving fund to be used in the
677 administration of this chapter.

678 (D) The division shall not begin production of a plate
679 authorized under the provisions of this subdivision until the
680 division receives at least one hundred completed applications
681 from the state or county executive committee members,
682 including all fees required pursuant to this subdivision.

683 (E) Notwithstanding the provisions of subsection (d) of this
684 section, the time period for the democratic executive committee
685 to comply with the minimum one hundred prepaid applications
686 is hereby extended to the fifteenth day of January, two thousand
687 five.

688 (33) The division may issue honorably discharged female
689 veterans special registration plates as follows:

690 (A) Upon appropriate application, there shall be issued to
691 any female honorably discharged veteran, of any branch of the
692 armed services of the United States, a special registration plate
693 for any number of vehicles titled in the name of the qualified
694 applicant with an insignia designed by the Commissioner of the
695 Division of Motor Vehicles to designate the recipient as a
696 woman veteran.

697 (B) A special initial application fee of ten dollars shall be
698 charged in addition to all other fees required by law. This
699 special fee is to compensate the Division of Motor Vehicles for
700 additional costs and services required in the issuing of the
701 special registration and shall be collected by the division and
702 deposited in a special revolving fund to be used for the
703 administration of this section: *Provided*, That nothing in this
704 section may be construed to exempt any veteran from any other
705 provision of this chapter.

706 (C) A surviving spouse may continue to use his deceased
707 spouse's honorably discharged veterans license plate until the
708 surviving spouse dies, remarries or does not renew the license
709 plate.

710 (34) The division may issue special registration plates
711 bearing the logo, symbol, insignia, letters or words demonstrat-
712 ing association with West Liberty State College to any resident
713 owner of a motor vehicle. Resident owners may apply for the
714 special license plate for any number of Class A vehicles titled

715 in the name of the applicant. The special registration plates
716 shall be designed by the commissioner. Each application
717 submitted pursuant to this subdivision shall be accompanied by
718 payment of a special initial application fee of fifteen dollars,
719 which is in addition to any other registration or license fee
720 required by this chapter. The division shall charge an annual fee
721 of fifteen dollars for each special educator registration plate in
722 addition to all other fees required by this chapter. All special
723 fees shall be collected by the division and deposited into a
724 special revolving fund to be used for the purpose of compensat-
725 ing the Division of Motor Vehicles for additional costs and
726 services required in the issuing of the special registration and
727 for the administration of this section.

728 (35) The division may issue special registration plates to
729 members of the Harley Owners Group as follows:

730 (A) Upon appropriate application, the division may issue a
731 special registration plate designed by the commissioner for any
732 number of vehicles titled in the name of the qualified applicant.
733 Persons desiring the special registration plate shall offer
734 sufficient proof of membership in the Harley Owners Group.

735 (B) The division shall charge a special initial application
736 fee of ten dollars in addition to all other fees required by law.
737 This special fee is to compensate the Division of Motor
738 Vehicles for additional costs and services required in the
739 issuing of the special registration and shall be collected by the
740 division and deposited in a special revolving fund to be used for
741 the administration of this section.

742 (C) An annual fee of fifteen dollars shall be charged for
743 each plate in addition to all other fees required by this chapter.

744 (36) The division may issue special registration plates for
745 persons retired from any branch of the armed services of the
746 United States as follows:

747 (A) Upon appropriate application, there shall be issued to
748 any person who has retired after service in any branch of the
749 armed services of the United States, a special registration plate
750 for any number of vehicles titled in the name of the qualified
751 applicant with an insignia designed by the Commissioner of the
752 Division of Motor Vehicles to designate the recipient as retired
753 from the armed services of the United States.

754 (B) A special initial application fee of ten dollars shall be
755 charged in addition to all other fees required by law. This
756 special fee is to compensate the Division of Motor Vehicles for
757 additional costs and services required in the issuing of a special
758 registration and shall be collected by the division and deposited
759 in a special revolving fund to be used for the administration of
760 this section: *Provided*, That nothing in this section may be
761 construed to exempt any registrants from any other provision of
762 this chapter.

763 (C) A surviving spouse may continue to use his or her
764 deceased spouse's retired military license plate until the
765 surviving spouse dies, remarries or does not renew the license
766 plate.

767 (37) The division may issue special registration plates
768 bearing the logo, symbol, insignia, letters or words demonstrat-
769 ing association with or support for Fairmont State College as
770 follows:

771 (A) Upon appropriate application, the division may issue a
772 special registration plate designed by the commissioner for any
773 number of vehicles titled in the name of the qualified applicant.

774 (B) The division shall charge a special initial application
775 fee of ten dollars in addition to all other fees required by law.
776 This special fee is to compensate the Division of Motor
777 Vehicles for additional costs and services required in the
778 issuing of the special registration and shall be collected by the

779 division and deposited in a special revolving fund to be used for
780 the administration of this section.

781 (C) An annual fee of fifteen dollars shall be charged for
782 each plate in addition to all other fees required by this chapter.

783 (38) The division may issue special registration plates
784 honoring the farmers of West Virginia as follows:

785 (A) Any owner of a motor vehicle who is a resident of West
786 Virginia may apply for a special license plate depicting a
787 farming scene or other apt reference to farming, whether in
788 pictures or words, at the discretion of the commissioner.

789 (B) The division shall charge a special initial application
790 fee of ten dollars. This special fee is to compensate the Division
791 of Motor Vehicles for additional costs and services required in
792 the issuing of the special registration and shall be collected by
793 the division and deposited in a special revolving fund to be used
794 for the administration of this section.

795 (C) An annual fee of fifteen dollars shall be charged for
796 each plate in addition to all other fees required by this chapter.

797 (39) The division shall issue special registration plates
798 promoting education as follows:

799 (A) Upon appropriate application, the division shall issue
800 a special registration plate displaying a children's educa-
801 tion-related theme as prescribed and designated by the commis-
802 sioner and the State Superintendent of Schools.

803 (B) The division shall charge a special initial application
804 fee of ten dollars in addition to all other fees required by law.
805 This special fee is to compensate the Division of Motor
806 Vehicles for additional costs and services required in the
807 issuing of the special registration and shall be collected by the

808 division and deposited in a special revolving fund to be used for
809 the administration of this section: *Provided*, That nothing in this
810 section exempts the applicant for a special registration plate
811 under this subdivision from any other provision of this chapter.

812 (C) An annual fee of fifteen dollars shall be charged for
813 each plate in addition to all other fees required by this chapter.

814 (40) The division may issue members of the 82nd Airborne
815 Division Association special registration plates as follows:

816 (A) The division may issue a special registration plate for
817 members of the 82nd Airborne Division Association upon
818 receipt of a guarantee from the organization of a minimum of
819 one hundred applicants. The insignia on the plate shall be
820 designed by the commissioner.

821 (B) Upon appropriate application, the division may issue
822 members of the 82nd Airborne Division Association in good
823 standing, as determined by the governing body of the organiza-
824 tion, a special registration plate for any number of vehicles
825 titled in the name of the qualified applicant.

826 (C) The division shall charge a special one-time initial
827 application fee of ten dollars for each special license plate in
828 addition to all other fees required by this chapter. All initial
829 application fees collected by the division shall be deposited into
830 a special revolving fund to be used in the administration of this
831 chapter: *Provided*, That nothing in this section may be con-
832 strued to exempt the applicant from any other provision of this
833 chapter.

834 (D) A surviving spouse may continue to use his or her
835 deceased spouse's special 82nd Airborne Division Association
836 registration plate until the surviving spouse dies, remarries or
837 does not renew the special registration plate.

838 (41) The division may issue special registration plates to
839 survivors of wounds received in the line of duty as a member
840 with a West Virginia law-enforcement agency.

841 (A) Upon appropriate application, the division shall issue
842 to any member of a municipal police department, sheriff's
843 department, the State Police or the law-enforcement division of
844 the Division of Natural Resources who has been wounded in the
845 line of duty and awarded a purple heart in recognition thereof
846 by the West Virginia Chiefs of Police Association, the West
847 Virginia Sheriffs' Association, the West Virginia Troopers
848 Association or the Division of Natural Resources a special
849 registration plate for one vehicle titled in the name of the
850 qualified applicant with an insignia appropriately designed by
851 the commissioner.

852 (B) Registration plates issued pursuant to this subdivision
853 are exempt from the registration fees otherwise required by the
854 provisions of this chapter.

855 (C) A surviving spouse may continue to use his or her
856 deceased spouse's special registration plate until the surviving
857 spouse dies, remarries or does not renew the plate.

858 (D) Survivors of wounds received in the line of duty as a
859 member with a West Virginia law-enforcement agency may
860 obtain a license plate as described in this section for use on a
861 passenger vehicle titled in the name of the qualified applicant.
862 The division shall charge a one-time fee of ten dollars to be
863 deposited into a special revolving fund to be used in the
864 administration of this section, in addition to all other fees
865 required by this chapter, for the second plate.

866 (42) The division may issue a special registration plate for
867 persons who are Native Americans and residents of this state.

868 (A) Upon appropriate application, the division shall issue
869 to an applicant who is a Native American resident of West

870 Virginia a registration plate for a vehicle titled in the name of
871 the applicant with an insignia designed by the Commissioner of
872 the Division of Motor Vehicles to designate the recipient as a
873 Native American.

874 (B) The division shall charge a special one-time initial
875 application fee of ten dollars in addition to all other fees
876 required by law. This special fee is to compensate the Division
877 of Motor Vehicles for additional costs and services required in
878 the issuing of the special registration and shall be collected by
879 the division and deposited in a special revolving fund to be used
880 for the administration of this section.

881 (C) An annual fee of fifteen dollars shall be charged for
882 each plate in addition to all other fees required by this chapter.

883 (43) The division may issue special registration plates
884 commemorating the centennial anniversary of the creation of
885 Davis and Elkins College as follows:

886 (A) Upon appropriate application, the division may issue a
887 special registration plate designed by the commissioner to
888 commemorate the centennial anniversary of Davis and Elkins
889 College for any number of vehicles titled in the name of the
890 applicant.

891 (B) The division shall charge a special initial application
892 fee of ten dollars. This special fee is to compensate the Division
893 of Motor Vehicles for additional costs and services required in
894 the issuing of the special registration and shall be collected by
895 the division and deposited in a special revolving fund to be used
896 for the administration of this section.

897 (C) An annual fee of fifteen dollars shall be charged for
898 each plate in addition to all other fees required by this chapter.

899 (44) The division may issue special registration plates
900 recognizing and honoring breast cancer survivors.

901 (A) Upon appropriate application, the division may issue a
902 special registration plate designed by the commissioner to
903 recognize and honor breast cancer survivors, such plate to
904 incorporate somewhere in the design the “pink ribbon emblem”,
905 for any number of vehicles titled in the name of the applicant.

906 (B) The division shall charge a special initial application
907 fee of ten dollars. This special fee is to compensate the Division
908 of Motor Vehicles for additional costs and services required in
909 the division and deposited in a special revolving fund to be used
910 for the administration of this section.

911 (C) An annual fee of fifteen dollars shall be charged for
912 each plate in addition to all other fees required by this chapter.

913 (45) The division may issue special registration plates to
914 members of the Knights of Pythias or Pythian Sisters as
915 follows:

916 (A) Upon appropriate application, the division may issue a
917 special registration plate designed by the commissioner for any
918 number of vehicles titled in the name of the qualified applicant.
919 Persons desiring the special registration plate shall offer
920 sufficient proof of membership in the Knights of Pythias or
921 Pythian Sisters.

922 (B) The division shall charge a special initial application
923 fee of ten dollars in addition to all other fees required by law.
924 This special fee is to compensate the Division of Motor
925 Vehicles for additional costs and services required in the
926 issuing of the special registration and shall be collected by the
927 division and deposited in a special revolving fund to be used for
928 the administration of this section.

929 (C) An annual fee of fifteen dollars shall be charged for
930 each plate in addition to all other fees required by this chapter.

931 (46) The commissioner may issue special registration plates
932 for whitewater rafting enthusiasts as follows:

933 (A) Upon appropriate application, the division may issue a
934 special registration plate designed by the commissioner for any
935 number of vehicles titled in the name of the qualified applicant.

936 (B) The division shall charge a special initial application
937 fee of ten dollars in addition to all other fees required by law.
938 This special fee is to compensate the Division of Motor
939 Vehicles for additional costs and services required in the
940 issuing of the special registration and shall be collected by the
941 division and deposited in a special revolving fund to be used for
942 the administration of this section.

943 (C) The division shall charge an annual fee of fifteen
944 dollars for each special registration plate in addition to all other
945 fees required by this chapter.

946 (47) The division may issue special registration plates to
947 members of Lions International as follows:

948 (A) Upon appropriate application, the division may issue a
949 special registration plate designed by the commissioner in
950 consultation with Lions International for any number of
951 vehicles titled in the name of the qualified applicant. Persons
952 desiring the special registration plate shall offer sufficient proof
953 of membership in Lions International.

954 (B) The division shall charge a special initial application
955 fee of ten dollars in addition to all other fees required by law.
956 This special fee is to compensate the Division of Motor
957 Vehicles for additional costs and services required in the
958 issuing of the special registration and shall be collected by the
959 division and deposited in a special revolving fund to be used for
960 the administration of this section.

961 (C) An annual fee of fifteen dollars shall be charged for
962 each plate in addition to all other fees required by this chapter.

963 (48) The division may issue special registration plates
964 supporting organ donation as follows:

965 (A) Upon appropriate application, the division may issue a
966 special registration plate designed by the commissioner which
967 recognizes, supports and honors organ and tissue donors and
968 includes the words "Donate Life".

969 (B) The division shall charge a special initial application
970 fee of ten dollars in addition to all other fees required by law.
971 This special fee is to compensate the Division of Motor
972 Vehicles for additional costs and services required in the
973 issuing of the special registration and shall be collected by the
974 division and deposited in a special revolving fund to be used for
975 the administration of this section.

976 (C) An annual fee of fifteen dollars shall be charged for
977 each plate in addition to all other fees required by this chapter.

978 (49) The division may issue special registration plates to
979 members of the West Virginia Bar Association as follows:

980 (A) Upon appropriate application, the division may issue a
981 special registration plate designed by the commissioner in
982 consultation with the West Virginia Bar Association for any
983 number of vehicles titled in the name of the qualified applicant.
984 Persons desiring the special registration plate shall offer
985 sufficient proof of membership in the West Virginia Bar
986 Association.

987 (B) The division shall charge a special initial application
988 fee of ten dollars in addition to all other fees required by law.
989 This special fee is to compensate the Division of Motor
990 Vehicles for additional costs and services required in the

991 issuing of the special registration and shall be collected by the
992 division and deposited in a special revolving fund to be used for
993 the administration of this section.

994 (C) An annual fee of fifteen dollars shall be charged for
995 each plate in addition to all other fees required by this chapter.

996 (50) The division may issue special registration plates
997 bearing an appropriate logo, symbol or insignia combined with
998 the words "SHARE THE ROAD" designed to promote
999 bicycling in the state as follows:

1000 (A) Upon appropriate application, the division may issue a
1001 special registration plate designed by the commissioner for any
1002 number of vehicles titled in the name of the applicant.

1003 (B) The division shall charge a special initial application
1004 fee of ten dollars in addition to all other fees required by law.
1005 This special fee is to compensate the Division of Motor
1006 Vehicles for additional costs and services required in the
1007 issuing of the special registration and shall be collected by the
1008 division and deposited in a special revolving fund to be used for
1009 the administration of this section.

1010 (C) An annual fee of fifteen dollars shall be charged for
1011 each plate in addition to all other fees required by this chapter.

1012 (51) The division may issue special registration plates
1013 honoring coal miners as follows:

1014 (A) Upon appropriate application, the division shall issue
1015 a special registration plate depicting and displaying coal miners
1016 in mining activities as prescribed and designated by the
1017 commissioner and the board of the National Coal Heritage Area
1018 Authority.

1019 (B) The division shall charge a special initial application
1020 fee of ten dollars in addition to all other fees required by law.

1021 This special fee is to compensate the Division of Motor
1022 Vehicles for additional costs and services required in the
1023 issuing of the special registration and shall be collected by the
1024 division and deposited in a special revolving fund to be used for
1025 the administration of this section.

1026 (C) An annual fee of fifteen dollars shall be charged for
1027 each plate in addition to all other fees required by this chapter.

1028 (52) The division may issue special registration plates to
1029 present and former Boy Scouts as follows:

1030 (A) Upon appropriate application, the division may issue a
1031 special registration plate designed by the Commissioner for any
1032 number of vehicles titled in the name of the qualified applicant.
1033 Persons desiring the special registration plate shall offer
1034 sufficient proof of present or past membership in the Boy
1035 Scouts as either a member or a leader.

1036 (B) The division shall charge a special initial application
1037 fee of ten dollars in addition to all other fees required by law.
1038 This special fee is to compensate the Division of Motor
1039 Vehicles for additional costs and services required in the
1040 issuing of the special registration and shall be collected by the
1041 division and deposited in a special revolving fund to be used for
1042 the administration of this section.

1043 (C) An annual fee of fifteen dollars shall be charged for
1044 each plate in addition to all other fees required by this chapter.

1045 (53) The division may issue special registration plates to
1046 present and former Boy Scouts who have achieved Eagle Scout
1047 status as follows:

1048 (A) Upon appropriate application, the division may issue a
1049 special registration plate designed by the Commissioner for any
1050 number of vehicles titled in the name of the qualified applicant.

1051 Persons desiring the special registration plate shall offer
1052 sufficient proof of achievement of Eagle Scout status.

1053 (B) The division shall charge a special initial application
1054 fee of ten dollars in addition to all other fees required by law.
1055 This special fee is to compensate the Division of Motor
1056 Vehicles for additional costs and services required in the
1057 issuing of the special registration and shall be collected by the
1058 division and deposited in a special revolving fund to be used for
1059 the administration of this section.

1060 (C) An annual fee of fifteen dollars shall be charged for
1061 each plate in addition to all other fees required by this chapter.

1062 (54) The division may issue special registration plates
1063 recognizing and memorializing victims of domestic violence.

1064 (A) Upon appropriate application, the division may issue a
1065 special registration plate designed by the commissioner to
1066 recognize and memorialize victims of domestic violence, such
1067 plate to incorporate somewhere in the design the “purple ribbon
1068 emblem”, for any number of vehicles titled in the name of the
1069 applicant.

1070 (B) The division shall charge a special initial application
1071 fee of ten dollars. This special fee is to compensate the Division
1072 of Motor Vehicles for additional costs and services required by
1073 the division and deposited in a special revolving fund to be used
1074 for the administration of this section.

1075 (C) An annual fee of fifteen dollars shall be charged for
1076 each plate in addition to all other fees required by this chapter.

1077 (55) The division may issue special registration plates
1078 bearing the logo, symbol, insignia, letters or words demonstrat-
1079 ing association with or support for the University of Charleston
1080 as follows:

1081 (A) Upon appropriate application, the division may issue a
1082 special registration plate designed by the commissioner for any
1083 number of vehicles titled in the name of the qualified applicant.

1084 (B) The division shall charge a special initial application
1085 fee of ten dollars in addition to all other fees required by law.
1086 This special fee is to compensate the Division of Motor
1087 Vehicles for additional costs and services required in the
1088 issuing of the special registration and shall be collected by the
1089 division and deposited in a special revolving fund to be used for
1090 the administration of this section.

1091 (C) An annual fee of fifteen dollars shall be charged for
1092 each plate in addition to all other fees required by this chapter.

1093 (56) The division may issue special registration plates to
1094 members of the Sons of the American Revolution as follows:

1095 (A) Upon appropriate application, the division may issue a
1096 special registration plate designed by the commissioner in
1097 consultation with the Sons of the American Revolution for any
1098 number of vehicles titled in the name of the qualified applicant.
1099 Persons desiring the special registration plate shall offer
1100 sufficient proof of membership in the Sons of the American
1101 Revolution.

1102 (B) The division shall charge a special initial application
1103 fee of ten dollars in addition to all other fees required by law.
1104 This special fee is to compensate the Division of Motor
1105 Vehicles for additional costs and services required in the
1106 issuing of the special registration and shall be collected by the
1107 division and deposited in a special revolving fund to be used for
1108 the administration of this section.

1109 (C) An annual fee of fifteen dollars shall be charged for
1110 each plate in addition to all other fees required by this chapter.

1111 (57) The commissioner may issue special registration plates
1112 for horse enthusiasts as follows:

1113 (A) Upon appropriate application, the division may issue a
1114 special registration plate designed by the commissioner for any
1115 number of vehicles titled in the name of the qualified applicant.

1116 (B) The division shall charge a special initial application
1117 fee of ten dollars in addition to all other fees required by law.
1118 This special fee is to compensate the Division of Motor
1119 Vehicles for additional costs and services required in the
1120 issuing of the special registration and shall be collected by the
1121 division and deposited in a special revolving fund to be used for
1122 the administration of this section.

1123 (C) The division shall charge an annual fee of fifteen
1124 dollars for each special registration plate in addition to all other
1125 fees required by this chapter.

1126 (58) The commissioner may issue special registration plates
1127 to the next of kin of a member of any branch of the armed
1128 services of the United States killed in combat as follows:

1129 (A) Upon appropriate application, the division shall issue
1130 a special registration plate for any number of vehicles titled in
1131 the name of a qualified applicant depicting the Gold Star
1132 awarded by the United States Department of Defense as
1133 prescribed and designated by the commissioner.

1134 (B) The next of kin shall provide sufficient proof of
1135 receiving a Gold Star lapel button from the United States
1136 Department of Defense in accordance with Public Law 534,
1137 89th Congress, and criteria established by the United States
1138 Department of Defense, including criteria to determine next of
1139 kin.

1140 (C) The division shall charge a special initial application
1141 fee of ten dollars in addition to all other fees required by law.

1142 This special fee is to compensate the Division of Motor
1143 Vehicles for additional costs and services required in the
1144 issuing of the special registration and shall be collected by the
1145 division and deposited in a special revolving fund to be used for
1146 the administration of this section.

1147 (D) The provisions of subsection (d) of this section are not
1148 applicable for the issuance of the special license plates
1149 designated by this subdivision.

1150 (59) The commissioner may issue special registration plates
1151 for retired or former Justices of the Supreme Court of Appeals
1152 of West Virginia as follows:

1153 (A) Upon appropriate application, the division may issue a
1154 special registration plate designed by the commissioner for any
1155 number of vehicles titled in the name of the qualified applicant.

1156 (B) The division shall charge a special initial application
1157 fee of ten dollars in addition to all other fees required by law.
1158 This special fee is to compensate the Division of Motor
1159 Vehicles for additional costs and services required in the
1160 issuing of the special registration and shall be collected by the
1161 division and deposited in a special revolving fund to be used for
1162 the administration of this section.

1163 (C) The division shall charge an annual fee of fifteen
1164 dollars for each special registration plate in addition to all other
1165 fees required by this chapter.

1166 (D) The provisions of subsection (d) of this section are not
1167 applicable for the issuance of the special license plates
1168 designated by this subdivision.

1169 (d) The minimum number of applications required prior to
1170 design and production of a special license plate shall be as
1171 follows:

1172 (1) The commissioner may not begin the design or
1173 production of any license plates for which eligibility is based on
1174 membership or affiliation with a particular private organization
1175 until at least one hundred persons complete an application and
1176 deposit with the organization a check to cover the first year's
1177 basic registration, one-time design and manufacturing costs and
1178 to cover the first year additional annual fee. If the organization
1179 fails to submit the required number of applications with
1180 attached checks within six months of the effective date of the
1181 authorizing legislation, the plate will not be produced and will
1182 require legislative reauthorization: *Provided*, That an organiza-
1183 tion or group that is unsuccessful in obtaining the minimum
1184 number of applications may not request reconsideration of a
1185 special plate until at least two years have passed since the
1186 effective date of the original authorization.

1187 (2) The commissioner may not begin the design or
1188 production of any license plates authorized by this section for
1189 which membership or affiliation with a particular organization
1190 is not required until at least two hundred fifty registrants
1191 complete an application and deposit a fee with the division to
1192 cover the first year's basic registration fee, one-time design and
1193 manufacturing fee and additional annual fee if applicable. If the
1194 commissioner fails to receive the required number of applica-
1195 tions within six months of the effective date of the authorizing
1196 legislation, the plate will not be produced and will require
1197 legislative reauthorization: *Provided*, That if the minimum
1198 number of applications is not satisfied within the six months of
1199 the effective date of the authorizing legislation, a person may
1200 not request reconsideration of a special plate until at least two
1201 years have passed since the effective date of the original
1202 authorization.

1203 (e)(1) Nothing in this section requires a charge for a free
1204 prisoner of war license plate or a free recipient of the Congres-
1205 sional Medal of Honor license plate for a vehicle titled in the

1206 name of the qualified applicant as authorized by other provi-
1207 sions of this code.

1208 (2) A surviving spouse may continue to use his or her
1209 deceased spouse's prisoner of war license plate or Congressio-
1210 nal Medal of Honor license plate until the surviving spouse
1211 dies, remarries or does not renew the license plate.

1212 (3) Qualified former prisoners of war and recipients of the
1213 Congressional Medal of Honor may obtain a second special
1214 registration plate for use on a passenger vehicle titled in the
1215 name of the qualified applicant. The division shall charge a
1216 one-time fee of ten dollars to be deposited into a special
1217 revolving fund to be used in the administration of this chapter,
1218 in addition to all other fees required by this chapter, for the
1219 second special plate.

1220 (f) The division may issue special ten-year registration
1221 plates as follows:

1222 (1) The commissioner may issue or renew for a period of no
1223 more than ten years any registration plate exempted from
1224 registration fees pursuant to any provision of this code or any
1225 restricted use antique motor vehicle license plate authorized by
1226 section three-a, article ten of this chapter: *Provided*, That the
1227 provisions of this subsection do not apply to any person who
1228 has had a special registration suspended for failure to maintain
1229 motor vehicle liability insurance as required by section three,
1230 article two-a, chapter seventeen-d of this code or failure to pay
1231 personal property taxes as required by section three-a of this
1232 article.

1233 (2) An initial nonrefundable fee shall be charged for each
1234 special registration plate issued pursuant to this subsection,
1235 which is the total amount of fees required by section fifteen,
1236 article ten of this chapter, section three, article three of this
1237 chapter or section three-a, article ten of this chapter for the
1238 period requested.

1239 (g) The provisions of this section may not be construed to
1240 exempt any registrant from maintaining motor vehicle liability
1241 insurance as required by section three, article two-a, chapter
1242 seventeen-d of this code or from paying personal property taxes
1243 on any motor vehicle as required by section three-a of this
1244 article.

1245 (h) The commissioner may, in his or her discretion, issue a
1246 registration plate of reflectorized material suitable for perma-
1247 nent use on motor vehicles, trailers and semitrailers, together
1248 with appropriate devices to be attached to the registration to
1249 indicate the year for which the vehicles have been properly
1250 registered or the date of expiration of the registration. The
1251 design and expiration of the plates shall be determined by the
1252 commissioner. The commissioner shall, whenever possible and
1253 cost-effective, implement the latest technology in the design,
1254 production and issuance of registration plates, indices of
1255 registration renewal and vehicle ownership documents,
1256 including, but not limited to, offering internet renewal of
1257 vehicle registration and the use of bar codes for instant
1258 identification of vehicles by scanning equipment to promote the
1259 efficient and effective coordination and communication of data
1260 for improving highway safety, aiding law enforcement and
1261 enhancing revenue collection.

1262 (i) Any license plate issued or renewed pursuant to this
1263 chapter which is paid for by a check that is returned for
1264 nonsufficient funds is void without further notice to the
1265 applicant. The applicant may not reinstate the registration until
1266 the returned check is paid by the applicant in cash, money order
1267 or certified check and all applicable fees assessed as a result
1268 thereof have been paid.

**§17A-3-23. Registration plates to state, county, municipal and
other governmental vehicles; use for undercover
activities.**

1 (a) Any motor vehicle designed to carry passengers, owned
2 or leased by the State of West Virginia, or any of its depart-
3 ments, bureaus, commissions or institutions, except vehicles
4 used by the Governor, Treasurer, three vehicles per elected
5 office of the Board of Public Works, vehicles operated by the
6 State Police, not to exceed five vehicles operated by the office
7 of the Secretary of Military Affairs and Public Safety, not to
8 exceed five vehicles operated by the Division of Homeland
9 Security and Emergency Management, vehicles operated by
10 conservation officers of the Division of Natural Resources, not
11 to exceed ten vehicles operated by the arson investigators of the
12 office of State Fire Marshal, not to exceed two vehicles
13 operated by the Division of Protective Services and not to
14 exceed sixteen vehicles operated by inspectors of the office of
15 the Alcohol Beverage Control Commissioner, may not be
16 operated or driven by any person unless it has displayed and
17 attached to the front thereof, in the same manner as regular
18 motor vehicle registration plates are attached, a plate of the
19 same size as the regular registration plate, with white lettering
20 on a green background bearing the words "West Virginia" in
21 one line and the words "State Car" in another line and the
22 lettering for the words "State Car" shall be of sufficient size to
23 be plainly readable from a distance of one hundred feet during
24 daylight.

25 The vehicle shall also have attached to the rear a plate
26 bearing a number and any other words and figures as the
27 Commissioner of Motor Vehicles shall prescribe. The rear plate
28 shall also be green with the number in white.

29 (b) On registration plates issued to vehicles owned by
30 counties, the color shall be white on red with the word
31 "County" on top of the plate and the words "West Virginia" on
32 the bottom. On any registration plates issued to a city or
33 municipality, the color shall be white on blue with the word
34 "City" on top and the words "West Virginia" on the bottom:

35 *Provided*, That after the thirty-first day of December, two
36 thousand six, registration plates issued to a city or municipality
37 law-enforcement department shall include blue lettering on a
38 white background with the word “West Virginia” on top of the
39 plate and shall be further designed by the commissioner to
40 include a law enforcement shield together with other insignia or
41 lettering sufficient to identify the motor vehicle as a municipal
42 law enforcement department motor vehicle. The colors may not
43 be reversed and shall be of reflectorized material. The registra-
44 tion plates issued to counties, municipalities and other govern-
45 mental agencies authorized to receive colored plates hereunder
46 shall be affixed to both the front and rear of the vehicles. Every
47 municipality shall provide the commissioner with a list of law-
48 enforcement vehicles operated by the law-enforcement
49 department of the municipality, unless otherwise provided in
50 this section, and a fee of ten dollars for each vehicle submitted
51 by the first day of July, two thousand six.

52 (c) Registration plates issued to vehicles operated by county
53 sheriffs shall be designed by the commissioner in cooperation
54 with the sheriffs’ association with the word “Sheriff” on top of
55 the plate and the words “West Virginia” on the bottom. The
56 plate shall contain a gold shield representing the sheriff’s star
57 and a number assigned to that plate by the commissioner. Every
58 county sheriff shall provide the commissioner with a list of
59 vehicles operated by the sheriff, unless otherwise provided in
60 this section, and a fee of ten dollars for each vehicle submitted
61 by the first day of July, two thousand two.

62 (d) The commissioner is authorized to designate the colors
63 and design of any other registration plates that are issued
64 without charge to any other agency in accordance with the
65 motor vehicle laws.

66 (e) Upon application, the commissioner is authorized to
67 issue a maximum of five Class A license plates per applicant to
68 be used by county sheriffs and municipalities on

69 law-enforcement vehicles while engaged in undercover
70 investigations.

71 (f) The commissioner is authorized to issue an unlimited
72 number of license plates per applicant to authorized drug and
73 violent crime task forces in the State of West Virginia when the
74 chairperson of the control group of a drug and violent crime
75 task force signs a written affidavit stating that the vehicle or
76 vehicles for which the plates are being requested will be used
77 only for official undercover work conducted by a drug and
78 violent crime task force.

79 (g) The commissioner is authorized to issue twenty Class
80 A license plates to the Criminal Investigation Division of the
81 Department of Revenue for use by its investigators.

82 (h) The commissioner may issue a maximum of ten Class
83 A license plates to the Division of Natural Resources for use by
84 conservation officers. The commissioner shall designate the
85 color and design of the registration plates to be displayed on the
86 front and the rear of all other state-owned vehicles owned by
87 the Division of Natural Resources and operated by conservation
88 officers.

89 (i) The commissioner is authorized to issue an unlimited
90 number of Class A license plates to the Commission on Special
91 Investigations for state-owned vehicles used for official
92 undercover work conducted by the Commission on Special
93 Investigations. The commissioner is authorized to issue a
94 maximum of two Class A plates to the Division of Protective
95 Services for state-owned vehicles used by the Division of
96 Protective Services in fulfilling its mission.

97 (j) No other registration plate may be issued for, or attached
98 to, any state-owned vehicle.

99 (k) The Commissioner of Motor Vehicles shall have a
100 sufficient number of both front and rear plates produced to

101 attach to all state-owned cars. The numbered registration plates
102 for the vehicles shall start with the number “five hundred” and
103 the commissioner shall issue consecutive numbers for all
104 state-owned cars.

105 (l) It is the duty of each office, department, bureau,
106 commission or institution furnished any vehicle to have plates
107 as described herein affixed thereto prior to the operation of the
108 vehicle by any official or employee.

109 (m) The commissioner may issue special registration plates
110 for motor vehicles titled in the name of the Division of Public
111 Transit or in the name of a public transit authority as defined in
112 this subsection and operated by a public transit authority or a
113 public transit provider to transport persons in the public
114 interest. For purposes of this subsection, “public transit
115 authority” means an urban mass transportation authority created
116 pursuant to the provisions of article twenty-seven, chapter eight
117 of this code or a nonprofit entity exempt from federal and state
118 income taxes under the Internal Revenue Code and whose
119 purpose is to provide mass transportation to the public at large.
120 The special registration plate shall be designed by the commis-
121 sioner and shall display the words “public transit” For words or
122 letters of similar effect to indicate the public purpose of the use
123 of the vehicle. The special registration plate shall be issued
124 without charge.

125 (n) Any person who violates the provisions of this section
126 is guilty of a misdemeanor and, upon conviction thereof, shall
127 be fined not less than fifty dollars nor more than one hundred
128 dollars. Magistrates shall have concurrent jurisdiction with
129 circuit and criminal courts for the enforcement of this section.

CHAPTER 160

(Com. Sub. for H. B. 4490 — By Delegate Boggs)

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §17A-6-6 and §17A-6-18 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §17A-6E-1, §17A-6E-2, §17A-6E-3, §17A-6E-4, §17A-6E-5, §17A-6E-6, §17A-6E-7, §17A-6E-8, §17A-6E-9, §17A-6E-10, §17A-6E-11, §17A-6E-12, §17A-6E-13 and §17A-6E-14, all relating generally to the regulation of selling new or used vehicles; providing for the comprehensive regulation and licensing of salespersons and finance and insurance representatives; setting forth specific licensure requirements; providing for revocation, suspension and refusal to renew licenses; authorizing fees; requiring dealers to notify the division upon the hiring and termination of salespersons; requiring display of list of licensees; authorizing the commissioner to propose legislative rules; prohibiting the employment by dealers of unlicensed salespersons; authorizing the commissioner to conduct investigations and petition for injunctions under certain circumstances; providing for investigations of violations; providing for appeals of decisions to suspend, revoke or deny licenses; and establishing special revenue fund.

Be it enacted by the Legislature of West Virginia:

That §17A-6-6 and §17A-6-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §17A-6E-1, §17A-6E-2, §17A-6E-3, §17A-6E-4, §17A-6E-5, §17A-6E-6,

§17A-6E-7, §17A-6E-8, §17A-6E-9, §17A-6E-10, §17A-6E-11, §17A-6E-12, §17A-6E-13 and §17A-6E-14, all to read as follows:

Article

6. Licensing of Dealers and Wreckers or Dismantlers; Special Plates; Temporary Plates or Markers, Etc.

6E. Motor Vehicle Salesperson License.

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS, ETC.

§17A-6-6. Refusal or issuance of license certificate; license certificate not transferable.

§17A-6-18. Investigation; matters confidential; grounds for suspending or revoking license or imposing fine; suspension and revocation generally.

§17A-6-6. Refusal or issuance of license certificate; license certificate not transferable.

1 (a) Upon the review of the application and all other
2 information before him or her, the commissioner may make and
3 enter an order denying an application for a license certificate
4 and refuse the license certificate sought. A denial and refusal
5 are final and conclusive unless an appeal is made in accordance
6 with the provisions of rules proposed for legislative approval in
7 accordance with the provisions of article three, chapter
8 twenty-nine-a of this code. The commissioner shall make and
9 enter an order denying or refusing a license, if the commis-
10 sioner finds that the applicant (individually, if an individual, or
11 the partners, if a copartnership, or the officers and directors, if
12 a corporation):

13 (1) Has failed to furnish the required bond unless otherwise
14 exempt under the provisions of section two-a of this article;

15 (2) Has failed to furnish the required certificate of insur-
16 ance;

17 (3) Has knowingly made false statement of a material fact
18 in his or her application;

19 (4) Has habitually defaulted on financial obligations in this
20 state or any other state or jurisdiction;

21 (5) Has been convicted of a felony: *Provided*, That upon
22 appeal, the Motor Vehicle Dealers Advisory Board established
23 pursuant to the provisions of section eighteen-a of this article
24 may grant an exemption of this restriction if the felony did not
25 involve financial matters, the motor vehicle industry or matters
26 of moral turpitude;

27 (6) So far as can be ascertained, has not complied with and
28 will not comply with the registration and title laws of this state
29 or any other state or jurisdiction;

30 (7) Does not or will not have or maintain at each place of
31 business, subject to the qualification contained in subdivision
32 (17), subsection (a), section one of this article with respect to a
33 new motor vehicle dealer (an established place of business as
34 defined for the business in question) in that section;

35 (8) Has been convicted of any fraudulent act in connection
36 with the business of new motor vehicle dealer, used motor
37 vehicle dealer, house trailer dealer, trailer dealer, recreational
38 vehicle dealer, motorcycle dealer, used parts dealer, or wrecker
39 or dismantler in this state or any other state or jurisdiction;

40 (9) Has done any act or has failed or refused to perform any
41 duty for which the license certificate sought could be suspended
42 or revoked were it then issued and outstanding;

43 (10) Is not age eighteen years or older;

44 (11) Is delinquent in the payment of any taxes owed to the
45 United States, the State of West Virginia or any political
46 subdivision of the state;

47 (12) Has been denied a license in another state or has been
48 the subject of license revocation or suspension in another state;

49 (13) Has committed any action in another state which, if it
50 had been committed in this state, would be grounds for denial
51 and refusal of the application for a license certificate;

52 (14) Has failed to pay any civil penalty assessed by this
53 state or any other state;

54 (15) Has failed to reimburse when ordered, any claim
55 against the dealer recovery fund as prescribed in section two-a
56 of this article; or

57 (16) Has failed to comply with the provisions of article
58 six-e of this chapter, pertaining to the employment of licensed
59 salespersons.

60 Otherwise, the commissioner shall issue to the applicant the
61 appropriate license certificate which entitles the licensee to
62 engage in the business of new motor vehicle dealer, used motor
63 vehicle dealer, house trailer dealer, trailer dealer, recreational
64 vehicle dealer, motorcycle dealer, used parts dealer, or wrecker
65 or dismantler, as the case may be.

66 (b) A license certificate issued in accordance with the
67 provisions of this article is not transferable.

**§17A-6-18. Investigation; matters confidential; grounds for
suspending or revoking license or imposing fine;
suspension and revocation generally.**

1 (a) The commissioner may conduct an investigation to
2 determine whether any provisions of this chapter have been or
3 are about to be violated by a licensee. Any investigation shall
4 be kept confidential by the commissioner and the division,
5 unless and until the commissioner suspends or revokes the

6 license certificate of the licensee involved or fines the licensee:
7 *Provided*, That the commissioner may advise the Motor Vehicle
8 Dealers Advisory Board of pending actions and may disclose to
9 the Motor Vehicle Dealers Advisory Board any information that
10 enables it to perform its advisory function in imposing penal-
11 ties. The commissioner may suspend or revoke a license
12 certificate, suspend a special dealer plate or plates, impose a
13 fine or take any combination of these actions if the commis-
14 sioner finds that the licensee:

15 (1) Has failed or refused to comply with the laws of this
16 state relating to the registration and titling of vehicles and the
17 giving of notices of transfers, the provisions and requirements
18 of this article, or any reasonable rules authorized in section
19 nine, article two of this chapter and promulgated to implement
20 the provisions of this article by the commissioner in accordance
21 with the provisions of article three, chapter twenty-nine-a of
22 this code;

23 (2) Has given any check in the payment of any fee required
24 under the provisions of this chapter which is dishonored;

25 (3) In the case of a dealer, has knowingly made or permitted
26 any unlawful use of any dealer special plate or plates issued to
27 him or her;

28 (4) In the case of a dealer, has a dealer special plate or
29 plates to which he or she is not lawfully entitled;

30 (5) Has knowingly made false statement of a material fact
31 in his or her application for the license certificate then issued
32 and outstanding;

33 (6) Has habitually defaulted on financial obligations;

34 (7) Does not have and maintain at each place of business
35 (subject to the qualification contained in subdivision (17),

36 subsection (a), section one of this article with respect to a new
37 motor vehicle dealer) an established place of business as
38 defined for the business in question in section one of this
39 article;

40 (8) Has been guilty of any fraudulent act in connection with
41 the business of new motor vehicle dealer, used motor vehicle
42 dealer, house trailer dealer, trailer dealer, motorcycle dealer,
43 used parts dealer or wrecker or dismantler;

44 (9) Has defrauded or is attempting to defraud any buyer or
45 any other person, to the damage of the buyer or other person, in
46 the conduct of the licensee's business;

47 (10) Has defrauded or is attempting to defraud the state or
48 any political subdivision of the state of any taxes or fees in
49 connection with the sale or transfer of any vehicle;

50 (11) Has committed fraud in the registration of a vehicle;

51 (12) Has knowingly purchased, sold or otherwise dealt in a
52 stolen vehicle or vehicles;

53 (13) Has advertised by any means, with intent to defraud,
54 any material representation or statement of fact which is untrue,
55 misleading or deceptive in any particular relating to the conduct
56 of the licensed business;

57 (14) Has willfully failed or refused to perform any legally
58 binding written agreement with any buyer;

59 (15) Has made a fraudulent sale or purchase;

60 (16) Has failed or refused to assign, reassign or transfer a
61 proper certificate of title;

62 (17) Has a license certificate to which he or she is not
63 lawfully entitled;

64 (18) Has misrepresented a customer's credit or financial
65 status to obtain financing;

66 (19) Has failed to reimburse, when ordered, any claim
67 against the dealer recovery fund as prescribed in section two-a
68 of this article; or

69 (20) Has employed unlicensed salespersons in violation of
70 article six-e of this chapter on or after the first day of January,
71 two thousand eight.

72 (b) The commissioner shall also suspend or revoke the
73 license certificate of a licensee if he or she finds the existence
74 of any ground upon which the license certificate could have
75 been refused or any ground which would be cause for refusing
76 a license certificate to the licensee were he or she then applying
77 for the license certificate.

78 (c) Whenever a licensee fails to keep the bond, unless
79 exempt from the requirement pursuant to section two-a of this
80 article or liability insurance required by section four of this
81 article, in full force and effect, or fails to provide evidence of
82 the bond or liability insurance, the commissioner shall automat-
83 ically suspend the license certificate of the licensee unless and
84 until a bond or certificate of insurance as required by section
85 four of this article is furnished to the commissioner. When the
86 licensee furnishes the bond or certificate of insurance to the
87 commissioner and pays all reinstatement fees, the commis-
88 sioner shall vacate the suspension.

89 (d) Suspensions under this section shall continue until the
90 cause for the suspension has been eliminated or corrected.
91 Revocation of a license certificate does not preclude application
92 for a new license certificate. The commissioner shall process
93 the application for a new license certificate in the same manner
94 and issue or refuse to issue the license certificate on the same
95 grounds as any other application for a license certificate is

96 processed, considered and passed upon, except that the
97 commissioner may give any previous suspension and the
98 revocation such weight in deciding whether to issue or refuse
99 the license certificate as is correct and proper under all of the
100 circumstances.

ARTICLE 6E. MOTOR VEHICLE SALESPERSON LICENSE.

- §17A-6E-1. Findings and purpose.
- §17A-6E-2. Definitions.
- §17A-6E-3. License required.
- §17A-6E-4. Eligibility and issuance of license.
- §17A-6E-5. Expiration of license, renewal and expired license.
- §17A-6E-6. Change of employer.
- §17A-6E-7. Change of address, lost or stolen license, duplicate license.
- §17A-6E-8. Display of license.
- §17A-6E-9. Revocation, suspension or refusal to renew license.
- §17A-6E-10. Administrative due process.
- §17A-6E-11. Investigation, matters confidential.
- §17A-6E-12. Injunctive relief.
- §17A-6E-13. Authority for rules.
- §17A-6E-14. Motor Vehicle Salesperson License Fund.

§17A-6E-1. Findings and purpose.

1 (a) It is the purpose of this article to protect retail motor
2 vehicle customers, motor vehicle dealers, banks and the state
3 from sustaining losses due to the fraudulent activity of persons
4 engaged in the business of selling vehicles.

5 (b) This article establishes minimum competency and
6 ethical standards for persons engaged in the business of selling
7 motor vehicles to the general public.

§17A-6E-2. Definitions.

1 The following words as used in this article, unless the
2 context otherwise requires, have the following meanings:

3 (1) “Applicant” means any person making application for
4 an original or renewal of a salesperson license;

5 (2) “Dealer” means any motor vehicle or auction business
6 regulated under the provisions of article six or six-c of this
7 chapter;

8 (3) “Licensee” means any person holding a license issued
9 under the provisions of this article;

10 (4) “Motor vehicle salesperson” or “salesperson” means
11 any person employed by a dealer to sell, buy, display and offer
12 for sale or deal in motor vehicles, recreational vehicles or
13 trailers, as those terms are defined in section one of article one
14 of this chapter, for a commission or other valuable consider-
15 ation, but does not mean any public officer performing his or
16 her official duties or the dealer licensee. A person employed by
17 a dealer as a finance and insurance representative is for the
18 purposes of this article a salesperson.

§17A-6E-3. License required.

1 (a) Except as provided in section six of this article, no
2 person may engage in business in this state as a motor vehicle
3 salesperson on and after the first day of January, two thousand
4 eight, without holding a license issued under the provisions of
5 this article.

6 (b) No class of vehicle dealer as defined in article six or
7 six-c of this chapter may employ an unlicensed motor vehicle
8 salesperson on or after the first day of January, two thousand
9 eight. No person may sell vehicles for more than one vehicle
10 dealer unless the commissioner grants a written waiver.

11 (c) Any person employed by licensed dealers as a salesper-
12 son immediately preceding the effective date of this section is
13 exempt from the requirements of the background investigation
14 and the written test and payment of the fee for the background
15 investigation provided in section four of this article.

§17A-6E-4. Eligibility and issuance of license.

1 (a) The division may not issue any person a motor vehicle
2 salesperson license unless the applicant:

3 (1) Is employed by a licensed West Virginia dealer who
4 verifies the employment;

5 (2) Completes the application for a license on the form
6 prescribed by the division, fully completed, signed and attested
7 to by the applicant, including, but not limited to, the appli-
8 cant's:

9 (A) Full name;

10 (B) Social security number;

11 (C) Residence and mailing address;

12 (D) Name of employing dealership;

13 (E) Statement as to whether the applicant has ever had any
14 previous application for a dealer or salesperson license refused
15 in this or any other state or jurisdiction;

16 (F) Statement as to whether the applicant has been previ-
17 ously licensed as a salesperson in this state or any other state or
18 jurisdiction;

19 (G) Statement as to whether the applicant has ever had his
20 or her salesperson license or a dealer license suspended or
21 revoked in this state or any other state or jurisdiction;

22 (H) Statement as to whether the applicant has ever held a
23 dealer license which has been suspended or revoked or has been
24 employed by a dealer which has had its license suspended or
25 revoked;

26 (I) Statement as to whether the applicant has ever been
27 convicted of a felony or whether the applicant individually or
28 as an owner, partner, officer or director of a business entity has
29 been convicted of, or pleaded guilty or nolo contendere to a
30 criminal action, and if so, a written explanation of the convic-
31 tion;

32 (J) Statement as to whether or not the applicant owes a
33 child support obligation, owes a child support obligation that is
34 more than six months in arrears, is the subject of a child support
35 related warrant, subpoena or court order; and

36 (K) Statement that the applicant has not been found to have
37 done any of the acts which would justify suspension or revoca-
38 tion of a salesperson's license under section nine of this article;

39 (3) Submits verification of employment by the employing
40 dealer;

41 (4) Furnishes a full set of fingerprints to facilitate a
42 background check and other investigation considered necessary
43 by the commissioner;

44 (5) Pays an initial nonrefundable application fee of seven
45 dollars for each year the license is valid. Payment of the fee
46 entitles the applicant to one attempt at a written test prescribed
47 by the division. Successful completion of at least seventy
48 percent of the written test is a passing score;

49 (6) Pays a nonrefundable background investigation fee of
50 twenty-five dollars; and

51 (7) Is not the subject of a background investigation which
52 reveals criminal convictions or other circumstances for which
53 the commissioner may deny licensure under the provisions of
54 this article.

55 (b) The division may, upon successful completion of all the
56 requirements contained in subsection (a) of this section, with
57 the exception of the background investigation, issue the
58 applicant a temporary motor vehicle salesperson license. The
59 temporary license is valid for a maximum of ninety days
60 pending issuance of the permanent license endorsement or
61 receipt of an unfavorable background investigation, whichever
62 occurs first.

63 (c) The division shall refuse to issue the license if the
64 applicant:

65 (1) Does not provide the necessary documents as deter-
66 mined by the division to establish his or her identity or legal
67 presence in this country;

68 (2) Has made any false statements of material fact in the
69 application;

70 (3) Has had his or her privilege to sell vehicles denied,
71 suspended or revoked by this state or any other state or
72 jurisdiction: *Provided*, That upon the applicant's appeal, the
73 commissioner may grant an exemption of this restriction if the
74 applicant can show that he or she is eligible for reinstatement in
75 his or her previous jurisdiction of licensure;

76 (4) Has committed a fraudulent act or omission or repeat-
77 edly defaulted in financial obligations in connection with the
78 buying, selling, leasing, rental or otherwise dealing in motor
79 vehicles, recreational vehicles or trailers;

80 (5) Has been convicted of a felony: *Provided*, That upon the
81 applicant's appeal the commissioner may grant an exemption
82 to this restriction if the felony did not involve financial matters
83 or the motor vehicle industry;

84 (6) Is not employed as a salesperson for a motor vehicle
85 dealer licensed in accordance with article six or six-c of this
86 chapter;

87 (7) Is acting as a salesperson for more than one motor
88 vehicle dealer at the same time without a waiver issued by the
89 commissioner; or

90 (8) Has a background investigation which reveals criminal
91 convictions or other circumstances for which the commissioner
92 may deny licensure under the provisions of this article.

93 (d) Willful misrepresentation of any fact in any application
94 or any document in support of the application is a violation of
95 this article.

§17A-6E-5. Expiration of license, renewal and expired license.

1 (a) An initial license issued under the provisions of this
2 article shall be valid for no less than three years nor more than
3 seven years as determined by the division to establish set
4 license expiration date on the applicant's birthday in a year in
5 which the applicant's age is evenly divisible by five.

6 (b) A licensee may renew a license in the manner pre-
7 scribed by the division upon completion of the application for
8 renewal, verification by the employing dealer and payment of
9 a renewal fee of ten dollars. The license shall be valid for a
10 period of five years.

11 (1) Any licensee who fails to renew his or her license
12 before the date of expiration shall pay an additional fee of five
13 dollars.

14 (2) Any licensee who fails to renew his or her license
15 within six months of expiration is not eligible for renewal and
16 is required to complete the application process required of all

17 new applicants, including the payment of all initial fees,
18 completion of the written test and background investigation as
19 if he or she never held a license.

§17A-6E-6. Change of employer.

1 (a) Within ten days of the termination of employment of a
2 licensed salesperson, the dealer shall notify the division of the
3 termination in the manner prescribed by the division. The
4 license of the salesperson becomes inactive upon termination of
5 employment by a licensed dealer, and the salesperson may not
6 engage in the activities of a salesperson as described in section
7 two of this article unless and until he or she becomes relicensed
8 as a salesperson for the same dealer or another dealer.

9 (b) Within ten days of hiring a licensed salesperson, the
10 dealer shall notify the division in the manner prescribed by the
11 division. The dealer shall complete an application for transfer
12 of a salesperson license, and shall verify the salesperson's
13 employment in a manner prescribed by the division.

14 (c) The salesperson shall submit the completed transfer
15 application, a fee of five dollars and obtain a new salesperson
16 license in the name of the new employer before engaging in the
17 activities of a salesperson as described in section two of this
18 article. No transfer application or fee is required if the salesper-
19 son is reemployed by the previous employer within six months
20 of cessation of employment.

§17A-6E-7. Change of address, lost or stolen license, duplicate license.

1 A licensee shall notify the division in the manner prescribed
2 by the division of a change of address of the licensee or the loss
3 of a license, and obtain a new license within twenty days of
4 loss. The division shall charge a fee of five dollars for issuing
5 any duplicate license.

§17A-6E-8. Display of license.

1 (a) Every licensee must have his or her license in his or her
2 possession at all times when engaged in the business of selling
3 vehicles, and shall display the license upon demand of any
4 customer, law-enforcement official or division employee.

5 (b) Every dealer shall conspicuously display a list of all
6 employees currently licensed as salespersons.

§17A-6E-9. Revocation, suspension or refusal to renew license.

1 (a) The commissioner may revoke or suspend the license of
2 any licensee if he or she determines that the licensee has:

3 (1) Violated any motor vehicle dealer law, any dealer rule
4 or order of the division;

5 (2) Improperly withheld, misappropriated or converted to
6 his or her own use any money received from customers;

7 (3) Misrepresented the terms of any existing or proposed
8 vehicle sale, purchase, lease, rental, finance, warranty or
9 insurance agreement;

10 (4) Engaged in any pattern of unfair competition or unfair
11 or deceptive acts or practices in the business of buying, selling,
12 renting or leasing vehicles;

13 (5) Forged another person's name to any application or
14 form required for the titling, leasing, rental, registration,
15 financing or insuring of a vehicle;

16 (6) Knowingly and willfully made or permitted a false or
17 fraudulent application or form required for the titling, leasing,
18 rental, registration, financing or insuring of a vehicle;

19 (7) Been convicted of or pleaded nolo contendere to any
20 felony: *Provided*, That upon the applicant's appeal the commis-

21 sioner may grant an exemption to this subdivision if the felony
22 did not involve financial matters or the motor vehicle industry;

23 (8) Been convicted of or pleaded nolo contendere to a
24 misdemeanor in connection with his or her activities in the
25 business of selling, renting or leasing vehicles;

26 (9) Been refused a dealer or salesperson license or had a
27 dealer or salesperson license suspended, revoked, restricted or
28 otherwise canceled in another state or jurisdiction: *Provided,*
29 That upon the applicant's appeal, the commissioner may grant
30 an exemption of this restriction if the applicant can show that he
31 or she is eligible for reinstatement in his or her previous
32 jurisdiction of licensure; or

33 (10) Obtained the license through misrepresentation, fraud
34 or any other act for which the issuance of the license could have
35 been refused had it been known to the commissioner at the time
36 of issuance.

37 (b) For the purposes of this section:

38 (1) "Suspension" means the privilege to sell vehicles is
39 temporarily withdrawn for a fixed period and is reinstatable
40 without retesting; and

41 (2) "Revocation" means the privilege to sell vehicles is
42 withdrawn permanently.

43 (c) A licensee whose license is revoked may reapply for an
44 original license with an explanation as to why the commissioner
45 should consider the applicant for relicensing.

§17A-6E-10. Administrative due process.

1 (a) Any person may appeal an order of the commissioner
2 suspending, revoking, denying or otherwise canceling his or her

3 salesperson license in accordance with the prescribed proce-
4 dures of the division.

5 (b) The commissioner may but is not required to stay the
6 suspension or revocation of a salesperson license during the
7 appeals process.

8 (c) Any final order entered pursuant to this article is subject
9 to judicial review as provided in article five, chapter
10 twenty-nine-a of this code.

§17A-6E-11. Investigation, matters confidential.

1 (a) The commissioner may conduct any investigation
2 necessary to determine whether any provision of this chapter
3 has been violated or is about to be violated by a licensee or
4 applicant.

5 (b) The commissioner and the division shall keep any
6 investigation confidential unless and until the commissioner
7 suspends, revokes or otherwise denies a license: *Provided*, That
8 the commissioner may advise the Motor Vehicle Dealers
9 Advisory Board of information that may enable it to perform its
10 advisory functions.

§17A-6E-12. Injunctive relief.

1 (a) Whenever it appears to the commissioner that any
2 person or licensee has violated any provision of this article or
3 any final order of the commissioner, the commissioner may
4 petition, in the name of the state, in the Circuit Court of
5 Kanawha County or in the circuit court of the county in which
6 the violation occurred, for an injunction against the person or
7 licensee. Injunctive relief may be awarded in addition to any
8 penalty imposed pursuant to the provisions of article eleven of
9 this chapter or any other remedy allowed by law.

10 (b) The circuit court may, by mandatory or prohibitory
11 injunction, compel compliance with the provisions of this
12 article and all final orders of the commissioner. The court may
13 also issue temporary injunctions.

14 (c) The judgment by the circuit court is final unless
15 reversed, vacated or modified on appeal to the Supreme Court
16 of Appeals of West Virginia. An appeal shall be sought in the
17 manner and within the time provided by law for appeals from
18 circuit courts in other civil cases.

§17A-6E-13. Authority for rules.

1 The commissioner may propose rules for legislative
2 approval in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code, in order to effectuate the
4 provisions of this article.

§17A-6E-14. Motor Vehicle Salesperson License Fund.

1 All moneys collected pursuant to this article shall be
2 deposited in a special revenue account in the State Treasury to
3 be known as the "Motor Vehicle Salesperson License Fund."
4 Expenditures from the fund shall be for the administration of
5 licensure of motor vehicle salespersons and are not authorized
6 from collections but are to be made only in accordance with
7 appropriation by the Legislature and in accordance with the
8 provisions of article three, chapter twelve of this code and upon
9 fulfillment of the provisions of article two, chapter eleven-b of
10 this code: *Provided*, That for the fiscal year ending the thirtieth
11 day of June, two thousand seven, expenditures are authorized
12 from collections rather than pursuant to appropriation by the
13 Legislature.

CHAPTER 161

(H. B. 4307 — By Delegates Evans, Boggs, Stalnaker,
Azinger, Rick Thompson and Schadler)

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §17A-10-3a of the Code of West Virginia, 1931, as amended, relating to extending the weekend driving privileges of antique motor vehicles and motorcycles.

Be it enacted by the Legislature of West Virginia:

That §17A-10-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-3a. Special registration of antique motor vehicles and motorcycles; definition, registration and use of classic motor vehicles and classic motorcycles.

1 (a) The annual registration fee for any antique motor
2 vehicle or motorcycle as defined in this section is two dollars.
3 “Antique motor vehicle” means any motor vehicle which is
4 more than twenty-five years old and is owned solely as a
5 collector’s item. “Antique motorcycle” means any motorcycle
6 which is more than twenty-five years old and is owned solely
7 as a collector’s item.

8 “Classic motor vehicle” means a motor vehicle which is
9 more than twenty-five years old and is registered pursuant to

10 section three of this article and is used for general transporta-
11 tion.

12 “Classic motorcycle” means a motorcycle which is more
13 than twenty-five years old and is registered pursuant to section
14 three of this article and is used for general transportation.

15 (b) Except as otherwise provided in this section, antique
16 motor vehicles or motorcycles may not be used for general
17 transportation but may only be used for:

18 (1) Participation in club activities, exhibits, tours, parades
19 and similar events;

20 (2) The purpose of testing their operation, obtaining repairs
21 or maintenance and transportation to and from events as
22 described in subdivision (1); and

23 (3) Recreational purposes starting Fridays at four o’clock
24 in the evening through Sundays, and holidays: *Provided*, That
25 a classic motor vehicle or a classic motorcycle as defined in this
26 section may be registered under the applicable class at the
27 applicable registration fee set forth in section three of this
28 article and may be used for general transportation.

29 (c) A West Virginia motor vehicle or motorcycle displaying
30 license plates of the same year of issue as the model year of the
31 antique motor vehicle or motorcycle, as authorized in this
32 section, may be used for general transportation purposes if the
33 following conditions are met:

34 (1) The license plate’s physical condition has been
35 inspected and approved by the Division of Motor Vehicles;

36 (2) The license plate is registered to the specific motor
37 vehicle or motorcycle by the Division of Motor Vehicles;

38 (3) The owner of the motor vehicle or motorcycle annually
39 registers the motor vehicle or motorcycle and pays an annual
40 registration fee for the motor vehicle or motorcycle equal to
41 that charged to obtain regular state license plates; and

42 (4) The motor vehicle or motorcycle passes an annual
43 safety inspection; and

44 (5) The motor vehicle or motorcycle displays a sticker
45 attached to the license plate, issued by the division, indicating
46 that the motor vehicle or motorcycle may be used for general
47 transportation.

48 (d) If more than one request is made for license plates
49 having the same number, the division shall accept only the first
50 application.

51 (e) The commissioner may promulgate rules in accordance
52 with the provisions of chapter twenty-nine-a of this code as may
53 be necessary or convenient for the carrying out of the provi-
54 sions of this section.

CHAPTER 162

**(Com. Sub. for H. B. 4004 —By Delegates Swartzmiller, Ennis,
Beach, Kominar, Ron Thompson, Talbott and Boggs)**

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17C-6-7a, relating to prohibiting the use of a traffic law photo-monitoring device by

police officers to detect traffic law violations; defining “traffic law photo-monitoring device”; providing that evidence obtained by the use of a traffic law photo-monitoring device may not be used to prove a violation of a traffic law; providing that this section does not prohibit the use of microwave devices to prove the speed of a motor vehicle in violation of a traffic law; and providing that evidence obtained by the use of a traffic law photo-monitoring device may be used for other lawful purposes.

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 §17C-6-7a, to read as follows:

§17C-6-7a. Prohibition of the use of traffic law photo-monitoring devices to detect or prove traffic law violations.

1 (a) As used in this section “traffic law photo-monitoring
2 device” means an electronic system consisting of a photo-
3 graphic, video, or electronic camera and a means of sensing the
4 presence of a motor vehicle that automatically produces
5 photographs, videotape, or digital images of the vehicle, its
6 operator, or its license plate.

7 (b) No police officer may utilize a traffic law photo-
8 monitoring device to determine compliance with, or to detect a
9 violation of, a municipal or county ordinance or any provision
10 of this code that governs or regulates the operation of motor
11 vehicles.

12 (c) A violation of a municipal or county ordinance or any
13 provision of this code that governs or regulates the operation of
14 motor vehicles may not be proved by evidence obtained by the
15 use of a traffic law photo-monitoring device.

16 (d) The provisions of this section do not prohibit the use of
17 any device designed to measure and indicate the speed of a

18 moving object by means of microwaves to obtain evidence to
19 prove the speed of a motor vehicle pursuant to section seven of
20 this article.

21 (e) The provisions of this section do not prohibit use of a
22 traffic law photo-monitoring device for any other lawful
23 purposes other than to obtain evidence to prove violations of
24 municipal or county ordinances or any provision of this code
25 governing or regulating the operation of motor vehicles.

CHAPTER 163

(H. B. 4437 — By Delegate Swartzmiller)

[Passed March 8, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 5, 2006.]

AN ACT to amend and reenact §17C-15-26 of the Code of West Virginia, 1931, as amended, relating to authorizing West Virginia Department of Agriculture emergency response vehicles to utilize red flashing warning lights.

Be it enacted by the Legislature of West Virginia:

That §17C-15-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15. EQUIPMENT.

§17C-15-26. Special restrictions on lamps.

1 (a) Any lighted lamp or illuminating device upon a motor
2 vehicle other than head lamps, spot lamps, auxiliary lamps or
3 flashing front-direction signals which projects a beam of light

4 of an intensity greater than three hundred candlepower shall be
5 so directed that no part of the beam will strike the level of the
6 roadway on which the vehicle stands at a distance of more than
7 seventy-five feet from the vehicle.

8 (b) No person shall drive or move any vehicle or equipment
9 upon any highway with any lamp or device thereon displaying
10 other than a white or amber light visible from directly in front
11 of the center thereof except as authorized by subsection (d) of
12 this section.

13 (c) Except as authorized in subsections (d) and (f) of this
14 section and authorized in section nineteen of this article,
15 flashing lights are prohibited on motor vehicles: *Provided*, That
16 any vehicle as a means for indicating right or left turn, or any
17 vehicle as a means of indicating the same is disabled or
18 otherwise stopped for an emergency may have blinking or
19 flashing lights.

20 (d) Notwithstanding any other provisions of this chapter,
21 the following colors of flashing warning lights are restricted for
22 the use of the type of vehicle designated:

23 (1) Blue flashing warning lights are restricted to police
24 vehicles. Authorization for police vehicles shall be designated
25 by the chief administrative official of each police department.

26 (2) Except for standard vehicle equipment authorized by
27 section nineteen of this article, red flashing warning lights are
28 restricted to ambulances; firefighting vehicles; hazardous
29 material response vehicles; industrial fire brigade vehicles;
30 school buses; West Virginia Department of Agriculture
31 emergency response vehicles; Class A vehicles, as defined by
32 section one, article ten, chapter seventeen-a of this code, of
33 those firefighters who are authorized by their fire chiefs to have
34 the lights; Class A vehicles of members of ambulance services
35 or duly chartered rescue squads who are authorized by their

36 respective chiefs to have the lights; and Class A vehicles of out-
37 of-state residents who are active members of West Virginia fire
38 departments, ambulance services or duly chartered rescue
39 squads who are authorized by their respective chiefs to have the
40 lights. Red flashing warning lights attached to the Class A
41 vehicles shall be operated only when responding to or engaged
42 in handling an emergency requiring the attention of the
43 firefighters, members of the ambulance services, or chartered
44 rescue squads.

45 (3) The use of red flashing warning lights shall be autho-
46 rized as follows:

47 (A) Authorization for all ambulances shall be designated by
48 the Department of Health and Human Resources and the sheriff
49 of the county of residence.

50 (B) Authorization for all fire department vehicles shall be
51 designated by the fire chief and the State Fire Marshal's office.

52 (C) Authorization for all hazardous material response
53 vehicles and industrial fire brigades shall be designated by the
54 chief of the fire department and the State Fire Marshal's Office.

55 (D) Authorization for all rescue squad vehicles not
56 operating out of a fire department shall be designated by the
57 squad chief, the sheriff of the county of residence and the
58 Department of Health and Human Resources.

59 (E) Authorization for school buses shall be designated as
60 set out in section twelve, article fourteen, chapter seventeen-c.

61 (F) Authorization for firefighters to operate Class A
62 vehicles shall be designated by their fire chiefs and the State
63 Fire Marshal's office.

64 (G) Authorization for members of ambulance services or
65 any other emergency medical service personnel to operate Class

66 A vehicles shall be designated by their chief official, the
67 Department of Health and Human Resources and the sheriff of
68 the county of residence.

69 (H) Authorization for members of duly chartered rescue
70 squads not operating out of a fire department to operate Class
71 A vehicles shall be designated by their squad chiefs, the sheriff
72 of the county of residence and the Department of Health and
73 Human Resources.

74 (I) Authorization for out-of-state residents operating Class
75 A vehicles who are active members of a West Virginia fire
76 department, ambulance services or duly chartered rescue squads
77 shall be designated by their respective chiefs.

78 (J) Authorization for West Virginia Department of
79 Agriculture emergency response vehicles shall be designated by
80 the Commissioner of the Department of Agriculture.

81 (4) Yellow flashing warning lights are restricted to the
82 following:

83 (A) All other emergency vehicles, including tow trucks and
84 wreckers, authorized by this chapter and by section twenty-
85 seven of this article;

86 (B) Postal service vehicles and rural mail carriers, as
87 authorized in section nineteen of this article;

88 (C) Rural newspaper delivery vehicles;

89 (D) Flag car services;

90 (E) Vehicles providing road service to disabled vehicles;

91 (F) Service vehicles of a public service corporation;

92 (G) Snow removal equipment; and

93 (H) School buses.

94 (5) The use of yellow flashing warning lights shall be
95 authorized as follows:

96 (A) Authorization for tow trucks, wreckers, rural newspaper
97 delivery vehicles, flag car services, vehicles providing road
98 service to disabled vehicles, service vehicles of a public service
99 corporation and postal service vehicles shall be designated by
100 the sheriff of the county of residence.

101 (B) Authorization for snow removal equipment shall be
102 designated by the Commissioner of the Division of Highways.

103 (C) Authorization for school buses shall be designated as
104 set out in section twelve, article fourteen, chapter seventeen-c.

105 (e) Notwithstanding the foregoing provisions of this
106 section, any vehicle belonging to a county board of education,
107 an organization receiving funding from the state or federal
108 transit administration for the purpose of providing general
109 public transportation, or hauling solid waste may be equipped
110 with a white flashing strobotron warning light. This strobe light
111 may be installed on the roof of a school bus, a public transpor-
112 tation vehicle, or a vehicle hauling solid waste not to exceed
113 one-third the body length forward from the rear of the roof
114 edge. The light shall have a single clear lens emitting light three
115 hundred sixty degrees around its vertical axis and may not
116 extend above the roof more than six and one-half inches. A
117 manual switch and a pilot light must be included to indicate the
118 light is in operation.

119 (f) It shall be unlawful for flashing warning lights of an
120 unauthorized color to be installed or used on a vehicle other
121 than as specified in this section, except that a police vehicle
122 may be equipped with either or both blue or red warning lights.

CHAPTER 164

(Com. Sub. for S. B. 644 — By Senator Unger)

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 5, 2006.]

AN ACT to repeal §17D-4-15, §17D-4-16, §17D-4-17, §17D-4-18 and §17D-4-19 of the Code of West Virginia, 1931, as amended; to amend and reenact §17A-3-3 of said code; to amend and reenact §17D-2A-3, §17D-2A-6, §17D-2A-7 and §17D-2A-8 of said code; to amend and reenact §17D-5-3 of said code; and to amend and reenact §17D-6-2 of said code, all relating to mandatory security upon motor vehicles; repealing the option of substituting the posting of a bond or other security with the State Treasurer or the Commissioner of Motor Vehicles in lieu of a motor vehicle liability policy; changing the method of random sampling for determining compliance with the requirement to maintain security; changing the period of suspension of a driver's license for failure to maintain security; requiring the court to forward evidence of compliance to the Division of Motor Vehicles; providing a criminal penalty for providing false or fraudulent information related to mandatory security; requiring the division to suspend the driver's license of any person upon a showing of forging or filing any false evidence or proof of mandatory security or information; and changing the requirements of obtaining a certificate of self insurance.

Be it enacted by the Legislature of West Virginia:

That §17D-4-15, §17D-4-16, §17D-4-17, §17D-4-18 and §17D-4-19 of the Code of West Virginia, 1931, as amended, be repealed; that

§17A-3-3 of said code be amended and reenacted; that §17D-2A-3, §17D-2A-6, §17D-2A-7 and §17D-2A-8 of said code be amended and reenacted; that §17D-5-3 of said code be amended and reenacted; and that §17D-6-2 of said code be amended and reenacted, all to read as follows:

Chapter

17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.

17D. Motor Vehicle Safety Responsibility Law.

**CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION,
REGISTRATION, CERTIFICATE OF TITLE, AND
ANTITHEFT PROVISIONS.**

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE
OF CERTIFICATES OF TITLE.**

**§17A-3-3. Application for registration; statement of insurance or
other proof of security to accompany application;
criminal penalties; fees; special revolving fund.**

1 Every owner of a vehicle subject to registration under this
2 article shall make application to the division for the registration
3 of the vehicle upon the appropriate form or forms furnished by
4 the division and every such application shall bear the signature
5 of the owner or his or her authorized agent, written with pen
6 and ink, and the application shall contain:

7 (a) The name, bona fide residence and mailing address of
8 the owner, the county in which he or she resides or business
9 address of the owner if a firm, association or corporation.

10 (b) A description of the vehicle including, insofar as the
11 data specified in this section may exist with respect to a given
12 vehicle, the make, model, type of body, the manufacturer's
13 serial or identification number or other number as determined
14 by the commissioner.

15 (c) In the event a motor vehicle is designed, constructed,
16 converted or rebuilt for the transportation of property, the
17 application shall include a statement of its declared gross
18 weight if the motor vehicle is to be used alone, or if the motor
19 vehicle is to be used in combination with other vehicles, the
20 application for registration of the motor vehicle shall include a
21 statement of the combined declared gross weight of the motor
22 vehicle and the vehicles to be drawn by the motor vehicle;
23 declared gross weight being the weight declared by the owner
24 to be the actual combined weight of the vehicle or combination
25 of vehicles and load when carrying the maximum load which
26 the owner intends to place on the vehicle; and the application
27 for registration of each vehicle shall also include a statement of
28 the distance between the first and last axles of that vehicle or
29 combination of vehicles.

30 The declared gross weight stated in the application shall not
31 exceed the permissible gross weight for the axle spacing listed
32 in the application as determined by the table of permissible
33 gross weights contained in chapter seventeen-c of this code; and
34 any vehicle registered for a declared gross weight as stated in
35 the application is subject to the single-axle load limit set forth
36 in said chapter.

37 (d) Each applicant shall state whether the vehicle is or is not
38 to be used in the public transportation of passengers or
39 property, or both, for compensation, and if used for compensa-
40 tion, or to be used, the applicants shall certify that the vehicle
41 is used for compensation and shall, as a condition precedent to
42 the registration of such vehicle, obtain a certificate of conve-
43 nience or permit from the Public Service Commission unless
44 otherwise exempt from this requirement in accordance with
45 chapter twenty-four-a of this code.

46 (e) A statement under penalty of false swearing that
47 liability insurance is in effect and will continue to be in effect

48 through the entire term of the vehicle registration period within
49 limits which shall be no less than the requirement of section
50 two, article four, chapter seventeen-d of this code, which shall
51 contain the name of the applicant's insurer, the name of the
52 agent or agency which issued the policy and the effective date
53 of the policy and such other information as may be required by
54 the Commissioner of Motor Vehicles, or that the applicant has
55 qualified as a self-insurer meeting the requirements of section
56 two, article six of said chapter and that as a self-insurer he or
57 she has complied with the minimum security requirements as
58 established in section two, article four of said chapter.

59 (1) *Intentional lapses of insurance coverage.* —

60 (A) In the case of a periodic use or seasonal vehicle, as
61 defined in section three, article two-a, chapter seventeen-d of
62 this code, the owner may provide, in lieu of other statements
63 required by this section, a statement, under penalty of false
64 swearing, that liability insurance is in effect during the portion
65 of the year the vehicle is in actual use, within limits which shall
66 be no less than the requirements of section two, article four,
67 chapter seventeen-d of this code, and other information relating
68 to the seasonal use, on a form designed and provided by the
69 division.

70 (B) Any registrant who prior to expiration of his or her
71 vehicle registration drops or cancels insurance coverage for any
72 reason other than periodic or seasonal use shall either surrender
73 the registration plate or shall, by certified mail, notify the
74 division of the cancellation. The notice shall contain a state-
75 ment under penalty of false swearing that the vehicle will not be
76 operated on the roads or highways of this state.

77 (C) The registration of any vehicle upon which insurance
78 coverage has been dropped or canceled under subparagraph (B)
79 of this paragraph shall be reinstated upon submission of current

80 proof of insurance and payment of the duplicate plate fee
81 prescribed by this chapter.

82 (2) *Verification process.* —

83 The division may select any certificate of insurance,
84 owner's statement of insurance, motor vehicle registration or
85 any other form or document for verification of insurance
86 coverage with an insurance company.

87 (A) If the division verifies with an insurance company that
88 a motor vehicle was operated in this state without the required
89 security in effect based on information received on an accident
90 report, citation, court report or any other evidence of motor
91 vehicle operation, the division shall proceed against the owner
92 and driver in accordance with section seven, article two-a,
93 chapter seventeen-d of this code.

94 (B) If the division selects a motor vehicle registration for
95 verification of insurance and determines that the owner of a
96 registered motor vehicle did or does not have the required
97 security in effect at the time of verification, the division shall
98 proceed as follows:

99 (i) The division shall send a notice by certified mail to the
100 registered owner's address and to any lienholder noted on the
101 certificate of title, advising that unless the owner provides
102 verifiable proof that the vehicle was insured on the date of
103 verification or that the vehicle is or was not required to be
104 registered, the owner's driver's license will be suspended for
105 thirty days for a first offense and ninety days for a second or
106 subsequent offense and the motor vehicle registration will be
107 revoked until current verifiable proof of insurance is provided
108 to the division: *Provided*, That the division shall suspend the
109 driver's license of only one owner if a vehicle is registered in
110 more than one name.

111 (ii) If, after the notice required in clause (i) of this subpara-
112 graph is given to the owner and the lienholder, the owner fails
113 to provide proof of insurance, the driver's license suspension
114 and motor vehicle registration revocation shall go into effect
115 without further notice thirty days from the date of the notice.

116 (iii) The division shall reinstate the driver's license without
117 regard to the suspension period in this paragraph and reinstate
118 the motor vehicle registration upon submission of proof of
119 current insurance coverage and payment of the reinstatement
120 fees provided in section nine, article three, chapter seventeen-b
121 of this code and section seven, article nine of this chapter.

122 (3) If any person making an application required under the
123 provisions of this section, in the application knowingly provides
124 false information, false proof of security or a false statement of
125 insurance, or if any person, including an applicant's insurance
126 agent, knowingly counsels, advises, aids or abets another in
127 providing false information, false proof of security, or a false
128 statement of insurance in the application he or she is guilty of
129 a misdemeanor and, upon conviction thereof, shall be fined not
130 more than five hundred dollars, or be imprisoned in jail for a
131 period not to exceed fifteen days, or both fined and imprisoned
132 and, in addition to the fine or imprisonment, shall have his or
133 her driver's license suspended for a period of ninety days and
134 vehicle registration revoked if applicable.

135 (f) Any further information as may reasonably be required
136 by the division to enable it to determine whether the vehicle is
137 lawfully entitled to registration.

138 (g) Each application for registration shall be accompanied
139 by the fees provided in this article and an additional fee of fifty
140 cents for each motor vehicle for which the applicant seeks
141 registration, the fee to be deposited in a special revolving fund
142 for the operation by the division of its functions established by
143 the provisions of article two-a, chapter seventeen-d of this code.

144 (h) Revocation of a motor vehicle registration pursuant to
145 this section shall not affect the perfection or priority of a lien or
146 security interest attaching to the motor vehicle that is noted on
147 the certificate of title to the motor vehicle.

CHAPTER 17D. MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.

Article

- 2A. Security upon Motor Vehicles.**
- 5. Violation of Provisions of Chapter; Penalties.**
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ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.

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§17D-2A-3. Required security; exceptions.

1 (a) Every owner or registrant of a motor vehicle required to
2 be registered and licensed in this state shall maintain security as
3 hereinafter provided in effect continuously throughout the
4 registration or licensing period except in case of a periodic use
5 or seasonal vehicle, in which case the owner or registrant is
6 required to maintain security upon the vehicle only for the
7 portion of the year the vehicle is in actual use. As used in this
8 section, a periodic use or seasonal vehicle means a recreational
9 vehicle, antique motor vehicle, motorcycle or other motor
10 vehicle which is stored part of the year and used seasonally.

11 (b) Every nonresident owner or registrant of a motor
12 vehicle, which is operated upon any road or highway of this
13 state and which has been physically present within this state for
14 more than thirty days during the preceding three hundred sixty-

15 five days shall thereafter maintain security as hereinafter
16 provided in effect continuously throughout the period such
17 motor vehicle remains within this state.

18 (c) No person shall knowingly drive or operate upon any
19 road or highway in this state any motor vehicle upon which
20 security is required by the provisions of this article unless such
21 security is in effect.

22 (d) Such security shall be provided by one of the following
23 methods:

24 (1) By an insurance policy delivered or issued for the
25 delivery in this state by an insurance company authorized to
26 issue vehicle liability and property insurance policies in this
27 state within limits which shall be no less than the requirements
28 of section two, article four of this chapter; or

29 (2) By qualification as a self-insurer under the provisions
30 of section two, article six of this chapter.

31 (e) This article does not apply to any motor vehicle owned
32 by the state or by a political subdivision of this state, nor to any
33 motor vehicle owned by the federal government.

**§17D-2A-6. Investigation by duly authorized law-enforcement
officer to include inquiry regarding required
security; notice by officer or court to Division of
Motor Vehicles.**

1 (a) At the time of investigation of a motor vehicle offense
2 or accident in this state by the State Police or other law-
3 enforcement agency or when a vehicle is stopped by a
4 law-enforcement officer for reasonable cause, the officer of the
5 agency making the investigation shall inquire of the operator of
6 any motor vehicle involved as to the existence upon the vehicle
7 or vehicles of the proof of insurance or other security required

8 by the provisions of this code and upon a finding by
9 the law-enforcement agency, officer or agent thereof that the
10 security required by the provisions of this article is not in effect,
11 as to any vehicle, he or she shall notify the Division of Motor
12 Vehicles of the finding within five days if no citation requiring
13 a court appearance is issued: *Provided*, That the law-enforce-
14 ment officer or agent may not stop vehicles solely to inquire as
15 to the certificate of insurance.

16 (b) A defendant who is charged with a traffic offense that
17 requires an appearance in court shall present the court at the
18 time of his or her appearance or subsequent appearance with
19 proof that the defendant had security at the time of the traffic
20 offenses as required by this article.

21 (c) If, as a result of the defendant's failure to show proof,
22 the court determines that the defendant has violated this article,
23 the court shall notify the Division of Motor Vehicles within five
24 days. For purposes of this section, presentation of a certificate
25 of insurance reflecting insurance to be in effect on the date in
26 question shall constitute proof of surety.

**§17D-2A-7. Suspension or revocation of license, registration;
reinstatement.**

1 (a) Any owner of a motor vehicle, subject to the provisions
2 of this article, who fails to have the required security in effect
3 at the time such vehicle is being operated upon the roads or
4 highways of this state shall have his or her driver's license
5 suspended by the Commissioner of the Division of Motor
6 Vehicles for a period of thirty days and shall have his or her
7 motor vehicle registration revoked until such time as he or she
8 shall present to the Division of Motor Vehicles the proof of
9 security required by this article: *Provided*, That if a motor
10 vehicle is registered in more than one name, the driver's license
11 of only one of the owners shall be suspended by the commis-
12 sioner.

13 (b) Any person who knowingly operates a motor vehicle
14 upon the roads or highways of this state which does not have
15 the security required by the provisions of this article shall have
16 his or her driver's license suspended by the commissioner for
17 a period of thirty days.

18 (c) A person's driver's license shall be suspended for a
19 period of thirty days if the person is operating a motor vehicle
20 designated for off-highway use upon the roads and highways of
21 this state without the required security in effect, if the motor
22 vehicle is not properly registered and licensed or if the required
23 security was canceled.

24 (d) The commissioner may withdraw a suspension of a
25 driver's license provided that the commissioner is satisfied that
26 there was not a violation of the provisions of required security
27 related to operation of a motor vehicle upon the roads or
28 highways of this state by such person. The commissioner may
29 request additional information as needed in order to make such
30 determination.

31 (e) No person shall have his or her driver's license
32 suspended or motor vehicle registration revoked under any
33 provisions of this section unless he or she and any lienholder
34 noted on the certificate of title shall first be given written notice
35 of such suspension or revocation sent by certified mail, at least
36 thirty days prior to the effective date of such suspension or
37 revocation, and upon such person's written request, sent by
38 certified mail, he or she shall be afforded an opportunity for a
39 hearing thereupon as well as a stay of the commissioner's order
40 of suspension or revocation and an opportunity for judicial
41 review of such hearing. Upon affirmation of the commis-
42 sioner's order, the period of suspension or revocation shall
43 commence to run.

44 (f) Such suspended driver's license shall be reinstated
45 following the period of suspension upon compliance with the

46 conditions set forth in this article and such revoked motor
47 vehicle registration shall be reissued only upon lawful compli-
48 ance with the provisions of this article.

49 (g) If the commissioner has previously suspended the
50 person's driver's license for any reason related to failure to
51 maintain insurance on a motor vehicle within the previous five
52 years, the period of suspension shall be for a period of ninety
53 days.

54 (h) Revocation of a motor vehicle registration pursuant to
55 this section shall not affect the perfection or priority of a lien or
56 security interest attaching to the motor vehicle that is noted on
57 the certificate of title to the motor vehicle.

§17D-2A-8. Rules.

1 The Commissioner of the Division of Motor Vehicles is
2 hereby authorized to promulgate rules, in accordance with
3 chapter twenty-nine-a of this code, for the administration,
4 operation and enforcement of the provisions of this article.

ARTICLE 5. VIOLATION OF PROVISIONS OF CHAPTER; PENALTIES.

§17D-5-3. Forgery; suspension of license or registration; penalty for violations of chapter.

1 (a) Any person who forges or, without authority, signs any
2 evidence or proof of insurance, who files or offers for filing any
3 such evidence of proof knowing or having reason to believe that
4 it is forged or signed without authority or who provides false or
5 fraudulent information is guilty of a misdemeanor and, upon
6 conviction thereof, shall be fined not more than one thousand
7 dollars or imprisoned in jail for not more than one year, or both.

8 (b) Any person who violates any provision of this chapter
9 for which no penalty is otherwise provided is guilty of a
10 misdemeanor and, upon conviction thereof, shall be fined not

11 more than five hundred dollars or imprisoned in jail not more
12 than ninety days, or both.

13 (c) The commissioner shall suspend the person's driver's
14 license for a period of ninety days and shall revoke the motor
15 vehicle registration upon receipt of a conviction under subsec-
16 tion (a) of this section: *Provided*, That the motor vehicle
17 registration may be reinstated upon current proof of the security
18 required by this chapter.

19 (d) If the commissioner determines that any person has
20 provided false or fraudulent insurance information on any
21 application, form or document to the division or has provided
22 a fraudulently altered or forged evidence or proof of insurance
23 to the division, the division shall suspend the person's driver's
24 license for ninety days and revoke the motor vehicle registra-
25 tion until genuine proof of insurance is provided to the division.

26 (e) The person shall be afforded due process in accordance
27 with the provisions of section seven, article two-a of this
28 chapter.

ARTICLE 6. GENERAL PROVISIONS.

§17D-6-2. Self-insurers.

1 (a) Any person in whose name more than twenty-five
2 vehicles are registered may qualify as a self-insurer by annually
3 obtaining a certificate of self-insurance issued by the commis-
4 sioner as provided in subsection (b) of this section.

5 (b) The commissioner may, in his or her discretion, upon
6 the application of such a person, issue a certificate of self-
7 insurance when he or she is satisfied that such person is
8 possessed and will continue to be possessed of ability to pay
9 judgments obtained against such person. The commissioner
10 may not issue a certificate of self-insurance unless the applicant
11 is listed as the registered owner of the motor vehicles and the

12 applicant files an itemized financial statement that reflects a
13 minimum of one million dollars in total assets. The listed assets
14 must be wholly owned by the applicant.

15 (c) A self-insured applicant, under the provisions of this
16 section, shall notify the commissioner upon his or her filing of
17 a petition for bankruptcy and shall comply with the provisions
18 of section ten, article four, chapter seventeen-a of this code
19 related to the issuance of salvage certificates and the determina-
20 tion of a vehicle as a total loss.

21 (d) Upon not less than five days' notice and a hearing
22 pursuant to the notice, the commissioner may upon reasonable
23 grounds cancel a certificate of self-insurance. Failure to pay any
24 judgment within thirty days after such judgment shall have
25 become final, shall constitute a reasonable ground for the
26 cancellation of a certificate of self-insurance.

CHAPTER 165

(Com. Sub. for S. B. 51 — By Senators Kessler and Hunter)

[Passed March 9, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 22, 2006.]

AN ACT to amend and reenact §48-25-101 of the Code of West Virginia, 1931, as amended, relating to refining procedures for name change; permitting persons to file for a name change who were born in, married in and previously were residents in the county for at least fifteen years where the petition is brought; setting forth requirements for the verified petition; and providing that a second notice and publication are not required in the event of a rescheduled hearing.

Be it enacted by the Legislature of West Virginia:

That §48-25-101 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 25. CHANGE OF NAME.

§48-25-101. Petition to circuit court or family court for change of name; contents thereof; notice of application.

1 (a) Any person desiring a change of his or her own name,
2 or that of his or her child or ward, may apply therefor to the
3 circuit court or family court of the county in which he or she
4 resides by a verified petition setting forth and affirming the
5 following:

6 (1) That he or she has been a bona fide resident of the
7 county for at least one year prior to the filing of the petition;

8 (2) The cause for which the change of name is sought;

9 (3) The new name desired;

10 (4) The name change is not for purposes of avoiding debt
11 or creditors;

12 (5) The petitioner seeking said name change is not a
13 registered sex offender pursuant to any state or federal law;

14 (6) The name change sought is not for purposes of avoiding
15 any state or federal law regarding identity;

16 (7) The name change sought is not for any improper or
17 illegal purpose; and

18 (8) The petitioner is not a convicted felon in any jurisdic-
19 tion.

20 (b) Notwithstanding the provisions of subsection (a) of this
21 section, a nonresident of the county may apply for a change of
22 name if the person was born in the county, was married in the
23 county and was previously a resident of the county for a period
24 of at least fifteen years.

25 (c) Previous to the filing of the petition, the person shall
26 cause a notice of the time and place that the application will be
27 made to be published as a Class I legal advertisement in
28 compliance with the provisions of article three, chapter
29 fifty-nine of this code. The publication area for the publication
30 is the county: *Provided*, That the publication shall contain a
31 provision that the hearing may be rescheduled without further
32 notice or publication.

CHAPTER 166

(H. B. 4386 — By Delegate Morgan)

[Passed March 10, 2006, in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-2-24a, relating to ratifying the National Crime Prevention and Privacy Compact.

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 §15-2-24a, to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-24a. National Crime Prevention and Privacy Compact.

1 The Legislature of West Virginia approves and ratifies the
2 National Crime Prevention and Privacy Compact, 42 U.S.C.
3 §14616, as it existed on the first day of January, two thousand
4 six, and the compact shall remain in effect in this state until the
5 Legislature renounces the compact by statute. The Superinten-
6 dent of the West Virginia State Police shall execute, administer,
7 and implement the compact on behalf of the state, and may
8 adopt necessary rules, regulations, and procedures for the
9 national exchange of criminal history records for noncriminal
10 records purposes. Ratification of the compact does not affect
11 the obligations and responsibilities of the State Police criminal
12 records section regarding the dissemination of criminal history
13 records within West Virginia.

CHAPTER 167

**(Com. Sub. for H. B. 4486 — By Mr. Speaker, Mr. Kiss, and
Delegates Stemple, Cann, Kominar, Stalnaker, Amores,
Michael, Campbell, Perry, Hartman and Browning)**

[Passed March 11, 2006; in effect July 1, 2006.]

[Approved by the Governor on April 5, 2006.]

AN ACT to amend and reenact §15-1B-16 of the Code of West Virginia, 1931, as amended, relating to the National Guard generally; and increasing the base pay of members of the National Guard while in active service to the state.

Be it enacted by the Legislature of West Virginia:

That §15-1B-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1B. NATIONAL GUARD.**§15-1B-16. Pay and allowances.**

1 (a) Pay and allowances for officers and enlisted personnel
2 of the National Guard for drill, encampment or other duty for
3 training prescribed or ordered by the federal government shall
4 be such as are provided by the laws of the United States.

5 (b) Officers and enlisted personnel of the National Guard in
6 active service of the state shall receive the same pay and
7 allowances, in accordance with their rank and service, as are
8 prescribed for the armed forces of the United States: *Provided*,
9 That no member of the National Guard shall receive base pay
10 of less than one hundred dollars per day while he or she is in
11 active service of the state.

12 (c) Notwithstanding any of the provisions of this article,
13 members of the National Guard may, with their consent,
14 perform without pay, or without pay and allowances, any duties
15 prescribed by section thirteen of this article pursuant to
16 competent orders therefor: *Provided*, That necessary expenses
17 may be furnished such personnel within the discretion of the
18 Adjutant General.

CHAPTER 168

(S. B. 496— By Senators Bowman and Prezioso)

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §20-2-12 of the Code of West Virginia, 1931, as amended, relating to transportation of wildlife

outside of the state; penalties; and allowing residents and nonresidents to take legally killed, taken or captured game out of the state.

Be it enacted by the Legislature of West Virginia:

That §20-2-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-12. Transportation of wildlife out of state; penalties.

1 (a) A person may not transport or have in his or her
2 possession with the intention of transporting beyond the limits
3 of the state any species of wildlife or any part thereof killed,
4 taken, captured or caught within this state, except as provided
5 for in this section.

6 (b) A person legally entitled to hunt and fish in this state
7 may take with him or her personally, when leaving the state,
8 any wildlife that he or she has lawfully taken or killed, not
9 exceeding, during the open season, the number that any person
10 may lawfully possess.

11 (c) This section does not apply to persons legally entitled to
12 propagate and sell wild animals, wild birds, fish, amphibians
13 and other forms of aquatic life.

14 (d) Licensed resident hunters and trappers and resident and
15 nonresident fur dealers may transport beyond the limits of the
16 state pelts of game and fur-bearing animals taken during the
17 legal season.

18 (e) The hide, head, antlers and feet of a legally killed deer
19 and the hide, head, skull, organs and feet of a legally killed
20 black bear may also be transported beyond the limits of the
21 state.

22 (f) The director shall have authority to promulgate rules in
23 accordance with chapter twenty-nine-a of this code dealing with
24 the transportation and tagging of wildlife and the skins.

25 (g) A person violating the provisions of this section by
26 transporting or possessing with the intention of transporting
27 beyond the limits of this state deer or wild boar shall be deemed
28 to have committed a separate offense for each animal so
29 transported or possessed.

30 (h) A person violating the provisions of this section shall be
31 guilty of a misdemeanor and, upon conviction thereof, shall be
32 fined not less than twenty dollars nor more than three hundred
33 dollars and be imprisoned in jail not less than ten nor more than
34 sixty days.

CHAPTER 169

**(H. B. 4445 — By Mr. Speaker, Mr. Kiss, and Delegates
Cann, Stemple, Pethel, Swartzmiller and H. White)**

[Passed March 10, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §20-3-11 of the Code of West Virginia, 1931, as amended, relating to permitting the Director of the Division of Forestry to recover costs incurred in fighting fires.

Be it enacted by the Legislature of West Virginia:

That §20-3-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. FORESTS AND WILDLIFE AREAS.**§20-3-11. Recovery of costs incurred in fighting fires; landowners responsibility to extinguish fires.**

1 The Director of the Division of Forestry shall, in the name
2 of the state, recover from the person or persons, firms or
3 corporations whose negligence or whose violation of any
4 provision of this article caused any fire at any time on grass or
5 forest land, the amount expended by the state for the personal
6 services of persons especially employed under the provisions of
7 section four of this article to control, confine, extinguish or
8 suppress such fire, and the costs associated therewith, including
9 payment for the personal services rendered by full-time State
10 Division of Forestry employees, operating costs of state
11 equipment used and costs related thereto in controlling,
12 confining, extinguishing or suppressing such fire. Such recov-
13 ery shall not bar an action for damages by any other person.

14 Any such fire which was caused by a trespasser or by a
15 person who was upon the property without the consent of the
16 owner shall not be deemed caused by the negligence of the
17 owner; but the owner shall use all practical means to confine,
18 extinguish or suppress any such fire on his land even though it
19 was caused by any such person. If he fails to do so, after
20 becoming aware of such fire, the Director of the Division of
21 Forestry shall, in the name of the state, recover from him
22 amounts expended by the state for the personal services of
23 persons especially employed under the provisions of section
24 four of this article to control, confine, extinguish or suppress
25 such fire and the costs associated therewith, including payment
26 for the personal services rendered by full-time State Division of
27 Forestry employees, operating costs of state equipment used
28 and costs related thereto in controlling, confining, extinguishing
29 or suppressing such fire.

30 Any time that a landowner, his or her agent or employee is
31 aware of a fire on the landowner's property, the landowner shall
32 use all practical means to confine, extinguish or suppress the
33 fire.

CHAPTER 170

(Com. Sub. for H. B. 4453 — By Delegates Stemple,
Poling, Varner and Pethtel)

[Passed March 10, 2006; in effect from ninety days from passage.]

[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §20-7-4 of the Code of West Virginia, 1931, as amended, relating to law-enforcement powers and duties of conservation officers; providing for the state-wide authority of conservation officers to enforce litter control laws; providing for conservation officer's authority to initiate complaint for violations of laws related to wildlife, forests and natural resources; and relating to the procurement and execution of related arrest and search warrants.

Be it enacted by the Legislature of West Virginia:

That §20-7-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-4. Powers and duties of conservation officers.

1 (a) Conservation officers and other persons authorized to
2 enforce the provisions of this chapter are under the supervision
3 and direction of the director in the performance of their duties.

4 (b) Conservation officers have statewide jurisdiction and
5 have authority to:

6 (1) Arrest on sight, without warrant or other court process,
7 any person or persons committing a criminal offense in
8 violation of the laws of this state, in the presence of the officer,
9 but no arrest may be made where any form of administrative
10 procedure is prescribed by this chapter for the enforcement of
11 the provisions of this chapter;

12 (2) Carry such arms and weapons as may be prescribed by
13 the director in the course and performance of their duties, but
14 no license or other authorization shall be required for this
15 privilege;

16 (3) Search and examine, in the manner provided by law,
17 any boat, vehicle, automobile, conveyance, express or railroad
18 car, fish box, fish bucket or creel, game bag or game coat or
19 other place in which hunting and fishing paraphernalia, wild
20 animals, wild birds, fish, amphibians or other forms of aquatic
21 life could be concealed, packed or conveyed whenever they
22 have reason to believe that they would thereby secure or
23 discover evidence of the violation of the provisions of this
24 chapter;

25 (4) Execute and serve a search warrant, notice or other
26 process of law issued under the authority of this chapter or
27 other law relating to wildlife, forests, and all other natural
28 resources, by a magistrate or court having jurisdiction in the
29 same manner, with the same authority and with the same legal
30 effect as a sheriff;

31 (5) Require the operator of any motor vehicle or other
32 conveyance on or about the public highways or roadways, or in
33 or near the fields and streams of this state, to stop for the
34 purpose of allowing the conservation officers to conduct game-
35 kill surveys;

36 (6) Summon aid in making arrests or seizures or in
37 executing warrants, notices or processes, in the same manner as
38 sheriffs;

39 (7) Enter private lands or waters within the state while
40 engaged in the performance of their official duties;

41 (8) Arrest on sight, without warrant or other court process,
42 subject to the limitations set forth in subdivision (1) of this
43 section, any person or persons committing a criminal offense in
44 violation of any law of this state in the presence of the officer
45 on any state-owned lands and waters and lands and waters
46 under lease by the Division of Natural Resources and all
47 national forest lands, waters and parks and U.S. Corps of Army
48 Engineers' properties within the boundaries of the State of West
49 Virginia and, in addition to the authority conferred in other
50 subdivisions of this section, execute all arrest warrants on these
51 state and national lands, waters and parks and U.S. Corps of
52 Army Engineers' properties, consistent with the provisions of
53 article one, chapter sixty-two of this code;

54 (9) Arrest any person who enters upon the land or premises
55 of another without written permission from the owner of the
56 land or premises in order to cut, damage or carry away, or cause
57 to be cut, damaged or carried away, any timber, trees, logs,
58 posts, fruit, nuts, growing plants or products of any growing
59 plant. Any person convicted of cutting, damaging or carrying
60 away or causing to be cut, damaged or carried away any timber,
61 trees, logs, posts, fruits, nuts, growing plants or products of
62 growing plants is liable to the owner in the amount of three
63 times the value of the timber, trees, logs, posts, fruit, nuts,
64 growing plants or products of any growing plant, in addition to
65 and notwithstanding any other penalties by law provided by
66 section thirteen, article three, chapter sixty-one of this code;

67 (10) Make a complaint in writing before any court or
68 officer having jurisdiction, and procure and execute the warrant,

69 when the officer knows or has reason to believe that a person
70 has violated a law of this state. The actions of the conservation
71 officer have the same force and effect as if made by a sheriff;

72 (11) Serve and execute warrants for the arrest of any person
73 and warrants for the search of any premises, buildings,
74 properties or conveyances issued by a properly constituted
75 authority in the same manner, with the same authority, and with
76 the same legal effect, as a sheriff; and

77 (12) Do all things necessary to carry into effect the
78 provisions of this chapter.

CHAPTER 171

**(H. B. 4622 — By Delegates Swartzmiller,
Anderson, Stemple and Ashley)**

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §22-6-26 of the Code of West Virginia, 1931, as amended; and to amend and reenact §22-21-6 and §22-21-8 of said code, all relating to oil and gas well and methane gas well performance bonds; reducing bond amounts; and increasing certain permit fees.

Be it enacted by the Legislature of West Virginia:

That §22-6-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §22-21-6 and §22-21-8 of said code be amended and reenacted, all to read as follows:

Article

6. **Office of Oil and Gas; Oil and Gas Wells; Administration; Enforcement.**
21. **Coalbed Methane Wells and Units.**

ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION; ENFORCEMENT.**§22-6-26. Performance bonds; corporate surety or other security.**

1 (a) No permit shall be issued pursuant to this article unless
2 a bond as described in subsection (d) of this section which is
3 required for a particular activity by this article is or has been
4 furnished as provided in this section.

5 (b) A separate bond as described in subsection (d) of this
6 section may be furnished for a particular oil or gas well, or for
7 a particular well for the introduction of liquids for the purposes
8 provided in section twenty-five of this article. A separate bond
9 as described in subsection (d) of this section shall be furnished
10 for each well drilled or converted for the introduction of liquids
11 for the disposal of pollutants or the effluent therefrom. Each of
12 these bonds shall be in the sum of five thousand dollars,
13 payable to the State of West Virginia, conditioned on full
14 compliance with all laws, rules relating to the drilling,
15 redrilling, deepening, casing and stimulating of oil and gas
16 wells (or, if applicable, with all laws, rules relating to drilling
17 or converting wells for the introduction of liquids for the
18 purposes provided in section twenty-five of this article or for
19 the introduction of liquids for the disposal of pollutants or the
20 effluent therefrom) and to the plugging, abandonment and
21 reclamation of wells and for furnishing such reports and
22 information as may be required by the director.

23 (c) When an operator makes or has made application for
24 permits to drill or stimulate a number of oil and gas wells or to
25 drill or convert a number of wells for the introduction of liquids

26 for the purposes provided in section twenty-five of this article,
27 the operator may in lieu of furnishing a separate bond furnish
28 a blanket bond in the sum of fifty thousand dollars, payable to
29 the State of West Virginia, and conditioned as aforesaid in
30 subsection (b) of this section.

31 (d) The form of the bond required by this article shall be
32 approved by the director and may include, at the option of the
33 operator, surety bonding, collateral bonding (including cash and
34 securities) letters of credit, establishment of an escrow account,
35 self-bonding or a combination of these methods. If collateral
36 bonding is used, the operator may elect to deposit cash, or
37 collateral securities or certificates as follows: Bonds of the
38 United States or its possessions, of the federal land bank, or the
39 homeowners' loan corporation; full faith and credit general
40 obligation bonds of the State of West Virginia, or other states,
41 and of any county, district or municipality of the State of West
42 Virginia or other states; or certificates of deposit in a bank in
43 this state, which certificates shall be in favor of the division.
44 The cash deposit or market value of such securities or certifi-
45 cates shall be equal to or greater than the amount of the bond.
46 The director shall, upon receipt of any such deposit of cash,
47 securities or certificates, promptly place the same with the
48 Treasurer of the State of West Virginia whose duty it shall be
49 to receive and hold the same in the name of the state in trust for
50 the purpose of which the deposit is made when the permit is
51 issued. The operator shall be entitled to all interest and income
52 earned on the collateral securities filed by such operator. The
53 operator making the deposit shall be entitled from time to time
54 to receive from the State Treasurer, upon the written approval
55 of the director, the whole or any portion of any cash, securities
56 or certificates so deposited, upon depositing with the Treasurer
57 in lieu thereof, cash or other securities or certificates of the
58 classes herein specified having value equal to or greater than
59 the amount of the bond.

60 (e) When an operator has furnished a separate bond from a
61 corporate bonding or surety company to drill, fracture or
62 stimulate an oil or gas well and the well produces oil or gas or
63 both, its operator may deposit with the director cash from the
64 sale of the oil or gas or both until the total deposited is five
65 thousand dollars. When the sum of the cash deposited is five
66 thousand dollars, the separate bond for the well shall be
67 released by the director. Upon receipt of such cash, the director
68 shall immediately deliver the same to the Treasurer of the State
69 of West Virginia. The Treasurer shall hold such cash in the
70 name of the state in trust for the purpose for which the bond
71 was furnished and the deposit was made. The operator shall be
72 entitled to all interest and income which may be earned on the
73 cash deposited so long as the operator is in full compliance with
74 all laws, rules relating to the drilling, redrilling, deepening,
75 casing, plugging, abandonment and reclamation of the well for
76 which the cash was deposited and so long as the operator has
77 furnished all reports and information as may be required by the
78 director. If the cash realized from the sale of oil or gas or both
79 from the well is not sufficient for the operator to deposit with
80 the director the sum of ten thousand dollars within one year of
81 the day the well started producing, the corporate or surety
82 company which issued the bond on the well may notify the
83 operator and the director of its intent to terminate its liability
84 under its bond. The operator then shall have thirty days to
85 furnish a new bond from a corporate bonding or surety
86 company or collateral securities or other forms of security, as
87 provided in the next preceding paragraph of this section with
88 the director. If a new bond or collateral securities or other
89 forms of security are furnished by the operator, the liability of
90 the corporate bonding or surety company under the original
91 bond shall terminate as to any acts and operations of the
92 operator occurring after the effective date of the new bond or
93 the date the collateral securities or other forms of security are
94 accepted by the Treasurer of the State of West Virginia. If the
95 operator does not furnish a new bond or collateral securities or

96 other forms of security, as provided in the next preceding
97 paragraph of this section, with the director, the operator shall
98 immediately plug, fill and reclaim the well in accordance with
99 all of the provisions of law and rules applicable thereto. In such
100 case, the corporate or surety company which issued the original
101 bond shall be liable for any plugging, filling or reclamation not
102 performed in accordance with such laws and rules.

103 (f) Any separate bond furnished for a particular well prior
104 to the effective date of this chapter shall continue to be valid for
105 all work on the well permitting prior to the eleventh day of July,
106 one thousand nine hundred eighty-five; but no permit shall
107 hereafter be issued on such a particular well without a bond
108 complying with the provisions of this section. Any blanket
109 bond furnished prior to the eleventh day of July, one thousand
110 nine hundred eighty-five shall be replaced with a new blanket
111 bond conforming to the requirements of this section, at which
112 time the prior bond shall be discharged by operation of law; and
113 if the director determines that any operator has not furnished a
114 new blanket bond, the director shall notify the operator by
115 certified mail, return receipt requested, of the requirement for
116 a new blanket bond; and failure to submit a new blanket bond
117 within sixty days after receipt of the notice from the director
118 shall work a forfeiture under subsection (i) of this section of the
119 blanket bond furnished prior to the eleventh day of July, one
120 thousand nine hundred eighty-five.

121 (g) Any such bond shall remain in force until released by
122 the director and the director shall release the same upon
123 satisfaction that the conditions thereof have been fully per-
124 formed. Upon the release of any such bond, any cash or
125 collateral securities deposited shall be returned by the director
126 to the operator who deposited same.

127 (h) Whenever the right to operate a well is assigned or
128 otherwise transferred, the assignor or transferor shall notify the

129 department of the name and address of the assignee or trans-
130 feree by certified mail, return receipt requested, not later than
131 five days after the date of the assignment or transfer. No
132 assignment or transfer by the owner shall relieve the assignor
133 or transferor of the obligations and liabilities unless and until
134 the assignee or transferee files with the department the well
135 name and the permit number of the subject well, the county and
136 district in which the subject well is located, the names and
137 addresses of the assignor or transferor, and assignee or
138 transferee, a copy of the instrument of assignment or transfer
139 accompanied by the applicable bond, cash, collateral security
140 or other forms of security, described in section twelve, fourteen,
141 twenty-three or twenty-six of this article, and the name and
142 address of the assignee's or transferee's designated agent if
143 assignee or transferee would be required to designate such an
144 agent under section six of this article, if assignee or transferee
145 were an applicant for a permit under said section six. Every
146 well operator required to designate an agent under this section
147 shall within five days after the termination of such designation
148 notify the department of such termination and designate a new
149 agent.

150 Upon compliance with the requirements of this section by
151 assignor or transferor and assignee or transferee, the director
152 shall release assignor or transferor from all duties and require-
153 ments of this article, and the deputy director shall give written
154 notice of release unto assignor or transferor of any bond and
155 return unto assignor or transferor any cash or collateral
156 securities deposited pursuant to section twelve, fourteen,
157 twenty-three or twenty-six of this article.

158 (i) If any of the requirements of this article or rules
159 promulgated pursuant thereto or the orders of the director have
160 not been complied with within the time limit set by the
161 violation notice as defined in sections three, four and five of
162 this article, the performance bond shall then be forfeited.

163 (j) When any bond is forfeited pursuant to the provisions of
164 this article or rules promulgated pursuant thereto, the director
165 shall give notice to the Attorney General who shall collect the
166 forfeiture without delay.

167 (k) All forfeitures shall be deposited in the Treasury of the
168 State of West Virginia in the special reclamation fund as
169 defined in section twenty-nine of this article.

ARTICLE 21. COALBED METHANE WELLS AND UNITS.

§22-21-6. Permit required for coalbed methane well; permit fee: application; soil erosion control plan; penalties.

§22-21-8. Performance bonds; corporate surety or other security.

§22-21-6. Permit required for coalbed methane well; permit fee; application; soil erosion control plan; penalties.

1 (a) It is unlawful for any person to commence, operate,
2 deepen or stimulate any coalbed methane well, to conduct any
3 horizontal drilling of a well commenced from the surface for
4 the purpose of commercial production of coalbed methane, or
5 to convert any existing well, vent hole or other hole to a
6 coalbed methane well, including in any case site preparation
7 work which involves any disturbance of land, without first
8 securing from the chief a permit pursuant to this article.

9 (b) Every permit application filed under this section shall
10 be verified and shall contain the following:

11 (1) The names and addresses of: (i) The well operator; (ii)
12 the agent required to be designated under subsection (e) of this
13 section; and (iii) every person or entity whom the applicant
14 must notify under any section of this article;

15 (2) The name and address of each coal operator and each
16 coal owner of record or providing a record declaration of notice
17 pursuant to section thirty-six, article six of this chapter of any

18 coal seam which is: (i) To be penetrated by a proposed well; (ii)
19 within seven hundred fifty horizontal feet of any portion of the
20 proposed well bore; or (iii) within one hundred vertical feet of
21 the designated completion coal seams of the proposed well,
22 except that in the case of an application to convert a ventilation
23 hole to a gob well, the name and address only of such owner or
24 operator of the seams to be penetrated by a proposed well shall
25 be necessary;

26 (3) The well name or such other identification as the chief
27 may require;

28 (4) The approximate depth to which the well is to be
29 drilled, deepened or converted, the coal seams (stating the depth
30 and thickness of each seam) in which the well will be com-
31 pleted for production, and any other coal seams (including the
32 depth and thickness of each seam) which will be penetrated by
33 the well;

34 (5) A description of any means to be used to stimulate the
35 well;

36 (6) If the proposed well will require casing or tubing to be
37 set, the entire casing program for the well, including the size of
38 each string of pipe, the starting point and depth to which each
39 string is to be set, and the extent to which each such string is to
40 be cemented;

41 (7) If the proposed operation is to convert an existing well,
42 as defined in section one, article six of this chapter, or to
43 convert a vertical ventilation hole to a coalbed methane well, all
44 information required by this section, all formations from which
45 production is anticipated, and any plans to plug any portion of
46 the well;

47 (8) Except for a gob well or vent hole proposed to be
48 converted to a well, if the proposed coalbed methane well will

49 be completed in some but not all coal seams for production, a
50 plan and design for the well which will protect all workable
51 coal seams which will be penetrated by the well;

52 (9) If the proposed operations will include horizontal
53 drilling of a well commenced on the surface, a description of
54 such operations, including both the vertical and horizontal
55 alignment and extent of the well from the surface to total depth;

56 (10) Any other relevant information which the chief may
57 require by rule.

58 (c) Each application for a coalbed methane well permit
59 shall be accompanied by the following:

60 (1) The applicable bond prescribed by section eight of this
61 article;

62 (2) A permit application fee of six hundred fifty dollars;

63 (3) The erosion and sediment control plan required under
64 subsection (d) of this section;

65 (4) The consent and agreement of the coal owner as
66 required by section seven and, if applicable, section twenty of
67 this article;

68 (5) A plat prepared by a licensed land surveyor or regis-
69 tered engineer showing the district and county in which the drill
70 site is located, the name of the surface owner of the drill site
71 tract, the acreage of the same, the names of the surface owners
72 of adjacent tracts, the names of all coal owners underlying the
73 drill site tract, the proposed or actual location of the well
74 determined by a survey, the courses and distances of such
75 location from two permanent points or landmarks on said tract,
76 the location of any other existing or permitted coalbed methane
77 well or any oil or gas well located within two thousand five

78 hundred feet of the drill site, the number to be given the coalbed
79 methane well, the proposed date for completion of drilling, the
80 proposed date for any stimulation of the well, and if horizontal
81 drilling of a well commenced on the surface is proposed, the
82 vertical and horizontal alignment and extent of the well;

83 (6) A certificate by the applicant that the notice require-
84 ments of section nine of this article have been satisfied by the
85 applicant. Such certification may be by affidavit of personal
86 service, or the return receipt card, or other postal receipt, for
87 certified mailing.

88 (d) An erosion and sediment control plan shall accompany
89 each application for a permit. Such plan shall contain methods
90 of stabilization and drainage, including a map of the project
91 area indicating the amount of acreage disturbed. The erosion
92 and sediment control plan shall meet the minimum require-
93 ments of the West Virginia erosion and sediment control
94 manual as adopted and from time to time amended by the office
95 of oil and gas in consultation with the several soil conservation
96 districts pursuant to the control program established in this state
97 through section 208 of the federal Water Pollution Control Act
98 Amendments of 1972 [33 U.S.C. 1288]. The erosion and
99 sediment control plan shall become part of the terms and
100 conditions of a permit and the provisions of the plan shall be
101 carried out where applicable in operations under the permit. The
102 erosion and sediment control plan shall set out the proposed
103 method of reclamation which shall comply with the require-
104 ments of section thirty, article six of this chapter.

105 (e) The well operator named in such application shall
106 designate the name and address of an agent for such operator
107 who shall be the attorney-in-fact for the operator and who shall
108 be a resident of the State of West Virginia, upon whom notices,
109 orders or other communications issued pursuant to this article
110 may be served, and upon whom process may be served. Every

111 well operator required to designate an agent under this section
112 shall within five days after the termination of such designation
113 notify the office of such termination and designate a new agent.

114 (f) The well owner or operator shall install the permit
115 number as issued by the chief in a legible and permanent
116 manner to the well upon completion of any permitted work. The
117 dimensions, specifications and manner of installation shall be
118 in accordance with the rules of the chief.

119 (g) The chief shall deny the issuance of a permit if he or she
120 determines that the applicant has committed a substantial
121 violation of a previously issued permit, including the erosion
122 and sediment control plan, or a substantial violation of one or
123 more of the rules promulgated hereunder, and has failed to
124 abate or seek review of the violation. In the event that the chief
125 finds that a substantial violation has occurred with respect to
126 existing operations and that the operator has failed to abate or
127 seek review of the violation in the time prescribed, he or she
128 may suspend the permit on which said violation exists, after
129 which suspension the operator shall forthwith cease all work
130 being conducted under the permit until the chief reinstates the
131 permit, at which time the work may be continued. The chief
132 shall make written findings of any such determination made by
133 him or her and may enforce the same in the circuit courts of this
134 state and the operator may appeal such suspension pursuant to
135 the provisions of section twenty-five of this article. The chief
136 shall make a written finding of any such determination.

137 (h) Any person who violates any provision of this section
138 shall be guilty of a misdemeanor and, upon conviction thereof,
139 shall be fined not more than five thousand dollars, or be
140 imprisoned in the county jail not more than twelve months, or
141 both fined and imprisoned.

§22-21-8. Performance bonds; corporate surety or other security.

1 (a) No permit shall be issued pursuant to this article unless
2 a bond is or has been furnished as provided in this section.

3 (b) A separate bond may be furnished for a particular
4 coalbed methane well in the sum of five thousand dollars,
5 payable to the State of West Virginia, conditioned on full
6 compliance with all laws and rules relating to the drilling,
7 operation and stimulation of such wells, to the plugging,
8 abandonment and reclamation thereof, and for furnishing such
9 reports and information as may be required by the chief.

10 (c) When an operator makes or has made application for
11 permits to drill, operate or stimulate more than one coalbed
12 methane well or a combination of coalbed methane wells and
13 wells regulated under article one, chapter twenty-two-b of this
14 code, the operator may in lieu of furnishing a separate bond
15 furnish a blanket bond in the sum of fifty thousand dollars,
16 payable to the State of West Virginia, and conditioned as stated
17 in subsection (b) of this section.

18 (d) All bonds submitted hereunder shall have a corporate
19 bonding or surety company authorized to do business in the
20 State of West Virginia as surety thereon, or in lieu of a
21 corporate surety, the operator may elect to deposit with the
22 chief cash, collateral securities or any combination thereof as
23 provided in subsection (d), section twenty-six, article six of this
24 chapter.

25 (e) For purposes of bonding requirements, a coalbed
26 methane well shall be treated as a well, as defined and regulated
27 in article one, chapter twenty-two-b of this code, and the
28 provisions of subsections (e), (g), (h), (i) and (j) of section
29 twenty-six thereof shall apply.

CHAPTER 172

(Com. Sub. for S. B. 521 — By Senators Bowman,
Prezioso, Dempsey and Love)

[Passed March 8, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2006.]

AN ACT to amend and reenact §20-5-2 of the Code of West Virginia, 1931, as amended, relating to the state parks and recreation system; providing that interest on investment of parks' operational revenue is to be used exclusively for the benefit of the state parks and public recreation system; allowing certain designated parks to raise the minimum bank deposit from two hundred fifty dollars to five hundred dollars; and providing the Natural Resources Commission authority to promulgate rules to permit and regulate the hunting of white-tailed deer in state parks.

Be it enacted by the Legislature of West Virginia:

That §20-5-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. PARKS AND RECREATION.

§20-5-2. Powers of the director with respect to the section of parks and recreation.

1 (a) The Director of the Division of Natural Resources is
2 responsible for the execution and administration of the
3 provisions in this article as an integral part of the parks and
4 recreation program of the state and shall organize and staff the
5 section of parks and recreation for the orderly, efficient and

6 economical accomplishment of these ends. The authority
7 granted in the year one thousand nine hundred ninety-four to
8 the Director of the Division of Natural Resources to employ up
9 to six additional unclassified personnel to carry out the parks'
10 functions of the Division of Natural Resources is continued.

11 (b) The Director of the Division of Natural Resources shall:

12 (1) Establish, manage and maintain the state's parks and
13 recreation system for the benefit of the people of this state and
14 do all things necessary and incidental to the development and
15 administration of the state's parks and recreation system;

16 (2) Acquire property for the state in the name of the
17 Division of Natural Resources by purchase, lease or agreement;
18 retain, employ and contract with legal advisors and consultants;
19 or accept or reject for the state, in the name of the division,
20 gifts, donations, contributions, bequests or devises of money,
21 security or property, both real and personal, and any interest in
22 the property, including lands and waters, for state park or
23 recreational areas for the purpose of providing public recre-
24 ation: *Provided*, That the provisions of section twenty, article
25 one of this chapter are specifically made applicable to any
26 acquisitions of land: *Provided, however*, That any sale,
27 exchange or transfer of property for the purposes of completing
28 land acquisitions or providing improved recreational opportuni-
29 ties to the citizens of the state is subject to the procedures of
30 article one-a of this chapter: *Provided further*, That no sale of
31 any park or recreational area property, including lands and
32 waters, used for purposes of providing public recreation on the
33 effective date of this article and no privatization of any park
34 may occur without statutory authority;

35 (3) Approve and direct the use of all revenue derived from
36 the operation of the state parks and public recreation system for
37 the operation, maintenance and improvement of the system,

38 individual projects of the system or for the retirement of park
39 development revenue bonds: *Provided*, That all revenues
40 derived from the operation of the state parks and public
41 recreation system shall be invested by the Treasurer and all
42 proceeds from investment earnings shall accrue for the
43 exclusive use for the operation, maintenance, and improvement
44 of the system, individual projects of the system or for the
45 retirement of park development revenue bonds;

46 (4) Effectively promote and market the state's parks, state
47 forests, state recreation areas and wildlife recreational resources
48 by approving the use of no less than twenty percent of the:

49 (A) Funds appropriated for purposes of advertising and
50 marketing expenses related to the promotion and development
51 of tourism, pursuant to subsection (j), section eighteen, article
52 twenty-two, chapter twenty-nine of this code; and

53 (B) Funds authorized for expenditure from the Tourism
54 Promotion Fund for purposes of direct advertising, pursuant to
55 section twelve, article two, chapter five-b of this code and
56 section ten, article twenty-two-a, chapter twenty-nine of this
57 code;

58 (5) Issue park development revenue bonds as provided in
59 this article;

60 (6) Provide for the construction and operation of cabins,
61 lodges, resorts, restaurants and other developed recreational
62 service facilities, subject to the provisions of section fifteen of
63 this article and section twenty, article one of this chapter;

64 (7) The director may sell timber that has been severed in a
65 state park incidental to the construction of park facilities or
66 related infrastructure where the construction is authorized by
67 the Legislature in accordance with section twenty, article one

68 of this chapter, and the sale of the timber is otherwise in the
69 best interest of park development, without regard to proceeds
70 derived from the sale of timber. The gross proceeds derived
71 from the sale of timber shall be deposited into the operating
72 budget of the park from which the timber was harvested;

73 (8) Propose rules for legislative approval in accordance
74 with the provisions of article three, chapter twenty-nine-a of
75 this code to control the uses of parks: *Provided*, That the
76 director may not permit public hunting, except as otherwise
77 provided in this section, the exploitation of minerals or the
78 harvesting of timber for commercial purposes in any state park;

79 (9) Exempt designated state parks from the requirement that
80 all payments must be deposited in a bank within twenty-four
81 hours for amounts less than five hundred dollars notwithstand-
82 ing any other provision of this code to the contrary: *Provided*,
83 That such designated parks shall make a deposit in any amount
84 no less than every seven working days;

85 (10) Waive the use fee normally charged to an individual or
86 group for one day's use of a picnic shelter or one week's use of
87 a cabin in a state recreation area when the individual or group
88 donates the materials and labor for the construction of the
89 picnic shelter or cabin: *Provided*, That the individual or group
90 was authorized by the director to construct the picnic shelter or
91 cabin and that it was constructed in accordance with the
92 authorization granted and the standards and requirements of the
93 division pertaining to the construction. The individual or group
94 to whom the waiver is granted may use the picnic shelter for
95 one reserved day or the cabin for one reserved week during
96 each calendar year until the amount of the donation equals the
97 amount of the loss of revenue from the waiver or until the
98 individual dies or the group ceases to exist, whichever first
99 occurs. The waiver is not transferable. The director shall permit
100 free use of picnic shelters or cabins to individuals or groups

101 who have contributed materials and labor for construction of
102 picnic shelters or cabins prior to the effective date of this
103 section. The director shall propose a legislative rule for
104 promulgation in accordance with the provisions of article three,
105 chapter twenty-nine-a of this code governing the free use of
106 picnic shelters or cabins provided in this section, the eligibility
107 for free use, the determination of the value of the donations of
108 labor and materials, the appropriate definitions of a group and
109 the maximum time limit for the use;

110 (11) Provide within the parks a market for West Virginia
111 arts, crafts and products, which shall permit gift shops within
112 the parks to offer for sale items purchased on the open market
113 from local artists, artisans, craftsmen and suppliers and local or
114 regional crafts cooperatives;

115 (12) Provide that reservations for reservable campsites may
116 be made, upon two days' advance notice, for any date for which
117 space is available within a state park or recreational area
118 managed by the parks and recreation section;

119 (13) Provide that reservations for all state parks and
120 recreational areas managed by the parks and recreation section
121 of the division may be made by use of a valid credit card;

122 (14) Develop a plan to establish a centralized computer
123 reservation system for all state parks and recreational areas
124 managed by the parks and recreation section and to implement
125 the plan as funds become available; and

126 (15) Notwithstanding the provisions of section fifty-eight,
127 article two of this chapter, the Natural Resources Commission
128 is authorized to promulgate rules in accordance with the
129 provisions of article three, chapter twenty-nine-a of this code to
130 permit and regulate the hunting of white-tail deer in any state

131 park as deemed appropriate by the director to protect the
132 ecological integrity of the area.

CHAPTER 173

**(S. B. 556 — By Senators Helmick, Sharpe, Chafin, Prezioso,
Plymale, Edgell, Love, Bailey, Bowman, McCabe, Unger,
Minear, Boley, Facemyer, Yoder, Guills and Sprouse)**

[Passed March 10, 2006; in effect from passage.]

[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §20-5-15 of the Code of West Virginia, 1931, as amended, relating to operational contracts within the state parks and public recreational system; removing the requirement of prior legislative approval and authorization; and requiring legislative notice and public hearings for certain contracts.

Be it enacted by the Legislature of West Virginia:

That §20-5-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. PARKS AND RECREATION.

§20-5-15. Authority to enter into certain operational contracts; terms and conditions; necessity for legislative notice and public hearing before certain facilities are placed under contract.

- 1 (a) The director may enter into a contract with a person,
- 2 firm, corporation, foundation or public agency for the operation

3 of a commissary, restaurant, recreational facility or other
4 establishment within the state parks and public recreational
5 system, for a duration not to exceed ten years, but the contract
6 may provide for an option to renew at the director's discretion
7 for an additional term or terms not to exceed ten years at the
8 time of renewal. Prior to initiating of a contract for the
9 operation of a state park lodge, cabin, campground, gift shop,
10 golf facility, including pro shop operations, or ski facility, the
11 director shall submit written notice of the specific location
12 subject to the contract to the Legislature by letter to the Senate
13 President and the Speaker of the House of Delegates.

14 (b) Prior to initiating a contract for a previously state-
15 operated state park lodge, cabin, campground, gift shop, golf
16 facility, including pro shop operations, or ski facility, the
17 director shall conduct a public hearing to be held at a reason-
18 able time and place within the county in which the facility is
19 located. Notice of the time, place and purpose of the public
20 hearing shall be provided as a Class II legal advertisement in
21 accordance with the provisions of section two, article three,
22 chapter fifty-nine of this code which notice shall be given at
23 least for the first publication twenty days in advance of said
24 hearing.

25 (c) Any contract entered into by the director shall provide
26 an obligation upon the part of the operator that he or she
27 maintain a level of performance satisfactory to the director and
28 shall further provide that any contract may be terminated by the
29 director in the event he or she determines that the performance
30 is unsatisfactory and has given the operator reasonable notice
31 of the termination.

CHAPTER 174

(S. B. 557 — By Senators Helmick, Sharpe, Chafin, Prezioso, Plymale, Edgell, Love, Bailey, Bowman, McCabe, Unger, Minear, Boley, Facemyer, Yoder, Guills and Sprouse)

[Passed March 11, 2006; in effect from passage.]

[Approved by the Governor on April 5, 2006.]

AN ACT to amend and reenact §17-16A-1, §17-16A-6, §17-16A-10, §17-16A-11, §17-16A-18, §17-16A-18a, §17-16A-20, §17-16A-21, §17-16A-22 and §17-16A-29 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §17-16A-13a, all relating to the West Virginia Parkways, Economic Development and Tourism Authority; eliminating the authority of the authority to issue certain additional revenue bonds after the effective date of the amendments to the section; placing certain limitations on the authority of the authority to issue revenue refunding bonds; limiting the purposes for which the authority may issue revenue refunding bonds; limiting the authority of the authority to acquire, hold or lease real property; limiting the ability of placement of new tolls; requiring public notice and hearings in certain circumstances; requiring certain procedures prior to any increase in rates, tolls or charges, approve certain contracts or proposals, issue refunding bonds or take any action that would result in or require an increase in rates, tolls or charges; requiring applications for commuter passes at every Division of Motor Vehicles office in the state; eliminating the authority to pledge state road funds in certain circumstances; and providing for a discount program.

Be it enacted by the Legislature of West Virginia:

That §17-16A-1, §17-16A-6, §17-16A-10, §17-16A-11, §17-16A-18, §17-16A-18a, §17-16A-20, §17-16A-21, §17-16A-22 and §17-16A-29 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 §17-16A-13a, all to read as follows:

ARTICLE 16A. WEST VIRGINIA PARKWAYS, ECONOMIC DEVELOPMENT AND TOURISM AUTHORITY.

- §17-16A-1. Constructing, operating, financing, etc., parkway, economic development and tourism projects.
- §17-16A-6. Parkways authority's powers.
- §17-16A-10. Parkway revenue bonds generally.
- §17-16A-11. Parkway revenue bonds—West Virginia Turnpike; related projects.
- §17-16A-13a. Public notice and hearing requirements.
- §17-16A-18. Cessation of tolls.
- §17-16A-18a. Corridor "L" toll fees authorized; commuter pass; annual report.
- §17-16A-20. Parkway projects part of state road system.
- §17-16A-21. Parkway revenue refunding bonds—Generally.
- §17-16A-22. Parkway revenue refunding bonds—West Virginia Turnpike.
- §17-16A-29. Discount program for purchasers of West Virginia EZ Pass transponders.

§17-16A-1. Constructing, operating, financing, etc., parkway, economic development and tourism projects.

1 In order to remove the present handicaps and hazards on the
 2 congested highways and roads in the State of West Virginia, to
 3 facilitate vehicular traffic throughout the state, to promote and
 4 enhance the tourism industry and to develop and improve
 5 tourist facilities and attractions in the state, to promote the
 6 agricultural, economic and industrial development of the state
 7 and to provide for the construction of modern express high-
 8 ways, including center divisions, ample shoulder widths,
 9 long sight distances, the bypassing of cities, multiple lanes in
 10 each direction and grade separations at all intersections with
 11 other highways and railroads, to provide for the development,
 12 construction, improvement and enhancement of state parks,
 13 tourist facilities and attractions and to provide for the improve-

14 ment and enhancement of state parks presently existing, the
15 West Virginia Parkways, Economic Development and Tourism
16 Authority (hereinafter created) is hereby authorized and
17 empowered to construct, reconstruct, improve, maintain, repair
18 and operate parkway projects, economic development projects
19 and tourism projects (as those terms are hereinafter defined in
20 section five of this article) at such locations as shall be
21 approved by the state Department of Transportation.

§17-16A-6. Parkways authority's powers.

1 (a) The parkways authority is hereby authorized and
2 empowered:

3 (1) To adopt bylaws for the regulation of its affairs and the
4 conduct of its business;

5 (2) To adopt an official seal and alter the same at pleasure;

6 (3) To maintain an office at such place or places within the
7 state as it may designate;

8 (4) To sue and be sued in its own name, plead and be
9 impleaded. Any and all actions against the parkways authority
10 shall be brought only in the county in which the principal office
11 of the parkways authority shall be located;

12 (5) To construct, reconstruct, improve, maintain, repair and
13 operate projects at such locations within the state as may be
14 determined by the parkways authority: *Provided*, That the
15 parkways authority shall be prohibited from constructing motels
16 or any other type of lodging facility within five miles of the
17 West Virginia Turnpike;

18 (6) To issue parkway revenue bonds of the State of West
19 Virginia, payable solely from revenues, for the purpose of
20 paying all or any part of the cost of any one or more projects,
21 which costs may include, with respect to the West Virginia

22 Turnpike, such funds as are necessary to repay to the State of
23 West Virginia all or any part of the state funds used to upgrade
24 the West Virginia Turnpike to federal interstate standards:
25 *Provided*, That upon the effective date of the amendments to
26 this section enacted during the regular session of the Legislature
27 in two thousand six, the authorization to issue bonds pursuant
28 to this subsection is limited to that of refunding bonds pursuant
29 to subdivision seven of this subsection;

30 (7) To issue parkway revenue refunding bonds of the State
31 of West Virginia, payable solely from revenues, for any one or
32 more of the following purposes: (i) Refunding any bonds which
33 shall have been issued under the provisions of this article or any
34 predecessor thereof; and (ii) repaying to the state all or any part
35 of the state funds used to upgrade the West Virginia Turnpike
36 to federal interstate standards;

37 (8) To fix and revise, from time to time, tolls for transit
38 over each parkway project constructed by it or by the West
39 Virginia Turnpike Commission;

40 (9) To fix and revise, from time to time, rents, fees or other
41 charges, of whatever kind or character, for the use of each
42 tourism project or economic development project constructed
43 by it or for the use of any building, structure or facility
44 constructed by it in connection with a parkway project;

45 (10) To acquire, hold, lease and dispose of real and personal
46 property in the exercise of its powers and the performance of its
47 duties under this article: *Provided*, That the authority may not
48 finance any transaction to acquire, hold or lease real property;

49 (11) To acquire in the name of the state by purchase or
50 otherwise, on such terms and conditions and in such manner as
51 it may deem proper, or by the exercise of the right of condem-
52 nation in the manner hereinafter provided, such public or
53 private lands, including public parks, playgrounds or reserva-

54 tions, or parts thereof or rights therein, rights-of-way, property,
55 rights, easements and interests, as it may deem necessary for
56 carrying out the provisions of this article: *Provided*, That the
57 authority may not finance any transaction to acquire real
58 property. No compensation shall be paid for public lands,
59 playgrounds, parks, parkways or reservations so taken, and all
60 public property damaged in carrying out the powers granted by
61 this article shall be restored or repaired and placed in its
62 original condition as nearly as practicable;

63 (12) To designate the locations, and establish, limit and
64 control such points of ingress to and egress from each project
65 as may be necessary or desirable in the judgment of the
66 parkways authority to ensure the proper operation and mainte-
67 nance of such project, and to prohibit entrance to such project
68 from any point or points not so designated;

69 (13) To make and enter into all contracts and agreements
70 necessary or incidental to the performance of its duties and the
71 execution of its powers under this article, and to employ
72 consulting engineers, attorneys, accountants, architects,
73 construction and financial experts, trustees, superintendents,
74 managers and such other employees and agents as may be
75 necessary in its judgment, and to fix their compensation. All
76 such expenses shall be payable solely from the proceeds of
77 parkway revenue bonds or parkway revenue refunding bonds
78 issued under the provisions of this article, tolls or from
79 revenues;

80 (14) To make and enter into all contracts, agreements or
81 other arrangements with any agency, department, division,
82 board, bureau, commission, authority or other governmental
83 unit of the state to operate, maintain or repair any project;

84 (15) To receive and accept from any federal agency grants
85 for or in aid of the construction of any project, and to receive

86 and accept aid or contributions from any source of either
87 money, property, labor or other things of value, to be held, used
88 and applied only for the purposes for which such grants and
89 contributions may be made;

90 (16) To do all acts and things necessary or convenient to
91 carry out the powers expressly granted in this article; and

92 (17) To file the necessary petition or petitions pursuant to
93 Title 11, United States Code, Sec. 401 (being section 81 of the
94 act of Congress entitled “An act to establish a uniform system
95 of bankruptcy throughout the United States”, approved July 1,
96 1898, as amended) and to prosecute to completion all proceed-
97 ings permitted by Title 11, United States Code, Secs. 401-403
98 (being sections 81 to 83, inclusive, of said act of Congress). The
99 State of West Virginia hereby consents to the application of
100 said Title 11, United States Code, Secs. 401-403, to the
101 parkways authority.

102 (b) Nothing in this article shall be construed to prohibit the
103 issuance of parkway revenue refunding bonds in a common
104 plan of financing with the issuance of parkway revenue bonds:
105 *Provided*, That upon the effective date of the amendments to
106 this section enacted during the regular session of the Legislature
107 in two thousand six, the authorization to issue bonds pursuant
108 to this subsection is limited to that of refunding bonds pursuant
109 to sections twenty-one and twenty-two of this article.

§17-16A-10. Parkway revenue bonds generally.

1 (a) The parkways authority is authorized to provide by
2 resolution for the issuance of parkway revenue bonds of the
3 state for the purpose of paying all or any part of the cost of one
4 or more projects: *Provided*, That this section shall not be
5 construed as authorizing the issuance of parkway revenue bonds
6 for the purpose of paying the cost of the West Virginia
7 Turnpike, which parkway revenue bonds may be issued only as

8 authorized under section eleven of this article. The principal of
9 and the interest on bonds shall be payable solely from the funds
10 provided for payment.

11 (b) The bonds of each issue shall be dated, shall bear
12 interest at a rate as may be determined by the parkways
13 authority in its sole discretion, shall mature at a time not
14 exceeding forty years from their date or of issue as may be
15 determined by the parkways authority, and may be made
16 redeemable before maturity, at the option of the parkways
17 authority at a price and under the terms and conditions as may
18 be fixed by the parkways authority prior to the issuance of the
19 bonds.

20 (c) The parkways authority shall determine the form of the
21 bonds, including any interest coupons to be attached thereto,
22 and shall fix the denomination of the bonds and the place of
23 payment of principal and interest, which may be at any bank or
24 trust company within or without the state.

25 (d) The bonds shall be executed by manual or facsimile
26 signature by the chair of the parkways authority, and the official
27 seal of the parkways authority shall be affixed to or printed on
28 each bond, and attested, manually or by facsimile signature, by
29 the secretary and treasurer of the parkways authority. Any
30 coupons attached to any bond shall bear the manual or facsimile
31 signature of the chair of the parkways authority.

32 (e) In case any officer whose signature or a facsimile of
33 whose signature appears on any bonds or coupons shall cease
34 to be an officer before the delivery of the bonds, the signature
35 or facsimile shall nevertheless be valid and sufficient for all
36 purposes the same as if he had remained in office until delivery.
37 In case the seal of the parkways authority has been changed
38 after a facsimile has been imprinted on the bonds, then the
39 facsimile seal will continue to be sufficient for all purposes.

40 (f) All bonds issued under the provisions of this article shall
41 have all the qualities and incidents of negotiable instruments
42 under the negotiable instruments law of the state. The bonds
43 may be issued in coupon or in registered form, or both, as the
44 parkways authority may determine, and provision may be made
45 for the registration of any coupon bonds as to principal alone
46 and also as to both principal and interest, and for the recorders
47 into coupon bonds of any bonds registered as to both principal
48 and interest.

49 (g) The parkways authority may sell the bonds at a public
50 or private sale at a price it determines to be in the best interests
51 of the state.

52 (h) The proceeds of the bonds of each issue shall be used
53 solely for the payment of the cost of the parkway project or
54 projects for which the bonds were issued, and shall be disbursed
55 in a manner consistent with the resolution authorizing the
56 issuance of the bonds or in the trust agreement securing the
57 bonds.

58 (i) If the proceeds of the bonds of any issue, by error of
59 estimates or otherwise, shall be less than the cost, then
60 additional bonds may in like manner be issued to provide the
61 amount of the deficit. Unless otherwise provided in the
62 resolution authorizing the issuance of the bonds or in the trust
63 agreement securing the bonds, the additional bonds shall be
64 deemed to be of the same issue and shall be entitled to payment
65 from the same fund without preference or priority of the bonds
66 first issued.

67 (j) If the proceeds of the bonds of any issue exceed the cost
68 of the project or projects for which the bonds were issued, then
69 the surplus shall be deposited to the credit of the sinking fund
70 for the bonds.

71 (k) Prior to the preparation of definitive bonds, the
72 parkways authority may, under like restrictions, issue interim
73 receipts or temporary bonds, with or without coupons, ex-
74 changeable for definitive bonds when the bonds have been
75 executed and are available for delivery. The parkways authority
76 may also provide for the replacement of any bonds that become
77 mutilated or are destroyed or lost.

78 (l) Bonds may be issued under the provisions of this article
79 without obtaining the consent of any department, division,
80 commission, board, bureau or agency of the state in accordance
81 with this article.

82 (m) Notwithstanding any other provision of this code to the
83 contrary, the authority may not issue parkway revenue bonds
84 after the effective date of the amendments to this section
85 enacted in the regular session of the Legislature in two thousand
86 six: *Provided*, That the authority may issue revenue refunding
87 bonds pursuant to sections twenty-one and twenty-two of this
88 article for parkway revenue bonds previously issued prior to the
89 effective date of the amendments to this section enacted in the
90 regular session of the Legislature in two thousand six.

**§17-16A-11. Parkway revenue bonds—West Virginia Turnpike;
related projects.**

1 (a) The parkways authority is authorized to provide by
2 resolution, at one time or from time to time, for the issuance of
3 parkway revenue bonds of the state in an aggregate outstanding
4 principal amount not to exceed, from time to time, two hundred
5 million dollars for the purpose of paying: (i) All or any part of
6 the cost of the West Virginia Turnpike, which may include, but
7 not be limited to, an amount equal to the state funds used to
8 upgrade the West Virginia Turnpike to federal interstate
9 standards; (ii) all or any part of the cost of any one or more
10 parkway projects that involve improvements to or enhance-
11 ments of the West Virginia Turnpike, including, without

12 limitation, lane-widening on the West Virginia Turnpike and
13 that are or have been recommended by the parkways authority's
14 traffic engineers or consulting engineers or by both of them
15 prior to the issuance of parkway revenue bonds for the project
16 or projects; and (iii) to the extent permitted by federal law, all
17 or any part of the cost of any related parkway project. For
18 purposes of this section only, a "related parkway project"
19 means any information center, visitors' center or rest stop, or
20 any combination thereof, and any expressway, turnpike,
21 trunkline, feeder road, state local service road or park and forest
22 road which connects to or intersects with the West Virginia
23 Turnpike and is located within seventy-five miles of the
24 turnpike as it exists on the first day of June, one thousand nine
25 hundred eighty-nine, or any subsequent expressway, trunkline,
26 feeder road, state local service road or park and forest road
27 constructed pursuant to this article: *Provided*, That nothing in
28 this section shall be construed as prohibiting the parkways
29 authority from issuing parkway revenue bonds pursuant to
30 section ten of this article for the purpose of paying all or any
31 part of the cost of any related parkway project: *Provided*,
32 *however*, That none of the proceeds of the issuance of parkway
33 revenue bonds under this section shall be used to pay all or any
34 part of the cost of any economic development project, except as
35 provided in section twenty-three of this article: *Provided*
36 *further*, That nothing in this section shall be construed as
37 prohibiting the parkways authority from issuing additional
38 parkway revenue bonds to the extent permitted by applicable
39 federal law for the purpose of constructing, maintaining and
40 operating any highway constructed, in whole or in part, with
41 money obtained from the Appalachian Regional Commission
42 as long as the highway connects to the West Virginia Turnpike
43 as it existed as of the first day of June, one thousand nine
44 hundred eighty-nine: *And provided further*, That, for purposes
45 of this section, in determining the amount of bonds outstanding,
46 from time to time, within the meaning of this section: Original
47 par amount or original stated principal amount at the time of

48 issuance of bonds shall be used to determine the principal
49 amount of bonds outstanding, except that the amount of
50 parkway revenue bonds outstanding under this section may not
51 include any bonds that have been retired through payment,
52 defeased through the deposit of funds irrevocably set aside for
53 payment or otherwise refunded so that they are no longer
54 secured by toll revenues of the West Virginia Turnpike: *And*
55 *provided further*, That the authorization to issue bonds under
56 this section is in addition to the authorization and power to
57 issue bonds under any other section of this code: *And provided*
58 *further*, That, without limitation of the authorized purposes for
59 which parkway revenue bonds are otherwise permitted to be
60 issued under this section, and without increasing the maximum
61 principal par amount of parkway revenue bonds permitted to be
62 outstanding, from time to time, under this section, the authority
63 is specifically authorized by this section to issue, at one time or
64 from time to time, by resolution or resolutions under this
65 section, parkway revenue bonds under this section for the
66 purpose of paying all or any part of the cost of one or more
67 parkway projects that: (i) Consist of enhancements or improve-
68 ments to the West Virginia Turnpike, including, without
69 limitation, projects involving lane widening, resurfacing,
70 surface replacement, bridge replacement, bridge improvements
71 and enhancements, other bridge work, drainage system
72 improvements and enhancements, drainage system replace-
73 ments, safety improvements and enhancements, and traffic flow
74 improvements and enhancements; and (ii) have been recom-
75 mended by the authority's consulting engineers or traffic
76 engineers, or both, prior to the issuance of the bonds. Except as
77 otherwise specifically provided in this section, the issuance of
78 parkway revenue bonds pursuant to this section, the maturities
79 and other details of the bonds, the rights of the holders of the
80 bonds, and the rights, duties and obligations of the parkways
81 authority in respect of the bonds shall be governed by the
82 provisions of this article insofar as the provisions are applica-
83 ble.

84 (b) Notwithstanding any other provision of this code to the
85 contrary, the authority may not issue parkway revenue bonds
86 after the effective date of the amendments to this section
87 enacted in the regular session of the Legislature in two thousand
88 six: *Provided*, That the authority may issue revenue refunding
89 bonds pursuant to sections twenty-one and twenty-two of this
90 article for parkway revenue bonds previously issued prior to the
91 effective date of the amendments to this section enacted during
92 the regular session of the Legislature in two thousand six.

§17-16A-13a. Public notice and hearing requirements.

1 (a) Notwithstanding any provision of the law to the
2 contrary, on and after the first day of July, two thousand six,
3 unless the parkways authority satisfies the public notice and
4 hearing requirements set forth in this section, it may not:

5 (1) Increase any rates, tolls or charges along any portion of
6 the parkway, or approve any proposal or contract that would
7 result in or require an increase in any rates or tolls along any
8 portion of the parkway;

9 (2) Issue any refunding bond pursuant to sections twenty-
10 one and twenty-two of this article which would require the
11 parkways authority to increase rates, tolls or charges;

12 (3) Approve any contract or project which would require or
13 result in an increase in the rates, tolls or charges along any
14 portion of the parkway; or,

15 (4) Take any other action which would require or result in
16 an increase in the rates, tolls or charges along any portion of the
17 parkway.

18 (b) The parkways authority shall publish notice of any
19 proposed contract, project or bond which would result in or
20 require an increase in any toll rates or charges, or the extension

21 of any bond repayment obligation, along with the associated
22 rate increase or revised bond repayment period, by a Class II
23 legal advertisement in accordance with the provisions of article
24 three, chapter fifty-nine of this code, published and of general
25 circulation in each county which borders the parkway.

26 (c) Once notice has been provided in accordance with the
27 provisions of this section, the parkways authority shall conduct
28 a public hearing in each county which borders the parkway, and
29 any citizen may communicate by writing to the parkways
30 authority his or her opposition to or approval of such proposal
31 or rate or toll increase or amended bond terms. The public
32 notice and written public comment period shall be conducted
33 not less than forty-five days from the publication of the notice
34 and the affected public must be provided with at least twenty
35 (20) days' notice of each scheduled public hearing.

36 (d) All studies, records, documents and other materials
37 which were considered by the parkways authority before
38 recommending the approval of any such project or recommend-
39 ing the adoption of any such increase shall be made available
40 for public inspection for a period of at least twenty days prior
41 to the scheduled hearing at a convenient location in each county
42 where a public hearing shall be held.

43 (e) At the conclusion of all required public hearings, the
44 parkways authority shall render a final decision which shall
45 include written findings of fact supporting its final decision on
46 any proposed project which would result in or require a rate
47 increase, or prior to finally approving any proposed rate or toll
48 increase, and such required findings and conclusions must
49 reference and give due consideration to the public comments
50 and additional evidence offered during the public hearings.

51 (f) On and after the first day of July, two thousand six, any
52 final action taken by the parkways authority to approve or
53 implement any proposed rate increase, contract or project which

54 would require or result in a proposed increase of any rate or
55 tolls along any portion of the parkway without first satisfying
56 the public notice and hearing requirements of this section, shall
57 be null and void.

§17-16A-18. Cessation of tolls.

1 (a) Except as provided herein, when all bonds issued under
2 the provisions of this article in connection with any parkway
3 project or projects and the interest thereon shall have been paid
4 or a sufficient amount for the payment of all such bonds and the
5 interest thereon to the maturity thereof shall have been set aside
6 in trust for the benefit of the bondholders, such project or
7 projects, if then in good condition and repair to the satisfaction
8 of the Commissioner of the state Division of Highways, shall be
9 transferred to the state Division of Highways and shall
10 thereafter be maintained by the state Division of Highways free
11 of tolls.

12 (b) No later than the first day of February, one thousand
13 nine hundred ninety, the parkways authority shall discontinue,
14 remove and not relocate all toll collection facilities on the West
15 Virginia Turnpike as the same existed on June first, one
16 thousand nine hundred eighty-nine, except for the three main
17 toll barriers and collection facilities and, provided solely that
18 the provisions of section eighteen-a are complied with, the toll
19 collection facilities at the intersection of U. S. Route 19
20 (Corridor "L") and said turnpike.

**§17-16A-18a. Corridor "L" toll fees authorized; commuter pass;
annual report.**

1 (a) The parkways authority is hereby authorized to operate
2 the currently existing toll collection facility located at the
3 interchange of U. S. Route 19 (Corridor "L") and said turnpike
4 subject to the following:

5 (1) The toll fee charges by the Parkways, Economic
6 Development and Tourism Authority at its toll facilities located
7 at the interchange of U. S. Route 19 (Corridor “L”) and said
8 turnpike shall not exceed those toll charges levied and collected
9 by the authority at said interchange as of the first day of
10 January, one thousand nine hundred ninety, and hereafter, no
11 proposed increase in such toll fees shall be implemented by the
12 parkways authority unless the authority shall have first
13 complied with validly promulgated and legislatively approved
14 rules pursuant to the applicable provisions of chapter
15 twenty-nine-a of this code;

16 (2) The parkways authority shall maintain, advertise,
17 implement and otherwise make generally available to all
18 qualified members of the public, resident or nonresident, a
19 system of commuter passes, in a form to be determined by the
20 authority: *Provided*, That said system of commuter passes shall,
21 at a minimum, permit the holder of such pass or passes, after
22 paying the applicable fee to the authority, to travel through the
23 U. S. Route 19 (Corridor “L”) turnpike interchange and toll
24 facilities on an unlimited basis, without additional charge
25 therefor, for a period of one year after the issuance of said
26 commuter pass or passes: *Provided, however*, That the cost for
27 such commuter pass or passes shall in no event aggregate more
28 than five dollars per year for a full calendar year of unlimited
29 travel through the U. S. Route 19 (Corridor “L”) turnpike
30 interchange toll facilities. Applications for these commuter
31 passes are to be made available by the Parkway Authority to
32 every Division of Motor Vehicles office in the state.

33 To the extent required or necessary, the parkways authority
34 is further hereby authorized and empowered, in addition to the
35 extent previously authorized and empowered pursuant to
36 section six and section thirteen-b, article sixteen-a of this
37 chapter, to promulgate rules in accordance with chapter
38 twenty-nine-a of this code with regard to the implementation of

39 proposed future toll increases at the U. S. Route 19 (Corridor
40 “L”) turnpike toll facility;

41 (3) The system of commuter passes implemented in
42 accordance with the provisions of subdivision (2), subsection
43 (a), above, shall be available only for use when operating or
44 traveling in a Class “A” motor vehicle as herein defined.
45 Whoever shall knowingly or intentionally utilize any commuter
46 pass issued in accordance with this section while operating
47 other than a Class “A” motor vehicle, as herein defined, at the
48 U. S. Route 19 (Corridor “L”) turnpike toll facility, or any other
49 toll facility at or upon which such pass may later be usable,
50 shall be guilty of a misdemeanor, and for every such offense
51 shall, upon conviction thereof, be punished in accordance with
52 the provisions of section seventeen, article sixteen-a of this
53 chapter; and the parkways authority shall hereafter be autho-
54 rized and empowered to cancel any such commuter pass or
55 passes improperly used in accordance with this section;

56 (4) In addition to the annual report required by section
57 twenty-six of this article, the parkways authority will prepare
58 and deliver to the Governor, the Speaker of the House of
59 Delegates and the President of the Senate a separate annual
60 report of toll revenues collected from the U. S. Route 19
61 (Corridor “L”) turnpike toll facility. The report shall disclose
62 separately the toll revenues generated from regular traffic and
63 the commuter pass created herein. The reports shall include, but
64 not be limited to, disclosing separately the expenditure of said
65 toll revenues generated from the U. S. Route 19 (Corridor “L”)
66 turnpike toll facility including a description of the purposes for
67 which such toll revenues are expended;

68 (5) In the event any court of competent jurisdiction shall
69 issue an order which adjudges that any portion of subdivision
70 (1), (2) or (3) subsection (a) of this section is illegal, unconstitu-
71 tional, unenforceable or in any manner invalid, the parkways

72 authority shall discontinue, remove and not otherwise relocate
73 the U. S. Route 19 (Corridor “L”) turnpike toll facility within
74 three hundred sixty-five days after the date upon which said
75 court order is final or all appeals to said order have been
76 exhausted;

77 (6) For the purpose of this section, a Class “A” vehicle shall
78 be defined as a motor vehicle of passenger type and truck with
79 a gross weight of not more than 8,000 pounds and registered or
80 eligible for registration as a Class “A” vehicle in accordance
81 with section one, article ten, chapter seventeen-a of this code as
82 the same is currently constituted; and

83 (7) Notwithstanding any other provisions of the this code to
84 the contrary, the parkways authority may not promulgate
85 emergency rules in accordance with section fifteen, article
86 three, chapter twenty-nine-a of this code to increase or decrease
87 toll fees or the commuter pass fee established herein.

88 (b) Nothing in this section is to be construed to apply to,
89 regulate, or in any manner affect the operation of the three main
90 line toll barriers and toll collection facilities currently located
91 on the West Virginia Turnpike and operated by the parkways
92 authority as Barrier A, Barrier B and Barrier C (I-64, I-77).

§17-16A-20. Parkway projects part of state road system.

1 It is hereby declared that any expressway, turnpike, feeder
2 road, state local service road or park and forest road or other
3 road, or any subsequent expressway, turnpike feeder road, state
4 local service road, park and forest road or other road con-
5 structed pursuant to this article shall be a part of the state road
6 system, although subject to the provisions of this article and of
7 any bonds or trust agreements entered into pursuant thereto, and
8 that the construction of such parkway projects shall be consid-
9 ered as developments of the state road system.

§17-16A-21. Parkway revenue refunding bonds—Generally.

1 The parkways authority is hereby authorized to provide by
2 resolution for the issuance of parkway revenue refunding bonds
3 of the state for the purpose of refunding any bonds then
4 outstanding which shall have been issued under the provisions
5 of this article, including the payment of any redemption
6 premium thereon and any interest accrued or to accrue to the
7 date of redemption of such bonds; and, if deemed advisable by
8 the parkways authority, for the additional purpose of construct-
9 ing improvements, extensions or enlargements of the project or
10 projects in connection with which the bonds to be refunded
11 shall have been issued: *Provided*, That this section shall not be
12 construed as authorizing the issuance of parkway revenue
13 refunding bonds for the purpose of refunding any bonds then
14 outstanding which shall have been issued under the provisions
15 of this article, or any predecessor thereof, in connection with
16 the construction of the West Virginia Turnpike, which revenue
17 refunding bonds may be issued only as authorized under section
18 twenty-two of this article. The issuance of such bonds, the
19 maturities and other details thereof, the rights of the holders
20 thereof and the rights, duties and obligations of the parkways
21 authority in respect of the same shall be governed by the
22 provisions of this article insofar as the same may be applicable.
23 After the effective date of the amendments to this article
24 enacted by the Legislature during the regular session in two
25 thousand six, no issuance of a refunding bond may extend the
26 maturity date of such bond being refunded and may not exceed
27 the outstanding principal of such bond being refunded. Any
28 refunding bond issued after the effective date of the amend-
29 ments to this article enacted by the Legislature during the
30 regular session in two thousand six shall be structured to
31 provide for approximately level annual debt service savings
32 each fiscal year through the final maturity or structured to
33 approximate the level of debt service that would have been paid
34 prior to the refunding, with a preponderance of the savings

35 being deferred toward eliminating or reducing the most distant
36 maturities. For purposes of this section, the outstanding
37 principal is to be determined as of the date on which the
38 revenue bond is refinanced.

**§17-16A-22. Parkway revenue refunding bonds—West Virginia
Turnpike.**

1 The parkways authority is hereby authorized to provide by
2 resolution for the issuance of parkway revenue refunding bonds
3 of the state in an aggregate principal amount not to exceed sixty
4 million dollars for the purpose of refunding any bonds which
5 shall have been issued under this article, or any predecessor
6 thereof, in connection with the construction of the West
7 Virginia Turnpike, including the payment of any redemption
8 premium thereon and any interest accrued or to accrue to the
9 date of redemption of such bonds, and, to the extent permissible
10 under federal law and if deemed advisable by the parkways
11 authority, for repaying to the state all or any part of the state
12 funds used to upgrade the West Virginia Turnpike to federal
13 interstate standards: *Provided*, That any proceeds derived from
14 the issuance of such bonds which are used on any parkway
15 project other than the West Virginia Turnpike must be used
16 solely on parkway projects: (i) Which are either connected to or
17 intersect with the West Virginia Turnpike and are within
18 seventy-five air miles of said turnpike as it exists on the first
19 day of June, one thousand nine hundred eighty-nine, or any
20 subsequent expressway, trunkline, turnpike, feeder road, state
21 local service road or park and forest road constructed pursuant
22 to this article; and (ii) which involve the upgrading or addition
23 of interchanges, the construction of expressways or feeder
24 roads, or the upgrading or construction of information centers,
25 visitors' centers, rest stops or any combination thereof:
26 *Provided, however*, That none of the proceeds of the issuance
27 of parkway revenue refunding bonds issued under this section
28 shall be used to pay all or any part of the cost of any economic

29 development project. Except as otherwise specifically provided
30 in this section, the issuance of parkway revenue refunding
31 bonds pursuant to this section, the maturities and other details
32 thereof, the rights of the holders thereof, and the rights, duties
33 and obligations of the parkways authority in respect of the
34 same, shall be governed by the provisions of this article insofar
35 as the same may be applicable.

36 After the effective date of the amendments to this article
37 enacted by the Legislature during the regular session in two
38 thousand six, no issuance of a refunding bond may extend the
39 maturity date of such bond being refunded and may not exceed
40 the outstanding principal of such bond being refunded. Any
41 refunding bond issued after the effective date of the amend-
42 ments to this article enacted by the Legislature during the
43 regular session in two thousand six shall be structured to
44 provide for approximately level annual debt service savings
45 each fiscal year through the final maturity or structured to
46 approximate the level of debt service that would have been paid
47 prior to the refunding, with a preponderance of the savings
48 being deferred toward eliminating or reducing the most distant
49 maturities. For purposes of this section, the outstanding
50 principal is to be determined as of the date on which the
51 revenue bond is refinanced.

**§17-16A-29. Discount program for purchasers of West Virginia
EZ Pass transponders.**

1 (a) The parkways authority is hereby authorized to create a
2 discount program for purchasers of West Virginia EZ Pass
3 transponders: *Provided*, That prior to any increase in any rates,
4 tolls or charges along any portion of the parkway, the parkways
5 authority shall create a discount program for purchasers of West
6 Virginia EZ Pass transponders. Any discount program created
7 pursuant to this section shall provide discounts for each class of
8 motor vehicles.

9 (b) The authority must provide public notice and hold
10 public hearings on any proposed discount program as required
11 in section thirteen-a of this article prior to implementation of
12 such program.

13 (c) For purposes of this section, a “West Virginia EZ Pass
14 transponder” means a device sold by the parkways authority
15 which allows the purchaser to attach the device to his or her
16 motor vehicle and travel through a Parkways toll facility and be
17 billed for such travel by the authority.

CHAPTER 175

**(S. B. 166 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed March 11, 2006; in effect from passage.]

[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §62-12-12, §62-12-13, §62-12-18, §62-12-19, §62-12-23 and §62-12-24 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §62-12-12a, all relating to the West Virginia Parole Board; providing for the appointment, powers and duties of the West Virginia Parole Board; providing for the appointment of the Chairperson of the West Virginia Parole Board by the Governor; providing for the consideration of parole and parole revocation by panels of the board; and providing for panels of the board to conduct parole interviews, consider parolees for discharge from parole and hold any other hearings authorized by the board.

Be it enacted by the Legislature of West Virginia:

That §62-12-12, §62-12-13, §62-12-18, §62-12-19, §62-12-23 and §62-12-24 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 §62-12-12a, all to read as follows:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-12. Parole board generally.

§62-12-12a. Parole board panels.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

§62-12-18. Period of parole; discharge.

§62-12-19. Violation of parole.

§62-12-23. Notification of parole hearing; victim's right to be heard; notification of release on parole.

§62-12-24. Request to continue for good cause and timely notice required.

§62-12-12. Parole board generally.

1 There shall be a state board of parole, known as the “West
2 Virginia Parole Board”. The board shall consist of nine
3 members, each of whom shall have been a resident of this state
4 for at least five consecutive years prior to his or her appoint-
5 ment. No more than five of the board members may at any one
6 time belong to the same political party. The board shall be
7 appointed by the Governor, by and with the advice and consent
8 of the Senate. Appointments following the effective date of this
9 section shall be made in such a manner that each congressional
10 district is represented and so that no more than four and no less
11 than two members of the board reside in any one congressional
12 district. No more than two members of the board may reside in
13 any one county. Each member of the board shall have a degree
14 in criminal justice or like experience and academic training and
15 shall be otherwise competent to perform the duties of his or her
16 office. The members shall be appointed for overlapping terms
17 of six years. Any member qualified under this section is eligible
18 for reappointment. The members of the board shall devote their
19 full time and attention to their board duties. The Governor shall

20 appoint one of the nine appointed members to serve as chairper-
21 son at the Governor's will and pleasure.

§62-12-12a. Parole board panels.

1 (a) The board shall sit in panels of three members for the
2 purpose of conducting hearings and making determinations
3 concerning the release of any inmate on parole, conducting
4 hearings and making determinations regarding the revocation
5 of parole, considering any eligible parolee for release from
6 further supervision and discharge from parole, conducting
7 parole interviews and conducting any other hearing provided
8 for in this article. Membership on each panel shall be appointed
9 on a rotating basis by the chairperson of the board. Two
10 members of each panel shall constitute a quorum for the
11 transaction of official business.

12 (b) When the board sits in panels as herein authorized, each
13 panel shall act in the same manner and under the same authority
14 as the full board. All authority, duties, powers and responsibili-
15 ties of the board on any matter brought before the panel for
16 hearing shall be exercised by the panel as though heard and
17 decided by the full board. Decisions of each panel shall
18 constitute a decision of the board. All procedures of the board
19 relating to the conduct of hearings shall apply to hearings
20 before the panels of the board.

**§62-12-13. Powers and duties of board; eligibility for parole;
procedure for granting parole.**

1 (a) The board of parole, whenever it is of the opinion that
2 the best interests of the state and of the inmate will be served,
3 and subject to the limitations hereinafter provided, shall release
4 any inmate on parole for terms and upon conditions as are
5 provided by this article.

6 (b) Any inmate of a state correctional center is eligible for
7 parole if he or she:

8 (1) (A) Has served the minimum term of his or her
9 indeterminate sentence or has served one fourth of his or her
10 definite term sentence, as the case may be, except that in no
11 case is any person who committed, or attempted to commit a
12 felony with the use, presentment or brandishing of a firearm,
13 eligible for parole prior to serving a minimum of three years of
14 his or her sentence or the maximum sentence imposed by the
15 court, whichever is less: *Provided*, That any person who
16 committed, or attempted to commit, any violation of section
17 twelve, article two, chapter sixty-one of this code, with the use,
18 presentment or brandishing of a firearm, is not eligible for
19 parole prior to serving a minimum of five years of his or her
20 sentence or one third of his or her definite term sentence,
21 whichever is greater. Nothing in this section applies to an
22 accessory before the fact or a principal in the second degree
23 who has been convicted as if he or she were a principal in the
24 first degree if, in the commission of or in the attempted
25 commission of the felony, only the principal in the first degree
26 used, presented or brandished a firearm. No person is ineligible
27 for parole under the provisions of this subdivision because of
28 the commission or attempted commission of a felony with the
29 use, presentment or brandishing of a firearm unless such fact is
30 clearly stated and included in the indictment or presentment by
31 which the person was charged and was either: (i) Found by the
32 court at the time of trial upon a plea of guilty or nolo contende-
33 re; or (ii) found by the jury, upon submitting to the jury a
34 special interrogatory for such purpose if the matter was tried
35 before a jury; or (iii) found by the court, if the matter was tried
36 by the court without a jury.

37 For the purpose of this section, the term “firearm” means
38 any instrument which will, or is designed to, or may readily be
39 converted to, expel a projectile by the action of an explosive,
40 gunpowder or any other similar means.

41 (B) The amendments to this subsection adopted in the year
42 one thousand nine hundred eighty-one:

43 (i) Apply to all applicable offenses occurring on or after the
44 first day of August of that year;

45 (ii) Apply with respect to the contents of any indictment or
46 presentment returned on or after the first day of August of that
47 year irrespective of when the offense occurred;

48 (iii) Apply with respect to the submission of a special
49 interrogatory to the jury and the finding to be made thereon in
50 any case submitted to the jury on or after the first day of August
51 of that year or to the requisite findings of the court upon a plea
52 of guilty or in any case tried without a jury: *Provided*, That the
53 state gives notice in writing of its intent to seek such finding by
54 the jury or court, as the case may be, which notice shall state
55 with particularity the grounds upon which the finding will be
56 sought as fully as such grounds are otherwise required to be
57 stated in an indictment, unless the grounds therefor are alleged
58 in the indictment or presentment upon which the matter is being
59 tried; and

60 (iv) Does not apply with respect to cases not affected by the
61 amendments and in such cases the prior provisions of this
62 section apply and are construed without reference to the
63 amendments.

64 Insofar as the amendments relate to mandatory sentences
65 restricting the eligibility for parole, all matters requiring a
66 mandatory sentence shall be proved beyond a reasonable doubt
67 in all cases tried by the jury or the court.

68 (2) Is not in punitive segregation or administrative segrega-
69 tion as a result of disciplinary action;

70 (3) Has maintained a record of good conduct in prison for
71 a period of at least three months immediately preceding the date
72 of his or her release on parole;

73 (4) Has submitted to the board a written parole release plan
74 setting forth proposed plans for his or her place of residence,
75 employment and, if appropriate, his or her plans regarding
76 education and post-release counseling and treatment, the parole
77 release plan having been approved by the Commissioner of
78 Corrections or his or her authorized representative; and

79 (5) Has satisfied the board that if released on parole he or
80 she will not constitute a danger to the community.

81 (c) Except in the case of a person serving a life sentence, no
82 person who has been previously twice convicted of a felony
83 may be released on parole until he or she has served the
84 minimum term provided by law for the crime for which he or
85 she was convicted. No person sentenced for life may be paroled
86 until he or she has served ten years, and no person sentenced for
87 life who has been previously twice convicted of a felony may
88 be paroled until he or she has served fifteen years: *Provided,*
89 That no person convicted of first degree murder for an offense
90 committed on or after the tenth day of June, one thousand nine
91 hundred ninety-four, is eligible for parole until he or she has
92 served fifteen years.

93 (d) In the case of a person sentenced to any state correc-
94 tional center, it is the duty of the board, as soon as a person
95 becomes eligible, to consider the advisability of his or her
96 release on parole.

97 (e) If, upon consideration, parole is denied, the board shall
98 promptly notify the inmate of the denial. The board shall, at the
99 time of denial, notify the person of the month and year he or she
100 may apply for reconsideration and review. The board shall at
101 least once a year reconsider and review the case of every inmate
102 who was denied parole and is still eligible: *Provided,* That the
103 board may reconsider and review parole eligibility any time
104 within three years following the denial of parole of a person
105 serving a life sentence.

106 (f) Any person serving a sentence on a felony conviction
107 who becomes eligible for parole consideration prior to being
108 transferred to a state correctional center may make written
109 application for parole. The terms and conditions for parole
110 consideration established by this article apply to such inmates.

111 (g) The board shall, with the approval of the Governor,
112 adopt rules governing the procedure in the granting of parole.
113 No provision of this article and none of the rules adopted
114 hereunder are intended or may be construed to contravene, limit
115 or otherwise interfere with or affect the authority of the
116 Governor to grant pardons and reprieves, commute sentences,
117 remit fines or otherwise exercise his or her constitutional
118 powers of executive clemency.

119 (h) The Division of Corrections is charged with the duty of
120 supervising all probationers and parolees whose supervision
121 may have been undertaken by this state by reason of any
122 interstate compact entered into pursuant to the uniform act for
123 out-of-state parolee supervision.

124 (i) (1) When considering an inmate of a state correctional
125 center for release on parole, the parole board panel considering
126 the parole is to have before it an authentic copy of or report on
127 the inmate's current criminal record as provided through the
128 West Virginia State Police, the United States Department of
129 Justice or other reliable criminal information sources and
130 written reports of the warden or superintendent of the state
131 correctional center to which such inmate is sentenced:

132 (i) On the inmate's conduct record while in custody,
133 including a detailed statement showing any and all infractions
134 of disciplinary rules by the inmate and the nature and extent of
135 discipline administered therefor;

136 (ii) On improvement or other changes noted in the inmate's
137 mental and moral condition while in custody, including a

138 statement expressive of the inmate's current attitude toward
139 society in general, toward the judge who sentenced him or her,
140 toward the prosecuting attorney who prosecuted him or her,
141 toward the policeman or other officer who arrested the inmate
142 and toward the crime for which he or she is under sentence and
143 his or her previous criminal record;

144 (iii) On the inmate's industrial record while in custody
145 which shall include: The nature of his or her work, occupation
146 or education, the average number of hours per day he or she has
147 been employed or in class while in custody and a recommenda-
148 tion as to the nature and kinds of employment which he or she
149 is best fitted to perform and in which the inmate is most likely
150 to succeed when he or she leaves prison;

151 (iv) On physical, mental and psychiatric examinations of
152 the inmate conducted, insofar as practicable, within the two
153 months next preceding parole consideration by the board.

154 (2) The board panel considering the parole may waive the
155 requirement of any report when not available or not applicable
156 as to any inmate considered for parole but, in every such case,
157 shall enter in the record thereof its reason for the waiver:
158 *Provided*, That in the case of an inmate who is incarcerated
159 because the inmate has been found guilty of, or has pleaded
160 guilty to a felony under the provisions of section twelve, article
161 eight, chapter sixty-one of this code or under the provisions of
162 article eight-b or eight-c of said chapter, the board panel may
163 not waive the report required by this subsection and the report
164 is to include a study and diagnosis including an on-going
165 treatment plan requiring active participation in sexual abuse
166 counseling at an approved mental health facility or through
167 some other approved program: *Provided, however*, That nothing
168 disclosed by the person during the study or diagnosis may be
169 made available to any law-enforcement agency, or other party
170 without that person's consent, or admissible in any court of this

171 state, unless the information disclosed indicates the intention or
172 plans of the parolee to do harm to any person, animal, institu-
173 tion or to property. Progress reports of outpatient treatment are
174 to be made at least every six months to the parole officer
175 supervising the person. In addition, in such cases, the parole
176 board shall inform the prosecuting attorney of the county in
177 which the person was convicted of the parole hearing and shall
178 request that the prosecuting attorney inform the parole board of
179 the circumstances surrounding a conviction or plea of guilty,
180 plea bargaining and other background information that might be
181 useful in its deliberations.

182 (j) Before releasing any inmate on parole, the board of
183 parole shall arrange for the inmate to appear in person before a
184 parole board panel and the panel may examine and interrogate
185 him or her on any matters pertaining to his or her parole,
186 including reports before the board made pursuant to the
187 provisions hereof: *Provided*, That an inmate may appear by
188 video teleconference if the members of the panel conducting the
189 examination are able to contemporaneously see the inmate and
190 hear all of his or her remarks and if the inmate is able to
191 contemporaneously see each of the members of the panel
192 conducting the examination and hear all of the members'
193 remarks. The panel shall reach its own written conclusions as
194 to the desirability of releasing the inmate on parole and the
195 majority of the panel considering the release shall concur in the
196 decision. The warden or superintendent shall furnish all
197 necessary assistance and cooperate to the fullest extent with the
198 parole board. All information, records and reports received by
199 the board are to be kept on permanent file.

200 (k) The board and its designated agents are at all times to
201 have access to inmates imprisoned in any state correctional
202 center or in any city, county or regional jail in this state and
203 shall have the power to obtain any information or aid necessary
204 to the performance of its duties from other departments and
205 agencies of the state or from any political subdivision thereof.

206 (l) The board shall, if so requested by the Governor,
207 investigate and consider all applications for pardon, reprieve or
208 commutation and shall make recommendation thereon to the
209 Governor.

210 (m) Prior to making a recommendation for pardon, reprieve
211 or commutation and prior to releasing any inmate on parole, the
212 board shall notify the sentencing judge and prosecuting attorney
213 at least ten days before the recommendation or parole.

214 (n) Any person released on parole shall participate as a
215 condition of parole in the litter control program of the county to
216 the extent directed by the board, unless the board specifically
217 finds that this alternative service would be inappropriate.

§62-12-18. Period of parole; discharge.

1 The period of parole shall be the maximum of any sentence,
2 less deductions for good conduct and work as provided by law,
3 for which the paroled inmate, at the time of release, was subject
4 to imprisonment under his or her definite or indeterminate
5 sentence, as the case may be: *Provided*, That any time after a
6 parolee has been on parole for a period of one year from the
7 date of his or her release, a panel of the board may, when in its
8 judgment the ends of parole have been attained and the best
9 interests of the state and the parolee will be served thereby,
10 release the parolee from further supervision and discharge him
11 or her from parole: *Provided, however*, That no inmate
12 sentenced to serve a life term of imprisonment and released on
13 parole shall be discharged from supervision and parole in a
14 period less than five years from the date of his or her release on
15 parole.

16 No parolee who has violated the terms of his or her release
17 on parole by confession to, or being convicted of, in any state
18 of the United States, the District of Columbia or the territorial
19 possessions of the United States, the crime of treason, murder,

20 aggravated robbery, first degree sexual assault, second degree
21 sexual assault, a sexual offense against a minor, incest or
22 offenses with the same essential elements if known by other
23 terms in other jurisdictions shall be discharged from parole. A
24 parolee serving a sentence in any correctional facility of another
25 state or the United States may, unless incarcerated for one of
26 the above enumerated crimes, be discharged from parole while
27 so serving his or her sentence in said correctional facility or be
28 continued on parole or returned to West Virginia as a parole
29 violator, in the discretion of the parole board.

§62-12-19. Violation of parole.

1 (a) If at any time during the period of parole there is
2 reasonable cause to believe that the parolee has violated any of
3 the conditions of his or her release on parole, the parole officer
4 may arrest him or her with or without an order or warrant, or
5 the Commissioner of Corrections may issue a written order or
6 warrant for his or her arrest, which written order or warrant is
7 sufficient for his or her arrest by any officer charged with the
8 duty of executing an ordinary criminal process. The commis-
9 sioner's written order or warrant delivered to the sheriff against
10 the paroled prisoner shall be a command to keep custody of the
11 parolee for the jurisdiction of the Division of Corrections and
12 during the period of custody, the parolee may be admitted to
13 bail by the court before which the parolee was sentenced. If the
14 parolee is not released on a bond, the costs of confining the
15 paroled prisoner shall be paid out of the funds appropriated for
16 the Division of Corrections.

17 (b) When a parolee is under arrest for violation of the
18 conditions of his or her parole, he or she shall be given a
19 prompt and summary hearing before a panel of the board, at
20 which the parolee and his or her counsel are given an opportu-
21 nity to attend. If at the hearing it appears to the satisfaction of
22 the panel that the parolee has violated any condition of his or

23 her release on parole, or any rules or conditions of his or her
24 supervision, the panel may revoke his or her parole and may
25 require him or her to serve in prison the remainder or any
26 portion of his or her maximum sentence for which, at the time
27 of his or her release, he or she was subject to imprisonment:
28 *Provided*, That if the violation of the conditions of parole or
29 rules for his or her supervision is not a felony as set out in
30 section eighteen of this article, the panel may, if in its judgment
31 the best interests of justice do not require revocation, reinstate
32 him or her on parole. The Division of Corrections shall effect
33 release from custody upon approval of a home plan. Notwith-
34 standing any provision of this code to the contrary, when
35 reasonable cause has been found to believe that a parolee has
36 violated the conditions of his or her parole but the violation
37 does not constitute felonious conduct, the commissioner may,
38 in his or her discretion and with the written consent of the
39 parolee, allow the parolee to remain on parole with additional
40 conditions or restrictions. The additional conditions or restric-
41 tions may include, but are not limited to, participation in any
42 program described in subsection (d), section five, article
43 eleven-c of this chapter. Compliance by the parolee with the
44 conditions of parole precludes revocation of parole for the
45 conduct which constituted the violation. Failure of the parolee
46 to comply with the conditions or restrictions and all other
47 conditions of release is an additional violation of parole and the
48 parolee may be proceeded against under the provisions of this
49 section for the original violation as well as any subsequent
50 violations.

51 (c) When a parolee has violated the conditions of his or her
52 release on parole by confession to, or being convicted of, any
53 of the crimes set forth in section eighteen of this article, he or
54 she shall be returned to the custody of the Division of Correc-
55 tions to serve the remainder of his or her maximum sentence,
56 during which remaining part of his or her sentence he or she is
57 ineligible for further parole.

58 (d) Whenever the parole of a paroled prisoner has been
59 revoked, the commissioner shall, upon receipt of the panel's
60 written order of revocation, convey and transport the paroled
61 prisoner to a state correctional institution. A paroled prisoner
62 whose parole has been revoked shall remain in custody of the
63 sheriff until delivery to a corrections officer sent and duly
64 authorized by the commissioner for the removal of the paroled
65 prisoner to a state penal institution; the cost of confining the
66 paroled prisoner shall be paid out of the funds appropriated for
67 the Division of Corrections.

68 (e) When a paroled prisoner is convicted of, or confesses to,
69 any one of the crimes enumerated in section eighteen of this
70 article, it is the duty of the board to cause him or her to be
71 returned to this state for a summary hearing as provided by this
72 article. Whenever a parolee has absconded supervision, the
73 commissioner shall issue a warrant for his or her apprehension
74 and return to this state for the hearing provided for in this
75 article: *Provided*, That the panel considering revocation may,
76 if it determines the best interests of justice do not require
77 revocation, cause the paroled absconder to be reinstated to
78 parole.

79 (f) A warrant filed by the commissioner shall stay the
80 running of his or her sentence until the parolee is returned to the
81 custody of the Division of Corrections and physically in West
82 Virginia.

83 (g) Whenever a parolee who has absconded supervision or
84 has been transferred out of this state for supervision pursuant to
85 section one, article six, chapter twenty-eight of this code is
86 returned to West Virginia due to a violation of parole and costs
87 are incurred by the Division of Corrections, the commissioner
88 may assess reasonable costs from the parolee's inmate funds or
89 the parolee as reimbursement to the Division of Corrections for
90 the costs of returning him or her to West Virginia.

91 (h) Conviction of a felony for conduct occurring during the
92 period of parole is proof of violation of the conditions of parole
93 and the hearing procedures required by the provisions of this
94 section are inapplicable.

95 (i) The Commissioner of the Division of Corrections may
96 issue subpoenas for persons and records necessary to prove a
97 violation of the terms and conditions of a parolee's parole either
98 at a preliminary hearing or at a final hearing before a panel of
99 the Parole Board. The subpoenas shall be served in the same
100 manner provided in the Rules of Criminal Procedure. The
101 subpoenas may be enforced by the commissioner through
102 application or petition of the commissioner to the circuit court
103 for contempt or other relief.

§62-12-23. Notification of parole hearing; victim's right to be heard; notification of release on parole.

1 (a) Following the sentencing of a person who has been
2 convicted of murder, aggravated robbery, sexual assault in the
3 first or second degree, kidnapping, child abuse resulting in
4 injury, child neglect resulting in injury, arson or a sexual
5 offense against a minor, the prosecuting attorney who prose-
6 cuted the offender shall prepare a "Parole Hearing Notification
7 Form". This form shall contain the following information:

8 (1) The name of the county in which the offender was
9 prosecuted and sentenced;

10 (2) The name of the court in which the offender was
11 prosecuted and sentenced;

12 (3) The name of the prosecuting attorney or assistant
13 prosecuting attorney who prosecuted the offender;

14 (4) The name of the judge who presided over the criminal
15 case and who sentenced the offender;

16 (5) The names of the law-enforcement agencies and officers
17 who were primarily involved with the investigation of the crime
18 for which the offender was sentenced; and

19 (6) The names, addresses and telephone numbers of the
20 victims of the crime for which the offender was sentenced or
21 the names, addresses and telephone numbers of the immediate
22 family members of each victim of the crime, including, but not
23 limited to, each victim's spouse, father, mother, brothers and
24 sisters.

25 (b) The prosecuting attorney shall retain the original of the
26 "Parole Hearing Notification Form" and shall provide copies of
27 it to the circuit court which sentenced the offender, the parole
28 board, the Commissioner of Corrections and to all persons
29 whose names and addresses are listed on the "Parole Hearing
30 Notification Form".

31 (c) At least forty-five days prior to the date of a parole
32 hearing, the parole board shall notify all persons who are listed
33 on the "Parole Hearing Notification Form" of the date, time and
34 place at which a parole hearing will be held. Such notice shall
35 be sent by certified mail, return receipt requested. The notice
36 shall state that the victims of the crime have the right to submit
37 a written statement to the parole board and to attend the parole
38 hearing to be heard regarding the propriety of granting parole
39 to the prisoner. The notice shall also state that only the victims
40 may submit written statements and speak at the parole hearing
41 unless a victim is deceased, is a minor or is otherwise incapacitated.
42

43 (d) The panel considering the parole shall inquire during the
44 parole hearing as to whether the victims of the crime or their
45 representatives, as provided in this section, are present. If so,
46 the panel shall permit those persons to speak at the hearing
47 regarding the propriety of granting parole for the prisoner.

48 (e) If the panel grants parole, it shall immediately set a date
49 on which the prisoner will be released. Such date shall be no
50 earlier than thirty days after the date on which parole is granted.
51 On the date on which parole is granted, the parole board shall
52 notify all persons listed on the "Parole Hearing Notification
53 Form" that parole has been granted and that the prisoner will be
54 released on a particular date. A written statement of reasons for
55 releasing the prisoner, prepared pursuant to subdivision (4),
56 subsection (b), section thirteen of this article, shall be provided
57 upon request to all persons listed on the "Parole Hearing
58 Notification Form".

§62-12-24. Request to continue for good cause and timely notice required.

1 (a) Any inmate scheduled for a parole interview shall, if he
2 or she desires to continue the interview, file with the institu-
3 tional parole officer a written waiver of his or her right to an
4 interview on the date set on a form provided by the commis-
5 sioner of corrections at least thirty days prior to the interview
6 date. A copy of the waiver shall be supplied to the board of
7 parole.

8 (b) The board shall propose for promulgation a legislative
9 rule pursuant to article three, chapter twenty-nine-a of this code
10 setting forth criteria constituting emergency circumstances
11 where a waiver of interview filed less than thirty days prior to
12 the scheduled interview shall constitute good cause for a
13 continuance.

14 (c) Any inmate failing to appear for his or her scheduled
15 parole interview who has not waived his or her interview
16 pursuant to subsection (a) or (b) of this section shall be deemed
17 to have waived his or her right to a parole interview for a period
18 of twelve months from the date of the interview at which he or
19 she failed to appear. The panel conducting the interview shall

- 20 have discretion to reset the interview with notice to the inmate
21 and any other person or persons entitled by law to notice, prior
22 to the expiration of the twelve-month waiver period.

CHAPTER 176

(S. B. 709 — By Senator Bailey)

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 5, 2006.]

AN ACT to amend and reenact §6B-2-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §8A-2-3, §8A-2-4 and §8A-2-5 of said code, all relating to members of planning commissions; allowing for the service of planning commission members who have businesses that appear before the planning commission under certain circumstances; and providing exceptions to limitations on practice before a planning commission.

Be it enacted by the Legislature of West Virginia:

That §6B-2-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §8A-2-3, §8A-2-4 and §8A-2-5 of said code be amended and reenacted, all to read as follows:

Chapter

6B. General Provisions Respecting Officers.

8A. Land Use Planning.

**CHAPTER 6B. GENERAL PROVISIONS
RESPECTING OFFICERS.**

**ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND
DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY**

**PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES
BEFORE PUBLIC AGENCIES; CODE OF CONDUCT FOR
ADMINISTRATIVE LAW JUDGES.**

**§6B-2-5. Ethical standards for elected and appointed officials and
public employees.**

1 (a) *Persons subject to section.* — The provisions of this
2 section apply to all elected and appointed public officials and
3 public employees, whether full or part time, in state, county,
4 municipal governments and their respective boards, agencies,
5 departments and commissions and in any other regional or local
6 governmental agency, including county school boards.

7 (b) *Use of public office for private gain.* —

8 (1) A public official or public employee may not knowingly
9 and intentionally use his or her office or the prestige of his or
10 her office for his or her own private gain or that of another
11 person. Incidental use of equipment or resources available to
12 a public official or public employee by virtue of his or her
13 position for personal or business purposes resulting in de
14 minimis private gain does not constitute use of public office for
15 private gain under this subsection. The performance of usual
16 and customary duties associated with the office or position or
17 the advancement of public policy goals or constituent services,
18 without compensation, does not constitute the use of prestige of
19 office for private gain.

20 (2) The Legislature, in enacting this subsection, recognizes
21 that there may be certain public officials or public employees
22 who bring to their respective offices or employment their own
23 unique personal prestige which is based upon their intelligence,
24 education, experience, skills and abilities, or other personal
25 gifts or traits. In many cases, these persons bring a personal
26 prestige to their office or employment which inures to the
27 benefit of the state and its citizens. Those persons may, in fact,

28 be sought by the state to serve in their office or employment
29 because, through their unusual gifts or traits, they bring stature
30 and recognition to their office or employment and to the state
31 itself. While the office or employment held or to be held by
32 those persons may have its own inherent prestige, it would be
33 unfair to those individuals and against the best interests of the
34 citizens of this state to deny those persons the right to hold
35 public office or to be publicly employed on the grounds that
36 they would, in addition to the emoluments of their office or
37 employment, be in a position to benefit financially from the
38 personal prestige which otherwise inheres to them. Accord-
39 ingly, the commission is directed, by legislative rule, to
40 establish categories of public officials and public employees,
41 identifying them generally by the office or employment held,
42 and offering persons who fit within those categories the
43 opportunity to apply for an exemption from the application of
44 the provisions of this subsection. Exemptions may be granted
45 by the commission, on a case-by-case basis, when it is shown
46 that: (A) The public office held or the public employment
47 engaged in is not such that it would ordinarily be available or
48 offered to a substantial number of the citizens of this state; (B)
49 the office held or the employment engaged in is such that it
50 normally or specifically requires a person who possesses
51 personal prestige; and (C) the person's employment contract or
52 letter of appointment provides or anticipates that the person will
53 gain financially from activities which are not a part of his or her
54 office or employment.

55 (c) *Gifts.* — (1) A public official or public employee may
56 not solicit any gift unless the solicitation is for a charitable
57 purpose with no resulting direct pecuniary benefit conferred
58 upon the official or employee or his or her immediate family:
59 *Provided,* That no public official or public employee may
60 solicit for a charitable purpose any gift from any person who is
61 also an official or employee of the state and whose position is
62 subordinate to the soliciting official or employee: *Provided,*

63 *however*, That nothing herein shall prohibit a candidate for
64 public office from soliciting a lawful political contribution. No
65 official or employee may knowingly accept any gift, directly or
66 indirectly, from a lobbyist or from any person whom the official
67 or employee knows or has reason to know:

68 (A) Is doing or seeking to do business of any kind with his
69 or her agency;

70 (B) Is engaged in activities which are regulated or con-
71 trolled by his or her agency; or

72 (C) Has financial interests which may be substantially and
73 materially affected, in a manner distinguishable from the public
74 generally, by the performance or nonperformance of his or her
75 official duties.

76 (2) Notwithstanding the provisions of subdivision (1) of
77 this subsection, a person who is a public official or public
78 employee may accept a gift described in this subdivision, and
79 there shall be a presumption that the receipt of such gift does
80 not impair the impartiality and independent judgment of the
81 person. This presumption may be rebutted only by direct
82 objective evidence that the gift did impair the impartiality and
83 independent judgment of the person or that the person knew or
84 had reason to know that the gift was offered with the intent to
85 impair his or her impartiality and independent judgment. The
86 provisions of subdivision (1) of this subsection do not apply to:

87 (A) Meals and beverages;

88 (B) Ceremonial gifts or awards which have insignificant
89 monetary value;

90 (C) Unsolicited gifts of nominal value or trivial items of
91 informational value;

92 (D) Reasonable expenses for food, travel and lodging of the
93 official or employee for a meeting at which the official or
94 employee participates in a panel or has a speaking engagement;

95 (E) Gifts of tickets or free admission extended to a public
96 official or public employee to attend charitable, cultural or
97 political events, if the purpose of such gift or admission is a
98 courtesy or ceremony customarily extended to the office;

99 (F) Gifts that are purely private and personal in nature; or

100 (G) Gifts from relatives by blood or marriage or a member
101 of the same household.

102 (3) The commission shall, through legislative rule promul-
103 gated pursuant to chapter twenty-nine-a of this code, establish
104 guidelines for the acceptance of a reasonable honorarium by
105 public officials and elected officials. The rule promulgated
106 shall be consistent with this section. Any elected public official
107 may accept an honorarium only when: (1) That official is a
108 part-time elected public official; (2) the fee is not related to the
109 official's public position or duties; (3) the fee is for services
110 provided by the public official that are related to the public
111 official's regular, nonpublic trade, profession, occupation,
112 hobby or avocation; and (4) the honorarium is not provided in
113 exchange for any promise or action on the part of the public
114 official.

115 (4) Nothing in this section shall be construed so as to
116 prohibit the giving of a lawful political contribution as defined
117 by law.

118 (5) The Governor or his designee may, in the name of the
119 State of West Virginia, accept and receive gifts from any public
120 or private source. Any gift so obtained shall become the
121 property of the state and shall, within thirty days of the receipt

122 thereof, be registered with the commission and the Division of
123 Culture and History.

124 (6) Upon prior approval of the Joint Committee on
125 Government and Finance, any member of the Legislature may
126 solicit donations for a regional or national legislative organiza-
127 tion conference or other legislative organization function to be
128 held in the state for the purpose of deferring costs to the state
129 for hosting of the conference or function. Legislative organiza-
130 tions are bipartisan regional or national organizations in which
131 the Joint Committee on Government and Finance authorizes
132 payment of dues or other membership fees for the Legislature's
133 participation and which assist this and other state legislatures
134 and their staff through any of the following:

135 (i) Advancing the effectiveness, independence and integrity
136 of legislatures in the states of the United States;

137 (ii) Fostering interstate cooperation and facilitating
138 information exchange among state legislatures;

139 (iii) Representing the states and their legislatures in the
140 American federal system of government;

141 (iv) Improving the operations and management of state
142 legislatures and the effectiveness of legislators and legislative
143 staff and to encourage the practice of high standards of conduct
144 by legislators and legislative staff;

145 (v) Promoting cooperation between state legislatures in the
146 United States and legislatures in other countries.

147 The solicitations may only be made in writing. The
148 legislative organization may act as fiscal agent for the confer-
149 ence and receive all donations. In the alternative, a bona fide
150 banking institution may act as the fiscal agent. The official
151 letterhead of the Legislature may not be used by the legislative

152 member in conjunction with the fund raising or solicitation
153 effort. The legislative organization for which solicitations are
154 being made shall file with the Joint Committee on Government
155 and Finance and with the Secretary of State for publication in
156 the State Register as provided in article two, chapter twenty-
157 nine-a of this code, copies of letters, brochures and other
158 solicitation documents, along with a complete list of the names
159 and last known addresses of all donors and the amount of
160 donations received. Any solicitation by a legislative member
161 shall contain the following disclaimer:

162 “This solicitation is endorsed by [name of member]. This
163 endorsement does not imply support of the soliciting organiza-
164 tion, nor of the sponsors who may respond to the solicitation.
165 A copy of all solicitations are on file with the West Virginia
166 Legislature’s Joint Committee on Government and Finance and
167 with the Secretary of State and are available for public review.”

168 (7) Upon written notice to the commission, any member of
169 the Board of Public Works may solicit donations for a regional
170 or national organization conference or other function related to
171 the office of the member to be held in the state for the purpose
172 of deferring costs to the state for hosting of the conference or
173 function. The solicitations may only be made in writing. The
174 organization may act as fiscal agent for the conference and
175 receive all donations. In the alternative, a bona fide banking
176 institution may act as the fiscal agent. The official letterhead of
177 the office of the Board of Public Works member may not be
178 used in conjunction with the fund-raising or solicitation effort.
179 The organization for which solicitations are being made shall
180 file with the Joint Committee on Government and Finance, with
181 the Secretary of State for publication in the State Register as
182 provided in article two, chapter twenty-nine-a of this code and
183 with the commission, copies of letters, brochures and other
184 solicitation documents, along with a complete list of the names
185 and last known addresses of all donors and the amount of

186 donations received. Any solicitation by a member of the Board
187 of Public Works shall contain the following disclaimer: "This
188 solicitation is endorsed by (name of member of Board of Public
189 Works.) This endorsement does not imply support of the
190 soliciting organization, nor of the sponsors who may respond to
191 the solicitation. Copies of all solicitations are on file with the
192 West Virginia Legislature's Joint Committee on Government
193 and Finance, with the West Virginia Secretary of State and with
194 the West Virginia Ethics Commission and are available for
195 public review." Any moneys in excess of those donations
196 needed for the conference or function shall be deposited in the
197 Capitol Dome and Capitol Improvement Fund established in
198 section two, article four, chapter five-a of this code.

199 (d) *Interests in public contracts.* — (1) In addition to the
200 provisions of section fifteen, article ten, chapter sixty-one of
201 this code, no elected or appointed public official or public
202 employee or member of his or her immediate family or business
203 with which he or she is associated may be a party to or have an
204 interest in the profits or benefits of a contract which the official
205 or employee may have direct authority to enter into, or over
206 which he or she may have control: *Provided*, That nothing
207 herein shall be construed to prevent or make unlawful the
208 employment of any person with any governmental body:
209 *Provided, however*, That nothing herein shall be construed to
210 prohibit a member of the Legislature from entering into a
211 contract with any governmental body, or prohibit a part-time
212 appointed public official from entering into a contract which the
213 part-time appointed public official may have direct authority to
214 enter into or over which he or she may have control when the
215 official has not participated in the review or evaluation thereof,
216 has been recused from deciding or evaluating and has been
217 excused from voting on the contract and has fully disclosed the
218 extent of his or her interest in the contract.

219 (2) In the absence of bribery or a purpose to defraud, an
220 elected or appointed public official or public employee or a

221 member of his or her immediate family or a business with
222 which he or she is associated shall not be considered as having
223 an interest in a public contract when such a person has a limited
224 interest as an owner, shareholder or creditor of the business
225 which is the contractor on the public contract involved. A
226 limited interest for the purposes of this subsection is:

227 (A) An interest:

228 (i) Not exceeding ten percent of the partnership or the
229 outstanding shares of a corporation; or

230 (ii) Not exceeding thirty thousand dollars interest in the
231 profits or benefits of the contract; or

232 (B) An interest as a creditor:

233 (i) Not exceeding ten percent of the total indebtedness of a
234 business; or

235 (ii) Not exceeding thirty thousand dollars interest in the
236 profits or benefits of the contract.

237 (3) Where the provisions of subdivisions (1) and (2) of this
238 subsection would result in the loss of a quorum in a public body
239 or agency, in excessive cost, undue hardship, or other substan-
240 tial interference with the operation of a state, county, munici-
241 pality, county school board or other governmental agency, the
242 affected governmental body or agency may make written
243 application to the Ethics Commission for an exemption from
244 subdivisions (1) and (2) of this subsection.

245 (e) *Confidential information.* — No present or former
246 public official or employee may knowingly and improperly
247 disclose any confidential information acquired by him or her in
248 the course of his or her official duties nor use such information
249 to further his or her personal interests or the interests of another
250 person.

251 (f) *Prohibited representation.* — No present or former
252 elected or appointed public official or public employee shall,
253 during or after his or her public employment or service,
254 represent a client or act in a representative capacity with or
255 without compensation on behalf of any person in a contested
256 case, rate-making proceeding, license or permit application,
257 regulation filing or other particular matter involving a specific
258 party or parties which arose during his or her period of public
259 service or employment and in which he or she personally and
260 substantially participated in a decision-making, advisory or
261 staff support capacity, unless the appropriate government
262 agency, after consultation, consents to such representation. A
263 staff attorney, accountant or other professional employee who
264 has represented a government agency in a particular matter
265 shall not thereafter represent another client in the same or
266 substantially related matter in which that client's interests are
267 materially adverse to the interests of the government agency,
268 without the consent of the government agency: *Provided,* That
269 this prohibition on representation shall not apply when the
270 client was not directly involved in the particular matter in
271 which the professional employee represented the government
272 agency, but was involved only as a member of a class. The
273 provisions of this subsection shall not apply to legislators who
274 were in office and legislative staff who were employed at the
275 time it originally became effective on the first day of July, one
276 thousand nine hundred eighty-nine, and those who have since
277 become legislators or legislative staff and those who shall serve
278 hereafter as legislators or legislative staff.

279 (g) *Limitation on practice before a board, agency, commis-*
280 *sion or department.* -- Except as otherwise provided in section
281 three, four or five, article two, chapter eight-a of this code:

282 (1) No elected or appointed public official and no full-time
283 staff attorney or accountant shall, during his or her public
284 service or public employment or for a period of one year after

285 the termination of his or her public service or public employ-
286 ment with a governmental entity authorized to hear contested
287 cases or promulgate or propose rules, appear in a representative
288 capacity before the governmental entity in which he or she
289 serves or served or is or was employed in the following matters:

290 (A) A contested case involving an administrative sanction,
291 action or refusal to act;

292 (B) To support or oppose a proposed rule;

293 (C) To support or contest the issuance or denial of a license
294 or permit;

295 (D) A rate-making proceeding; and

296 (E) To influence the expenditure of public funds.

297 (2) As used in this subsection, “represent” includes any
298 formal or informal appearance before, or any written or oral
299 communication with, any public agency on behalf of any
300 person: *Provided*, That nothing contained in this subsection
301 shall prohibit, during any period, a former public official or
302 employee from being retained by or employed to represent,
303 assist or act in a representative capacity on behalf of the public
304 agency by which he or she was employed or in which he or she
305 served. Nothing in this subsection shall be construed to prevent
306 a former public official or employee from representing another
307 state, county, municipal or other governmental entity before the
308 governmental entity in which he or she served or was employed
309 within one year after the termination of his or her employment
310 or service in the entity.

311 (3) A present or former public official or employee may
312 appear at any time in a representative capacity before the
313 Legislature, a county commission, city or town council or
314 county school board in relation to the consideration of a statute,
315 budget, ordinance, rule, resolution or enactment.

316 (4) Members and former members of the Legislature and
317 professional employees and former professional employees of
318 the Legislature shall be permitted to appear in a representative
319 capacity on behalf of clients before any governmental agency
320 of the state or of county or municipal governments, including
321 county school boards.

322 (5) An elected or appointed public official, full-time staff
323 attorney or accountant who would be adversely affected by the
324 provisions of this subsection may apply to the Ethics Commis-
325 sion for an exemption from the six months prohibition against
326 appearing in a representative capacity, when the person's
327 education and experience is such that the prohibition would, for
328 all practical purposes, deprive the person of the ability to earn
329 a livelihood in this state outside of the governmental agency.
330 The Ethics Commission shall by legislative rule establish
331 general guidelines or standards for granting an exemption or
332 reducing the time period, but shall decide each application on
333 a case-by-case basis.

334 (h) *Employment by regulated persons.* — (1) No full-time
335 official or full-time public employee may seek employment
336 with, be employed by, or seek to purchase, sell or lease real or
337 personal property to or from any person who:

338 (A) Had a matter on which he or she took, or a subordinate
339 is known to have taken, regulatory action within the preceding
340 twelve months; or

341 (B) Has a matter before the agency to which he or she is
342 working or a subordinate is known by him or her to be working.

343 (2) Within the meaning of this section, the term “employ-
344 ment” includes professional services and other services
345 rendered by the public official or public employee, whether
346 rendered as employee or as an independent contractor; “seek
347 employment” includes responding to unsolicited offers of

348 employment as well as any direct or indirect contact with a
349 potential employer relating to the availability or conditions of
350 employment in furtherance of obtaining employment; and
351 “subordinate” includes only those agency personnel over whom
352 the public official or public employee has supervisory responsi-
353 bility.

354 (3) A full-time public official or full-time public employee
355 who would be adversely affected by the provisions of this
356 subsection may apply to the Ethics Commission for an
357 exemption from the prohibition contained in subdivision (1) of
358 this subsection. The Ethics Commission shall by legislative rule
359 establish general guidelines or standards for granting an
360 exemption, but shall decide each application on a case-by-case
361 basis.

362 (4) A full-time public official or full-time public employee
363 may not take personal regulatory action on a matter affecting a
364 person by whom he or she is employed or with whom he or she
365 is seeking employment or has an agreement concerning future
366 employment.

367 (5) A full-time public official or full-time public employee
368 may not receive private compensation for providing informa-
369 tion or services that he or she is required to provide in carrying
370 out his or her public job responsibilities.

371 (i) *Members of the Legislature required to vote.* —
372 Members of the Legislature who have asked to be excused from
373 voting or who have made inquiry as to whether they should be
374 excused from voting on a particular matter and who are
375 required by the presiding officer of the House of Delegates or
376 Senate of West Virginia to vote under the rules of the particular
377 house shall not be guilty of any violation of ethics under the
378 provisions of this section for a vote so cast.

379 (j) *Limitations on participation in licensing and rate-*
380 *making proceedings.* — No public official or employee may
381 participate within the scope of his or her duties as a public
382 official or employee, except through ministerial functions as
383 defined in section three, article one of this chapter, in any
384 license or rate-making proceeding that directly affects the
385 license or rates of any person, partnership, trust, business trust,
386 corporation or association in which the public official or
387 employee or his or her immediate family owns or controls more
388 than ten percent. No public official or public employee may
389 participate within the scope of his or her duties as a public
390 official or public employee, except through ministerial
391 functions as defined in section three, article one of this chapter,
392 in any license or rate-making proceeding that directly affects
393 the license or rates of any person to whom the public official or
394 public employee or his or her immediate family, or a partner-
395 ship, trust, business trust, corporation or association of which
396 the public official or employee, or his or her immediate family,
397 owns or controls more than ten percent, has sold goods or
398 services totaling more than one thousand dollars during the
399 preceding year, unless the public official or public employee
400 has filed a written statement acknowledging such sale with the
401 public agency and the statement is entered in any public record
402 of the agency's proceedings. This subsection shall not be
403 construed to require the disclosure of clients of attorneys or of
404 patients or clients of persons licensed pursuant to article three,
405 eight, fourteen, fourteen-a, fifteen, sixteen, twenty, twenty-one
406 or thirty-one, chapter thirty of this code.

407 (k) *Certain compensation prohibited.* — (1) A public
408 employee may not receive additional compensation from
409 another publicly funded state, county or municipal office or
410 employment for working the same hours, unless:

411 (A) The public employee's compensation from one public
412 employer is reduced by the amount of compensation received
413 from the other public employer;

414 (B) The public employee's compensation from one public
415 employer is reduced on a pro rata basis for any work time
416 missed to perform duties for the other public employer;

417 (C) The public employee uses earned paid vacation,
418 personal or compensatory time or takes unpaid leave from his
419 or her public employment to perform the duties of another
420 public office or employment; or

421 (D) A part-time public employee who does not have
422 regularly scheduled work hours or a public employee who is
423 authorized by one public employer to make up, outside of
424 regularly scheduled work hours, time missed to perform the
425 duties of another public office or employment maintains time
426 records, verified by the public employee and his or her
427 immediate supervisor at least once every pay period, showing
428 the hours that the public employee did, in fact, work for each
429 public employer. The public employer shall submit these time
430 records to the Ethics Commission on a quarterly basis.

431 (2) This section does not prohibit a retired public official or
432 public employee from receiving compensation from a publicly
433 funded office or employment in addition to any retirement
434 benefits to which the retired public official or public employee
435 is entitled.

436 (l) *Certain expenses prohibited.* — No public official or
437 public employee shall knowingly request or accept from any
438 governmental entity compensation or reimbursement for any
439 expenses actually paid by a lobbyist and required by the
440 provisions of this chapter to be reported, or actually paid by any
441 other person.

442 (m) Any person who is employed as a member of the
443 faculty or staff of a public institution of higher education and
444 who is engaged in teaching, research, consulting or publication
445 activities in his or her field of expertise with public or private

446 entities and thereby derives private benefits from such activities
447 shall be exempt from the prohibitions contained in subsections
448 (b), (c) and (d) of this section when the activity is approved as
449 a part of an employment contract with the governing board of
450 the institution or has been approved by the employee's
451 department supervisor or the president of the institution by
452 which the faculty or staff member is employed.

453 (n) Except as provided in this section, a person who is a
454 public official or public employee may not solicit private
455 business from a subordinate public official or public employee
456 whom he or she has the authority to direct, supervise or control.
457 A person who is a public official or public employee may
458 solicit private business from a subordinate public official or
459 public employee whom he or she has the authority to direct,
460 supervise or control when:

461 (A) The solicitation is a general solicitation directed to the
462 public at large through the mailing or other means of distribu-
463 tion of a letter, pamphlet, handbill, circular or other written or
464 printed media; or

465 (B) The solicitation is limited to the posting of a notice in
466 a communal work area; or

467 (C) The solicitation is for the sale of property of a kind that
468 the person is not regularly engaged in selling; or

469 (D) The solicitation is made at the location of a private
470 business owned or operated by the person to which the
471 subordinate public official or public employee has come on his
472 or her own initiative.

473 (o) The commission may, by legislative rule promulgated
474 in accordance with chapter twenty-nine-a of this code, define
475 further exemptions from this section as necessary or appropri-
476 ate.

CHAPTER 8A. LAND USE PLANNING.**ARTICLE 2. PLANNING COMMISSIONS.**

§8A-2-3. Municipal planning commission.

§8A-2-4. County planning commission.

§8A-2-5. Multicounty planning commission, regional planning commission or joint planning commission.

§8A-2-3. Municipal planning commission.

1 (a) A municipal planning commission shall have not less
2 than five nor more than fifteen members, the exact number to
3 be specified in the ordinance creating the planning commission.

4 (b) The members of a municipal planning commission must
5 be:

6 (1) Residents of the municipality; and

7 (2) Qualified by knowledge and experience in matters
8 pertaining to the development of the municipality.

9 (c) At least three fifths of all of the members must have
10 been residents of the municipality for at least three years prior
11 to nomination or appointment and confirmation.

12 (d) The members of a municipal planning commission must
13 fairly represent different areas of interest, knowledge and
14 expertise, including, but not limited to, business, industry,
15 labor, government and other relevant disciplines. One member
16 must be a member of the municipal governing body or a
17 designee and one member must be a member of the administra-
18 tive department of the municipality or a designee. The term of
19 membership for these two members is the same as their term of
20 office.

21 (e) The Legislature finds that there are persons willing to
22 serve on planning commissions who may also own interests in

23 businesses that regularly conduct business in front of or with
24 planning commission staff. Such persons may have experience
25 and expertise which would be valuable assets to a planning
26 commission. For those reasons, notwithstanding any other
27 provisions in this code to the contrary, any person employed by,
28 owning an interest in or otherwise associated with a business
29 that regularly conducts business in front of or with planning
30 commission staff may also serve as a member of a planning
31 commission and shall not be disqualified from serving as a
32 member because of a conflict of interest as defined in section
33 fifteen, article ten, chapter sixty-one of this code and shall not
34 be subject to prosecution under provisions of that chapter when
35 the violation is created solely as a result of his or her relation-
36 ship with the business. This member must recuse himself or
37 herself from any vote, discussion, participation or other activity
38 regarding the conflicting issue.

39 (f) The Legislature finds that there are persons willing to
40 serve on planning commissions who may also own interests in
41 businesses who regularly conduct business in front of or with
42 planning commission staff. Such persons may have experience
43 and expertise which would be valuable assets to a planning
44 commission. For those reasons, notwithstanding any other
45 provisions in this code to the contrary, any person employed by,
46 owning an interest in or otherwise associated with a business
47 that regularly conducts business in front of or with planning
48 commission staff may also serve as a member of a planning
49 commission and shall not be in violation of subsection (g),
50 section five, article two, chapter six-b of this code if the
51 member recuses himself or herself from any vote, discussion,
52 participation or other activity regarding the conflicting issue:
53 *Provided*, That such members do not constitute a majority of
54 the members of the planning commission at the same time.

55 (g) The remaining members of the municipal planning
56 commission first selected shall serve respectively for terms of

57 one year, two years and three years, divided equally or as nearly
58 equally as possible between these terms. Thereafter, members
59 shall serve three-year terms. Vacancies shall be filled for the
60 unexpired term and made in the same manner as original
61 selections were made.

62 (h) The members of a municipal planning commission shall
63 serve without compensation, but shall be reimbursed for all
64 reasonable and necessary expenses actually incurred in the
65 performance of their official duties.

66 (i) Nominations for municipal planning commission
67 membership shall be made by the administrative authority and
68 confirmed by the governing body when the administrative
69 authority and the governing body are separate, or appointed and
70 confirmed by the governing body where the administrative
71 authority and governing body are the same.

72 (j) An individual may serve as a member of a municipal
73 planning commission, a county planning commission, a
74 multicounty planning commission, a regional planning
75 commission or a joint planning commission, at the same time.

76 (k) The governing body of the municipality may establish
77 procedures for the removal of members of the planning
78 commission for inactivity, neglect of duty or malfeasance. The
79 procedures must contain provisions requiring that the person to
80 be removed be provided with a written statement of the reasons
81 for removal and an opportunity to be heard on the matter.

§8A-2-4. County planning commission.

1 (a) A county planning commission shall have not less than
2 five nor more than fifteen members, the exact number to be
3 specified in the ordinance creating the planning commission.

4 (b) The members of a county planning commission must
5 be:

6 (1) Residents of the county; and

7 (2) Qualified by knowledge and experience in matters
8 pertaining to the development of the county.

9 (c) At least three fifths of all of the members must have
10 been residents of the county for at least three years prior to
11 appointment and confirmation by the county commission.

12 (d) The members of a county planning commission must
13 fairly represent different areas of interest, knowledge and
14 expertise, including, but not limited to, business, industry,
15 labor, farming, government and other relevant disciplines. One
16 member must be a member of the county commission or a
17 designee. The term of membership for this member is the same
18 as the term of office.

19 (e) The Legislature finds that there are persons willing to
20 serve on planning commissions who may also own interests in
21 businesses that regularly conduct business in front of or with
22 planning commission staff. Such persons may have experience
23 and expertise which would be valuable assets to a planning
24 commission. For those reasons, notwithstanding any other
25 provisions in this code to the contrary, any person employed by,
26 owning an interest in or otherwise associated with a business
27 that regularly conducts business in front of or with planning
28 commission staff may also serve as a member of a planning
29 commission and shall not be disqualified from serving as a
30 member because of a conflict of interest as defined in section
31 fifteen, article ten, chapter sixty-one of this code and shall not
32 be subject to prosecution under provisions of that chapter when
33 the violation is created solely as a result of his or her relation-
34 ship with the business. This member must recuse himself or

35 herself from any vote, discussion, participation or other activity
36 regarding the conflicting issue.

37 (f) The Legislature finds that there are persons willing to
38 serve on planning commissions who may also own interests in
39 businesses who regularly conduct business in front of or with
40 planning commission staff. Such persons may have experience
41 and expertise which would be valuable assets to a planning
42 commission. For those reasons, notwithstanding any other
43 provisions in this code to the contrary, any person employed by,
44 owning an interest in or otherwise associated with a business
45 that regularly conducts business in front of or with planning
46 commission staff may also serve as a member of a planning
47 commission and shall not be in violation of subsection (g),
48 section five, article two, chapter six-b of this code if the
49 member recuses himself or herself from any vote, discussion,
50 participation or other activity regarding the conflicting issue:
51 *Provided*, That such members do not constitute a majority of
52 the members of the planning commission at the same time.

53 (g) The remaining members of the county planning
54 commission first selected shall serve respectively for terms of
55 one year, two years and three years, divided equally or as nearly
56 equally as possible between these terms. Thereafter, members
57 shall serve three-year terms. Vacancies shall be filled for the
58 unexpired term and made in the same manner as original
59 selections were made.

60 (h) The members of a county planning commission shall
61 serve without compensation, but shall be reimbursed for all
62 reasonable and necessary expenses actually incurred in the
63 performance of their official duties.

64 (i) Appointments for county planning commission member-
65 ship shall be made and confirmed by the county commission.

66 (j) An individual may serve as a member of a municipal
67 planning commission, a county planning commission, a
68 multicounty planning commission, a regional planning
69 commission or a joint planning commission, at the same time.

70 (k) The county commission may establish procedures for
71 the removal of members of the planning commission for
72 inactivity, neglect of duty or malfeasance. The procedures must
73 contain provisions requiring that the person to be removed be
74 provided with a written statement of the reasons for removal
75 and an opportunity to be heard on the matter.

**§8A-2-5. Multicounty planning commission, regional planning
commission or joint planning commission.**

1 (a) A multicounty planning commission, a regional
2 planning commission or a joint planning commission shall have
3 not less than five nor more than fifteen members, the exact
4 number to be specified in the ordinance creating the planning
5 commission.

6 (b) The members of a multicounty planning commission, a
7 regional planning commission or a joint planning commission
8 must be:

9 (1) Residents of the jurisdiction of the multicounty planning
10 commission, regional planning commission or joint planning
11 commission; and

12 (2) Qualified by knowledge and experience in matters
13 pertaining to the development of the jurisdiction.

14 (c) The members of a multicounty planning commission, a
15 regional planning commission or a joint planning commission
16 must equally represent the jurisdictions in the planning
17 commission and must have been residents of the jurisdiction he

18 or she represents for at least three years prior to appointment
19 and confirmation.

20 (d) The members of a multicounty planning commission, a
21 regional planning commission or a joint planning commission
22 must fairly represent different areas of interest, knowledge and
23 expertise, including, but not limited to, business, industry,
24 labor, farming, government and other relevant disciplines. Each
25 governing body participating in the planning commission must
26 have one member from its governing body on the planning
27 commission. The term of membership for this member is the
28 same as the term of office.

29 (e) The Legislature finds that there are persons willing to
30 serve on planning commissions who may also own interests in
31 businesses that regularly conduct business in front of or with
32 planning commission staff. Such persons may have experience
33 and expertise which would be valuable assets to a planning
34 commission. For those reasons, notwithstanding any other
35 provisions in this code to the contrary, any person employed by,
36 owning an interest in or otherwise associated with a business
37 that regularly conducts business in front of or with planning
38 commission staff may also serve as a member of a planning
39 commission and shall not be disqualified from serving as a
40 member because of a conflict of interest as defined in section
41 fifteen, article ten, chapter sixty-one of this code and shall not
42 be subject to prosecution under provisions of that chapter when
43 the violation is created solely as a result of his or her relation-
44 ship with the business. This member must recuse himself or
45 herself from any vote, discussion, participation or other activity
46 regarding the conflicting issue.

47 (f) The Legislature finds that there are persons willing to
48 serve on planning commissions who may also own interests in
49 businesses who regularly conduct business in front of or with

50 planning commission staff. Such persons may have experience
51 and expertise which would be valuable assets to a planning
52 commission. For those reasons, notwithstanding any other
53 provisions in this code to the contrary, any person employed by,
54 owning an interest in or otherwise associated with a business
55 that regularly conducts business in front of or with planning
56 commission staff may also serve as a member of a planning
57 commission and shall not be in violation of subsection (g),
58 section five, article two, chapter six-b of this code if the
59 member recuses himself or herself from any vote, discussion,
60 participation or other activity regarding the conflicting issue:
61 *Provided*, That such members do not constitute a majority of
62 the members of the planning commission at the same time.

63 (g) The remaining members of the multicounty planning
64 commission, regional planning commission or joint planning
65 commission first selected shall serve respectively for terms of
66 one year, two years and three years, divided equally or as nearly
67 equally as possible between these terms. Thereafter, members
68 shall serve three-year terms. Vacancies shall be filled for the
69 unexpired term and made in the same manner as original
70 selections were made.

71 (h) The members of a multicounty planning commission, a
72 regional planning commission or a joint planning commission
73 shall serve without compensation, but shall be reimbursed for
74 all reasonable and necessary expenses actually incurred in the
75 performance of their official duties.

76 (i) Appointments for a multicounty planning commission,
77 a regional planning commission or a joint planning commission
78 membership shall be made and confirmed by each governing
79 body participating in the planning commission.

80 (j) An individual may serve as a member of a municipal
81 planning commission, a county planning commission, a

82 multicounty planning commission, a regional planning
83 commission or a joint planning commission, at the same time.

84 (k) The governing bodies may establish procedures for the
85 removal of members of the planning commission for inactivity,
86 neglect of duty or malfeasance. The procedures must contain
87 provisions requiring that the person to be removed be provided
88 with a written statement of the reasons for removal and an
89 opportunity to be heard on the matter.

CHAPTER 177

(H. B. 4651 — By Mr. Speaker, Mr. Kiss)

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18B-11B-1, §18B-11B-2, §18B-11B-3, §18B-11B-4, §18B-11B-5 and §18B-11B-6, all relating to continuing the statewide poison center generally; setting forth legislative findings; providing for the continuation of the poison center as the West Virginia Poison Control Center; requiring certification; establishing an advisory board; providing for an annual report; setting forth certain responsibilities of the West Virginia Poison Control Center; setting forth certain powers and responsibilities of the director of the center; and providing for general immunity for the center and its employees for actions taken in good faith.

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 §18B-11B-1, §18B-11B-2,

§18B-11B-3, §18B-11B-4, §18B-11B-5 and §18B-11B-6, all to read as follows:

ARTICLE 11B. WEST VIRGINIA POISON CENTER.

§18B-11B-1. Intent.

§18B-11B-2. West Virginia poison center continued; certification.

§18B-11B-3. Advisory Board.

§18B-11B-4. Center responsibilities.

§18B-11B-5. Powers and responsibilities of the director.

§18B-11B-6. Immunity of center and staff.

§18B-11B-1. Intent.

1 The Legislature hereby finds that the current level of
2 scientific information regarding the chemicals, hazardous and
3 noxious substances, biochemical agents, toxic household
4 products and various combinations of them that lead to human
5 poisoning with the added risks associated with criminal activity
6 and clandestine terrorism involving toxic materials and agents
7 requires the immediate availability of accurate information,
8 resources and services to assess toxic threats to the public,
9 prevent human poisoning and assist the general public, the
10 police, firefighters, public health officials, emergency service
11 workers, health care providers and other first responding
12 emergency personnel.

13 It is the intent of the Legislature that poison control services
14 be provided throughout the state on a consistent and prompt
15 basis by any and all electronic means as well as by a toll free
16 telephone network in order that illness or death that may result
17 from the exposure of an individual to poisonous substances may
18 be avoided. The Legislature also finds that the West Virginia
19 Poison Center located at the Robert C. Byrd Health Sciences
20 Center, West Virginia University, Charleston Division and
21 operated by West Virginia University meets these criteria and
22 is hereby continued as the West Virginia Poison Center.

23 The Legislature further finds that effective poison control,
24 not only saves lives and protects the public welfare but also
25 reduces emergency medical costs and is considered an essential
26 emergency service.

§18B-11B-2. West Virginia Poison Center continued; certification.

1 (a) The West Virginia Poison Center (hereinafter referred
2 to as “the Center”) currently a part of and located at the Robert
3 C. Byrd Health Sciences Center, West Virginia University,
4 Charleston Division and operated by West Virginia University,
5 is hereby continued as a special service under West Virginia
6 University.

7 (b) The center shall be certified by the American Associa-
8 tion of Poison Centers or other similar organization with the
9 same or higher certification standards, and shall have a director
10 who is a board certified toxicologist.

11 (c) The West Virginia Poison Center is exempt from
12 temporary budget hiring freezes that may apply to colleges and
13 universities under the Higher Education Policy Commission.

§18B-11B-3. Advisory Board.

1 There is hereby created the West Virginia Poison Center
2 Advisory Board (hereinafter referred to as the board). The
3 board shall be composed of eight members. The members
4 include: The Chancellor of the West Virginia Higher Education
5 Policy Commission or his or her designee; the Secretary of the
6 Department of Military Affairs and Public Safety or his or her
7 designee; the Commissioner of the Bureau for Public Health or
8 his or her designee; the Associate Vice President of West
9 Virginia University, Health Sciences Center, West Virginia
10 University, Charleston, West Virginia, who shall be chairman
11 of the board; the president of the West Virginia Hospital

12 Association or his or her designee; two members appointed by
13 the Director of the Poison Center who shall represent profes-
14 sional health care organizations in this state with extensive
15 experience in public health education, research or administra-
16 tion; and one member appointed by the Director of the Poison
17 Center to represent the general public. All appointed members
18 shall serve terms of four years and may be reappointed.
19 Appointed members of the advisory board shall serve without
20 compensation, but may be reimbursed for any necessary and
21 reasonable expenses incurred in attending meetings on the same
22 basis as members of the Legislature are reimbursed for
23 expenses.

24 The board shall provide advice and assistance to the
25 director of the center in providing services as set out in this
26 article. The board shall meet not less than two times each year
27 on the call of the chair. Not later than the first day of July of
28 each year, the board shall prepare an annual report for the
29 calendar year for submission to the Governor and the Legisla-
30 ture. The report shall include an analysis of the activities of the
31 center and any recommendations for improvement the board
32 may deem necessary or appropriate.

§18B-11B-4. Center responsibilities.

1 The center shall provide:

2 (1) Twenty-four hour, seven days a week emergency
3 telephone management and treatment referral of victims of
4 poisoning to include determining whether treatment can be
5 accomplished at the scene of the incident or transport to an
6 emergency treatment or other facility is required and carrying
7 out telephone follow-up to families and other individuals to
8 assure that adequate care is provided;

9 (2) Emergency telephone treatment recommendations for
10 all types of poisonings, chemical exposures, drug overdoses and

11 exposure to weapons of mass destruction. This information
12 shall be provided to medical and nonmedical providers;

13 (3) Telephone follow-up for hospitalized and nonhospital-
14 ized patients to assess progress and recommend additional
15 treatment as necessary;

16 (4) Surveillance of human poison exposures. This includes
17 those related chemicals, drugs, biologicals and weapons of mass
18 destruction;

19 (5) Community education in poison prevention; and

20 (6) Education in the recognition and management of
21 poisonings for health care providers.

§18B-11B-5. Powers and responsibilities of the director.

1 The Director of the West Virginia Poison Center:

2 (1) Shall ensure that the center is certified by the American
3 Association of Poison Control Centers and remains in good
4 standing with that organization;

5 (2) Is authorized to enter into agreements with other state
6 agencies or departments, with public or private colleges or
7 universities, schools of medicine or hospitals for the use of
8 laboratories, personnel, equipment and other fixtures, facilities
9 or services;

10 (3) May accept federal funds granted by the United States
11 Congress or by executive order of the President of the United
12 States as well as gifts, grants, endowments and donations from
13 individuals and private organizations or foundations for all or
14 any of the functions of the center;

15 (4) Develop and advocate for an annual budget for the
16 center;

17 (5) Maintain a central office at the current location of the
18 center; and

19 (6) Employ adequate professional and technical employees
20 to meet the requirements of this article.

§18B-11B-6. Immunity of center and staff.

1 Neither the director nor any employee of the center staff
2 shall be considered a member of any patient treatment team, or
3 acting in concert with any responsible treating entity, including
4 emergency personnel, hospital or clinic employees, or private
5 medical practitioners of any health care treatment team.

6 The center and its employees are immune from any and all
7 liability arising from the good faith provision of services
8 provided under the provisions of this article. The immunity
9 granted by this section is in addition to any other immunity now
10 existing or granted under any other provision of this code or by
11 common law.

CHAPTER 178

**(Com. Sub. for S. B. 511 — By Senators Foster,
McCabe, Harrison, Sprouse and Barnes)**

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §8-22-19 and §8-22-20 of the Code of West Virginia, 1931, as amended, all relating to municipal policemen's and firemen's pension and relief funds; allowing increases for employee contributions; allowing the basis for

calculating alternative contributions to be modified; and allowing increases for municipal contributions.

Be it enacted by the Legislature of West Virginia:

That §8-22-19 and §8-22-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-19. Levy to maintain fund.

§8-22-20. Minimum standards for actuarial soundness.

§8-22-19. Levy to maintain fund.

1 (a) (1) The provisions of this subsection shall remain in
2 effect through the thirtieth day of June, one thousand nine
3 hundred eighty-three.

4 (2) In every municipality in which there is a policemen's
5 pension and relief fund or a firemen's pension and relief fund,
6 or both, the same shall be maintained as follows: The governing
7 body of the municipality shall levy annually and in the manner
8 provided by law for other municipal levies, and include within
9 the maximum levy or levies permitted by law, and if necessary
10 in excess of any charter provision, a tax at such rate as will,
11 after crediting the amount of the contributions received during
12 such year from the members of the respective paid police
13 department or paid fire department, provide funds equal to the
14 sum of: (1) The full amount of estimated expenditures of the
15 boards of trustees of the respective funds; and (2) an additional
16 amount equal to ten percent of the estimated expenditures, said
17 ten percent amount to be taken, accumulated and invested, if

18 possible, as surplus reserve: *Provided*, That in no event shall the
19 levy for each of the respective boards of trustees be less than
20 one cent nor more than eight cents on each one hundred dollars
21 of all real and personal property as listed for taxation in the
22 municipality: *Provided, however*, That in the event that the
23 funds derived above are not sufficient to meet the annual
24 expenditures and the surplus reserve funds for any fiscal year
25 do not contain a sufficient balance to maintain full retirement
26 benefits for that fiscal year, the municipality shall for only that
27 fiscal year levy an amount not to exceed an additional two cents
28 on each one hundred dollars of all real and personal property
29 listed for taxation in such municipality: *Provided further*, That
30 in the event that a municipality is required to levy an amount
31 for any fiscal year in excess of eight cents on each one hundred
32 dollars of all real and personal property as provided above, the
33 municipality shall assess and collect for only that fiscal year
34 from each member an additional amount of one percent of the
35 actual salary or compensation for each one cent that the
36 municipality has levied in excess of the eight cents which shall
37 become a required part of the pension and relief fund to which
38 the member belongs.

39 (3) The levies authorized under the provisions of this
40 section, or any part of them, may by the governing body be laid
41 in addition to all other municipal levies, and to that extent,
42 beyond the limit of levy imposed by the charter of the munic-
43 ipality; and the levies shall supersede and if necessary exclude
44 levies for other purposes if priority or exclusion is necessary
45 under limitations upon taxes or tax levies imposed by law.

46 (4) The public corporations are authorized to take by gift,
47 grant, devise or bequest, any money or real or personal
48 property, upon such terms as to the investment and expenditures
49 thereof as may be fixed by the grantor or determined by the
50 trustees.

51 (5) In addition to all other sums provided for pensions in
52 this section, it shall be the duty of every municipality in which
53 any policemen's pension and relief fund or firemen's pension
54 and relief fund or funds have been or shall be established to
55 assess and collect from each member of the paid police
56 department or paid fire department or both each month, the sum
57 of six percent of the actual salary or compensation of the
58 member; and the amount so collected shall become a regular
59 part of the policemen's pension and relief fund, if collected
60 from a policeman, and of the firemen's pension and relief fund,
61 if collected from a fireman.

62 (b) (1) After the thirtieth day of June, one thousand nine
63 hundred eighty-three: In order for a municipal policemen's or
64 firemen's pension and relief fund to receive the allocable
65 portion of moneys from the municipal pensions and protection
66 fund established in section fourteen-d, article three, chapter
67 thirty-three of this code, the governing body of the municipality
68 shall levy annually and in the manner provided by law for other
69 municipal levies, and include within the maximum levy or
70 levies permitted by law, and if necessary in excess of any
71 charter provision, a tax at such rate as will, after crediting: (A)
72 The amount of the contributions received during the year from
73 the members of the respective paid police department or paid
74 fire department; and (B) the allocable portion of the municipal
75 pensions and protection fund established in section fourteen-d,
76 article three, chapter thirty-three of this code provide funds
77 equal to the amount necessary to meet the minimum standards
78 for actuarial soundness as provided in section twenty of this
79 article, said amount to be irrevocably contributed, accumulated
80 and invested as fund assets described in sections twenty-one
81 and twenty-two of this article. The municipality contributions
82 shall be deposited as fund assets on at least a quarterly basis and
83 any revenues received from any source by a municipality which
84 are specifically collected for the purpose of allocation for
85 deposit into the policemen's pension and relief fund or

86 firemen's pension and relief fund shall be so deposited within
87 thirty days of receipt by the municipality. Heretofore surplus
88 reserves accumulated before the first day of July, one thousand
89 nine hundred eighty-three, shall be irrevocably contributed,
90 aggregated and invested as fund assets described in sections
91 twenty-one and twenty-two of this article. Any actuarial
92 deficiency arising under this section and section twenty of this
93 article shall not be the obligation of the State of West Virginia.

94 (2) The levies authorized under the provisions of this
95 section, or any part of them, may by the governing body be laid
96 in addition to all other municipal levies, and to that extent,
97 beyond the limit of levy imposed by the charter of the munic-
98 ipality; and the levies shall supersede and if necessary exclude
99 levies for other purposes, where other purposes have not
100 already attained priority, and within the limitations upon taxes
101 or tax levies imposed by the constitution and laws.

102 (3) The public corporations are authorized to take by gift,
103 grant, devise or bequest, any money or real or personal
104 property, upon such terms as to the investment and expenditures
105 thereof as may be fixed by the grantor or determined by the
106 trustees.

107 (4) Notwithstanding provisions in section six of this article,
108 in addition to all other sums provided for pensions in this
109 section, it is the duty of every municipality in which any fund
110 or funds have been or shall be established to assess and collect
111 from each member of the paid police department or paid fire
112 department or both each month, the sum of seven percent of the
113 actual salary or compensation of such member; and the amount
114 so collected shall become a regular part of the policemen's
115 pension and relief fund, if collected from a policeman, and of
116 the firemen's pension and relief fund, if collected from a
117 fireman: *Provided*, That the board of trustees for each pension
118 and relief fund may assess and collect from each member of the

119 paid police department or paid fire department or both each
120 month not more than an additional two and one half percent of
121 the actual salary or compensation of each member: *Provided,*
122 *however,* That if any board of trustees decides to assess and
123 collect any additional amount pursuant to this subdivision
124 above the member contribution required by this section, then
125 that board of trustees may not reduce the additional amount
126 until the respective pension and relief fund no longer has any
127 actuarial deficiency: *Provided further,* That if any board of
128 trustees decides to assess and collect any additional amount,
129 any board of trustees decision and any additional amount is not
130 the liability of the State of West Virginia. Member contribu-
131 tions shall be deposited in the pension and relief fund on at least
132 a monthly basis.

133 (5) For the fiscal year beginning on the first day of July,
134 one thousand nine hundred eighty-three and for each fiscal year
135 thereafter, the State Treasurer shall retain the allocable portion
136 of the Municipal Pensions and Protection Fund, established in
137 section fourteen-d, article three, chapter thirty-three of this
138 code, until such time as the treasurer of the municipality applies
139 for the allocable portion and certifies in writing to the State
140 Auditor that:

141 (A) The municipality has irrevocably contributed the
142 amount required under this section and section twenty of this
143 article to the pension and relief fund for the fiscal year; and

144 (B) The board of trustees of the pension and relief fund has
145 made a report to the governing body of the municipality on the
146 condition of its fund with respect to the fiscal year.

147 (6) When the aforementioned application and certification
148 are made the allocable portion of moneys from the Municipal
149 Pensions and Protection Fund shall be paid to the corresponding
150 policemen's or firemen's pension and relief fund.

151 (7) The State Auditor has the power and duty as the Auditor
152 deems necessary to perform or review audits on the pension and
153 relief funds or to employ an independent consulting actuary or
154 accountant to determine the compliance of the aforementioned
155 certification with the requirements of this section and section
156 twenty of this article. The expense of the audit or determination
157 shall be paid from the portion of the municipal pensions and
158 protection fund allocable to municipal policemen's and
159 firemen's pension and relief funds. If the allocable portion of
160 the Municipal Pensions and Protection Fund is not paid to the
161 pension and relief fund within thirty-six months, the portion is
162 forfeited by the pension and relief fund and is allocable to other
163 eligible municipal policemen's and firemen's pension and relief
164 funds in accordance with section fourteen-d, article three,
165 chapter thirty-three of this code.

§8-22-20. Minimum standards for actuarial soundness.

1 The board of trustees for each pension and relief fund shall
2 have regularly scheduled actuarial valuation reports prepared by
3 a qualified actuary. All of the following standards must be met:

4 (a) An actuarial valuation report shall be prepared at least
5 once every three years commencing with the later of: (1) The
6 first day of July, one thousand nine hundred eighty-three; or (2)
7 three years following the most recently prepared actuarial
8 valuation report: *Provided*, That this most recently prepared
9 actuarial valuation report meets all of the standards of this
10 section.

11 (b) The actuarial valuation report shall consist of, but is not
12 limited to, the following disclosures: (1) The financial objective
13 of the fund and how the objective is to be attained; (2) the
14 progress being made toward realization of the financial
15 objective; (3) recent changes in the nature of the fund, benefits
16 provided, or actuarial assumptions or methods; (4) the fre-

17 quency of actuarial valuation reports and the date of the most
18 recent actuarial valuation report; (5) the method used to value
19 fund assets; (6) the extent to which the qualified actuary relies
20 on the data provided and whether the data was certified by the
21 fund's Auditor or examined by the qualified actuary for
22 reasonableness; (7) a description and explanation of the
23 actuarial assumptions and methods; and (8) any other informa-
24 tion the qualified actuary feels is necessary or would be useful
25 in fully and fairly disclosing the actuarial condition of the fund.

26 (c) (1) After the thirtieth day of June, one thousand nine
27 hundred ninety-one, and thereafter, the financial objective of
28 each municipality shall not be less than to contribute to the fund
29 annually an amount which, together with the contributions from
30 the members and the allocable portion of the Municipal
31 Pensions and Protection Fund for municipal pension and relief
32 funds established under section fourteen-d, article three, chapter
33 thirty-three of this code and other income sources as authorized
34 by law, will be sufficient to meet the normal cost of the fund
35 and amortize any actuarial deficiency over a period of not more
36 than forty years beginning from the first day of July, one
37 thousand nine hundred ninety-one : *Provided*, That in the fiscal
38 year ending the thirtieth day of June, one thousand nine hundred
39 ninety-one, the municipality may elect to make its annual
40 contribution to the fund using an alternative contribution in an
41 amount not less than: (i) One hundred seven percent of the
42 amount contributed for the fiscal year ending the thirtieth day
43 of June, one thousand nine hundred ninety; or (ii) an amount
44 equal to the average of the contribution payments made in the
45 five highest fiscal years beginning with the fiscal year ending
46 one thousand nine hundred eighty-four, whichever is greater:
47 *Provided, however*, That contribution payments in subsequent
48 fiscal years under this alternative contribution method may not
49 be less than one hundred seven percent of the amount contrib-
50 uted in the prior fiscal year: *Provided further*, That in order to
51 avoid penalizing municipalities and to provide flexibility when

52 making contributions, municipalities using the alternative
53 contribution method may exclude a one-time additional
54 contribution made in any one year in excess of the minimum
55 required by this section: *And provided further*, That the
56 governing body of any municipality may elect to provide an
57 employer continuing contribution of one percent more than the
58 municipality's required minimum under the alternative
59 contribution plan authorized in this subsection: *And provided*
60 *further*, That if any municipality decides to contribute an
61 additional one percent, then that municipality may not reduce
62 the additional contribution until the respective pension and
63 relief fund no longer has any actuarial deficiency: *And provided*
64 *further*, That any decision and any contribution payment by the
65 municipality is not the liability of the State of West Virginia:
66 *And provided further*, That if any municipality or any pension
67 fund board of trustees makes a voluntary election and thereafter
68 fails to contribute the voluntarily increase as provided in this
69 section and in subdivision (4), subsection (b), section nineteen
70 of this article, then the board of trustees is not eligible to
71 receive funds allocated under section fourteen-d, article three,
72 chapter thirty-three of this code: *And provided further*, That
73 prior to using this alternative contribution method the actuary
74 of the fund shall certify in writing that the fund is projected to
75 be solvent under the alternative contribution method for the
76 next consecutive fifteen-year period. For purposes of determin-
77 ing this minimum financial objective: (i) The value of the
78 fund's assets shall be determined on the basis of any reasonable
79 actuarial method of valuation which takes into account fair
80 market value; and (ii) all costs, deficiencies, rate of interest and
81 other factors under the fund shall be determined on the basis of
82 actuarial assumptions and methods which, in aggregate, are
83 reasonable (taking into account the experience of the fund and
84 reasonable expectations) and which, in combination, offer the
85 qualified actuary's best estimate of anticipated experience
86 under the fund: *And provided further*, That any municipality
87 which elected the alternative funding method under this section

88 and which has an unfunded actuarial liability of not more than
89 twenty-five percent of fund assets, may, beginning the first day
90 of September, two thousand three, elect to revert to the standard
91 funding method, which is to contribute to the fund annually an
92 amount which is not less than an amount which, together with
93 the contributions from the members and the allocable portion of
94 the Municipal Pensions and Protection Fund for municipal
95 pension and relief funds established under section fourteen-d,
96 article three, chapter thirty-three of this code and other income
97 sources as authorized by law, will be sufficient to meet the
98 normal cost of the fund and amortize any actuarial deficiency
99 over a period of not more than forty years, beginning from the
100 first day of July, one thousand nine hundred ninety-one.

101 (2) No municipality may anticipate or use in any manner
102 any state funds accruing to the police or firemen's pension fund
103 to offset the minimum required funding amount for any fiscal
104 year.

105 (3) Notwithstanding any other provision of this section or
106 article to the contrary, each municipality shall contribute
107 annually to the fund an amount which may not be less than the
108 normal cost, as determined by the actuarial report.

109 (d) For purposes of this section the term "qualified actuary"
110 means only an actuary who is a member of the Society of
111 Actuaries or the American Academy of Actuaries. The qualified
112 actuary shall be designated a fiduciary and shall discharge his
113 or her duties with respect to a fund solely in the interest of the
114 members and member's beneficiaries of that fund. In order for
115 the standards of this section to be met, the qualified actuary
116 shall certify that the actuarial valuation report is complete and
117 accurate and that in his or her opinion the technique and
118 assumptions used are reasonable and meet the requirements of
119 this section of this article.

120 (e) The cost of the preparation of the actuarial valuation
121 report shall be paid by the fund.

122 (f) Notwithstanding any other provision of this section, for
123 the fiscal year ending the thirtieth day of June, one thousand
124 nine hundred ninety-one, the municipality may calculate its
125 annual contribution based upon the provisions of the supple-
126 mental benefit provided in this article enacted during the one
127 thousand nine hundred ninety-one regular session of the
128 Legislature.

CHAPTER 179

(H. B. 4850 — By Delegates Beane, Ennis and Frich)

[Passed March 11, 2006; in effect from passage.]

[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §30-1A-2 and §30-1A-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-1A-2a, all relating to expediting the sunrise application process.

Be it enacted by the Legislature of West Virginia:

That §30-1A-2 and §30-1A-3 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 §30-1A-2a, all to read as follows:

ARTICLE 1A. PROCEDURE FOR REGULATION OF OCCUPATIONS AND PROFESSIONS.

§30-1A-2. Required application for regulation of professional or occupational group.

§30-1A-2a. Date applications are due and reporting date.

§30-1A-3. Analysis and evaluation of application.

§30-1A-2. Required application for regulation of professional or occupational group.

1 (a) Any professional or occupational group or organization,
2 any individual or any other interested party which proposes the
3 regulation of any unregulated professional or occupational
4 group shall submit an application for regulation to the Joint
5 Standing Committee on Government Organization, as set out in
6 section two-a of this article. The Joint Standing Committee on
7 Government Organization may only accept an application for
8 regulation of a professional or occupational group when the
9 party submitting an application files with the committee a
10 statement of support for the proposed regulation which has been
11 signed by at least ten residents or citizens of the State of West
12 Virginia who are members of the professional or occupational
13 group for which regulation is being sought.

14 (b) The completed application shall contain:

15 (1) A description of the occupational or professional group
16 proposed for regulation, including a list of associations,
17 organizations and other groups currently representing the
18 practitioners in this state, and an estimate of the number of
19 practitioners in each group;

20 (2) A definition of the problem and the reasons why
21 regulation is deemed necessary;

22 (3) The reasons why certification, registration, licensure or
23 other type of regulation is being requested and why that
24 regulatory alternative was chosen;

25 (4) A detailed statement of the fee structure conforming
26 with the statutory requirements of financial autonomy as set out
27 in subsection (c), section six, article one, chapter thirty of this
28 code;

29 (5) A detailed statement of the location and manner in
30 which the group plans to maintain records which are accessible
31 to the public as set out in section twelve, article one, chapter
32 thirty of this code;

33 (6) The benefit to the public that would result from the
34 proposed regulation; and

35 (7) The cost of the proposed regulation.

§30-1A-2a. Date applications are due and reporting date.

1 (a) For an application for regulation received after the first
2 day of December and on or before the first day of June, the
3 Performance Evaluation and Research Division of the Office of
4 the Legislative Auditor shall present a report to the Joint
5 Committee on Government Organization by the thirty-first day
6 of December of that year.

7 (b) For an application for regulation received after the first
8 day of June and on or before the first day of December, the
9 Performance Evaluation and Research Division of the Office of
10 the Legislative Auditor shall present a report to the Joint
11 Committee on Government Organization by the thirtieth day of
12 June of the next year.

§30-1A-3. Analysis and evaluation of application.

1 (a) The Joint Committee on Government Organization shall
2 refer the completed application of the professional or occupa-
3 tional group to the Performance Evaluation and Research
4 Division of the Office of the Legislative Auditor.

5 (b) The Performance Evaluation and Research Division of
6 the Office of the Legislative Auditor shall conduct an analysis
7 and evaluation of the application. The analysis and evaluation
8 shall be based upon the criteria listed in subsection (c) of this

9 section. The Performance Evaluation and Research Division of
10 the Office of the Legislative Auditor shall submit a report, and
11 such supporting materials as may be required, to the Joint
12 Standing Committee on Government Organization, as set out in
13 section two-a of this article.

14 (c) The report shall include evaluation and analysis as to:

15 (1) Whether the unregulated practice of the occupation or
16 profession clearly harms or endangers the health, safety or
17 welfare of the public, and whether the potential for the harm is
18 easily recognizable and not remote or dependent upon tenuous
19 argument;

20 (2) Whether the public needs, and can reasonably be
21 expected to benefit from, an assurance of initial and continuing
22 professional or occupational competence; and

23 (3) Whether the public can be adequately protected by other
24 means in a more cost-effective manner.



CHAPTER 180

(S. B. 463 — By Senator Jenkins)

[Passed March 8, 2006; in effect from passage.]

[Approved by the Governor on March 22, 2006.]

AN ACT to amend and reenact §30-3-10 of the Code of West Virginia, 1931, as amended, relating to the modification of qualifications to obtain a license to practice medicine and surgery in the state.

Be it enacted by the Legislature of West Virginia:

That §30-3-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-10. Licenses to practice medicine and surgery or podiatry.

1 (a) The board shall issue a license to practice medicine and
2 surgery or to practice podiatry to any individual who is
3 qualified to do so in accordance with the provisions of this
4 article.

5 (b) For an individual to be licensed to practice medicine
6 and surgery in this state, he or she must meet the following
7 requirements:

8 (1) He or she shall submit an application to the board on a
9 form provided by the board and remit to the board a reasonable
10 examination fee, the amount of the reasonable fee to be set by
11 the board. The application must, as a minimum, require a sworn
12 and notarized statement that the applicant is of good moral
13 character and that he or she is physically and mentally capable
14 of engaging in the practice of medicine and surgery;

15 (2) He or she must provide evidence of graduation and
16 receipt of the degree of doctor of medicine or its equivalent
17 from a school of medicine, which is approved by the liaison
18 committee on medical education or by the board;

19 (3) He or she must submit evidence to the board of having
20 successfully completed a minimum of one year of graduate
21 clinical training in a program approved by the accreditation
22 council for graduate medical education; and

23 (4) He or she must pass an examination approved by the
24 board, which examination can be related to a national standard.

25 The examination shall be in the English language and be
26 designed to ascertain an applicant's fitness to practice medicine
27 and surgery. The board shall before the date of examination
28 determine what will constitute a passing score: *Provided*, That
29 the board, or a majority of it, may accept in lieu of an examina-
30 tion of applicants the certificate of the national board of
31 medical examiners: *Provided, however*, That the board is
32 authorized to enter into reciprocity agreements with medical
33 licensing authorities in other states, the District of Columbia,
34 Canada or the Commonwealth of Puerto Rico and, for an
35 applicant who: (i) Is currently fully licensed, excluding any
36 temporary, conditional or restricted license or permit, under the
37 laws of another state or jurisdiction having reciprocity; (ii) has
38 been engaged on a full-time professional basis in the practice of
39 medicine within that state or jurisdiction for a period of at least
40 five years; and (iii) is not the subject of any pending disciplin-
41 ary action by a medical licensing board and has not been the
42 subject of professional discipline by a medical licensing board
43 in any jurisdiction, the board may permit licensure in this state
44 by reciprocity. If an applicant fails to pass the examination on
45 two occasions, he or she shall successfully complete a course of
46 study or training, as approved by the board, designed to
47 improve his or her ability to engage in the practice of medicine
48 and surgery before being eligible for reexamination: *Provided*
49 *further*, That an applicant is required to attain a passing score
50 on all components or steps of the examination within a period
51 of seven consecutive years: *And provided further*, That the
52 board may, in its discretion, extend this period of seven
53 consecutive years for up to three additional years for any
54 medical student enrolled in a dual MD-PhD program or
55 participating in an accredited fellowship training. The board
56 need not reject a candidate for a nonmaterial technical or
57 administrative error or omission in the application process that
58 is unrelated to the candidate's professional qualifications as
59 long as there is sufficient information available to the board to
60 determine the eligibility of the candidate for licensure.

61 (c) In addition to the requirements of subsection (b) of this
62 section, any individual who has received the degree of doctor
63 of medicine or its equivalent from a school of medicine located
64 outside of the United States, the Commonwealth of Puerto Rico
65 and Canada to be licensed to practice medicine in this state
66 must also meet the following additional requirements and
67 limitations:

68 (1) He or she must be able to demonstrate to the satisfaction
69 of the board his or her ability to communicate in the English
70 language;

71 (2) Before taking a licensure examination, he or she must
72 have fulfilled the requirements of the educational commission
73 for foreign medical graduates for certification, or he or she must
74 provide evidence of receipt of a passing score on the examina-
75 tion of the educational commission for foreign medical
76 graduates: *Provided*, That an applicant who: (i) Is currently
77 fully licensed, excluding any temporary, conditional or
78 restricted license or permit, under the laws of another state, the
79 District of Columbia, Canada or the Commonwealth of Puerto
80 Rico; (ii) has been engaged on a full-time professional basis in
81 the practice of medicine within the state or jurisdiction where
82 the applicant is fully licensed for a period of at least five years;
83 and (iii) is not the subject of any pending disciplinary action by
84 a medical licensing board and has not been the subject of
85 professional discipline by a medical licensing board in any
86 jurisdiction is not required to have a certificate from the
87 educational commission for foreign medical graduates;

88 (3) He or she must submit evidence to the board of either:
89 (i) Having successfully completed a minimum of two years of
90 graduate clinical training in a program approved by the
91 accreditation council for graduate medical education; or (ii)
92 current certification by a member board of the American Board
93 of Medical Specialties.

94 (d) For an individual to be licensed to practice podiatry in
95 this state, he or she must meet the following requirements:

96 (1) He or she shall submit an application to the board on a
97 form provided by the board and remit to the board a reasonable
98 examination fee, the amount of the reasonable fee to be set by
99 the board. The application must, as a minimum, require a sworn
100 and notarized statement that the applicant is of good moral
101 character and that he or she is physically and mentally capable
102 of engaging in the practice of podiatric medicine;

103 (2) He or she must provide evidence of graduation and
104 receipt of the degree of doctor of podiatric medicine and its
105 equivalent from a school of podiatric medicine which is
106 approved by the council of podiatry education or by the board;

107 (3) He or she must pass an examination approved by the
108 board, which examination can be related to a national standard.
109 The examination shall be in the English language and be
110 designed to ascertain an applicant's fitness to practice podiatric
111 medicine. The board shall before the date of examination
112 determine what will constitute a passing score. If an applicant
113 fails to pass the examination on two occasions, he or she shall
114 successfully complete a course of study or training, as approved
115 by the board, designed to improve his or her ability to engage
116 in the practice of podiatric medicine, before being eligible for
117 reexamination: *Provided*, That an applicant is required to attain
118 a passing score on all components or steps of the examination
119 within a period of seven consecutive years; and

120 (4) He or she must submit evidence to the board of having
121 successfully completed a minimum of one year of graduate
122 clinical training in a program approved by the council on
123 podiatric medical education or the colleges of podiatric
124 medicine. The board may consider a minimum of two years of
125 graduate podiatric clinical training in the U. S. armed forces or

126 three years' private podiatric clinical experience in lieu of this
127 requirement.

128 (e) Notwithstanding any of the foregoing, the board may
129 grant licenses to an applicant in extraordinary circumstances
130 under the following conditions:

131 (1) Upon a finding by the board that based on the appli-
132 cant's exceptional education, training and practice credentials,
133 the applicant's practice in the state would be beneficial to the
134 public welfare;

135 (2) Upon a finding by the board that the applicant's
136 education, training and practice credentials are substantially
137 equivalent to the requirements of licensure established in this
138 article;

139 (3) That a license granted under these extraordinary
140 circumstances is approved by a vote of three fourths of the
141 members of the board;

142 (4) That orders denying applications for a license under this
143 subsection are not appealable;

144 (5) That the board report to the President of the Senate and
145 the Speaker of the House of Delegates all decisions made
146 pursuant to this subsection and the reasons for those decisions;
147 and

148 (6) That the provisions of this subsection exist until the first
149 day of July, two thousand seven, unless sooner terminated,
150 continued or reestablished by an act of the Legislature.

151 (f) All licenses to practice medicine and surgery granted
152 prior to the first day of July, one thousand nine hundred
153 ninety-one, and valid on that date shall continue in full effect
154 for the term and under the conditions provided by law at the

155 time of the granting of the license: *Provided*, That the provi-
156 sions of subsection (d) of this section do not apply to any
157 person legally entitled to practice chiropody or podiatry in this
158 state prior to the eleventh day of June, one thousand nine
159 hundred sixty-five: *Provided, however*, That all persons
160 licensed to practice chiropody prior to the eleventh day of June,
161 one thousand nine hundred sixty-five, shall be permitted to use
162 the term “chiropody-podiatry” and shall have the rights,
163 privileges and responsibilities of a podiatrist set out in this
164 article.

165 (g) The board may not issue a license to a person whose
166 license has been revoked or suspended in another state until
167 reinstatement of his or her license in that state.

CHAPTER 181

(Com. Sub. for H. B. 4661 — By Delegates Mahan and Amores)

[Passed March 9, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §30-7C-7 of the Code of West Virginia, 1931, as amended, relating to continuing Board of Registered Professional Nurses emergency rule relating to dialysis technicians.

Be it enacted by the Legislature of West Virginia:

That §30-7C-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 7C. DIALYSIS TECHNICIANS.

§30-7C-7. Powers and duties of Board; rule-making authority.

- 1 (a) The Board may:
 - 2 (1) Adopt and amend rules consistent with this article
3 necessary to enable it to carry into effect the provisions of this
4 article, including disciplinary rules;
 - 5 (2) Prescribe standards for preparing individuals for the role
6 of dialysis technician under this article;
 - 7 (3) Provide for standards for approved dialysis technician
8 training programs;
 - 9 (4) Accredit educational programs for the preparation of
10 dialysis technicians that meet the requirements of this article;
 - 11 (5) Provide surveys of educational programs when the
12 Board considers it necessary;
 - 13 (6) Approve, reapprove and prescribe standards for testing
14 organizations and the tests offered by organizations for dialysis
15 technicians;
 - 16 (7) Deny or withdraw approval of testing organizations;
 - 17 (8) Prescribe standards for dialysis technician trainees;
 - 18 (9) Issue, renew or revoke temporary permits, endorsements
19 and certifications for dialysis technicians;
 - 20 (10) Deny or withdraw accreditation of approved dialysis
21 technician training programs for failure to meet or maintain
22 prescribed standards required by this article and by the Board;
 - 23 (11) Conduct hearings upon charges calling for discipline
24 of a dialysis technician;

- 25 (12) Keep a record of all proceedings of the Board; and
- 26 (13) Further regulate, as necessary, dialysis technicians:
27 *Provided*, That the Board is not authorized to establish staffing
28 ratios.
- 29 (b) The Board shall propose rules for legislative approval
30 in accordance with the provisions of article three, chapter
31 twenty-nine-a of the code to:
- 32 (1) Prescribe standards for training programs;
- 33 (2) Prescribe testing standards and requirements;
- 34 (3) Prescribe requirements for persons and organizations
35 providing training programs and testing services;
- 36 (4) Assess fees for the certification of dialysis technicians,
37 approval of training programs, tests and providers of training
38 programs and testing services, and other services performed by
39 the Board; and
- 40 (5) Provide for any other requirements necessary to carry
41 out the purposes of this article.
- 42 (c) The Board may promulgate emergency rules pursuant
43 to the provisions of section fifteen, article three, chapter twenty-
44 nine-a of this code for the purposes set forth in this section.
45 Notwithstanding the provisions of section fifteen, article three,
46 chapter twenty-nine-a of this code to the contrary, the legisla-
47 tive rule proposed by the Board of Registered Professional
48 Nurses entitled “Dialysis Technicians”, [19CSR13] and
49 authorized as an emergency rule by the Secretary of State on
50 the fifth day of August, two thousand five, shall continue in full
51 force and effect as an emergency rule until the first day of July,
52 two thousand seven, unless disapproved or authorized as a
53 legislative rule, or otherwise amended by an Act of the
54 Legislature.

CHAPTER 182

(Com. Sub. for H. B. 4108 — By Delegates Browning,
Staton, Long and Michael)

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §30-14A-1 of the Code of West Virginia, 1931, as amended, relating to osteopathic physician assistants; allowing an osteopathic physician and surgeon to supervise up to three physician assistants generally; and providing for legislative and emergency rule-making authority.

Be it enacted by the Legislature of West Virginia:

That §30-14A-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 14A. ASSISTANTS TO OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14A-1. Osteopathic physician assistant to osteopathic physicians and surgeons; definitions; board of osteopathy rules; certification; temporary certification; recertification; job description required; revocation or suspension of certification; responsibilities of the supervising physician; legal responsibility for osteopathic physician assistants; reporting of disciplinary procedures; identification; limitation on employment and duties; fees; unlawful use of the title of “osteopathic physician assistant”;

unlawful representation of an osteopathic physician assistant as a physician; criminal penalties.

1 (a) As used in this section:

2 (1) "Osteopathic physician assistant" means an assistant to
3 an osteopathic physician who is a graduate of an approved
4 program of instruction in primary care or surgery, has passed
5 the national certification examination and is qualified to
6 perform direct patient care services under the supervision of an
7 osteopathic physician;

8 (2) "Supervising physician" means a doctor of osteopathy
9 permanently licensed in this state who assumes legal and
10 supervising responsibility for the work or training of any
11 osteopathic physician assistant under his or her supervision;

12 (3) "Approved program" means an educational program for
13 osteopathic physician assistants approved and accredited by the
14 committee on allied health education and accreditation or its
15 successor;

16 (4) "Health care facility" means any licensed hospital,
17 nursing home, extended care facility, state health or mental
18 institution, clinic or physician's office; and

19 (5) "Direct supervision" means the presence of the
20 supervising physician at the site where the osteopathic physi-
21 cian assistant performs medical duties.

22 (b) The board shall promulgate legislative and emergency
23 rules governing the extent to which osteopathic physician
24 assistants may function in this state. Such rules shall provide
25 that the osteopathic physician assistant is limited to the
26 performance of those services for which he or she is trained and
27 that he or she performs only under the supervision and control
28 of an osteopathic physician permanently licensed in this state,

29 but such supervision and control does not require the personal
30 presence of the supervising physician at the place or places
31 where services are rendered if the osteopathic physician
32 assistant's normal place of employment is on the premises of
33 the supervising physician. The supervising physician may send
34 the osteopathic physician assistant off the premises to perform
35 duties under his or her direction, but a separate place of work
36 for the osteopathic physician assistant shall not be established.
37 In promulgating such rules, the board may allow the osteopathic
38 physician assistant to perform those procedures and examina-
39 tions and in the case of authorized osteopathic physician
40 assistants to prescribe at the direction of his or her supervising
41 physician in accordance with subsection (o) of this section
42 those categories of drugs submitted to it in the job description
43 required by subsection (e) of this section. The board shall
44 compile and publish an annual report that includes a list of
45 currently certified osteopathic physician assistants and their
46 employers and location in the state.

47 (c) The board shall certify as an osteopathic physician
48 assistant any person who files an application and furnishes
49 satisfactory evidence to it that he or she has met the following
50 standards:

51 (1) He or she is a graduate of an approved program of
52 instruction in primary health care or surgery;

53 (2) He or she has passed the examination for a primary care
54 physician assistant or surgery administered by the national
55 board of medical examiners on behalf of the national commis-
56 sion on certification of physician assistants; and

57 (3) He or she is of good moral character.

58 (d) When any graduate of an approved program submits an
59 application to the board, accompanied by a job description in
60 conformity with subsection (e) of this section, for an osteo-

61 pathic physician assistant certificate, the board may issue to
62 such applicant a temporary certificate allowing such applicant
63 to function as an osteopathic physician assistant for the period
64 of one year. Said temporary certificate may be renewed for one
65 additional year upon the request of the supervising physician.
66 An osteopathic physician assistant who has not been certified
67 as such by the national board of medical examiners on behalf of
68 the national commission on certification of physician assistants
69 will be restricted to work under the direct supervision of the
70 supervising physician.

71 (e) Any osteopathic physician applying to the board to
72 supervise an osteopathic physician assistant shall provide a job
73 description that sets forth the range of medical services to be
74 provided by such assistant. Before an osteopathic physician
75 assistant can be employed or otherwise use his or her skills, the
76 supervising physician must obtain approval of the job descrip-
77 tion from the board. The board may revoke or suspend any
78 certification of an assistant to a physician for cause, after giving
79 such person an opportunity to be heard in the manner provided
80 by sections eight and nine, article one of this chapter.

81 (f) The supervising physician is responsible for observing,
82 directing and evaluating the work records and practices of each
83 osteopathic physician assistant performing under his or her
84 supervision. He or she shall notify the board in writing of any
85 termination of his or her supervisory relationship with an
86 osteopathic physician assistant within ten days of his or her
87 termination. The legal responsibility for any osteopathic
88 physician assistant remains with the supervising physician at all
89 times, including occasions when the assistant, under his or her
90 direction and supervision, aids in the care and treatment of a
91 patient in a health care facility. In his or her absence, a
92 supervising physician must designate an alternate supervising

93 physician; however, the legal responsibility remains with the
94 supervising physician at all times. A health care facility is not
95 legally responsible for the actions or omissions of an osteo-
96 pathic physician assistant unless the osteopathic physician
97 assistant is an employee of the facility.

98 (g) The acts or omissions of an osteopathic physician
99 assistant employed by health care facilities providing inpatient
100 services shall be the legal responsibility of said facilities.
101 Osteopathic physician assistants employed by such facilities in
102 staff positions shall be supervised by a permanently licensed
103 physician.

104 (h) A health care facility shall report in writing to the board
105 within sixty days after the completion of the facility's formal
106 disciplinary procedure, and also after the commencement, and
107 again after the conclusion, of any resulting legal action, the
108 name of any osteopathic physician assistant practicing in the
109 facility whose privileges at the facility have been revoked,
110 restricted, reduced or terminated for any cause including
111 resignation, together with all pertinent information relating to
112 such action. The health care facility shall also report any other
113 formal disciplinary action taken against any osteopathic
114 physician assistant by the facility relating to professional ethics,
115 medical incompetence, medical malpractice, moral turpitude or
116 drug or alcohol abuse. Temporary suspension for failure to
117 maintain records on a timely basis or failure to attend staff or
118 section meetings need not be reported.

119 (i) When functioning as an osteopathic physician assistant,
120 the osteopathic physician assistant shall wear a name tag that
121 identifies him or her as a physician assistant.

122 (j) (1) A supervising physician shall not supervise at any
123 time more than three osteopathic physician assistants, except

124 that a physician may supervise up to four hospital-employed
125 osteopathic physician assistants: *Provided*, That an alternative
126 supervisor has been designated for each.

127 (2) An osteopathic physician assistant shall not perform any
128 service that his or her supervising physician is not qualified to
129 perform.

130 (3) An osteopathic physician assistant shall not perform any
131 service that is not included in his or her job description and
132 approved by the board as provided for in this section.

133 (4) The provisions of this section do not authorize an
134 osteopathic physician assistant to perform any specific function
135 or duty delegated by this code to those persons licensed as
136 chiropractors, dentists, registered nurses, licensed practical
137 nurses, dental hygienists, optometrists or pharmacists or
138 certified as nurse anesthetists.

139 (k) Each job description submitted by a licensed osteo-
140 pathic supervising physician shall be accompanied by a fee of
141 one hundred dollars. A fee of fifty dollars shall be charged for
142 the annual renewal of the certificate. A fee of twenty-five
143 dollars shall be charged for any change of supervising physi-
144 cian.

145 (l) As a condition of renewal of osteopathic physician
146 assistant certification, each osteopathic physician assistant shall
147 provide written documentation satisfactory to the board of
148 participation in and successful completion of continuing
149 education in courses approved by the board of osteopathy for
150 the purposes of continuing education of osteopathic physician
151 assistants. The osteopathy board shall promulgate legislative
152 rules for minimum continuing hours necessary for certification
153 renewal. These rules shall provide for minimum hours equal to

154 or more than the hours necessary for national certification.
155 Notwithstanding any provision of this chapter to the contrary,
156 failure to timely submit such required written documentation
157 shall result in the automatic suspension of any certification as
158 an osteopathic physician assistant until such time as the written
159 documentation is submitted to and approved by the board.

160 (m) It is unlawful for any person who is not certified by the
161 board as an osteopathic physician assistant to use the title of
162 “osteopathic physician assistant” or to represent to any other
163 person that he or she is an osteopathic physician assistant. Any
164 person who violates the provisions of this subsection is guilty
165 of a misdemeanor and, upon conviction thereof, shall be fined
166 not more than two thousand dollars.

167 (n) It is unlawful for any osteopathic physician assistant to
168 represent to any person that he or she is a physician. Any person
169 who violates the provisions of this subsection is guilty of a
170 felony, and, upon conviction thereof, shall be imprisoned in the
171 penitentiary for not less than one, nor more than two years, or
172 be fined not more than two thousand dollars, or both fined and
173 imprisoned.

174 (o) An osteopathic physician assistant providing primary
175 care outpatient services in a medically underserved area or
176 other area of need, both as defined by the board, may write or
177 sign prescriptions or transmit prescriptions by word of mouth,
178 telephone or other means of communication at the direction of
179 his or her supervising physician. The board shall promulgate
180 rules and regulations governing the eligibility and extent to
181 which such an osteopathic physician assistant may prescribe at
182 the direction of the supervising physician. The regulations shall
183 provide for a state formulary classifying pharmacologic
184 categories of drugs which may be prescribed by such an
185 osteopathic physician assistant. In classifying such pharmaco-

186 logic categories, those categories of drugs which shall be
187 excluded shall include, but not be limited to, Schedules I and II
188 of the uniform controlled substances act, anticoagulants,
189 antineoplastics, antipsychotics, radiopharmaceuticals, general
190 anesthetics and radiographic contrast materials. Drugs listed
191 under Schedule III shall be limited to a forty-eight hour supply
192 without refill. The regulations shall provide that all pharmaco-
193 logical categories of drugs to be prescribed by an osteopathic
194 physician assistant shall be listed in each job description
195 submitted to the board as required in subsection (e) of this
196 section. The regulations shall provide the maximum dosage an
197 osteopathic physician assistant may prescribe.

198 The regulations shall also provide that to be eligible for
199 such prescription privileges, an osteopathic physician assistant
200 must submit an application to the board for such privileges. The
201 regulations shall also provide that an osteopathic physician
202 assistant shall have performed patient care services for a
203 minimum of two years immediately preceding the submission
204 to the board of said application for prescription privileges and
205 shall have successfully completed an accredited course of
206 instruction in clinical pharmacology approved by the board.
207 The regulations shall also provide that to maintain prescription
208 privileges, an osteopathic physician assistant shall continue to
209 maintain national certification as an osteopathic physician
210 assistant, and in meeting such national certification require-
211 ments shall complete a minimum of ten hours of continuing
212 education in rational drug therapy in each certification period.
213 Nothing in this subsection shall be construed to permit an
214 osteopathic physician assistant to independently prescribe or
215 dispense drugs.

CHAPTER 183

**(Com. Sub. for H. B. 4276 — By Delegates Beane, Ennis,
Barker, Butcher, Hatfield, Porter, Schoen and Walters)**

[Passed March 10, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2006.]

AN ACT to repeal §30-22-5a of the Code of West Virginia, 1931, as amended; to amend and reenact §30-22-1, §30-22-2, §30-22-3, §30-22-4, §30-22-5, §30-22-6, §30-22-7, §30-22-8, §30-22-9, §30-22-10, §30-22-11, §30-22-12, §30-22-13, §30-22-14, §30-22-15, §30-22-16, §30-22-17 and §30-22-18; and to amend said code by adding thereto eleven new sections, designated §30-22-19, §30-22-20, §30-22-21, §30-22-22, §30-22-23, §30-22-24, §30-22-25, §30-22-26, §30-22-27, §30-22-28 and §30-22-29, all relating to updating the regulation of the practice of landscape architecture; definitions; board composition; powers and duties of the board; clarifying rulemaking authority; license, temporary permit and certificate of authorization requirements; exemptions; hearing and notice requirements; providing a civil cause of action; criminal penalties; and continuation of the board.

Be it enacted by the Legislature of West Virginia:

That §30-22-5a of the Code of West Virginia, 1931, as amended, be repealed; and that §30-22-1, §30-22-2, §30-22-3, §30-22-4, §30-22-5, §30-22-6, §30-22-7, §30-22-8, §30-22-9, §30-22-10, §30-22-11, §30-22-12, §30-22-13, §30-22-14, §30-22-15, §30-22-16, §30-22-17 and §30-22-18, be amended and reenacted; and that said code be amended by adding thereto eleven new sections, designated §30-22-19, §30-22-20, §30-22-21, §30-22-22, §30-22-23, §30-22-24,

§30-22-25, §30-22-26, §30-22-27, §30-22-28 and §30-22-29, all to read as follows:

ARTICLE 22. LANDSCAPE ARCHITECTS.

- §30-22-1. License required to practice.
- §30-22-2. Unlawful acts.
- §30-22-3. Applicable law.
- §30-22-4. Definitions.
- §30-22-5. Board of Landscape Architects.
- §30-22-6. Powers and duties of the board.
- §30-22-7. Rule-making authority.
- §30-22-8. Fees; special revenue account; administrative fines.
- §30-22-9. Education, experience and examination requirements for licensure.
- §30-22-10. License requirements.
- §30-22-11. License from another jurisdiction; license to practice in this state.
- §30-22-12. License renewal requirements.
- §30-22-13. Inactive license requirements.
- §30-22-14. Retired license requirements.
- §30-22-15. Reinstatement.
- §30-22-16. Temporary permits.
- §30-22-17. Display of license.
- §30-22-18. Seal requirements.
- §30-22-19. Certificate of authorization requirements.
- §30-22-20. Certificate of authorization renewal requirements.
- §30-22-21. Display of certificate of authorization.
- §30-22-22. Exemptions from article.
- §30-22-23. Refusal to issue or renew, suspension or revocation; disciplinary action.
- §30-22-24. Complaints; investigations; notice.
- §30-22-25. Hearing and judicial review.
- §30-22-26. Injunctions.
- §30-22-27. Criminal proceedings; penalties.
- §30-22-28. Single act evidence of practice.
- §30-22-29. Continuation of West Virginia Board of Landscape Architects.

§30-22-1. License required to practice.

- 1 The practice of landscape architecture requires education,
- 2 training and experience and should only be practiced by a
- 3 licensed landscape architect. Therefore, the Legislature finds
- 4 that in order to protect the health, safety, interest and welfare of

5 the public and to provide for the regulation of landscape
6 architecture in this state, a person must have a license, as
7 provided in this article, to practice as a landscape architect.

§30-22-2. Unlawful acts.

1 (a) It is unlawful for any person to practice or offer to
2 practice landscape architecture in this state without a license
3 issued under the provisions of this article, or advertise or use
4 any title or description tending to convey the impression that
5 the person is a licensed landscape architect, unless such person
6 has been duly licensed under the provisions of this article.

7 (b) It is unlawful for any firm to practice or offer to practice
8 landscape architecture in this state without a certificate of
9 authorization issued under the provisions of this article, or
10 advertise or use any title or description tending to convey the
11 impression that it is a landscape architectural firm, unless such
12 firm has been issued a certificate of authorization under the
13 provisions of this article.

§30-22-3. Applicable law.

1 The practice of landscape architecture and the Board of
2 Landscape Architects are subject to the provisions of article one
3 of this chapter and the provisions of this article and any rules
4 promulgated thereunder.

§30-22-4. Definitions.

1 As used in this article, the following words and terms have
2 the following meanings, unless the context clearly indicates
3 otherwise:

4 (a) "Accredited" means a school, college or university
5 accredited by the Landscape Architectural Accreditation Board
6 (LAAB) or any other accrediting body recognized by the board.

7 (b) “Applicant” means a person making application for a
8 license or a permit, or a firm making application for a certifi-
9 cate of authorization, under the provisions of this article.

10 (c) “Board” means the West Virginia Board of Landscape
11 Architects.

12 (d) “Certificate of authorization” means a certificate issued
13 under the provisions of this article to a firm providing land-
14 scape architectural services.

15 (e) “Certificate of authorization holder” means a firm
16 certified under the provisions of this article to provide land-
17 scape architectural services.

18 (f) “Examination” means the examination in landscape
19 architecture required for licensure.

20 (g) “Firm” means any business entity, partnership, associa-
21 tion, company, corporation, limited partnership, limited liability
22 company or other entity providing landscape architectural
23 services.

24 (h) “Landscape architect” means a person licensed under
25 the provisions of this article to practice landscape architecture.

26 (i) “Landscape architecture” means the analysis, planning,
27 design, management and stewardship of the natural and built
28 environments.

29 (j) “License” means a landscape architecture license issued
30 under the provisions of this article.

31 (k) “Licensee” means a person holding a landscape
32 architecture license issued under the provisions of this article.

33 (l) “Permittee” means a person holding a temporary permit.

34 (m) "Practice of landscape architecture" means the
35 performance of professional services, including but not limited
36 to, analysis, consultations, evaluations, research, planning,
37 design, management or responsible supervision of projects
38 principally directed at the functional, aesthetic use, preservation
39 and stewardship of the land and natural and built environments,
40 including:

41 (1) Investigation, selection and allocation of land and water
42 resources for appropriate uses;

43 (2) Formulation of feasibility studies and graphic and
44 written criteria to govern the planning, design and management
45 of land and water resources;

46 (3) Preparation, review and analysis of those aspects of land
47 use master plans, subdivision plans and preliminary plats as are
48 related to landscape architecture;

49 (4) Determination of the location and siting of improve-
50 ments, including buildings and other features, as well as the
51 access and environs for those improvements associated with the
52 practice of landscape architecture;

53 (5) Design of land forms, soil conservation and erosion
54 control methods, site lighting, water features, irrigation
55 systems, plantings, pedestrian and vehicular circulation systems
56 and related construction details, and natural drainage, surface
57 and ground water drainage systems: *Provided*, That such
58 systems do not require structural design of system components
59 or a hydraulic analysis of the receiving storm water conveyance
60 system; and

61 (6) Preparation, filing and administration of plans, draw-
62 ings, specifications and other related construction documents.

63 (n) "Temporary permit" means a permit to practice
64 landscape architecture issued by the board for a period of time
65 not to exceed one year.

§30-22-5. Board of Landscape Architects.

1 (a) The West Virginia Board of Landscape Architects is
2 hereby continued and shall be composed of three members, two
3 of whom must be licensed landscape architects, appointed by
4 the Governor by and with the advice and consent of the Senate,
5 for staggered terms of three years.

6 (b) Each licensed member of the board, at the time of his or
7 her appointment, must have held a license in this state for a
8 period of not less than three years and must have been a
9 resident of this state for a period of not less than one year
10 immediately preceding the appointment.

11 (c) Each member of the board must be a resident of this
12 state during the appointment term.

13 (d) No member may serve more than three consecutive full
14 terms and any member having served three consecutive full
15 terms may not be appointed for one year after completion of his
16 or her third full term. A member shall continue to serve until his
17 or her successor has been appointed and qualified. Any member
18 currently serving on the board on the effective date of this
19 article may be reappointed in accordance with the provisions of
20 this section.

21 (e) A vacancy on the board shall be filled by appointment
22 by the Governor for the unexpired term of the member whose
23 office is vacant.

24 (f) The Governor may remove any member from the board
25 for neglect of duty, incompetency or official misconduct.

26 (g) Any member of the board immediately and automati-
27 cally forfeits his or her membership if he or she has his or her
28 license to practice suspended or revoked by the board, is
29 convicted of a felony under the laws of any state or the United
30 States, or becomes a nonresident of this state.

31 (h) The board shall designate one of its members as
32 chairperson and one member as secretary-treasurer who shall
33 serve at the will of the board.

34 (i) Each member of the board is entitled to receive compen-
35 sation and expense reimbursement in accordance with article
36 one of this chapter.

37 (j) A majority of the members of the board shall constitute
38 a quorum.

39 (k) The board shall hold at least one annual meeting. Other
40 meetings shall be held at the call of the chairperson or upon the
41 written request of two members, at such time and place as
42 designated in the call or request.

§30-22-6. Powers and duties of the board.

1 (a) The board has all the powers and duties set forth in this
2 article, by rule, in article one of this chapter, and elsewhere in
3 law.

4 (b) The board's powers and duties include:

5 (1) Holding meetings, conducting hearings and administer-
6 ing examinations and reexaminations;

7 (2) Setting the requirements for a license, temporary permit
8 and certificate of authorization;

9 (3) Establishing procedures for submitting, approving and
10 rejecting applications for a license, temporary permit and
11 certificate of authorization;

12 (4) Determining the qualifications of any applicant for a
13 license, temporary permit and certificate of authorization;

14 (5) Preparing, conducting, administering and grading
15 written, oral or written and oral examinations and reexamina-
16 tions for a license;

17 (6) Contracting with third parties to prepare and/or
18 administer the examinations and reexaminations required under
19 the provisions of this article;

20 (7) Determining the passing grade for the examinations;

21 (8) Maintaining records of the examinations and reexamina-
22 tions the board or a third party administers, including the
23 number of persons taking the examination or reexamination and
24 the pass and fail rate;

25 (9) Maintaining an accurate registry of names and addresses
26 of all persons and firms regulated by the board;

27 (10) Defining, by legislative rule, the fees charged under
28 the provisions of this article;

29 (11) Issuing, renewing, denying, suspending, revoking or
30 reinstating licenses, temporary permits and certificates of
31 authorization;

32 (12) Establishing, by legislative rule, the continuing
33 education requirements for licensees;

34 (13) Suing and being sued in its official name as an agency
35 of this state;

36 (14) Maintaining an office, and hiring, discharging, setting
37 the job requirements and fixing the compensation of employees
38 and investigators necessary to enforce the provisions of this
39 article;

40 (15) Investigating alleged violations of the provisions of
41 this article, the rules promulgated hereunder, and orders and
42 final decisions of the board;

43 (16) Conducting disciplinary hearings of all persons and
44 business entities regulated by the board;

45 (17) Setting disciplinary action and issuing orders;

46 (18) Instituting appropriate legal action for the enforcement
47 of the provisions of this article;

48 (19) Keeping accurate and complete records of its proceed-
49 ings, and certifying the same as may be appropriate;

50 (20) Proposing rules in accordance with the provisions of
51 article three, chapter twenty-nine-a of this code to implement
52 the provisions of this article; and

53 (21) Taking all other actions necessary and proper to
54 effectuate the purposes of this article.

§30-22-7. Rule-making authority.

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 this
4 article, including the establishment of:

5 (1) Standards and requirements for licensure, temporary
6 permits and certificates of authorization;

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, and the
11 passing grade on the examination for licensure;

12 (5) Procedures for the issuance and renewal of a license,
13 temporary permit and certificate of authorization;

14 (6) A fee schedule: *Provided*, That the fee schedule in
15 effect as of the first day of July, two thousand five, will remain
16 in effect until amended, modified, repealed or replaced by the
17 legislative rule promulgated pursuant to this subsection;

18 (7) Continuing education requirements for licensees;

19 (8) The procedures for denying, suspending, revoking,
20 reinstating or limiting the practice of a licensee, permittee or
21 certificate of authorization holder;

22 (9) Requirements for inactive or revoked licenses, tempo-
23 rary permits or certificates of authorization; and

24 (10) Any other rules necessary to effectuate the provisions
25 of this article.

26 (b) All rules in effect on the effective date of this article
27 shall remain in effect until they are amended, modified,
28 repealed or replaced.

§30-22-8. Fees; special revenue account; administrative fines.

1 (a) All fees and other moneys, except administrative fines,
2 received by the board shall be deposited in a separate special
3 revenue fund in the State Treasury designated the "Board of
4 Landscape Architects Fund," which fund is hereby continued.
5 The fund shall be used by the board for the administration of
6 this article. Except as may be provided in article one of this

7 chapter, the board shall retain the amounts in the special
8 revenue account from year to year. No compensation or
9 expense incurred under this article is a charge against the
10 general revenue fund.

11 (b) Any amounts received as fines imposed pursuant to this
12 article shall be deposited into the general revenue fund of the
13 State Treasury.

**§30-22-9. Education, experience and examination requirements
for licensure.**

1 (a) An applicant for licensure under this article must have
2 completed one of the following educational and/or experience
3 requirements:

4 (1) Has a bachelor degree in landscape architecture from
5 an accredited college or university and at least two years of
6 experience in landscape architecture under the supervision of a
7 landscape architect or a person having qualifications acceptable
8 to the board and similar to the qualifications of a landscape
9 architect;

10 (2) Has a graduate degree in landscape architecture from an
11 accredited college or university and at least one year of
12 experience in landscape architecture under the supervision of a
13 landscape architect or a person having qualifications acceptable
14 to the board and similar to the qualifications of a landscape
15 architect; or

16 (3) (A) Prior to the thirty-first day of December, two
17 thousand six, has completed at least ten years of experience in
18 landscape architecture, including at least six years of experience
19 in landscape architecture under the supervision of a landscape
20 architect or a person having qualifications acceptable to the
21 board and similar to the qualifications of a landscape architect;
22 or

23 (B) Prior to the thirty-first day of December, two thousand
24 six, has begun the ten years of experience in landscape
25 architecture set out in subdivision (3) (A) of this subsection,
26 and has not completed the experience requirements prior to the
27 thirty-first day of December, two thousand six, then the person
28 must notify the board that he or she will be making application
29 under this subdivision and comply with the procedures
30 prescribed by the board; or

31 (C) On and after the first day of January, two thousand
32 seven, has completed at least ten years of experience in
33 landscape architecture under the supervision of a landscape
34 architect or a person having qualifications acceptable to the
35 board and similar to the qualifications of a landscape architect.

36 (b) An applicant for licensure under this article must pass
37 the examination prescribed by the board.

§30-22-10. License requirements.

1 (a) The board shall issue a license to practice under the
2 provisions of this article to an applicant who meets the
3 following requirements:

4 (1) Is of good moral character;

5 (2) Is at least eighteen years of age;

6 (3) Is a citizen of the United States or is eligible for
7 employment in the United States;

8 (4) Has not been convicted of a crime involving moral
9 turpitude;

10 (5) Has not had his or her application for a license to
11 practice as a landscape architect refused in any state of the
12 United States;

13 (6) Has not had his or her license to practice landscape
14 architecture suspended or revoked in any state of the United
15 States; and

16 (7) Has completed the licensure requirements set out in this
17 article and the rules promulgated hereunder.

18 (b) The board may issue a license to practice under the
19 provisions of this article to an applicant who does not meet the
20 licensure requirements set out in subdivisions (5) or (6) of
21 subsection (a) of this section, but who does meet the licensure
22 requirements established by rule by the board.

23 (c) An application for a license shall be made on forms
24 prescribed by the board.

25 (d) An applicant shall pay all the applicable fees.

26 (e) A license to practice landscape architecture issued by
27 the board prior to the first day of July, two thousand six, shall
28 for all purposes be considered a license issued under this
29 article: *Provided*, That a person holding a license to practice
30 landscape architecture issued prior to the first day of July, two
31 thousand six, must renew the license pursuant to the provisions
32 of this article.

**§30-22-11. License from another jurisdiction; license to practice
in this state.**

1 The board may issue a license to practice landscape
2 architecture in this state, without requiring an examination, to
3 an applicant of good moral character who holds a valid license
4 or other authorization to practice landscape architecture from
5 another jurisdiction, if the applicant:

6 (1) Holds a license or other authorization to practice
7 landscape architecture in another jurisdiction and meets

8 requirements which are substantially equivalent to the licensure
9 requirements set forth in this article;

10 (2) 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 license or other authorization
13 to practice landscape architecture, and has never had a license
14 or other authorization to practice landscape architecture
15 revoked;

16 (3) Has not previously failed an examination for licensure
17 in this state;

18 (4) Has paid all the applicable fees; and

19 (5) Has completed such other action as required by the
20 board.

§30-22-12. License renewal requirements.

1 (a) A licensee shall, annually or biennially upon or before
2 the first day of July, renew his or her license by completing a
3 form prescribed by the board and paying a renewal fee.

4 (b) At least thirty days prior to the first day of July, either
5 annually or biennially, the secretary-treasurer of the board shall
6 mail to every licensee a notice of renewal, an application for
7 renewal and a statement for the renewal fee.

8 (c) The board shall charge a fee for each renewal of a
9 license and a late fee for any renewal not paid in a timely
10 manner.

11 (d) The board shall require as a condition for the renewal of
12 a license that each licensee complete continuing education
13 requirements.

14 (e) The board may deny an application for renewal for any
15 reason which would justify the denial of an original application
16 for a license.

§30-22-13. Inactive license requirements.

1 (a) A licensee who chooses not to continue in active
2 practice and notifies the board in writing, may be granted
3 inactive status.

4 (b) A person granted inactive status shall pay an inactive
5 fee, is exempt from the continuing education requirements and
6 cannot practice in this state.

7 (c) When an inactive licensee wants to return to active
8 practice, he or she must complete all the continuing education
9 requirements, pay all the applicable fees and meet all the other
10 requirements prescribed by the board.

§30-22-14. Retired license requirements.

1 (a) A licensee who chooses to retire and notifies the board
2 in writing, may be granted retired status.

3 (b) A person granted retired status cannot practice land-
4 scape architecture in this state.

§30-22-15. Reinstatement.

1 The board may reinstate a license upon a showing that the
2 applicant is qualified to resume practice. The applicant shall
3 pay all applicable fees and shall meet all the requirements
4 prescribed by the board.

§30-22-16. Temporary permits.

1 (a) Upon proper application and payment of the applicable
2 fees, the board may issue a temporary permit, for a period of

3 time not to exceed one year, to an applicant who has completed
4 the educational and/or experience requirements set out in this
5 article, but who has not taken the examination.

6 (b) The temporary permit expires thirty days after the board
7 gives written notice to the permittee of the results of the first
8 examination held following the issuance of the temporary
9 permit.

10 (c) The temporary permit may not be renewed nor another
11 temporary permit be issued to the same person.

12 (d) The temporary permit may be revoked for any reason
13 which would justify the suspension, revocation, limitation or
14 denial of a license.

§30-22-17. Display of license.

1 (a) The board shall prescribe the form for a license and may
2 issue a duplicate license, upon payment of a fee.

3 (b) A licensee shall conspicuously display his or her license
4 at his or her principal place of practice.

§30-22-18. Seal requirements.

1 (a) Each licensee must have a seal, authorized by the board,
2 which seal shall include the licensee's name and the words:
3 "Professional Landscape Architect, State of West Virginia,"
4 and any other words or figures prescribed by the board.

5 (b) All working drawings and specifications prepared by a
6 licensee shall be signed and stamped with the licensee's seal:
7 *Provided*, That nothing contained in this article shall be
8 construed to permit the seal of a landscape architect to serve as
9 a substitute for the seal of an architect, an engineer or a

10 professional surveyor whenever the seal of such architect,
11 engineer or professional surveyor is required by law.

12 (c) It is unlawful for a person who is not licensed under the
13 provisions of this article to affix a seal on a document.

§30-22-19. Certificate of authorization requirements.

1 (a) After the first day of July, two thousand six, a firm
2 practicing landscape architecture in West Virginia shall have a
3 certificate of authorization.

4 (b) The board shall issue a certificate of authorization to a
5 firm that:

6 (1) Wants to practice landscape architecture in West
7 Virginia;

8 (2) Provides proof that the firm employs a West Virginia
9 licensed landscape architect;

10 (3) Has paid all applicable fees; and

11 (4) Completes such other requirements as specified by the
12 board.

13 (c) The name of the employed licensee in direct control or
14 having personal supervision of the practice of the firm shall
15 appear as the landscape architect on all plans, drawings,
16 specifications, reports or other instruments of service rendered
17 or submitted by the firm.

§30-22-20. Certificate of authorization renewal requirements.

1 (a) A firm wanting to continue in active practice shall,
2 annually or biennially upon or before the first day of July,
3 renew its certificate of authorization and pay a renewal fee.

4 (b) At least thirty days prior to the first day of July, either
5 annually or biennially, the secretary-treasurer of the board shall
6 mail to every certificate of authorization holder a notice of
7 renewal, an application for renewal and a statement for the
8 renewal fee.

9 (c) The board shall charge a fee for each renewal of a
10 certificate of authorization and a late fee for any renewal not
11 paid in a timely manner.

§30-22-21. Display of certificate of authorization.

1 (a) The board shall prescribe the form for a certificate of
2 authorization, and may issue a duplicate certificate of authoriza-
3 tion upon payment of a fee.

4 (b) A firm shall conspicuously display its certificate of
5 authorization at its principal place of practice.

§30-22-22. Exemptions from article.

1 (a) Nothing in this article shall prohibit any professional
2 engineer, professional surveyor, or forester licensed or
3 registered under the provisions of this code from providing
4 services for which they are licensed or registered.

5 (b) Nothing in this article shall prohibit any architect
6 licensed or registered under the provisions of this code from
7 performing any of the services included within the definition of
8 the practice of landscape architecture as set forth in subsection
9 (m), section four of this article when incidental to the practice
10 of architecture as defined in article twelve of this chapter.

11 (c) Nothing in this article shall prohibit a nursery person,
12 agriculturist, horticulturist, gardener, landscape designer,
13 landscape contractor, grader, cultivator of land, garden or lawn
14 caretaker from engaging in the occupation of growing or
15 marketing nursery stock, preparing planting plans, installing

16 plant material, providing drawings or graphic diagrams neces-
17 sary for the proper layout of goods or materials, or arranging for
18 the installation of goods or materials on private or public land.

19 (d) Nothing in this article shall prohibit state, county, city
20 or other municipal, urban or regional planners and designers
21 from preparing plans or diagrams necessary to the planning,
22 design and management of communities or regions.

23 (e) Nothing in this article shall prohibit an individual from
24 making landscape plans, drawings or specifications for property
25 owned, leased or rented by the individual for his or her personal
26 use.

27 (f) Only licensed landscape architects shall use the title,
28 "Landscape Architect", or other similar words or titles which
29 implies licensure.

**§30-22-23. Refusal to issue or renew, suspension or revocation;
disciplinary action.**

1 (a) The board may refuse to issue, refuse to renew, suspend,
2 revoke or limit any license, temporary permit, certificate of
3 authorization or practice privilege and may take disciplinary
4 action against a licensee, permittee or certificate of authoriza-
5 tion holder who, after notice and a hearing, has been adjudged
6 by the board as unqualified for any of the following reasons:

7 (1) Fraud, misrepresentation or deceit in obtaining or
8 maintaining a license, temporary permit or certificate of
9 authorization;

10 (2) Failure by any licensee, permittee or certificate of
11 authorization holder to maintain compliance with the require-
12 ments for the issuance or renewal of a license, temporary permit
13 or certificate of authorization;

14 (3) Dishonesty, fraud, professional negligence in the
15 performance of landscape architectural services, or a willful
16 departure from the accepted standards of landscape architecture
17 and the professional conduct of landscape architects;

18 (4) Violation of any provision of this article or any rule
19 promulgated hereunder;

20 (5) Violation of any professional standard or rule of
21 professional conduct;

22 (6) Failure to comply with the provisions of this article or
23 any rule promulgated hereunder;

24 (7) Failure to comply with any order or final decision of the
25 board;

26 (8) Failure to respond to a request or action of the board;

27 (9) Conviction of a crime involving moral turpitude;

28 (10) Conviction of a felony or a crime involving dishonesty
29 or fraud or any similar crime under the laws of the United
30 States, this state or another jurisdiction, if the underlying act or
31 omission involved would have constituted a crime under the
32 laws of this state;

33 (11) Any conduct adversely affecting the licensee's,
34 permittee's or certificate of authorization holder's fitness to
35 perform landscape architectural services; or

36 (12) Knowingly using any false or deceptive statements in
37 advertising.

38 (b) If the board suspends, revokes, refuses to issue, refuses
39 to renew or limits any license, temporary permit, certificate of
40 authorization or practice privilege, the board shall make and

41 enter an order to that effect and give written notice of the order
42 to the person by certified mail, return receipt requested, which
43 order shall include a statement of the charges setting forth the
44 reasons for the action, and notice of the date, time and place of
45 the hearing. If a license, temporary permit, certificate of
46 authorization is ordered suspended or revoked, then the
47 licensee, permittee or certificate of authorization holder shall,
48 within twenty days after receipt of the order, return the license,
49 temporary permit, certificate of authorization to the board. The
50 hearing shall be held in accordance with the provisions of this
51 article.

52 (c) Disciplinary action includes, but is not limited to, a
53 reprimand, censure, probation, administrative fines, and
54 mandatory attendance at continuing education seminars.

§30-22-24. Complaints; investigations; notice.

1 (a) The board may, on its own motion, conduct an investi-
2 gation to determine whether there are any grounds for disciplin-
3 ary action against a licensee, permittee or certificate of
4 authorization holder. The board shall, upon the verified written
5 complaint of any person, conduct an investigation to determine
6 whether there are any grounds for disciplinary action against a
7 licensee, permittee or certificate of authorization holder.

8 (b) Upon receipt of a written complaint filed against any
9 licensee, permittee or certificate of authorization holder, the
10 board shall provide a copy of the complaint to the licensee,
11 permittee or certificate of authorization holder.

12 (c) If the board finds, upon investigation, that probable
13 cause exists that the licensee, permittee or certificate of
14 authorization holder has violated any provision of this article or
15 the rules promulgated hereunder, then the board shall serve the
16 licensee, permittee or certificate of authorization holder with a

17 written statement of charges and a notice specifying the date,
18 time and place of the hearing. The hearing shall be held in
19 accordance with the provisions of this article.

§30-22-25. Hearing and judicial review.

1 (a) Any person adversely affected by an order entered by
2 the board is entitled to a hearing. A hearing on a statement of
3 the charges shall be held in accordance with the provisions for
4 hearings set forth in article one of this chapter and the proce-
5 dures specified by the board by rule.

6 (b) Any licensee, permittee or certificate of authorization
7 holder, adversely affected by any decision of the board entered
8 after a hearing, may obtain judicial review of the decision in
9 accordance with section four, article five, chapter twenty-nine-a
10 of this code, and may appeal any ruling resulting from judicial
11 review in accordance with article five, chapter twenty-nine-a of
12 this code.

§30-22-26. Injunctions.

1 (a) When, by reason of an investigation under this article or
2 otherwise, the board or any other interested person believes that
3 a person has violated or is about to violate any provision of this
4 article, any rule promulgated hereunder, any order of the board
5 or any final decision of the board, the board or any other
6 interested person may apply to any court of competent jurisdic-
7 tion for an injunction against such person enjoining such person
8 from the violation. Upon a showing that the person has engaged
9 in or is about to engage in any prohibited act or practice, an
10 injunction, restraining order or other appropriate order may be
11 granted by the court without bond.

12 (b) A cause of action by the board may be brought in the
13 circuit court of the county where the cause of action took place.

§30-22-27. 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 person has
3 knowingly violated the provisions of this article, the board may
4 bring its information to the attention of the Attorney General or
5 other appropriate law-enforcement officer who may cause
6 appropriate criminal proceedings to be brought.

7 (b) If a court of law finds that a person knowingly violated
8 any provision of this article, any rule promulgated hereunder,
9 any order of the board or any final decision of the board, then
10 the person is guilty of a misdemeanor and, upon conviction
11 thereof, shall be fined not less than one hundred dollars and no
12 more than one thousand dollars for each violation, imprisoned
13 for up to thirty days for each violation, or both fined and
14 imprisoned.

§30-22-28. 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 prohib-
3 ited by this article is sufficient to justify a penalty, injunction,
4 restraining order or conviction without evidence of a general
5 course of conduct.

§30-22-29. Continuation of West Virginia Board of Landscape Architects.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the West Virginia Board of Landscape Architects shall
3 continue to exist until the first day of July, two thousand nine,
4 unless sooner terminated, continued or reestablished.

CHAPTER 184

**(H. B. 4279 — By Delegates Beane, Ennis, Butcher,
Hatfield, Manchin, Martin, Perdue, Swartzmiller,
Frich, Schoen and Walters)**

[Passed March 10, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §30-37-7, §30-37-8, §30-37-9, §30-37-10 and §30-37-11 of the Code of West Virginia, 1931, as amended, all relating to the Massage Therapy Licensure Board; discontinuing waiver of requirements for licensure; providing that board may require licensees formerly licensed by waiver to meet certain requirements to reinstate lapsed licenses; providing grounds for denial of renewal of licenses; prohibiting practicing under lapsed license; providing for disciplinary sanctions for certain prohibited acts; clarifying that students of massage therapy may not charge or receive fees; and increasing civil penalties.

Be it enacted by the Legislature of West Virginia:

That §30-37-7, §30-37-8, §30-37-9, §30-37-10 and §30-37-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 37. MASSAGE THERAPISTS.

- §30-37-7. Requirements for licensure; renewal of licenses; reinstatement; penalties.
§30-37-8. Enforcement.
§30-37-9. Hearing for revocation, suspension, other discipline, nonrenewal of license.
§30-37-10. Prohibitions and penalties.
§30-37-11. Exemptions.

§30-37-7. Requirements for licensure; renewal of licenses; reinstatement; penalties.

1 (a) The board shall propose rules for legislative approval
2 in accordance with article three, chapter twenty-nine-a of this
3 code, establishing a procedure for licensing of massage
4 therapists. License requirements shall include the following:

5 (1) Completion of a program of massage education at a
6 school approved by the West Virginia Higher Education Policy
7 Commission or by a state agency in another state, the District
8 of Columbia or a United States territory which approves
9 educational programs and which meets qualifications for the
10 National Certification Exam administered through the National
11 Certification Board for Therapeutic Massage and Bodywork.
12 This school shall require a diploma from an accredited high
13 school, or the equivalent, and require completion of at least five
14 hundred hours of supervised academic instruction;

15 (2) Successful completion of the National Certification for
16 Therapeutic Massage and Bodywork (NCTMB) examination,
17 or other board approved examination; and

18 (3) Payment of a reasonable fee every two years required by
19 the board which shall compensate and be retained by the board
20 for the costs of administration.

21 (b) A license to practice massage therapy issued by the
22 board prior to the first day of July, two thousand six, shall for
23 all purposes be considered a license issued under this section:
24 *Provided*, That a person holding a license to practice massage
25 therapy issued prior to the first day of July, two thousand six,
26 must renew the license pursuant to the provisions of this article:
27 *Provided, however*, That a person whose license was issued by
28 the board prior to the first day of July, two thousand six, and

29 whose license subsequently lapses may, in the discretion of the
30 board, be subject to the licensing requirements of this section.

31 (c) In addition to provisions for licensure, the rules shall
32 include:

33 (1) Requirements for completion of continuing education
34 hours conforming to NCTMB guidelines; and

35 (2) Requirements for issuance of a reciprocal license to
36 licensees of states with requirements which may include the
37 successful completion of the NCTMB examination or other
38 board approved examination.

39 (d) Subject to the provisions of subsection (b) of this
40 section, the board may deny an application for renewal for any
41 reason which would justify the denial of an application for
42 initial licensure.

43 (e) Any person practicing massage therapy during the time
44 his or her license has lapsed is in violation of this article and is
45 subject to the penalties provided in this article.

46 (f) A massage therapist who is licensed by the board shall
47 be issued a certificate and a license number. The current, valid
48 license certificate shall be publicly displayed and available for
49 inspection by the board and the public at a massage therapist's
50 work site.

§30-37-8. Enforcement.

1 (a) The board has the power and authority to enter into any
2 court of this state having proper jurisdiction to seek an
3 injunction against any person, corporation or association not in
4 compliance with the provisions of this article, and is further
5 empowered to enter into any court to enforce the provisions of
6 this article to ensure compliance with such provisions.

7 (b) The board may suspend, revoke, or impose probationary
8 conditions upon a license or impose disciplinary sanctions upon
9 a licensee pursuant to rules adopted in accordance with this
10 article concerning board requirements for licensure. The
11 following are grounds for revocation, suspension, annulment or
12 the imposition of other disciplinary sanctions when a person,
13 corporation or association is:

14 (1) Guilty of fraud in practice of massage, or fraud or deceit
15 in the licensee's application for licensure;

16 (2) Engaged in practice under a false or assumed name, or
17 impersonating another practitioner of a like or different name;

18 (3) Addicted to the habitual use of drugs, alcohol or
19 stimulants to an extent as to incapacitate that person's perfor-
20 mance of professional duties;

21 (4) Guilty of fraudulent, false, misleading or deceptive
22 advertising, or for prescribing medicines or drugs, or practicing
23 or offering to practice any licensed profession without legal
24 authority. The licensee may not diagnose, or imply or advertise
25 in any way a service for a condition that would require
26 diagnosis;

27 (5) Practicing or offering to practice beyond the scope of
28 licensure of massage therapy without legal authority;

29 (6) Grossly negligent in the practice of massage or guilty of
30 employing, allowing or permitting an unlicensed person to
31 perform massage in the licensee's work site;

32 (7) Practicing massage or bodywork with a license from
33 another state or jurisdiction that has been canceled, revoked,
34 suspended or otherwise restricted;

35 (8) Incapacitated by a physical or mental disability which
36 is determined by a physician to render further practice by the
37 licensee inconsistent with competency and ethics requirements;

38 (9) Convicted of sexual misconduct, assignation or the
39 solicitation or attempt thereof;

40 (10) Engaging in any act of sexual abuse, sexual miscon-
41 duct or sexual exploitation related to the licensee's practice of
42 massage therapy;

43 (11) Obtaining any fee by fraud, deceit or misrepresenta-
44 tion; or

45 (12) In violation of any of the provisions of this article or
46 any substantive rule adopted under the authority of this article.

**§30-37-9. Hearing for revocation, suspension, other discipline,
nonrenewal of license.**

1 All proceedings for the revocation, suspension, or other
2 disciplinary sanctions, or nonrenewal of licenses issued under
3 the authority of this chapter shall be governed by the provisions
4 of section eight, article one, chapter thirty of this code.

§30-37-10. Prohibitions and penalties.

1 (a) After the thirtieth day of June, one thousand nine
2 hundred ninety-eight, a person, corporation or association who
3 is not licensed pursuant to the provisions of this article may not
4 engage in the practice of massage therapy and may not use the
5 initials LMT, C.M.T., or the words "licensed massage thera-
6 pist," "masseur," or "masseur," or any other words or titles
7 which imply or represent that the person, corporation or
8 association is engaging in the practice of massage therapy, nor
9 may a person, corporation or association employ any person,
10 not duly licensed, who is engaging in the practice of massage

11 therapy or who is using such words or titles to imply or
12 represent that he or she is engaging in the practice of massage
13 therapy.

14 (b) Any person, corporation or association who violates the
15 provisions of subsection (a) of this section is guilty of a
16 misdemeanor and, upon conviction thereof, shall be fined not
17 less than five hundred dollars nor more than one thousand
18 dollars, or confined in jail not more than one year, or both fined
19 and imprisoned.

§30-37-11. Exemptions.

1 Nothing in this article may be construed to prohibit or
2 otherwise limit:

3 (a) The practice of a profession by persons who are
4 licensed, certified or registered under the laws of this state and
5 who are performing services within their authorized scope of
6 practice. Persons exempted under this subdivision include, but
7 are not limited to, those licensed, certified or registered to
8 practice within the scope of any branch of medicine, nursing,
9 osteopathy, chiropractic and podiatry, as well as licensed,
10 certified or registered barbers, cosmetologists, athletic trainers,
11 physical and occupational therapists; and any student enrolled
12 in a program of massage education at a school approved by the
13 West Virginia State College System Board or by a state agency
14 in another state, the District of Columbia or a United States
15 territory which approves educational programs and which meets
16 qualifications for the National Certification Exam administered
17 through the National Certification Board for Therapeutic
18 Massage and Bodywork, provided that the student does not hold
19 himself or herself out as a licensed massage therapist and does
20 not charge or receive a fee; and

21 (b) The activities of any resort spa that has been operating
22 on a continuing basis since the first day of January, one

23 thousand nine hundred seventy-five, or any employees of the
24 resort spa. The exemption set forth in this subsection does not
25 extend to any person, corporation or association providing
26 escort services, nude dancing or other sexually oriented services
27 not falling within the scope of massage therapy as defined in
28 this article, irrespective of how long the person, corporation or
29 association has been in operation.

CHAPTER 185

(H. B. 4606 — By Delegates Beane, Yost, Talbott,
Blair, Ennis, Iaquina and Swartzmiller)

[Passed March 10, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 5, 2006.]

AN ACT to amend and reenact §30-40-20 of the Code of West Virginia, 1931, as amended, relating to the Real Estate Licensing Act generally; and eliminating the requirement that complaints be verified.

Be it enacted by the Legislature of West Virginia:

That §30-40-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 40. WEST VIRGINIA REAL ESTATE LICENSE ACT.

§30-40-20. Complaints; investigation.

- 1 (a) The commission may upon its own motion and shall
- 2 upon the filing of a complaint setting forth a cause of action
- 3 under this article or the rules promulgated thereunder, ascertain

4 the facts and if warranted hold a hearing for the suspension or
5 revocation of a license, or the imposition of sanctions against a
6 licensee.

7 (b) The commission shall consider complaints which are
8 submitted in writing and set forth the details of the transaction.

9 (c) Upon initiation or receipt of the complaint, the commis-
10 sion shall provide a copy of the complaint to the licensee for his
11 or her response to the allegations contained in the complaint.
12 The accused party shall file an answer within twenty days of the
13 date of service. Failure of the licensee to file a timely response
14 may be considered an admission of the allegations in the
15 complaint: *Provided*, That nothing contained herein shall
16 prohibit the accused party from obtaining an extension of time
17 to file a response, if the commission, its executive director or
18 other authorized representative permits the extension.

19 (d) The commission may cause an investigation to be made
20 into the facts and circumstances giving rise to the complaint
21 and any person licensed by the commission has an affirmative
22 duty to assist the commission, or its authorized representative,
23 in the conduct of its investigation.

24 (e) After receiving the licensee's response and reviewing
25 any information obtained through investigation, the commission
26 shall determine if probable cause exists that the licensee has
27 violated any provision of this article or the rules.

28 (f) If a determination that probable cause exists for
29 disciplinary action, the commission may hold a hearing in
30 compliance with section twenty-one of this article or may
31 dispose of the matter informally through a consent agreement
32 or otherwise.

CHAPTER 186

**(H. B. 4654 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §5-16-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §5-16D-1, §5-16D-2, §5-16D-3, §5-16D-4, §5-16D-5 and §5-16D-6, all relating to the Public Employees Insurance Agency, establishing the West Virginia Retiree health Benefit Trust Fund, providing for post-employment Health care benefits, operation and funding and establishing that the eighty-twenty split between employer and employee for the scheduled increase in health care costs for employees may be partially offset by a legislative appropriation.

Be it enacted by the Legislature of West Virginia:

That §5-16-5 of the Code of West Virginia, 1931, as amended, be amended; and that said code be amended by adding thereto a new article, designated §5-16D-1, §5-16D-2, §5-16D-3, §5-16D-4, §5-16D-5 and §5-16D-6, all to read as follows:

Article

16. West Virginia Public Employees Insurance Act.

16D. West Virginia Retirement Health Benefit Trust Fund.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-5. Purpose, powers and duties of the finance board; initial financial plan; financial plan for following year; and annual financial plans.

1 (a) The purpose of the finance board created by this article
2 is to bring fiscal stability to the Public Employees Insurance
3 Agency through development of annual financial plans and
4 long-range plans designed to meet the agency's estimated total
5 financial requirements, taking into account all revenues
6 projected to be made available to the agency and apportioning
7 necessary costs equitably among participating employers,
8 employees and retired employees and providers of health care
9 services.

10 (b) The finance board shall retain the services of an
11 impartial, professional actuary, with demonstrated experience
12 in analysis of large group health insurance plans, to estimate the
13 total financial requirements of the Public Employees Insurance
14 Agency for each fiscal year and to review and render written
15 professional opinions as to financial plans proposed by the
16 finance board. The actuary shall also assist in the development
17 of alternative financing options and perform any other services
18 requested by the finance board or the director. All reasonable
19 fees and expenses for actuarial services shall be paid by the
20 Public Employees Insurance Agency. Any financial plan or
21 modifications to a financial plan approved or proposed by the
22 finance board pursuant to this section shall be submitted to and
23 reviewed by the actuary and may not be finally approved and
24 submitted to the Governor and to the Legislature without the
25 actuary's written professional opinion that the plan may be
26 reasonably expected to generate sufficient revenues to meet all
27 estimated program and administrative costs of the agency,
28 including incurred but unreported claims, for the fiscal year for
29 which the plan is proposed. The actuary's opinion on the
30 financial plan for each fiscal year shall allow for no more than
31 thirty days of accounts payable to be carried over into the next
32 fiscal year. The actuary's opinion for any fiscal year shall not
33 include a requirement for establishment of a reserve fund.

34 (c) All financial plans required by this section shall
35 establish:

36 (1) Maximum levels of reimbursement which the Public
37 Employees Insurance Agency makes to categories of health
38 care providers;

39 (2) Any necessary cost containment measures for imple-
40 mentation by the director;

41 (3) The levels of premium costs to participating employers;
42 and

43 (4) The types and levels of cost to participating employees
44 and retired employees.

45 The financial plans may provide for different levels of costs
46 based on the insureds' ability to pay. The finance board may
47 establish different levels of costs to retired employees based
48 upon length of employment with a participating employer,
49 ability to pay or other relevant factors. The financial plans may
50 also include optional alternative benefit plans with alternative
51 types and levels of cost. The finance board may develop
52 policies which encourage the use of West Virginia health care
53 providers.

54 In addition, the finance board may allocate a portion of the
55 premium costs charged to participating employers to subsidize
56 the cost of coverage for participating retired employees, on such
57 terms as the finance board determines are equitable and
58 financially responsible.

59 (d)(1) The finance board shall prepare an annual financial
60 plan for each fiscal year during which the finance board
61 remains in existence. The finance board chairman shall request
62 the actuary to estimate the total financial requirements of the
63 Public Employees Insurance Agency for the fiscal year.

64 (2) The finance board shall prepare a proposed financial
65 plan designed to generate revenues sufficient to meet all

66 estimated program and administrative costs of the Public
67 Employees Insurance Agency for the fiscal year. The proposed
68 financial plan shall allow for no more than thirty days of
69 accounts payable to be carried over into the next fiscal year.
70 Before final adoption of the proposed financial plan, the finance
71 board shall request the actuary to review the plan and to render
72 a written professional opinion stating whether the plan will
73 generate sufficient revenues to meet all estimated program and
74 administrative costs of the Public Employees Insurance Agency
75 for the fiscal year. The actuary's report shall explain the basis
76 of its opinion. If the actuary concludes that the proposed
77 financial plan will not generate sufficient revenues to meet all
78 anticipated costs, then the finance board shall make necessary
79 modifications to the proposed plan to ensure that all actuarially
80 determined financial requirements of the agency will be met.

81 (3) Upon obtaining the actuary's opinion, the finance board
82 shall conduct one or more public hearings in each congressional
83 district to receive public comment on the proposed financial
84 plan, shall review the comments and shall finalize and approve
85 the financial plan.

86 (4) Any financial plan shall be designed to allow thirty days
87 or less of accounts payable to be carried over into the next fiscal
88 year. For each fiscal year, the Governor shall provide his or her
89 estimate of total revenues to the finance board no later than the
90 fifteenth day of October of the preceding fiscal year: *Provided,*
91 That, for the prospective financial plans required by this
92 section, the Governor shall estimate the revenues available for
93 each fiscal year of the plans based on the estimated percentage
94 of growth in general fund revenues. The finance board shall
95 submit its final, approved financial plan, after obtaining the
96 necessary actuary's opinion and conducting one or more public
97 hearings in each congressional district, to the Governor and to
98 the Legislature no later than the first day of January preceding
99 the fiscal year. The financial plan for a fiscal year becomes

100 effective and shall be implemented by the director on the first
101 day of July of the fiscal year. In addition to each final, approved
102 financial plan required under this section, the finance board
103 shall also simultaneously submit financial statements based on
104 generally accepted accounting practices (GAAP) and the final,
105 approved plan restated on an accrual basis of accounting, which
106 shall include allowances for incurred but not reported claims:
107 *Provided, however,* That the financial statements and the
108 accrual-based financial plan restatement shall not affect the
109 approved financial plan.

110 (e) The provisions of chapter twenty-nine-a of this code
111 shall not apply to the preparation, approval and implementation
112 of the financial plans required by this section.

113 (f) By the first day of January of each year the finance
114 board shall submit to the Governor and the Legislature a
115 prospective financial plan, for a period not to exceed five years,
116 for the programs provided in this article. Factors that the board
117 shall consider include, but are not limited to, the trends for the
118 program and the industry; the medical rate of inflation; utiliza-
119 tion patterns; cost of services; and specific information such as
120 average age of employee population, active to retiree ratios, the
121 service delivery system and health status of the population.

122 (g) The prospective financial plans shall be based on the
123 estimated revenues submitted in accordance with subdivision
124 (4), subsection (d) of this section and shall include an average
125 of the projected cost-sharing percentages of premiums and an
126 average of the projected deductibles and copays for the various
127 programs. Beginning in the plan year which commences on the
128 first day of July, two thousand two, and in each plan year
129 thereafter, until and including the plan year which commences
130 on the first day of July, two thousand six, the prospective plans
131 shall include incremental adjustments toward the ultimate level
132 required in this subsection, in the aggregate cost-sharing

133 percentages of premium between employers and employees,
134 including the amounts of any subsidization of retired employee
135 benefits: *Provided*, That for the period beginning the first day
136 of July, two thousand five, through the thirty-first day of
137 December, two thousand five, the portion of the policy
138 surcharge collected from certain fire and casualty insurers and
139 transferred into the fund in the State Treasury of the Public
140 Employees Insurance Agency pursuant to the provisions of
141 section thirty-three, article three, chapter thirty-three of this
142 code shall be used, in lieu of an increase in costs to active state
143 pool employees, to subsidize any incremental adjustment in
144 those employees' portion of the aggregate cost-sharing
145 percentages of premium between employers and employees.
146 The foregoing does not prohibit any premium increase occa-
147 sioned by an employee's increase in salary: *Provided, however*,
148 That for the period beginning the first day of July, two thousand
149 five, through the thirty-first day of December, two thousand
150 five, in lieu of an increase in costs to retired state pool employ-
151 ees, such funds as are necessary to subsidize any increase in
152 costs to retired state pool employees shall be transferred from
153 the reserve fund established in section twenty-five of this article
154 into the fund in the State Treasury of the Public Employees
155 Insurance Agency. Effective in the plan year commencing on
156 the first day of July, two thousand six, and in each plan year
157 thereafter, the aggregate premium cost-sharing percentages
158 between employers and employees, including the amounts of
159 any subsidization of retired employee benefits, shall be at a
160 level of eighty percent for the employer and twenty percent for
161 employees, except for the employers provided in subsection (d),
162 section eighteen of this article whose premium cost-sharing
163 percentages shall be governed by that subsection. After the
164 submission of the initial prospective plan, the board may not
165 increase costs to the participating employers or change the
166 average of the premiums, deductibles and copays for employ-
167 ees, except in the event of a true emergency as provided in this
168 section: *Provided further*, That if the board invokes the

169 emergency provisions, the cost shall be borne between the
170 employers and employees in proportion to the cost-sharing ratio
171 for that plan year: *And provided further*, That for purposes of
172 this section, “emergency” means that the most recent projec-
173 tions demonstrate that plan expenses will exceed plan revenues
174 by more than one percent in any plan year: *And provided*
175 *further*, That the aggregate premium cost-sharing percentages
176 between employers and employees, including the amounts of
177 any subsidization of retired employee benefits, scheduled to be
178 at a level of twenty percent for employees by the first day of
179 July two-thousand six may be offset, in part, by a legislative
180 appropriation for that purpose, prior to the first day of July two-
181 thousand six.

182 (h) The finance board shall meet on at least a quarterly
183 basis to review implementation of its current financial plan in
184 light of the actual experience of the Public Employees Insur-
185 ance Agency. The board shall review actual costs incurred, any
186 revised cost estimates provided by the actuary, expenditures
187 and any other factors affecting the fiscal stability of the plan
188 and may make any additional modifications to the plan
189 necessary to ensure that the total financial requirements of the
190 agency for the current fiscal year are met. The finance board
191 may not increase the types and levels of cost to employees
192 during its quarterly review except in the event of a true
193 emergency.

194 (i) For any fiscal year in which legislative appropriations
195 differ from the Governor’s estimate of general and special
196 revenues available to the agency, the finance board shall, within
197 thirty days after passage of the budget bill, make any modifica-
198 tions to the plan necessary to ensure that the total financial
199 requirements of the agency for the current fiscal year are met.

**ARTICLE 16D. WEST VIRGINIA RETIREMENT HEALTH BENEFIT
TRUST FUND.**

§5-16D-1. Definitions.

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§5-16D-1. Definitions.

1 As used in this article, the term:

2 (a) “Actuarial accrued liability” means that portion, as
3 determined by a particular actuarial cost method, of the
4 actuarial present value of fund obligations and administrative
5 expenses which is not provided by future normal costs.

6 (b) “Actuarial cost method” means a method for determin-
7 ing the actuarial present value of the obligations and adminis-
8 trative expenses of the fund and for developing an actuarially
9 equivalent allocation of the value to time periods, usually in the
10 form of a normal cost and an actuarial accrued liability.
11 Acceptable actuarial methods are the aggregate, attained age,
12 entry age, frozen attained age, frozen entry age, and projected
13 unit credit methods.

14 (c) “Actuarially sound” means that calculated contributions
15 to the fund are sufficient to pay the full actuarial cost of the
16 fund. The full actuarial cost includes both the normal cost of
17 providing for fund obligations as they accrue in the future and
18 the cost of amortizing the unfunded actuarial accrued liability
19 over a period of no more than thirty years.

20 (d) “Actuarial present value of total projected benefits”
21 means the present value, at the valuation date, of the cost to
22 finance benefits payable in the future, discounted to reflect the
23 expected effects of the time value of money and the probability
24 of payment.

25 (e) “Actuarial assumptions” means assumptions regarding
26 the occurrence of future events affecting the fund such as
27 mortality, withdrawal, disability, and retirement; changes in
28 compensation and offered post-employment benefits; rates of
29 investment earnings and other asset appreciation or deprecia-
30 tion; procedures used to determine the actuarial value of assets;
31 and other relevant items.

32 (f) “Actuarial valuation” means the determination, as of a
33 valuation date, of the normal cost, actuarial accrued liability,
34 actuarial value of assets, and related actuarial present values for
35 the fund.

36 (g) “Administrative expenses” means all expenses incurred
37 in the operation of the fund, including all investment expenses.

38 (h) “Annual required contribution” means the amount
39 employers must contribute in a given year to fully fund the
40 trust, as determined by the actuarial valuation in accordance
41 with requirements of generally accepted accounting principles.
42 This amount shall represent a level of funding that if paid on an
43 ongoing basis is projected to cover the normal cost each year
44 and amortize any unfunded actuarial liabilities of the plan over
45 a period not to exceed thirty years.

46 (i) “Board” means the Public Employees Insurance Agency
47 Finance Board created in section four, article sixteen of this
48 chapter.

49 (j) “Cost sharing multiple employer plan” means a single
50 plan with pooling (cost-sharing) arrangements for the partici-
51 pating employers. All risk, rewards, and costs, including benefit
52 costs, are shared and not attributed individually to the employ-
53 ers. A single actuarial valuation covers all plan members and
54 the same contribution rate(s) applies for each employer.

55 (k) “Covered health care expenses” means all actual health
56 care expenses paid by the health plan on behalf, of fund

57 beneficiaries. Actual health care expenses include claims
58 payments to providers and premiums paid to intermediary
59 entities and health care providers by the health plan.

60 (l) “Employer” means any employer as defined by section
61 two, article sixteen of this chapter, which has or will have
62 retired employees in any Public Employees Insurance Agency
63 health plan.

64 (m) “Employer annual required contribution” means the
65 portion of the annual required contribution which is the
66 responsibility of that particular employer.

67 (n) “Fund” means the West Virginia Retiree Health Benefit
68 Trust Fund established under this article.

69 (o) “Fund beneficiaries” means all persons receiving post-
70 employment health care benefits through the health plan.

71 (p) “Health plan” means the health insurance plan or plans
72 established under article sixteen of this chapter.

73 (q) “Minimum annual employer premium payment” means
74 the annual amount paid by employers toward retiree premiums,
75 which, when combined with the retirees’ contributions on their
76 premiums that year, provide sufficient funds to cover all
77 projected retiree covered health care expenses and related
78 administrative costs for that year. The finance board shall
79 develop the minimum annual employer premium payment as
80 part of its financial plan each year as addressed in section five,
81 article sixteen of this chapter.

82 (r) “Normal cost” means that portion of the actuarial
83 present value of the fund obligations and expenses which is
84 allocated to a valuation year by the actuarial cost method used
85 for the fund.

86 (s) “Obligations” means the administrative expenses of the
87 fund and the cost of covered health care expenses incurred on
88 behalf of fund beneficiaries.

89 (t) “Other post-employment benefits” or “retiree post-
90 employment health care benefits” means those benefits as
91 addressed by governmental accounting standards board
92 statement no. 43, or any subsequent governmental standards
93 board statement that may be applicable to the fund.

94 (u) “Plan for other post-employment benefits” means the
95 fiscal funding plan for retiree post-employment health care
96 benefits as it relates to governmental accounting standards
97 board statement no. 43, or any subsequent governmental
98 accounting standards board statements that may be applicable
99 to the fund.

100 (v) “Retiree” means retired employee as defined by section
101 two, article sixteen of this chapter.

102 (w) “Retirement system” or “system” means the West
103 Virginia Consolidated Public Retirement Board created and
104 established by article ten of this chapter and includes any
105 retirement systems or funds administered or overseen by the
106 Consolidated Public Retirement Board.

107 (x) “Unfunded actuarial accrued liability” means for any
108 actuarial valuation the excess of the actuarial accrued liability
109 over the actuarial value of the assets of the fund under an
110 actuarial cost method used by the fund for funding purposes.

§5-16D-2. Creation of West Virginia Retiree Health Benefit Trust Fund.

1 The Legislature declares that certain dedicated revenues
2 should be preserved in trust for the purpose of funding other
3 post-employment benefits.

4 There is hereby created the West Virginia Retiree Health
5 Benefit Trust Fund for the purpose of providing for and
6 administering retiree post-employment health care benefits, and
7 the respective revenues and costs of those benefits as a cost
8 sharing multiple employer plan.

9 The fund shall be available without fiscal year limitations
10 for covered health care expenses and administration costs. All
11 contributions, appropriations, earnings, and reserves for the
12 payment of obligations under this article shall be credited to the
13 fund and are irrevocable.

14 The amounts remaining in the fund, if any, after covered
15 health care expenses and administration costs have been paid
16 shall be retained in the fund as a special reserve for adverse
17 fluctuation. All assets of the fund shall be used solely for the
18 payment of fund obligations and for no other purpose.

§5-16D-3. Operation of trust fund.

1 (a) Responsibility for the rules and policies for the proper
2 operation of the fund is vested in the board.

3 (b) The board shall adopt actuarial assumptions as it deems
4 necessary and prudent.

5 (c) The board shall determine the annual required contribu-
6 tion rates sufficient to maintain the fund in accordance with the
7 state plan for other post-employment benefits.

8 (d) The board may promulgate, in accordance with chapter
9 twenty-nine-a of this code, any rules it finds necessary to
10 properly administer the fund. The board may promulgate
11 emergency rules pursuant to the provisions of section fifteen,
12 article three, chapter twenty-nine-a of this code.

13 (e) The Public Employees Insurance Agency shall furnish
14 reports to the board at each of the board's regularly scheduled

15 meetings. The reports shall contain the most recent information
16 reasonably available to the Public Employees Insurance Agency
17 reflecting the obligations of the fund, earnings on investments,
18 and such other information as the board deems necessary and
19 appropriate.

20 (f) The Secretary of the Department of Administration, as
21 chairman of the board, shall cause to be employed within the
22 Public Employees Insurance Agency such personnel as may be
23 needed to carry out the provisions of this article. The pro rata
24 share of the costs to the Public Employees Insurance Agency of
25 operating the fund shall be part of the administrative costs of
26 the fund and shall be reimbursed to the Public Employees
27 Insurance Agency.

28 (g) The Public Employees Insurance Agency, on the
29 board's behalf, shall be responsible for the day-to-day operation
30 of the fund and may employ or contract for the services of
31 actuaries and other professionals as required to carry out the
32 duties established by this article.

33 (h) The board shall contract with the West Virginia
34 Investment Management Board for any necessary services with
35 respect to fund investments.

36 (i) The Public Employees Insurance Agency, on the board's
37 behalf, shall maintain all necessary records regarding the fund
38 in accordance with generally accepted accounting principles.

39 (j) The Public Employees Insurance Agency, on the board's
40 behalf, shall collect all moneys due to the fund and shall pay
41 current post-employment healthcare costs and any administra-
42 tive expenses necessary and appropriate for the operation of the
43 fund from the fund. The fund's assets shall be maintained and
44 accounted for in state funds. The state funds shall be: (1) The
45 Other Post-Employment Benefit Contribution Accumulation

46 Fund; (2) the Other Post-Employment Benefit Investment Fund;
47 and (3) the Other Post-Employment Benefit Expense Fund.
48 These funds will be maintained by the Public Employees
49 Insurance Agency on the board's behalf.

50 (k) The Public Employees Insurance Agency, on the
51 board's behalf, shall prepare an annual report of fund activities.
52 Such report shall include, but not be limited to, independently
53 audited financial statements in accordance with generally
54 accepted accounting principles. The financial statements must
55 be independently audited in accordance with auditing standards
56 generally accepted in the United States and the standards
57 applicable to financial audits contained in government auditing
58 standards as issued by the Comptroller General of the United
59 States.

60 (l) Notwithstanding any other provision of law to the
61 contrary, the Public Employees Insurance Agency shall be
62 entitled to request and receive any information that it deems
63 necessary and appropriate from any relevant retirement system
64 in order that the provisions of this article may be carried out.

§5-16D-4. Actuary.

1 (a) The actuary employed or retained by the Public
2 Employees Insurance Agency shall provide technical advice to
3 the Public Employees Insurance Agency and to the board
4 regarding the operation of the fund.

5 (b) Using the actuarial assumptions most recently adopted
6 by the board, the actuary shall, on a biannual basis, or as
7 frequently as the board determines necessary, set actuarial
8 valuations of normal cost, actuarial liability, actuarial value of
9 assets, and related actuarial present values for the state plan for
10 other post-employment benefits.

§5-16D-5. Operational control of trust fund.

1 (a) The Public Employees Insurance Agency shall have
2 operational control over the fund. The obligations provided in
3 this article and all related administrative expenses shall be paid
4 from the fund. The Public Employees Insurance Agency may
5 expend moneys from the fund for any purpose authorized by
6 this article.

7 (b) Notwithstanding any provision of this code or any
8 legislative rule to the contrary, all assets of the fund shall be
9 held in trust. The Public Employees Insurance Agency, on
10 behalf of the board, shall have full power to invest and reinvest
11 the fund's assets via the West Virginia Investment Management
12 Board, subject to all of the terms, conditions, limitations, and
13 restrictions imposed by article six, chapter twelve of this code.
14 Subject to the terms, conditions, limitations and restrictions,
15 and consistent with this article, the Public Employees Insurance
16 Agency shall have full power to hold, purchase, sell, assign,
17 transfer, and dispose of any securities and investments in which
18 any of the moneys are invested, including the proceeds of any
19 investments and other moneys belonging to the fund.

20 (c) Except as otherwise provided in this chapter, no member
21 of the board or employee of the Public Employees Insurance
22 Agency shall have any personal interest in the gains or profits
23 from any investment made by the board or use the assets of the
24 fund in any manner, except to make such payments as may be
25 authorized by the board or by the Secretary of the Department
26 of Administration as the chairman of the board in accordance
27 with this article.

§ 5-16D-6. Mandatory employer contributions.

1 (a) The board shall annually set the total annual required
2 contribution sufficient to maintain the fund in an actuarially

3 sound manner in accordance with generally accepted account-
4 ing principles.

5 (b) The board shall annually allocate to the respective
6 employers the employer's portion of the annual required
7 contribution, which allocated amount is the "employer annual
8 required contribution".

9 (c) The board may apportion the annual required contribu-
10 tion into various components. These components may include
11 the amortized unfunded actuarial accrued liability, the total
12 normal cost, the employer annual required contribution and the
13 lesser included minimum annual employer premium payment.

14 (d) It shall be the mandatory responsibility of employers to
15 make annual contributions to the fund in, at least, the amount of
16 the minimum annual employer premium payment rates
17 established by the board.

18 (e) It shall be the responsibility of the Public Employees
19 Insurance Agency to bill each employer for the employer
20 annual required contribution and the included minimum annual
21 employer premium payment. It shall be the responsibility of the
22 Public Employees Insurance Agency to annually collect the
23 minimum annual employer premium payment. The Public
24 Employees Insurance Agency shall, in addition to the minimum
25 annual employer premium payment, collect any amounts the
26 employer elects to pay toward the employer annual required
27 contribution. Any employer annual required contribution
28 amount not satisfied by the respective employer shall remain
29 the liability of that employer until fully paid.

CHAPTER 187

(H. B. 4007 — By Delegates Beane, Cann and Walters)

[Passed March 10, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2006.]

AN ACT to amend and reenact §20-1A-4 of the Code of West Virginia, 1931, as amended, relating to updating appraisal standards employed by the Public Land Corporation to determine fair market value of public lands.

Be it enacted by the Legislature of West Virginia:

That §20-1A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

§20-1A-4. Public land corporation to conduct sales of public lands by competitive bidding, modified competitive bidding or direct sale.

1 (a) Sales, exchanges or transfers of public lands under this
2 article shall be conducted under competitive bidding proce-
3 dures. However, where the secretary determines it necessary
4 and proper in order to assure the following public policies,
5 including, but not limited to, a preference to users, lands may
6 be sold by modified competitive bidding or without competitive
7 bidding. In recognizing public policies, the secretary shall give
8 consideration to the following potential purchasers:

9 (1) The local government entities which are in the vicinity
10 of the lands; and

11 (2) Adjoining landowners.

12 (b) The policy for selecting the methods of sale is as
13 follows:

14 (1) Competitive sale is the general procedure for sales of
15 public lands and shall be used in the following circumstances:

16 (A) Wherever in the judgment of the secretary the lands are
17 accessible and usable regardless of adjoining land ownership;
18 or

19 (B) Wherever the lands are within a developing or urbaniz-
20 ing area and land values are increasing due to the location of the
21 land and interest on the competitive market.

22 (2) Modified competitive sales may be used to permit the
23 adjoining landowner or local governmental entity to meet the
24 high bid at the public sale. Lands otherwise offered under this
25 procedure would normally be public lands not located near
26 urban expansion areas, or not located near areas with rapidly
27 increasing land values, and where existing use of adjacent lands
28 would be jeopardized by sale under competitive bidding
29 procedures.

30 (3) Direct sale may be used when the lands offered for sale
31 are completely surrounded by lands in one ownership with no
32 public access, or where the lands are needed by local govern-
33 ments.

34 (4) In no event shall lands be offered for sale by “modified
35 competitive sales” or “direct sale” unless and until the corpora-
36 tion makes a written finding of justification for use of an
37 alternative bidding procedure.

38 (5) Subject to the bidding procedures set forth herein, the
39 corporation is authorized, at its discretion, to sell public lands

40 subject to rights-of-way, restrictive covenants or easements
41 retained by the corporation, limiting the use of such lands to
42 purposes consistent with the use of adjoining or nearby lands
43 owned by the corporation.

44 (c) When lands have been offered for sale by one method
45 of sale and the lands remain unsold, then the lands may be
46 reoffered by another method of sale.

47 (d) Except as provided herein, public lands may not be sold,
48 exchanged or transferred by the corporation for less than fair
49 market value. Fair market value shall be determined by an
50 appraisal made by an independent person or firm chosen by the
51 public land corporation. The appraisal shall be performed using
52 the principles contained in the current "Uniform Appraisal
53 Standards for Federal Land Acquisitions" published under the
54 auspices of the Interagency Land Acquisition Conference:
55 *Provided*, That public lands may be sold, exchanged or
56 transferred to any federal agency or to the state or any of its
57 political subdivisions for less than fair market value if, upon a
58 specific written finding of fact, the corporation determines that
59 such a transfer would be in the best interests of the corporation
60 and state.

61 (e) The corporation may reject all bids when such bids do
62 not represent the corporation's considered value of the property
63 exclusive of the fair market value.

64 (f) The corporation shall promulgate rules, in accordance
65 with the provisions of chapter twenty-nine-a of this code,
66 regarding procedures for conducting public land sales by
67 competitive bidding, modified competitive bidding and direct
68 sales.

CHAPTER 188

**(H. B. 4595 — By Delegates Michael, Williams, Kominar,
Stalaker, H. White, G. White and Ashley)**

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §12-6C-7 and §12-6C-9 of the Code of West Virginia, 1931, as amended, all relating to authorizing the Board of Treasury Investments to retain, rather than require it to retain, one employee with a chartered financial analyst designation or an employee who is a certified treasury manager; removing the restriction on investing in mortgage-backed securities; and adding certificates of deposit as an investment.

Be it enacted by the Legislature of West Virginia:

That §12-6C-7 and §12-6C-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6C. WEST VIRGINIA BOARD OF TREASURY INVESTMENTS.

§12-6C-7. Management and control of fund; officers; staff; fiduciary or surety bonds for directors; liability of directors.

§12-6C-9. Asset allocation; investment policies, authorized investments; restrictions.

**§12-6C-7. Management and control of fund; officers; staff;
fiduciary or surety bonds for directors; liability of
directors.**

- 1 (a) The management and control of the Consolidated Fund
- 2 is vested solely in the board in accordance with the provisions
- 3 of this article.

4 (b) The State Treasurer is the chairperson of the board. The
5 board shall elect a vice chairperson. Annually, the directors
6 shall elect a secretary to keep a record of the proceedings of the
7 board and provide any other duties required by the board. The
8 board may elect a person who is not a member of the board as
9 secretary.

10 (c) The board may use the staff of the State Treasurer,
11 employ personnel and contract with any person or entity needed
12 to perform the tasks related to operating the Consolidated Fund.

13 (d) The board shall retain an internal auditor to report
14 directly to the board and shall fix his or her compensation. As
15 a minimum qualification, the internal auditor shall be a certified
16 public accountant with at least three years' experience as an
17 auditor. The internal auditor shall develop an internal audit
18 plan, with board approval, for the testing of procedures, internal
19 controls and the security of transactions.

20 (e) The board may retain one employee with a chartered
21 financial analyst designation or an employee who is a certified
22 treasury manager.

23 (f) Each director shall give a separate fiduciary or surety
24 bond from a surety company qualified to do business within this
25 state in a penalty amount of one million dollars for the faithful
26 performance of his or her duties as a director. The board shall
27 purchase a blanket bond for the faithful performance of its
28 duties in the amount of fifty million dollars or in an amount
29 equivalent to one percent of the assets under management,
30 whichever is greater. The amount of the blanket bond is in
31 addition to the one million dollar individual bond required of
32 each director by the provisions of this section. The board may
33 require a fiduciary or surety bond from a surety company
34 qualified to do business in this state for any person who has
35 charge of, or access to, any securities, funds or other moneys

36 held by the board and the amount of the fiduciary or surety
37 bond are fixed by the board. The premiums payable on all
38 fiduciary or surety bonds are expenses of the board.

39 (g) The directors, employees of the board and employees of
40 the State Treasurer performing work for or on behalf of the
41 board are not liable personally, either jointly or severally, for
42 any debt or obligation created by the board: *Provided*, That the
43 directors and employees of the board are liable for acts of
44 misfeasance or gross negligence.

45 (h) The board is exempt from the provisions of article three,
46 chapter five-a, and sections seven and eleven, article three,
47 chapter twelve of this code. However, the board is subject to the
48 purchasing policies and procedures of the State Treasurer's
49 Office.

**§12-6C-9. Asset allocation; investment policies, authorized
investments; restrictions.**

1 (a) The board shall develop, adopt, review or modify an
2 asset allocation plan for the Consolidated Fund at each annual
3 board meeting.

4 (b) The board shall adopt, review, modify or cancel the
5 investment policy of each fund or pool created at each annual
6 board meeting. For each participant directed account authorized
7 by the State Treasurer, staff of the board shall develop an
8 investment policy for the account and create the requested
9 account. The board shall review all existing participant directed
10 accounts and investment policies at its annual meeting for
11 modification.

12 (c) The board shall consider the following when adopting,
13 reviewing, modifying or canceling investment policies:

14 (1) Preservation of capital;

- 15 (2) Risk tolerance;
- 16 (3) Credit standards;
- 17 (4) Diversification;
- 18 (5) Rate of return;
- 19 (6) Stability and turnover;
- 20 (7) Liquidity;
- 21 (8) Reasonable costs and fees;
- 22 (9) Permissible investments;
- 23 (10) Maturity ranges;
- 24 (11) Internal controls;
- 25 (12) Safekeeping and custody;
- 26 (13) Valuation methodologies;
- 27 (14) Calculation of earnings and yields;
- 28 (15) Performance benchmarks and evaluation; and
- 29 (16) Reporting.

30 (d) No security may be purchased by the board unless the
31 type of security is on a list approved at a board meeting. The
32 board shall review the list at its annual meeting.

33 (e) Notwithstanding the restrictions which are otherwise
34 provided by law with respect to the investment of funds, the
35 board and all participants, now and in the future, may invest
36 funds in these securities:

37 (1) Obligations of, or obligations that are insured as to
38 principal and interest by, the United States of America or any
39 agency or corporation thereof and obligations and securities of
40 the United States sponsored enterprises, including, without
41 limitation:

42 (i) United States Treasury;

43 (ii) Export-Import Bank of the United States;

44 (iii) Farmers Home Administration;

45 (iv) Federal Farm Credit Banks;

46 (v) Federal Home Loan Banks;

47 (vi) Federal Home Loan Mortgage Corporation;

48 (vii) Federal Land Banks;

49 (viii) Government National Mortgage Association;

50 (ix) Merchant Marine bonds; and

51 (x) Tennessee Valley Authority Obligations;

52 (2) Obligations of the Federal National Mortgage Associa-
53 tion;

54 (3) Commercial paper with one of the two highest commer-
55 cial paper credit ratings by a nationally recognized investment
56 rating firm;

57 (4) Corporate debt rated in one of the six highest rating
58 categories by a nationally recognized rating agency;

59 (5) State and local government, or any instrumentality or
60 agency thereof, securities with one of the three highest ratings
61 by a nationally recognized rating agency;

62 (6) Repurchase agreements involving the purchase of
63 United States Treasury securities and repurchase agreements
64 fully collateralized by obligations of the United States govern-
65 ment or its agencies or instrumentalities;

66 (7) Reverse repurchase agreements involving the purchase
67 of United States Treasury securities and reverse repurchase
68 agreements fully collateralized by obligations of the United
69 States government or its agencies or instrumentalities;

70 (8) Asset-backed securities rated in the highest category by
71 a nationally recognized rating agency;

72 (9) Certificates of deposit; and

73 (10) Investments in accordance with the Linked Deposit
74 Program, a program using financial institutions in West
75 Virginia to obtain certificates of deposit, loans approved by the
76 Legislature and any other programs authorized by the Legisla-
77 ture.

78 (f) In addition to the restrictions and conditions contained
79 in this section:

80 (1) At no time shall more than seventy-five percent of the
81 Consolidated Fund be invested in any bond, note, debenture,
82 commercial paper or other evidence of indebtedness of any
83 private corporation or association;

84 (2) At no time shall more than five percent of the Consoli-
85 dated Fund be invested in securities issued by a single private
86 corporation or association; and

87 (3) At no time shall less than fifteen percent of the
88 Consolidated Fund be invested in any direct obligation of or
89 obligation guaranteed as to the payment of both principal and
90 interest by the United States of America.

CHAPTER 189

(H. B. 4632 — By Delegates Staton, Amores and Craig)

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §15-5-15 of the Code of West Virginia, 1931, as amended, relating to employing homeland security and emergency service personnel.

Be it enacted by the Legislature of West Virginia:

That §15-5-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.

§15-5-15. Emergency service personnel.

1 (a) No person may be employed or associated in any
2 capacity in homeland security or any emergency service
3 organization established under this article who has been
4 convicted of a felony or who advocates or has advocated a
5 change by force or violence in the constitutional form of the
6 government of the United States or this state or the overthrow
7 of any government in the United States by force or violence or
8 who has been convicted of or is under indictment or informa-
9 tion charging any subversive act against the United States.

10 (b) Each person who is appointed to serve in an organiza-
11 tion for homeland security or emergency services shall undergo

12 a background check and shall, before entering upon his or her
13 duties, take an oath, in writing, before a person authorized to
14 administer oaths in this state, which shall be substantially as
15 follows:

16 “I, _____, do solemnly swear or affirm that
17 I will support and defend the Constitution of the United States
18 and the Constitution of West Virginia against all enemies,
19 foreign and domestic; that I will bear true faith and allegiance
20 to the same; that I take this obligation freely, without any
21 mental reservation or evasion; that I am not a convicted felon;
22 and that I will faithfully and competently discharge the duties
23 upon which I am about to enter.

24 “I do further swear or affirm that I do not advocate, nor am
25 I a member of any political party or organization that advocates,
26 the overthrow of the government of the United States or this
27 state by force or violence; while I am a member of the (name of
28 organization) I will not advocate or become a member of any
29 political party or organization that advocates the overthrow of
30 the government of the United States or this state by force or
31 violence.”

CHAPTER 190

(S. B. 419 — By Senators Love and Hunter)

[Passed March 10, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §16-13A-25 of the Code of West Virginia, 1931, as amended; and to amend and reenact §24-2-1 and §24-2-11 of said code, all relating to the authority of the

Public Service Commission; providing that an innovative, alternative sewer service method provided by a public utility is subject to the jurisdiction of the Public Service Commission; modifying the review by the Public Service Commission of public convenience and necessity applications where the project has been approved by Infrastructure and Jobs Development Council; and providing that Infrastructure and Jobs Development Council-approved projects receiving a certificate of public convenience may not be compelled to reopen.

Be it enacted by the Legislature of West Virginia:

That §16-13A-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §24-2-1 and §24-2-11 of said code be amended and reenacted, all to read as follows:

Chapter

16. Public Health.

24. Public Service Commission.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-25. Borrowing and bond issuance; procedure.

1 (a) Notwithstanding any other provisions of this article to
2 the contrary, a public service district may not borrow money,
3 enter into contracts for the provision of engineering, design or
4 feasibility studies, issue or contract to issue revenue bonds or
5 exercise any of the powers conferred by the provisions of
6 section thirteen, twenty or twenty-four of this article without
7 the prior consent and approval of the Public Service Commis-
8 sion: *Provided*, That approval of funding set forth in section
9 eleven, article two, chapter twenty-four of this code or this
10 section is not required if the funding is for a project which has
11 received a certificate of public convenience and necessity after
12 the eighth day of July, two thousand five, from the commission

13 and where the cost of the project changes but the change does
14 not affect the rates established for the project.

15 (b) The Public Service Commission may waive the
16 provision of prior consent and approval for entering into
17 contracts for engineering, design or feasibility studies pursuant
18 to this section for good cause shown which is evidenced by the
19 public service district filing a request for waiver of this section
20 stated in a letter directed to the commission with a brief
21 description of the project, a verified statement by the board
22 members that the public service district has complied with
23 chapter five-g of this code, and further explanation of ability to
24 evaluate their own engineering contract, including, but not
25 limited to:

26 (1) Experience with the same engineering firm; or

27 (2) Completion of a construction project requiring engineer-
28 ing services. The district shall also forward an executed copy of
29 the engineering contract to the commission after receiving
30 approval of the waiver.

31 (c) An engineering contract that meets one or more of the
32 following criteria is exempt from the waiver or approval
33 requirements:

34 (1) A contract with a public service district that is a Class
35 A utility on the first day of April, two thousand three, or
36 subsequently becomes a Class A utility as defined by commis-
37 sion rule;

38 (2) A contract with a public service district that does not
39 require borrowing and that can be paid out of existing rates;

40 (3) A contract where the payment of engineering fees are
41 contingent upon the receipt of funding, and commission
42 approval of the funding, to construct the project which is the
43 subject of the contract; or

44 (4) A contract that does not exceed fifteen thousand dollars.

45 (d) Requests for approval or waivers of engineering
46 contracts shall be deemed granted thirty days after the filing
47 date unless the staff of the Public Service Commission or a
48 party files an objection to the request. If an objection is filed,
49 the Public Service Commission shall issue its decision within
50 one hundred twenty days of the filing date. In the event
51 objection is received to a request for a waiver, the application
52 shall be considered a request for waiver as well as a request for
53 approval in the event a waiver is not appropriate.

54 (e) Unless the properties to be constructed or acquired
55 represent ordinary extensions or repairs of existing systems in
56 the usual course of business, a public service district must first
57 obtain a certificate of public convenience and necessity from
58 the Public Service Commission in accordance with the
59 provision of chapter twenty-four of this code when a public
60 service district is seeking to acquire or construct public service
61 property.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

§24-2-11. Requirements for certificate of public convenience and necessity.

§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

1 (a) The jurisdiction of the commission shall extend to all
2 public utilities in this state and shall include any utility engaged
3 in any of the following public services:

4 Common carriage of passengers or goods, whether by air,
5 railroad, street railroad, motor or otherwise, by express or
6 otherwise, by land, water or air, whether wholly or partly by
7 land, water or air; transportation of oil, gas or water by pipeline;

8 transportation of coal and its derivatives and all mixtures and
9 combinations thereof with other substances by pipeline;
10 sleeping car or parlor car services; transmission of messages by
11 telephone, telegraph or radio; generation and transmission of
12 electrical energy by hydroelectric or other utilities for service
13 to the public, whether directly or through a distributing utility;
14 supplying water, gas or electricity, by municipalities or others;
15 sewer systems servicing twenty-five or more persons or firms
16 other than the owner of the sewer systems: *Provided*, That if a
17 public utility intends to provide sewer service by an innovative,
18 alternative method, as defined by the Federal Environmental
19 Protection Agency, the innovative, alternative method is a
20 public utility function and subject to the jurisdiction of the
21 Public Service Commission regardless of the number of
22 customers served by the innovative, alternative method; any
23 public service district created under the provisions of article
24 thirteen-a, chapter sixteen of this code; toll bridges, wharves,
25 ferries; solid waste facilities; and any other public service:
26 *Provided, however*, That natural gas producers who provide
27 natural gas service to not more than twenty-five residential
28 customers are exempt from the jurisdiction of the commission
29 with regard to the provisions of such residential service:
30 *Provided further*, That upon request of any of the customers of
31 such natural gas producers, the commission may, upon good
32 cause being shown, exercise such authority as the commission
33 may deem appropriate over the operation, rates and charges of
34 such producer and for such length of time as the commission
35 may consider to be proper: *And provided further*, That the
36 jurisdiction the commission may exercise over the rates and
37 charges of municipally operated public utilities is limited to that
38 authority granted the commission in section four-b of this
39 article: *And provided further*, That the decision-making
40 authority granted to the commission in sections four and four-a
41 of this article shall, in respect to an application filed by a public
42 service district, be delegated to a single hearing examiner
43 appointed from the commission staff, which hearing examiner

44 shall be authorized to carry out all decision-making duties
45 assigned to the commission by said sections, and to issue orders
46 having the full force and effect of orders of the commission.

47 (b) The commission may, upon application, waive its
48 jurisdiction and allow a utility operating in an adjoining state to
49 provide service in West Virginia when:

50 (1) An area of West Virginia cannot be practicably and
51 economically served by a utility licensed to operate within the
52 State of West Virginia;

53 (2) Said area can be provided with utility service by a utility
54 which operates in a state adjoining West Virginia;

55 (3) The utility operating in the adjoining state is regulated
56 by a regulatory agency or commission of the adjoining state;
57 and

58 (4) The number of customers to be served is not substantial.
59 The rates the out-of-state utility charges West Virginia
60 customers shall be the same as the rate the utility is duly
61 authorized to charge in the adjoining jurisdiction. The commis-
62 sion, in the case of any such utility, may revoke its waiver of
63 jurisdiction for good cause.

64 (c) Any other provisions of this chapter to the contrary
65 notwithstanding:

66 (1) An owner or operator of an electric generating facility
67 located or to be located in this state that has been designated as
68 an exempt wholesale generator under applicable federal law, or
69 will be so designated prior to commercial operation of the
70 facility, and for which such facility the owner or operator holds
71 a certificate of public convenience and necessity issued by the
72 commission on or before the first day of July, two thousand
73 three, shall be subject to subsections (e), (f), (g), (h), (i) and (j),

74 section eleven-c of this article as if the certificate of public
75 convenience and necessity for such facility were a siting
76 certificate issued under said section and shall not otherwise be
77 subject to the jurisdiction of the commission or to the provi-
78 sions of this chapter with respect to such facility except for the
79 making or constructing of a material modification thereof as
80 provided in subdivision (5) of this subsection.

81 (2) Any person, corporation or other entity that intends to
82 construct or construct and operate an electric generating facility
83 to be located in this state that has been designated as an exempt
84 wholesale generator under applicable federal law, or will be so
85 designated prior to commercial operation of the facility, and for
86 which facility the owner or operator does not hold a certificate
87 of public convenience and necessity issued by the commission
88 on or before the first day of July, two thousand three, shall,
89 prior to commencement of construction of the facility, obtain a
90 siting certificate from the commission pursuant to the provi-
91 sions of section eleven-c of this article in lieu of a certificate of
92 public convenience and necessity pursuant to the provisions of
93 section eleven of this article. An owner or operator of an
94 electric generating facility as is described in this subdivision for
95 which a siting certificate has been issued by the commission
96 shall be subject to subsections (e), (f), (g), (h), (i) and (j),
97 section eleven-c of this article and shall not otherwise be
98 subject to the jurisdiction of the commission or to the provi-
99 sions of this chapter with respect to such facility except for the
100 making or constructing of a material modification thereof as
101 provided in subdivision (5) of this subsection.

102 (3) An owner or operator of an electric generating facility
103 located in this state that had not been designated as an exempt
104 wholesale generator under applicable federal law prior to
105 commercial operation of the facility, that generates electric
106 energy solely for sale at retail outside this state or solely for
107 sale at wholesale in accordance with any applicable federal law

108 that preempts state law or solely for both such sales at retail and
109 such sales at wholesale, and that had been constructed and had
110 engaged in commercial operation on or before the first day of
111 July, two thousand three, shall not be subject to the jurisdiction
112 of the commission or to the provisions of this chapter with
113 respect to such facility, regardless of whether such facility
114 subsequent to its construction has been or will be designated as
115 an exempt wholesale generator under applicable federal law:
116 *Provided*, That such owner or operator shall be subject to
117 subdivision (5) of this subsection if a material modification of
118 such facility is made or constructed.

119 (4) Any person, corporation or other entity that intends to
120 construct or construct and operate an electric generating facility
121 to be located in this state that has not been or will not be
122 designated as an exempt wholesale generator under applicable
123 federal law prior to commercial operation of the facility, that
124 will generate electric energy solely for sale at retail outside this
125 state or solely for sale at wholesale in accordance with any
126 applicable federal law that preempts state law or solely for both
127 such sales at retail and such sales at wholesale and that had not
128 been constructed and had not been engaged in commercial
129 operation on or before the first day of July, two thousand three,
130 shall, prior to commencement of construction of the facility,
131 obtain a siting certificate from the commission pursuant to the
132 provisions of section eleven-c of this article in lieu of a
133 certificate of public convenience and necessity pursuant to the
134 provisions of section eleven of this article. An owner or
135 operator of an electric generating facility as is described in this
136 subdivision for which a siting certificate has been issued by the
137 commission shall be subject to subsections (e), (f), (g), (h), (i)
138 and (j), section eleven-c of this article and shall not otherwise
139 be subject to the jurisdiction of the commission or to the
140 provisions of this chapter with respect to such facility except
141 for the making or constructing of a material modification
142 thereof as provided in subdivision (5) of this subsection.

143 (5) An owner or operator of an electric generating facility
144 described in this subsection shall, before making or construct-
145 ing a material modification of the facility that is not within the
146 terms of any certificate of public convenience and necessity or
147 siting certificate previously issued for the facility or an earlier
148 material modification thereof, obtain a siting certificate for the
149 modification from the commission pursuant to the provisions of
150 section eleven-c of this article in lieu of a certificate of public
151 convenience and necessity for the modification pursuant to the
152 provisions of section eleven of this article and, except for the
153 provisions of section eleven-c of this article, shall not otherwise
154 be subject to the jurisdiction of the commission or to the
155 provisions of this chapter with respect to such modification.

156 (6) The commission shall consider an application for a
157 certificate of public convenience and necessity filed pursuant to
158 section eleven of this article to construct an electric generating
159 facility described in this subsection or to make or construct a
160 material modification of such electric generating facility as an
161 application for a siting certificate pursuant to section eleven-c
162 of this article if the application for the certificate of public
163 convenience and necessity was filed with the commission prior
164 to the first day of July, two thousand three, and if the commis-
165 sion has not issued a final order thereon as of that date.

166 (7) The limitations on the jurisdiction of the commission
167 over, and on the applicability of the provisions of this chapter
168 to, the owner or operator of an electric generating facility as
169 imposed by, and described in this subsection, shall not be
170 deemed to affect or limit the commission's jurisdiction over
171 contracts or arrangements between the owner or operator of
172 such facility and any affiliated public utility subject to the
173 provisions of this chapter.

**§24-2-11. Requirements for certificate of public convenience and
necessity.**

1 (a) No public utility, person or corporation shall begin the
2 construction of any plant, equipment, property or facility for
3 furnishing to the public any of the services enumerated in
4 section one, article two of this chapter, nor apply for, nor obtain
5 any franchise, license or permit from any municipality or other
6 governmental agency, except ordinary extensions of existing
7 systems in the usual course of business, unless and until it shall
8 obtain from the Public Service Commission a certificate of
9 public convenience and necessity authorizing such construction
10 franchise, license or permit.

11 (b) Upon the filing of any application for such 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, such
14 certificate of convenience and necessity: *Provided*, That the
15 commission, after it gives proper notice and if not protest is
16 received within thirty days after the notice is given, may waive
17 formal hearing on the application. Notice shall be given by
18 publication which shall state that a formal hearing may be
19 waived in the absence of protest, made within thirty days, to the
20 application. The notice shall be published as a Class I legal
21 advertisement in compliance with the provisions of article
22 three, chapter fifty-nine of this code. The publication area shall
23 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 such 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-day
30 notice requirement for projects approved by the Infrastructure
31 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 section
34 eleven-a of this article within two hundred seventy days of the

35 filing of the application and within ninety days after final
36 submission of any such application for decision following a
37 hearing.

38 (e) The commission shall render its final decision on any
39 application filed under the provisions of this section that has
40 received the approval of the Infrastructure and Jobs Develop-
41 ment Council pursuant to article fifteen-a, chapter thirty-one of
42 this code within one hundred eighty days after filing of the
43 application: *Provided*, That if a protest is received within thirty
44 days after the notice is provided pursuant to subsection (b) of
45 this section, the commission shall render its final decision
46 within two hundred seventy days of the filing of the application.

47 (f) If the projected total cost of a project which is the
48 subject of an application filed pursuant to this section or section
49 eleven-a of this article is greater than fifty million dollars, the
50 commission shall render its final decision on any such applica-
51 tion filed under the provisions of this section or section eleven-
52 a of this article within four hundred days of the filing of the
53 application and within ninety days after final submission of any
54 such application for decision after a hearing.

55 (g) If a decision is not rendered within the aforementioned
56 one hundred eighty days, two hundred seventy days, four
57 hundred days or ninety days, the commission shall issue a
58 certificate of convenience and necessity as applied for in the
59 application.

60 (h) The commission shall prescribe such rules as it may
61 deem proper for the enforcement of the provisions of this
62 section; and, in establishing that public convenience and
63 necessity do exist, the burden of proof shall be upon the
64 applicant.

65 (i) Pursuant to the requirements of this section the commis-
66 sion may issue a certificate of public convenience and necessity

67 to any intrastate pipeline, interstate pipeline or local distribution
68 company for the transportation in intrastate commerce of
69 natural gas used by any person for one or more uses, as defined
70 by rule, by the commission in the case of:

71 (1) Natural gas sold by a producer, pipeline or other seller
72 to such person; or

73 (2) Natural gas produced by such person.

74 (j) A public utility, including a public service district,
75 which has received a certificate of public convenience and
76 necessity after the eighth day of July, two thousand five, from
77 the commission and has been approved by the Infrastructure
78 and Jobs Development Council, is not required to, and cannot
79 be compelled to, reopen the proceeding if the cost of the project
80 changes but the change does not affect the rates established for
81 the project.

82 (k) Any public utility, person or corporation proposing any
83 electric power project that requires a certificate under this
84 section is not required to obtain such certificate before applying
85 for or obtaining any franchise, license or permit from any
86 municipality or other governmental agency.

CHAPTER 191

(S. B. 578 — By Senators Fanning and Plymale)

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 5, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §24-2-11d, relating to

increasing the power of the Public Service Commission with respect to the takeover or transfer or takeover of troubled utilities; authorizing the revocation of certificates of public convenience and necessity for the effective abandonment or inability or unwillingness of gas and electric utilities to adequately serve its customers; establishing criteria which would need to be met to support a contemplated revocation of certificate authority; authorizing the Public Service Commission to concurrently require another public utility to acquire and serve the customers, facilities and service territory of a revoked utility; listing additional criteria to be considered prior to revoking authority or approving acquisition of territory; providing for the determination of an acquisition price for the revoked utility's facilities and territory, either by agreement or by eminent domain; requiring reasonable notice and hearing to affected utility and customers before revoking certificate; and establishing deadline by which Public Service Commission may initiate proceeding to revoke authority pursuant to said section.

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 §24-2-11d, to read as follows:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-11d. Revocation of certificate of public convenience and necessity; acquisition of facilities by capable public utility.

- 1 (a) In addition to the powers conferred by section seven,
- 2 article two of this chapter, upon a finding by the Public Service
- 3 Commission that a public utility which holds a certificate of
- 4 public convenience and necessity to provide natural gas or
- 5 electric service is unable or unwilling to adequately serve its
- 6 customers or has been actually or effectively abandoned by its

7 owner or owners, or that its management is grossly and
8 willfully inefficient, irresponsible or unresponsive to the needs
9 of its customers, or is not capable of providing economical and
10 efficient utility service, the commission may, after reasonable
11 notice and opportunity for hearing has been afforded to the
12 affected utility and its customers, revoke the certificate of
13 public convenience and necessity held by the public utility. In
14 the case of such revocation, the commission shall concurrently
15 order a capable public utility to acquire the facilities of the
16 revoked public utility and to provide service to the customers
17 of the revoked public utility. The commission shall also allow
18 a capable public utility that acquires the facilities of a revoked
19 public utility to recover all reasonable costs related to such
20 acquisition of facilities and upgrading of service to customers
21 of the revoked public utility, including, but not limited to,
22 additional capital, environmental, operating and maintenance
23 costs.

24 (b) In making a determination to revoke a certificate of
25 public convenience and necessity, pursuant to subsection (a) of
26 this section, the commission shall consider: (1) The financial,
27 managerial and technical ability of the public utility considered
28 for revocation; (2) the financial, managerial and technical
29 ability of the capable public utility; (3) the expenditures that
30 may be necessary to make improvements to the facilities of the
31 public utility considered for revocation to assure compliance
32 with all applicable statutory and regulatory standards concern-
33 ing adequacy, efficiency, safety and reasonableness of service;
34 and (4) any other matters which may be relevant.

35 (c) The price of the acquisition of the facilities of the
36 revoked public utility shall be determined by an agreement
37 between the revoked public utility and the acquiring capable
38 public utility, subject to a determination by the commission that
39 the price is reasonable. If the revoked public utility and the

40 acquiring capable public utility are unable to agree on an
41 acquisition price or the commission disapproves the acquisition
42 price on which the utilities have agreed, the commission shall
43 issue an order directing the acquiring capable public utility to
44 acquire the revoked public utility by following the procedure
45 prescribed for exercising the power of eminent domain pursuant
46 to article two, chapter fifty-four of this code. The fact that the
47 acquisition price has not been agreed to or finally determined
48 shall not delay the effect of any order issued by the commission
49 pursuant to subsection (a) of this section.

50 (d) As used in this section, the following words and phrases
51 shall have the following meanings:

52 (1) "Capable public utility" means a public utility which
53 provides electric or natural gas service and has at least twenty-
54 five thousand customers which provides the same type of utility
55 service as the revoked public utility and has the financial,
56 managerial and technical ability to comply with all applicable
57 statutory and regulatory standards concerning adequacy,
58 efficiency, safety and reasonableness of service on a long-term
59 basis;

60 (2) "Revoked public utility" means a public utility with less
61 than twenty-five thousand customers which has had its
62 certificate of public convenience and necessity revoked by the
63 commission pursuant to subsection (a) of this section.

64 (e) Any action of the Public Service Commission to revoke
65 the certificate of public convenience and necessity of an electric
66 or natural gas public utility pursuant to the provisions of this
67 section must be initiated on or before the first day of March,
68 two thousand eight.

CHAPTER 192

**(Com. Sub. for H. B. 4120 — By Delegates Michael, Stemple, Boggs,
Ashley, Hrutkay, Martin, Swartzmiller, Stalnaker and Evans)**

[Passed March 9, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-3-10, relating to authorizing the termination of water service for delinquent sewer bills; providing for the termination of water service for delinquent sewer bills where sewer service is provided by a public utility that is owned and operated by a homeowners' association; and providing for the termination of water service for delinquent sewer bills where sewer service is provided by a privately owned public utility.

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 §24-3-10, to read as follows:

**ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT
TO REGULATIONS OF COMMISSION.**

§24-3-10. Termination of water service for delinquent sewer bills.

- 1 (a) In the event that any publicly or privately owned utility,
- 2 city, incorporated town, municipal corporation or public service
- 3 district owns and operates either water facilities or sewer
- 4 facilities, and a privately owned public utility or a public utility

5 that is owned and operated by a homeowners' association owns
6 and operates the other kind of facilities, either water or sewer,
7 then the privately owned public utility or the homeowners'
8 association may contract with the publicly or privately owned
9 utility, city, incorporated town, or public service district which
10 provides the other services to shutoff and discontinue the
11 supplying of water service for the nonpayment of sewer service
12 fees and charges.

13 (b) Any contracts entered into by a privately owned public
14 utility or by a public utility that is owned and operated by a
15 homeowners' association pursuant to this section must be
16 submitted to the Public Service Commission for approval.

17 (c) Any privately owned public utility or any public utility
18 that is owned and operated by a homeowners' association which
19 provides water and sewer service to its customers may termi-
20 nate water service for delinquency in payment of either water
21 or sewer bills.

22 (d) Where a privately owned public utility or a public utility
23 that is owned and operated by a homeowners' association is
24 providing sewer service and another utility is providing water
25 service, and the privately owned public utility or the homeown-
26 ers' association providing sewer service experiences a delin-
27 quency in payment, the utility providing water service, upon the
28 request of the homeowners' association or the privately owned
29 public utility providing sewer service to the delinquent account,
30 shall terminate its water service to the customer having the
31 delinquent sewer account.

32 (e) Any termination of water service must comply with all
33 rules and orders of the Public Service Commission.

CHAPTER 193

(Com. Sub. for S. B. 473 — By Senators Unger, Hunter and Kessler)

[Passed March 9, 2006; in effect July 1, 2006.]
[Approved by the Governor on March 23, 2006.]

AN ACT to amend and reenact §17C-5-3 of the Code of West Virginia, 1931, as amended, relating to creating the criminal offense of reckless driving causing serious bodily injury; defining serious bodily injury; and penalties.

Be it enacted by the Legislature of West Virginia:

That §17C-5-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-3. Reckless driving; penalties.

1 (a) Any person who drives any vehicle upon any street or
2 highway, or upon any residential street, or in any parking area,
3 or upon the ways of any institution of higher education, whether
4 public or private, or upon the ways of any state institution, or
5 upon the property of any county boards of education, or upon
6 any property within the state park and public recreation system
7 established by the Director of the Division of Natural Resources
8 pursuant to section three, article four, chapter twenty of this
9 code in willful or wanton disregard for the safety of persons or
10 property is guilty of reckless driving.

11 (b) The provisions of subsection (a) of this section shall not
12 apply to those areas which have been temporarily closed for
13 racing sport events or which may be set aside by the Director of
14 the Division of Natural Resources within the state park and
15 recreation system for exclusive use by motorcycles or other
16 recreational vehicles.

17 (c) Every person convicted of reckless driving is guilty of
18 a misdemeanor, and upon a first conviction thereof, shall be
19 confined in jail for a period of not less than five days nor more
20 than ninety days, or fined not less than twenty-five dollars nor
21 more than five hundred dollars, or both, and upon conviction of
22 a second or subsequent conviction thereof, shall be confined in
23 jail not less than ten days nor more than six months, or fined not
24 less than fifty dollars nor more than one thousand dollars, or
25 both.

26 (d) Notwithstanding the provisions of subsection (c) of this
27 section, any person convicted of a violation of subsection (a) of
28 this section who in doing so proximately causes another to
29 suffer serious bodily injury shall, upon conviction, be confined
30 in jail not less than ten days nor more than six months or fined
31 not less than fifty dollars nor more than one thousand dollars,
32 or both.

33 (e) For purposes of subsection (d) of this section, “serious
34 bodily injury” means bodily injury which creates a substantial
35 risk of death, which causes serious or prolonged disfigurement,
36 prolonged impairment of health or prolonged loss or impair-
37 ment of the function of any bodily organ.

CHAPTER 194

**(Com. Sub. for H. B. 4015 — By Mr. Speaker,
Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §4-11A-2 and §4-11A-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §11B-2-20 of said code; and to amend and reenact §33-20F-4 of said code, all relating generally to reserve funding; creating the Revenue Shortfall Reserve Fund – Part B; providing for the transfer of all moneys in the West Virginia Tobacco Settlement Medical Trust Fund including any interest and earnings thereon to the Revenue Shortfall Reserve Fund - Part B; closing the West Virginia Tobacco Settlement Medical Trust Fund; providing funding for the Revenue Shortfall Reserve Fund; providing legislative authority to appropriate moneys from the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund - Part B; providing that repayments from the loan made to the physicians' mutual insurance company shall be paid into the Revenue Shortfall Reserve Fund – Part B; providing for the investment of moneys in the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §4-11A-2 and §4-11A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11B-2-20 of said code

be amended and reenacted; and that §33-20F-4 of said code be amended and reenacted, all to read as follows:

Chapter

- 4. The Legislature.**
- 11B. Department of Revenue.**
- 33. Insurance.**

CHAPTER 4. THE LEGISLATURE.

ARTICLE 11A. LEGISLATIVE APPROPRIATION OF TOBACCO SETTLEMENT FUNDS.

§4-11A-2. Receipt of settlement funds and required deposit in West Virginia Tobacco Settlement Medical Trust Fund until the first day of June, two thousand five, then to Workers' Compensation Debt Reduction Fund; deposit of strategic compensation payments; transfer of trust fund moneys.

§4-11A-3. Receipt of settlement funds and required deposit in the West Virginia Tobacco Settlement Fund.

§4-11A-2. Receipt of settlement funds and required deposit in West Virginia Tobacco Settlement Medical Trust Fund until the first day of June, two thousand five, then to Workers' Compensation Debt Reduction Fund; deposit of strategic compensation payments; transfer of trust fund moneys.

1 (a) The Legislature finds and declares that certain dedicated
2 revenues should be preserved in trust for the purpose of
3 stabilizing the state's health-related programs and delivery
4 systems. It further finds and declares that these dedicated
5 revenues should be preserved in trust for the purpose of
6 educating the public about the health risks associated with
7 tobacco usage and establishing a program designed to reduce
8 and stop the use of tobacco by the citizens of this state and in
9 particular by teenagers.

10 (b) There is hereby created a special account in the State
11 Treasury, designated the "West Virginia Tobacco Settlement

12 Medical Trust Fund”, which shall be an interest-bearing
13 account and may be invested in the manner permitted by section
14 nine, article six, chapter twelve of this code, with the interest
15 income a proper credit to the fund. Unless contrary to federal
16 law, fifty percent of all revenues received pursuant to the
17 master settlement agreement shall be deposited in this fund.
18 Funds paid into the account may also be derived from the
19 following sources:

20 (1) All interest or return on investment accruing to the fund;

21 (2) Any gifts, grants, bequests, transfers or donations which
22 may be received from any governmental entity or unit or any
23 person, firm, foundation or corporation;

24 (3) Any appropriations by the Legislature which may be
25 made for this purpose; and

26 (4) Any funds or accrued interest remaining in the Board of
27 Risk and Insurance Management physicians’ mutual insurance
28 company account created pursuant to section seven, article
29 twenty-f, chapter thirty-three of this code on or after the first
30 day of July, two thousand four.

31 (c)(1) The moneys from the principal in the trust fund may
32 not be expended for any purpose, except that on the first day of
33 April, two thousand three, the treasurer shall transfer to the
34 Board of Risk and Insurance Management physicians’ mutual
35 insurance company account created by section seven, article
36 twenty-f, chapter thirty-three of this code, twenty-four million
37 dollars from the West Virginia Tobacco Settlement Medical
38 Trust Fund for use as the initial capital and surplus of the
39 physicians’ mutual insurance company created pursuant to said
40 article. The remaining moneys in the trust fund resulting from
41 interest earned on the moneys in the fund and the return on
42 investments of the moneys in the fund shall be available only
43 upon appropriation by the Legislature as part of the state budget

44 and expended in accordance with the provisions of section three
45 of this article.

46 (2) Notwithstanding any other provision of this code to the
47 contrary, on the effective date of the amendment and
48 reenactment of this section during the regular session of the
49 Legislature in two thousand six, all moneys in the trust fund and
50 any interest or other return earned thereon shall be transferred
51 to the Revenue Shortfall Reserve Fund – Part B created in
52 section twenty, article two, chapter eleven-b of this code and
53 the trust fund shall be closed. No provisions of the amendments
54 made to this section during the regular session of the Legisla-
55 ture in two thousand six may be construed to change the
56 requirements of this section for the deposit of revenues received
57 pursuant to the tobacco master settlement agreement into the
58 workers' compensation debt reduction fund.

59 (d) Notwithstanding the preceding subsections to the
60 contrary, the first thirty million dollars of all revenues received
61 after the thirtieth day of June, two thousand five, pursuant to
62 section IX(c)(1) of the tobacco master settlement agreement
63 shall in the fiscal year beginning the first day of July, two
64 thousand five, and each fiscal year thereafter, be deposited in
65 the workers' compensation debt reduction fund established in
66 the state treasury in section five, article two-d, chapter twenty-
67 three of this code. Receipts in excess of thirty million dollars
68 shall be deposited into the Tobacco Settlement Fund provided
69 in section three of this article.

70 (e) Notwithstanding anything in this code to the contrary,
71 strategic compensation payments received pursuant to section
72 IX(c)(2) of the tobacco master settlement agreement, beginning
73 in two thousand eight, shall be deposited in their entirety in the
74 workers' compensation debt reduction fund.

**§4-11A-3. Receipt of settlement funds and required deposit in the
West Virginia Tobacco Settlement Fund.**

1 (a) There is hereby created in the state treasury a special
2 revenue account, designated the "Tobacco Settlement Fund",
3 which shall be an interest bearing account and may be invested
4 in the manner permitted by the provisions of article six, chapter
5 twelve of this code, with the interest income a proper credit to
6 the fund. Unless contrary to federal law, fifty percent of all
7 revenues received pursuant to the master settlement agreement
8 shall be deposited in this fund. These funds shall be available
9 only upon appropriation by the Legislature as part of the state
10 budget: *Provided*, That for the fiscal year two thousand, the first
11 five million dollars received into the fund shall be transferred
12 to the public employees insurance reserve fund created in
13 article two, chapter five-a of this code.

14 (b) Appropriations from the Tobacco Settlement Fund are
15 limited to expenditures for the following purposes:

16 (1) Reserve funds for continued support of the programs
17 offered by the Public Employees Insurance Agency established
18 in article sixteen, chapter five of this code;

19 (2) Funding for expansion of the federal-state medicaid
20 program as authorized by the Legislature or mandated by the
21 federal government;

22 (3) Funding for public health programs, services and
23 agencies; and

24 (4) Funding for any state owned or operated health
25 facilities.

CHAPTER 11B. DEPARTMENT OF REVENUE.

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-20. Reduction of appropriations; powers of Governor; Revenue Shortfall Reserve Fund and permissible expenditures therefrom.

1 (a) Notwithstanding any provision of this section, the
2 Governor may reduce appropriations according to any of the
3 methods set forth in sections twenty-one and twenty-two of this
4 article. The Governor may, in lieu of imposing a reduction in
5 appropriations, request an appropriation by the Legislature from
6 the Revenue Shortfall Reserve Fund established in this section.

7 (b) A Revenue Shortfall Reserve Fund is hereby continued
8 within the State Treasury. The Revenue Shortfall Reserve Fund
9 shall be funded as set forth in this subsection from surplus
10 revenues, if any, in the State Fund, General Revenue, as the
11 surplus revenues may accrue from time to time. Within sixty
12 days of the end of each fiscal year, the secretary shall cause to
13 be deposited into the Revenue Shortfall Reserve Fund the first
14 fifty percent of all surplus revenues, if any, determined to have
15 accrued during the fiscal year just ended. The Revenue Shortfall
16 Reserve Fund shall be funded continuously and on a revolving
17 basis in accordance with this subsection up to an aggregate
18 amount not to exceed ten percent of the total appropriations
19 from the State Fund, General Revenue, for the fiscal year just
20 ended. If at the end of any fiscal year the Revenue Shortfall
21 Reserve Fund is funded at an amount equal to or exceeding ten
22 percent of the State's General Revenue Fund budget for the
23 fiscal year just ended, then there shall be no further obligation
24 of the secretary under the provisions of this section to apply any
25 surplus revenues as set forth in this subsection until that time
26 the Revenue Shortfall Reserve Fund balance is less than ten
27 percent of the total appropriations from the state fund, general
28 revenue.

29 (c) Not earlier than the first day of November of each
30 calendar year, if the state's fiscal circumstances are such as to
31 otherwise trigger the authority of the Governor to reduce
32 appropriations under this section or section twenty-one or
33 section twenty-two of this article, then in that event the
34 Governor may notify the presiding officers of both houses of

35 the Legislature in writing of his or her intention to convene the
36 Legislature pursuant to section nineteen, article VI of the
37 Constitution of West Virginia for the purpose of requesting the
38 introduction of a supplementary appropriation bill or to request
39 a supplementary appropriation bill at the next preceding regular
40 session of the Legislature to draw money from the surplus
41 Revenue Shortfall Reserve Fund to meet any anticipated
42 revenue shortfall. If the Legislature fails to enact a supplemen-
43 tary appropriation from the Revenue Shortfall Reserve Fund
44 during any special legislative session called for the purposes set
45 forth in this section or during the next preceding regular session
46 of the Legislature, then the Governor may proceed with a
47 reduction of appropriations pursuant to sections twenty-one and
48 twenty-two of this article. Should any amount drawn from the
49 Revenue Shortfall Reserve Fund pursuant to an appropriation
50 made by the Legislature prove insufficient to address any
51 anticipated shortfall, then the Governor may also proceed with
52 a reduction of appropriations pursuant to sections twenty-one
53 and twenty-two of this article.

54 (d) Upon the creation of the fund, the Legislature is
55 authorized and may make an appropriation from the Revenue
56 Shortfall Reserve Fund for revenue shortfalls, for emergency
57 revenue needs caused by acts of God or natural disasters or for
58 other fiscal needs as determined solely by the Legislature.

59 (e) Prior to the thirty-first day of October, in any fiscal year
60 in which revenues are inadequate to make timely payments of
61 the state's obligations, the Governor may by executive order,
62 after first notifying the presiding officers of both houses of the
63 Legislature in writing, borrow funds from the Revenue Shortfall
64 Reserve Fund. The amount of funds borrowed under this
65 subsection shall not exceed one and one-half percent of the
66 general revenue estimate for the fiscal year in which the funds
67 are to be borrowed, or the amount the Governor determines is
68 necessary to make timely payment of the state's obligations,

69 whichever is less. Any funds borrowed pursuant to this
70 subsection shall be repaid, without interest, and redeposited to
71 the credit of the Revenue Shortfall Reserve Fund within ninety
72 days of their withdrawal.

73 (f) There is hereby created in the State Treasury the
74 “Revenue Shortfall Reserve Fund – Part B.” The Revenue
75 Shortfall Reserve Fund – Part B shall consist of moneys
76 transferred from the West Virginia Tobacco Settlement Medical
77 Trust Fund pursuant to the provisions of section two, article
78 eleven-a, chapter four of this code, repayments made of the loan
79 from the West Virginia Tobacco Settlement Medical Trust Fund
80 to the physician’s mutual insurance company pursuant to the
81 provisions of article twenty-f, chapter thirty-three of this code,
82 and all interest and other return earned on the moneys in the
83 Revenue Shortfall Reserve Fund – Part B. Moneys in the
84 Revenue Shortfall Reserve Fund – Part B may be expended
85 solely for the purposes set forth in subsection (d) of this section,
86 subject to the following conditions:

87 (1) No moneys in the Revenue Shortfall Reserve Fund –
88 Part B nor any interest or other return earned thereon may be
89 expended for any purpose unless all moneys in the Revenue
90 Shortfall Reserve Fund described in subsection (b) of this
91 section have first been expended, except that the interest or
92 other return earned on moneys in the Revenue Shortfall Reserve
93 Fund – Part B may be expended as provided in subdivision (2)
94 of this subsection; and

95 (2) Notwithstanding any other provision of this section to
96 the contrary, the Legislature may appropriate any interest and
97 other return earned thereon that may accrue on the moneys in
98 the Revenue Shortfall Reserve Fund – Part B after the thirtieth
99 day of June, two thousand twenty-five, for expenditure for the
100 purposes set forth in section three, article eleven-a, chapter four
101 of this code; and

102 (3) Any appropriation made from Revenue Shortfall
103 Reserve Fund – Part B shall be made only in instances of
104 revenue shortfalls or fiscal emergencies of an extraordinary
105 nature.

106 (g) Subject to the conditions upon expenditures from the
107 Revenue Shortfall Reserve Fund – Part B prescribed in subsec-
108 tion (f) of this section, in appropriating moneys pursuant to the
109 provisions of this section, the Legislature may in any fiscal year
110 appropriate from the Revenue Shortfall Reserve Fund and the
111 Revenue Shortfall Reserve Fund – Part B, a total amount up to,
112 but not exceeding, ten percent of the total appropriations from
113 the State Fund, General Revenue, for the fiscal year just ended.

114 (h)(1) Of the moneys in the Revenue Shortfall Reserve
115 Fund, one hundred million dollars, or such greater amount as
116 may be certified as necessary by the director of the budget for
117 the purposes of subsection (e) of this section, shall be made
118 available to the West Virginia Board of Treasury Investments
119 for management and investment of the moneys in accordance
120 with the provisions of article six-c, chapter twelve of this code.
121 All other moneys in the Revenue Shortfall Reserve Fund shall
122 be made available to the West Virginia Investment Manage-
123 ment Board for management and investment of the moneys in
124 accordance with the provisions of article six, chapter twelve of
125 this code. Any balance of the Revenue Shortfall Reserve Fund
126 including accrued interest and other return earned thereon at the
127 end of any fiscal year shall not revert to the general fund but
128 shall remain in the Revenue Shortfall Reserve Fund for the
129 purposes set forth in this section.

130 (2) All of the moneys in the Revenue Shortfall Reserve
131 Fund – Part B shall be made available to the West Virginia
132 Investment Management Board for management and investment
133 of the moneys in accordance with the provisions of article six,
134 chapter twelve of this code. Any balance of the Revenue
135 Shortfall Reserve Fund – Part B, including accrued interest and
136 other return earned thereon at the end of any fiscal year, shall

137 not revert to the general fund but shall remain in the Revenue
138 Shortfall Reserve Fund – Part B for the purposes set forth in
139 this section.

CHAPTER 33. INSURANCE.

ARTICLE 20F. PHYSICIANS' MUTUAL INSURANCE COMPANY.

§33-20F-4. Authorization for creation of company; requirements and limitations; repayment of loan.

1 (a) Subject to the provisions of this article, a physicians'
2 mutual insurance company may be created as a domestic,
3 private, nonstock, nonprofit corporation. As an incentive for its
4 creation, the company may be eligible for funds from the
5 Legislature in accordance with the provisions of section seven
6 of this article. The company must remain for the duration of its
7 existence a domestic mutual insurance company owned by its
8 policyholders and may not be converted into a stock corpora-
9 tion, a for-profit corporation or any other entity not owned by
10 its policyholders. The company may not declare any dividend
11 to its policyholders; sell, assign or transfer substantial assets of
12 the company; or write coverage outside this state, except for
13 counties adjoining this state, until after any and all debts owed
14 by the company to the state have been fully paid.

15 (b) For the duration of its existence, the company is not and
16 may not be considered a department, unit, agency, or instru-
17 mentality of the state for any purpose. All debts, claims,
18 obligations, and liabilities of the company, whenever incurred,
19 shall be the debts, claims, obligations, and liabilities of the
20 company only and not of the state or of any department, unit,
21 agency, instrumentality, officer, or employee of the state.

22 (c) The moneys of the company are not and may not be
23 considered part of the general revenue fund of the state. The
24 debts, claims, obligations, and liabilities of the company are not

25 and may not be considered a debt of the state or a pledge of the
26 credit of the state.

27 (d) The company is not subject to provisions of article
28 nine-a, chapter six of this code or the provisions of article one,
29 chapter twenty-nine-b of this code.

30 (e)(1) All premiums collected by the company are subject
31 to the premium taxes, additional premium taxes, additional fire
32 and casualty insurance premium taxes and surcharges contained
33 in sections fourteen, fourteen-a, fourteen-d and thirty-three,
34 article three of this chapter: *Provided*, That while the loan to the
35 company of moneys from the West Virginia Tobacco Settle-
36 ment Medical Trust Fund pursuant to section nine of this article
37 remains outstanding, the commissioner may waive the com-
38 pany's premium taxes, additional premium taxes and additional
39 fire and casualty insurance premium taxes if payment would
40 render the company insolvent or otherwise financially impaired.

41 (2) On and after the first day of July, two thousand three,
42 any premium taxes and additional premium taxes paid by the
43 company and by any insurer on its medical malpractice line
44 pursuant to sections fourteen and fourteen-a, article three of this
45 chapter, shall be temporarily applied toward replenishing the
46 moneys appropriated from the West Virginia Tobacco Settle-
47 ment Medical Trust Fund pursuant to subsection (c), section
48 two, article eleven-a, chapter four of this code pending
49 repayment of the loan of such moneys by the company.

50 (3) The State Treasurer shall notify the commissioner when
51 the moneys appropriated from the West Virginia tobacco
52 settlement medical trust have been fully replenished, at which
53 time the commissioner shall resume depositing premium taxes
54 and additional premium taxes diverted pursuant to subdivision
55 (2) of this subsection in accordance with the provisions of
56 sections fourteen and fourteen-a, article three of this chapter.

57 (4) Payments received by the treasurer from the company
58 in repayment of any outstanding loan made pursuant to section

59 nine of this article shall be deposited in the West Virginia
60 Tobacco Settlement Medical Trust Fund and dedicated to
61 replenishing the moneys appropriated therefrom under
62 subsection (c), section two, article eleven-a, chapter four of this
63 code. Once the moneys appropriated from the West Virginia
64 Tobacco Settlement Medical Trust Fund have been fully
65 replenished, the treasurer shall deposit any payments from the
66 company in repayment of any outstanding loan made pursuant
67 to section nine of this article in said fund and transfer a like
68 amount from said fund to the commissioner for disbursement in
69 accordance with the provisions of sections fourteen and
70 fourteen-a, article three of this chapter.

71 (5) Notwithstanding any other provision of this code to the
72 contrary, on and after the effective date of the amendment and
73 reenactment of this section during the regular session of the
74 Legislature in two thousand six, all moneys otherwise required
75 by this section to be deposited in the West Virginia Tobacco
76 Settlement Medical Trust Fund and dedicated to replenishing
77 the moneys transferred therefrom under subsection (c), section
78 two, article eleven-a, chapter four of this code shall instead be
79 paid into the Revenue Shortfall Reserve Fund – Part B created
80 in section twenty, article two, chapter eleven-b of this code.

CHAPTER 195

**(Com. Sub. for S. B. 173 — By Senators Foster,
Barnes, Lanham, McCabe and Plymale)**

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 5, 2006.]

AN ACT to amend and reenact §5-10-14, §5-10-27 and §5-10-48 of
the Code of West Virginia, 1931, as amended, all relating to the

Public Employees Retirement System generally; providing service credit for certain temporary legislative employees for retirement purposes; clarifying right of members and former members to select certain beneficiaries for preretirement death annuities; limiting choice of beneficiaries to receive preretirement death annuities for new members only; providing for preretirement death benefit of accumulated contributions to be paid in a lump sum amount to any beneficiary or beneficiaries chosen by a member; providing that the date of membership and date of passage control election of benefits; recognizing exception for certain members who die as a result of active military service; and providing for the reemployment of certain former legislative employees on a per diem basis under certain restrictions without suspension of retirement annuity.

Be it enacted by the Legislature of West Virginia:

That §5-10-14, §5-10-27 and §5-10-48 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-14. Service credit; retroactive provisions.

§5-10-27. Preretirement death annuities.

§5-10-48. Reemployment after retirement; options for holder of elected public office.

§5-10-14. Service credit; retroactive provisions.

1 (a) The board of trustees shall credit each member with the
2 prior service and contributing service to which he or she is
3 entitled based upon rules adopted by the board of trustees and
4 based upon the following:

5 (1) In no event may less than ten days of service rendered
6 by a member in any calendar month be credited as a month of
7 service: *Provided*, That for employees of the state Legislature
8 whose term of employment is otherwise classified as temporary

9 and who are employed to perform services required by the
10 Legislature for its regular sessions or during the interim
11 between regular sessions and who have been or are so em-
12 ployed during regular sessions or during the interim between
13 regular sessions in seven consecutive calendar years, service
14 credit of one month shall be awarded for each ten days
15 employed in the interim between regular sessions, which
16 interim days shall be cumulatively calculated so that any ten
17 days, regardless of calendar month or year, shall be calculated
18 toward any award of one month of service credit;

19 (2) Except for hourly employees, ten or more months of
20 service credit earned in any calendar year shall be credited as a
21 year of service: *Provided*, That no more than one year of
22 service may be credited to any member for all service rendered
23 by him or her in any calendar year and no days may be carried
24 over by a member from one calendar year to another calendar
25 year where the member has received a full-year credit for that
26 year; and

27 (3) Service may be credited to a member who was em-
28 ployed by a political subdivision if his or her employment
29 occurred within a period of thirty years immediately preceding
30 the date the political subdivision became a participating public
31 employer.

32 (b) The board of trustees shall grant service credit to
33 employees of boards of health, the Clerk of the House of
34 Delegates and the Clerk of the state Senate or to any former and
35 present member of the State Teachers Retirement System who
36 have been contributing members for more than three years, for
37 service previously credited by the State Teachers Retirement
38 System and shall require the transfer of the member's contribu-
39 tions to the system and shall also require a deposit, with
40 interest, of any withdrawals of contributions any time prior to
41 the member's retirement. Repayment of withdrawals shall be as
42 directed by the board of trustees.

43 (c) Court reporters who are acting in an official capacity,
44 although paid by funds other than the county commission or
45 State Auditor, may receive prior service credit for time served
46 in that capacity.

47 (d) Active members who previously worked in CETA
48 (Comprehensive Employment and Training Act) may receive
49 service credit for time served in that capacity: *Provided*, That
50 in order to receive service credit under the provisions of this
51 subsection the following conditions must be met: (1) The
52 member must have moved from temporary employment with
53 the participating employer to permanent full-time employment
54 with the participating employer within one hundred twenty days
55 following the termination of the member's CETA employment;
56 (2) the board must receive evidence that establishes to a
57 reasonable degree of certainty as determined by the board that
58 the member previously worked in CETA; and (3) the member
59 shall pay to the board an amount equal to the employer and
60 employee contribution plus interest at the amount set by the
61 board for the amount of service credit sought pursuant to this
62 subsection: *Provided, however*, That the maximum service
63 credit that may be obtained under the provisions of this
64 subsection is two years: *Provided further*, That a member must
65 apply and pay for the service credit allowed under this subsec-
66 tion and provide all necessary documentation by the thirty-first
67 day of March, two thousand three: *And provided further*, That
68 the board shall exercise due diligence to notify affected
69 employees of the provisions of this subsection.

70 (e)(1) Employees of the state Legislature whose terms of
71 employment are otherwise classified as temporary and who are
72 employed to perform services required by the Legislature for its
73 regular sessions or during the interim time between regular
74 sessions shall receive service credit for the time served in that
75 capacity in accordance with the following. For purposes of this
76 section, the term "regular session" means day one through day

77 sixty of a sixty-day legislative session or day one through day
78 thirty of a thirty-day legislative session. Employees of the state
79 Legislature whose term of employment is otherwise classified
80 as temporary and who are employed to perform services
81 required by the Legislature for its regular sessions or during the
82 interim time between regular sessions and who have been or are
83 employed during regular sessions or during the interim time
84 between regular sessions in seven consecutive calendar years,
85 as certified by the clerk of the house in which the employee
86 served, shall receive service credit of six months for all regular
87 sessions served, as certified by the clerk of the house in which
88 the employee served, or shall receive service credit of three
89 months for each regular thirty-day session served prior to one
90 thousand nine hundred seventy-one: *Provided*, That employees
91 of the state Legislature whose term of employment is otherwise
92 classified as temporary and who are employed to perform
93 services required by the Legislature for its regular sessions and
94 who have been or are employed during the regular sessions in
95 thirteen consecutive calendar years as either temporary
96 employees or full-time employees or a combination thereof, as
97 certified by the clerk of the house in which the employee
98 served, shall receive a service credit of twelve months for each
99 regular session served, as certified by the clerk of the house in
100 which the employee served: *Provided, however*, That the
101 amendments made to this subsection during the two thousand
102 two regular session of the Legislature only apply to employees
103 of the Legislature who are employed by the Legislature as
104 either temporary employees or full-time employees as of the
105 first day of January, two thousand two, or who become
106 employed by the Legislature as temporary or full-time employ-
107 ees for the first time after the first day of January, two thousand
108 two. Employees of the state Legislature whose terms of
109 employment are otherwise classified as temporary and who are
110 employed to perform services required by the Legislature
111 during the interim time between regular sessions shall receive
112 service credit of one month for each ten days served during the

113 interim between regular sessions, which interim days shall be
114 cumulatively calculated so that any ten days, regardless of
115 calendar month or year, shall be calculated toward any award
116 of one month of service credit: *Provided further*, That no more
117 than one year of service may be credited to any temporary
118 legislative employee for all service rendered by that employee
119 in any calendar year and no days may be carried over by a
120 temporary legislative employee from one calendar year to
121 another calendar year where the member has received a full
122 year credit for that year. Service credit awarded for legislative
123 employment pursuant to this section shall be used for the
124 purpose of calculating that member's retirement annuity,
125 pursuant to section twenty-two of this article, and determining
126 eligibility as it relates to credited service, notwithstanding any
127 other provision of this section. Certification of employment for
128 a complete legislative session and for interim days shall be
129 determined by the clerk of the house in which the employee
130 served, based upon employment records. Service of fifty-five
131 days of a regular session constitutes an absolute presumption of
132 service for a complete legislative session and service of twenty-
133 seven days of a thirty-day regular session occurring prior to one
134 thousand nine hundred seventy-one constitutes an absolute
135 presumption of service for a complete legislative session. Once
136 a legislative employee has been employed during regular
137 sessions for seven consecutive years or has become a full-time
138 employee of the Legislature, that employee shall receive the
139 service credit provided in this section for all regular and interim
140 sessions and interim days worked by that employee, as certified
141 by the clerk of the house in which the employee served,
142 regardless of when the session or interim legislative employ-
143 ment occurred: *And provided further*, That regular session
144 legislative employment for seven consecutive years may be
145 served in either or both houses of the Legislature.

146 (2) For purposes of this section, employees of the Joint
147 Committee on Government and Finance are entitled to the same

148 benefits as employees of the House of Delegates or the Senate:
149 *Provided*, That for joint committee employees whose terms of
150 employment are otherwise classified as temporary, employment
151 in preparation for regular sessions, certified by the Legislative
152 Manager as required by the Legislature for its regular sessions,
153 shall be considered the same as employment during regular
154 sessions to meet service credit requirements for sessions served.

155 (f) Any employee may purchase retroactive service credit
156 for periods of employment in which contributions were not
157 deducted from the employee's pay. In the purchase of service
158 credit for employment prior to the year one thousand nine
159 hundred eighty-nine in any department, including the Legisla-
160 ture, which operated from the General Revenue Fund and which
161 was not expressly excluded from budget appropriations in
162 which blanket appropriations were made for the state's share of
163 public employees' retirement coverage in the years prior to the
164 year one thousand nine hundred eighty-nine, the employee shall
165 pay the employee's share. Other employees shall pay the state's
166 share and the employee's share to purchase retroactive service
167 credit. Where an employee purchases service credit for
168 employment which occurred after the year one thousand nine
169 hundred eighty-eight, that employee shall pay for the em-
170 ployee's share and the employer shall pay its share for the
171 purchase of retroactive service credit: *Provided*, That no
172 legislative employee and no current or former member of the
173 Legislature may be required to pay any interest or penalty upon
174 the purchase of retroactive service credit in accordance with the
175 provisions of this section where the employee was not eligible
176 to become a member during the years for which he or she is
177 purchasing retroactive credit or had the employee attempted to
178 contribute to the system during the years for which he or she is
179 purchasing retroactive service credit and such contributions
180 would have been refused by the board: *Provided, however*, That
181 a legislative employee purchasing retroactive credit under this
182 section does so within twenty-four months of becoming a

183 member of the system or no later than the last day of December,
184 two thousand eight, whichever occurs last: *Provided further*,
185 That once a legislative employee becomes a member of the
186 retirement system, he or she may purchase retroactive service
187 credit for any time he or she was employed by the Legislature
188 and did not receive service credit. Any service credit purchased
189 shall be credited as six months for each sixty-day session
190 worked, three months for each thirty-day session worked or
191 twelve months for each sixty-day session for legislative
192 employees who have been employed during regular sessions in
193 thirteen consecutive calendar years, as certified by the clerk of
194 the houses in which the employee served, and credit for interim
195 employment as provided in this subsection: *And provided*
196 *further*, That this legislative service credit shall also be used for
197 months of service in order to meet the sixty-month requirement
198 for the payments of a temporary legislative employee member's
199 retirement annuity: *And provided further*, That no legislative
200 employee may be required to pay for any service credit beyond
201 the actual time he or she worked regardless of the service credit
202 which is credited to him or her pursuant to this section: *And*
203 *provided further*, That any legislative employee may request a
204 recalculation of his or her credited service to comply with the
205 provisions of this section at any time.

206 (g)(1) Notwithstanding any provision to the contrary, the
207 seven consecutive calendar years requirement and the thirteen
208 consecutive calendar years requirement and the service credit
209 requirements set forth in this section shall be applied retroac-
210 tively to all periods of legislative employment prior to the
211 passage of this section, including any periods of legislative
212 employment occurring before the seven consecutive and
213 thirteen consecutive calendar years referenced in this section:
214 *Provided*, That the employee has not retired prior to the
215 effective date of the amendments made to this section in the
216 two thousand two regular session of the Legislature.

217 (2) The requirement of seven consecutive years and the
218 requirement of thirteen consecutive years apply retroactively to
219 all legislative employment prior to the effective date of the two
220 thousand six amendments to this section.

221 (h) The board of trustees shall grant service credit to any
222 former or present member of the State Police Death, Disability
223 and Retirement Fund who has been a contributing member of
224 this system for more than three years for service previously
225 credited by the State Police Death, Disability and Retirement
226 Fund if the member transfers all of his or her contributions to
227 the State Police Death, Disability and Retirement Fund to the
228 system created in this article, including repayment of any
229 amounts withdrawn any time from the State Police Death,
230 Disability and Retirement Fund by the member seeking the
231 transfer allowed in this subsection: *Provided*, That there shall
232 be added by the member to the amounts transferred or repaid
233 under this subsection an amount which shall be sufficient to
234 equal the contributions he or she would have made had the
235 member been under the Public Employees Retirement System
236 during the period of his or her membership in the State Police
237 Death, Disability and Retirement Fund plus interest at a rate
238 determined by the board.

239 (i) The provisions of section twenty-two-h of this article are
240 not applicable to the amendments made to this section during
241 the two thousand six regular session.

§5-10-27. Preretirement death annuities.

1 (a) (1) Except as otherwise provided in this section, in the
2 event any member who has ten or more years of credited
3 service or any former member with ten or more years of
4 credited service and who is entitled to a deferred annuity,
5 pursuant to section twenty-one of this article, may at any time
6 prior to the effective date of his or her retirement, by written

7 declaration duly executed and filed with the board of trustees,
8 in the same manner as if he or she were then retiring from the
9 employ of a participating public employer, elect option A
10 provided in section twenty-four of this article and nominate a
11 beneficiary whom the board finds to have had an insurable
12 interest in the life of the member. Prior to the effective date of
13 his or her retirement, a member may revoke his or her election
14 of option A and nomination of beneficiary and he or she may
15 again prior to his or her retirement elect option A and nominate
16 a beneficiary as provided in this subsection. Upon the death of
17 a member who has an option A election in force, his or her
18 beneficiary, if living, shall immediately receive an annuity
19 computed in the same manner in all respects as if the same
20 member had retired the day preceding the date of his or her
21 death, notwithstanding that he or she might not have attained
22 age sixty years, and elected the said option A. If at the time of
23 his or her retirement a member has an option A election in
24 force, his or her election of option A and nomination of
25 beneficiary shall thereafter continue in force. As an alternative
26 to annuity option A, a member or former member may elect to
27 have the preretirement death benefit paid as a return of
28 accumulated contributions in a lump sum amount to any
29 beneficiary or beneficiaries he or she chooses.

30 (2) In the event any member or former member, who first
31 became a member of the Public Employees Retirement System
32 after the effective date of amendments made to this section
33 during the two thousand six regular legislative session and who
34 has ten or more years of credited service and who is entitled to
35 a deferred annuity, pursuant to section twenty-one of this
36 article: Dies without leaving a surviving spouse; but leaves
37 surviving him or her a child who is financially dependent on the
38 member by virtue of a permanent mental or physical disability
39 upon evidence satisfactory to the board; and has named the
40 disabled child as sole beneficiary, the disabled child shall
41 immediately receive an annuity computed in the same manner

42 in all respects as if the member had: (A) Retired the day
43 preceding the date of his or her death, notwithstanding that he
44 or she might not have attained age sixty or sixty-two years, as
45 the case may be; (B) elected option A provided in section
46 twenty-four of this article; and (C) nominated his or her
47 disabled child as beneficiary. A member or former member
48 with ten or more years of credited service, who does not leave
49 surviving him or her a spouse or a disabled child, may elect to
50 have the preretirement death benefit paid as a return of
51 accumulated contributions in a lump sum amount to any
52 beneficiary or beneficiaries he or she chooses.

53 (b)(1) In the event any member who has ten or more years
54 of credited service, or any former member with ten or more
55 years of credited service and who is entitled to a deferred
56 annuity, pursuant to section twenty-one of this article: Dies; and
57 leaves a surviving spouse, the surviving spouse shall immedi-
58 ately receive an annuity computed in the same manner in all
59 respects as if the member had: (A) Retired the day preceding
60 the date of his or her death, notwithstanding that he or she
61 might not have attained age sixty or sixty-two years, as the case
62 may be; (B) elected option A provided in section twenty-four of
63 this article; and (C) nominated his or her surviving spouse as
64 beneficiary. However, the surviving spouse shall have the right
65 to waive the annuity provided in this section: *Provided*, That he
66 or she executes a valid and notarized waiver on a form provided
67 by the board and that the member or former member attests to
68 the waiver. If the waiver is presented to and accepted by the
69 board, the member or former member, may nominate a
70 beneficiary who has an insurable interest in the member's or
71 former member's life. As an alternative to annuity option A, the
72 member or former member may elect to have the preretirement
73 death benefit paid as a return of accumulated contributions in
74 a lump sum amount to any beneficiary or beneficiaries he or she
75 chooses in the event a waiver, as provided in this section, has
76 been presented to and accepted by the board.

77 (2) Whenever any member or former member who first
78 became a member of the retirement system after the effective
79 date of the amendments to this section made during the two
80 thousand six regular legislative session and who has ten or more
81 years of credited service and who is entitled to a deferred
82 annuity, pursuant to section twenty-one of this article: Dies; and
83 leaves a surviving spouse, the surviving spouse shall immedi-
84 ately receive an annuity computed in the same manner in all
85 respects as if the member had: (A) Retired the day preceding
86 the date of his or her death, notwithstanding that he or she
87 might not have attained age sixty or sixty-two years, as the case
88 may be; (B) elected option A provided in section twenty-four of
89 this article; and (C) nominated his or her surviving spouse as
90 beneficiary. However, the surviving spouse shall have the right
91 to waive the annuity provided in this section: *Provided*, That he
92 or she executes a valid and notarized waiver on a form provided
93 by the board and that the member or former member attests to
94 the waiver. If the waiver is presented to and accepted by the
95 Board, the member or former member may: (1) Elect to have
96 the preretirement death benefit paid in a lump sum amount,
97 rather than annuity option A provided in section twenty-four of
98 this article, as a return of accumulated contributions to any
99 beneficiary or beneficiaries he or she chooses; or (2) may name
100 his or her surviving child, who is financially dependent on the
101 member by virtue of a permanent mental or physical disability,
102 as his or her sole beneficiary to receive an annuity computed in
103 the same manner in all respects as if the member had: (A)
104 Retired the day preceding the date of his or her death, notwith-
105 standing that he or she might not have attained the age of sixty
106 or sixty-two as the case may be; (B) elected option A provided
107 in section twenty-four of this article; and (C) nominated his or
108 her disabled child as beneficiary.

109 (c) In the event any member who has ten or more years of
110 credited service or any former member with ten or more years
111 of credited service and who is entitled to a deferred annuity,

112 pursuant to section twenty-one of this article: (1) Dies without
113 leaving surviving him or her a spouse; but (2) leaves surviving
114 him or her an infant child or children; and (3) does not have a
115 beneficiary nominated as provided in subsection (a) of this
116 section, the infant child or children are entitled to an annuity to
117 be calculated as follows: The annuity reserve shall be calculated
118 as though the member had retired as of the date of his or her
119 decease and elected a straight life annuity and the amount of the
120 annuity reserve shall be paid in equal monthly installments to
121 the member's infant child or children until the child or children
122 attain age twenty-one or sooner marry or become emancipated;
123 however, in no event shall any child or children receive more
124 than two hundred fifty dollars per month each. The annuity
125 payments shall be computed as of the date of the death of the
126 member and the amount of the annuity shall remain constant
127 during the period of payment. The annual amount of the
128 annuities payable by this section shall not exceed sixty percent
129 of the deceased member's final average salary.

130 (d) In the event any member or former member does not
131 have ten or more years of credited service, no preretirement
132 death annuity may be authorized, owed or awarded under this
133 section, except as provided in subdivision (4), subsection (a),
134 section fifteen of this article as amended during the two
135 thousand five regular session of the Legislature.

**§5-10-48. Reemployment after retirement; options for holder of
elected public office.**

1 (a) The Legislature finds that a compelling state interest
2 exists in maintaining an actuarially sound retirement system
3 and that this interest necessitates that certain limitations be
4 placed upon an individual's ability to retire from the system and
5 to then later return to state employment as an employee with a
6 participating public employer while contemporaneously
7 drawing an annuity from the system. The Legislature hereby

8 further finds and declares that the interests of the public are
9 served when persons having retired from public employment
10 are permitted, within certain limitations, to render post-
11 retirement employment in positions of public service, either in
12 elected or appointed capacities. The Legislature further finds
13 and declares that it has the need for qualified employees and
14 that in many cases an employee of the Legislature will retire
15 and be available to return to work for the Legislature as a per
16 diem employee. The Legislature further finds and declares that
17 in many instances these employees have particularly valuable
18 expertise which the Legislature cannot find elsewhere. The
19 Legislature further finds and declares that reemploying these
20 persons on a limited per diem basis after they have retired is not
21 only in the best interests of this state, but has no adverse effect
22 whatsoever upon the actuarial soundness of this particular
23 retirement system.

24 (b) For the purposes of this section: (1) “Regularly
25 employed on a full-time basis” means employment of an
26 individual by a participating public employer, in a position
27 other than as an elected or appointed public official, which
28 normally requires twelve months per year service and/or
29 requires at least one thousand forty hours of service per year in
30 that position; (2) “temporary full-time employment or tempo-
31 rary part-time employment” means employment of an individ-
32 ual on a temporary or provisional basis by a participating public
33 employer, other than as an elected or appointed public official,
34 in a position which does not otherwise render the individual as
35 regularly employed; (3) “former employee of the Legislature”
36 means any person who has retired from employment with the
37 Legislature and who has at least ten years contributing service
38 with the Legislature; and (4) “reemployed by the Legislature”
39 means a former employee of the Legislature who has been
40 reemployed on a per diem basis not to exceed one hundred
41 seventy-five days per calendar year.

42 (c) In the event a retirant becomes regularly employed on
43 a full-time basis by a participating public employer, payment of
44 his or her annuity shall be suspended during the period of his or
45 her reemployment and he or she shall become a contributing
46 member to the retirement system. If his or her reemployment is
47 for a period of one year or longer, his or her annuity shall be
48 recalculated and he or she shall be granted an increased annuity
49 due to such additional employment, said annuity to be com-
50 puted according to section twenty-two of this article. A retirant
51 may accept temporary full-time or temporary part-time
52 employment from a participating employer without suspending
53 his or her retirement annuity so long as he or she does not
54 receive annual compensation in excess of twenty thousand
55 dollars.

56 (d) In the event a member retires and is then subsequently
57 elected to a public office or is subsequently appointed to hold
58 an elected public office, or is a former employee of the
59 Legislature who has been reemployed by the Legislature, he or
60 she has the option, notwithstanding subsection (c) of this
61 section, to either:

62 (1) Continue to receive payment of his or her annuity while
63 holding such public office or during any reemployment of a
64 former employee of the Legislature on a per diem basis, in
65 addition to the salary he or she may be entitled to as such office
66 holder or as a per diem reemployed former employee of the
67 Legislature; or

68 (2) Suspend the payment of his or her annuity and become
69 a contributing member of the retirement system as provided in
70 subsection (c) of this section. Notwithstanding the provisions of
71 this subsection, a member who is participating in the system as
72 an elected public official may not retire from his or her elected
73 position and commence to receive an annuity from the system
74 and then be reappointed to the same position unless and until a

75 continuous six-month period has passed since his or her
76 retirement from the position: *Provided*, That a former employee
77 of the Legislature may not be reemployed by the Legislature on
78 a per diem basis until at least sixty days after the employee has
79 retired: *Provided, however*, That the limitation on compensation
80 provided by subsection (b) of this section does not apply to the
81 reemployed former employee: *Provided further*, That in no
82 event may reemployment by the Legislature of a per diem
83 employee exceed one hundred seventy-five days per calendar
84 year.

85 (e) A member who is participating in the system simulta-
86 neously as both a regular, full-time employee of a participating
87 public employer and as an elected or appointed member of the
88 legislative body of the state or any political subdivision may,
89 upon meeting the age and service requirements of this article,
90 elect to retire from his or her regular full-time state employment
91 and may commence to receive an annuity from the system
92 without terminating his or her position as a member of the
93 legislative body of the state or political subdivision: *Provided*,
94 That the retired member shall not, during the term of his or her
95 retirement and continued service as a member of the legislative
96 body of a political subdivision, be eligible to continue his or her
97 participation as a contributing member of the system and shall
98 not continue to accrue any additional service credit or benefits
99 in the system related to the continued service.

100 (f) Notwithstanding the provisions of section twenty-seven-
101 b of this article, any publicly elected member of the legislative
102 body of any political subdivision or of the state Legislature, the
103 Clerk of the House of Delegates and the Clerk of the Senate
104 may elect to commence receiving in-service retirement
105 distributions from this system upon attaining the age of seventy
106 and one-half years: *Provided*, That the member is eligible to
107 retire under the provisions of section twenty or section twenty-
108 one of this article: *Provided, however*, That the member elects

109 to stop actively contributing to the system while receiving such
110 in-service distributions.

111 (g) The provisions of section twenty-two-h of this article
112 are not applicable to the amendments made to this section
113 during the two thousand six regular session.

CHAPTER 196

**(H. B. 4846 — By Delegates Michael, Leach, Kominar, Stalnaker,
Varner, H. White, Williams, Hall, Evans and G. White)**

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 5, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-10-22i; to amend and reenact §5E-1-8 of said code; to amend said code by adding thereto a new section, designated §11-24-43; and to amend said code by adding thereto a new section, designated §18-7A-26t, all relating to providing one-time supplements to certain annuitants; dedication of corporate net income tax proceeds to pay for supplement; and supplying fiscal support for such supplements by increasing available general revenue through the expiration of certain tax credits.

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 §5-10-22i; that §5E-1-8 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-24-43; and that said code be amended by adding thereto a new section, designated §18-7A-26t, 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.

5E. Venture Capital Company.

11. Taxation.

18. Education.

**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 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

**§5-10-22i. One-time supplement for certain annuitants effective
July 1, 2006.**

1 (a) A one-time supplement to retirement benefits of not less
2 than three percent and not exceeding four and one-half percent,
3 as determined by appropriation of the Legislature, shall be
4 provided to all retirees that are age seventy or older and have
5 been annuitants for at least five consecutive years as of the
6 effective date of this section and beneficiaries of deceased
7 members who would have been at least seventy years of age or
8 older and have been annuitants for at least five consecutive
9 years as of the effective date of this section.

10 (b) The one-time supplement provided for in this section
11 applies only to members who have retired at least five years
12 prior to the effective date of this section or, if applicable, to
13 beneficiaries of deceased members who have been receiving
14 benefits under the retirement system at least five years prior to
15 the effective date of this section: *Provided*, That the supplement
16 provided herein is subject to any applicable limitations thereon
17 under Section 415 of the Internal Revenue Code of 1986, as
18 amended.

CHAPTER 5E. VENTURE CAPITAL COMPANY.**ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.****§5E-1-8. Tax credits.**

1 (a) The total amount of tax credits authorized for a single
2 qualified company may not exceed two million dollars. The
3 total amount of tax credits authorized for a single economic
4 development and technology advancement center may not
5 exceed one million dollars. Capitalization of the company or
6 center may be increased pursuant to rule of the authority.

7 (b) (1) The total credits authorized by the authority for all
8 companies and centers may not exceed a total of ten million
9 dollars each fiscal year: *Provided*, That for the fiscal year
10 beginning on the first day of July, one thousand nine hundred
11 ninety-nine, the total credits authorized for all companies may
12 not exceed a total of six million dollars: *Provided, however*,
13 That for the fiscal year beginning on the first day of July, two
14 thousand, the total credits authorized for all companies may not
15 exceed a total of four million dollars: *Provided further*, That for
16 the fiscal year beginning on the first day of July, two thousand
17 one, the total credits authorized for all companies may not
18 exceed a total of four million dollars: *And provided further*,
19 That for the fiscal year beginning on the first day of July, two
20 thousand two, the total credits authorized for all companies may
21 not exceed a total of three million dollars: *And provided further*,
22 That for the fiscal year beginning on the first day of July, two
23 thousand three, the total credits authorized for all companies
24 may not exceed a total of three million dollars: *And provided*
25 *further*, That for the fiscal year beginning on the first day of
26 July, two thousand four, the total credits authorized for all
27 companies may not exceed a total of one million dollars: *And*
28 *provided further*, That for the fiscal year beginning on the first
29 day of July, two thousand five, there shall be no credits
30 authorized: *And provided further*, That for the fiscal year

31 beginning on the first day of July, two thousand six, the total
32 credits authorized for all companies may not exceed a total of
33 one million dollars: *And provided further*, That for the fiscal
34 years beginning on the first day of July, two thousand seven,
35 and two thousand eight, there shall be no credits authorized:
36 *And provided further*, That the capital base of any qualified
37 company other than an economic development and technology
38 advancement center qualified under the provisions of article
39 twelve-a, chapter eighteen-b of this code shall be invested in
40 accordance with the provisions of this article. The authority
41 shall allocate these credits to qualified companies and centers
42 in the order that the companies are qualified.

43 (2) Not more than two million dollars of the credits allowed
44 under subdivision (1) of this subsection may be allocated by the
45 authority during each fiscal year to one or more small business
46 investment companies described in this subdivision: *Provided*,
47 That for the fiscal year beginning on the first day of July, two
48 thousand four, and for the fiscal year beginning on the first day
49 of July, two thousand five, no credits authorized by this section
50 may be allocated by the authority to one or more small business
51 investment companies: *Provided, however*, That for the fiscal
52 year beginning on the first day of July, two thousand six, all of
53 the credits allowed under subdivision (1) of this subsection
54 shall be allocated only to one or more small business invest-
55 ment companies described in this subdivision: *Provided*
56 *further*, That for the fiscal years beginning on the first day of
57 July, two thousand seven and two thousand eight, no credits
58 authorized by this section may be allocated by the authority to
59 one or more small business investment companies. After a
60 portion of the credits are allocated to small business investment
61 companies as provided in this section, not more than one
62 million dollars of the credits allowed under subdivision (1) of
63 this subsection may be allocated by the authority during each
64 fiscal year to one or more economic development and technol-
65 ogy advancement centers qualified by the authority under

66 article twelve-a, chapter eighteen-b of this code: *Provided*
67 *however*, That for the fiscal year beginning on the first day of
68 July, two thousand four, all of the credits allowed under
69 subdivision (1) of this subsection shall be allocated only to one
70 or more qualified economic development and technology
71 advancement centers: *Provided further*, That for the fiscal year
72 beginning on the first day of July, two thousand five, no credits
73 allowed under subdivision (1) of this subsection shall be
74 allocated to any qualified economic development and technol-
75 ogy advancement center: *And provided further*, That for the
76 fiscal years beginning on the first day of July, two thousand six,
77 two thousand seven and two thousand eight, no credits allowed
78 under subdivision (1) of this subsection shall be allocated to any
79 qualified economic development and technology advancement
80 center. The remainder of the tax credits allowed during the
81 fiscal year shall be allocated by the authority under the
82 provisions of section four, article two of this chapter: *Provided*,
83 That for the fiscal year beginning on the first day of July, two
84 thousand four, and for the fiscal year beginning on the first day
85 of July, two thousand five, no credits authorized by this section
86 may be allocated by the authority to a taxpayer pursuant to the
87 provisions of section four, article two of this chapter: *Provided*,
88 *however*, That for the fiscal year beginning on the first day of
89 July, two thousand six, two thousand seven and two thousand
90 eight, no credits authorized by this section may be allocated by
91 the authority to a taxpayer pursuant to the provisions of section
92 four, article two of this chapter. The portion of the tax credits
93 allowed for small business investment companies described in
94 this subdivision shall be allowed only if allocated by the
95 authority during the first ninety days of the fiscal year and may
96 only be allocated to companies that: (A) Were organized on or
97 after the first day of January, one thousand nine hundred
98 ninety-nine; (B) are licensed by the small business administra-
99 tion as a small business investment company under the small
100 business investment act; and (C) have certified in writing to the
101 authority on the application for credits under this act that the

102 company will diligently seek to obtain and thereafter diligently
103 seek to invest leverage available to the small business invest-
104 ment companies under the small business investment act. These
105 credits shall be allocated by the authority in the order that the
106 companies are qualified. The portion of the tax credits allowed
107 for economic development and technology advancement centers
108 described in article twelve-a, chapter eighteen-b of this code
109 shall be similarly allowed only if allocated by the authority
110 during the first ninety days of the fiscal year: *And provided*
111 *further*, That solely for the fiscal year beginning on the first day
112 of July, two thousand four, the authority may allocate the tax
113 credits allowed for economic development and technology
114 advancement centers at any time during the fiscal year. Any
115 credits which have not been allocated to qualified companies
116 meeting the requirements of this subdivision relating to small
117 business investment companies or to qualified economic
118 development and technology advancement centers during the
119 first ninety days of the fiscal year shall be made available and
120 allocated by the authority under the provisions of section four,
121 article two of this chapter: *Provided*, That for the fiscal year
122 beginning on the first day of July, two thousand four, and for
123 the fiscal year beginning on the first day of July, two thousand
124 five, and for the fiscal years beginning on the first day of July,
125 two thousand six, two thousand seven, and two thousand eight,
126 no credits authorized by this section may be allocated by the
127 authority to a taxpayer pursuant to the provisions of section
128 four, article two of this chapter.

129 (3) Notwithstanding any provision of this code or legisla-
130 tive rule promulgated thereunder to the contrary, for the fiscal
131 year beginning on the first day of July, two thousand four, and
132 for the fiscal year beginning on the first day of July, two
133 thousand five, the authority has the sole discretion to allocate or
134 refuse to allocate tax credits authorized under this section to
135 any qualified economic development and technology advance-
136 ment center upon its determination of the extent to which the

137 center will fulfill the purposes of this article. The determination
138 shall be based upon the application of the center, the extent to
139 which the company or center fulfilled those purposes in prior
140 years after receiving tax credits authorized under this section,
141 the extent to which the center is expected to stimulate economic
142 development and high technology research in the chemical
143 industry and such other similarly related criteria as the authority
144 may establish by vote of the majority of authority.

145 (c) Any investor, including an individual, partnership,
146 limited liability company, corporation or other entity who
147 makes a capital investment in a qualified West Virginia capital
148 company, is entitled to a tax credit equal to fifty percent of the
149 investment, except as otherwise provided in this section or in
150 this article: *Provided*, That the tax credit available to investors
151 who make a capital investment in an economic development
152 and technology advancement center shall be one hundred
153 percent of the investment. The credit allowed by this article
154 shall be taken after all other credits allowed by chapter eleven
155 of this code. It shall be taken against the same taxes and in the
156 same order as set forth in subsections (c) through (i), inclusive,
157 section five, article thirteen-c, chapter eleven of this code. The
158 credit for investments by a partnership, limited liability
159 company, a corporation electing to be treated as a subchapter S
160 corporation or any other entity which is treated as a pass
161 through entity under federal and state income tax laws may be
162 divided pursuant to election of the entity's partners, members,
163 shareholders or owners.

164 (d) The tax credit allowed under this section is to be
165 credited against the taxpayer's tax liability for the taxable year
166 in which the investment in a qualified West Virginia capital
167 company or economic development and technology advance-
168 ment center is made. If the amount of the tax credit exceeds the
169 taxpayer's tax liability for the taxable year, the amount of the
170 credit which exceeds the tax liability for the taxable year may
171 be carried to succeeding taxable years until used in full or until

172 forfeited: *Provided*, That: (i) Tax credits may not be carried
173 forward beyond fifteen years; and (ii) tax credits may not be
174 carried back to prior taxable years. Any tax credit remaining
175 after the fifteenth taxable year is forfeited.

176 (e) The tax credit provided in this section is available only
177 to those taxpayers whose investment in a qualified West
178 Virginia capital company or economic development and
179 technology advancement center occurs after the first day of
180 July, one thousand nine hundred eighty-six.

181 (f) The tax credit allowed under this section may not be
182 used against any liability the taxpayer may have for interest,
183 penalties or additions to tax.

184 (g) Notwithstanding any provision in this code to the
185 contrary, the tax commissioner shall publish in the state register
186 the name and address of every taxpayer and the amount, by
187 category, of any credit asserted under this article. The catego-
188 ries by dollar amount of credit received are as follows:

- 189 (1) More than \$1.00, but not more than \$50,000;
- 190 (2) More than \$50,000, but not more than \$100,000;
- 191 (3) More than \$100,000, but not more than \$250,000;
- 192 (4) More than \$250,000, but not more than \$500,000;
- 193 (5) More than \$500,000, but not more than \$1,000,000; and
- 194 (6) More than \$1,000,000.

CHAPTER 11. TAXATION.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-43. Dedication of corporation net income tax proceeds.

1 (a) There is hereby dedicated for the fiscal years beginning
2 on the first day of July, two thousand six, two thousand seven
3 and two thousand eight, an annual amount of ten million dollars
4 from annual collections of the tax imposed by this article for
5 payment of the unfunded liability created by the one-time
6 supplement of certain annuitants as provided in section twenty-
7 two-i, article ten, chapter five and section twenty-six-t, article
8 seven-a, chapter eighteen of this code.

9 (b) Notwithstanding any other provision of this code to the
10 contrary, on the first day of October of two thousand six, two
11 thousand seven and two thousand eight, ten million dollars from
12 collections of the tax imposed by this article shall be deposited
13 with the reserves of the public employees retirement and state
14 teachers retirement systems in such allocations as the consoli-
15 dated public retirement board finds to be necessary and
16 advantageous in funding the one-time supplements of certain
17 annuitants as provided in section twenty-two-i, article ten,
18 chapter five and section twenty-six-t, article seven-a, chapter
19 eighteen of this code.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-26t. One-time supplement for certain annuitants effective July 1, 2006.

1 (a) A one-time supplement to retirement benefits of three
2 percent shall be provided to all retirees that are age seventy or
3 older and have been annuitants for at least five consecutive
4 years as of the effective date of this section and beneficiaries of
5 deceased members who would have been at least seventy years
6 of age or older and have been annuitants for at least five
7 consecutive years as of the effective date of this section.

8 (b) The one-time supplement provided for in this section
9 applies only to members who have retired at least five years

10 prior to the effective date of this section or, if applicable, to
11 beneficiaries of deceased members who have been receiving
12 benefits under the retirement system at least five years prior to
13 the effective date of this section: *Provided*, That the supplement
14 provided herein is subject to any applicable limitations thereon
15 under Section 415 of the Internal Revenue Code of 1986, as
16 amended.

CHAPTER 197

**(Com. Sub. for H. B. 4032 — By Delegates Stalnaker, Browning,
Williams, Frederick, Hall, Duke and Manchin)**

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §5-10D-1 of the Code of West Virginia, 1931, as amended, relating to authorizing the Consolidated Public Retirement Board to recover from a participating employer that fails to pay contributions due in a timely manner, amounts not to exceed interest or other earnings lost as a result of the untimely payment, or a reasonable minimum fee, whichever is greater, as provided by legislative rule; requiring that any amounts recovered shall be administered in the same manner in which the contributions are required to be administered; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §5-10D-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

**§5-10D-1. Consolidated Public Retirement Board continued;
members; vacancies; investment of plan funds.**

1 (a) The Consolidated Public Retirement Board is continued
2 to administer all public retirement plans in this state. It shall
3 administer the Public Employees Retirement System estab-
4 lished in article ten of this chapter; the Teachers Retirement
5 System established in article seven-a, chapter eighteen of this
6 code; the Teachers Defined Contribution Retirement System
7 created by article seven-b of said chapter; the West Virginia
8 State Police Death, Disability and Retirement Fund created by
9 article two, chapter fifteen of this code; the West Virginia State
10 Police Retirement System created by article two-a of said
11 chapter; the Deputy Sheriff Death, Disability and Retirement
12 Fund created by article fourteen-d, chapter seven of this code;
13 and the Judges' Retirement System created under article nine,
14 chapter fifty-one of this code.

15 (b) The membership of the Consolidated Public Retirement
16 Board consists of:

17 (1) The Governor or his or her designee;

18 (2) The State Treasurer or his or her designee;

19 (3) The State Auditor or his or her designee;

20 (4) The Secretary of the Department of Administration or
21 his or her designee;

22 (5) Four residents of the state, who are not members,
23 retirants or beneficiaries of any of the public retirement
24 systems, to be appointed by the Governor, with the advice and
25 consent of the Senate; and

26 (6) A member, annuitant or retirant of the Public Employ-
27 ees Retirement System who is or was a state employee; a

28 member, annuitant or retirant of the Public Employees Retire-
29 ment System who is not or was not a state employee; a member,
30 annuitant or retirant of the Teachers Retirement System; a
31 member, annuitant or retirant of the West Virginia State Police
32 Death, Disability and Retirement Fund; a member, annuitant or
33 retirant of the Deputy Sheriff Death, Disability and Retirement
34 Fund; and a member, annuitant or retirant of the Teachers
35 Defined Contribution Retirement System all to be appointed by
36 the Governor, with the advice and consent of the Senate.

37 (c) The appointed members of the board serve five-year
38 terms. A member appointed pursuant to subdivision (6),
39 subsection (b) of this section ceases to be a member of the
40 board if he or she ceases to be a member of the represented
41 system. If a vacancy occurs in the appointed membership, the
42 Governor, within sixty days, shall fill the vacancy by appoint-
43 ment for the unexpired term. No more than five appointees may
44 be of the same political party.

45 (d) The Consolidated Public Retirement Board has all the
46 powers, duties, responsibilities and liabilities of the Public
47 Employees Retirement System established pursuant to article
48 ten of this chapter; the Teachers Retirement System established
49 pursuant to article seven-a, chapter eighteen of this code; the
50 Teachers Defined Contribution System established pursuant to
51 article seven-b of said chapter; the West Virginia State Police
52 Death, Disability and Retirement Fund created pursuant to
53 article two, chapter fifteen of this code; the West Virginia State
54 Police Retirement System created by article two-a of said
55 chapter; the Deputy Sheriff Death, Disability and Retirement
56 Fund created pursuant to article fourteen-d, chapter seven of
57 this code; and the Judges' Retirement System created pursuant
58 to article nine, chapter fifty-one of this code and their appropri-
59 ate governing boards.

60 (e) The Consolidated Public Retirement Board may propose
61 rules for legislative approval, in accordance with article three,

62 chapter twenty-nine-a of this code, necessary to effectuate its
63 powers, duties and responsibilities: *Provided*, That the board
64 may adopt any or all of the rules, previously promulgated, of a
65 retirement system which it administers.

66 (f) (1) The Consolidated Public Retirement Board shall
67 continue to transfer all funds received for the benefit of the
68 retirement systems within the consolidated pension plan as
69 defined in section three-c, article six-b, chapter forty-four of
70 this code, including, but not limited to, all employer and
71 employee contributions, to the West Virginia Investment
72 Management Board: *Provided*, That the employer and em-
73 ployee contributions of the Teachers Defined Contribution
74 System, established in section three, article seven-b, chapter
75 eighteen of this code, and voluntary deferred compensation
76 funds invested by the West Virginia Consolidated Public
77 Retirement Board pursuant to section five, article ten-b of this
78 chapter may not be transferred to the West Virginia Investment
79 Management Board.

80 (2) The board may recover from a participating employer
81 that fails to pay any amount due a retirement system in a timely
82 manner the contribution due and an additional amount not to
83 exceed interest or other earnings lost as a result of the untimely
84 payment, or a reasonable minimum fee, whichever is greater, as
85 provided by legislative rule promulgated pursuant to the
86 provisions of article three, chapter twenty-nine-a of this code.
87 Any amounts recovered shall be administered in the same
88 manner in which the amount due is required to be administered.

89 (g) Notwithstanding any provision of this code or any
90 legislative rule to the contrary, all assets of the public retire-
91 ment plans set forth in subsection (a) of this section shall be
92 held in trust. The Consolidated Public Retirement Board is a
93 trustee for all public retirement plans, except with regard to the
94 investment of funds: *Provided*, That the Consolidated Public

95 Retirement Board is a trustee with regard to the investments of
96 the Teachers' Defined Contribution System, the voluntary
97 deferred compensation funds invested pursuant to section five,
98 article ten-b of this chapter and any other assets of the public
99 retirement plans administered by the Consolidated Public
100 Retirement Board as set forth in subsection (a) of this section
101 for which no trustee has been expressly designated in this code.

102 (h) The board may employ the West Virginia Investment
103 Management Board to provide investment management
104 consulting services for the investment of funds in the Teachers'
105 Defined Contribution System.

CHAPTER 198

**(Com. Sub. for H. B. 2638 — By Delegates Swartzmiller, Manchin,
Stemple, Pethtel, Varner, Kominar and Ennis)**

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §8-22-22a of the Code of West Virginia, 1931, as amended, relating to restrictions on investments by municipal policemen's and firemen's pension and relief funds by increasing the amount which may be invested in equities.

Be it enacted by the Legislature of West Virginia:

That §8-22-22a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION

AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-22a. Restrictions on investments.

1 Moneys invested as permitted by section twenty-two of this
2 article are subject to the following restrictions and conditions
3 contained in this section:

4 (a) Fixed income securities shall at no time exceed ten
5 percent of the total assets of the pension fund, which are issued
6 by one issuer, other than the United States Government or
7 agencies thereof, whereas this limit shall not apply;

8 (b) At no time shall the equity portion of the portfolio
9 exceed sixty percent of the total portfolio. Furthermore, the
10 debit or equity securities of any one company or association
11 shall not exceed five percent with a maximum of fifteen percent
12 in any one industry;

13 (c) Notwithstanding any other provisions of this article, any
14 investments in equities under subsections (g) and (h), section
15 twenty-two of this article shall be subject to the following
16 additional guidelines:

17 (1) Equity mutual funds shall be no sales load (front or
18 back) and no contingent deferred sales charges shall be allowed.
19 The total annual operating expense ratio shall not exceed one
20 and three-quarter percent for any mutual fund;

21 (2) The stated investment policy requires one hundred
22 percent of the equities of the portfolio be that of securities
23 which are listed on the New York Stock Exchange, the
24 American Stock Exchange or the NASDAQ National Market;
25 and

26 (3) Equity mutual funds may be only of the following fund
27 description stated purpose: Growth funds, growth and income
28 funds, equity income funds, index funds; utilities, funds,
29 balanced funds and flexible portfolio funds.

30 (d) The board of trustees of each fund shall obtain an
31 independent performance evaluation of the funds at least
32 annually and the evaluation shall consist of comparisons with
33 other funds having similar investment objectives for perfor-
34 mance results with appropriate market indices; and

35 (e) Each entity conducting business for each pension fund,
36 shall fully disclose all fees and costs of transactions conducted
37 on a quarterly basis. Entities conducting business in mutual
38 funds for and on behalf of each pension fund, shall timely file
39 revised prospectus and normal quarterly and annual Securities
40 Exchange Commission reporting documents with the board of
41 trustees of each pension fund.

CHAPTER 199

**(Com. Sub. for S. B.174 — By Senators Foster,
Barnes, Lanham, McCabe and Plymale,)**

[Passed March 10, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §15-2-31a and §15-2-37 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §15-2-52, all relating to the State Police Death, Disability and Retirement Fund; clarifying earnings information required; requiring examination of certain records; clarifying substantial gainful activity, establishing

earnings limits and providing for annual adjustment; authorizing benefit termination for and reapplication by disability retirants terminated for failure to maintain eligibility due to income or type of employment; requiring medical exam at applicant's expense on reapplication; clarifying reinstatement for reenlisting members; and providing for termination and recovery of benefits for misrepresentation.

Be it enacted by the Legislature of West Virginia:

That §15-2-31a and §15-2-37 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 §15-2-52, all to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-31a. Application for disability benefit; determinations.

§15-2-37. Refunds to certain members upon discharge or resignation; deferred retirement.

§15-2-52. Termination of benefits; procedures.

§15-2-31a. Application for disability benefit; determinations.

1 (a) Application for a disability benefit may be made by a
2 member or, if the member is under an incapacity, by a person
3 acting with legal authority on the member's behalf. After
4 receiving an application for a disability benefit from a member
5 or a person acting with legal authority on behalf of the member,
6 the board shall notify the superintendent of the department that
7 an application has been filed: *Provided*, That when, in the
8 judgment of the superintendent, a member is no longer
9 physically or mentally fit for continued duty as a member of the
10 West Virginia State Police and the member has failed or refused
11 to make application for disability benefits under this article, the
12 superintendent may petition the board to retire the member on
13 the basis of disability pursuant to rules which may be estab-
14 lished by the board. Within thirty days of the superintendent's

15 receipt of the notice from the board or the filing of the superin-
16 tentent's petition with the board, the superintendent shall
17 forward to the board a statement certifying the duties of the
18 member's employment, information relating to the superinten-
19 dent's position on the work relatedness of the member's alleged
20 disability, complete copies of the member's medical file and
21 any other information requested by the board in its processing
22 of the application, if this information is requested timely.

23 (b) The board shall propose legislative rules in accordance
24 with the provisions of article three, chapter twenty-nine-a of
25 this code relating to the processing of applications and petitions
26 for disability retirement under this article.

27 (c) The board shall notify the member and the superinten-
28 dent of its final action on the disability application or petition
29 within ten days of the board's final action. The notice shall be
30 sent by certified mail, return receipt requested. If either the
31 member or the superintendent is aggrieved by the decision of
32 the board and intends to pursue judicial review of the board's
33 decision as provided in section four, article five, chapter
34 twenty-nine-a of this code, the party so aggrieved shall notify
35 the board within twenty days of the member's or superinten-
36 dent's receipt of the board's notice that they intend to pursue
37 judicial review of the board's decision.

38 (d) (1) The board shall require each disability benefit
39 recipient to file an annual certified statement of earnings, to
40 include the amount and source of earnings, and any other
41 information required in legislative rules which may be proposed
42 by the board. The board may waive or modify the requirement
43 that a recipient of total disability benefits file the annual
44 statement of earnings if the board's physician certifies that the
45 recipient's disability is ongoing. The board shall annually
46 examine the information submitted by each recipient. If a
47 disability retirant refuses to file a statement and other informa-

48 tion required by the board, the disability benefit shall be
49 suspended, after notice and opportunity to be heard, until the
50 statement and information are filed.

51 (2) The board shall annually examine any information
52 available from the State Tax Commissioner on all recipients of
53 disability benefits pursuant to article ten, chapter eleven of this
54 code.

55 (e) (1) A nonblind recipient earning annual income
56 exceeding the equivalent of eight hundred sixty dollars per
57 month in the year two thousand six, after impairment-related
58 work expenses are subtracted from earnings, has engaged in
59 substantial gainful activity. A statutorily blind recipient has
60 engaged in substantial gainful activity in the year two thousand
61 six if the recipient has earned annual income exceeding the
62 equivalent of one thousand four hundred fifty dollars per month
63 after impairment-related work expenses are subtracted from
64 earnings.

65 (2) The substantial gainful activity dollar limit shall be
66 automatically adjusted annually to correspond to the dollar limit
67 as established and published by the United States Social
68 Security Administration for each year in accordance with
69 methods published in the Federal Register (FR6582905
70 December 29, 2000) and similar methods used by the Social
71 Security Administration applying the average annual wage
72 index.

73 (3) If after review of a disability retiree's annual statement
74 of earnings, tax records or other financial information, as
75 required or otherwise obtained by the board, the board deter-
76 mines that earnings of the recipient of total disability benefits
77 in the preceding year are sufficient to show that the recipient
78 engaged in substantial gainful activity, the disability retiree's
79 disability annuity shall be terminated by the board, upon

80 recommendation of the board's disability review committee and
81 after notice and opportunity to be heard, on the first day of the
82 month following the board's action.

83 (4) If the board obtains information that a recipient of
84 partial disability benefits is employed as a law-enforcement
85 officer, upon recommendation of the board's disability review
86 committee and after notice and an opportunity to be heard, the
87 board shall terminate the recipient's disability benefits on the
88 first day of the month following the board's action.

89 (f) Any person who wishes to reapply for disability
90 retirement and whose disability retirement has been terminated
91 by the board pursuant to this section may do so within ninety
92 days of the effective date of termination: *Provided*, That any
93 person reapplying for disability benefits shall undergo an
94 examination at the applicant's expense by an appropriate
95 medical professional selected by the board as part of the
96 reapplication process.

97 (g) Notwithstanding other provisions in this section, any
98 person whose disability retirement has been terminated by the
99 board pursuant to this section may apply for regular retirement
100 benefits upon meeting the eligibility requirements of age and
101 years of service.

§15-2-37. Refunds to certain members upon discharge or resignation; deferred retirement.

1 (a) Any member who is discharged by order of the
2 superintendent or otherwise terminates employment with the
3 department, at the written request of the member to the
4 retirement board, is entitled to receive from the retirement fund
5 a sum equal to the aggregate of the principal amount of moneys
6 deducted from his or her salary and paid into the State Police
7 Death, Disability and Retirement Fund plus four percent

8 interest compounded thereon calculated annually as provided
9 and required by this article.

10 (b) Any member withdrawing contributions who may
11 thereafter be reenlisted as a member of the department shall not
12 receive any prior service credit on account of former service,
13 unless following reenlistment the member redeposits in the
14 fund established in article two-a of this chapter the amount of
15 the refund, together with interest thereon at the rate of seven
16 and one-half percent per annum from the date of withdrawal to
17 the date of redeposit, in which case he or she shall receive the
18 same credit on account of his or her former service as if no
19 refund had been made. He or she shall become a member of the
20 retirement system established in article two-a of this chapter.

21 (c) Every member who completes ten years of service with
22 the department is eligible, upon separation of employment with
23 the department, either to withdraw his or her contributions in
24 accordance with subsection (a) of this section or to choose not
25 to withdraw his or her accumulated contributions with interest.
26 Upon attainment of age sixty-two, a member who chooses not
27 to withdraw his or her contributions is eligible to receive a
28 retirement annuity. Any member choosing to receive the
29 deferred annuity under this subsection is not eligible to receive
30 the annual annuity adjustment provided in section twenty-
31 seven-a of this article. When the retirement board retires any
32 member under any of the provisions of this section, the board
33 shall, by order in writing, make an award directing that the
34 member is entitled to receive annually and that there shall be
35 paid to the member from the State Police Death, Disability and
36 Retirement Fund in equal monthly installments during the
37 lifetime of the member while in status of retirement one or the
38 other of two amounts, whichever is greater:

39 (1) An amount equal to five and one-half percent of the
40 aggregate of salary paid to the member during the whole period
41 of service as a member of the department; or

42 (2) The sum of six thousand dollars.

43 The annuity shall be payable during the lifetime of the
44 member. The retiring member may choose, in lieu of a life
45 annuity, an annuity in reduced amount payable during the
46 member's lifetime, with one half of the reduced monthly
47 amount paid to his or her surviving spouse if any, for the
48 spouse's remaining lifetime after the death of the member.
49 Reduction of this monthly benefit amount shall be calculated to
50 be of equal actuarial value to the life annuity the member could
51 otherwise have chosen.

§15-2-52. Termination of benefits; procedures.

1 (a) Whenever the board determines that a person seeking
2 benefits under the provisions of this article has made false
3 representation of a material fact in support of applying for or
4 retaining benefits or has falsified or permitted to be falsified
5 any record or records of the retirement system in support of
6 benefits, the board shall terminate any present benefit approved
7 as a result of the false statement or record. In addition, the
8 board shall initiate appropriate action to recover any benefits
9 paid by virtue of the false representation.

10 (b) Any termination of benefits pursuant to this section may
11 be appealed pursuant to the state administrative procedures act
12 in chapter twenty-nine-a of this code. The board may promul-
13 gate rules in accordance with the provisions of article three of
14 said chapter regarding the procedure for termination of benefits
15 and any repayment of benefits.

CHAPTER 200

(S. B. 598 — By Senators Foster and Minard)

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2006.]

AN ACT to repeal §18-7A-24 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-7A-23 and §18-7A-25 of said code, all relating to the State Teachers Retirement System; deleting provisions which allowed for the distribution, without a contributor's consent, of accumulated contributions to the State Teachers Retirement System to a contributor with fewer than five years of service, who quits service or ceases to be a member; and correcting code references.

Be it enacted by the Legislature of West Virginia:

That §18-7A-24 of the Code of West Virginia, 1931, as amended, be repealed; and that §18-7A-23 and §18-7A-25 of said code be amended and reenacted, all to read as follows:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-23. Withdrawal and death benefits.

§18-7A-25. Eligibility for retirement allowance.

§18-7A-23. Withdrawal and death benefits.

1 Benefits upon withdrawal from service prior to retirement
2 under the provisions of this article shall be as follows:

3 (a) A contributor who withdraws from service for any cause
4 other than death or retirement shall, upon application, be paid

5 his or her accumulated contributions plus refund interest up to
6 the end of the fiscal year preceding the year in which applica-
7 tion is made, but in no event shall interest be paid beyond the
8 end of five years following the year in which the last contribu-
9 tion was made: *Provided*, That such contributor, at the time of
10 application, is then no longer under contract, verbal or other-
11 wise, to serve as a teacher; or

12 (b) If such contributor has completed twenty years of total
13 service, he or she may elect to receive at retirement age an
14 annuity which shall be computed as provided in this article:
15 *Provided*, That if such contributor has completed at least five,
16 but fewer than twenty years of total service in this state, he or
17 she may elect to receive at age sixty-two an annuity which shall
18 be computed as provided in this article. The contributor must
19 notify the retirement board in writing concerning such election.
20 If such contributor has completed fewer than five years of
21 service in this state, he or she shall be subject to the provisions
22 as outlined in subsection (a) above.

23 Benefits upon the death of a contributor prior to retirement
24 under the provisions of this article shall be paid as follows:

25 (1) If the contributor was at least fifty years old, and if his
26 or her total service as a teacher was at least twenty-five years at
27 the time of his or her death, then the surviving spouse of the
28 deceased, provided the spouse is designated as the sole refund
29 beneficiary, is eligible for an annuity computed as though the
30 deceased were actually a retired teacher at the time of death,
31 and had selected a survivorship option which pays the spouse
32 the same monthly amount which would have been received by
33 the deceased; or

34 (2) If the facts do not permit payment under the preceding
35 paragraph (1), then the following sum shall be paid to the
36 refund beneficiary of the contributor: The contributor's
37 accumulated contributions with refund interest up to the year of

38 his or her death plus the amount of his or her accumulated
39 contributions. The latter sum shall emanate from the employer's
40 accumulation fund.

§18-7A-25. Eligibility for retirement allowance.

1 (a) Any member who has attained the age of sixty years or
2 who has had thirty-five years of total service as a teacher in
3 West Virginia, regardless of age, is eligible for an annuity. No
4 new entrant nor present member is eligible for an annuity,
5 however, if either has less than five years of service to his or
6 her credit.

7 (b) Any member who has attained the age of fifty-five years
8 and who has served thirty years as a teacher in West Virginia is
9 eligible for an annuity.

10 (c) Any member who has served at least thirty but less than
11 thirty-five years as a teacher or nonteaching member in West
12 Virginia and is less than fifty-five years of age is eligible for an
13 annuity, but the annuity shall be the reduced actuarial equiva-
14 lent of the annuity the member would have received if the
15 member were age fifty-five at the time such annuity was
16 applied for.

17 (d) The request for any annuity shall be made by the
18 member in writing to the retirement board, but in case of
19 retirement for disability, the written request may be made by
20 either the member or the employer.

21 (e) A member is eligible for annuity for disability if he or
22 she satisfies the conditions in either subdivision (1) or (2) of
23 this subsection and meets the conditions of subdivision (3) of
24 this subsection as follows:

25 (1) His or her service as a teacher or nonteaching member
26 in West Virginia must total at least ten years and service as a
27 teacher or nonteaching member must have been terminated

28 because of disability, which disability must have caused
29 absence from service for at least six months before his or her
30 application for disability annuity is approved.

31 (2) His or her service as a teacher or nonteaching member
32 in West Virginia must total at least five years and service as a
33 teacher or nonteaching member must have been terminated
34 because of disability, which disability must have caused
35 absence from service for at least six months before his or her
36 application for disability annuity is approved and the disability
37 is a direct and total result of an act of student violence directed
38 toward the member.

39 (3) An examination by a physician or physicians selected
40 by the Retirement Board must show that the member is at the
41 time mentally or physically incapacitated for service as a
42 teacher, that for that service the disability is total and likely to
43 be permanent and that he or she should be retired in conse-
44 quence of the disability.

45 (f) Continuance of the disability of the retired member shall
46 be established by medical examination, as prescribed in
47 subdivision (3), subsection (e) of this section, annually for five
48 years after retirement, and thereafter at such times required by
49 the retirement board. Effective the first day of July, one
50 thousand nine hundred ninety-eight, a member who has retired
51 because of a disability may select an option of payment under
52 the provisions of section twenty-eight of this article: *Provided,*
53 That any option selected under the provisions of section twenty-
54 eight of this article shall be in all respects the actuarial
55 equivalent of the straight life annuity benefit the disability
56 retiree receives or would receive if the options under said
57 section were not available and that no beneficiary or beneficia-
58 ries of the disability annuitant may receive a greater benefit, nor
59 receive any benefit for a greater length of time, than the
60 beneficiary or beneficiaries would have received had the

61 disability retiree not made any election of the options available
62 under said section. In determining the actuarial equivalence, the
63 board shall take into account the life expectancies of the
64 member and the beneficiary: *Provided, however,* That the life
65 expectancies may at the discretion of the board be established
66 by an underwriting medical director of a competent insurance
67 company offering annuities. Payment of the disability annuity
68 provided in this article shall cease immediately if the retirement
69 board finds that the disability of the retired teacher no longer
70 exists, or if the retired teacher refuses to submit to medical
71 examination as required by this section.

CHAPTER 201

(S. B. 759 — By Senator Bowman)

[Passed March 11, 2006; in effect from passage.]

[Approved by the Governor on March 31, 2006.]

AN ACT to repeal §17-4-17c of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §17-2D-1, §17-2D-2, §17-2D-3, §17-2D-4 and §17-2D-5; and to amend and reenact §17-4-17b and §17-4-17d of said code, all relating to construction of highways and bridges; creating the Highway Design-Build Pilot Program; listing requirements for approval of design-build projects; requiring monthly progress reports on design-build projects; requiring annual reports; revising authority to propose certain rules and requirements; establishing requirements for issuing invitations for bid; requiring a report to the Legislature; creating procedure for removal, relocation or adjustment of utility lines or facilities to accommodate a highway project; requiring notice of need to

remove, relocate or adjust a utility line or facility; requiring removal, relocation or adjustment plans; creating liability for not following plan; and requiring public utility to pay for relocation, removal or adjustment.

Be it enacted by the Legislature of West Virginia:

That §17-4-17c of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new article, designated §17-2D-1, §17-2D-2, §17-2D-3, §17-2D-4 and §17-2D-5; and that §17-4-17b and §17-4-17d of said code, be amended and reenacted, all to read as follows:

ARTICLE 2D. HIGHWAY DESIGN-BUILD PILOT PROGRAM.

§17-2D-1. Short title.

§17-2D-2. Establishment of a Highway Design-Build Pilot Program.

§17-2D-3. Invitation for bids.

§17-2D-4. Acceptance of design-build bid.

§17-2D-5. Report to the Legislature.

§17-2D-1. Short title.

- 1 This article shall be known and may be cited as the West
- 2 Virginia Highway Design-Build Pilot Program.

§17-2D-2. Establishment of a Highway Design-Build Pilot Program.

- 1 (a) Notwithstanding any provision of this code to the
- 2 contrary, the Commissioner of the West Virginia Division of
- 3 Highways may establish a pilot program to expedite the
- 4 construction of no more than three special projects by combin-
- 5 ing the design and construction elements of a highway or bridge
- 6 project into a single contract.

- 7 (b) A design-build project may not be let to contract before
- 8 the first day of January, two thousand seven, and no more than
- 9 three project may be let to contract in the eighteen months
- 10 thereafter.

11 (c) A design-build project may not be let to contract until
12 the commissioner of the division of highways has established
13 policies and procedures concerning design-build projects.

14 (d) After completion of the third project, no projects shall
15 be commenced unless the West Virginia Legislature either
16 approves additional projects to further study the effectiveness
17 of the design-build process or makes the program permanent.

§17-2D-3. Invitation for bids.

1 (a) The division shall prepare an invitation for bids for
2 pre-qualified design-builders, which must provide at a mini-
3 mum:

4 (1) The procedures to be followed for submitting bids and
5 the procedures for making awards;

6 (2) The proposed general terms and conditions for the
7 design-build contract;

8 (3) The description of the drawings, specifications or other
9 information to be submitted with the bid, with guidance as to
10 the form and level of completeness of the drawings, specifica-
11 tions or submittals that will be acceptable;

12 (4) A proposed time schedule commencement and comple-
13 tion of the design-build contract;

14 (5) Budget limits for the design-build contract, if any;

15 (6) Requirements or restrictions for the subletting of
16 specific portions of the design-build contract, if any; and

17 (7) Requirements for performance bonds, payment bonds,
18 insurance, professional liability insurance and workers'
19 compensation coverage.

20 (b) The division shall make available to the qualified
21 design-builders, approved subcontractors, suppliers and
22 sureties, as applicable, additional information including, but not
23 limited to, surveys, soils reports, drawings or information
24 regarding existing structures, environmental studies, photo-
25 graphs or references to public records, or other pertinent
26 information.

27 (c) The division shall set forth its needs with sufficient
28 clarity to assure that there is a comprehensive understanding of
29 the project's scope and requirement.

§17-2D-4. Acceptance of design-build bid.

1 (a) The design-builder shall submit the bid to the division
2 as required in the invitation for bids.

3 (b) The design-builder shall furnish a bid bond not to
4 exceed five percent of the maximum cost of the design-build
5 contract.

6 (c) The selection committee may choose to reject all bids.
7 If the selection committee chooses to accept a bid, the commit-
8 tee shall award the project to the qualified design-builder based
9 on low bid or a value-based selection process combining
10 technical qualifications and competitive bidding elements. The
11 selection committee shall ascertain that the submissions comply
12 with the requirements of this article and the policies and
13 procedures of the commissioner.

§17-2D-5. Report to the Legislature.

1 On or before the first day of December, two thousand eight,
2 the commissioner shall prepare and submit to the Joint Standing
3 Committee on Government Organization a report evaluating the
4 experience of the division of highways with each project,
5 including whether the division realized any cost or time

- 6 savings, the number and cost of change orders, the quality of
- 7 work performed, the number of bids received and other issues
- 8 the commissioner considers appropriate.

ARTICLE 4. STATE ROAD SYSTEM.

§17-4-17b. Relocation of public utility lines on highway construction projects.

§17-4-17d. Relocation of public utility lines and public service districts utility lines
on state highway construction projects.

§17-4-17b. Relocation of public utility lines on highway construction projects.

1 (a) Whenever the division reasonably determines that any
2 public utility line or facility located upon, across or under any
3 portion of a state highway needs to be removed, relocated or
4 adjusted in order to accommodate a highway project, the
5 division shall give to the utility sixty (60) days' written notice
6 directing it to begin the physical removal, relocation or
7 adjustment of such utility obstruction or interference. If such
8 notice is in conjunction with a highway improvement project,
9 it will be provided at the date of advertisement or award. Prior
10 to the notice directing the physical removal, relocation or
11 adjustment of a utility line or facility, the utility shall adhere to
12 the division's utility relocation procedures for public road
13 improvements which shall include, but not be limited to, the
14 following:

15 (1) The division will submit to the utility a letter and a set
16 of plans for the proposed highway improvement project;

17 (2) The utility must, within twenty (20) days, submit to the
18 division a written confirmation acknowledging receipt of the
19 plans and a declaration of whether or not its facilities are within
20 the proposed project limits and the extent to which the facilities
21 are in conflict with the project;

22 (3) If the utility is adjusting, locating or relocating facilities
23 or lines from or into the division's right-of-way, the utility must

24 submit to the division plans showing existing and proposed
25 locations of utility facilities. These utility plans must be
26 submitted to the division within thirty (30) days of receipt of
27 the highways plans or such longer time as may be provided in
28 the letter accompanying the highway plans.

29 (4) The utility's submission shall include with the plans a
30 working time analysis demonstrating that the utility adjustment,
31 location or relocation will be accomplished in a manner and
32 time frame established by the division's written procedures and
33 instructions. Such working time plan shall specify the order and
34 calendar days for removal, relocation or adjustment of the
35 utility from or within the project site and any staging property
36 acquisition, compensable work or other special requirements
37 needed to complete the removal, relocation or adjustment. The
38 division may approve the work plan, including any requests for
39 compensation, submitted by a utility for a highway improve-
40 ment project if it is submitted within the established schedule
41 and does not adversely affect the letting date. The division will
42 review the work plan to ensure compliance with the proposed
43 improvement plans and schedule.

44 (b) If the utility does not thereafter begin removal within
45 the time specified in the work plan, the division may give the
46 utility a final notice directing that such removal shall com-
47 mence not later than ten (10) days from the receipt of such final
48 notice. If the utility does not, within the ten (10) days from
49 receipt of the final notice, begin to remove or relocate the
50 facility or, having so begun removal or relocation, thereafter
51 fails to complete the removal or relocation within the time
52 specified by the work plan, the division may remove or relocate
53 the same with its own employees or by employing or contract-
54 ing for the necessary engineering, labor, tools, equipment,
55 supervision, materials and other necessary services to accom-
56 plish the removal or relocation, and the expenses of such
57 removal may be paid and collected as provided at law. If

58 additional utility removal, relocation, or adjustment work is
59 found necessary after the letting date of the highway improve-
60 ment project, the utility shall provide a revised work plan
61 within thirty (30) calendar days after becoming aware of such
62 additional work or upon receipt of the division's written
63 notification advising of such additional work. The utility's
64 revised work plan shall be reviewed by the division to ensure
65 compliance with the highway project or improvement.

66 (c) In addition to the foregoing, the owner of the utility
67 shall be responsible for and liable to the division or its contrac-
68 tors for damages resulting from its failure to comply with the
69 submitted and approved work plan. If the utility owner fails to
70 provide a work plan or fails to complete the removal, reloca-
71 tion, or adjustment of its facilities in accordance with the work
72 plan approved by the division, the owner shall be liable to the
73 contractor for all delay costs and liquidated damages incurred
74 by the contractor which are caused by or which grow out of the
75 failure of the utility owner to provide a work plan or a revised
76 work plan or to complete its work in accordance with the
77 approved work plan. The division may withhold approval of
78 permits for failure of the utility owner to comply with the
79 requirements of this section.

**§17-4-17d. Relocation of public utility lines and public service
districts utility lines on state highway construction
projects.**

1 Whenever the Commissioner of Highways determines that
2 any public utility line owned by a county or municipal govern-
3 mental body located upon, across or under any portion of a state
4 highway needs to be relocated in order to accommodate a
5 highway project for which proportionate reimbursement of the
6 cost is not available from any federal program, the commis-
7 sioner shall notify the public utility owning or operating the
8 facility which shall relocate the same in accordance with this

9 section, and the cost of the relocation shall be paid out of the
10 state road fund.

CHAPTER 202

**(S. B. 587 — By Senators Edgell, Plymale, Jenkins,
Prezioso, Dempsey, Hunter, Minard and Kessler)**

[Passed March 11, 2006; in effect July 1, 2006.]
[Approved by the Governor on April 5, 2006.]

AN ACT to amend and reenact §5-5-1 of the Code of West Virginia, 1931, as amended, relating to expanding eligibility for certain incremental salary increases to certain higher education employees.

Be it enacted by the Legislature of West Virginia:

That §5-5-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-1. Definitions.

1 For the purposes of this article:

2 (a) “Eligible employee” means:

3 (1) Any regular full-time employee of the state or any
4 spending unit of the state who is eligible for membership in any
5 state retirement system of the State of West Virginia or other
6 retirement plan authorized by the state: *Provided*, That the

7 mandatory salary increase required by this article does not
8 apply to any employee of the state whose compensation is fixed
9 by statute or by statutory schedule other than employees
10 described in this section. Clerks, deputy clerks and magistrate
11 assistants of magistrate courts are eligible for the incremental
12 salary increases provided in this article with the increases to be
13 allowable in addition to the maximum salaries and compensa-
14 tion for the employee offices under the magistrate court system
15 statutes of article one, chapter fifty of this code. This article
16 may not be construed to mandate an increase in the salary of
17 any elected or appointed officer of the state;

18 (2) Any classified employee as defined in section two,
19 article nine, chapter eighteen-b of this code who is an employee
20 of a state institution of higher education, the Higher Education
21 Policy Commission or the Council for Community and
22 Technical College Education; or

23 (3) Any full-time faculty member as defined in section one,
24 article eight, chapter eighteen-b of this code who is an em-
25 ployee of a state institution of higher education, the Higher
26 Education Policy Commission or the West Virginia Council for
27 Community and Technical College Education.

28 (b) “Years of service” means full years of totaled service as
29 an employee of the State of West Virginia. For full-time faculty
30 as defined in this section, each nine or more months of
31 contracted employment during a fiscal year equals one full year
32 of service; and

33 (c) “Spending unit” means any state office, department,
34 agency, board, commission, institution, bureau or other
35 designated body authorized to hire employees.

CHAPTER 203

**(S. B. 558 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed March 11, 2006; in effect July 1, 2006.]
[Approved by the Governor on April 5, 2006.]

AN ACT to amend and reenact §6-7-2 and §6-7-2a of the Code of West Virginia, 1931, as amended; to amend and reenact §9A-1-5 of said code; to amend and reenact §15-2-2 of said code; to amend and reenact §16-5P-5 of said code; to amend and reenact §17-2A-3 of said code; to amend and reenact §18-3-1 of said code; to amend and reenact §19-1A-5 of said code; to amend and reenact §20-1-5 of said code; to amend and reenact §21-1-2 of said code; to amend and reenact §21A-4-5 of said code; to amend and reenact §22-1-6 of said code; to amend and reenact §29-1-1 of said code; to amend and reenact §29-12-5 of said code; to amend and reenact §33-2-2 of said code; and to amend and reenact §60-2-9 of said code, all relating to salary adjustments for certain public officials.

Be it enacted by the Legislature of West Virginia:

That §6-7-2 and §6-7-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §9A-1-5 of said code be amended and reenacted; that §15-2-2 of said code be amended and reenacted; that §16-5P-5 of said code be amended and reenacted; that §17-2A-3 of said code be amended and reenacted; that §18-3-1 of said code be amended and reenacted; that §19-1A-5 of said code be amended and reenacted; that §20-1-5 of said code be amended and reenacted; that §21-1-2 of said code be amended and reenacted; that

§21A-4-5 of said code be amended and reenacted; that §22-1-6 of said code be amended and reenacted; that §29-1-1 of said code be amended and reenacted; that §29-12-5 of said code be amended and reenacted; that §33-2-2 of said code be amended and reenacted; and that §60-2-9 of said code be amended and reenacted, all to read as follows:

Chapter

- 6. General Provisions Respecting Officers.**
- 9A. Veterans' Affairs.**
- 15. Public Safety.**
- 16. Public Health.**
- 17. Roads and Highways.**
- 18. Education.**
- 19. Agriculture.**
- 20. Natural Resources.**
- 21. Labor.**
- 21A. Unemployment Compensation.**
- 22. Environmental Resources.**
- 29. Miscellaneous Boards and Officers.**
- 33. Insurance.**
- 60. State Control of Alcoholic Liquors.**

**CHAPTER 6. GENERAL PROVISIONS
RESPECTING OFFICERS.**

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2. Salaries of certain state officers.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

§6-7-2. Salaries of certain state officers.

1 (a) Beginning in the calendar year two thousand five, and
2 for each calendar year after that, salaries for each of the state
3 constitutional officers are as follows:

4 (1) The salary of the Governor is ninety-five thousand
5 dollars per year;

6 (2) The salary of the Attorney General is eighty thousand
7 dollars per year;

8 (3) The salary of the Auditor is seventy-five thousand
9 dollars per year;

10 (4) The salary of the Secretary of State is seventy thousand
11 dollars per year;

12 (5) The salary of the Commissioner of Agriculture is
13 seventy-five thousand dollars per year; and

14 (6) The salary of the State Treasurer is seventy-five
15 thousand dollars per year.

16 (b) Notwithstanding the provisions of subsection (a) of this
17 section, beginning in the calendar year two thousand nine, and
18 for each calendar year thereafter, salaries for each of the state
19 constitutional officers shall be as follows:

20 (1) The salary of the Governor shall be one hundred fifty
21 thousand dollars per year;

22 (2) The salary of the Attorney General shall be ninety-five
23 thousand dollars per year;

24 (3) The salary of the Auditor shall be ninety-five thousand
25 dollars per year;

26 (4) The salary of the Secretary of State shall be ninety-five
27 thousand dollars per year;

28 (5) The salary of the Commissioner of Agriculture shall be
29 ninety-five thousand dollars per year; and

30 (6) The salary of the State Treasurer shall be ninety-five
31 thousand dollars per year.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

1 (a) Each of the following appointive state officers named in
2 this subsection shall be appointed by the Governor, by and with
3 the advice and consent of the Senate. Each of the appointive
4 state officers serves at the will and pleasure of the Governor for
5 the term for which the Governor was elected and until the
6 respective state officers' successors have been appointed and
7 qualified. Each of the appointive state officers are subject to the
8 existing qualifications for holding each respective office and
9 each has and is hereby granted all of the powers and authority
10 and shall perform all of the functions and services heretofore
11 vested in and performed by virtue of existing law respecting
12 each office.

13 Prior to the first day of July, two thousand six, each such
14 named appointive state officer shall continue to receive the
15 annual salaries they were receiving as of the effective date of
16 the enactment of this section in two thousand six, and thereaf-
17 ter, notwithstanding any other provision of this code to the
18 contrary, the annual salary of each named appointive state
19 officer shall be as follows:

20 Commissioner, Division of Highways, ninety-two thousand
21 five hundred dollars; Commissioner, Division of Corrections,
22 eighty thousand dollars; Director, Division of Natural Re-
23 sources, seventy-five thousand dollars; Superintendent, State
24 Police, eighty-five thousand dollars; Commissioner, Division
25 of Banking, seventy-five thousand dollars; Commissioner,
26 Division of Culture and History, sixty-five thousand dollars;
27 Commissioner, Alcohol Beverage Control Commission,
28 seventy-five thousand dollars; Commissioner, Division of
29 Motor Vehicles, seventy-five thousand dollars; Director,
30 Division of Personnel, seventy thousand dollars; Chairman,

31 Health Care Authority, eighty thousand dollars; members,
32 Health Care Authority, seventy thousand dollars; Director,
33 Human Rights Commission, fifty-five thousand dollars;
34 Commissioner, Division of Labor, seventy thousand dollars;
35 Director, Division of Veterans' Affairs, sixty-five thousand
36 dollars; Chairperson, Board of Parole, fifty-five thousand
37 dollars; members, Board of Parole, fifty thousand dollars;
38 members, Employment Security Review Board, seventeen
39 thousand dollars; and Commissioner, Bureau of Employment
40 Programs, seventy-five thousand dollars. Secretaries of the
41 departments shall be paid an annual salary as follows: Health
42 and Human Resources, ninety-five thousand dollars; Transpor-
43 tation, ninety-five thousand dollars; Revenue, ninety-five
44 thousanddollars; Military Affairs and Public Safety, ninety-five
45 thousand dollars; Administration, ninety-five thousand dollars;
46 Education and the Arts, ninety-five thousand dollars; Com-
47 merce, ninety-five thousand dollars; and Environmental
48 Protection, ninety-five thousand dollars: *Provided*, That any
49 increase in the salary of any current appointive state officer
50 named in this subsection pursuant to the reenactment of this
51 subsection during the regular session of the Legislature in two
52 thousand six that exceeds five thousand dollars shall be paid to
53 such officer or his or her successor beginning on the first day of
54 July, two thousand six, in annual increments of five thousand
55 dollars per fiscal year, up to the maximum salary provided in
56 this subsection.

57 (b) Each of the state officers named in this subsection shall
58 continue to be appointed in the manner prescribed in this code
59 and, prior to the first day of July, two thousand six, each of the
60 state officers named in this subsection shall continue to receive
61 the annual salaries he or she was receiving as of the effective
62 date of the enactment of this section in two thousand six, and
63 shall thereafter, notwithstanding any other provision of this
64 code to the contrary, be paid an annual salary as follows:

65 Director, Board of Risk and Insurance Management, eighty
66 thousand dollars; Director, Division of Rehabilitation Services,
67 seventy thousand dollars; Executive Director, Educational
68 Broadcasting Authority, seventy-five thousand dollars;
69 Secretary, Library Commission, seventy-two thousand dollars;
70 Director, Geological and Economic Survey, seventy-five
71 thousand dollars; Executive Director, Prosecuting Attorneys
72 Institute, seventy thousand dollars; Executive Director, Public
73 Defender Services, seventy thousand dollars; Commissioner,
74 Bureau of Senior Services, seventy-five thousand dollars;
75 Director, State Rail Authority, sixty-five thousand dollars;
76 Executive Director, Women's Commission, forty-five thousand
77 dollars; Director, Hospital Finance Authority, thirty-five
78 thousand dollars; member, Racing Commission, twelve
79 thousand dollars; Chairman, Public Service Commission,
80 eighty-five thousand dollars; members, Public Service Commis-
81 sion, eighty-five thousand dollars; Director, Division of
82 Forestry, seventy-five thousand dollars; Director, Division of
83 Juvenile Services, eighty thousand dollars; and Executive
84 Director, Regional Jail and Correctional Facility Authority,
85 eighty thousand dollars: *Provided*, That any increase in the
86 salary of any current appointive state officer named in this
87 subsection pursuant to the reenactment of this subsection during
88 the regular session of the Legislature in two thousand six that
89 exceeds five thousand dollars shall be paid to such officer or his
90 or her successor beginning on the first day of July, two
91 thousand six, in annual increments of five thousand dollars per
92 fiscal year, up to the maximum salary provided in this subsec-
93 tion.

94 (c) Each of the following appointive state officers named in
95 this subsection shall be appointed by the Governor, by and with
96 the advice and consent of the Senate. Each of the appointive
97 state officers serves at the will and pleasure of the Governor for
98 the term for which the Governor was elected and until the

99 respective state officers' successors have been appointed and
100 qualified. Each of the appointive state officers are subject to the
101 existing qualifications for holding each respective office and
102 each has and is hereby granted all of the powers and authority
103 and shall perform all of the functions and services heretofore
104 vested in and performed by virtue of existing law respecting
105 each office.

106 Prior to the first day of July, two thousand six, each such
107 named appointive state officer shall continue to receive the
108 annual salaries they were receiving as of the effective date of
109 the enactment of this section in two thousand six, and thereaf-
110 ter, notwithstanding any other provision of this code to the
111 contrary, the annual salary of each named appointive state
112 officer shall be as follows:

113 Commissioner, State Tax Division, ninety-two thousand
114 five hundred dollars; Commissioner, Insurance Commission,
115 ninety-two thousand five hundred dollars; Director, Lottery
116 Commission, ninety-two thousand five hundred dollars;
117 Director, Division of Homeland Security and Emergency
118 Management, sixty-five thousand dollars; and Adjutant
119 General, ninety-two thousand five hundred dollars;

120 (d) No increase in the salary of any appointive state officer
121 pursuant to this section shall be paid until and unless the
122 appointive state officer has first filed with the State Auditor and
123 the Legislative Auditor a sworn statement, on a form to be
124 prescribed by the Attorney General, certifying that his or her
125 spending unit is in compliance with any general law providing
126 for a salary increase for his or her employees. The Attorney
127 General shall prepare and distribute the form to the affected
128 spending units.

CHAPTER 9A. VETERANS' AFFAIRS.

ARTICLE 1. DIVISION OF VETERANS' AFFAIRS.

§9A-1-5. Compensation of director, veterans' affairs officers, assistants and employees; payment to Veterans' Council members; traveling expenses; meetings of Veterans' Council.

1 The director shall receive an annual salary as provided in
2 section two-a, article seven, chapter six of this code and
3 necessary traveling expenses incident to the performance of his
4 or her duties. The salaries of the veterans' affairs officers,
5 assistants and employees shall be fixed by the Veterans'
6 Council. The members of the Veterans' Council shall receive
7 no salary, but each member shall receive the same compensa-
8 tion and expense reimbursement as is paid to members of the
9 Legislature for their interim duties as recommended by the
10 CitizensLegislativeCompensation Commission and authorized
11 by law for each day or portion thereof engaged in the discharge
12 of official duties. The requisition for such expenses and
13 traveling expenses shall be accompanied by a sworn and
14 itemized statement, which shall be filed with the Auditor and
15 permanently preserved as a public record. The Veterans'
16 Council shall hold its initial meeting on the call of the Gover-
17 nor, and thereafter shall meet on the call of its chairman, except
18 as otherwise provided. With the exception of the first three
19 meetings of the Veterans' Council, none of which shall be of a
20 duration longer than two weeks each, for organizational
21 purposes, the Veterans' Council shall meet not more than once
22 every two months at such times as may be determined by and
23 upon the call of the chairman for a period of not more than two
24 days, unless there should be an emergency requiring a special
25 meeting or for a longer period and so declared and called by the
26 Governor or by the chairman with the approval of the Governor.
27 A majority of the members of the Veterans' Council shall
28 constitute a quorum for the conduct of official business.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-2. Superintendent; departmental headquarters; continuation of the State Police.

1 The Department of Public Safety, heretofore established,
2 shall be continued and hereafter shall be known as the West
3 Virginia State Police. Wherever the words “Department of
4 Public Safety” or “Division of Public Safety” appear in this
5 code, they shall mean the West Virginia State Police. The
6 Governor shall nominate and, by and with the advice and
7 consent of the Senate, appoint a superintendent to be the
8 executive and administrative head of the department. The
9 superintendent shall be paid an annual salary as provided in
10 section two-a, article seven, chapter six of this code. The
11 superintendent shall hold the rank of colonel and is entitled to
12 all rights, benefits and privileges of regularly enlisted members.
13 On the date of his or her appointment, the superintendent shall
14 be at least thirty years of age. Before entering upon the
15 discharge of the duties of his or her office, he or she shall
16 execute a bond in the penalty of ten thousand dollars, payable
17 to the State of West Virginia and conditioned upon the faithful
18 performance of his or her duties. Such bond both as to form and
19 security shall be approved as to form by the Attorney General
20 and to sufficiency by the Governor.

21 Before entering upon the duties of his or her office, the
22 superintendent shall subscribe to the oath hereinafter provided.
23 The headquarters of the department shall be located in Kanawha
24 County.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5P. SENIOR SERVICES.

§16-5P-5. Compensation; traveling expenses.

1 The Commissioner of the Bureau of Senior Services shall
2 receive an annual salary as provided in section two-a, article

3 seven, chapter six of this code and the necessary traveling
4 expenses incident to the performance of his or her duties.
5 Requisition for traveling expenses shall be accompanied by a
6 sworn itemized statement which shall be filed with the Auditor
7 and preserved as a public record.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-3. Salary and expenses.

1 The commissioner shall receive an annual salary as
2 provided in section two-a, article seven, chapter six of this
3 code. He or she shall be allowed and paid necessary traveling
4 expenses incident to the performance of his or her duties.
5 Statements covering such expenses shall be itemized and
6 verified by the commissioner.

CHAPTER 18. EDUCATION.

ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.

§18-3-1. Appointment; qualifications; compensation; traveling expenses; office and residence; evaluation.

1 There shall be appointed by the state board a State Superin-
2 tendent of Schools who shall serve at the will and pleasure of
3 the state board. He or she shall be a person of good moral
4 character, of recognized ability as a school administrator,
5 holding at least a master's degree in educational administration,
6 and shall have had not less than five years of experience in
7 public school work. He or she shall receive an annual salary set
8 by the state board, to be paid monthly: *Provided*, That the
9 annual salary may not exceed one hundred forty-six thousand
10 one hundred dollars: *Provided, however*, That after the thirtieth
11 day of June, two thousand six, the annual salary may not exceed
12 one hundred seventy-five thousand dollars. The state superin-

13 tendent also shall receive necessary traveling expenses incident
14 to the performance of his or her duties to be paid out of the
15 General School Fund upon warrants of the State Auditor. The
16 state superintendent shall have his or her office at the State
17 Capitol. The state board shall report to the Legislative Over-
18 sight Commission on Education Accountability upon request
19 concerning its progress during any hiring process for a state
20 superintendent.

21 The state board annually shall evaluate the performance of
22 the state superintendent and publicly announce the results of the
23 evaluation.

CHAPTER 19. AGRICULTURE.

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-5. Director of Division of Forestry; appointment; qualifications.

1 The Director of the Division of Forestry shall be appointed
2 by the Governor, by and with the advice and consent of the
3 Senate, and shall serve at the will and pleasure of the Governor.
4 The director shall be a graduate of a school of forestry accred-
5 ited by the Society of American Foresters and have a minimum
6 of ten years' experience in forest management. The director
7 shall be paid an annual salary as provided in section two-a,
8 article seven, chapter six of this code: *Provided*, That the
9 director's salary shall be paid solely from budget appropriations
10 to the division.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-5. Salary, expenses, oath and bond of director.

1 The director shall receive an annual salary as provided in
2 section two-a, article seven, chapter six of this code, payable in

3 equal monthly installments and shall be allowed and paid
4 necessary expenses incident to the performance of his or her
5 official duties. Prior to the assumption of the duties of his or her
6 office, he or she shall take and subscribe to the oath required of
7 public officers by the Constitution of West Virginia and shall
8 execute a bond, with surety approved by the Governor, in the
9 penal sum of ten thousand dollars, which executed oath and
10 bond shall be filed in the office of the Secretary of State.
11 Premiums on the bond shall be paid from division funds.

CHAPTER 21. LABOR.

ARTICLE 1. DIVISION OF LABOR.

§21-1-2. Appointment of Commissioner of Labor; qualifications; term of office; salary.

1 The state Commissioner of Labor shall be appointed by the
2 Governor, by and with the advice and consent of the Senate. He
3 or she shall be a competent person, who is identified with the
4 labor interests of the state. The Commissioner of Labor in
5 office on the effective date of this section shall, unless sooner
6 removed, continue to serve until his or her term expires and his
7 or her successor has been appointed and has qualified. On or
8 before the first day of April, one thousand nine hundred forty-
9 one, and on or before the first day of April of each fourth year
10 thereafter, the Governor shall appoint a Commissioner of Labor
11 to serve for a term of four years, commencing on said first day
12 of April. The commissioner shall receive an annual salary as
13 provided in section two-a, article seven, chapter six of this
14 code.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 4. BOARD OF REVIEW.

§21A-4-5. Compensation and travel expenses.

1 Each member of the board shall receive an annual salary as
2 provided in section two-a, article seven, chapter six of this code
3 and the necessary traveling expenses incurred in the perfor-
4 mance of his or her duties.

5 Requisition for traveling expenses shall be accompanied by
6 a sworn and itemized statement which shall be filed with the
7 Auditor and preserved as a public record.

8 The salaries and expenses of the members shall be paid
9 from the administration fund.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

§22-1-6. Secretary of the Department of Environmental Protec- tion.

1 (a) The secretary is the chief executive officer of the
2 division. Subject to section seven of this article and other
3 provisions of law, the secretary shall organize the department
4 into such offices, sections, agencies and other units of activity
5 as may be found by the secretary to be desirable for the orderly,
6 efficient and economical administration of the department and
7 for the accomplishment of its objects and purposes. The
8 secretary may appoint a deputy secretary, chief of staff,
9 assistants, hearing officers, clerks, stenographers and other
10 officers, technical personnel and employees needed for the
11 operation of the department and may prescribe their powers and
12 duties and fix their compensation within amounts appropriated.

13 (b) The secretary has the power to and may designate
14 supervisory officers or other officers or employees of the
15 department to substitute for him or her on any board or
16 commission established under this code or to sit in his or her
17 place in any hearings, appeals, meetings or other activities with

18 such substitute having the same powers, duties, authority and
19 responsibility as the secretary. The secretary has the power to
20 delegate, as he or she considers appropriate, to supervisory
21 officers or other officers or employees of the department his or
22 her powers, duties, authority and responsibility relating to
23 issuing permits, hiring and training inspectors and other
24 employees of the department, conducting hearings and appeals
25 and such other duties and functions set forth in this chapter or
26 elsewhere in this code.

27 (c) The secretary has responsibility for the conduct of the
28 intergovernmental relations of the department, including
29 assuring:

30 (1) That the department carries out its functions in a manner
31 which supplements and complements the environmental
32 policies, programs and procedures of the federal government,
33 other state governments and other instrumentalities of this state;
34 and

35 (2) That appropriate officers and employees of the division
36 consult with individuals responsible for making policy relating
37 to environmental issues in the federal government, other state
38 governments and other instrumentalities of this state concerning
39 differences over environmental policies, programs and
40 procedures and concerning the impact of statutory law and rules
41 upon the environment of this state.

42 (d) In addition to other powers, duties and responsibilities
43 granted and assigned to the secretary by this chapter, the
44 secretary is hereby authorized and empowered to:

45 (1) Sign and execute in the name of the state by the
46 "Department of Environmental Protection" any contract or
47 agreement with the federal government or its departments or
48 agencies, subdivisions of the state, corporations, associations,
49 partnerships or individuals: *Provided*, That the powers granted

50 to the secretary to enter into agreements or contracts and to
51 make expenditures and obligations of public funds under this
52 subdivision may not exceed or be interpreted as authority to
53 exceed the powers granted by the Legislature to the various
54 commissioners, directors or board members of the various
55 departments, agencies or boards that comprise and are incorpo-
56 rated into each secretary's department pursuant to the provi-
57 sions of chapter five-f of this code;

58 (2) Conduct research in improved environmental protection
59 methods and disseminate information to the citizens of this
60 state;

61 (3) Enter private lands to make surveys and inspections for
62 environmental protection purposes; to investigate for violations
63 of statutes or rules which the division is charged with enforcing;
64 to serve and execute warrants and processes; to make arrests;
65 issue orders, which for the purposes of this chapter include
66 consent agreements; and to otherwise enforce the statutes or
67 rules which the division is charged with enforcing;

68 (4) Acquire for the state in the name of the "Department of
69 Environmental Protection" by purchase, condemnation, lease or
70 agreement, or accept or reject for the state, in the name of the
71 Department of Environmental Protection, gifts, donations,
72 contributions, bequests or devises of money, security or
73 property, both real and personal, and any interest in property;

74 (5) Provide for workshops, training programs and other
75 educational programs, apart from or in cooperation with other
76 governmental agencies, necessary to ensure adequate standards
77 of public service in the department. The secretary may provide
78 for technical training and specialized instruction of any
79 employee. Approved educational programs, training and
80 instruction time may be compensated for as a part of regular
81 employment. The secretary is authorized to pay out of federal
82 or state funds, or both, as such funds are available, fees and

83 expenses incidental to such educational programs, training, and
84 instruction. Eligibility for participation by employees will be in
85 accordance with guidelines established by the secretary;

86 (6) Issue certifications required under 33 U. S. C. §1341 of
87 the federal Clean Water Act and enter into agreements in
88 accordance with the provisions of section seven-a, article
89 eleven of this chapter. Prior to issuing any certification the
90 secretary shall solicit from the Division of Natural Resources
91 reports and comments concerning the possible certification. The
92 Division of Natural Resources shall direct the reports and
93 comments to the secretary for consideration; and

94 (7) Notwithstanding any provisions of this code to the
95 contrary, employ in-house counsel to perform all legal services
96 for the secretary and the department, including, but not limited
97 to, representing the secretary, any chief, the department or any
98 office thereof in any administrative proceeding or in any
99 proceeding in any state or federal court. Additionally, the
100 secretary may call upon the Attorney General for legal
101 assistance and representation as provided by law.

102 (e) The secretary shall be appointed by the Governor, by
103 and with the advice and consent of the Senate, and serves at the
104 will and pleasure of the Governor.

105 (f) At the time of his or her initial appointment, the
106 secretary must be at least thirty years old and must be selected
107 with special reference and consideration given to his or her
108 administrative experience and ability, to his or her demon-
109 strated interest in the effective and responsible regulation of the
110 energy industry and the conservation and wise use of natural
111 resources. The secretary must have at least a bachelor's degree
112 in a related field and at least three years of experience in a
113 position of responsible charge in at least one discipline relating
114 to the duties and responsibilities for which the secretary will be
115 responsible upon assumption of the office. The secretary may

116 not be a candidate for or hold any other public office, may not
117 be a member of any political party committee and shall
118 immediately forfeit and vacate his or her office as secretary in
119 the event he or she becomes a candidate for or accepts appoint-
120 ment to any other public office or political party committee.

121 (g) The secretary shall receive an annual salary as provided
122 in section two-a, article seven, chapter six of this code and will
123 be allowed and paid necessary expenses incident to the
124 performance of his or her official duties. Prior to the assump-
125 tion of the duties of his or her office, the secretary shall take
126 and subscribe to the oath required of public officers prescribed
127 by section five, article IV of the Constitution of West Virginia
128 and shall execute a bond, with surety approved by the Gover-
129 nor, in the penal sum of ten thousand dollars, which executed
130 oath and bond will be filed in the Office of the Secretary of
131 State. Premiums on the bond will be paid from the department
132 funds.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

Article

- 1. Division of Culture and History.**
- 12. State Insurance.**

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-1. Division of Culture and History continued; sections and commissions; purposes; definitions; effective date.

1 (a) The Division of Culture and History and the office of
2 Commissioner of Culture and History heretofore created are
3 hereby continued. The Governor shall nominate and, by and
4 with the advice and consent of the Senate, appoint the commis-
5 sioner, who shall be the chief executive officer of the division
6 and shall be paid an annual salary as provided in section two-a,
7 article seven, chapter six of this code. The commissioner so

8 appointed shall have: (1) A bachelor's degree in one of the fine
9 arts, social sciences, library science or a related field; or (2)
10 four years' experience in the administration of museum
11 management, public administration, arts, history or a related
12 field.

13 (b) The division shall consist of five sections as follows:

14 (1) The arts section;

15 (2) The archives and history section;

16 (3) The museums section;

17 (4) The historic preservation section; and

18 (5) The administrative section.

19 (c) The division shall also consist of two citizens commis-
20 sions as follows:

21 (1) A Commission on the Arts; and

22 (2) A Commission on Archives and History.

23 (d) The commissioner shall exercise control and supervi-
24 sion of the division and shall be responsible for the projects,
25 programs and actions of each of its sections. The purpose and
26 duty of the division is to advance, foster and promote the
27 creative and performing arts and crafts, including both indoor
28 and outdoor exhibits and performances; to advance, foster,
29 promote, identify, register, acquire, mark and care for historical,
30 prehistorical, archaeological and significant architectural sites,
31 structures and objects in the state; to encourage the promotion,
32 preservation and development of significant sites, structures
33 and objects through the use of economic development activities
34 such as loans, subsidies, grants and other incentives; to
35 coordinate all cultural, historical and artistic activities in state

36 government and at state-owned facilities; to acquire, preserve
37 and classify books, documents, records and memorabilia of
38 historical interest or importance; and, in general, to do all things
39 necessary or convenient to preserve and advance the culture of
40 the state.

41 (e) The division shall have jurisdiction and control and may
42 set and collect fees for the use of all space in the building
43 presently known as the West Virginia Science and Culture
44 Center, including the deck and courtyards forming an integral
45 part thereof; the building presently known as West Virginia
46 Independence Hall in Wheeling, including all the grounds and
47 appurtenances thereof; “Camp Washington Carver” in Fayette
48 County, as provided in section fourteen of this article; and any
49 other sites as may be transferred to or acquired by the division.
50 Notwithstanding any provision of this code to the contrary,
51 including the provisions of article one, chapter five-b of this
52 code, beginning on and after the first day of July, one thousand
53 nine hundred ninety-three, the division shall have responsibility
54 for, and control of, all visitor touring and visitor tour guide
55 activities within the State Capitol Building at Charleston.

56 (f) For the purposes of this article, “commissioner” means
57 the Commissioner of Culture and History, and “division” means
58 the Division of Culture and History.

ARTICLE 12. STATE INSURANCE.

§29-12-5. Powers and duties of board.

1 (a)(1) The board has, without limitation and in its discretion
2 as it seems necessary for the benefit of the insurance program,
3 general supervision and control over the insurance of state
4 property, activities and responsibilities, including:

5 (A) The acquisition and cancellation of state insurance;

6 (B) Determination of the kind or kinds of coverage;

7 (C) Determination of the amount or limits for each kind of
8 coverage;

9 (D) Determination of the conditions, limitations, exclu-
10 sions, endorsements, amendments and deductible forms of
11 insurance coverage;

12 (E) Inspections or examinations relating to insurance
13 coverage of state property, activities and responsibilities;

14 (F) Reinsurance; and

15 (G) Any and all matters, factors and considerations entering
16 into negotiations for advantageous rates on and coverage of
17 such state property, activities and responsibilities.

18 (2) The board shall endeavor to secure reasonably broad
19 protection against loss, damage or liability to state property and
20 on account of state activities and responsibilities by proper,
21 adequate, available and affordable insurance coverage and
22 through the introduction and employment of sound and
23 accepted principles of insurance, methods of protection and
24 principles of loss control and risk.

25 (3) The board is not required to provide insurance for every
26 state property, activity or responsibility.

27 (4) Any policy of insurance purchased or contracted for by
28 the board shall provide that the insurer shall be barred and
29 estopped from relying upon the constitutional immunity of the
30 State of West Virginia against claims or suits: *Provided*, That
31 nothing herein shall bar a state agency or state instrumentality
32 from relying on the constitutional immunity granted the State
33 of West Virginia against claims or suits arising from or out of
34 any state property, activity or responsibility not covered by a
35 policy or policies of insurance: *Provided, however*, That
36 nothing herein shall bar the insurer of political subdivisions

37 from relying upon any statutory immunity granted such
38 political subdivisions against claims or suits.

39 (5) The board shall make a complete survey of all presently
40 owned and subsequently acquired state property subject to
41 insurance coverage by any form of insurance, which survey
42 shall include and reflect inspections, appraisals, exposures, fire
43 hazards, construction and any other objectives or factors
44 affecting or which might affect the insurance protection and
45 coverage required.

46 (6) The board shall keep itself currently informed on new
47 and continuing state activities and responsibilities within the
48 insurance coverage herein contemplated. The board shall work
49 closely in cooperation with the State Fire Marshal's office in
50 applying the rules of that office insofar as the appropriations
51 and other factors peculiar to state property will permit.

52 (7) The board may negotiate and effect settlement of any
53 and all insurance claims arising on or incident to losses of and
54 damages to covered state properties, activities and responsibili-
55 ties hereunder and shall have authority to execute and deliver
56 proper releases of all such claims when settled. The board may
57 adopt rules and procedures for handling, negotiating and
58 settlement of all such claims. Any discussion or consideration
59 of the financial or personal information of an insured may be
60 held by the board in executive session closed to the public,
61 notwithstanding the provisions of article nine-a, chapter six of
62 this code.

63 (8) The board may employ an executive director and such
64 other employees, including legal counsel, as may be necessary
65 to carry out its duties. The executive director shall receive an
66 annual salary as provided in section two-a, article seven,
67 chapter six of this code. The legal counsel may represent the
68 board before any judicial or administrative tribunal and perform
69 such other duties as may be requested by the board.

70 (9) The board may enter into any contracts necessary to the
71 execution of the powers granted to it by this article or to further
72 the intent of this article.

73 (10) The board may make rules governing its functions and
74 operations and the procurement of state insurance. Except
75 where otherwise provided by statute, rules of the board are
76 subject to the provisions of article three, chapter twenty-nine-a
77 of this code.

78 (11) The funds received by the board, including, but not
79 limited to, state agency premiums, mine subsidence premiums
80 and political subdivision premiums, shall be deposited with the
81 West Virginia Investment Management Board with the interest
82 income and returns on investment a proper credit to such
83 property insurance trust fund or liability insurance trust fund as
84 applicable.

85 (b) (1) *Definitions.* — The following words and phrases
86 when used in this subsection, for the purposes of this subsec-
87 tion, have the meanings respectively ascribed to them in this
88 subsection;

89 (A) “Political subdivision” has the same meaning as in
90 section three, article twelve-a of this chapter;

91 (B) “Charitable” or “public service organization” means
92 any hospital in this state which has been certified as a critical
93 access hospital by the federal Centers for Medicare and
94 Medicaid upon the designation of the state Office of Rural
95 Health Policy, the Office of Community and Rural Health
96 Services, the Bureau for Public Health or the Department of
97 Health and Human Resources and any bona fide, not-for-profit,
98 tax-exempt, benevolent, educational, philanthropic, humane,
99 patriotic, civic, religious, eleemosynary, incorporated or
100 unincorporated association or organization or a rescue unit or
101 other similar volunteer community service organization or

102 association, but does not include any nonprofit association or
103 organization, whether incorporated or not, which is organized
104 primarily for the purposes of influencing legislation or
105 supporting or promoting the campaign of any candidate for
106 public office; and

107 (C) “Emergency medical service agency” has the same
108 meaning as in section three, article four-c, chapter sixteen of
109 this code.

110 (2) If requested by a political subdivision, a charitable or
111 public service organization or an emergency medical services
112 agency, the board may, but is not required to, provide property
113 and liability insurance to insure the property, activities and
114 responsibilities of the political subdivision, charitable or public
115 service organization or emergency medical services agency.
116 The board may enter into any contract necessary to the
117 execution of the powers granted by this article or to further the
118 intent of this article.

119 (A) Property insurance provided by the board pursuant to
120 this subsection may also include insurance on property leased
121 to or loaned to the political subdivision, a charitable or public
122 service organization or an emergency medical services agency
123 which is required to be insured under a written agreement.

124 (B) The cost of insurance, as determined by the board, shall
125 be paid by the political subdivision, the charitable or public
126 service organization or the emergency medical services agency
127 and may include administrative expenses. For purposes of this
128 section, if an emergency medical services agency is a for-profit
129 entity, its claims history may not adversely affect other
130 participants’ rates in the same class.

131 (c)(1) The board has general supervision and control over
132 the optional medical liability insurance programs providing
133 coverage to health care providers as authorized by the provi-

134 sions of article twelve-b of this chapter. The board is hereby
135 granted and may exercise all powers necessary or appropriate
136 to carry out and effectuate the purposes of this article.

137 (2) The board shall:

138 (A) Administer the preferred medical liability program and
139 the high risk medical liability program and exercise and
140 perform other powers, duties and functions specified in this
141 article;

142 (B) Obtain and implement, at least annually, from an
143 independent outside source, such as a medical liability actuary
144 or a rating organization experienced with the medical liability
145 line of insurance, written rating plans for the preferred medical
146 liability program and high-risk medical liability program on
147 which premiums shall be based;

148 (C) Prepare and annually review written underwriting
149 criteria for the preferred medical liability program and the high-
150 risk medical liability program. The board may utilize review
151 panels, including, but not limited to, the same specialty review
152 panels to assist in establishing criteria;

153 (D) Prepare and publish, before each regular session of the
154 Legislature, separate summaries for the preferred medical
155 liability program and high-risk medical liability program
156 activity during the preceding fiscal year, each summary to be
157 included in the Board of Risk and Insurance Management
158 audited financial statements as “other financial information”
159 and which shall include a balance sheet, income statement and
160 cash flow statement, an actuarial opinion addressing adequacy
161 of reserves, the highest and lowest premiums assessed, the
162 number of claims filed with the program by provider type, the
163 number of judgments and amounts paid from the program, the
164 number of settlements and amounts paid from the program and
165 the number of dismissals without payment;

166 (E) Determine and annually review the claims history debit
167 or surcharge for the high-risk medical liability program;

168 (F) Determine and annually review the criteria for transfer
169 from the preferred medical liability program to the high-risk
170 medical liability program;

171 (G) Determine and annually review the role of independent
172 agents, the amount of commission, if any, to be paid therefor
173 and agent appointment criteria;

174 (H) Study and annually evaluate the operation of the
175 preferred medical liability program and the high-risk medical
176 liability program and make recommendations to the Legisla-
177 ture, as may be appropriate, to ensure their viability, including,
178 but not limited to, recommendations for civil justice reform
179 with an associated cost-benefit analysis, recommendations on
180 the feasibility and desirability of a plan which would require all
181 health care providers in the state to participate with an associ-
182 ated cost-benefit analysis, recommendations on additional
183 funding of other state-run insurance plans with an associated
184 cost-benefit analysis and recommendations on the desirability
185 of ceasing to offer a state plan with an associated analysis of a
186 potential transfer to the private sector with a cost-benefit
187 analysis, including impact on premiums;

188 (I) Establish a five-year financial plan to ensure an adequate
189 premium base to cover the long-tail nature of the claims-made
190 coverage provided by the preferred medical liability program
191 and the high-risk medical liability program. The plan shall be
192 designed to meet the program's estimated total financial
193 requirements, taking into account all revenues projected to be
194 made available to the program and apportioning necessary costs
195 equitably among participating classes of health care providers.
196 For these purposes, the board shall:

197 (i) Retain the services of an impartial, professional actuary,
198 with demonstrated experience in analysis of large group
199 malpractice plans, to estimate the total financial requirements
200 of the program for each fiscal year and to review and render
201 written professional opinions as to financial plans proposed by
202 the board. The actuary shall also assist in the development of
203 alternative financing options and perform any other services
204 requested by the board or the executive director. All reasonable
205 fees and expenses for actuarial services shall be paid by the
206 board. Any financial plan or modifications to a financial plan
207 approved or proposed by the board pursuant to this section shall
208 be submitted to and reviewed by the actuary and may not be
209 finally approved and submitted to the governor and to the
210 Legislature without the actuary's written professional opinion
211 that the plan may be reasonably expected to generate sufficient
212 revenues to meet all estimated program and administrative
213 costs, including incurred but not reported claims, for the fiscal
214 year for which the plan is proposed. The actuary's opinion for
215 any fiscal year shall include a requirement for establishment of
216 a reserve fund;

217 (ii) Submit its final, approved five-year financial plan, after
218 obtaining the necessary actuary's opinion, to the governor and
219 to the Legislature no later than the first day of January preced-
220 ing the fiscal year. The financial plan for a fiscal year becomes
221 effective and shall be implemented by the executive director on
222 the first day of July of the fiscal year. In addition to each final,
223 approved financial plan required under this section, the board
224 shall also simultaneously submit an audited financial statement
225 based on generally accepted accounting practices (GAAP) and
226 which shall include allowances for incurred but not reported
227 claims: *Provided*, That the financial statement and the ac-
228 cural-based financial plan restatement shall not affect the
229 approved financial plan. The provisions of chapter twenty-nine-
230 a of this code shall not apply to the preparation, approval and
231 implementation of the financial plans required by this section;

232 (iii) Submit to the governor and the Legislature a prospec-
233 tive five-year financial plan beginning on the first day of
234 January, two thousand three, and every year thereafter, for the
235 programs established by the provisions of article twelve-b of
236 this chapter. Factors that the board shall consider include, but
237 shall not be limited to, the trends for the program and the
238 industry; claims history, number and category of participants in
239 each program; settlements and claims payments; and judicial
240 results;

241 (iv) Obtain annually certification from participants that they
242 have made a diligent search for comparable coverage in the
243 voluntary insurance market and have been unable to obtain the
244 same;

245 (J) Meet on at least a quarterly basis to review implementa-
246 tion of its current financial plan in light of the actual experience
247 of the medical liability programs established in article twelve-b
248 of this chapter. The board shall review actual costs incurred,
249 any revised cost estimates provided by the actuary, expendi-
250 tures and any other factors affecting the fiscal stability of the
251 plan and may make any additional modifications to the plan
252 necessary to ensure that the total financial requirements of these
253 programs for the current fiscal year are met;

254 (K) To analyze the benefit of and necessity for excess
255 verdict liability coverage;

256 (L) Consider purchasing reinsurance, in the amounts as it
257 may, from time to time, determine is appropriate, and the cost
258 thereof shall be considered to be an operating expense of the
259 board;

260 (M) Make available to participants optional extended
261 reporting coverage or tail coverage: *Provided*, That, at least five
262 working days prior to offering such coverage to a participant or
263 participants, the board shall notify the President of the Senate

264 and the Speaker of the House of Delegates in writing of its
265 intention to do so and such notice shall include the terms and
266 conditions of the coverage proposed;

267 (N) Review and approve, reject or modify rules that are
268 proposed by the executive director to implement, clarify or
269 explain administration of the preferred medical liability
270 program and the high-risk medical liability program. Notwith-
271 standing any provisions in this code to the contrary, rules
272 promulgated pursuant to this paragraph are not subject to the
273 provisions of sections nine through sixteen, inclusive, article
274 three, chapter twenty-nine-a of this code. The board shall
275 comply with the remaining provisions of article three and shall
276 hold hearings or receive public comments before promulgating
277 any proposed rule filed with the Secretary of State: *Provided,*
278 That the initial rules proposed by the executive director and
279 promulgated by the board shall become effective upon approval
280 by the board notwithstanding any provision of this code;

281 (O) Enter into settlements and structured settlement
282 agreements whenever appropriate. The policy may not require
283 as a condition precedent to settlement or compromise of any
284 claim the consent or acquiescence of the policyholder. The
285 board may own or assign any annuity purchased by the board to
286 a company licensed to do business in the state;

287 (P) Refuse to provide insurance coverage for individual
288 physicians whose prior loss experience or current professional
289 training and capability are such that the physician represents an
290 unacceptable risk of loss if coverage is provided;

291 (Q) Terminate coverage for nonpayment of premiums upon
292 written notice of the termination forwarded to the health care
293 provider not less than thirty days prior to termination of
294 coverage;

295 (R) Assign coverage or transfer insurance obligations
296 and/or risks of existing or in-force contracts of insurance to a
297 third-party medical professional liability insurance carrier with
298 the comparable coverage conditions as determined by the
299 board. Any transfer of obligation or risk shall effect a novation
300 of the transferred contract of insurance and if the terms of the
301 assumption reinsurance agreement extinguish all liability of the
302 board and the State of West Virginia, such extinguishment shall
303 be absolute as to any and all parties; and

304 (S) Meet and consult with and consider recommendations
305 from the Medical Malpractice Advisory Panel established by
306 the provisions of article twelve-b of this chapter.

307 (d) If, after the first day of September, two thousand two,
308 the board has assigned coverages or transferred all insurance
309 obligations and/or risks of existing or in-force contracts of
310 insurance to a third-party medical professional liability
311 insurance carrier, and the board otherwise has no covered
312 participants, then the board shall not thereafter offer or provide
313 professional liability insurance to any health care provider
314 pursuant to the provisions of subsection (c) of this section or the
315 provisions of article twelve-b of this chapter unless the
316 Legislature adopts a concurrent resolution authorizing the board
317 to reestablish medical liability insurance programs.

CHAPTER 33. INSURANCE.

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-2. Compensation and expenses of commissioner and employees; location of office.

1 The commissioner shall receive an annual salary as
2 provided in section two-a, article seven, chapter six of this code
3 and actual expenses incurred in the performance of official
4 business, which compensation shall be in full for all services.
5 The office of the commissioner shall be maintained in the

6 capitol or other suitable place in Charleston. The commissioner
7 may employ such persons and incur such expenses as may be
8 necessary in the discharge of his duties and shall fix the
9 compensation of such employees, but such compensation shall
10 not exceed the appropriation therefor. The commissioner may
11 reimburse employees for reasonable expenses incurred for
12 job-related training and educational seminars and courses. All
13 compensation for salaries and expenses of the commissioner
14 and his employees shall be paid monthly out of the State
15 Treasury by requisition upon the Auditor, properly certified by
16 the commissioner.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 2. ALCOHOL BEVERAGE CONTROL COMMISSIONER.

§60-2-9. Salary and expenses.

1 The commissioner shall receive an annual salary as
2 provided in section two-a, article seven, chapter six of this
3 code, and shall be paid actual and necessary traveling expenses
4 incurred in performance of the official duties of the office.

CHAPTER 204

(H. B. 4842 — By Delegates Proudfoot, Amores, Craig and Trump)

[Passed March 10, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2006.]

AN ACT to amend and reenact §20-3A-2 and §20-3A-5 of the Code of West Virginia, 1931, as amended; and to amend said code by

adding thereto a new section, designated §20-3A-9, all relating to the Skiing Responsibility Act; amending and adding definitions; modifying duties of ski skiers; and adding provisions relating to ski competitions.

Be it enacted by the Legislature of West Virginia:

That §20-3A-2 and §20-3A-5 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 §20-3A-9, all to read as follows:

ARTICLE 3A. SKIING RESPONSIBILITY ACT.

§20-3A-2. Definitions.

§20-3A-5. Duties of skiers.

§20-3A-9. Competition.

§20-3A-2. Definitions.

1 Unless the context of usage clearly requires otherwise:

2 (a) “Aerial passenger tramway” means any device operated
3 by a ski area operator used to transport passengers, by single or
4 double reversible tramway; chair lift or gondola lift; T-bar lift,
5 J-bar lift, platter lift, conveyor lift or similar device; or a fiber
6 rope tow.

7 (b) “Competitor” means a skier actually engaged in
8 competition, a special event, or training or practicing for
9 competition or a special event on any portion of the area made
10 available by the ski area operator.

11 (c) “Freestyle terrain” includes, but is not limited to, terrain
12 parks and terrain park features such as jumps, rails, fun boxes,
13 and all other constructed and natural features, half-pipes,
14 quarter pipes, and freestyle-bump terrain.

15 (d) “Passenger” means any person who is lawfully using an
16 aerial passenger tramway, or is waiting to embark or has
17 recently disembarked from an aerial passenger tramway and is
18 in its immediate vicinity.

19 (e) “Ski area” means any property owned or leased and
20 under the control of the ski area operator or operators within
21 West Virginia.

22 (f) “Ski area operator” means any person, partnership,
23 corporation or other commercial entity and their agents,
24 officers, employees or representatives, or the State of West
25 Virginia, or any political subdivision thereof, who has opera-
26 tional responsibility for any ski area or aerial passenger
27 tramway.

28 (g) “Skiing area” means all ski slopes and trails not
29 including any aerial passenger tramway.

30 (h) “Skier” means any person present at a skiing area under
31 the control of a ski area operator for the purpose of engaging in
32 the sport of skiing in locations designated as the ski slopes and
33 trails, but does not include a passenger using an aerial passen-
34 ger tramway.

35 (i) “Skiing” means sliding downhill or jumping on snow or
36 ice on skis, a toboggan, a sled, a tube, a snowbike, a snowboard,
37 or any other device by utilizing any of the facilities of the ski
38 area.

39 (j) “Ski slopes and trails” means all ski slopes or trails and
40 adjoining skiable terrain, including all their edges and features,
41 and those areas designated by the ski area operator to be used
42 by skiers for the purpose of participating in the sport of skiing
43 in areas designated for that type of skiing activity. Ski slopes
44 and trails shall be designated on trail maps, if provided, and by
45 signs indicating to the skiing public the designated skiing
46 activity for skiing areas.

§20-3A-5. Duties of skiers.

1 (a) It is recognized that skiing as a recreational sport is
2 hazardous to skiers, regardless of all feasible safety measures
3 which can be taken. Each skier expressly assumes the risk of
4 and legal responsibility for any injury, loss or damage to person
5 or property which results from participation in the sport of
6 skiing including, but not limited to, any injury, loss or damage
7 caused by the following: Variations in terrain including
8 freestyle terrain; surface or subsurface snow or ice conditions;
9 bare spots, rocks, trees, other forms of forest growth or debris;
10 collisions with pole lines, lift towers or any component thereof;
11 or, collisions with snowmaking equipment which is marked by
12 a visible sign or other warning implement in compliance with
13 section three of this article. Each skier shall have the sole
14 individual responsibility for knowing the range of his or her
15 own ability to negotiate any ski slope or trail, and it shall be the
16 duty of each skier to ski within the limits of the skier's own
17 ability, to maintain reasonable control of speed and course at all
18 times while skiing, to heed all posted warnings, to ski only on
19 a skiing area designated by the ski area operator and to refrain
20 from acting in a manner which may cause or contribute to the
21 injury of anyone. If while actually skiing, any skier collides
22 with any object or person, except an obviously intoxicated
23 person of whom the ski area operator is aware, the responsibil-
24 ity for such collision shall be solely that of the skier or skiers
25 involved and not that of the ski area operator.

26 (b) No person shall place any object in the skiing area or on
27 the uphill track or any aerial passenger tramway which may
28 cause a passenger or skier to fall.

29 (c) No skier shall cross the track of any T-bar lift, J-bar lift,
30 platter lift, conveyor lift or similar device, or a fiber rope tow
31 except at a designated location, nor shall any skier place any
32 object in such an uphill track.

33 (d) No person involved in a skiing accident shall depart the
34 ski area without leaving personal identification, including name
35 and address, with an employee of the ski area operator or
36 without notifying the proper authorities or without obtaining
37 assistance when that person knows or reasonably should know
38 that any other person involved in the accident is in need of
39 medical or other assistance.

40 (e) A ski or snowboard used by a skier while skiing or
41 snowboarding shall be equipped with a strap or other device
42 capable of stopping the ski or snowboard should the ski or
43 snowboard detach from the skier. No skier shall fail to wear
44 retention straps or other devices to help prevent runaway skis
45 or snowboards. This requirement shall not apply to cross
46 country skis.

47 (f) Each skier has the duty to maintain control of his or her
48 speed and course at all times when skiing and to maintain a
49 proper lookout so as to be able to avoid other skiers and objects.
50 However, the primary duty shall be on the person skiing
51 downhill to avoid collision with any person or objects below
52 him or her.

53 (g) No skier shall ski on a ski slope or trail that has been
54 posted as "Closed."

55 (h) No skier shall use any ski slope while such person's
56 ability to do so is impaired by the consumption of alcohol or by
57 the use of any controlled substance or other drug or while such
58 person is under the influence of alcohol or any controlled
59 substance or other drug.

60 (i) Each skier has the duty to heed all posted information
61 and other warnings.

62 (j) Before beginning to ski from a stationary position or
63 before entering a ski slope or trail from the side, the skier shall

64 have the duty to avoid moving skiers already on the ski slope or
65 trail.

§20-3A-9. Competition.

1 (a) The ski area operator shall, prior to use of any portion
2 of the area made available by the ski area operator, allow each
3 competitor the opportunity to conduct a reasonable visual
4 inspection of the ski slopes and trails or freestyle terrain used
5 in the competition.

6 (b) The competitor shall be held to assume the risk of all ski
7 slopes and trails or freestyle terrain conditions including, but
8 not limited to, weather and snow conditions; obstacles, course
9 or feature location, construction or layout, freestyle terrain
10 configuration and conditions; and other courses, layouts, or
11 configurations of the area to be used. No liability shall attach to
12 a ski area operator for injury or death to any competitor caused
13 by course, venue, or area conditions that a visual inspection
14 should have revealed or by collisions with other competitors.

CHAPTER 205

**(S. B. 503 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed March 11, 2006; in effect July 1, 2006.]
[Approved by the Governor on April 5, 2006.]

AN ACT to amend and reenact §15-2-4 and §15-2-5 of the Code of West Virginia, 1931, as amended, relating to the appointment, temporary promotion and compensation of the membership of the West Virginia State Police; providing for the temporary promo-

tion from the membership of the executive protection section of the West Virginia State Police; providing annual salary schedules and adjusting annual experience increment pay for the West Virginia State Police; and authorizing recovery of compensation from certain members.

Be it enacted by the Legislature of West Virginia:

That §15-2-4 and §15-2-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-4. Appointment of commissioned officers, noncommissioned officers, other members; temporary and permanent positions.

§15-2-5. Career progression system; salaries; exclusion from wage and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

§15-2-4. Appointment of commissioned officers, noncommissioned officers, other members; temporary and permanent positions.

1 (a) The superintendent shall appoint, from the enlisted
2 membership of the State Police, a deputy superintendent who
3 shall hold the rank of lieutenant colonel and be next in authority
4 to the superintendent. The superintendent shall appoint, from
5 the enlisted membership of the State Police, the number of
6 other officers and members he or she considers necessary to
7 operate and maintain the executive offices, training school and
8 forensic laboratory; and to keep records relating to crimes and
9 criminals, coordinate traffic safety activities, maintain a system
10 of supplies and accounting and perform other necessary
11 services.

12 (b) The ranks within the membership of the State Police
13 shall be colonel, lieutenant colonel, major, captain, first
14 lieutenant, second lieutenant, first sergeant, sergeant, corporal,

15 trooper first class, senior trooper, trooper or cadet trooper. Each
16 member while in uniform shall wear the insignia of rank as
17 provided by law and written State Police policies. Members
18 assigned to the forensic laboratory shall hold the title of trooper,
19 be classified as criminalists and wear the insignia of classifica-
20 tion as provided by written State Police policies.

21 The superintendent may appoint from the membership of
22 the State Police seventeen principal supervisors who shall
23 receive the compensation and hold the temporary rank of
24 lieutenant colonel, major or captain at the will and pleasure of
25 the superintendent. The superintendent may also appoint from
26 the membership of the executive protection section of the State
27 Police two additional supervisors who shall receive the
28 compensation and hold the temporary rank of first lieutenant
29 and serve at the will and pleasure of the superintendent.
30 Appointments are exempt from any eligibility requirements
31 established by the career progression system: *Provided*, That
32 any member appointed from within the executive protection
33 section of the State Police to the temporary rank of first
34 lieutenant must have completed a minimum of two years
35 service within the executive protection section prior to
36 becoming eligible for such appointment. Any person appointed
37 to a temporary rank under the provisions of this article remains
38 eligible for promotion or reclassification under the provisions
39 of the career progression system if his or her permanent rank is
40 below that of first lieutenant. Upon the termination of a
41 temporary appointment by the superintendent, the member may
42 not be reduced to a rank or classification below his or her
43 permanent rank or classification, unless the reduction results
44 from disciplinary action, and remains eligible for subsequent
45 appointment to a temporary rank.

**§15-2-5. Career progression system; salaries; exclusion from
wage and hour law, with supplemental payment;
bond; leave time for members called to duty in
guard or reserves.**

1 (a) The superintendent shall establish within the West
 2 Virginia State Police a system to provide for: The promotion of
 3 members to the supervisory ranks of sergeant, first sergeant,
 4 second lieutenant and first lieutenant; the classification of
 5 nonsupervisory members within the field operations force to the
 6 ranks of trooper, senior trooper, trooper first class or corporal;
 7 the classification of members assigned to the forensic labora-
 8 tory as criminalist I-VII; and the temporary reclassification of
 9 members assigned to administrative duties as administrative
 10 support specialist I-VIII.

11 (b) The superintendent may propose legislative rules for
 12 promulgation in accordance with article three, chapter
 13 twenty-nine-a of this code for the purpose of ensuring consis-
 14 tency, predictability and independent review of any system
 15 developed under the provisions of this section.

16 (c) The superintendent shall provide to each member a
 17 written manual governing any system established under the
 18 provisions of this section and specific procedures shall be
 19 identified for the evaluation and testing of members for
 20 promotion or reclassification and the subsequent placement of
 21 any members on a promotional eligibility or reclassification
 22 recommendation list.

23 (d) Beginning on the first day of November, two thousand
 24 five, and continuing until and including the thirtieth day of
 25 June, two thousand six, members shall receive annual salaries
 26 as follows:

27 **ANNUAL SALARY SCHEDULE (BASE PAY)**
 28 **SUPERVISORY AND NONSUPERVISORY RANKS**

29	Cadet During Training	.....	\$2,218.50 Mo.	..	\$26,622
30	Cadet Trooper After Training	....	2,621.50 Mo.	..	31,458
31	Trooper Second Year	.....			31,922
32	Trooper Third Year	.....			32,294

33	Trooper Fourth & Fifth Year	32,594
34	Senior Trooper	34,682
35	Trooper First Class	36,770
36	Corporal	38,858
37	Sergeant	43,034
38	First Sergeant	45,122
39	Second Lieutenant	47,210
40	First Lieutenant	49,298
41	Captain	51,386
42	Major	53,474
43	Lieutenant Colonel	55,562

44 **ANNUAL SALARY SCHEDULE (BASE PAY)**
 45 **ADMINISTRATION SUPPORT**
 46 **SPECIALIST CLASSIFICATION**

47	I	\$32,594
48	II	34,682
49	III	36,770
50	IV	38,858
51	V	43,034
52	VI	45,122
53	VII	47,210
54	VIII	49,298

55 **ANNUAL SALARY SCHEDULE (BASE PAY)**
 56 **CRIMINALIST CLASSIFICATION**

57	I	\$32,594
58	II	34,682
59	III	36,770
60	IV	38,858
61	V	43,044
62	VI	45,122
63	VII	47,210
64	VIII	49,298

65 Beginning on the first day of July, two thousand six, and
 66 continuing until and including the thirtieth day of June, two
 67 thousand seven, members shall receive annual salaries as
 68 follows:

69 **ANNUAL SALARY SCHEDULE (BASE PAY)**
 70 **SUPERVISORY AND NONSUPERVISORY RANKS**

71	Cadet During Training	\$2,343.50 Mo. .	\$28,122
72	Cadet Trooper After Training	2,913.17 Mo. .	34,958
73	Trooper Second Year		36,922
74	Trooper Third Year		37,294
75	Senior Trooper		37,682
76	Trooper First Class		38,270
77	Corporal		38,858
78	Sergeant		43,034
79	First Sergeant		45,122
80	Second Lieutenant		47,210
81	First Lieutenant		49,298
82	Captain		51,386
83	Major		53,474
84	Lieutenant Colonel		55,562

85 **ANNUAL SALARY SCHEDULE (BASE PAY)**
 86 **ADMINISTRATION SUPPORT**
 87 **SPECIALIST CLASSIFICATION**

88	I	\$37,294
89	II	37,682
90	III	38,270
91	IV	38,858
92	V	43,034
93	VI	45,122
94	VII	47,210
95	VIII	49,298

96 **ANNUAL SALARY SCHEDULE (BASE PAY)**
97 **CRIMINALIST CLASSIFICATION**

98	I	.....	\$37,294
99	II	.....	37,682
100	III	.....	38,270
101	IV	.....	38,858
102	V	.....	43,044
103	VI	.....	45,122
104	VII	.....	47,210
105	VIII	.....	49,298

106 Beginning on the first day of July, two thousand seven,
107 until and including the thirtieth day of June, two thousand eight,
108 members shall receive annual salaries as follows:

109 **ANNUAL SALARY SCHEDULE (BASE PAY)**
110 **SUPERVISORY AND NONSUPERVISORY RANKS**

111	Cadet During Training	.....	\$2,468.50 Mo.	..	\$29,622
112	Cadet Trooper After Training	....	3,038.17 Mo.	..	36,458
113	Trooper Second Year	.....			37,922
114	Trooper Third Year	.....			38,294
115	Senior Trooper	.....			38,682
116	Trooper First Class	.....			39,270
117	Corporal	.....			39,858
118	Sergeant	.....			44,034
119	First Sergeant	.....			46,122
120	Second Lieutenant	.....			48,210
121	First Lieutenant	.....			50,298
122	Captain	.....			52,386
123	Major	.....			54,474
124	Lieutenant Colonel	.....			56,562

125 **ANNUAL SALARY SCHEDULE (BASE PAY)**
126 **ADMINISTRATION SUPPORT**
127 **SPECIALIST CLASSIFICATION**

128	I	\$38,294
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129	II	38,682
130	III	39,270
131	IV	39,858
132	V	44,034
133	VI	46,122
134	VII	48,210
135	VIII	50,298

136 **ANNUAL SALARY SCHEDULE (BASE PAY)**

137 **CRIMINALIST CLASSIFICATION**

138	I	\$38,294
139	II	38,682
140	III	39,270
141	IV	39,858
142	V	44,044
143	VI	46,122
144	VII	48,210
145	VIII	50,298

146 Beginning on the first day of July, two thousand eight, and
 147 continuing thereafter, members shall receive annual salaries as
 148 follows:

149 **ANNUAL SALARY SCHEDULE (BASE PAY)**

150 **SUPERVISORY AND NONSUPERVISORY RANKS**

151	Cadet During Training	\$2,593.50 Mo.	\$31,122
152	Cadet Trooper After Training	3,163.17 Mo.	37,958
153	Trooper Second Year		38,922
154	Trooper Third Year		39,294
155	Senior Trooper		39,682
156	Trooper First Class		40,270
157	Corporal		40,858
158	Sergeant		45,034
159	First Sergeant		47,122
160	Second Lieutenant		49,210

161	First Lieutenant	51,298
162	Captain	53,386
163	Major	55,474
164	Lieutenant Colonel	57,562

165 **ANNUAL SALARY SCHEDULE (BASE PAY)**
 166 **ADMINISTRATION SUPPORT**
 167 **SPECIALIST CLASSIFICATION**

168	I	\$39,294
169	II	39,682
170	III	40,270
171	IV	40,858
172	V	45,034
173	VI	47,122
174	VII	49,210
175	VIII	51,298

176 **ANNUAL SALARY SCHEDULE (BASE PAY)**
 177 **CRIMINALIST CLASSIFICATION**

178	I	\$39,294
179	II	39,682
180	III	40,270
181	IV	40,858
182	V	45,034
183	VI	47,122
184	VII	49,210
185	VIII	51,298

186 Each member of the West Virginia State Police whose
 187 salary is fixed and specified in this annual salary schedule is
 188 entitled to the length of service increases set forth in subsection
 189 (e) of this section and supplemental pay as provided in
 190 subsection (g) of this section.

191 (e) Each member of the West Virginia State Police whose
 192 salary is fixed and specified pursuant to this section shall

193 receive, and is entitled to, an increase in salary over that set
194 forth in subsection (d) of this section, for grade in rank, based
195 on length of service, including that service served before and
196 after the effective date of this section with the West Virginia
197 State Police as follows: At the end of two years of service with
198 the West Virginia State Police, the member shall receive a
199 salary increase of four hundred dollars to be effective during his
200 or her next year of service and a like increase at yearly intervals
201 thereafter, with the increases to be cumulative.

202 (f) In applying the salary schedules set forth in this section
203 where salary increases are provided for length of service,
204 members of the West Virginia State Police in service at the time
205 the schedules become effective shall be given credit for prior
206 service and shall be paid the salaries the same length of service
207 entitles them to receive under the provisions of this section.

208 (g) The Legislature finds and declares that because of the
209 unique duties of members of the West Virginia State Police, it
210 is not appropriate to apply the provisions of state wage and hour
211 laws to them. Accordingly, members of the West Virginia State
212 Police are excluded from the provisions of state wage and hour
213 law. This express exclusion shall not be construed as any
214 indication that the members were or were not covered by the
215 wage and hour law prior to this exclusion.

216 In lieu of any overtime pay they might otherwise have
217 received under the wage and hour law, and in addition to their
218 salaries and increases for length of service, members who have
219 completed basic training and who are exempt from federal Fair
220 Labor Standards Act guidelines may receive supplemental pay
221 as provided in this section.

222 The authority of the superintendent to propose a legislative
223 rule or amendment thereto for promulgation in accordance with
224 article three, chapter twenty-nine-a of this code to establish the

225 number of hours per month which constitute the standard work
226 month for the members of the West Virginia State Police is
227 hereby continued. The rule shall further establish, on a
228 graduated hourly basis, the criteria for receipt of a portion or all
229 of supplemental payment when hours are worked in excess of
230 the standard work month. The superintendent shall certify
231 monthly to the West Virginia State Police's payroll officer the
232 names of those members who have worked in excess of the
233 standard work month and the amount of their entitlement to
234 supplemental payment. The supplemental payment may not
235 exceed two hundred thirty-six dollars monthly. The superinten-
236 dent and civilian employees of the West Virginia State Police
237 are not eligible for any supplemental payments.

238 (h) Each member of the West Virginia State Police, except
239 the superintendent and civilian employees, shall execute, before
240 entering upon the discharge of his or her duties, a bond with
241 security in the sum of five thousand dollars payable to the State
242 of West Virginia, conditioned upon the faithful performance of
243 his or her duties, and the bond shall be approved as to form by
244 the Attorney General and as to sufficiency by the Governor.

245 (i) In consideration for compensation paid by the West
246 Virginia State Police to its members during those members'
247 participation in the West Virginia State Police Cadet Training
248 Program pursuant to section eight, article twenty-nine, chapter
249 thirty of this code, the West Virginia State Police may require
250 of its members by written agreement entered into with each of
251 them in advance of such participation in the program that, if a
252 member should voluntarily discontinue employment any time
253 within one year immediately following completion of the
254 training program, he or she shall be obligated to pay to the West
255 Virginia State Police a pro rata portion of such compensation
256 equal to that part of such year which the member has chosen not
257 to remain in the employ of the West Virginia State Police.

258 (j) Any member of the West Virginia State Police who is
259 called to perform active duty training or inactive duty training
260 in the National Guard or any reserve component of the Armed
261 Forces of the United States annually shall be granted, upon
262 request, leave time not to exceed thirty calendar days for the
263 purpose of performing the active duty training or inactive duty
264 training and the time granted may not be deducted from any
265 leave accumulated as a member of the West Virginia State
266 Police.

CHAPTER 206

**(Com. Sub. for H. B. 4030 — By Delegates Hamilton, Duke, Romine,
R. Thompson, Perdue, Leggett, Howard, Stemple, Poling and Boggs)**

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-2-9, relating to legislative findings; and limiting the administration of a voluntary contribution fund or similar benefit plan by members and employees 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 §15-2-9, to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-9. State Police Voluntary Contribution Fund.

1 (a) The Legislature finds that from the year one thousand
2 nine hundred fifty-one to two thousand three, employees of the
3 West Virginia State Police or its predecessor agencies have
4 operated a voluntary contribution fund. Upon the death of a
5 member or employee of the West Virginia State Police who,
6 upon his or her death, was a member of the contribution fund,
7 active members and employees of the West Virginia State
8 Police who have voluntarily chosen to be members of the fund
9 have been permitted, as an expression of respect and gratitude
10 for the contributions and service of the deceased member in
11 protecting the public, to donate small financial contributions to
12 a designated beneficiary of the deceased member. The contribu-
13 tions were deposited into the contribution fund and the
14 disbursements were made from the fund.

15 The Legislature further finds, upon the reports of the
16 Legislative Auditor, that over the years, without statutory
17 authority to do so, administrators of the West Virginia State
18 Police and its predecessor agencies assumed control of the
19 administration of the contribution fund, performing or directing
20 the administrative functions necessary to receive contributions
21 to and disbursements from the contribution fund.

22 The Legislature further finds that the State of West Virginia
23 had not established the contribution fund or any similar benefit
24 plan for the members and employees of the West Virginia State
25 Police or its predecessor agencies, nor approved the same as an
26 official state benefit program or plan in any manner whatsoever.
27 In the absence of the establishment or approval of such a
28 program or plan by the Legislature, the exercise of administra-
29 tive powers for these purposes is inappropriate.

30 The Legislature further finds that the contribution fund is
31 not a state program, but a private activity to which individual
32 employees of the West Virginia State Police have committed
33 state time and resources.

34 The Legislature further finds that the contributions and
35 service of deceased members and employees of the West
36 Virginia State Police merit sincere, dignified and personal
37 voluntary expressions of respect and gratitude from fellow
38 members and employees of the deceased. The Legislature
39 further finds that the continuance of the contribution fund or
40 similar benefit plan for the purposes of facilitating those
41 personal voluntary expressions of respect and gratitude may be
42 appropriate under certain circumstances.

43 It is therefore the intent of the Legislature to authorize the
44 limited use of staff and other resources incidental to the
45 continued administration of the private contribution fund in
46 accordance with the provisions of this section.

47 (b) The limited use of State Police staff time, postage,
48 duplicating and incidental resources is authorized in the
49 continued administration of the contribution fund for the
50 purpose of facilitating contributions and disbursements from the
51 fund if the following conditions have been met:

52 (1) The superintendent has provided each member and
53 employee of the West Virginia State Police a copy of this
54 section and a statement in writing that clearly advises the
55 member or employee that the contribution fund is a private
56 activity established and maintained by members and employees
57 of the West Virginia State Police in their private capacity with
58 limited administration by the West Virginia State Police and is
59 not in any manner a benefit or other plan provided by or on
60 behalf of the State of West Virginia and that participation in the
61 fund or plan is not required, but is only permitted if the member
62 or employee elects to participate on a voluntary basis with no
63 obligation to give nor opportunity for coerced participation and
64 that the purpose of the fund is to facilitate participating
65 members' expressions of admiration, appreciation and bereave-
66 ment to the survivors of deceased members;

67 (2) All rosters, records and accounts of the contribution
68 fund are available for public inspection and audit; and

69 (3) State Police administration is consistent with all
70 applicable federal and state tax requirements.

71 (c) Membership in the State Police Contribution Fund is
72 voluntary. On or before the thirty-first day of July, two
73 thousand six, members or employees hired between the first day
74 of January, two thousand three, and the effective date of this
75 section may elect to participate in the fund, and within five days
76 of employment or reemployment with the West Virginia State
77 Police, a member or employee may elect to participate in the
78 fund: *Provided*, That any member of the original contribution
79 fund in good standing upon the effective date of this section
80 shall be presumed to be a member of the contribution fund. A
81 retired member may maintain membership in the fund. A
82 member may terminate membership in the fund at any time, by
83 written notice to the superintendent, or by ceasing to make
84 contributions to the fund. Upon the death of a member of the
85 fund, the superintendent is authorized to collect a contribution
86 not to exceed the sum of five dollars from all personnel
87 participating in the fund, payable to a designated beneficiary of
88 the deceased member. To aid administrative efficiency and ease
89 the burden of participation, the superintendent may collect
90 funds prospectively to cover an estimated number of deaths in
91 a given period: *Provided, however*, That any such remaining
92 funds credited to a deceased member shall be returned to the
93 member's designated beneficiary.

94 (d) Use of coercion in an attempt to influence a West
95 Virginia State Police officer's or employee's election to
96 participate in the contribution fund is prohibited and grounds
97 for dismissal from employment.

98 (e) The superintendent is authorized to establish and
99 maintain a nongovernmental bank account established by

100 agreement with a bank within the state to receive contributions
101 to and make disbursements from the fund. These receipts are
102 not to be deposited or held in the State Treasury.

103 (f) The superintendent shall verify any death of a member
104 of the fund and authorize the dissemination of a notice of the
105 death to members of the fund. The superintendent shall use the
106 most cost efficient means of communication available in
107 making these notifications.

108 (g) The superintendent is authorized to develop a written
109 internal department policy for the operation of the contribution
110 fund, which may include terms and conditions of membership
111 and the development of any necessary forms or agreements for
112 enrollment in the fund and the designation of a beneficiary.

CHAPTER 207

**(S. B. 218 — By Senators Bowman, Bailey, Boley, Harrison,
Lanham, McCabe, Minear, Weeks and White)**

[Passed March 8, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 22, 2006.]

AN ACT to amend and reenact §4-8-6 of the Code of West Virginia,
1931, as amended, relating to continuing the West Virginia
Capitol Building Commission.

Be it enacted by the Legislature of West Virginia:

That §4-8-6 of the Code of West Virginia, 1931, as amended, be
amended and reenacted to read as follows:

ARTICLE 8. CAPITOL BUILDING COMMISSION.**§4-8-6. Continuation of the West Virginia Capitol Building Commission.**

1 Pursuant to the provisions of article ten of this chapter, the
2 West Virginia Capitol Building Commission shall continue to
3 exist until the first day of July, two thousand nine, unless
4 sooner terminated, continued or reestablished.

CHAPTER 208

**(S. B. 213 — By Senators Bowman, Bailey, Boley, Harrison,
Lanham, McCabe, Minear, Weeks and White)**

[Passed March 8, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-10D-8, relating to continuing the West Virginia Consolidated Public Retirement Board.

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 §5-10D-8, to read as follows:

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.**§5-10D-8. Continuation of the West Virginia Consolidated Public Retirement Board.**

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the West Virginia Consolidated Public Retirement Board
3 shall continue to exist until the first day of July, two thousand
4 eight, unless sooner terminated, continued or reestablished.

CHAPTER 209

**(H. B. 4349 — By Delegates Beane, Ennis,
Barker, Manchin, Blair and Frich)**

[Passed March 7, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 16, 2006.]

AN ACT to amend and reenact §17A-2-24 of the Code of West Virginia, 1931, as amended, relating to continuing the Division of Motor Vehicles.

Be it enacted by the Legislature of West Virginia:

That §17A-2-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. DIVISION OF MOTOR VEHICLES.

§17A-2-24. Continuation of division.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the Division of Motor Vehicles shall continue to exist,
3 until the first day of July, two thousand twelve, unless sooner
4 terminated, continued or reestablished.

CHAPTER 210

**(H. B. 4069 — By Delegates Beane, Ennis,
Miley, Iaquina, Frich, Argento and Rowan)**

[Passed March 7, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 16, 2006.]

AN ACT to amend and reenact §18B-16-6b of the Code of West Virginia, 1931 as amended, relating to continuation of the Rural Health Advisory Panel.

Be it enacted by the Legislature of West Virginia:

That §18B-16-6b of the Code of West Virginia, 1931 as amended, be amended and reenacted to read as follows:

ARTICLE 16. HEALTH CARE EDUCATION.

§18B-16-6b. Continuation of advisory panel.

- 1 Pursuant to the provisions of article ten, chapter four of this
- 2 code, the Rural Health Advisory Panel shall continue to exist,
- 3 until the first day of July, two thousand nine, unless sooner
- 4 terminated, continued or reestablished.

CHAPTER 211

(H. B. 4392 — By Delegates Beane, Ennis, Walters and Frich)

[Passed March 9, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §19-21A-4a of the Code of West Virginia, 1931, as amended, relating to continuing the State Conservation Committee.

Be it enacted by the Legislature of West Virginia:

That §19-21A-4a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21A. CONSERVATION DISTRICTS.

***§19-21A-4a. Continuation of the State Conservation Committee.**

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the State Conservation Committee shall continue to exist
3 until the first day of July, two thousand twelve, unless sooner
4 terminated, continued or reestablished.

***CLERK'S NOTE:** This section was repealed by S. B. 778 (Chapter 38), which passed subsequent to this act.

CHAPTER 212

(H. B. 4239 — By Delegates Beane, Ennis, laquinta and Frich)

[Passed March 7, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 16, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §21A-1-9, relating to continuation of the Division of Unemployment Compensation.

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 §21A-1-9, to read as follows:

ARTICLE 1. UNEMPLOYMENT COMPENSATION.

§21A-1-9. Continuation of the Division of Unemployment Compensation.

- 1 Pursuant to the provisions of article ten, chapter four of this
- 2 code, the Division of Unemployment Compensation shall
- 3 continue to exist until the first day of July, two thousand ten,
- 4 unless sooner terminated, continued or reestablished.

CHAPTER 213

**(H. B. 4311 — By Delegates Beane, Ennis,
Barker, Iaquina, Manchin and Frich)**

[Passed March 8, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §22-1-4 of the Code of West Virginia, 1931, as amended, relating to continuing the Department of Environmental Protection.

Be it enacted by the Legislature of West Virginia:

That §22-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-4. Department of Environmental Protection continued.

- 1 Pursuant to the provisions of article ten, chapter four of this
- 2 code, the Department of Environmental Protection shall
- 3 continue to exist until the first day of July, two thousand seven,
- 4 unless sooner terminated, continued or reestablished.

CHAPTER 214

**(H. B. 4310 — By Delegates Beane, Ennis,
Miley, Iaquinta, Walters and Frich)**

[Passed March 7, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 16, 2006.]

AN ACT to amend and reenact §29-12-12 of the Code of West Virginia, 1931, as amended, relating to continuation of the Board of Risk and Insurance Management.

Be it enacted by the Legislature of West Virginia:

That §29-12-12 of the Code of West Virginia, as amended, be amended and reenacted to read as follows:

ARTICLE 12. STATE INSURANCE.

§29-12-12. Continuation of State Board of Risk and Insurance Management.

- 1 Pursuant to the provisions of article ten, chapter four of this
- 2 code, the State Board of Risk and Insurance Management shall
- 3 continue to exist until the first day of July, two thousand eleven,
- 4 unless sooner terminated, continued or reestablished.

CHAPTER 215

(H. B. 4391 — By Delegates Beane, Ennis and Frich)

[Passed March 7, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 16, 2006.]

AN ACT to amend and reenact §29-18-24 of the Code of West Virginia, 1931, as amended, relating to continuation of the State Rail Authority.

Be it enacted by the Legislature of West Virginia:

That §29-18-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.

§29-18-24. Continuation of State Rail Authority.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the West Virginia State Rail Authority shall continue to
3 exist until the first day of July, two thousand eleven, unless
4 sooner terminated, continued or reestablished.

CHAPTER 216

**(S. B. 216 — By Senators Bowman, Bailey,
Boley, Lanham, McCabe, Minear, Weeks and White)**

[Passed February 27, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 6, 2006.]

AN ACT to amend and reenact §29-20-7 of the Code of West Virginia, 1931, as amended, relating to continuing the West Virginia Women’s Commission.

Be it enacted by the Legislature of West Virginia:

That §29-20-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 20. WOMEN’S COMMISSION.

§29-20-7. Continuation of the West Virginia Women’s Commission.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the West Virginia Women’s Commission shall continue
3 until the first day of July, two thousand twelve, unless sooner
4 terminated, continued or reestablished.

CHAPTER 217

**(S. B. 212 — By Senators Bowman, Bailey, Boley,
Lanham, McCabe, Minear, Weeks and White)**

[Passed March 9, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2006.]

AN ACT to amend and reenact §30-4-30 of the Code of West Virginia, 1931, as amended, relating to continuing the West Virginia Board of Dental Examiners.

Be it enacted by the Legislature of West Virginia:

That §30-4-30 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. DENTAL EXAMINERS.

§30-4-30. Continuation of the West Virginia Board of Dental Examiners.

- 1 Pursuant to the provisions of article ten, chapter four of this
- 2 code, the West Virginia Board of Dental Examiners shall
- 3 continue to exist until the first day of July, two thousand eight,
- 4 unless sooner terminated, continued or reestablished.

CHAPTER 218

**(S. B. 211 — By Senators Bowman, Bailey, Boley,
Harrison, Lanham, McCabe, Minear, Weeks and White)**

[Passed March 9, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §30-13A-37 of the Code of West Virginia, 1931, as amended, relating to continuing the West Virginia Board of Professional Surveyors.

Be it enacted by the Legislature of West Virginia:

That §30-13A-37 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13A. LAND SURVEYORS.

§30-13A-37. Continuation of the West Virginia Board of Professional Surveyors.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the West Virginia Board of Professional Surveyors shall
3 continue to exist until the first day of July, two thousand eleven,
4 unless sooner terminated, continued or reestablished.

CHAPTER 219

**(S. B. 217 — By Senators Bowman, Bailey, Boley,
Harrison, Lanham, McCabe, Minear, Weeks and White)**

[Passed March 10, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §30-14-16 of the Code of West Virginia, 1931, as amended, relating to continuing the West Virginia Board of Osteopathy.

Be it enacted by the Legislature of West Virginia:

That §30-14-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-16. Continuation of the West Virginia Board of Osteopathy.

- 1 Pursuant to the provisions of article ten, chapter four of this
- 2 code, the West Virginia Board of Osteopathy shall continue to
- 3 exist until the first day of July, two thousand nine, unless
- 4 sooner terminated, continued or reestablished.

CHAPTER 220

**(S. B. 215 — By Senators Bowman, Bailey, Boley,
Lanham, McCabe, Minear, Weeks and White)**

[Passed March 8, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2006.]

AN ACT to amend and reenact §30-31-15 of the Code of West Virginia, 1931, as amended, relating to continuing the West Virginia Board of Examiners in Counseling.

Be it enacted by the Legislature of West Virginia:

That §30-31-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 31. LICENSED PROFESSIONAL COUNSELORS.

§30-31-15. Continuation of the West Virginia Board of Examiners in Counseling.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the West Virginia Board of Examiners in Counseling
3 shall continue to exist until the first day of July, two thousand
4 eight, unless sooner terminated, continued or reestablished.

CHAPTER 221

**(S. B. 214 — By Senators Bowman, Bailey, Boley,
Harrison, Lanham, McCabe, Minear, Weeks and White)**

[Passed March 8, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 22, 2006.]

AN ACT to amend and reenact §30-40-28 of the Code of West Virginia, 1931, as amended, relating to continuing the West Virginia Real Estate Commission.

Be it enacted by the Legislature of West Virginia:

That §30-40-28 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 40. WEST VIRGINIA REAL ESTATE LICENSE ACT.

§30-40-28. Continuation of the West Virginia Real Estate Commission.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the West Virginia Real Estate Commission shall continue
3 to exist until the first day of July, two thousand nine, unless
4 sooner terminated, continued or reestablished.

CHAPTER 222

**(H. B. 4350 — By Delegates Beane, Ennis,
Argento, Blair, Frich and Rowan)**

[Passed March 7, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 16, 2006.]

AN ACT to amend and reenact §48-26-1102 of the Code of West Virginia, 1931, as amended, relating to continuing the Family Protection Services Board.

Be it enacted by the Legislature of West Virginia:

That §48-26-1102 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 26. DOMESTIC VIOLENCE ACT.

§48-26-1102. Continuation of board.

- 1 Pursuant to the provisions of article ten, chapter four of this
- 2 code, the Family Protection Services Board shall continue to
- 3 exist until the first day of July, two thousand twelve, unless
- 4 sooner terminated, continued or reestablished.

CHAPTER 223

(H. B. 4849 — By Delegates Beane, Ennis, Barker, Iaquinta, Martin, Yost, Walters, Frich and Porter)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §4-10-4, §4-10-4a, §4-10-5, §4-10-5a and §4-10-5b of the Code of West Virginia, 1931, as amended, all relating to the West Virginia sunset law; terminating agencies following full performance evaluations; terminating agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates; terminating agencies following preliminary performance reviews; terminating agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates; and terminating boards created to regulate professions and occupations.

Be it enacted by the Legislature of West Virginia:

That §4-10-4, §4-10-4a, §4-10-5, §4-10-5a and §4-10-5b of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

- §4-10-4. Termination of agencies following full performance evaluations.
- §4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.
- §4-10-5. Termination of agencies following preliminary performance reviews.
- §4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.

§4-10-5b. Termination of boards created to regulate professions and occupations.

§4-10-4. Termination of agencies following full performance evaluations.

1 The following agencies terminate on the date indicated, but
2 no agency terminates under this section unless a full perfor-
3 mance evaluation has been conducted upon the agency:

4 (1) On the first day of July, two thousand seven: Office of
5 Health Facilities Licensure and Certification within the
6 Department of Health and Human Resources; Development
7 Office; Parkways, Economic Development and Tourism
8 Authority; Division of Highways; Division of Personnel; Office
9 of the Insurance Commissioner; Division of Culture and
10 History; Department of Revenue; Department of Health and
11 Human Resources; Department of Environmental Protection;
12 and State Police.

13 (2) On the first day of July, two thousand eight: Purchasing
14 Division within the Department of Administration; Division of
15 Rehabilitation Services; Division of Corrections; Division of
16 Labor; Investment Management Board; Division of Natural
17 Resources; and Consolidated Public Retirement Board.

18 (3) On the first day of July, two thousand nine: Office of
19 Judges in Workers' Compensation; and Public Land Corpora-
20 tion.

21 (4) On the first day of July, two thousand twelve: Division
22 of Motor Vehicles.

§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.

1 The following agencies terminate on the date indicated, but
2 no agency terminates under this section unless a compliance
3 monitoring and further inquiry update has been completed on
4 the agency subsequent to the prior completion of a full
5 performance evaluation:

6 (1) On the first day of July, two thousand seven: School
7 Building Authority; and Tourism Commission within the
8 Development Office.

9 (2) On the first day of July, two thousand eight: James
10 "Tiger" Morton Catastrophic Illness Commission.

§4-10-5. Termination of agencies following preliminary performance reviews.

1 The following agencies terminate on the date indicated, but
2 no agency terminates under this section unless a preliminary
3 performance review has been conducted upon the agency:

4 (1) On the first day of July, one thousand nine hundred
5 ninety-six: Juvenile Facilities Review Panel.

6 (2) On the first day of July, one thousand nine hundred
7 ninety-seven: Public Employees Insurance Agency Advisory
8 Board; Cable Television Advisory Board.

9 (3) On the first day of July, one thousand nine hundred
10 ninety-nine: Tree Fruit Industry Self-improvement Assessment
11 Program.

12 (4) On the first day of July, two thousand: Terms of Family
13 Law Master and Family Law Master System.

14 (5) On the first day of July, two thousand three: Advisory
15 Council on Public Health; Governor's Office of Fiscal Risk
16 Analysis and Management.

17 (6) On the first day of July, two thousand four: Workers'
18 Compensation Appeal Board.

19 (7) On the first day of July, two thousand five: Clean Coal
20 Technology Council; and Steel Advisory Commission and Steel
21 Futures Program.

22 (8) On the first day of July, two thousand six: Medical
23 Services Fund Advisory Council; Care Home Advisory Board.

24 (9) On the first day of July, two thousand seven: Human
25 Rights Commission; Office of Coalfield Community Develop-
26 ment; State Fire Commission; Children's Health Insurance
27 Board; Board of Banking and Financial Institutions; Lending
28 and Credit Rate Board; Governor's Cabinet on Children and
29 Families; State Geological and Economic Survey; Public
30 Energy Authority and Board; Ron Yost Personal Assistance
31 Services Program; Records Management and Preservation
32 Board; Public Employees Insurance Agency; Office of
33 Explosives and Blasting; Waste Tire Fund; West Virginia
34 Stream Partners Program; Ohio River Valley Water Sanitation
35 Commission; State Lottery Commission; Whitewater Commis-
36 sion within the Division of Natural Resources; and Contractor
37 Licensing Board.

38 (10) On the first day of July, two thousand eight: Ethics
39 Commission; Public Service Commission; Parks section and
40 parks function of the Division of Natural Resources; Office of
41 Water Resources of the Department of Environmental Protec-
42 tion; Marketing and Development Division of Department of
43 Agriculture; Public Defender Services; Health Care Authority;
44 Public Employees Insurance Agency Finance Board; West
45 Virginia Prosecuting Attorneys Institute; and Design-Build
46 Board.

47 (11) On the first day of July, two thousand nine: Driver's
48 Licensing Advisory Board; West Virginia Commission for

49 National and Community Service; Membership in the Southern
50 Regional Education Board; Bureau of Senior Services; Oil and
51 Gas Inspector's Examining Board; Division of Protective
52 Services; Motorcycle Safety Awareness Board; Commission on
53 Holocaust Education; Commission for the Deaf and Hard of
54 Hearing; and Rural Health Advisory Panel.

55 (12) On the first day of July, two thousand ten: Meat
56 Inspection Program of the Department of Agriculture; Motor
57 Vehicle Dealers Advisory Board; Interstate Commission on
58 Uniform State Laws; Center for Professional Development
59 Board; Interstate Commission on the Potomac River Basin; and
60 Bureau for Child Support Enforcement.

61 (13) On the first day of July, two thousand eleven: Manu-
62 factured Housing Construction and Safety Standards Board;
63 State Board of Risk and Insurance Management; and State Rail
64 Authority.

65 (14) On the first day of July, two thousand twelve: Family
66 Protection Services Board; State Conservation Committee; and
67 Women's Commission.

**§4-10-5a. Termination of agencies previously subject to prelimi-
nary performance reviews following compliance
monitoring and further inquiry updates.**

1 The following agencies terminate on the date indicated, but
2 no agency terminates under this section unless a compliance
3 monitoring and further inquiry update has been completed on
4 the agency subsequent to the prior completion of a preliminary
5 performance review:

6 (1) On the first day of July, two thousand: State Building
7 Commission.

8 (2) On the first day of July, two thousand seven: Office of
9 the Environmental Advocate; Racing Commission; Educational
10 Broadcasting Authority; and Oral Health Program.

11 (3) On the first day of July, two thousand eight: Environ-
12 mental Quality Board; and Emergency Medical Services
13 Advisory Council.

14 (4) On the first day of July, two thousand nine: Capitol
15 Building Commission.

16 (5) On the first day of July, two thousand ten: Veterans'
17 council; Oil and Gas Conservation Commission; and Unem-
18 ployment Compensation.

**§4-10-5b. Termination of boards created to regulate professions
and occupations.**

1 (a) The Legislative Auditor shall evaluate each board
2 created under chapter thirty of this code to regulate professions
3 and occupations, at least once every twelve years. The evalua-
4 tion shall assess whether the board complies with the policies
5 and provisions of chapter thirty of this code and other applica-
6 ble laws and rules, whether the board follows a disciplinary
7 procedure which observes due process rights and protects the
8 public interest and whether the public interest requires that the
9 board be continued.

10 (b) The following boards terminate on the date indicated,
11 but no board terminates under this section unless a regulatory
12 board evaluation has been conducted upon the board:

13 (1) On the first day of July, two thousand seven: Board of
14 Registration for Sanitarians; Board of Embalmers and Funeral
15 Directors; Board of Optometry; Board of Social Work Examin-
16 ers; Board of Respiratory Care Practitioners; Board of Veteri-

17 nary Medicine; and Board of Accountancy; and Board of
18 Examiners of Psychologists.

19 (2) On the first day of July, two thousand eight: Nursing
20 Home Administrators Board; Board of Hearing Aid Dealers;
21 Board of Pharmacy; Board of Medicine; Board of Barbers and
22 Cosmetologists; and Board of Acupuncture; Board of Licensed
23 Dietitians; Board of Examiners in Counseling; and Board of
24 Dental Examiners.

25 (3) On the first day of July, two thousand nine: Board of
26 Physical Therapy; Board of Chiropractic Examiners; Board of
27 Landscape Architects; Board of Occupational Therapy; and
28 Real Estate Commission; and Board of Osteopathy.

29 (4) On the first day of July, two thousand ten: Board of
30 Registration for Professional Engineers; Board of Examiners
31 for Registered Professional Nurses; Board of Examiners for
32 Licensed Practical Nurses; Board of Examiners for Speech
33 Language Pathology and Audiology; Board of Registration for
34 Foresters; and Radiologic Technology Board of Examiners.

35 (5) On the first day of July, two thousand eleven: West
36 Virginia Board of Professional Surveyors.

37 (6) On the first day of July, two thousand thirteen: Real
38 Estate Appraiser Licensure and Certification Board.

39 (7) On the first day of July, two thousand fourteen: Board
40 of Architects.

41 (8) On the first day of July, two thousand fifteen: Massage
42 Therapy Licensure Board.

CHAPTER 224

(S. B. 362 — By Senators Bowman, Foster, Hunter and Oliverio)

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-10-5y, relating to requiring the Tax Commissioner to disclose certain tax information to the Consolidated Public Retirement Board to aid in administering retirement plans' disability retirement benefits; and providing applicability of criminal penalties for unlawful disclosure of information.

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 §11-10-5y, to read as follows:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-5y. Disclosure of return information to Consolidated Public Retirement Board.

1 (a) The Tax Commissioner shall, upon written request,
2 disclose to designated employees authorized by the Consoli-
3 dated Public Retirement Board created by article ten-d, chapter
4 five of this code:

5 (1) Available return information from the master files of the
6 Tax Division relating to the social security account number,

7 address, filing status, marital status, amounts, nature and source
8 of income and the number of dependents reported on any return
9 filed by, or with respect to, any individual receiving a disability
10 annuity; and

11 (2) Available state return information reflected on any state
12 return filed by, or with respect to, any individual described in
13 this subsection relating to the amount of and sources of the
14 individual's gross income.

15 (b) The Tax Commissioner shall disclose return information
16 under this section only for purposes of assisting the Consoli-
17 dated Public Retirement Board in its efforts to ascertain
18 whether individuals receiving disability retirement benefits
19 under any of the retirement systems which it administers
20 continue to be eligible to receive their disability retirement
21 benefits.

22 (c) The Consolidated Public Retirement Board and its
23 employees shall maintain the confidentiality of information
24 received under this section, except that the information may be
25 disclosed during an administrative process, hearing or appeal,
26 or other action relating to whether an individual receiving
27 disability retirement benefits under any of the retirement
28 systems which the board administers continues to be eligible to
29 receive his or her disability retirement benefits.

30 (d) The provisions of subsection (c), section five-d of this
31 article are applicable to all employees, officers and agents of
32 the Consolidated Public Retirement Board who disclose
33 information received pursuant to this section that is otherwise
34 confidential under any provision of this code for purposes other
35 than those specified in this section.

CHAPTER 225

(H. B. 4598 — By Delegate Michael)

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §11-1C-14 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-10-5w of said code; and to amend and reenact §11-13A-3a of said code, all relating to information provided on oil and gas property tax returns; providing limited information relating to oil and gas property that may be disclosed by certain state agencies; and eliminating by the first day of July, two thousand six, the requirement for a combined oil and gas property tax return.

Be it enacted by the Legislature of West Virginia:

That §11-1C-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-10-5w of said code be amended and reenacted; and that §11-13A-3a of said code be amended and reenacted, all to read as follows:

Article

- 1C. Fair and Equitable Property Valuation.**
- 10. Tax Procedure and Administration.**
- 13A. Severance Taxes.**

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-14. Confidentiality and disclosure of return information to develop or maintain a mineral mapping or geographic information system; offenses; penalties.

1 (a) All information provided by or on behalf of a natural
2 resources property owner or by or on behalf of an owner of an
3 interest in natural resources property to any state or county
4 representative, including property tax returns, maps and
5 geological information and property tax audit information
6 provided to the West Virginia Department of Environmental
7 Protection, Office of Oil and Gas, and the West Virginia
8 Geological and Economic Survey, for use in the valuation or
9 assessment of natural resources property or for use in the
10 development or maintenance of a legislatively funded mineral
11 mapping or geographic information system is confidential. The
12 information is exempt from disclosure under section four,
13 article one, chapter twenty-nine-b of this code, and shall be
14 kept, held and maintained confidential except to the extent the
15 information is needed by the State Tax Commissioner to defend
16 an appraisal challenged by the owner or lessee of the natural
17 resources property subject to the appraisal: *Provided*, That this
18 section may not be construed to prohibit the publication or
19 release of information generated as a part of the minerals
20 mapping or geographic information system, whether in the form
21 of aggregated statistics, maps, articles, reports, professional
22 talks or otherwise, presented in accordance with generally
23 accepted practices and in a manner so as to preclude the
24 identification or determination of information about particular
25 property owners: *Provided, however*, That effective the first day
26 of July, two thousand six, the Tax Commissioner may disclose
27 the following specified information obtained from the West
28 Virginia oil and gas producer/operator return to the West
29 Virginia Geological and Economic Survey and the West
30 Virginia Department of Environmental Protection, Office of Oil
31 and Gas: *Provided further*, That the West Virginia Geological
32 and Economic Survey and the West Virginia Department of
33 Environmental Protection, Office of Oil and Gas, may disclose
34 the following specified information obtained from the West
35 Virginia oil and gas producer/operator return.

36 (1) The name and address of the owner of a working
37 interest in the well for which the return is filed;

38 (2) The county and district within the county wherein the
39 oil or gas well is located and taxed for ad valorem taxation
40 purposes;

41 (3) The name, address and telephone number of the
42 producer and the producer's agent;

43 (4) The American Petroleum Institute number assigned to
44 each well for which the return is filed;

45 (5) The total barrels produced in the reporting period for
46 each oil well for which the return is filed; and

47 (6) The total mcf produced in the reporting period for each
48 gas well for which the return is filed.

49 (b) Any state or county representative or employee, or
50 employee or representative of the West Virginia Geological and
51 Economic Survey or the Department of Environmental
52 Protection, who violates this section by disclosing confidential
53 information is guilty of a misdemeanor and, upon conviction
54 thereof, shall be fined not more than one thousand dollars or
55 confined in jail for not more than one year, or both fined and
56 confined, and shall be assessed the cost of prosecution. As used
57 in this section, the term "state or county representative"
58 includes any current or former state or county employee,
59 officer, commission or board member and any state or county
60 agency, institution, organization, contractor or subcontractor
61 and any principal, officer, agent or employee thereof.

ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION.

§11-10-5w. Confidentiality and disclosure of information set forth in the oil and gas combined reporting form

specified in subsection (d), section three-a, article thirteen-a of this chapter to county assessors, the Department of Environmental Protection and to the Public Service Commission; offenses; penalties.

1 (a) *Confidentiality of certain information reported on the*
2 *oil and gas combined reporting form, exception.* — The
3 following information provided by or on behalf of any person
4 or entity on the oil and gas combined reporting form specified
5 in subsection (d), section three-a, article thirteen-a of this
6 chapter is confidential:

7 (1) The natural resources account number (NRA);

8 (2) Total gross revenue for oil or gas or both;

9 (3) Working interest revenue for oil or gas or both;

10 (4) The name and address of the owner of a working
11 interest or override royalty interest in the well;

12 (5) The ownership interest held by the owner of a working
13 interest or override royalty interest in the well, expressed as a
14 percentage or decimal equivalent, of total ownership of each
15 listed owner; and

16 (6) The income of any owner.

17 Such information is exempt from disclosure under section
18 four, article one, chapter twenty-nine-b of this code, and shall
19 be kept, held and maintained as confidential except to the extent
20 the information is disclosable under subsections (b) and (c) of
21 this section.

22 (b) *Disclosure to county assessors, Department of Environ-*
23 *mental Protection and Public Service Commission authorized.*
24 — Notwithstanding the provisions of section five-d, article ten

25 of this chapter to the contrary, and notwithstanding any other
26 provision of this code to the contrary, the Tax Commissioner
27 may disclose the oil and gas combined reporting form specified
28 in subsection (d), section three-a, article thirteen-a of this
29 chapter, and information set forth thereon to county assessors,
30 the Department of Environmental Protection and the Public
31 Service Commission for the purpose of administering and
32 implementing the assessment, administrative, oversight and
33 regulatory functions and responsibilities with which they are
34 charged by law.

35 (c) *Release and publication of information.* —

36 (1) *Statistical and aggregate information.* — This section
37 shall not be construed to prohibit the publication or release of
38 summary statistical information derived from the oil and gas
39 combined reporting form, including summary statistical
40 information derived from the items specified in subsection (a)
41 of this section. Publication or release of such summary
42 statistical information is authorized in the form of aggregated
43 statistics, maps, articles, reports or professional talks, or in
44 other forms, provided it is presented in accordance with
45 generally accepted practices and in a manner so as to preclude
46 the identification of particular oil and gas combined report filers
47 and to preclude derivation or determination of information
48 specified in subsection (a) of this section about particular oil
49 and gas combined report filers.

50 (2) *Release and publication of certain information.* —
51 Notwithstanding the provisions of this section to the contrary
52 and notwithstanding any other provision of this code to the
53 contrary, the Tax Commissioner, county assessors, the Depart-
54 ment of Environmental Protection, and the Public Service
55 Commission may publish or publicly release information
56 provided by or on behalf of any person or entity in the oil and
57 gas combined reporting form except for the information
58 specified as confidential in subsection (a) of this section.

59 (d) *Penalty of unlawful disclosure.* — Any state, county or
60 governmental subdivision employee or representative (includ-
61 ing, but not limited to, any county assessor or any employee or
62 representative of the West Virginia Department of Environmen-
63 tal Protection or the West Virginia Public Service Commis-
64 sion), who violates this section by making an unlawful or
65 unauthorized disclosure of confidential information that is
66 reported on the oil and gas combined reporting form is guilty of
67 a misdemeanor and, upon conviction thereof, shall be fined not
68 more than one thousand dollars or confined in jail for not more
69 than one year, or both fined and confined, and shall be assessed
70 the cost of prosecution. As used in this section, the term “state,
71 county or governmental subdivision employee or representa-
72 tive” includes, but is not limited to, any current or former state,
73 county or municipal employee, officer, or commission or board
74 member, and any state, county or municipal agency, institution,
75 organization, contractor or subcontractor and any principal,
76 officer, agent or employee thereof.

77 (e) Effective the first day of July, two thousand six, this
78 section shall have no force or effect.

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-3a. Imposition of tax on privilege of severing natural gas or oil; Tax Commissioner to develop a uniform reporting form.

1 (a) *Imposition of tax.* — For the privilege of engaging or
2 continuing within this state in the business of severing natural
3 gas or oil for sale, profit or commercial use, there is hereby
4 levied and shall be collected from every person exercising such
5 privilege an annual privilege tax: *Provided*, That effective for
6 all taxable periods beginning on or after the first day of January,
7 two thousand, there is an exemption from the imposition of the
8 tax provided in this article on the following: (1) Free natural gas
9 provided to any surface owner; (2) natural gas produced from

10 any well which produced an average of less than five thousand
11 cubic feet of natural gas per day during the calendar year
12 immediately preceding a given taxable period; (3) oil produced
13 from any oil well which produced an average of less than one-
14 half barrel of oil per day during the calendar year immediately
15 preceding a given taxable period; and (4) for a maximum period
16 of ten years, all natural gas or oil produced from any well which
17 has not produced marketable quantities of natural gas or oil for
18 five consecutive years immediately preceding the year in which
19 a well is placed back into production and thereafter produces
20 marketable quantities of natural gas or oil.

21 (b) *Rate and measure of tax.* — The tax imposed in
22 subsection (a) of this section shall be five percent of the gross
23 value of the natural gas or oil produced, as shown by the gross
24 proceeds derived from the sale thereof by the producer, except
25 as otherwise provided in this article.

26 (c) *Tax in addition to other taxes.* — The tax imposed by
27 this section shall apply to all persons severing gas or oil in this
28 state, and shall be in addition to all other taxes imposed by law.

29 (d)(1) The Legislature finds that in addition to the produc-
30 tion reports and financial records which must be filed by oil and
31 gas producers with the State Tax Commissioner in order to
32 comply with this section, oil and gas producers are required to
33 file other production reports with other agencies, including, but
34 not limited to, the office of oil and gas, the Public Service
35 Commission and county assessors. The reports required to be
36 filed are largely duplicative, the compiling of the information
37 in different formats is unnecessarily time consuming and costly,
38 and the filing of one report or the sharing of information by
39 agencies of government would reduce the cost of compliance
40 for oil and gas producers.

41 (2) On or before the first day of July, two thousand three,
42 the Tax Commissioner shall design a common form that may be

43 used for each of the reports regarding production that are
44 required to be filed by oil and gas producers, which form shall
45 readily permit a filing without financial information when such
46 information is unnecessary. The commissioner shall also design
47 such forms so as to permit filings in different formats, includ-
48 ing, but not limited to, electronic formats.

49 (3) Effective the first day of July, two thousand six, this
50 subsection shall have no force or effect.

CHAPTER 226

**(S. B. 370 — By Senators Helmick, Facemyer, Sharpe, Prezioso,
Plymale, Edgell, Love, Bailey, McCabe, Unger, Minear,
Boley, Yoder, Guills and Sprouse)**

[Amended and Again Passed March 18, 2006; in effect January 1, 2007.]

[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §11-3-9 of the Code of West Virginia, 1931, as amended, relating to exempting personal property employed exclusively in agriculture and owned by the producer from personal property taxation.

Be it enacted by the Legislature of West Virginia:

That §11-3-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-9. Property exempt from taxation.

1 (a) All property, real and personal, described in this
2 subsection, and to the extent herein limited, is exempt from
3 taxation:

4 (1) Property belonging to the United States, other than
5 property permitted by the United States to be taxed under state
6 law;

7 (2) Property belonging exclusively to the state;

8 (3) Property belonging exclusively to any county, district,
9 city, village or town in this state and used for public purposes;

10 (4) Property located in this state belonging to any city,
11 town, village, county or any other political subdivision of
12 another state and used for public purposes;

13 (5) Property used exclusively for divine worship;

14 (6) Parsonages and the household goods and furniture
15 pertaining thereto;

16 (7) Mortgages, bonds and other evidence of indebtedness in
17 the hands of bona fide owners and holders hereafter issued and
18 sold by churches and religious societies for the purposes of
19 securing money to be used in the erection of church buildings
20 used exclusively for divine worship or for the purpose of paying
21 indebtedness thereon;

22 (8) Cemeteries;

23 (9) Property belonging to, or held in trust for, colleges,
24 seminaries, academies and free schools, if used for educational,
25 literary or scientific purposes, including books, apparatus,
26 annuities and furniture;

27 (10) Property belonging to, or held in trust for, colleges or
28 universities located in West Virginia, or any public or private

29 nonprofit foundation or corporation which receives contribu-
30 tions exclusively for such college or university, if the property
31 or dividends, interest, rents or royalties derived therefrom are
32 used or devoted to educational purposes of such college or
33 university;

34 (11) Public and family libraries;

35 (12) Property used for charitable purposes and not held or
36 leased out for profit;

37 (13) Property used for the public purposes of distributing
38 water or natural gas or providing sewer service by a duly
39 chartered nonprofit corporation when such property is not held,
40 leased out or used for profit;

41 (14) Property used for area economic development
42 purposes by nonprofit corporations when such property is not
43 leased out for profit;

44 (15) All real estate not exceeding one acre in extent, and the
45 buildings thereon, used exclusively by any college or university
46 society as a literary hall, or as a dormitory or clubroom, if not
47 used with a view to profit, including, but not limited to,
48 property owned by a fraternity or sorority organization
49 affiliated with a university or college, or property owned by a
50 nonprofit housing corporation or similar entity on behalf of a
51 fraternity or sorority organization affiliated with a university or
52 college, when the property is used as residential accommoda-
53 tions or as a dormitory for members of the organization;

54 (16) All property belonging to benevolent associations not
55 conducted for private profit;

56 (17) Property belonging to any public institution for the
57 education of the deaf, dumb or blind or any hospital not held or
58 leased out for profit;

59 (18) Houses of refuge and mental health facility or
60 orphanage;

61 (19) Homes for children or for the aged, friendless or infirm
62 not conducted for private profit;

63 (20) Fire engines and implements for extinguishing fires,
64 and property used exclusively for the safekeeping thereof, and
65 for the meeting of fire companies;

66 (21) All property on hand to be used in the subsistence of
67 livestock on hand at the commencement of the assessment year;

68 (22) Household goods to the value of two hundred dollars,
69 whether or not held or used for profit;

70 (23) Bank deposits and money;

71 (24) Household goods, which for purposes of this section
72 means only personal property and household goods commonly
73 found within the house and items used to care for the house and
74 its surrounding property, when not held or used for profit;

75 (25) Personal effects, which for purposes of this section
76 means only articles and items of personal property commonly
77 worn on or about the human body, or carried by a person and
78 normally thought to be associated with the person when not
79 held or used for profit;

80 (26) Dead victuals laid away for family use;

81 (27) All property belonging to the state, any county,
82 district, city, village, town or other political subdivision, or any
83 state college or university which is subject to a lease purchase
84 agreement and which provides that, during the term of the lease
85 purchase agreement, title to the leased property rests in the
86 lessee so long as lessee is not in default or shall not have
87 terminated the lease as to the property;

88 (28) Personal property, including vehicles that qualify for
89 a farm use exemption certificate pursuant to section two, article
90 three, chapter seventeen-a of this code and livestock, employed
91 exclusively in agriculture, as defined in article ten, section one
92 of the West Virginia Constitution: *Provided*, That this exemp-
93 tion shall only apply in the case of such personal property used
94 on a farm or farming operation that annually produces for sale
95 agricultural products, as defined in rules of the Tax Commis-
96 sioner; and

97 (29) Any other property or security exempted by any other
98 provision of law.

99 (b) Notwithstanding the provisions of subsection (a) of this
100 section, no property is exempt from taxation which has been
101 purchased or procured for the purpose of evading taxation
102 whether temporarily holding the same over the first day of the
103 assessment year or otherwise.

104 (c) Real property which is exempt from taxation by
105 subsection (a) of this section shall be entered upon the asses-
106 sor's books, together with the true and actual value thereof, but
107 no taxes may be levied upon the property or extended upon the
108 assessor's books.

109 (d) Notwithstanding any other provisions of this section,
110 this section does not exempt from taxation any property owned
111 by, or held in trust for, educational, literary, scientific, religious
112 or other charitable corporations or organizations, including any
113 public or private nonprofit foundation or corporation existing
114 for the support of any college or university located in West
115 Virginia, unless such property, or the dividends, interest, rents
116 or royalties derived therefrom, is used primarily and immedi-
117 ately for the purposes of the corporations or organizations.

118 (e) The Tax Commissioner shall, by issuance of rules,
119 provide each assessor with guidelines to ensure uniform

120 assessment practices statewide to effect the intent of this
121 section.

122 (f) Inasmuch as there is litigation pending regarding
123 application of this section to property held by fraternities and
124 sororities, amendments to this section enacted in the year one
125 thousand nine hundred ninety-eight shall apply to all cases and
126 controversies pending on the date of such enactment.

127 (g) The amendment to subdivision (27), subsection (a) of
128 this section, passed during the two thousand five regular session
129 of the Legislature, shall apply to all applicable lease purchase
130 agreements in existence upon the effective date of the amend-
131 ment.

CHAPTER 227

**(H. B. 4037 — By Delegates Michael, Boggs, Cann, Kominar,
Williams, Houston, Hall, Border, Ashley and Anderson)**

[Passed February 1, 2006; in effect from passage.]

[Approved by the Governor on February 7, 2006.]

AN ACT to amend and reenact § 11-4-3 of the Code of West Virginia, 1931, as amended, relating to correcting definitions applicable to the assessment of real property; and making amendments effective retroactively to and including the first day of July, two thousand five, for tax year two thousand six and thereafter.

Be it enacted by the Legislature of West Virginia:

That § 11-4-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. ASSESSMENT OF REAL PROPERTY.**§ 11-4-3. Definitions.**

1 (a) For the purpose of giving effect to the “Tax Limitations
2 Amendment,” this chapter shall be interpreted in accordance
3 with the following definitions, unless the context clearly
4 requires a different meaning:

5 (1) “Owner” means the person, as defined in section ten,
6 article two, chapter two of this code, who is possessed of the
7 freehold, whether in fee or for life. A person seized or entitled
8 in fee subject to a mortgage or deed of trust securing a debt or
9 liability is considered the owner until the mortgagee or trustee
10 takes possession, after which the mortgagee or trustee shall be
11 considered the owner. A person who has an equitable estate of
12 freehold, or is a purchaser of a freehold estate who is in
13 possession before transfer of legal title is also considered the
14 owner.

15 (2) “Used and occupied by the owner thereof exclusively
16 for residential purpose” means actual habitation by the owner
17 or the owner’s spouse of all or a portion of a parcel of real
18 property as a place of abode to the exclusion of any commercial
19 use: *Provided*, That if the parcel of real property was unoccu-
20 pied at the time of assessment and either: (A) Was used and
21 occupied by the owner thereof exclusively for residential
22 purposes on the first day of July of the previous year assess-
23 ment date; (B) was unimproved on the first day of July of the
24 previous year but a building improvement for residential
25 purposes was subsequently constructed thereon between that
26 date and the time of assessment; or (C) is retained by the
27 property owner for noncommercial purposes and was most
28 recently used and occupied by the owner or the owner’s spouse
29 as a residence, and the owner, as a result of illness, accident or
30 infirmity, is residing with a family member or is a resident in a
31 nursing home, personal care home, rehabilitation center or

32 similar facility, then the property shall be considered “used and
33 occupied by the owner thereof exclusively for residential
34 purpose”: *Provided, however,* That nothing herein contained
35 shall permit an unoccupied or unimproved property to be
36 considered “used and occupied by the owner thereof exclu-
37 sively for residential purposes” for more than one year unless
38 the owner, as a result of illness, accident or infirmity, is
39 residing with a family member or is a resident of a nursing
40 home, personal care home, rehabilitation center or similar
41 facility. If a license is required for an activity on the premises
42 or if an activity is conducted thereon which involves the use of
43 equipment of a character not commonly employed solely for
44 domestic as distinguished from commercial purposes, the use
45 may not be considered to be exclusively residential.

46 (3) “Family member” means a person who is related by
47 common ancestry, adoption or marriage including, but not
48 limited to, persons related by lineal and collateral consanguin-
49 ity.

50 (4) “Farm” means a tract or contiguous tracts of land used
51 for agriculture, horticulture or grazing and includes all real
52 property designated as “wetlands” by the United States army
53 corps of engineers or the United States fish and wildlife service.

54 (5) “Occupied and cultivated” means subjected as a unit to
55 farm purposes, whether used for habitation or not, and although
56 parts may be lying fallow, in timber or in wastelands.

57 (b) Effective date of amendments — Amendments to this
58 section enacted during the regular session of the Legislature in
59 the year two thousand six shall have retroactive effect to and
60 including the first day of July, two thousand five, and shall
61 apply in determining tax for tax years beginning the first day of
62 January, two thousand six, and thereafter.

CHAPTER 228

(Com. Sub. for H. B. 4601 — By Delegate Michael)

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §11-6-26 of the Code of West Virginia, 1931, as amended, relating to increasing the portion of property tax revenues that may be used to reimburse the State Tax Division for its operating costs in carrying out its duties related to the property tax assessment of public utilities.

Be it enacted by the Legislature of West Virginia:

That §11-6-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. ASSESSMENT OF PUBLIC SERVICE BUSINESSES.

§11-6-26. Operating fund for public utilities division in Auditor's Office.

1 The Auditor shall establish a special operating fund in the
2 state treasury for the public utilities division in his or her office.
3 The Auditor shall pay into the fund one and three eighths
4 percent of the gross receipts of all moneys collected as provided
5 for in this article. Up to one percent of the gross receipts shall
6 be transferred from the operating fund to the tax loss restoration
7 fund created in section twenty-seven of this article. From the
8 operating fund, the Auditor shall reimburse the tax division for

9 the actual operating expenses incurred in the performance of its
10 duties required by this article not to exceed fifty percent of the
11 fund balance after annual transfers to the tax loss restoration
12 fund. Any moneys remaining in the special operating fund after
13 annual transfers to the tax loss restoration fund shall be used by
14 the tax division and the Auditor for funding the operation of
15 their offices. On the thirty-first day of July in each fiscal year,
16 if the balance in the operating fund exceeds one percent of
17 gross revenues plus fifty thousand dollars, the excess shall be
18 withdrawn from the special fund and deposited in the general
19 fund of the state.

CHAPTER 229

(S. B. 591 — By Senator Helmick)

[Passed March 8, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2006.]

AN ACT to amend and reenact §11-10-11 of the Code of West Virginia, 1931, as amended, relating to authorizing the Tax Division to collect the cost of federal refund offset fees from the tax debtor; creating fund; and authorizing expenditure of proceeds in the fund by the Tax Division in the administration of its office.

Be it enacted by the Legislature of West Virginia:

That §11-10-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-11. Collection of tax.

1 (a) *General.* — The Tax Commissioner shall collect the
2 taxes, additions to tax, penalties and interest imposed by this
3 article or any of the other articles of this chapter to which this
4 article is applicable. In addition to all other remedies available
5 for the collection of debts due this state, the Tax Commissioner
6 may proceed by foreclosure of the lien provided in section
7 twelve, or by levy and distraint under section thirteen.

8 (b) *Prerequisite to final settlement of contracts with*
9 *nonresident contractor; user personally liable.* —

10 (1) Any person contracting with a nonresident contractor
11 subject to the taxes imposed by articles thirteen, twenty-one and
12 twenty-four of this chapter, shall withhold payment, in the final
13 settlement of the contract, of a sufficient amount, not exceeding
14 six percent of the contract price, as will in the person's opinion
15 be sufficient to cover the taxes, until the receipt of a certificate
16 from the Tax Commissioner to the effect that the above
17 referenced taxes imposed against the nonresident contractor
18 have been paid or provided for.

19 (2) If any person shall fail to withhold as provided in
20 subdivision (1) of this subsection, that person is personally
21 liable for the payment of all taxes attributable to the contract,
22 not to exceed six percent of the contract price. The taxes
23 attributable shall be recoverable by the Tax Commissioner by
24 appropriate legal proceedings, which may include issuance of
25 an assessment under this article.

26 (c) *Prerequisite for issuance of certificate of dissolution or*
27 *withdrawal of corporation.* — The Secretary of State shall
28 withhold the issuance of any certificate of dissolution or
29 withdrawal in the case of any corporation organized under the
30 laws of this state, or organized under the laws of another state
31 and admitted to do business in this state, until the receipt of a
32 certificate from the Tax Commissioner to the effect that every
33 tax administered under this article imposed against any

34 corporation has been paid or provided for, or that the applicant
35 is not liable for any tax administered under this article.

36 (d) *Prerequisite to final settlement of contract with this*
37 *state or political subdivision; penalty.* — All state, county,
38 district and municipal officers and agents making contracts on
39 behalf of this state or any political subdivision thereof shall
40 withhold payment, in the final settlement of any contract, until
41 the receipt of a certificate from the Tax Commissioner to the
42 effect that the taxes imposed by articles thirteen, twenty-one
43 and twenty-four of this chapter against the contractor have been
44 paid or provided for. If the transaction embodied in the contract
45 or the subject matter of the contract is subject to county or
46 municipal business and occupation tax, then the payment shall
47 also be withheld until receipt of a release from the county or
48 municipality to the effect that all county or municipal business
49 and occupation taxes levied or accrued against the contractor
50 have been paid. Any official violating this section is subject to
51 a civil penalty of one thousand dollars, recoverable as a debt in
52 a civil action brought by the Tax Commissioner.

53 (e) *Limited effect of Tax Commissioner's certificates.* —
54 The certificates of the Tax Commissioner provided in subsections
55 (b), (c) and (d) of this section shall not bar subsequent
56 investigations, assessments, refunds and credits with respect to
57 the taxpayer.

58 (f) *Payment when person sells out or quits business;*
59 *liability of successor; lien.* —

60 (1) If any person subject to any tax administered under this
61 article sells out his, her or its business or stock of goods, or
62 ceases doing business, any tax, additions to tax, penalties and
63 interest imposed by this article or any of the other articles of
64 this chapter to which this article is applicable shall become due
65 and payable immediately and that person shall, within thirty
66 days after selling out his, her or its business or stock of goods

67 or ceasing to do business, make a final return or returns and pay
68 any tax or taxes which are due. The unpaid amount of any tax
69 is a lien upon the property of that person.

70 (2) The successor in business of any person who sells out
71 his, her or its business or stock of goods, or ceases doing
72 business, is personally liable for the payments of tax, additions
73 to tax, penalties and interest unpaid after expiration of the
74 thirty-day period allowed for payment: *Provided*, That if the
75 business is purchased in an arms-length transaction, and if the
76 purchaser withholds so much of the consideration for the
77 purchase as will satisfy any tax, additions to tax, penalties and
78 interest which may be due until the seller produces a receipt
79 from the Tax Commissioner evidencing the payment thereof,
80 the purchaser is not personally liable for any taxes attributable
81 to the former owner of the business unless the contract of sale
82 provides for the purchaser to be liable for some or all of the
83 taxes. The amount of tax, additions to tax, penalties and interest
84 for which the successor is liable is a lien on the property of the
85 successor, which shall be enforced by the Tax Commissioner as
86 provided in this article.

87 (g) *Priority in distribution of estate or property in receiver-*
88 *ship; personal liability of fiduciary.* — All taxes due and unpaid
89 under this article shall be paid from the first money available
90 for distribution, voluntary or compulsory, in receivership,
91 bankruptcy or otherwise, of the estate of any person, firm or
92 corporation, in priority to all claims, except taxes and debts due
93 the United States which under federal law are given priority
94 over the debts and liens created by this article. Any trustee,
95 receiver, administrator, executor or person charged with the
96 administration of an estate who violates the provisions of this
97 section is personally liable for any taxes accrued and unpaid
98 under this article, which are chargeable against the person, firm
99 or corporation whose estate is in administration.

100 (h) *Injunction.* — If the taxpayer fails for a period of more
101 than sixty days to fully comply with any of the provisions of
102 this article or of any other article of this chapter to which this
103 article is applicable, the Tax Commissioner may institute a
104 proceeding to secure an injunction to restrain the taxpayer from
105 doing business in this state until the taxpayer fully complies
106 with the provisions of this article or any other articles. No bond
107 is required of the Tax Commissioner in any action instituted
108 under this subsection.

109 (i) *Costs.* — In any proceeding under this section, upon
110 judgment or decree for the Tax Commissioner, he or she shall
111 be awarded his or her costs.

112 (j) *Refunds; credits; right to offset.* —

113 (1) Whenever a taxpayer has a refund or credit due it for an
114 overpayment of any tax administered under this article, the Tax
115 Commissioner may reduce the amount of the refund or credit by
116 the amount of any tax administered under this article, whether
117 it be the same tax or any other tax, which is owed by the same
118 taxpayer and collectible as provided in subsection (a) of this
119 section.

120 (2) The Tax Commissioner may enter into agreements with
121 the Internal Revenue Service that provide for offsetting state tax
122 refunds against federal tax liabilities; offsetting federal tax
123 refunds against state tax liabilities; and establishing the amount
124 of the offset fee per transaction which both agencies may
125 charge each other: *Provided*, That offsets under subdivision (1)
126 of this subsection shall occur prior to offset under this subdivi-
127 sion. At the times moneys are received as a result of an offset
128 of a taxpayer's federal tax refund under the provisions of
129 section 6402(e) of the Internal Revenue Code, the taxpayer is
130 given credit against state tax liability for the amount of the
131 offset less a deduction for the offset fee imposed by the Internal

132 Revenue Service: *Provided*, That the amount of the offset fee
133 imposed by the Internal Revenue Service shall be added to the
134 taxes, interest and penalties owed by the taxpayer to this state:
135 *Provided, however*, That the amount of the offset fee imposed
136 by the Internal Revenue Service shall be deducted from the
137 moneys received from the taxpayer's federal tax refund and
138 then deposited in the special revolving fund which is hereby
139 created and established in the State Treasury and designated as
140 the Tax Offset Fee Administration Fund: *Provided further*, That
141 the fees deposited in the Tax Offset Fee Administration Fund
142 may be expended by the Tax Commissioner for the general
143 administration of the taxes administered under the authority of
144 this article.

145 (k) *Spouse relieved of liability in certain cases.* —

146 (1) *In general.* — Under regulations prescribed by the Tax
147 Commissioner, if:

148 (A) A joint personal income tax return has been made for
149 a taxable year;

150 (B) On the return there is a substantial understatement of
151 tax attributable to grossly erroneous items of one spouse;

152 (C) The other spouse establishes that in signing the return
153 he or she did not know, and had no reason to know, that there
154 was a substantial understatement; and

155 (D) Taking into account all the facts and circumstances, it
156 is inequitable to hold the other spouse liable for the deficiency
157 in tax for the taxable year attributable to the substantial
158 understatement, then the other spouse is relieved of any liability
159 for tax, including interest, additions to tax, and other amounts
160 for the taxable year to the extent the liability is attributable to
161 the substantial understatement.

162 (2) *Grossly erroneous items.* — For purposes of this
163 subsection, the term “grossly erroneous items” means, with
164 respect to any spouse:

165 (A) Any item of gross income attributable to a spouse
166 which is omitted from gross income; and

167 (B) Any claim of a deduction, credit or basis by a spouse in
168 an amount for which there is no basis in fact or law.

169 (3) *Substantial understatement.* — For purposes of this
170 subsection, the term “substantial understatement” means any
171 understatement, as defined in regulations prescribed by the Tax
172 Commissioner which exceed five hundred dollars.

173 (4) Understatement must exceed specified percentage of
174 spouse’s income.

175 (A) *Adjusted gross income of \$20,000 or less.* — If the
176 spouse’s adjusted gross income for the readjustment year is
177 twenty thousand dollars or less, this subsection applies only if
178 the liability described in paragraph (1) of this subsection is
179 greater than ten percent of the adjusted gross income.

180 (B) *Adjusted gross income of more than twenty thousand*
181 *dollars.* — If the spouse’s adjusted gross income for the
182 readjustment year is more than twenty thousand dollars,
183 subparagraph (A) of this subdivision is applied by substituting
184 “twenty-five percent” for “ten percent”.

185 (C) *Readjustment year.* — For purposes of this paragraph,
186 the term “readjustment year” means the most recent taxable
187 year of the spouse ending before the date the deficiency notice
188 is mailed.

189 (D) *Computation of spouse’s adjusted gross income.* — If
190 the spouse is married to another spouse at the close of the
191 readjustment year, the spouse’s adjusted gross income shall

192 include the income of the new spouse whether or not they file
193 a joint return.

194 (E) *Exception for omissions from gross income.* — This
195 paragraph shall not apply to any liability attributable to the
196 omission of an item from gross income.

197 (5) *Adjusted gross income.* — For purposes of this subsec-
198 tion, the term “adjusted gross income” means the West Virginia
199 adjusted gross income of the taxpayer, determined under article
200 twenty-one of this chapter.

CHAPTER 230

(H. B. 4580 — By Delegate Michael)

[Passed March 9, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-10-11b, relating to creation of a fund in the State Treasury; designating the fund as the “special district excise tax administration fund,” and authorizing expenditure of the fund for designated purposes.

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 §11-10-11b, to read as follows:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-11b. Fund creation; authorization for expenditure.

1 Amounts deducted and retained by the Tax Commissioner
2 under subsection (e), section eleven-a of this article shall be
3 deposited by the Tax Commissioner in the special revolving
4 fund which is hereby created and established in the State
5 Treasury and designated as the “special district excise tax
6 administration fund.” Amounts deposited in the special district
7 excise tax administration fund may be expended by the Tax
8 Commissioner for the general administration of the taxes
9 administered under the authority of this article.

CHAPTER 231

(Com. Sub. for H. B. 4630 — By Delegate Michael)

[Passed March 9, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2006.]

AN ACT to amend and reenact §11-10-15 and §11-10-18 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §11-10E-1, §11-10E-2, §11-10E-3, §11-10E-4, §11-10E-5, §11-10E-6, §11-10E-7, §11-10E-8, §11-10E-9 and §11-10E-10, all relating to creating a voluntary disclosure program; requiring disclosure of certain tax shelters used to avoid paying state income taxes; extending the statute of limitations for issuing assessments related to failures to disclose a listed transaction; and imposing penalties for promoting abusive tax shelters relative to failing to report listed transactions, reportable transaction understatements, failing to participate in the voluntary disclosure program, and for failing to register a tax shelter or maintain required list.

Be it enacted by the Legislature of West Virginia:

That §11-10-15 and §11-10-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new article, designated §11-10E-1, §11-10E-2, §11-10E-3, §11-10E-4, §11-10E-5, §11-10E-6, §11-10E-7, §11-10E-8, §11-10E-9 and §11-10E-10, all to read as follows:

Article

10. Procedure and Administration.

10E. Tax Shelter Voluntary Compliance Program.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-15. Limitations on assessment.

§11-10-18. Additions to tax.

§11-10-15. Limitations on assessment.

1 (a) *General rule.* — The amount of any tax, additions to
2 tax, penalties and interest imposed by this article or any of the
3 other articles of this chapter to which this article is applicable
4 shall be assessed within three years after the date the return was
5 filed (whether or not such return was filed on or after the date
6 prescribed for filing): *Provided*, That in the case of a false or
7 fraudulent return filed with the intent to evade tax, or in case no
8 return was filed, the assessment may be made at any time:
9 *Provided, however*, That if a taxpayer fails to disclose a listed
10 transaction, as defined in Section 6707A of the Internal
11 Revenue Code, on the taxpayer's state or federal income tax
12 return, an assessment may be made at any time not later than
13 six years after the due date of the return required under article
14 twenty-one or article twenty-four of this chapter for the same
15 taxable year or after such return was filed, or not later than
16 three years after an amended return is filed, whichever is later.

17 (b) *Time return deemed filed.* —

18 (1) *Early return.* — For purposes of this section, a return
19 filed before the last day prescribed by law, or by rules promul-
20 gated by the Tax Commissioner for filing thereof, shall be
21 considered as filed on such last date;

22 (2) *Returns executed by Tax Commissioner.* — The
23 execution of a return by the Tax Commissioner pursuant to the
24 authority conferred by section five-c of this article, shall not
25 start the running of the period of limitations on assessment and
26 collection.

27 (c) *Exceptions.* — Notwithstanding subsection (a):

28 (1) *Extension by agreement.* — The Tax Commissioner and
29 the taxpayer may enter into written agreements to extend the
30 period within which the Tax Commissioner may make an
31 assessment against the taxpayer which period shall not exceed
32 two years. The period so agreed upon may be extended for
33 additional periods not in excess of two years each by subse-
34 quent agreements in writing made before the expiration of the
35 period previously agreed upon;

36 (2) *Deficiency in federal tax.* — Notwithstanding subsec-
37 tion (a), in the event of a final determination by the United
38 States Internal Revenue Service or other competent authority of
39 a deficiency in the taxpayer's federal income tax liability, the
40 period of limitation, upon assessment of a deficiency reflecting
41 such final determinations in the net income tax imposed by
42 article twelve-a and the taxes imposed by articles twenty-one
43 and twenty-four of this chapter, shall not expire until ninety
44 days after the Tax Commissioner is advised of the determina-
45 tion by the taxpayer as provided in section six-a of said article
46 twelve-a, section fifty-nine of said article twenty-one and
47 section twenty of said article twenty-four, or until the period of
48 limitations upon assessment provided in subsection (a) has
49 expired, whichever expires the later, and regardless of the tax
50 year of the deficiency;

51 (3) *Special rule for certain amended returns.* — Where,
52 within the sixty-day period ending on the day on which the time
53 prescribed in this section for the assessment of any tax for any
54 taxable year would otherwise expire, the Tax Commissioner
55 receives a written document signed by the taxpayer showing
56 that the taxpayer owes an additional amount of such tax for
57 such taxable year, the period for the assessment of such
58 additional amount shall not expire before the day sixty days
59 after the day on which the Tax Commissioner receives such
60 document;

61 (4) *Net operating loss or capital loss carrybacks.* — In the
62 case of a deficiency attributable the application by the taxpayer
63 of a net operating loss carryback or a capital loss carryback
64 (including that attributable to a mathematical or clerical error
65 in application of the loss carryback) such deficiency may be
66 assessed at any time before expiration of the period within
67 which a deficiency for the taxable year of the net operating loss
68 or net capital loss which results in such carryback may be
69 assessed;

70 (5) *Certain credit carrybacks.* — In the case of a deficiency
71 attributable to the application to the taxpayer of a credit
72 carryback (including that attributable to a mathematical or
73 clerical error in application of the credit carryback) such
74 deficiency may be assessed at any time before expiration of the
75 period within which a deficiency for the taxable year of the
76 unused credit which results in such carryback may be assessed,
77 or with respect to any portion of a credit carryback from a
78 taxable year attributable to a net operating loss carryback,
79 capital loss carryback, or other credit carryback from a
80 subsequent taxable year, at any time before expiration of the
81 period within which a deficiency for such subsequent taxable
82 year may be assessed. The term “credit carryback” means any
83 carryback allowed under section eight, article one, chapter five-
84 e of this code;

85 (6) *Overpayment of tax credited against payment of another*
86 *tax.* — In the event of a final determination that a taxpayer
87 owes less tax than the amount paid by the taxpayer, and the
88 amount paid was allowed as a credit against a tax administered
89 under this article, the period of limitation upon assessment of
90 a deficiency in the payment of such other tax due to the
91 overstating of the allowable credit, shall not expire until ninety
92 days after the Tax Commissioner receives written notice from
93 the taxpayer advising the Tax Commissioner of the final
94 determination reducing the taxpayer's liability for a tax allowed
95 as a credit against a tax administered under this article, or until
96 the period of limitations upon assessment provided in subsection
97 (a) has expired, whichever expires the later, and regardless
98 of the tax year of the deficiency.

99 (d) *Cases under bankruptcy code.* — The running of
100 limitations provided in subsection (a), on the making of
101 assessments, or provided in section sixteen, on collection, shall,
102 in a case under title eleven of the United States code, be
103 suspended for the period during which the Tax Commissioner
104 is prohibited by reason of such case from making the assess-
105 ment or from collecting the tax and:

106 (1) For assessment, sixty days thereafter; and

107 (2) For collection, six months thereafter.

§11-10-18. Additions to tax.

1 (a) *Failure to file tax return or pay tax due.* —

2 (1) In the case of failure to file a required return of any tax
3 administered under this article on or before the date prescribed
4 for filing such return (determined with regard to any extension
5 of time for filing), unless it is shown that such failure is due to
6 reasonable cause and not due to willful neglect, there shall be
7 added to the amount required to be shown as tax on such return

8 five percent of the amount of such tax if the failure is for more
9 than one month, with an additional five percent for each
10 additional month or fraction thereof during which such failure
11 continues, not exceeding twenty-five percent in the aggregate:
12 *Provided*, That this addition to tax shall be imposed only on the
13 net amount of tax due;

14 (2) In the case of failure to pay the amount shown as tax, on
15 any required return of any tax administered under this article on
16 or before the date prescribed for payment of such tax (deter-
17 mined with regard to any extension of time for payment), unless
18 it is shown that such failure is due to reasonable cause and not
19 due to willful neglect, there shall be added to the amount shown
20 as tax on such return one half of one percent of the amount of
21 such tax if the failure is for not more than one month, with an
22 additional one half of one percent for each additional month or
23 fraction thereof during which such failure continues, not
24 exceeding twenty-five percent in the aggregate: *Provided*, That
25 the addition to tax shall be imposed only on the net amount of
26 tax due;

27 (3) In the case of failure to pay any amount in respect to
28 any tax required to be shown on a return specified in paragraph
29 (1) which is not so shown within fifteen days of the date of
30 notice and demand therefore, unless it is shown that such failure
31 is due to reasonable cause and not due to willful neglect, there
32 shall be added to the amount of tax stated in such notice and
33 demand one half of one percent of the amount of each tax if the
34 failure is for not more than one month, with an additional one
35 half of one percent for each additional month or fraction thereof
36 during which such failure continues, not exceeding twenty-five
37 percent in the aggregate: *Provided*, That this addition to tax
38 shall be imposed only on the net amount of tax due.

39 (b) *Limitation and special rule.* —

40 (1) Additions under more than one paragraph:

41 (A) With respect to any return, the amount of the addition
42 under paragraph (1) of subsection (a) shall be reduced by the
43 amount of the addition under paragraph (2) of subsection (a) for
44 any month to which an addition to tax applies under both
45 paragraphs (1) and (2);

46 (B) With respect to any return, the maximum amount of the
47 addition permitted under paragraph (3) of subsection (a) shall
48 be reduced by the amount of the addition under paragraph (1)
49 of subsection (a) (determined without regard to the last sentence
50 of such subsection) which is attributable to the tax for which the
51 notice and demand is made and which is not paid within fifteen
52 days of notice and demand.

53 (2) *Amount of tax shown more than amount required to be*
54 *shown.* — If the correct amount of tax due is less than the
55 amount shown on the return, paragraphs (1) and (2) of subsec-
56 tion (a) shall only apply to the lower amount.

57 (3) *Exception for estimated tax.* — Subsection (a) shall not
58 apply to any failure to pay any estimated tax.

59 (c) *Negligence or intentional disregard of rules and*
60 *regulations.* — If any part of any underpayment of any tax
61 administered under this article is due to negligence or inten-
62 tional disregard of rules (but without intent to defraud), there
63 shall be added to the amount of tax due five percent of the
64 amount of such tax if the underpayment due to negligence or
65 intentional disregard of rules is for not more than one month,
66 with an additional five percent for each additional month or
67 fraction thereof during which such underpayment continues, not
68 exceeding twenty-five percent in the aggregate: *Provided*, That
69 these additions to tax shall be imposed only on the net amount
70 of tax due and shall be in lieu of the additions to tax provided
71 in subsection (a), and the Tax Commissioner shall state in his
72 or her notice of assessment the reason or reasons for imposing

73 this addition to tax with sufficient particularity to put the
74 taxpayer on notice regarding why it was assessed.

75 (d) *False or fraudulent return.* — In the case of the filing
76 of any false or fraudulent return with intent to evade any such
77 tax, or in the case of willful failure to file a return with intent to
78 evade tax, there shall be added to the tax due an amount equal
79 to fifty percent thereof which shall be in lieu of the additions to
80 tax provided in subsections (a) and (c). The burden of proving
81 fraud, willfulness or intent to evade tax shall be upon the Tax
82 Commissioner. In the case of a joint personal income tax return
83 under article twenty-one of this chapter, this subsection shall
84 not apply with respect to the tax of the spouse unless some part
85 of the underpayment is due to the fraud of such spouse.

86 (e) *Additions to tax treated as tax.* — Additions to tax
87 prescribed under this section on any tax shall be assessed,
88 collected and paid in the same manner as taxes.

89 (f) *Penalties for promoting abusive tax shelters and for*
90 *failure to report listed transactions.* —

91 (1) A penalty is hereby imposed on every person who
92 engages in activities promoting abusive tax shelters described
93 in Section 6700(a) of the Internal Revenue Code of 1986, or
94 any subsequent corresponding provisions of the Internal
95 Revenue Code, as from time to time amended, and who is
96 subject to a penalty imposed thereunder, whether or not such
97 penalty has been imposed, where such activities affect tax
98 returns required to be filed with the Tax Commissioner. The
99 amount of the penalty imposed hereunder shall be equal to fifty
100 percent of the gross income derived from activities by such
101 person which are subject to that penalty under paragraph (2)(A)
102 of said section 6700(a) for making a false or fraudulent
103 statement; and shall be the lesser of one thousand dollars or one
104 hundred percent of such gross income when the activity is

105 subject to that penalty under paragraph (1) of said section
106 6700(a).

107 (2) For audits of returns commencing on or after the first
108 day of July, two thousand six, when it appears that any part of
109 the deficiency for which an assessment is made is due to failure
110 to disclose a listed transaction or a reportable transaction other
111 than a listed transaction, as the terms are defined in Section
112 6707A of the Internal Revenue Code of 1986, or any subse-
113 quent corresponding provision of the Internal Revenue Code, as
114 from time to time amended, on the taxpayer's federal income
115 tax return, there shall be imposed a penalty. In the case of a
116 listed transaction the amount of the penalty shall be equal to
117 seventy percent of the amount of the deficiency, and in the case
118 of other reportable transactions the amount of the penalty shall
119 be equal to thirty-five percent of the amount of the deficiency.

120 (g) *Coordination with other penalties.* — Unless provided
121 otherwise by rules, the penalties imposed by this section are in
122 addition to any other penalty imposed by this article or article
123 ten-e of this chapter.

ARTICLE 10E. TAX SHELTER VOLUNTARY COMPLIANCE PROGRAM.

§11-10E-1. Short title.

§11-10E-2. Tax shelter voluntary compliance program.

§11-10E-3. "Tax avoidance transaction" defined.

§11-10E-4. Use of evidence of participation in the program.

§11-10E-5. Reportable transactions.

§11-10E-6. Failure to register tax shelter or maintain list.

§11-10E-7. Promoting tax shelters.

§11-10E-8. Registration of tax shelters.

§11-10E-9. Investor lists.

§11-10E-10. Suspension of inconsistent code provisions.

§11-10E-1. Short title.

1 This article may be cited as the "Tax Shelter Voluntary
2 Compliance Act."

§11-10E-2. Tax shelter voluntary compliance program.

1 (a) *In general.* — The Tax Commissioner shall establish
2 and administer a tax shelter voluntary compliance program for
3 eligible taxpayers subject to tax under article twenty-one and
4 article twenty-four of this chapter. The program shall be
5 conducted from the first day of August, two thousand six,
6 through the first day of November, two thousand six, and shall
7 apply to personal income tax and corporation net income tax
8 liabilities attributable to the use of tax avoidance transactions
9 for taxable years beginning before the first day of January, two
10 thousand six.

11 (b) The department is authorized to adopt rules (including
12 interpretive and emergency rules), issue forms and instructions,
13 issue administrative notices, and take such other actions as it
14 deems necessary to implement the provisions of this article.

15 (c) *Election.* — An eligible taxpayer that meets the
16 requirements of subsection (d) of this section with respect to
17 any taxable year to which this article applies may elect to
18 participate in the program under either method below for any
19 particular tax avoidance transaction period. Such election shall
20 be made separately for each taxable year in the form and
21 manner prescribed by the Tax Commissioner, and once made
22 shall be irrevocable.

23 (1) *Voluntary compliance without appeal.* — If an eligible
24 taxpayer elects to participate under this paragraph: (i) The Tax
25 Commissioner shall abate and not seek to collect any penalty
26 that may be applicable to the underreporting or underpayment
27 of West Virginia income tax attributable to the use of tax
28 avoidance transactions for such taxable year; (ii) except as
29 otherwise provided in this article, the Tax Commissioner shall
30 not seek civil or criminal prosecution against the taxpayer for
31 such taxable year with respect to tax avoidance transactions;
32 and (iii) the taxpayer may not file a claim for credit or refund

33 with respect to the tax avoidance transaction for such taxable
34 year. Nothing in this subsection shall preclude a taxpayer from
35 filing a claim for credit or refund for the same taxable year in
36 which a tax avoidance transaction was reported if such credit or
37 refund is not attributable to the tax avoidance transaction. No
38 penalty may be waived or abated under this article if the penalty
39 imposed relates to an amount of West Virginia income tax
40 assessed prior to the first day of August, two thousand six.

41 (2) *Voluntary compliance with appeal.* — If an eligible
42 taxpayer elects to participate under this paragraph, then: (i) The
43 Tax Commissioner shall abate and not seek to collect the
44 penalties for failure to report listed transactions, with respect to
45 such taxable year; (ii) except as otherwise provided in this
46 article, the Tax Commissioner shall not seek civil or criminal
47 prosecution against the taxpayer for such taxable year with
48 respect to tax avoidance transactions; and (iii) the taxpayer may
49 file a claim for credit or refund as provided in article ten of this
50 chapter with respect to such taxable year. Notwithstanding any
51 other provision of the code to the contrary, the taxpayer may
52 not file an appeal until after either of the following: (i) The Tax
53 Commissioner issues a notice of denial; or (ii) the earlier of: (1)
54 The date which is one hundred eighty days after the date of a
55 final determination by the Internal Revenue Service with
56 respect to the transactions at issue; or (2) the date that is three
57 years after the date the claim for refund was filed or one year
58 after full payment of all tax, including penalty and interest. No
59 penalty may be waived or abated under this article if the penalty
60 imposed relates to an amount of West Virginia income tax
61 assessed prior to the first day of August, two thousand six.

62 (d) *Eligible taxpayer.* — The tax shelter voluntary compli-
63 ance program applies to any eligible taxpayer who, during the
64 period from the first day of August, two thousand six, to the
65 first day of November, two thousand six, does both of the
66 following: (1) Files an amended return for the taxable year for

67 which the taxpayer used a tax avoidance transaction to
68 underreport the taxpayer's West Virginia income tax liability,
69 reporting the total West Virginia taxable income and income
70 tax for such taxable year computed without regard to any tax
71 avoidance transactions; and (2) makes full payment of the
72 additional income tax and interest due for such taxable year that
73 is attributable to the use of the tax avoidance transaction. For
74 purposes of this subsection (d), if the Tax Commissioner
75 subsequently determines that the correct amount of West
76 Virginia income tax was not paid for the taxable year, then the
77 penalty relief under this section shall not apply to any portion
78 of the underpayment not paid to the state that is attributable to
79 a tax avoidance transaction.

80 An "eligible taxpayer" is an individual, partnership, estate,
81 trust, corporation, limited liability company, joint stock
82 company, or any other company, trustee, receiver, assignee,
83 referee, society, association, business or any other person as
84 described in the tax law, who or which has a tax liability
85 relating to income tax imposed under article twenty-one or
86 article twenty-four of this chapter. However, an otherwise
87 eligible taxpayer would be prohibited from participating in the
88 voluntary compliance initiative if:

89 (a) The taxpayer is a party to any federal or state criminal
90 investigation for underreporting or underpayment of tax;

91 (b) As of the taxpayer's application date under the volun-
92 tary compliance initiative, the taxpayer is a party to any
93 pending administrative proceeding or civil or criminal litigation
94 relating to the designated taxes under the voluntary compliance
95 initiative. An administrative proceeding or civil litigation shall
96 be deemed not to be pending on the application date if the
97 taxpayer withdraws from that proceeding or litigation before the
98 Tax Commissioner's penalty waiver under the voluntary
99 compliance initiative;

100 (c) The taxpayer has a criminal conviction concerning the
101 tax on which penalty relief is sought; or

102 (d) The taxpayer was eligible to participate in the amnesty
103 program under article ten-d of this chapter but did not do so,
104 and the taxpayer participated in the voluntary compliance
105 programs of any other state.

§11-10E-3. “Tax avoidance transaction” defined.

1 For purposes of this article, the term “tax avoidance
2 transaction” means a plan or arrangement devised for the
3 principal purpose of avoiding federal or state income tax or
4 both. Tax avoidance transactions include, but are not limited to,
5 “listed transactions” as defined in Treasury Regulations Section
6 1.6011-4(b)(2).

§11-10E-4. Use of evidence of participation in the program.

1 The fact of a taxpayer’s participation in the tax shelter
2 voluntary compliance program shall not be considered evidence
3 that the taxpayer in fact engaged in a tax avoidance transaction.

§11-10E-5. Reportable transactions.

1 (a) For each taxable year in which a taxpayer is required to
2 make a disclosure statement under Treasury Regulations
3 Section 1.6011-4 (26 CFR 1.6011-4) (including any taxpayer
4 that is a member of a consolidated group required to make such
5 disclosure) with respect to a reportable transaction (including
6 a listed transaction) in which the taxpayer participated in a
7 taxable year for which a return is required, such taxpayer shall
8 file a copy of such disclosure with the Tax Commissioner.
9 Disclosure under this subsection is required to be made by any
10 taxpayer that is a member of a unitary business group that
11 includes any person required to make a disclosure statement
12 under Treasury Regulations Section 1.6011-4. Disclosure under

13 this subsection is required with respect to any transaction
14 entered into after the twenty-eighth day of February, two
15 thousand, that becomes a listed transaction at any time, and
16 shall be made in the manner prescribed by the Tax Commis-
17 sioner. With respect to transactions in which the taxpayer
18 participated for taxable years ending before the thirty-first day
19 of December, two thousand four, disclosure shall be made by
20 the due date (including extensions) of the first annual return due
21 after the effective date of this article. With respect to transac-
22 tions in which the taxpayer participated for taxable years ending
23 on and after the thirty-first day of December, two thousand
24 four, disclosure shall be made in the time and manner pre-
25 scribed in Treasury Regulations Section 1.6011-4(e). Notwith-
26 standing the above, no disclosure is required for transactions
27 entered into after the twenty-eighth day of February, two
28 thousand, and before the first day of January, two thousand
29 five: (i) If the taxpayer has filed an amended West Virginia
30 income tax return which reverses the tax benefits of the
31 potential tax avoidance transaction; or (ii) as a result of a
32 federal audit the Internal Revenue Service has determined the
33 tax treatment of the transaction and a West Virginia amended
34 return has been filed to reflect the federal treatment.

35 (b) *Reportable transaction understatement penalty.* — If a
36 taxpayer has a reportable transaction understatement for any
37 taxable year, there shall be added to the tax an amount equal to
38 twenty percent of the amount of that understatement. This
39 penalty shall be deemed assessed upon the assessment of the tax
40 to which such penalty relates and shall be collected and paid on
41 notice and demand in the same manner as the tax.

42 (1) *Reportable transaction understatement.* — For purposes
43 of this section, the term “reportable transaction understatement”
44 means the product of: (i) The amount of the increase (if any) in
45 taxable income, as determined by reference to the amount of
46 post-apportioned income that results from a difference between

47 the proper tax treatment of an item to which this subsection
48 applies and the taxpayer's treatment of that item as shown on
49 the taxpayer's return, including an amended return filed prior
50 to the date the taxpayer is first contacted by the Tax Commis-
51 sioner regarding the examination of the return; and (ii) the
52 applicable tax rates.

53 (2) *Items to which subsection (b) applies.* — This subsec-
54 tion shall apply to any item which is attributable to either of the
55 following: (i) any listed transaction as defined in Treasury
56 Regulations Section 1.6011-4; and (ii) any reportable transac-
57 tion as defined in Treasury Regulations Section 1.6011-4 (other
58 than a listed transaction) if a significant purpose of the
59 transaction is the avoidance or evasion of federal income tax.

60 (3) Subsection (b) shall be applied by substituting thirty
61 percent for twenty percent with respect to the portion of any
62 reportable transaction understatement with respect to which the
63 requirements of this subsection are not met.

64 (4) *Reasonable cause exception.* —

65 (A) *In general.* — No penalty shall be imposed under this
66 subsection with respect to any portion of a reportable transac-
67 tion understatement if it is shown by clear and convincing
68 evidence that there was a reasonable cause for such portion and
69 that the taxpayer acted in good faith with respect to such
70 portion.

71 (B) *Special rules.* — Subparagraph (A) does not apply to
72 any reportable transaction (including a listed transaction) unless
73 all of the following requirements are met:

74 (C) The relevant facts affecting the tax treatment of the
75 item are adequately disclosed in accordance with this article. A
76 taxpayer failing to adequately disclose shall be treated as
77 meeting the requirements of this subparagraph: (i) If the penalty

78 for that failure was rescinded; (ii) there is or was substantial
79 authority for such treatment; and (iii) the taxpayer reasonably
80 believed that such treatment was more likely than not the proper
81 treatment.

82 (c) *One hundred percent interest penalty for failure to*
83 *participate.* — If an eligible taxpayer who fails to participate in
84 the program is contacted by the Internal Revenue Service or the
85 Tax Commissioner regarding the potential use of a tax avoid-
86 ance transaction with respect to a taxable year and has a
87 deficiency with respect to such taxable year or years, there shall
88 be added to the tax attributable to the potential tax avoidance
89 transaction an amount equal to one hundred percent of the
90 interest due under article ten of this chapter for the period
91 beginning with the statutory due date of the return (determined
92 without regard to extensions) on which the income should have
93 been reported to the date of the notice of assessment. Such
94 penalty shall be deemed assessed upon the assessment of the
95 interest to which such penalty relates and shall be collected and
96 paid in the same manner as such interest. The penalty imposed
97 by this subsection is in addition to any other penalty imposed
98 by this article or article ten. This subsection shall apply to
99 taxable years ending on and after the thirty-first day of
100 December, two thousand five.

101 (d) *Coordination with other penalties.* — Unless provided
102 otherwise by rules, the penalties imposed by this section are in
103 addition to any other penalty imposed by this article or article
104 ten of this chapter.

§11-10E-6. Failure to register tax shelter or maintain list.

1 (a) *Penalty imposed.* — Any person that fails to comply
2 with the requirements of section eight or section nine of this
3 article shall incur a penalty as provided in subsection (b). A
4 person shall not be in compliance with the requirements of
5 section eight unless and until the required registration has been

6 filed and contains all of the information required to be included
7 with such registration under such section eight or Section 6111
8 of the Internal Revenue Code. A person shall not be in compli-
9 ance with the requirements of section nine unless, at the time
10 the required list is made available to the Tax Commissioner,
11 such list contains all of the information required to be main-
12 tained under such section nine or Section 6112 of the Internal
13 Revenue Code.

14 (b) *Amount of penalty.* — The following penalties apply:

15 (1) In the case of each failure to comply with the require-
16 ments of subsection (a), subsection (b) or subsection (d) of
17 section eight, the penalty shall be ten thousand dollars;

18 (2) If the failure is with respect to a listed transaction under
19 subsection (c) of section eight, the penalty shall be one hundred
20 thousand dollars;

21 (3) In the case of each failure to comply with the require-
22 ments of subsection (a) or subsection (b) of section nine, the
23 penalty shall be ten thousand dollars; and

24 (4) If the failure is with respect to a listed transaction under
25 subsection (c) of section nine, the penalty shall be one hundred
26 thousand dollars.

27 (c) *Authority to rescind penalty.* — The office of tax
28 appeals, with the written approval of the Tax Commissioner,
29 may rescind all or any portion of any penalty imposed by this
30 section with respect to any violation only if one or more of the
31 following apply: (1) It is determined that failure to comply did
32 not jeopardize the best interests of the state and is not due to
33 any willful neglect or any intent not to comply; (2) it is shown
34 that the violation is due to an unintentional mistake of fact; (3)
35 rescinding the penalty would promote compliance with the
36 requirements of this article and effective tax administration; or

37 (4) the taxpayer can show that there was reasonable cause for
38 the failure to disclose and that the taxpayer acted in good faith.

39 (d) *Coordination with other penalties.* — The penalty
40 imposed by this section is in addition to any penalty imposed by
41 this article or article ten of this chapter.

§11-10E-7. Promoting tax shelters.

1 Except as herein provided, the provisions of Section 6700
2 of the Internal Revenue Code shall apply for purposes of this
3 article as if such section applied to a West Virginia deduction,
4 credit, exclusion from income, allocation or apportionment rule,
5 or other West Virginia tax benefit. Notwithstanding Section
6 6700(a) of the Internal Revenue Code, if an activity with
7 respect to which a penalty imposed under Section 6700(a) of
8 the Internal Revenue Code, as applied for purposes of this
9 article, involves a false or fraudulent statement as described in
10 Section 6700(a)(2)(A) of the Internal Revenue Code, as applied
11 for purposes of this article, the amount of the penalty imposed
12 under this section shall be fifty percent of the gross income
13 derived (or to be derived) from such activity by the person upon
14 which the penalty is imposed.

§11-10E-8. Registration of tax shelters.

1 (a) *Federal tax shelter.* — Any tax shelter organizer
2 required to register a tax shelter under Section 6111 of the
3 Internal Revenue Code shall send a duplicate of the federal
4 registration information to the Tax Commissioner not later than
5 the day on which registration is required under federal law. Any
6 person required to register under Section 6111 of the Internal
7 Revenue Code who receives a tax registration number from the
8 Secretary of the Treasury shall, within thirty days after request
9 by the Tax Commissioner, file a statement of that registration
10 number with the Tax Commissioner.

11 (b) *Additional requirements for listed transactions.* — In
12 addition to the requirements of subsection (a), for any transac-
13 tions entered into on or after the twenty-eighth day of February,
14 two thousand, that become listed transactions (as defined under
15 Treasury Regulations Section 1.6011-4) at any time, those
16 transactions shall be registered with the Tax Commissioner (in
17 the form and manner prescribed by the Tax Commissioner) by
18 the later of: (i) Sixty days after entering into the transaction; (ii)
19 sixty days after the transaction becomes a listed transaction; or
20 (iii) the first day of July, two thousand six.

21 (c) *Tax shelters subject to this section.* — The provisions of
22 this section apply to any tax shelter herein described in which
23 a person:

24 (1) Organizes or participates in the sale of an interest in a
25 partnership, entity or other plan or arrangement; and

26 (2) Makes or causes another person to make a false or
27 fraudulent statement with respect to securing a tax benefit or a
28 gross valuation as to any material matter, and which is or was
29 one or more of the following: (A) Organized in this state; (B)
30 doing business in this state; or (C) deriving income from
31 sources in this state.

32 (d) *Tax shelter identification number.* — Any person
33 required to file a return under this article and required to
34 include on the person's federal income tax return a tax shelter
35 identification number pursuant to Section 6111 of the Internal
36 Revenue Code shall furnish such number when filing the
37 person's West Virginia return.

§11-10E-9. Investor lists.

1 (a) *Federal abusive tax shelter.* — Any person required to
2 maintain a list under Section 6112 of the Internal Revenue Code
3 and Treasury Regulations Section 301.6112-1 with respect to a

4 potentially abusive tax shelter shall furnish such list to the Tax
5 Commissioner not later than the time such list is required to be
6 furnished to the Internal Revenue Service under federal income
7 tax law. The list required under this section shall include the
8 same information required with respect to a potentially abusive
9 tax shelter under Treasury Regulations Section 301.6112-1 and
10 any other information that the Tax Commissioner may require.

11 (b) *Additional requirements for listed transactions.* — For
12 transactions entered into on or after the twenty-eighth day of
13 February, two thousand, that become listed transactions (as
14 defined under Treasury Regulations Section 1.6011-4) at any
15 time thereafter, the list shall be furnished to the Tax Commis-
16 sioner by the later of sixty days after entering into the transac-
17 tion or sixty days after the transaction becomes a listed
18 transaction.

19 (c) *Tax shelters subject to this section.* — The provisions of
20 this section apply to any tax shelter herein described in which
21 a person:

22 (1) Organizes or participates in the sale of an interest in a
23 partnership, entity or other plan or arrangement; and

24 (2) Makes or causes another person to make a false or
25 fraudulent statement with respect to securing a tax benefit or a
26 gross valuation as to any material matter; and which is or was
27 one or more of the following: (A) Organized in this state; (B)
28 doing business in this state; or (C) deriving income from
29 sources in this state.

§11-10E-10. Suspension of inconsistent code provisions.

1 All provisions of article ten, chapter eleven of this code and
2 all provisions of tax statutes administered under said article ten
3 of this chapter that are inconsistent with the provisions of this

4 article are suspended to the extent necessary to carry out the
5 provisions of this article.

CHAPTER 232

(S. B. 371 — By Senators Helmick, Facemyer, Sharpe,
Prezioso, Plymale, Edgell, Love, Bailey, McCabe, Unger,
Minear, Boley, Yoder, Guills and Sprouse)

[Passed March 8, 2006; in effect from passage.]

[Approved by the Governor on March 22, 2006.]

AN ACT to amend and reenact §11-13A-3b of the Code of West Virginia, 1931, as amended, relating to reducing the rate of tax paid on privilege of severing timber after specified date; and deleting obsolete language.

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 to read as follows:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§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 by
10 the producer, except as otherwise provided in this article:
11 *Provided*, That as to timber produced after the thirty-first day
12 of December, two thousand six, the rate of the tax imposed in
13 subsection (a) of this section shall be one and twenty-two
14 hundredths percent of the gross value of the timber produced,
15 as shown by the gross proceeds derived from the sale thereof by
16 the producer, 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 law.

CHAPTER 233

(S. B. 581 — By Senator Helmick)

[Passed March 9, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §11-14C-2 of the Code of West Virginia, 1931, as amended, relating to the motor fuel excise tax; and amending the definition of “person” to include responsible persons.

Be it enacted by the Legislature of West Virginia:

That §11-14C-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 14C. MOTOR FUEL EXCISE TAX.

§11-14C-2. Definitions.

1 As used in this article and unless the context requires
2 otherwise, the following terms have the meaning ascribed
3 herein.

4 (1) "Agricultural purposes" means the activities of:

5 (A) Cultivating the soil, including the planting and
6 harvesting of crops, for the commercial production of food,
7 fiber and ornamental woodland products;

8 (B) Using land for breeding and management of farm
9 livestock, including dairy, apiary, equine or poultry husbandry;
10 and

11 (C) Using land for the practice of horticulture including the
12 growing of Christmas trees, orchards and nursery stock:
13 *Provided*, That agricultural purposes shall not include commer-
14 cial forestry, growing of timber for commercial purposes or any
15 other activity that normally would not be included in subdivi-
16 sion (A), (B) or (C) of this definition.

17 (2) "Aircraft" includes any airplane or helicopter.

18 (3) "Alcohol" means motor fuel grade ethanol or a mixture
19 of motor fuel-grade ethanol and methanol, excluding denaturant
20 and water that is a minimum of ninety-eight percent ethanol or
21 methanol by volume.

22 (4) "Article" or "this article" means article fourteen-c,
23 chapter eleven of this code.

24 (5) "Assessment" means a written determination by the
25 commissioner of the amount of taxes owed by a taxpayer.

26 (6) "Aviation fuel" means aviation gasoline or aviation jet
27 fuel.

28 (7) "Aviation gasoline" means motor fuel designed for use
29 in the operation of aircraft other than jet aircraft, and sold or
30 used for that purpose.

31 (8) "Aviation jet fuel" means motor fuel designed for use
32 in the operation of jet or turbo-prop aircraft and sold or used for
33 that purpose.

34 (9) "Biodiesel fuel" means any motor fuel or mixture of
35 motor fuels that is derived, in whole or in part, from agricultural
36 products or animal fats, or the wastes of such products or fats,
37 and is advertised as, offered for sale as, suitable for use or used
38 as motor fuel in an internal combustion engine.

39 (10) "Blended fuel" means a mixture composed of gasoline
40 or diesel fuel and another liquid, including, but not limited to,
41 gasoline blend stocks, gasohol, ethanol, methanol, fuel grade
42 alcohol, diesel fuel enhancers and resulting blends, other than
43 a de minimus amount of a product such as carburetor detergent
44 or oxidation inhibitor, that can be used as a motor fuel in a
45 highway vehicle.

46 (11) "Blender" means a person who produces blended
47 motor fuel outside the bulk transfer/terminal system.

48 (12) "Blending" means the mixing of one or more petro-
49 leum products, with or without another product, regardless of
50 the original character of the product blended, if the product
51 obtained by the blending is capable of use in the generation of
52 power for the propulsion of a motor vehicle, an airplane or a
53 marine vessel. Blending does not include mixing that occurs in
54 the process of refining by the original refiner of crude petro-
55 leum or the blending of products known as lubricating oil in the
56 production of lubricating oils and greases.

57 (13) "Bulk plant" means a motor fuel storage and distribu-
58 tion facility that is not a terminal and from which motor fuel
59 may be removed at a rack.

60 (14) “Bulk transfer” means any transfer of motor fuel from
61 one location to another by pipeline tender or marine delivery
62 within a bulk transfer/terminal system, including, but not
63 limited to, all of the following:

64 (A) A marine vessel movement of motor fuel from a
65 refinery or terminal to a terminal;

66 (B) Pipeline movements of motor fuel from a refinery or
67 terminal to a terminal;

68 (C) Book transfer of motor fuel within a terminal between
69 licensed suppliers prior to completion of removal across the
70 rack; and

71 (D) Two-party exchange between licensed suppliers or
72 between licensed suppliers and permissive suppliers.

73 (15) “Bulk user” means a person who maintains storage
74 facilities for motor fuel and uses part or all of the stored motor
75 fuel to operate a motor vehicle, watercraft or aircraft.

76 (16) “Bulk transfer/terminal system” means the motor fuel
77 distribution system consisting of refineries, pipelines, marine
78 vessels, and terminals. Motor fuel in a refinery, a pipeline, a
79 terminal or a marine vessel transporting motor fuel to a refinery
80 or terminal is in the bulk transfer/terminal system. Motor fuel
81 in a motor fuel storage facility including, but not limited to, a
82 bulk plant that is not part of a refinery or terminal, in the motor
83 fuel supply tank of any engine or motor vehicle, in a marine
84 vessel transporting motor fuel to a motor fuel storage facility
85 that is not in the bulk transfer/terminal system, or in any tank
86 car, rail car, trailer, truck or other equipment suitable for ground
87 transportation is not in the bulk transfer/terminal system.

88 (17) “Carrier” means any operator of a pipeline or marine
89 vessel engaged in the business of transporting motor fuel above
90 the terminal rack.

91 (18) “Code” means the Code of West Virginia of one
92 thousand nine hundred thirty-one, as amended.

93 (19) “Commercial watercraft” means a watercraft employed
94 in the business of commercial fishing, transporting persons or
95 property for compensation or hire or any other trade or
96 business.

97 (20) “Commissioner” or “tax commissioner” means the
98 West Virginia State Tax Commissioner or his or her delegate.

99 (21) “Compressed natural gas” means natural gas that has
100 been compressed and dispensed into motor fuel storage
101 containers and is advertised as, offered for sale as, suitable for
102 use as, or used as an engine motor fuel.

103 (22) “Corporate or partnership officer” means an officer or
104 director of a corporation, partner of a partnership, or member of
105 a limited liability company, who as an officer, director, partner
106 or member is under a duty to perform on behalf of the corpora-
107 tion, partnership, or limited liability company the tax collection,
108 accounting or remitting obligations.

109 (23) “Dead storage” is the amount of motor fuel that cannot
110 be pumped out of a motor fuel storage tank because the motor
111 fuel is below the mouth of the draw pipe. The amount of motor
112 fuel in dead storage is two hundred gallons for a tank with a
113 capacity of less than ten thousand gallons and four hundred
114 gallons for a tank with a capacity of ten thousand gallons or
115 more.

116 (24) “Denaturants” means and includes gasoline, natural
117 gasoline, gasoline components or toxic or noxious materials
118 added to motor fuel grade ethanol to make it unsuitable for
119 beverage use, but not unsuitable for automotive use.

120 (25) “Designated inspection site” means any state highway
121 inspection station, weigh station, agricultural inspection station,

122 mobile station or other location designated by the commissioner
123 to be used as a motor fuel inspection site.

124 (26) "Destination state" means the state, territory, or
125 foreign country to which motor fuel is directed for delivery into
126 a storage facility, a receptacle, a container or a type of transpor-
127 tation equipment for the purpose of resale or use. The term shall
128 not include a tribal reservation of any recognized Native
129 American tribe.

130 (27) "Diesel fuel" means any liquid that is advertised as,
131 offered for sale as, sold for use as, suitable for use as or used as
132 a motor fuel in a diesel-powered highway vehicle or watercraft.
133 The term includes #1 fuel oil, #2 fuel oil, undyed diesel fuel and
134 kerosene, but shall not include gasoline or aviation fuel.

135 (28) "Distributor" means a person who acquires motor fuel
136 from a licensed supplier, permissive supplier, or from another
137 licensed distributor for subsequent sale or use.

138 (29) "Diversion" means transporting motor fuel outside a
139 reasonably direct route from the source to the destination state.

140 (30) "Division" or "State Tax Division" means the Tax
141 Division of the West Virginia Department of Revenue.

142 (31) "Dyed diesel fuel" means diesel fuel that meets the
143 dyeing and marking requirements of section 4082, Title 26,
144 United States Code, regardless of how the diesel fuel was dyed.

145 (32) "End seller" means the person who sells motor fuel to
146 the ultimate user of the motor fuel.

147 (33) "Export" means to obtain motor fuel in West Virginia
148 for sale or other distribution in another state, territory, or
149 foreign country.

150 (34) “Exporter” means a person that exports motor fuel
151 from this state. The seller is the exporter of motor fuel delivered
152 out-of-state by or for the seller and the purchaser is the exporter
153 of motor fuel delivered out-of-state by or for the purchaser.

154 (35) “Fuel” means motor fuel.

155 (36) “Fuel alcohol” means methanol or motor fuel grade
156 ethanol.

157 (37) “Fuel grade ethanol” means the ASTM standard in
158 effect on the effective date of this article as the D-4806
159 specification for denatured motor fuel grade ethanol for
160 blending with gasoline.

161 (38) “Fuel supply tank” means any receptacle on a motor
162 vehicle from which motor fuel is supplied for the propulsion of
163 the motor vehicle.

164 (39) “Gallon” means a unit of liquid measure as custom-
165 arily used in the United States containing two hundred thirty-
166 one cubic inches by volume.

167 (40) “Gasohol” means a blended motor fuel composed of
168 gasoline and motor fuel alcohol.

169 (41) “Gasoline” means any product commonly or commer-
170 cially known as gasoline, regardless of classification, that is
171 advertised as, offered for sale as, sold for use as, suitable for
172 use as or used as motor fuel in an internal combustion engine,
173 including gasohol, but does not include special fuel as defined
174 in this section.

175 (42) “Gasoline blend stocks” includes any petroleum
176 product component of gasoline, such as naphtha, reformate, or
177 toluene, listed in Treas. Reg. §48.4081-1(c) (3) that can be
178 blended for use in a motor fuel. However, the term does not

179 include any substance that will be ultimately used for consumer
180 nonmotor fuel use and is sold or removed in drum quantities of
181 fifty-five gallons or less at the time of the removal or sale.

182 (43) "Gross gallons" means the total measured product,
183 exclusive of any temperature or pressure adjustments, consider-
184 ations or deductions, in U. S. gallons.

185 (44) "Governmental entity" means this state or any political
186 subdivision thereof or the United States or its commissioners,
187 agencies and instrumentalities.

188 (45) "Heating oil" means any combustible liquid, including,
189 but not limited to, #1 fuel oil, #2 dyed fuel oil and kerosene,
190 that is burned in a boiler, furnace, or stove for heating or for
191 industrial processing purposes.

192 (46) "Highway" means every way or place of whatever
193 nature open to the use of the public for purposes of vehicular
194 travel in this state, including the streets and alleys in towns and
195 cities.

196 (47) "Highway vehicle" means any self-propelled vehicle,
197 trailer or semitrailer that is designed or used for transporting
198 persons or property over the public highway and includes all
199 vehicles subject to registration under article three, chapter
200 seventeen-a of this code.

201 (48) "Import" means to bring motor fuel into this state by
202 motor vehicle, marine vessel, pipeline, or any other means.
203 However, import does not include bringing motor fuel into this
204 state in the motor fuel supply tank of a motor vehicle, if the
205 motor fuel is used to power that motor vehicle.

206 (49) "Importer" means a person that imports motor fuel into
207 this state. The seller is the importer for motor fuel delivered
208 into this state from outside of this state by or for the seller and

209 the purchaser is the importer for motor fuel delivered into this
210 state from outside of this state by or for the purchaser.

211 (50) "Import verification number" means the number
212 assigned by the commissioner with respect to a single transport
213 vehicle delivery into this state from another state upon request
214 for an assigned number by an importer or the transporter
215 carrying taxable motor fuel into this state for the account of an
216 importer.

217 (51) "In this state" means the area within the borders of
218 West Virginia, including all territory within the borders of West
219 Virginia that is owned by the United States of America.

220 (52) "Invoiced gallons" means the gallons actually billed on
221 an invoice for payment.

222 (53) "Licensee" means any person licensed by the commis-
223 sioner pursuant to section ten of this article.

224 (54) "Liquid" means any substance that is liquid above its
225 freezing point.

226 (55) "Liquefied natural gas" means natural gas that has
227 been liquefied at -126.1 degrees centigrade and stored in
228 insulated cryogenic tanks for use as an engine motor fuel.

229 (56) "Motor carrier" means any vehicle used, designated or
230 maintained for the transportation of persons or property and
231 having two axles and a gross vehicle weight exceeding twenty-
232 six thousand pounds or having three or more axles regardless of
233 weight or is used in combination when the weight of the
234 combination exceeds twenty-six thousand pounds or registered
235 gross vehicle weight, and any aircraft, barge or other watercraft
236 or railroad locomotive transporting passengers or freight in or
237 through this state: *Provided*, That the gross vehicle weight
238 rating of the vehicles being towed is in excess of ten thousand

239 pounds. The term motor carrier does not include any type of
240 recreational vehicle.

241 (57) "Motor fuel" means gasoline, blended fuel, aviation
242 fuel and any special fuel.

243 (58) "Motor fuel transporter" means a person who trans-
244 ports motor fuel outside the bulk transfer/terminal system by
245 means of a transport vehicle, a railroad tank car, or a marine
246 vessel.

247 (59) "Motor vehicle" means automobiles, motor carriers,
248 motor trucks, motorcycles and all other vehicles or equipment,
249 engines or machines which are operated or propelled by
250 combustion of motor fuel.

251 (60) "Net gallons" means the amount of motor fuel
252 measured in gallons when adjusted to a temperature of sixty
253 degrees fahrenheit and a pressure of fourteen and seven-tenths
254 pounds pressure per square inch.

255 (61) "Permissive supplier" is a person who may not be
256 subject to the taxing jurisdiction of this state, but who meets
257 both of the following requirements: (A) Is registered under
258 section 4101 of the Internal Revenue Code for transactions in
259 motor fuel in the bulk transfer/terminal system; and (B) a
260 position holder in motor fuel only located in another state or a
261 person who receives motor fuel only in another state pursuant
262 to a two-party exchange: *Provided*, That a person is classified
263 as a supplier if it has or maintains, occupies or uses, within this
264 state, directly or by a subsidiary, an office, distribution house,
265 sales house, warehouse, or other place of business, or any agent
266 (by whatever name called) operating within this state under the
267 authority of the supplier or its subsidiary.

268 (62) "Person" means any individual; firm; cooperative;
269 association; corporation; limited liability corporation; estate;

270 guardian; executor; administrator; trust; business trust;
271 syndicate; partnership; limited partnership; copartnership;
272 organization; limited liability partnership; joint venture;
273 receiver; trustee in bankruptcy; club, society or other group or
274 combination acting as a unit; or public body, including, but not
275 limited to, this state, any other state, and any agency, commis-
276 sioner, institution, political subdivision or instrumentality of
277 this state or any other state; and also any officer, employee or
278 member of any of the foregoing who, as an officer, employee
279 or member, is under a duty to perform or is responsible for the
280 performance of an act prescribed by the provisions of this
281 article.

282 (63) "Position holder" means the person who holds the
283 inventory position in motor fuel in a terminal, as reflected on
284 the records of the terminal operator. A person holds the
285 inventory position in motor fuel when that person has a contract
286 with the terminal operator for the use of storage facilities and
287 terminaling services for motor fuel at the terminal. The term
288 includes a terminal operator who owns motor fuel in the
289 terminal.

290 (64) "Principal" means:

291 (A) If a partnership, all its partners;

292 (B) If a corporation, all its officers, directors, and control-
293 ling direct or indirect owners;

294 (C) If a limited liability company, all its members; or

295 (D) An individual.

296 (65) "Rack" means a mechanism for delivering motor fuel
297 from a refinery, terminal, marine vessel or bulk plant into a
298 transport vehicle, railroad tank car or other means of transfer
299 that is outside the bulk transfer/terminal system.

300 (66) "Railroad locomotive" means any diesel-powered
301 equipment or machinery that rides on railroad rails and includes
302 a switching engine.

303 (67) "Receive" means any acquisition of ownership or
304 possession of motor fuel.

305 (68) "Refiner" means any person who owns, operates or
306 otherwise controls a refinery.

307 (69) "Refinery" means a facility for the manufacture or
308 reprocessing of finished or unfinished petroleum products
309 usable as motor fuel and from which motor fuel may be
310 removed by pipeline or marine vessel or at a rack.

311 (70) "Removal" means a physical transfer other than by
312 evaporation, loss, or destruction. A physical transfer to a
313 transport vehicle or other means of conveyance outside the bulk
314 transfer/terminal system is complete upon delivery into the
315 means of conveyance.

316 (71) "Retailer" means a person who sells motor fuel at
317 retail or dispenses motor fuel at a retail location.

318 (72) "Special fuel" means any gas or liquid, other than
319 gasoline, used or suitable for use as motor fuel in an internal
320 combustion engine or motor to propel any form of vehicle,
321 machine, or mechanical contrivance and includes products
322 commonly known as natural or casing-head gasoline, diesel
323 fuel, dyed diesel fuel, biodiesel fuel, transmix and all forms of
324 motor fuel commonly or commercially known or sold as
325 butane, propane, liquefied natural gas, liquefied petroleum gas,
326 compressed natural gas product or a combination of liquefied
327 petroleum gas and a compressed natural gas product. "Special
328 fuel" does not include any petroleum product or chemical
329 compound such as alcohol, industrial solvent, heavy furnace oil
330 or lubricant, unless blended in or sold for use as motor fuel in
331 an internal combustion engine.

332 (73) “State” or “this state” means the State of West
333 Virginia.

334 (74) “Supplier” means a person that is:

335 (A) Subject to the general taxing jurisdiction of this state;

336 (B) Registered under Section 4101 of the Internal Revenue
337 Code for transactions in motor fuel in the bulk transfer/terminal
338 distribution system; and

339 (C) One of the following:

340 (i) A position holder in motor fuel in a terminal or refinery
341 in this state and may concurrently also be a position holder in
342 motor fuel in another state; or

343 (ii) A person who receives motor fuel in this state pursuant
344 to a two-party exchange.

345 A terminal operator shall not be considered a supplier based
346 solely on the fact that the terminal operator handles motor fuel
347 consigned to it within a terminal.

348 (75) “Tax” or “this tax” is the motor fuel excise tax
349 imposed by this article and includes within its meaning interest,
350 additions to tax and penalties, unless the context requires a
351 more limited meaning.

352 (76) “Taxpayer” means any person required to file a return
353 for the tax imposed by this article or any person liable for
354 payment of the tax imposed by this article.

355 (77) “Terminal” means a motor fuel storage and distribu-
356 tion facility to which a terminal control number has been
357 assigned by the Internal Revenue Service, to which motor fuel
358 is supplied by pipeline or marine vessel, and from which motor
359 fuel may be removed at a rack.

360 (78) "Terminal operator" means a person who owns,
361 operates or otherwise controls a terminal.

362 (79) "Transmix" means: (A) The buffer or interface
363 between two different products in a pipeline shipment; or (B)
364 a mix of two different products within a refinery or terminal
365 that results in an off-grade mixture.

366 (80) "Transport vehicle" means a vehicle designed or used
367 to carry motor fuel over the highway and includes a straight
368 truck, a straight truck/trailer combination and a semitrailer
369 combination rig.

370 (81) "Trustee" means a person who is licensed as a supplier
371 or a permissive supplier and receives tax payments from and on
372 behalf of another pursuant to section twenty-four of this article.

373 (82) "Two-party exchange" means a transaction in which
374 motor fuel is transferred from one licensed supplier or permis-
375 sive supplier to another licensed supplier or permissive supplier
376 pursuant to an exchange agreement; and

377 (A) Includes a transfer from the person who holds the
378 inventory position in taxable motor fuel in the terminal as
379 reflected on the records of the terminal operator;

380 (B) Is completed prior to removal of the product from the
381 terminal by the receiving exchange partner; and

382 (C) Is recorded on the terminal operator's books and
383 records with the receiving exchange partner as the supplier that
384 removes the motor fuel across the terminal rack for purposes of
385 reporting the transaction to this state.

386 (83) "Use" means the actual consumption or receipt of
387 motor fuel by any person into a motor vehicle, aircraft or
388 watercraft.

389 (84) "Watercraft" means any vehicle used on waterways.

CHAPTER 234

(Com. Sub. for S. B. 692 — By Senator Helmick)

[Passed March 10, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 29, 2006.]

AN ACT to amend and reenact §11-15-9d and §11-15-20 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-15A-3d of said code; to amend and reenact §11-15B-2, §11-15B-2a, §11-15B-13, §11-15B-14a, §11-15B-15, §11-15B-18, §11-15B-19, §11-15B-20, §11-15B-23, §11-15B-24, §11-15B-35 and §11-15B-36 of said code; and to amend said code by adding thereto two new sections, designated §11-15B-2b and §11-15B-37, all relating generally to conforming West Virginia's consumers sales and use tax law to requirements of the Streamlined Sales and Use Tax Agreement as amended; incorporating certain substantive provisions of the agreement pertaining to definitions, administration, collection and enforcement of sales and use taxes; deleting obsolete language; making other technical changes; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-15-9d and §11-15-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-15A-3d of said code be amended and reenacted; that §11-15B-2, §11-15B-2a, §11-15B-13, §11-15B-14a, §11-15B-15, §11-15B-18, §11-15B-19, §11-15B-20, §11-15B-23, §11-15B-24, §11-15B-35 and §11-15B-36 of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §11-15B-2b and §11-15B-37, 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.**

§11-15-9d. Direct pay permits.

§11-15-20. Quarterly and annual returns.

§11-15-9d. Direct pay permits.

1 (a) Notwithstanding any other provision of this article, the
2 Tax Commissioner may, pursuant to rules promulgated by him
3 or her in accordance with article three, chapter twenty-nine-a of
4 this code, authorize a person who is a user, consumer, distribu-
5 tor or lessee to which sales or leases of tangible personal
6 property are made or services provided, to pay any tax levied by
7 this article or article fifteen-a of this chapter directly to the Tax
8 Commissioner and waive the collection of the tax by that
9 person's vendor. No authority shall be granted or exercised
10 except upon application to the Tax Commissioner and after
11 issuance by the Tax Commissioner of a direct pay permit. Each
12 direct pay permit granted pursuant to this section is valid until
13 surrendered by the holder or canceled for cause by the commis-
14 sioner. The commissioner shall prescribe by rules promulgated
15 in accordance with article three, chapter twenty-nine-a of this
16 code those activities which will cause cancellation of a direct
17 pay permit issued pursuant to this section. Upon issuance of a
18 direct pay permit, payment of the tax imposed or assertion of
19 the exemptions allowed by this article or article fifteen-a of this
20 chapter on sales and leases of tangible personal property and
21 sales of taxable services from the vendors of the personal
22 property or services shall be made directly to the Tax Commis-
23 sioner by the permit holder.

24 (b) On or before the twentieth day of each month, every
25 permit holder shall make and file with the Tax Commissioner

26 a consumers sales and use tax direct pay permit return for the
27 preceding month in the form prescribed by the Tax Commis-
28 sioner showing the total value of the tangible personal property
29 used, the amount of taxable services purchased, the amount of
30 consumers sales and use taxes due from the permit holder,
31 which shall be paid to the Tax Commissioner with the return,
32 and any other information as the Tax Commissioner considers
33 necessary: *Provided*, That if the amount of consumers sales and
34 use taxes due averages less than two hundred fifty dollars per
35 month, the Tax Commissioner may permit the filing of
36 quarterly returns in lieu of monthly returns and the amount of
37 tax shown on the returns to be due shall be remitted on or
38 before the fifteenth day following the close of the calendar
39 quarter; and if the amount due averages less than one hundred
40 fifty dollars per calendar quarter, the Tax Commissioner may
41 permit the filing of an annual direct pay permit return and the
42 amount of tax shown on the return to be due shall be remitted
43 on or before thirty days after the end of the permit holder tax
44 year for federal and state income tax purposes: *Provided*,
45 *however*, That the Tax Commissioner may, by nonemergency
46 legislative rules promulgated pursuant to article three, chapter
47 twenty-nine-a of this code, change the minimum amounts
48 established in this subsection. The Tax Commissioner, upon
49 written request by the permit holder, may grant a reasonable
50 extension of time, upon terms as the Tax Commissioner may
51 require, for the making and filing of direct pay permit returns
52 and paying the tax due. Interest on the tax shall be chargeable
53 on every extended payment at the rate specified in section
54 seventeen, article ten of this chapter.

55 (c) A permit issued pursuant to this section is valid until
56 expiration of the taxpayers registration year under article twelve
57 of this chapter. This permit is automatically renewed when the
58 taxpayer's business registration certificate is issued for the next
59 succeeding fiscal year, unless the permit is surrendered by the
60 holder or canceled for cause by the Tax Commissioner.

61 (d) Persons who hold a direct payment permit which has not
62 been canceled are not required to pay the tax to the vendor as
63 otherwise provided in this article or article fifteen-a of this
64 chapter. They shall notify each vendor from whom tangible
65 personal property is purchased or leased or from whom services
66 are purchased of their direct payment permit number and that
67 the tax is being paid directly to the Tax Commissioner. Upon
68 receipt of the notice, the vendor is absolved from all duties and
69 liabilities imposed by this chapter for the collection and
70 remittance of the tax with respect to sales of tangible personal
71 property and sales of services to the permit holder. Vendors
72 who make sales upon which the tax is not collected by reason
73 of the provisions of this section shall maintain records in a
74 manner that the amount involved and identity of each purchaser
75 may be ascertained.

76 (e) Upon the expiration, cancellation or surrender of a
77 direct payment permit, the provisions of this chapter, without
78 regard to this section, will thereafter apply to the person who
79 previously held the permit, and that person shall promptly
80 notify in writing vendors from whom tangible personal property
81 or services are purchased or leased of the cancellation or
82 surrender. Upon receipt of the notice, the vendor is subject to
83 the provisions of this chapter, without regard to this section,
84 with respect to all sales, distributions, leases or storage of
85 tangible personal property, thereafter made to or for that person.

86 (f) The amendments to this section enacted in the year two
87 thousand six are effective for tax years beginning on or after the
88 first day of January, two thousand six.

§11-15-20. Quarterly and annual returns.

1 (a) When the total consumers sales and use tax remittance
2 for which a person is liable does not exceed an average monthly
3 amount over the taxable year of two hundred fifty dollars, he or

4 she may pay the tax and make a quarterly return on or before
5 the twentieth day of the first month in the next succeeding
6 quarter in lieu of monthly returns: *Provided*, That the Tax
7 Commissioner may, by nonemergency legislative rules
8 promulgated pursuant to article three, chapter twenty-nine-a of
9 this code, change the minimum amount established in this
10 subsection.

11 (b) When the total consumers sales and use tax remittance
12 for which a person is liable does not in the aggregate exceed six
13 hundred dollars for the taxable year, he or she may pay the tax
14 and make an annual return on or before thirty days after the end
15 of his or her taxable year for federal and state income tax
16 purposes: *Provided*, That the Tax Commissioner may, by
17 nonemergency legislative rules promulgated pursuant to article
18 three, chapter twenty-nine-a of this code, change the minimum
19 amount established in this subsection.

20 (c) The amendments to this section enacted in the year two
21 thousand six are effective for tax years beginning on or after the
22 first day of January, two thousand six.

ARTICLE 15A. USE TAX.

§11-15A-3d. Direct pay permits.

1 (a) Notwithstanding any other provision of this article, the
2 Tax Commissioner may, pursuant to rules promulgated by him
3 or her in accordance with article three, chapter twenty-nine-a of
4 this code, authorize a person as defined in section two of article
5 fifteen who is a user, consumer, distributor or lessee to which
6 sales or leases of tangible personal property are made or
7 services provided to pay any tax levied by this article or article
8 fifteen of this chapter directly to the Tax Commissioner and
9 waive the collection of the tax by that person's vendor. This
10 authority is not to be granted or exercised except upon applica-
11 tion to the Tax Commissioner and after issuance by the Tax

12 Commissioner of a direct pay permit. Each direct pay permit
13 granted pursuant to this section continues to be valid until
14 surrendered by the holder or canceled for cause by the commis-
15 sioner. The commissioner shall prescribe by rules promulgated
16 in accordance with article three, chapter twenty-nine-a of this
17 code those activities which will cause cancellation of a direct
18 pay permit issued pursuant to this section. Upon issuance of the
19 direct pay permit, payment of the tax imposed or assertion of
20 the exemptions allowed by this article or article fifteen of this
21 chapter on sales and leases of tangible personal property and
22 sales of taxable services from the vendors thereof shall be made
23 directly to the Tax Commissioner by the permit holder.

24 (b) On or before the twentieth day of each month, every
25 permit holder shall make and file with the Tax Commissioner
26 a consumers sales and use tax direct pay permit return for the
27 preceding month in the form prescribed by the Tax Commis-
28 sioner showing the total value of the tangible personal property
29 so used, the amount of taxable services purchased, the amount
30 of tax due from the permit holder, which amount shall be paid
31 to the Tax Commissioner with the return, and any other
32 information the Tax Commissioner considers necessary:
33 *Provided*, That if the amount of consumers sales and use taxes
34 due averages less than two hundred fifty dollars per month, the
35 Tax Commissioner may permit the filing of quarterly returns in
36 lieu of monthly returns and the amount of tax shown thereon to
37 be due shall be remitted on or before the twentieth day
38 following the close of the calendar quarter; and if the amount
39 due averages less than one hundred fifty dollars per calendar
40 quarter, the Tax Commissioner may permit the filing of an
41 annual direct pay permit return and the amount of tax shown to
42 be due is to be remitted on or before the thirtieth day after the
43 close of permit holder's taxable year: *Provided, however*, That
44 the Tax Commissioner may, by nonemergency legislative rules
45 promulgated pursuant to article three, chapter twenty-nine-a of
46 this code, change the minimum amounts established in this

47 subsection. The Tax Commissioner, upon written request filed
48 by the permit holder before the due date of the return, may
49 grant a reasonable extension of time, upon the terms the Tax
50 Commissioner may require, for the making and filing of direct
51 pay permit returns and paying the tax due. Interest on the tax is
52 chargeable on every extended payment at the rate specified in
53 section seventeen, article ten of this chapter.

54 (c) A permit issued pursuant to this section is to be valid
55 until expiration of the taxpayer's registration year under article
56 twelve of this chapter. This permit is automatically renewed
57 when the taxpayer's business registration certificate is issued
58 for the next succeeding fiscal year, unless the permit is
59 surrendered by the holder or canceled for cause by the Tax
60 Commissioner.

61 (d) Persons who hold a direct payment permit which has not
62 been canceled are not required to pay the tax to the vendor as
63 otherwise provided in this article or article fifteen of this
64 chapter. These persons shall notify each vendor from whom
65 tangible personal property is purchased or leased or from whom
66 services are purchased of their direct payment permit number
67 and that the tax is being paid directly to the Tax Commissioner.
68 Upon receipt of the notice, the vendor is absolved from all
69 duties and liabilities imposed by this chapter for the collection
70 and remittance of the tax with respect to sales, distributions,
71 leases or storage of tangible personal property and sales of
72 services to the permit holder. Vendors who make sales upon
73 which the tax is not collected by reason of the provisions of this
74 section shall maintain records in a manner by which the amount
75 involved and identity of each purchaser may be ascertained.

76 (e) Upon the expiration, cancellation or surrender of a
77 direct payment permit, the provisions of this chapter, without
78 regard to this section, shall thereafter apply to the person who
79 previously held the permit, and the person shall promptly notify

80 in writing vendors from whom tangible personal property or
81 services are purchased of the cancellation or surrender. Upon
82 receipt of the notice, the vendor is subject to the provisions of
83 this chapter, without regard to this section, with respect to all
84 sales of tangible personal property or taxable services, thereaf-
85 ter made to or for the person.

86 (f) The amendments to this section enacted in the year two
87 thousand six are effective for tax years beginning on or after the
88 first day of January, two thousand six.

ARTICLE 15B. STREAMLINED SALES AND USE TAX ADMINISTRATION ACT.

§11-15B-2. Definitions.

§11-15B-2a. Streamlined Sales and Use Tax Agreement defined.

§11-15B-2b. Telecommunications definitions.

§11-15B-13. Amnesty for registration.

§11-15B-14a. Application of general sourcing rules and exclusion from the rules.

§11-15B-15. General transaction sourcing rules.

§11-15B-18. Multiple points of use of certain products and services.

§11-15B-19. Telecommunications sourcing rule.

§11-15B-20. Telecommunication sourcing definitions.

§11-15B-23. Enactment of exemptions.

§11-15B-24. Administration of exemptions.

§11-15B-35. Local rate and boundary changes.

§11-15B-36. Relief from certain liability for state and local taxes.

§11-15B-37. State review and approval of certified automated system software and
certain liability relief.

§11-15B-2. Definitions.

1 (a) *General.* — When used in this article and articles fifteen
2 and fifteen-a of this chapter, words defined in subsection (b) of
3 this section shall have the meanings ascribed to them in this
4 section, except in those instances where a different meaning is
5 distinctly expressed or the context in which the term is used
6 clearly indicates that a different meaning is intended by the
7 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 Tax
12 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 nonitemized
20 price. A “bundled transaction” does not include the sale of any
21 products in which the “sales price” varies, or is negotiable,
22 based on the selection by the purchaser of the products included
23 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 immate-
30 rial include grocery sacks, shoeboxes, dry cleaning garment
31 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 or
41 other supporting sales-related documentation made available to
42 the customer in paper or electronic form including, but not
43 limited to, an invoice, bill of sale, receipt, contract, service
44 agreement, lease agreement, periodic notice of rates and
45 services, rate card or price list.

46 (C) A transaction that otherwise meets the definition of a
47 "bundled transaction", as defined in this subdivision, is not a
48 "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 the
51 use of the service, and is provided exclusively in connection
52 with the service, and the true object of the transaction is the
53 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 connec-
57 tion with the second service and the true object of the transac-
58 tion 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 the
64 total "purchase price" or "sales price" of the bundled products.

65 (II) Sellers shall use either the "purchase price" or the
66 "sales price" of the products to determine if the taxable

67 products are de minimis. Sellers may not use a combination of
68 the “purchase price” and “sales price” of the products to
69 determine if the taxable products are de minimis.

70 (III) Sellers shall use the full term of a service contract to
71 determine if the taxable products are de minimis; or

72 (iv) A transaction that includes products taxable at the
73 general rate of tax and food or food ingredients taxable at a
74 lower rate of tax and the “purchase price” or “sales price” of the
75 products taxable at the general sales tax rate is de minimis.

76 (I) “De minimis” means the seller’s “purchase price” or
77 “sales price” of the products taxable at the general sales tax rate
78 is ten percent or less of the total “purchase price” or “sales
79 price” of the bundled products.

80 (II) Sellers shall use either the “purchase price” or the
81 “sales price” of the products to determine if the products
82 taxable at the general rate of tax are de minimis. Sellers may
83 not use a combination of the “purchase price” and “sales price”
84 of the products to determine if the products taxable at the
85 general rate of tax are de minimis.

86 (III) Sellers shall use the full term of a service contract to
87 determine if the products taxable at the general rate of tax are
88 de minimis; or

89 (v) The “retail sale” of exempt tangible personal property,
90 or food and food ingredients taxable at a lower rate of tax, and
91 tangible personal property taxable at the general rate of tax
92 where:

93 (I) The transaction includes “food and food ingredients”,
94 “drugs”, “durable medical equipment”, “mobility-enhancing
95 equipment”, “prosthetic devices” all as defined in this article ;
96 and

97 (II) Where the seller's "purchase price" or "sales price" of
98 the taxable tangible personal property taxable at the general rate
99 of tax is fifty percent or less of the total "purchase price" or
100 "sales price" of the bundled tangible personal property. Sellers
101 may not use a combination of the "purchase price" and "sales
102 price" of the tangible personal property when making the fifty
103 percent determination for a transaction.

104 (5) "Candy" means a preparation of sugar, honey or other
105 natural or artificial sweeteners in combination with chocolate,
106 fruits, nuts or other ingredients or flavorings in the form of bars,
107 drops or pieces. "Candy" shall not include any preparation
108 containing flour and shall require no refrigeration.

109 (6) "Certified automated system" or "CAS" means software
110 certified under the agreement to calculate the tax imposed by
111 each jurisdiction on a transaction, determine the amount of tax
112 to remit to the appropriate state and maintain a record of the
113 transaction.

114 (7) "Certified service provider" or "CSP" means an agent
115 certified under the agreement to perform all of the seller's sales
116 tax functions.

117 (8) "Computer" means an electronic device that accepts
118 information in digital or similar form and manipulates the
119 information for a result based on a sequence of instructions.

120 (9) "Computer software" means a set of coded instructions
121 designed to cause a "computer" or automatic data processing
122 equipment to perform a task.

123 (10) "Delivered electronically" means delivered to the
124 purchaser by means other than tangible storage media.

125 (11) "Delivery charges" means charges by the seller of
126 personal property or services for preparation and delivery to a

127 location designated by the purchaser of personal property or
128 services including, but not limited to, transportation, shipping,
129 postage, handling, crating and packing.

130 (12) “Dietary supplement” means any product, other than
131 “tobacco”, intended to supplement the diet that:

132 (A) Contains one or more of the following dietary ingredi-
133 ents:

134 (i) A vitamin;

135 (ii) A mineral;

136 (iii) A herb or other botanical;

137 (iv) An amino acid;

138 (v) A dietary substance for use by humans to supplement
139 the diet by increasing the total dietary intake; or

140 (vi) A concentrate, metabolite, constituent, extract or
141 combination of any ingredient described in subparagraph (i)
142 through (v), inclusive, of this paragraph;

143 (B) Is intended for ingestion in tablet, capsule, powder,
144 softgel, gelcap or liquid form, or if not intended for ingestion in
145 such a form, is not represented as conventional food and is not
146 represented for use as a sole item of a meal or of the diet; and

147 (C) Is required to be labeled as a dietary supplement,
148 identifiable by the “Supplemental Facts” box found on the label
149 as required pursuant to 21 CFR §101.36, or in any successor
150 section of the Code of Federal Regulations.

151 (13) “Direct mail” means printed material delivered or
152 distributed by United States mail or other delivery service to a
153 mass audience or to addressees on a mailing list provided by the

154 purchaser or at the direction of the purchaser when the cost of
155 the items are not billed directly to the recipients. "Direct mail"
156 includes tangible personal property supplied directly or
157 indirectly by the purchaser to the direct mail seller for inclusion
158 in the package containing the printed material. "Direct mail"
159 does not include multiple items of printed material delivered to
160 a single address.

161 (14) "Drug" means a compound, substance or preparation,
162 and any component of a compound, substance or preparation,
163 other than food and food ingredients, dietary supplements or
164 alcoholic beverages:

165 (A) Recognized in the official United States pharmaco-
166 poeia, official homeopathic pharmacopoeia of the United
167 States, or official national formulary, and supplement to any of
168 them;

169 (B) Intended for use in the diagnosis, cure, mitigation,
170 treatment or prevention of disease in humans; or

171 (C) Intended to affect the structure or any function of the
172 human body.

173 (15) "Durable medical equipment" means equipment
174 including repair and replacement parts for the equipment, but
175 does not include "mobility-enhancing equipment", which:

176 (A) Can withstand repeated use;

177 (B) Is primarily and customarily used to serve a medical
178 purpose;

179 (C) Generally is not useful to a person in the absence of
180 illness or injury; and

181 (D) Is not worn in or on the body.

182 (16) “Electronic” means relating to technology having
183 electrical, digital, magnetic, wireless, optical, electromagnetic
184 or similar capabilities.

185 (17) “Entity-based exemption” means an exemption based
186 on who purchases the product or service or who sells the
187 product or service. An exemption that is available to all
188 individuals shall not be considered an entity-based exemption.

189 (18) “Food and food ingredients” means substances,
190 whether in liquid, concentrated, solid, frozen, dried or dehy-
191 drated form, that are sold for ingestion or chewing by humans
192 and are consumed for their taste or nutritional value. “Food and
193 food ingredients” does not include alcoholic beverages,
194 prepared food or tobacco.

195 (19) “Food sold through vending machines” means food
196 dispensed from a machine or other mechanical device that
197 accepts payment.

198 (20) “Governing board” means the governing board of the
199 Streamlined Sales and Use Tax Agreement.

200 (21) “Includes” and “including” when used in a definition
201 contained in this article is not considered to exclude other
202 things otherwise within the meaning of the term being defined.

203 (22) “Lease” includes rental, hire and license. “Lease”
204 means any transfer of possession or control of tangible personal
205 property for a fixed or indeterminate term for consideration. A
206 lease or rental may include future options to purchase or extend.

207 (A) “Lease” does not include:

208 (i) A transfer of possession or control of property under a
209 security agreement or deferred payment plan that requires the
210 transfer of title upon completion of the required payments;

211 (ii) A transfer or possession or control of property under an
212 agreement that requires the transfer of title upon completion of
213 required payments and payment of an option price does not
214 exceed the greater of one hundred dollars or one percent of the
215 total required payments; or

216 (iii) Providing tangible personal property along with an
217 operator for a fixed or indeterminate period of time. A condi-
218 tion of this exclusion is that the operator is necessary for the
219 equipment to perform as designed. For the purpose of this
220 subparagraph, an operator must do more than maintain, inspect
221 or set-up the tangible personal property.

222 (B) This definition shall be used for sales and use tax
223 purposes regardless if a transaction is characterized as a lease
224 or rental under generally accepted accounting principles, the
225 Internal Revenue Code, the Uniform Commercial Code or other
226 provisions of federal, state or local law.

227 (23) “Load and leave” means delivery to the purchaser by
228 use of a tangible storage media where the tangible storage
229 media is not physically transferred to the purchaser.

230 (24) “Mobility-enhancing equipment” means equipment,
231 including repair and replacement parts to the equipment, but
232 does not include “durable medical equipment”, which:

233 (A) Is primarily and customarily used to provide or increase
234 the ability to move from one place to another and which is
235 appropriate for use either in a home or a motor vehicle;

236 (B) Is not generally used by persons with normal mobility;
237 and

238 (C) Does not include any motor vehicle or equipment on a
239 motor vehicle normally provided by a motor vehicle manufac-
240 turer.

241 (25) “Model I seller” means a seller that has selected a
242 certified service provider as its agent to perform all the seller’s
243 sales and use tax functions, other than the seller’s obligation to
244 remit tax on its own purchases.

245 (26) “Model II seller” means a seller that has selected a
246 certified automated system to perform part of its sales and use
247 tax functions, but retains responsibility for remitting the tax.

248 (27) “Model III seller” means a seller that has sales in at
249 least five member states, has total annual sales revenue of at
250 least five hundred million dollars, has a proprietary system that
251 calculates the amount of tax due each jurisdiction and has
252 entered into a performance agreement with the member states
253 that establishes a tax performance standard for the seller. As
254 used in this definition, a seller includes an affiliated group of
255 sellers using the same proprietary system.

256 (28) “Person” means an individual, trust, estate, fiduciary,
257 partnership, limited liability company, limited liability
258 partnership, corporation or any other legal entity.

259 (29) “Personal service” includes those:

260 (A) Compensated by the payment of wages in the ordinary
261 course of employment; and

262 (B) Rendered to the person of an individual without, at the
263 same time, selling tangible personal property, such as nursing,
264 barbering, manicuring and similar services.

265 (30) (A) “Prepared food” means:

266 (i) Food sold in a heated state or heated by the seller;

267 (ii) Two or more food ingredients mixed or combined by
268 the seller for sale as a single item; or

269 (iii) Food sold with eating utensils provided by the seller,
270 including plates, knives, forks, spoons, glasses, cups, napkins
271 or straws. A plate does not include a container or packaging
272 used to transport the food.

273 (B) “Prepared food” in subparagraph (ii), paragraph (A) of
274 this subdivision does not include food that is only cut, repack-
275 aged or pasteurized by the seller, and eggs, fish, meat, poultry
276 and foods containing these raw animal foods requiring cooking
277 by the consumer as recommended by the Food and Drug
278 Administration in Chapter 3, Part 401.11 of its Food Code of
279 2001 so as to prevent food-borne illnesses.

280 (C) Additionally, “prepared food”, as defined in this
281 subdivision does not include:

282 (i) Food sold by a seller whose proper primary NAICS
283 classification is manufacturing in Sector 311, except Subsection
284 3118 (bakeries);

285 (ii) Food sold in an unheated state by weight or volume as
286 a single item; or

287 (iii) Bakery items, including bread, rolls, buns, biscuits,
288 bagels, croissants, pastries, donuts, danish, cakes, tortes, pies,
289 tarts, muffins, bars, cookies, tortillas.

290 (31) “Prescription” means an order, formula or recipe
291 issued in any form of oral, written, electronic or other means of
292 transmission by a duly licensed practitioner authorized by the
293 laws of this state to issue prescriptions.

294 (32) “Prewritten computer software” means “computer
295 software”, including prewritten upgrades, which is not designed
296 and developed by the author or other creator to the specifica-
297 tions of a specific purchaser.

298 (A) The combining of two or more prewritten computer
299 software programs or prewritten portions thereof does not cause
300 the combination to be other than prewritten computer software.

301 (B) “Prewritten computer software” includes software
302 designed and developed by the author or other creator to the
303 specifications of a specific purchaser when it is sold to a person
304 other than the purchaser. Where a person modifies or enhances
305 computer software of which the person is not the author or
306 creator, the person is considered to be the author or creator only
307 of the person’s modifications or enhancements.

308 (C) “Prewritten computer software” or a prewritten portion
309 thereof that is modified or enhanced to any degree, where the
310 modification or enhancement is designed and developed to the
311 specifications of a specific purchaser, remains prewritten
312 computer software: *Provided*, That where there is a reasonable,
313 separately stated charge or an invoice or other statement of the
314 price given to the purchaser for the modification or enhance-
315 ment, the modification or enhancement does not constitute
316 prewritten computer software.

317 (33) “Product-based exemption” means an exemption based
318 on the description of the product or service and not based on
319 who purchases the product or service or how the purchaser
320 intends to use the product or service.

321 (34) “Prosthetic device” means a replacement, corrective or
322 supportive device, including repair and replacement parts for
323 the device worn on or in the body, to:

324 (A) Artificially replace a missing portion of the body;

325 (B) Prevent or correct physical deformity or malfunction of
326 the body; or

327 (C) Support a weak or deformed portion of the body.

328 (35) “Protective equipment” means items for human wear
329 and designed as protection of the wearer against injury or
330 disease or as protections against damage or injury of other
331 persons or property but not suitable for general use.

332 (36) “Purchase price” means the measure subject to the tax
333 imposed by article fifteen or article fifteen-a of this chapter and
334 has the same meaning as sales price.

335 (37) “Purchaser” means a person to whom a sale of
336 personal property is made or to whom a service is furnished.

337 (38) “Registered under this agreement” means registration
338 by a seller with the member states under the central registration
339 system provided in article four of the agreement.

340 (39) “Retail sale” or “sale at retail” means:

341 (A) Any sale or lease for any purpose other than for resale
342 as tangible personal property, sublease or subrent; and

343 (B) Any sale of a service other than a service purchased for
344 resale.

345 (40) (A) “Sales price” means the measure subject to the tax
346 levied by this article and includes the total amount of consider-
347 ation, including cash, credit, property and services, for which
348 personal property or services are sold, leased or rented, valued
349 in money, whether received in money or otherwise, without any
350 deduction for the following:

351 (i) The seller’s cost of the property sold;

352 (ii) The cost of materials used, labor or service cost,
353 interest, losses, all costs of transportation to the seller, all taxes
354 imposed on the seller, and any other expense of the seller;

355 (iii) Charges by the seller for any services necessary to
356 complete the sale, other than delivery and installation charges;

357 (iv) Delivery charges; and

358 (v) Installation charges.

359 (B) "Sales price" does not include:

360 (i) Discounts, including cash, term or coupons that are not
361 reimbursed by a third party that are allowed by a seller and
362 taken by a purchaser on a sale;

363 (ii) Interest, financing and carrying charges from credit
364 extended on the sale of personal property, goods or services, if
365 the amount is separately stated on the invoice, bill of sale or
366 similar document given to the purchaser; or

367 (iii) Any taxes legally imposed directly on the consumer
368 that are separately stated on the invoice, bill of sale or similar
369 document given to the purchaser.

370 (C) "Sales price" shall include consideration received by
371 the seller from third parties if:

372 (i) The seller actually receives consideration from a party
373 other than the purchaser and the consideration is directly related
374 to a price reduction or discount on the sale;

375 (ii) The seller has an obligation to pass the price reduction
376 or discount through to the purchaser;

377 (iii) The amount of the consideration attributable to the sale
378 is fixed and determinable by the seller at the time of the sale of
379 the item to the purchaser; and

380 (iv) One of the following criteria is met:

381 (I) The purchaser presents a coupon, certificate or other
382 documentation to the seller to claim a price reduction or
383 discount where the coupon, certificate or documentation is
384 authorized, distributed or granted by a third party with the
385 understanding that the third party will reimburse any seller to
386 whom the coupon, certificate or documentation is presented;

387 (II) The purchaser identifies himself or herself to the seller
388 as a member of a group or organization entitled to a price
389 reduction or discount (a “preferred customer” card that is
390 available to any patron does not constitute membership in such
391 a group); or

392 (III) The price reduction or discount is identified as a third-
393 party price reduction or discount on the invoice received by the
394 purchaser or on a coupon, certificate or other documentation
395 presented by the purchaser.

396 (41) “Sales tax” means the tax levied under article fifteen
397 of this chapter.

398 (42) “Seller” means any person making sales, leases or
399 rentals of personal property or services.

400 (43) “Service” or “selected service” includes all nonprofes-
401 sional activities engaged in for other persons for a consider-
402 ation, which involve the rendering of a service as distinguished
403 from the sale of tangible personal property, but does not include
404 contracting, personal services, services rendered by an em-
405 ployee to his or her employer, any service rendered for resale
406 or any service furnished by a business that is subject to the
407 control of the Public Service Commission when the service or
408 the manner in which it is delivered is subject to regulation by
409 the Public Service Commission of this state. The term “service”
410 or “selected service” does not include payments received by a
411 vendor of tangible personal property as an incentive to sell a
412 greater volume of such tangible personal property under a

413 manufacturer's, distributor's or other third-party's marketing
414 support program, sales incentive program, cooperative
415 advertising agreement or similar type of program or agreement,
416 and these payments are not considered to be payments for a
417 "service" or "selected service" rendered, even though the
418 vendor may engage in attendant or ancillary activities associ-
419 ated with the sales of tangible personal property as required
420 under the programs or agreements.

421 (44) "Soft drink" means nonalcoholic beverages that
422 contain natural or artificial sweeteners. "Soft drinks" do not
423 include beverages that contain milk or milk products, soy, rice
424 or similar milk substitutes or greater than fifty percent of
425 vegetable or fruit juice by volume.

426 (45) "State" means any state of the United States and the
427 District of Columbia.

428 (46) "Tangible personal property" means personal property
429 that can be seen, weighed, measured, felt or touched, or that is
430 in any manner perceptible to the senses. "Tangible personal
431 property" includes, but is not limited to, electricity, steam,
432 water, gas and prewritten computer software.

433 (47) "Tax" includes all taxes levied under articles fifteen
434 and fifteen-a of this chapter and additions to tax, interest and
435 penalties levied under article ten of this chapter.

436 (48) "Tax Commissioner" means the State Tax Commis-
437 sioner or his or her delegate. The term "delegate" in the phrase
438 "or his or her delegate", when used in reference to the Tax
439 Commissioner, means any officer or employee of the State Tax
440 Division duly authorized by the Tax Commissioner directly, or
441 indirectly by one or more redelegations of authority, to perform
442 the functions mentioned or described in this article or rules
443 promulgated for this article.

444 (49) “Taxpayer” means any person liable for the taxes
445 levied by articles fifteen and fifteen-a of this chapter or any
446 additions to tax penalties imposed by article ten of this chapter.

447 (50) “Telecommunications service” when used in this
448 article and articles fifteen and fifteen-a shall have the same
449 meaning as that term is defined in section two-b of this article.

450 (51) “Tobacco” means cigarettes, cigars, chewing or pipe
451 tobacco or any other item that contains tobacco.

452 (52) “Use tax” means the tax levied under article fifteen-a
453 of this chapter.

454 (53) “Use-based exemption” means an exemption based on
455 a specific use of the product or service by the purchaser.

456 (54) “Vendor” means any person furnishing services taxed
457 by article fifteen or fifteen-a of this chapter or making sales of
458 tangible personal property or custom software. “Vendor” and
459 “seller” are used interchangeably in this article and in articles
460 fifteen and fifteen-a of this chapter.

461 (c) *Additional definitions.* — Other terms used in this
462 article are defined in articles fifteen and fifteen-a of this
463 chapter, which definitions are incorporated by reference into
464 this article. Additionally, other sections of this article may
465 define terms primarily used in the section in which the term is
466 defined.

§11-15B-2a. Streamlined Sales and Use Tax Agreement defined.

1 As used in this article and articles fifteen and fifteen-a of
2 this chapter, the term “Streamlined Sales and Use Tax Agree-
3 ment” or “agreement” means the agreement adopted the twelfth
4 day of November, two thousand two, by states that enacted
5 authority to engage in multistate discussions similar to that

6 provided in section four of this article, except when the context
7 in which the term is used clearly indicates that a different
8 meaning is intended by the Legislature. “Agreement” includes
9 amendments to the agreement adopted by the implementing
10 states in calendar years two thousand three, two thousand four,
11 two thousand five and amendments adopted by the governing
12 board on or before the thirty-first day of January, two thousand
13 six, but does not include any substantive changes in the
14 agreement adopted after the thirty-first day of January, two
15 thousand six.

§11-15B-2b. Telecommunications definitions.

1 (a) *General.* — When used in this article and articles
2 fifteen and fifteen-a of this chapter, words defined in subsection
3 (b) of this section shall have the meanings ascribed to them in
4 this section, except in those instances where a different meaning
5 is distinctly expressed or the context in which the term is used
6 clearly indicates that a different meaning is intended by the
7 Legislature.

8 (b) *Terms defined.* —

9 (1) “Telecommunications service” means the electronic
10 transmission, conveyance or routing of voice, data, audio, video
11 or any other information or signals to a point, or between or
12 among points.

13 (A) The term “telecommunications service” includes such
14 transmission, conveyance or routing in which computer
15 processing applications are used to act on the form, code or
16 protocol of the content for purposes of transmission, convey-
17 ance or routing without regard to whether the service is referred
18 to as voice over internet protocol services or is classified by the
19 Federal Communications Commission as enhanced or value
20 added.

- 21 (B) “Telecommunications service” does not include:
- 22 (i) Advertising, including, but not limited to, directory
23 advertising;
- 24 (ii) “Ancillary services”;
- 25 (iii) Billing and collection services provided to third parties;
- 26 (iv) Data processing and information services that allow
27 data to be generated, acquired, stored, processed or retrieved
28 and delivered by an electronic transmission to a purchaser
29 where the purchaser’s primary purpose for the underlying
30 transaction is the processed data or information;
- 31 (v) Digital products “delivered electronically”, including,
32 but not limited to, software, music, video, reading materials or
33 ring tones;
- 34 (vi) Installation or maintenance of wiring or equipment on
35 a customer’s premises;
- 36 (vii) Internet access service;
- 37 (viii) Radio and television audio and video programming
38 services, regardless of the medium, including the furnishing of
39 transmission, conveyance and routing of services by the
40 programming service provider. Radio and television audio and
41 video programming services shall include, but not be limited to,
42 cable service as defined in 47 U. S. C. 522(6) and audio and
43 video programming services delivered by commercial mobile
44 radio service providers, as defined in 47 CFR 20.3; or
- 45 (ix) Tangible personal property.
- 46 (2) *Related or ancillary terms.* — The following terms are
47 either used in subsection (a) of this section or are commonly
48 associated with terms used in that subsection.

49 (A) “800 service” means a “telecommunications service”
50 that allows a caller to dial a toll-free number without incurring
51 a charge for the call. The service is typically marketed under the
52 name “800”, “855”, “866”, “877” and “888” toll-free calling,
53 and any subsequent numbers designated by the Federal
54 Communications Commission.

55 (B) “900 service” means an inbound toll “telecommunica-
56 tions service” purchased by a subscriber that allows the
57 subscriber’s customers to call in to the subscriber’s prerecorded
58 announcement or live service. “900 service” does not include
59 the charge for collection services provided by the seller of the
60 “telecommunications services” to the subscriber or service or
61 product sold by the subscriber to the subscriber’s customer. The
62 service is typically marketed under the name “900” service, and
63 any subsequent numbers designated by the Federal Communi-
64 cations Commission.

65 (C) “Ancillary services” means services that are associated
66 with or incidental to the provision of “telecommunications
67 services”, including, but not limited to, “detailed telecommuni-
68 cations billing”, “directory assistance”, “vertical service” and
69 “voice mail services”.

70 (D) “Coin-operated telephone service” means a “telecom-
71 munications service” paid for by inserting money into a
72 telephone accepting direct deposits of money to operate.

73 (E) “Conference-bridging service” means an “ancillary
74 service” that links two or more participants of an audio or video
75 conference call and may include the provision of a telephone
76 number. “Conference-bridging service” does not include the
77 “telecommunications services” used to reach the conference
78 bridge.

79 (F) “Detailed telecommunications billing service” means an
80 “ancillary service” of separately stating information pertaining
81 to individual calls on a customer’s billing statement.

82 (G) “Directory assistance” means an “ancillary service” of
83 providing telephone number information and/or address
84 information.

85 (H) “Fixed wireless service” means a “telecommunications
86 service” that provides radio communication between fixed
87 points.

88 (I) “International” means a “telecommunications service”
89 that originates or terminates in the United States and terminates
90 or originates outside the United States, respectively. United
91 States includes the District of Columbia or a United States
92 territory or possession.

93 (J) “Interstate” means a “telecommunications service” that
94 originates in one United States state, or a United States territory
95 or possession, and terminates in a different United States state
96 or a United States territory or possession.

97 (K) “Intrastate” means a “telecommunications service” that
98 originates in one United States state or a United States territory
99 or possession, and terminates in the same United States state or
100 a United States territory or possession.

101 (L) “Mobile wireless service” means a “telecommunica-
102 tions service” that is transmitted, conveyed or routed regardless
103 of the technology used, whereby the origination and/or
104 termination points of the transmission, conveyance or routing
105 are not fixed, including, by way of example only, “telecommu-
106 nications services” that are provided by a commercial mobile
107 radio service provider.

108 (M) “Paging service” means a “telecommunications
109 service” that provides transmission of coded radio signals for

110 the purpose of activating specific pagers and may include
111 messages and/or sounds.

112 (N) “Pay telephone service” means a “telecommunications
113 service” provided through any pay telephone.

114 (O) “Prepaid calling service” means the right to access
115 exclusively “telecommunications services”, which must be paid
116 for in advance and which enables the origination of calls using
117 an access number or authorization code, whether manually or
118 electronically dialed, and that is sold in predetermined units or
119 dollars of which the number declines with use in a known
120 amount.

121 (P) “Prepaid wireless calling service” means a “telecom-
122 munications service” that provides the right to utilize “mobile
123 wireless service” as well as other nontelecommunications
124 services including the download of digital products “delivered
125 electronically”, content and “ancillary services”, which must be
126 paid for in advance that is sold in predetermined units of dollars
127 of which the number declines with use in a known amount.

128 (Q) “Private communications service” means a “telecom-
129 munications service” that entitles the customer to exclusive or
130 priority use of a communications channel or group of channels
131 between or among termination points, regardless of the manner
132 in which the channel or channels are connected, and includes
133 switching capacity, extension lines, stations and any other
134 associated services that are provided in connection with the use
135 of the channel or channels.

136 (R) “Residential telecommunications service” means a
137 “telecommunications service” or “ancillary services” provided
138 to an individual for personal use at a residential address,
139 including an individual dwelling unit such as an apartment. In
140 the case of institutions where individuals reside, such as schools
141 or nursing homes, “telecommunications service” is considered

142 residential if it is provided to and paid for by an individual
143 resident rather than the institution.

144 (S) “Value-added nonvoice data service” means a service
145 that otherwise meets the definition of “telecommunications
146 services” in which computer processing applications are used
147 to act on the form, content, code or protocol of the information
148 or data primarily for a purpose other than transmission,
149 conveyance or routing.

150 (T) “Vertical service” means an “ancillary service” that is
151 offered in connection with one or more “telecommunications
152 services”, which offers advanced calling features that allow
153 customers to identify callers and to manage multiple calls and
154 call connections, including “conference-bridging services”.

155 (U) “Voice mail service” means an “ancillary service” that
156 enables the customer to store, send or receive recorded
157 messages. “Voice mail service” does not include any “vertical
158 services” that the customer may be required to have in order to
159 utilize the “voice mail service”.

160 (c) *Effective date.* — This section enacted in the year two
161 thousand six shall apply to purchases made on or after the first
162 day of July, two thousand six.

§11-15B-13. Amnesty for registration.

1 (a) Subject to the limitations in this section:

2 (1) The Tax Commissioner shall provide amnesty for
3 uncollected or unpaid sales or use tax to a seller who registers
4 to pay or to collect and remit applicable sales or use tax on sales
5 made to purchasers in this state in accordance with the terms of
6 the streamlined sales and use tax agreement: *Provided*, That the
7 seller was not registered in this state in the twelve-month period
8 preceding the first day of October, two thousand five, the

9 effective date of this state's participation in the Streamlined
10 Sales and Use Tax Agreement.

11 (2) The amnesty precludes assessment for uncollected or
12 unpaid sales or use tax together with additions to tax, penalty or
13 interest for sales made during the period the seller was not
14 registered in this state: *Provided*, That registration under the
15 agreement occurs within twelve months after the date on which
16 the governing board determines that an adequate number of
17 certified service providers have been certified by the governing
18 board to collect taxes under the agreement.

19 (b) *Exceptions*. — The amnesty is not available:

20 (1) To a seller with respect to any matter or matters for
21 which the seller received notice of the commencement of an
22 audit and which audit is not yet finally resolved including any
23 related administrative and judicial processes; or

24 (2) For sales or use taxes already paid or remitted to the
25 state or to taxes collected by the seller for this state.

26 (c) *Period of amnesty*. — The amnesty is fully effective,
27 absent the seller's fraud or intentional misrepresentation of a
28 material fact, as long as the seller continues registration under
29 the agreement and continues payment or collection and
30 remittance of applicable sales or use taxes for a period of at
31 least thirty-six months. The statute of limitations applicable to
32 asserting a tax liability during this 36-month period is tolled.

33 (d) *Effect of amnesty*. — The amnesty is applicable only to
34 sales or use taxes due from a seller in its capacity as a seller and
35 not to sales or use taxes due from a seller in its capacity as a
36 buyer.

**§11-15B-14a. Application of general sourcing rules and exclusion
from the rules.**

1 (a) Sellers shall source the sale of a product in accordance
2 with section fifteen of this article. The provisions of said
3 section apply regardless of the characterization of the product
4 as tangible personal property, custom software or a service. The
5 provisions of said section only apply to determine a seller's
6 obligation to pay or collect and remit a sales or use tax with
7 respect to the seller's sale of a product. These provisions do not
8 affect the obligation of a purchaser or lessee to remit tax on the
9 use of the product to the taxing jurisdiction of that use.

10 (b) Section fifteen of this article does not apply to sales or
11 use tax levied on telecommunication services as defined in
12 section two-b of this article. Telecommunication services shall
13 be sourced in accordance with section nineteen of this article.

§11-15B-15. General transaction sourcing rules.

1 (a) *General rule.* — For purposes of articles fifteen and
2 fifteen-a of this chapter, the retail sale, excluding lease or
3 rental, of a product shall be sourced as follows:

4 (1) When the product is received by the purchaser at a
5 business location of the seller, the sale is sourced to that
6 business location.

7 (2) When the product is not received by the purchaser at a
8 business location of the seller, the sale is sourced to the location
9 where receipt by the purchaser or the purchaser's designated
10 donee occurs, including the location indicated by instructions
11 for delivery to the purchaser or donee, known to the seller.

12 (3) When subdivisions (1) and (2) of this subsection do not
13 apply, the sale is sourced to the location indicated by an address
14 for the purchaser that is available from the business records of
15 the seller that are maintained in the ordinary course of the
16 seller's business when use of this address does not constitute
17 bad faith.

18 (4) When subdivisions (1), (2) and (3) of this subsection do
19 not apply, the sale is sourced to the location indicated by an
20 address for the purchaser obtained during the consummation of
21 the sale, including the address of a purchaser's payment
22 instrument, if no other address is available, provided use of this
23 address does not constitute bad faith.

24 (5) When none of the previous subdivisions of this
25 subsection apply, including the circumstance in which the seller
26 is without sufficient information to apply the previous rules,
27 then the location will be determined by the address from which
28 tangible personal property was shipped, or computer software
29 delivered electronically was first available for transmission by
30 the seller, or from which the service was provided: *Provided*,
31 That any location that merely provided the digital transfer of
32 the product sold is disregarded for these purposes.

33 (b) *Lease or rental.* — The lease or rental of tangible
34 personal property or custom software, other than property
35 identified in subsection (c) or (d) of this section, shall be
36 sourced as follows:

37 (1) For a lease or rental that requires recurring periodic
38 payments, the first periodic payment is sourced the same as a
39 retail sale in accordance with the provisions of subsection (a) of
40 this section. Periodic payments made subsequent to the first
41 payment are sourced to the primary property location for each
42 period covered by the payment. The primary property location
43 is as indicated by an address for the property provided by the
44 lessee that is available to the lessor from its records maintained
45 in the ordinary course of business, when use of this address
46 does not constitute bad faith. The property location may not be
47 altered by intermittent use at different locations, such as use of
48 business property that accompanies employees on business trips
49 and service calls.

50 (2) For a lease or rental that does not require recurring
51 periodic payments, the payment is sourced the same as a retail
52 sale in accordance with the provisions of subsection (a) of this
53 section.

54 (3) This subsection does not affect the imposition or
55 computation of sales or use tax on leases or rentals based on a
56 lump sum or accelerated basis, or on the acquisition of property
57 for lease.

58 (c) *Vehicles.* — The lease or rental of motor vehicles,
59 trailers, semitrailers or aircraft that do not qualify as transporta-
60 tion equipment, as defined in subsection (d) of this section,
61 shall be sourced as follows:

62 (1) For a lease or rental that requires recurring periodic
63 payments, each periodic payment is sourced to the primary
64 property location. The primary property location is indicated by
65 an address for the property provided by the lessee that is
66 available to the lessor from its records maintained in the
67 ordinary course of business, when use of this address does not
68 constitute bad faith. This location shall not be altered by
69 intermittent use at different locations.

70 (2) For a lease or rental that does not require recurring
71 periodic payments, the payment is sourced the same as a retail
72 sale in accordance with the provisions of subsection (a) of this
73 section.

74 (3) This subsection does not affect the imposition or
75 computation of sales or use tax on leases or rentals based on a
76 lump sum or accelerated basis, or on the acquisition of property
77 for lease.

78 (d) *Sale or lease or rental of transportation equipment.* —
79 The retail sale, including lease or rental, of transportation
80 equipment is sourced the same as a retail sale in accordance

81 with the provisions of subsection (a) of this section, notwith-
82 standing the exclusion of lease or rental in said subsection.
83 “Transportation equipment” means any of the following:

84 (1) Locomotives and railcars that are utilized for the
85 carriage of persons or property in interstate commerce.

86 (2) Trucks and truck-tractors with a gross vehicle weight
87 rating of ten thousand pounds or greater, trailers, semitrailers or
88 passenger buses that are:

89 (A) Registered through the international registration plan;
90 and

91 (B) Operated under authority of a carrier authorized and
92 certificated by the United States Department of Transportation
93 or another federal authority to engage in the carriage of persons
94 or property in interstate commerce.

95 (3) Aircraft that are operated by air carriers authorized and
96 certificated by the United States Department of Transportation
97 or another federal or foreign authority to engage in the carriage
98 of persons or property in interstate or foreign commerce.

99 (4) Containers designed for use on and component parts
100 attached or secured on the items set forth in subdivisions (1)
101 through (3), inclusive, of this subsection.

102 (e) *Exceptions.* — Subsections (a) and (b) of this section
103 shall not apply to the following goods or services:

104 (1) Telecommunications services, as set out in section
105 twenty of this article, shall be sourced in accordance with
106 section nineteen of this article; and

107 (2) Until the first day of January, two thousand eight, a
108 seller who is primarily engaged in the retail sale of cut flowers

109 and flower arrangements taking the original order to sell
110 tangible personal property shall source the sale to the place
111 where order was taken. For purposes of this exception,
112 “primarily” means more than fifty percent of the seller’s total
113 gross sales or receipts are derived from that activity. In
114 determining if a seller is primarily a florist, the total sales price
115 of cut flowers and floral arrangements includes separately
116 stated delivery or service charges. After the thirty-first day of
117 December, two thousand seven, sales by florists shall be subject
118 to the general sourcing rules stated in subsection (a) of this
119 section.

120 (f) *Product defined.* — As used in subsection (a) of this
121 section, “product” includes tangible personal property, custom
122 software or a service, or any combination thereof.

§11-15B-18. Multiple points of use of certain products and services.

1 (a) *General.* — Notwithstanding the provisions of section
2 fifteen of this article, a business purchaser that is not a holder
3 of a direct pay permit that knows at the time of the business
4 purchase of a digital good, computer software or service that
5 the digital good, computer software or service will be concur-
6 rently available for use in more than one jurisdiction shall
7 deliver to the seller in conjunction with the purchase an
8 exemption certificate claiming “multiple points of use” or meet
9 the requirements of subsection (b) or (c) of this section.

10 (1) Upon receipt of an exemption certificate claiming
11 multiple points of use, the seller is relieved of all obligation to
12 collect, pay or remit the applicable tax and the purchaser shall
13 be obligated to collect, pay or remit the applicable tax on a
14 direct pay basis.

15 (2) A purchaser delivering an exemption certificate
16 claiming multiple points of use may use any reasonable, but

17 consistent and uniform, method of apportionment that is
18 supported by the purchaser's business records as they exist at
19 the timethe transaction is reported for sales or use tax purposes.

20 (3) A purchaser delivering an exemption certificate
21 claiming multiple points of use shall report and pay the
22 appropriate tax to each jurisdiction where concurrent use
23 occurs. The tax due shall be calculated as if the apportioned
24 amount of the digital good, computer software or service had
25 been delivered to each jurisdiction to which the sale is appor-
26 tioned pursuant to subdivision (2) of this subsection.

27 (4) The exemption certificate claiming multiple points of
28 use shall remain in effect for all future sales by the seller to the
29 purchaser, except as to the subsequent sale's specific appor-
30 tionment that is governed by the principles of subdivisions (2) and
31 (3) of this subsection until revoked in writing.

32 (b) Notwithstanding subsection (a) of this section, when the
33 seller knows that the product will be concurrently available for
34 use in more than one jurisdiction, but the purchaser does not
35 provide an exemption certificate claiming multiple points of use
36 as required in subsection (a), the seller may work with the
37 purchaser to produce the correct apportionment. The purchaser
38 and seller may use any reasonable, but consistent and uniform,
39 method of apportionment that is supported by the seller's and
40 purchaser's business records as they exist at the time the
41 transaction is reported for sales or use tax purposes. If the
42 purchaser certifies to the accuracy of the apportionment and the
43 seller accepts the certification, the seller shall collect and remit
44 the tax pursuant to subdivision (3), subsection (a) of this
45 section. In the absence of bad faith on the part of the seller, the
46 seller is relieved of any further obligation to collect tax on any
47 transaction where the seller has collected tax pursuant to the
48 information certified by the purchaser.

49 (c) When the seller knows that the product will be concur-
50 rently available for use in more than one jurisdiction and the
51 purchaser does not have a direct pay permit and does not
52 provide the seller with an exemption certificate claiming
53 multiple points of use as required in subsection (a) of this
54 section, or certification pursuant to subsection (b) of this
55 section, the seller shall collect and remit the tax based on the
56 provisions of section fifteen of this article.

57 (d) *Holders of direct pay permits.* — A holder of a direct
58 pay permit may not be required to deliver an exemption
59 certificate claiming multiple points of use to the seller. A direct
60 pay permit holder shall follow the provisions of subdivision (2),
61 subsection (a) of this section in apportioning the tax due on a
62 digital good, computer software or a service that will be
63 concurrently available for use in more than one jurisdiction.

§11-15B-19. Telecommunications sourcing rule.

1 (a) Except for the defined telecommunication services in
2 subsection (c) of this section, the sale of telecommunication
3 service sold on a call-by-call basis shall be sourced to: (1) Each
4 level of taxing jurisdiction where the call originates and
5 terminates in that jurisdiction; or (2) each level of taxing
6 jurisdiction where the call either originates or terminates and in
7 which the service address is also located.

8 (b) Except for the defined telecommunication services in
9 subsection (c) of this section, a sale of telecommunication
10 service sold on a basis other than a call-by-call basis is sourced
11 to the customer's place of primary use.

12 (c) The sale of the following telecommunication services
13 shall be sourced to each level of taxing jurisdiction as follows:

14 (1) A sale of mobile telecommunication service, other than
15 air-to-ground radiotelephone service and prepaid calling

16 service, is sourced to the customer's place of primary use, as
17 required by the Mobile Telecommunications Sourcing Act.

18 (2) A sale of post-paid calling service is sourced to the
19 origination point of the telecommunications signal as first
20 identified by either: The seller's telecommunications system, or
21 information received by the seller from its service provider,
22 where the system used to transport the signal is not that of the
23 seller.

24 (3) A sale of prepaid calling service or a sale of a prepaid
25 wireless calling service is sourced in accordance with section
26 fifteen of this article: *Provided*, That in the case of a sale of a
27 prepaid wireless calling service, the rule provided in subdivi-
28 sion (5), subsection (a), section fifteen of this article shall
29 include, as an option, the location associated with the mobile
30 telephone number.

31 (4) A sale of a private communication service is sourced as
32 follows:

33 (A) Service for a separate charge related to a customer
34 channel termination point is sourced to each level of jurisdic-
35 tion in which the customer channel termination point is located.

36 (B) Service where all customer termination points are
37 located entirely within one jurisdiction or levels of jurisdiction
38 is sourced in the jurisdiction in which the customer channel
39 termination points are located.

40 (C) Service for segments of a channel between two
41 customer channel termination points located in different
42 jurisdictions and which segment of channel are separately
43 charged is sourced fifty percent in each level of jurisdiction in
44 which the customer channel termination points are located.

45 (D) Service for segments of a channel located in more than
46 one jurisdiction or levels of jurisdiction and which segments are
47 not separately billed is sourced in each jurisdiction based on the
48 percentage determined by dividing the number of customer
49 channel termination points in the jurisdiction by the total
50 number of customer channel termination points.

§11-15B-20. Telecommunication sourcing definitions.

1 For the purpose of section nineteen of this article, the
2 following definitions apply:

3 (1) “Air-to-ground radiotelephone service” means a radio
4 service, as that term is defined in 47 CFR 22.99, in which
5 common carriers are authorized to offer and provide radio
6 telecommunications service for hire to subscribers in aircraft.

7 (2) “Call-by-call basis” means any method of charging for
8 telecommunications services where the price is measured by
9 individual calls.

10 (3) “Communications channel” means a physical or virtual
11 path of communications over which signals are transmitted
12 between or among customer channel termination points.

13 (4) “Customer” means the person or entity that contracts
14 with the seller of telecommunications services. If the end user
15 of telecommunications services is not the contracting party, the
16 end user of the telecommunications service is the customer of
17 the telecommunication service, but this sentence only applies
18 for the purpose of sourcing sales of telecommunications
19 services under section nineteen of this article. “Customer” does
20 not include a reseller of telecommunications service or for
21 mobile telecommunications service of a serving carrier under
22 an agreement to serve the customer outside the home service
23 provider’s licensed service area.

24 (5) “Customer channel termination point” means the
25 location where the customer either inputs or receives the
26 communications.

27 (6) “End user” means the person who utilizes the telecom-
28 munication service. In the case of an entity, “end user” means
29 the individual who utilizes the service on behalf of the entity.

30 (7) “Home service provider” means the same as that term
31 is defined in Section 124(5) of Public Law 106-252 (Mobile
32 Telecommunications Sourcing Act).

33 (8) “Mobile telecommunications service” means the same
34 as that term is defined in Section 124(5) of Public Law 106-252
35 (Mobile Telecommunications Sourcing Act).

36 (9) “Place of primary use” means the street address
37 representative where the customer’s use of the telecommunica-
38 tion service primarily occurs, which must be the residential
39 street address or the primary business street address of the
40 customer. In the case of mobile telecommunications services,
41 “place of primary use” must be within the licensed service area
42 of the home service provider.

43 (10) “Post-paid calling service” means the telecommunica-
44 tion service obtained by making a payment on a call-by-call
45 basis, either through the use of a credit card or payment
46 mechanism such as a bank card, travel card, credit card or debit
47 card, or by charge made to a telephone number which is not
48 associated with the origination or termination of the telecom-
49 munication service. A post-paid calling service includes a
50 telecommunication service, except a prepaid wireless calling
51 service, that would be a prepaid calling service except it is not
52 exclusively a telecommunication service.

53 (11) “Prepaid calling service” means the right to access
54 exclusively telecommunications services, which must be paid

55 for in advance and which enables the origination of calls using
56 an access number or authorization code, whether manually or
57 electronically dialed, and that is sold in predetermined units or
58 dollars of which the number declines with use in a known
59 amount.

60 (12) "Prepaid wireless calling service" means a telecommu-
61 nications service that provides the right to utilize mobile
62 wireless service as well as other nontelecommunications
63 services, including the download of digital products delivered
64 electronically, content and ancillary services, which must be
65 paid for in advance that is sold in predetermined units or dollars
66 of which the number declines with use in a known amount.

67 (13) "Private communication service" means a telecommu-
68 nication service that entitles the customer to exclusive or
69 priority use of a communications channel or group of channels
70 between or among termination points, regardless of the manner
71 in which the channel or channels are connected, and includes
72 switching capacity, extension lines, stations and any other
73 associated services that are provided in connection with the use
74 of the channel or channels.

75 (14) "Service address" means:

76 (A) The location of the telecommunications equipment to
77 which a customer's call is charged and from which the call
78 originates or terminates, regardless of where the call is billed or
79 paid;

80 (B) If the location in paragraph (A) of this subdivision is
81 not known, service address means the origination point of the
82 signal of the telecommunications services first identified by
83 either the seller's telecommunications system or in information
84 received by the seller from its service provider, where the
85 system used to transport the signals is not that of the seller; or

86 (C) If the location in paragraphs (A) and (B) of this
87 subdivision are not known, then “service address” means the
88 location of the customer’s place of primary use.

§11-15B-23. Enactment of exemptions.

1 (a) *General rule.* — The Legislature may only enact entity-
2 based, use-based and product-based exemptions, from the taxes
3 levied by articles fifteen and fifteen-a of this chapter, in
4 accordance with the provisions of this section and Streamlined
5 Sales and Use Tax Agreement.

6 (b) *Specific rules for product-based exemptions.* —

7 (1) A product-based exemption may be enacted without
8 restriction if Part II of the Library of Definitions in Appendix
9 C of the Streamlined Sales and Use Tax Agreement does not
10 have a definition for the product.

11 (2) If Part II of the Library of Definitions in Appendix C of
12 the Streamlined Sales and Use Tax Agreement has a definition
13 for the product, a product-based exemption may be enacted for
14 the product only if: (A) The exemption utilizes the product
15 definition in a manner consistent with Part II of the Library of
16 Definitions in Appendix C of the Agreement and Section 327
17 of the Agreement; and (B) the product-based exemption
18 exempts all items included within a definition in Part II of the
19 Library of Definitions unless the product definition in the
20 Library of Definitions sets out an exclusion for the item or
21 items from the definition.

22 (c) *Specific rules of entity-based and use-based exemptions.*
23 —

24 (1) An entity-based or use-based exemption for a product
25 may be enacted without restriction if Part II of the Library of
26 Definitions in Appendix C of the Streamlined Sales and Use
27 Tax Agreement does not have a definition for the product.

28 (2) If Part II of the Library of Definitions in Appendix C of
29 the Streamlined Sales and Use Tax Agreement has a definition
30 for the product, the entity-based or use-based exemption for the
31 product must utilize the product definition in a manner
32 consistent with Part II of the Library of Definitions and Section
33 327 of the Streamlined Sales and Use Tax Agreement.

34 (3) An entity-based exemption for an item may be enacted
35 if Part II of the Library of Definition in Appendix C of the
36 Streamlined Sales and Use Tax Agreement does not have a
37 definition for the item but does have a definition for a product
38 that includes the item.

39 (4) A use-based exemption for an item may not be enacted
40 that effectively constitutes a product-based exemption if Part II
41 of the Library of Definitions in Appendix C of the Streamlined
42 Sales and Use Tax Agreement has a definition for a product that
43 includes the item.

44 (5) A use-based exemption for an item may be enacted if
45 Part II of the Library of Definitions in Appendix C of the
46 Streamlined Sales and Use Tax Agreement has a definition for
47 a product that includes the item, if the exemption is not
48 prohibited in subdivision (4) of this subsection, and if the
49 exemption is consistent with the definition in Part II of the
50 Library of Definitions.

51 (d) *Construction.* — For purposes of complying with the
52 requirements in this section, the inclusion of a product within
53 the definition of tangible personal property is disregarded.

§11-15B-24. Administration of exemptions.

1 (a) *General rules.* — When a purchaser claims an exemp-
2 tion from paying tax under article fifteen or fifteen-a of this
3 chapter:

4 (1) A seller registered under the Streamlined Sales and Use
5 Tax Agreement shall obtain identifying information of the
6 purchaser and the reason for claiming a tax exemption at the
7 time of the purchase, as determined by the governing board
8 established pursuant to the agreement. A seller not registered
9 under the agreement shall obtain identifying information of the
10 purchaser and the reason for claiming a tax exemption at the
11 time of purchase, as determined by the Tax Commissioner.

12 (2) A purchaser is not required to provide a signature to
13 claim an exemption from tax unless a paper exemption
14 certificate is used.

15 (3) The seller shall use the standard form for claiming an
16 exemption electronically that is adopted by the governing board
17 administering the Streamlined Sales and Use Tax Agreement.

18 (4) The seller shall obtain the same information for proof of
19 a claimed exemption regardless of the medium in which the
20 transaction occurred.

21 (5) The Tax Commissioner may utilize a system wherein
22 the purchaser exempt from the payment of the tax is issued an
23 identification number that is presented to the seller at the time
24 of the sale.

25 (6) The seller shall maintain proper records of exempt
26 transactions and provide the records to the Tax Commissioner
27 or the Tax Commissioner's designee.

28 (7) The Tax Commissioner shall administer use-based and
29 entity-based exemptions when practicable through a direct pay
30 permit, an exemption certificate or another means that does not
31 burden sellers.

32 (8) After the thirty-first day of December, two thousand
33 seven, in the case of drop shipments, a third-party vendor such

34 as a drop shipper may claim a resale exemption based on an
35 exemption certificate provided by its customer/reseller or any
36 other acceptable information available to the third-party vendor
37 evidencing qualification for a resale exemption, regardless of
38 whether the customer/reseller is registered to collect and remit
39 sales and use taxes in this state, when the sale is sourced to this
40 state.

41 (b) The Tax Commissioner shall relieve sellers registered
42 under the Streamlined Sales and Use Tax Agreement that
43 follow the requirements of this section from any tax otherwise
44 applicable if it is determined that the purchaser improperly
45 claimed an exemption and shall hold the purchaser liable for the
46 nonpayment of tax. This relief from liability does not apply:

47 (A) To a seller who fraudulently fails to collect the tax;

48 (B) To a seller who solicits purchasers to participate in the
49 unlawful claim of an exemption;

50 (C) To a seller who accepts an exemption certificate when
51 the purchaser claims an entity-based exemption when: (i) The
52 subject of the transaction sought to be covered by the exemp-
53 tion certificate is actually received by the purchaser at a
54 location operated by the seller; and (ii) the state in which that
55 location resides provides an exemption certificate that clearly
56 and affirmatively indicates (graying out exemption reason types
57 on uniform form and posting it on a state's web site is an
58 indicator) that the claimed exemption is not available in that
59 state; or

60 (D) To a seller who accepts an exemption certificate
61 claiming multiple points of use for tangible personal property
62 other than computer software for which exemption claiming
63 multiple points of use is acceptable under section eighteen of
64 this article.

65 (c) *Time within which seller must obtain exemption*
66 *certificates.* — A seller is relieved from paying tax otherwise
67 applicable under article fifteen or fifteen-a of this chapter if the
68 seller obtains a fully completed exemption certificate or
69 captures the relevant data elements required under the Stream-
70 lined Sales and Use Tax Agreement within ninety days
71 subsequent to the date of sale.

72 (1) If the seller has not obtained an exemption certificate or
73 all relevant data elements, the seller may, within one hundred
74 twenty days subsequent to a request for substantiation by the
75 Tax Commissioner, either prove that the transaction was not
76 subject to tax by other means or obtain a fully completed
77 exemption certificate from the purchaser, taken in good faith.
78 For purposes of this section, the Tax Commissioner may
79 continue to apply this state's standards of good faith until a
80 uniform standard for good faith is defined in the Streamlined
81 Sales and Use Tax Agreement.

82 (2) Nothing in this section shall affect the ability of the Tax
83 Commissioner to require purchasers to update exemption
84 certificate information or to reapply with the state to claim
85 certain exemptions.

86 (3) Notwithstanding the preceding provisions of this
87 section, when an exemption may be claimed by exemption
88 certificate, a seller is relieved from paying the tax otherwise
89 applicable if the seller obtains a blanket exemption certificate
90 from a purchaser with which the seller has a recurring business
91 relationship. The Tax Commissioner may not request from the
92 seller renewal of blanket certificates or updates of exemption
93 certificate information or data elements when there is a
94 recurring business relationship between the buyer and seller.
95 For purposes of this subdivision, a recurring business relation-
96 ship exists when a period of no more than twelve months
97 elapses between sales transactions.

98 (d) *Exception.* — No exemption certificate or direct pay
99 permit number is required when the sale is exempt per se from
100 the taxes imposed by articles fifteen and fifteen-a of this
101 chapter.

§11-15B-35. Local rate and boundary changes.

1 (a) *General.* — Local tax rate changes shall be effective
2 only on the first day of a calendar quarter after a minimum of
3 sixty days' notice to the sellers, except as provided in subsec-
4 tion (b) of this section.

5 (b) *Printed catalogs.* — Local tax rate changes shall apply
6 to purchases from printed catalogs where the purchaser
7 computed the tax based upon the local tax rate published in the
8 catalog only on and after the first day of a calendar quarter after
9 a minimum of one hundred twenty days' notice to the sellers.

10 (c) *Local boundary changes.* — A local jurisdiction
11 boundary change shall first apply for purposes of computation
12 of a local sales and use tax on the first day of a calendar quarter
13 after a minimum of sixty days' notice to sellers.

14 (d) *Database of local jurisdiction boundaries.* —

15 (1) The state shall provide and maintain a database that
16 describes boundary changes for all taxing jurisdictions. This
17 database shall include a description of the change and the
18 effective date of the change for sales and use tax purposes.

19 (2) The state shall provide and maintain a database of all
20 sales and use tax rates for all of the jurisdictions levying taxes
21 within the state. For the identification of states, counties and
22 cities, codes corresponding to the rates must be provided
23 according to federal information processing standards (FIPS) as
24 developed by the National Institute of Standards and Technol-
25 ogy. For the identification of all other jurisdictions, codes

26 corresponding to the rates must be in the format determined by
27 the governing board.

28 (3) The state shall provide and maintain a database that
29 assigns each five-digit and nine-digit zip code within the state
30 to the proper tax rates and jurisdictions. The state must apply
31 the lowest combined tax rate imposed in the zip code area if the
32 area includes more than one tax rate in any level of taxing
33 jurisdictions. If a nine-digit zip code designation is not
34 available for a street address or if a seller or certified service
35 provider is unable to determine the nine-digit zip code designa-
36 tion applicable to a purchase after exercising due diligence to
37 determine the designation, the seller or certified service
38 provider may apply the rate for the five-digit zip code area. For
39 the purposes of this section, there is a rebuttable presumption
40 that a seller or certified service provider has exercised due
41 diligence if the seller has attempted to determine the nine-digit
42 zip code designation by utilizing software approved by the
43 governing board that makes this designation from the street
44 address and the five-digit zip code applicable to a purchase.

45 (4) This state shall have the option of providing address-
46 based boundary database records for assigning taxing jurisdic-
47 tions and their associated rates which are in addition to the
48 requirements of subdivision (3) of this subsection. The database
49 records must be in the same approved format as the database
50 records pursuant to subdivision (3) of this subsection and shall
51 meet the requirements developed pursuant to the federal Mobile
52 Telecommunications Sourcing Act (4 U. S. C. §119(a)). The
53 governing board may allow the state to require sellers that
54 register under the agreement to use an address-based database
55 provided by the state. If the state develops address-based
56 assignment database records pursuant to the agreement, a seller
57 or certified service provider may use those database records in
58 place of the five- and nine-digit zip code database records
59 provided in subdivision (3) of this subsection. If a seller or

60 certified service provider is unable to determine the applicable
61 rate and jurisdiction using an address-based database record
62 after exercising due diligence, the seller or certified service
63 provider may apply the nine-digit zip code designation
64 applicable to a purchase. If a nine-digit zip code designation is
65 not available for a street address or if a seller or certified
66 service provider is unable to determine the nine-digit zip code
67 designation applicable to a purchase after exercising due
68 diligence to determine the designation, the seller or certified
69 service provider may apply the rate for the five-digit zip code
70 area. For the purposes of this subsection, there is a rebuttable
71 presumption that a seller or certified service provider has
72 exercised due diligence if the seller or certified service provider
73 has attempted to determine the tax rate and jurisdiction by
74 utilizing software approved by the governing board that makes
75 this assignment from the address and zip code information
76 applicable to the purchase.

77 (5) The Tax Commissioner, after meeting the requirements
78 of subdivision (3) of this subsection, may certify vendor
79 provided address-based databases for assigning tax rates and
80 jurisdictions. The databases must be in the same approved
81 format as the database records pursuant to subdivision (4) of
82 this subsection and must meet the requirements developed
83 pursuant to the federal Mobil Telecommunications Sourcing
84 Act (4 U. S. C. §119(a)). If the state certifies a vendor address-
85 based database, a seller or certified service provider may use
86 that database in place of the database provided for in subdivi-
87 sion (3) or (4) of this subsection. Vendors providing address-
88 based databases may request certification of their databases
89 from the governing board. Certification by the governing board
90 does not replace the requirement that the databases be certified
91 by the state.

§11-15B-36. Relief from certain liability for state and local taxes.

1 (a) *General.* — Sellers and certified service providers
2 registered under the streamlined sales and use tax agreement to
3 collect sales and use taxes imposed by this state or a political
4 subdivision of this state who charged and collected the incorrect
5 amount of sales or use taxes resulting from the seller or the
6 certified service provider relying on erroneous data provided by
7 this state on tax rates, boundaries or taxing jurisdiction
8 assignments shall be held harmless by the Tax Commissioner
9 and the local taxing jurisdiction.

10 (b) *Exception.* — After providing adequate notice as
11 determined by the governing board, if the state provides an
12 address-based database for assigning taxing jurisdictions
13 pursuant to subdivision (4) or (5), subsection (d), section
14 thirty-five of this article, the state may cease providing liability
15 relief for errors resulting from reliance on the database provided
16 by the Tax Commissioner under subdivision (3) of said
17 subsection. If a seller demonstrates that requiring the use of the
18 address-based database would create an undue hardship, the
19 Tax Commissioner and the governing board may extend the
20 relief from liability to that seller for a designated period of time.

**§11-15B-37. State review and approval of certified automated
system software and certain liability relief.**

1 (a) The Tax Commissioner shall review software submitted
2 to the governing board for certification as a certified automated
3 system under the agreement. The Tax Commissioner's review
4 shall include a review to determine that the program adequately
5 classifies the State of West Virginia's product-based exemp-
6 tions. Upon completion of the review, the Tax Commissioner
7 shall certify to the governing board its acceptance of the
8 classifications made by the system.

9 (b) Certified service providers and Model 2 sellers shall be
10 relieved of liability for not collecting sales or use taxes

11 resulting from the certified service provider or Model 2 seller
12 relying on the certification provided by the Tax Commissioner.

13 (c) Certified service providers shall be relieved of liability
14 for not collecting sales and use taxes in the same manner as
15 provided to sellers under the provisions of section twenty-four
16 of this article.

17 (d) The governing board and the State of West Virginia
18 shall not be responsible for classification of an item or transac-
19 tion within the product-based exemptions certified and the
20 relief from liability provided in this section shall not be
21 available for a certified service provider or a Model 2 seller that
22 has incorrectly classified an item or transaction into a product-
23 based exemption certified by the Tax Commissioner: *Provided,*
24 That the provisions of this subsection shall not apply to the
25 individual listing of items or transactions within a product
26 definition approved by the governing board or the Tax Commis-
27 sioner.

28 (e) If the Tax Commissioner determines that an item or
29 transaction is incorrectly classified as to its taxability, the Tax
30 Commissioner shall notify the certified service provider or
31 Model 2 seller of the incorrect classification. The certified
32 service provider or Model 2 seller shall have ten days to revise
33 the classification after receipt of notice from the Tax Commis-
34 sioner of the determination. Upon expiration of the ten days, the
35 certified service provider or Model 2 seller shall be liable for
36 the failure to collect the correct amount of sales or use taxes
37 due and owing the state.

CHAPTER 235

**(S. B. 529 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed March 9, 2006; in effect from passage.]
[Approved by the Governor on March 23, 2006.]

AN ACT to amend and reenact §11-21-9 of the Code of West Virginia, 1931, as amended, relating to updating meaning of federal adjusted gross income and certain other terms used in West Virginia Personal Income Tax Act; and specifying effective dates.

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 the
5 United States means the provisions of the Internal Revenue
6 Code of 1986, as amended, and any other provisions of the laws
7 of the United States that relate to the determination of income
8 for federal income tax purposes. All amendments made to the
9 laws of the United States after the thirty-first day of December,
10 two thousand four, but prior to the first day of January, two

11 thousand six, shall be given effect in determining the taxes
12 imposed by this article to the same extent those changes are
13 allowed for federal income tax purposes, whether the changes
14 are retroactive or prospective, but no amendment to the laws of
15 the United States made on or after the first day of January, two
16 thousand six, shall be given any effect.

17 (b) *Medical savings accounts.* — The term “taxable trust”
18 does not include a medical savings account established pursuant
19 to section twenty, article fifteen, chapter thirty-three of this
20 code or section fifteen, article sixteen of said chapter. Employer
21 contributions to a medical savings account established pursuant
22 to said sections are not “wages” for purposes of withholding
23 under section seventy-one of this article.

24 (c) *Surtax.* — The term “surtax” means the twenty percent
25 additional tax imposed on taxable withdrawals from a medical
26 savings account under section twenty, article fifteen, chapter
27 thirty-three of this code and the twenty percent additional tax
28 imposed on taxable withdrawals from a medical savings
29 account under section fifteen, article sixteen of said chapter
30 which are collected by the Tax Commissioner as tax collected
31 under this article.

32 (d) *Effective date.* — The amendments to this section
33 enacted in the year two thousand six are retroactive to the
34 extent allowable under federal income tax law. With respect to
35 taxable years that began prior to the first day of January, two
36 thousand six, the law in effect for each of those years shall be
37 fully preserved as to that year, except as provided in this
38 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” as
42 used in subsection (a) of this section means and includes the

43 term “low income” as defined in subsection (b), section twenty-
44 one of this article and as reflected in the poverty guidelines
45 updated periodically in the federal register by the U. S.
46 Department of Health and Human Services under the authority
47 of 42 U. S. C. §9902(2).

CHAPTER 236

**(S. B. 786 — By Senators Bowman, Helmick, Sharpe,
Prezioso, Plymale, Edgell, Bailey and McCabe)**

[Passed March 11, 2006; in effect from passage.]
[Approved by the Governor on March 29, 2006.]

AN ACT to amend and reenact §11-21-12 of the Code of West Virginia, 1931, as amended, relating to calculation of West Virginia adjusted gross income for personal income tax purposes; and subtracting certain severance wages from federal adjusted gross income.

Be it enacted by the Legislature of West Virginia:

That §11-21-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

PART II. RESIDENTS.

§11-21-12. West Virginia adjusted gross income of resident individual.

- 1 (a) *General.* — The West Virginia adjusted gross income
2 of a resident individual means his or her federal adjusted gross

3 income as defined in the laws of the United States for the
4 taxable year with the modifications specified in this section.

5 (b) *Modifications increasing federal adjusted gross income.*

6 — There shall be added to federal adjusted gross income unless
7 already included therein the following items:

8 (1) Interest income on obligations of any state other than
9 this state or of a political subdivision of any other state unless
10 created by compact or agreement to which this state is a party;

11 (2) Interest or dividend income on obligations or securities
12 of any authority, commission or instrumentality of the United
13 States, which the laws of the United States exempt from federal
14 income tax but not from state income taxes;

15 (3) Any deduction allowed when determining federal
16 adjusted gross income for federal income tax purposes for the
17 taxable year that is not allowed as a deduction under this article
18 for the taxable year;

19 (4) Interest on indebtedness incurred or continued to
20 purchase or carry obligations or securities the income from
21 which is exempt from tax under this article, to the extent
22 deductible in determining federal adjusted gross income;

23 (5) Interest on a depository institution tax-exempt savings
24 certificate which is allowed as an exclusion from federal gross
25 income under Section 128 of the Internal Revenue Code, for the
26 federal taxable year;

27 (6) The amount of a lump sum distribution for which the
28 taxpayer has elected under Section 402(e) of the Internal
29 Revenue Code of 1986, as amended, to be separately taxed for
30 federal income tax purposes; and

31 (7) Amounts withdrawn from a medical savings account
32 established by or for an individual under section twenty, article

33 fifteen, chapter thirty-three of this code or section fifteen,
34 article sixteen of said chapter that are used for a purpose other
35 than payment of medical expenses, as defined in those sections.

36 (c) *Modifications reducing federal adjusted gross income.*
37 — There shall be subtracted from federal adjusted gross income
38 to the extent included therein:

39 (1) Interest income on obligations of the United States and
40 its possessions to the extent includable in gross income for
41 federal income tax purposes;

42 (2) Interest or dividend income on obligations or securities
43 of any authority, commission or instrumentality of the United
44 States or of the State of West Virginia to the extent includable
45 in gross income for federal income tax purposes but exempt
46 from state income taxes under the laws of the United States or
47 of the State of West Virginia, including federal interest or
48 dividends paid to shareholders of a regulated investment
49 company, under Section 852 of the Internal Revenue Code for
50 taxable years ending after the thirtieth day of June, one
51 thousand nine hundred eighty-seven;

52 (3) Any amount included in federal adjusted gross income
53 for federal income tax purposes for the taxable year that is not
54 included in federal adjusted gross income under this article for
55 the taxable year;

56 (4) The amount of any refund or credit for overpayment of
57 income taxes imposed by this state, or any other taxing
58 jurisdiction, to the extent properly included in gross income for
59 federal income tax purposes;

60 (5) Annuities, retirement allowances, returns of contribu-
61 tions and any other benefit received under the West Virginia
62 Public Employees Retirement System, the West Virginia State
63 Teachers Retirement System and all forms of military retire-

64 ment, including regular armed forces, reserves and national
65 guard, including any survivorship annuities derived therefrom,
66 to the extent includable in gross income for federal income tax
67 purposes: *Provided*, That notwithstanding any provisions in this
68 code to the contrary this modification shall be limited to the
69 first two thousand dollars of benefits received under the West
70 Virginia Public Employees Retirement System, the West
71 Virginia State Teachers Retirement System and, including any
72 survivorship annuities derived therefrom, to the extent
73 includable in gross income for federal income tax purposes for
74 taxable years beginning after the thirty-first day of December,
75 one thousand nine hundred eighty-six; and the first two
76 thousand dollars of benefits received under any federal
77 retirement system to which Title 4 U. S. C. §111 applies:
78 *Provided, however*, That the total modification under this
79 paragraph shall not exceed two thousand dollars per person
80 receiving retirement benefits and this limitation shall apply to
81 all returns or amended returns filed after the last day of
82 December, one thousand nine hundred eighty-eight;

83 (6) Retirement income received in the form of pensions and
84 annuities after the thirty-first day of December, one thousand
85 nine hundred seventy-nine, under any West Virginia police,
86 West Virginia Firemen's Retirement System or the West
87 Virginia State Police Death, Disability and Retirement Fund,
88 the West Virginia State Police Retirement System or the West
89 Virginia Deputy Sheriff Retirement System, including any
90 survivorship annuities derived from any of these programs, to
91 the extent includable in gross income for federal income tax
92 purposes;

93 (7) (A) For taxable years beginning after the thirty-first day
94 of December, two thousand, and ending prior to the first day of
95 January, two thousand three, an amount equal to two percent
96 multiplied by the number of years of active duty in the armed
97 forces of the United States of America with the product thereof

98 multiplied by the first thirty thousand dollars of military
99 retirement income, including retirement income from the
100 regular armed forces, reserves and National Guard paid by the
101 United States or by this state after the thirty-first day of
102 December, two thousand, including any survivorship annuities,
103 to the extent included in gross income for federal income tax
104 purposes for the taxable year.

105 (B) For taxable years beginning after the thirty-first day of
106 December, two thousand two, the first twenty thousand dollars
107 of military retirement income, including retirement income
108 from the regular armed forces, reserves and National Guard
109 paid by the United States or by this state after the thirty-first
110 day of December, two thousand two, including any survivorship
111 annuities, to the extent included in gross income for federal
112 income tax purposes for the taxable year.

113 (C) In the event that any of the provisions of this subdivi-
114 sion are found by a court of competent jurisdiction to violate
115 either the Constitution of this state or of the United States, or is
116 held to be extended to persons other than specified in this
117 subdivision, this subdivision shall become null and void by
118 operation of law.

119 (8) Federal adjusted gross income in the amount of eight
120 thousand dollars received from any source after the thirty-first
121 day of December, one thousand nine hundred eighty-six, by any
122 person who has attained the age of sixty-five on or before the
123 last day of the taxable year, or by any person certified by proper
124 authority as permanently and totally disabled, regardless of age,
125 on or before the last day of the taxable year, to the extent
126 includable in federal adjusted gross income for federal tax
127 purposes: *Provided*, That if a person has a medical certification
128 from a prior year and he or she is still permanently and totally
129 disabled, a copy of the original certificate is acceptable as proof
130 of disability. A copy of the form filed for the federal disability
131 income tax exclusion is acceptable: *Provided, however*, That:

132 (i) Where the total modification under subdivisions (1), (2),
133 (5), (6) and (7) of this subsection is eight thousand dollars per
134 person or more, no deduction shall be allowed under this
135 subdivision; and

136 (ii) Where the total modification under subdivisions (1),
137 (2), (5), (6) and (7) of this subsection is less than eight thousand
138 dollars per person, the total modification allowed under this
139 subdivision for all gross income received by that person shall
140 be limited to the difference between eight thousand dollars and
141 the sum of modifications under subdivisions (1), (2), (5), (6)
142 and (7) of this subsection;

143 (9) Federal adjusted gross income in the amount of eight
144 thousand dollars received from any source after the thirty-first
145 day of December, one thousand nine hundred eighty-six, by the
146 surviving spouse of any person who had attained the age of
147 sixty-five or who had been certified as permanently and totally
148 disabled, to the extent includable in federal adjusted gross
149 income for federal tax purposes: *Provided, That:*

150 (i) Where the total modification under subdivisions (1), (2),
151 (5), (6), (7) and (8) of this subsection is eight thousand dollars
152 or more, no deduction shall be allowed under this subdivision;
153 and

154 (ii) Where the total modification under subdivisions (1),
155 (2), (5), (6), (7) and (8) of this subsection is less than eight
156 thousand dollars per person, the total modification allowed
157 under this subdivision for all gross income received by that
158 person shall be limited to the difference between eight thousand
159 dollars and the sum of subdivisions (1), (2), (5), (6), (7) and (8)
160 of this subsection;

161 (10) Contributions from any source to a medical savings
162 account established by or for the individual pursuant to section

163 twenty, article fifteen, chapter thirty-three of this code or
164 section fifteen, article sixteen of said chapter, plus interest
165 earned on the account, to the extent includable in federal
166 adjusted gross income for federal tax purposes: *Provided*, That
167 the amount subtracted pursuant to this subdivision for any one
168 taxable year may not exceed two thousand dollars plus interest
169 earned on the account. For married individuals filing a joint
170 return, the maximum deduction is computed separately for each
171 individual;

172 (11) For the two thousand six taxable year only, severance
173 wages received by a taxpayer from an employer as the result of
174 the taxpayer's permanent termination from employment
175 through a reduction in force and through no fault of the
176 employee, not to exceed thirty thousand dollars. For purposes
177 of this subdivision:

178 (i) The term "severance wages" means any monetary
179 compensation paid by the employer in the taxable year as a
180 result of permanent termination from employment in excess of
181 regular annual wages or regular annual salary;

182 (ii) The term "reduction in force" means a net reduction in
183 the number of employees employed by the employer in West
184 Virginia, determined based on total West Virginia employment
185 of the employer's controlled group;

186 (iii) The term "controlled group" means one or more chains
187 of corporations connected through stock ownership with a
188 common parent corporation if stock possessing at least fifty
189 percent of the voting power of all classes of stock of each of the
190 corporations is owned directly or indirectly by one or more of
191 the corporations and the common parent owns directly stock
192 possessing at least fifty percent of the voting power of all
193 classes of stock of at least one of the other corporations;

194 (iv) The term “corporation” means any corporation, joint-
195 stock company or association and any business conducted by a
196 trustee or trustees wherein interest or ownership is evidenced by
197 a certificate of interest or ownership or similar written instru-
198 ment; and

199 (12) Any other income which this state is prohibited from
200 taxing under the laws of the United States.

201 (d) *Modification for West Virginia fiduciary adjustment.* —
202 There shall be added to or subtracted from federal adjusted
203 gross income, as the case may be, the taxpayer’s share, as
204 beneficiary of an estate or trust, of the West Virginia fiduciary
205 adjustment determined under section nineteen of this article.

206 (e) *Partners and S corporation shareholders.* — The
207 amounts of modifications required to be made under this
208 section by a partner or an S corporation shareholder, which
209 relate to items of income, gain, loss or deduction of a partner-
210 ship or an S corporation, shall be determined under section
211 seventeen of this article.

212 (f) *Husband and wife.* — If husband and wife determine
213 their federal income tax on a joint return but determine their
214 West Virginia income taxes separately, they shall determine
215 their West Virginia adjusted gross incomes separately as if their
216 federal adjusted gross incomes had been determined separately.

217 (g) *Effective date.* — (1) Changes in the language of this
218 section enacted in the year two thousand shall apply to taxable
219 years beginning after the thirty-first day of December, two
220 thousand.

221 (2) Changes in the language of this section enacted in the
222 year two thousand two shall apply to taxable years beginning
223 after the thirty-first day of December, two thousand two.

CHAPTER 237

(S. B. 609 — By Senators Helmick and Minard)

[Passed March 9, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §11-21-21 of the Code of West Virginia, 1931, as amended, relating to personal income tax; and subjecting the refundable senior citizens' tax credit to a three-year statute of limitations for filing a claim for refund.

Be it enacted by the Legislature of West Virginia:

That §11-21-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-21. Senior citizens' tax credit for property tax paid on first ten thousand dollars of taxable assessed value of a homestead in this state.

1 (a) *Allowance of credit.* — A low-income person who is
2 allowed a twenty thousand dollar homestead exemption from
3 the assessed value of his or her homestead for ad valorem
4 property tax purposes, as provided in section three, article six-b
5 of this chapter, shall be allowed a refundable credit against the
6 taxes imposed by this article equal to the amount of ad valorem
7 property taxes paid on up to the first ten thousand dollars of
8 taxable assessed value of the homestead for property tax years
9 that begin on or after the first day of January, two thousand
10 three: *Provided*, That the credit for each property tax year shall

11 be claimed by filing a claim for refund within three years after
12 the due date for the personal income tax return upon which the
13 credit is first available.

14 (b) *Terms defined.* — For purposes of this section:

15 (1) “Low income” means federal adjusted gross income for
16 the taxable year that is one hundred fifty percent or less of the
17 federal poverty guideline for the year in which property tax was
18 paid, based upon the number of individuals in the family unit
19 residing in the homestead, as determined annually by the United
20 States Secretary of Health and Human Services.

21 (2) “Taxes paid” means the aggregate of regular levies,
22 excess levies and bond levies extended against not more than
23 ten thousand dollars of the taxable assessed value of a home-
24 stead that are paid during the calendar year determined after
25 application of any discount for early payment of taxes but
26 before application of any penalty or interest for late payment of
27 property taxes for a property tax year that begins on or after the
28 first day of January, two thousand three.

29 (c) *Legislative rule.* — The Tax Commissioner shall
30 propose a legislative rule for promulgation as provided in
31 article three, chapter twenty-nine-a of this code to explain and
32 implement this section.

33 (d) *Confidentiality.* — The Tax Commissioner shall utilize
34 property tax information in the statewide electronic data
35 processing system network to the extent necessary for the
36 purpose of administering this section, notwithstanding any
37 provision of this code to the contrary.

CHAPTER 238

(S. B. 582 — By Senators Helmick, Plymale, Prezioso and Minard)

[Passed March 8, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-21-54, relating to personal income tax; and requiring certain tax preparers to file certain personal income tax returns of their clients 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 §11-21-54, to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-54. Electronic filing for certain tax preparers.

1 (a) If an income tax return preparer filed more than one
2 hundred personal income tax returns for any taxable year that
3 began after the first day of January, two thousand five, and if
4 during calendar year two thousand six or any calendar year
5 thereafter that income tax preparer prepares one or more
6 personal income tax returns using tax preparation software for
7 a previous taxable year, then for each current taxable year all
8 unamended personal income tax returns prepared by that
9 preparer shall be filed electronically, except as provided in
10 subsections (c) and (d) of this section.

11 (b) For purposes of this section:

12 (1) “Income tax preparer” means any person who prepares,
13 in exchange for compensation, or who employs another person
14 to prepare, in exchange for compensation, all or a substantial
15 portion of any return for a taxpayer for the tax imposed by this
16 article and who is identified as the preparer for the taxpayer on
17 the return. A person who only performs those acts described in
18 clauses (i) through (iv) of Section 7701(a)(36)(B) of the
19 Internal Revenue Code with respect to the preparation of a
20 return for a trust or estate for which he or she is a fiduciary or
21 a return for a partnership of which he or she is a partner is not
22 an income tax preparer for purposes of this section.

23 (2) “Electronic filing” or “e-filing” means filing using
24 electronic technology such as computer modem, magnetic
25 media, optical disk, facsimile machine, telephone or other
26 technology approved by the Tax Commissioner, in such manner
27 as he or she deems acceptable.

28 (3) “Tax preparation software” means any computer
29 software program intended for accounting or tax return
30 preparation.

31 (c) Subsection (a) of this section shall cease to apply to an
32 income tax preparer if, for the previous taxable year, that
33 income tax preparer prepared no more than twenty-five
34 personal income tax returns.

35 (d) This section first applies to personal income tax returns
36 required to be filed for taxable years beginning the first day of
37 January, two thousand six. This section does not require
38 electronic filing of: (1) Returns that were not required to be
39 filed for taxable years beginning prior to that date; (2) returns
40 for prior taxable years beginning prior to that date; or (3)
41 amended returns for any taxable year.

42 (e) An income tax preparer who is required to e-file under
43 this section but does not do so is liable for a penalty in the
44 amount of twenty-five dollars for each return prepared that is
45 not e-filed, unless the preparer shows that the failure to do so is
46 due to reasonable cause rather than willful neglect. For
47 purposes of this subsection, reasonable cause includes, but is
48 not limited to, a documented election by a client not to file
49 electronically.

50 (f) The commissioner shall implement the provisions of this
51 section using any combination of notices, forms, instructions
52 and rules that he or she deems necessary.

CHAPTER 239

(S. B. 626 — By Senators Helmick and Minard)

[Passed March 9, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §11-21-74 of the Code of West Virginia, 1931, as amended, relating to personal income tax; requiring employers to submit copy of employee's withholding statement with an annual reconciliation of income tax withheld; and requiring employer with two hundred fifty or more employees to submit withholding statements electronically.

Be it enacted by the Legislature of West Virginia:

That §11-21-74 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-74. Filing of employer's withholding return and payment of withheld taxes; annual reconciliation; e-filing required for certain tax preparers and employers.

1 (a) *General.* — Every employer required to deduct and
2 withhold tax under this article shall, for each calendar quarter,
3 on or before the last day of the month following the close of
4 such calendar quarter, file a withholding return as prescribed by
5 the Tax Commissioner and pay over to the Tax Commissioner
6 the taxes so required to be deducted and withheld. Where the
7 average quarterly amount so deducted and withheld by any
8 employer is less than one hundred fifty dollars and the aggregate
9 for the calendar year can reasonably be expected to be less
10 than six hundred dollars, the Tax Commissioner may by
11 regulation permit an employer to file an annual return and pay
12 over to the Tax Commissioner the taxes deducted and withheld
13 on or before the last day of the month following the close of the
14 calendar year: *Provided*, That the Tax Commissioner may, by
15 nonemergency legislative rules promulgated pursuant to article
16 three, chapter twenty-nine-a of this code, change the minimum
17 amounts established by this subsection. The Tax Commissioner
18 may, if he or she believes such action necessary for the
19 protection of the revenues, require any employer to make the
20 return and pay to him or her the tax deducted and withheld at
21 any time, or from time to time.

22 (b) *Monthly returns and payments of withheld tax on and*
23 *after the first day of January, two thousand one.* — Notwith-
24 standing the provisions of subsection (a) of this section, on and
25 after the first day of January, two thousand one, every employer
26 required to deduct and withhold tax under this article shall, for
27 each of the first eleven months of the calendar year, on or
28 before the twentieth day of the succeeding month and for the
29 last calendar month of the year, on or before the last day of the
30 succeeding month, file a withholding return as prescribed by the
31 Tax Commissioner and pay over to the Tax Commissioner the

32 taxes so required to be deducted and withheld, if such withheld
33 taxes aggregate two hundred fifty dollars or more for the
34 month, except any employer with respect to whom the Tax
35 Commissioner may have by regulation provided otherwise in
36 accordance with the provisions of subsection (a) of this section.

37 (c) *Annual returns and payments of withheld tax of certain*
38 *domestic and household employees.* — Employers of domestic
39 and household employees whose withholdings of federal
40 income tax are annually paid and reported by the employer
41 pursuant to the filing of Schedule H of federal form 1040,
42 1040A, 1040NR, 1040NR-EZ, 1040SS or 1041 may, on or
43 before the thirty-first day of January next succeeding the end of
44 the calendar year for which withholdings are deducted and
45 withheld, file an annual withholding return with the Tax
46 Commissioner and annually remit to the Tax Commissioner
47 West Virginia personal income taxes deducted and withheld for
48 the employees. The Tax Commissioner may promulgate
49 legislative or other rules pursuant to article three, chapter
50 twenty-nine-a of this code for implementation of this subsec-
51 tion.

52 (d) *Deposit in trust for Tax Commissioner.* — Whenever
53 any employer fails to collect, truthfully account for, or pay over
54 the tax, or to make returns of the tax as required in this section,
55 the Tax Commissioner may serve a notice requiring the
56 employer to collect the taxes which become collectible after
57 service of the notice, to deposit the taxes in a bank approved by
58 the Tax Commissioner, in a separate account, in trust for and
59 payable to the Tax Commissioner, and to keep the amount of
60 the tax in the separate account until payment over to the Tax
61 Commissioner. The notice shall remain in effect until a notice
62 of cancellation is served by the Tax Commissioner.

63 (e) *Accelerated payment.* — (1) Notwithstanding the
64 provisions of subsections (a) and (b) of this section, for
65 calendar years beginning after the thirty-first day of December,

66 one thousand nine hundred ninety, every employer required to
67 deduct and withhold tax whose average payment per calendar
68 month for the preceding calendar year under subsection (b) of
69 this section exceeded one hundred thousand dollars shall remit
70 the tax attributable to the first fifteen days of June each year on
71 or before the twenty-third day of June.

72 (2) For purposes of complying with subdivision (1) of this
73 subsection, the employer shall remit an amount equal to the
74 withholding tax due under this article on employee compensa-
75 tion subject to withholding tax payable or paid to employees for
76 the first fifteen days of June or, at the employer's election, the
77 employer may remit an amount equal to fifty percent of the
78 employer's liability for withholding tax under this article on
79 compensation payable or paid to employees for the preceding
80 month of May.

81 (3) For an employer which has not been in business for a
82 full calendar year, the total amount the employer was required
83 to deduct and withhold under subsection (b) of this section for
84 the prior calendar year shall be divided by the number of
85 months, including fractions of a month, that it was in business
86 during the prior calendar year, and if that amount exceeds one
87 hundred thousand dollars, the employer shall remit the tax
88 attributable to the first fifteen days of June each year on or
89 before the twenty-third day of June, as provided in subdivision
90 (2) of this subsection.

91 (4) When an employer required to make an advanced
92 payment of withholding tax under subdivision (1) of this
93 subsection makes out its return for the month of June, which is
94 due on the twentieth day of July, that employer may claim as a
95 credit against its liability under this article for tax on employee
96 compensation paid or payable for employee services rendered
97 during the month of June the amount of the advanced payment
98 of tax made under subdivision (1) of this subsection.

99 (f) The amendments to this section enacted in the year two
100 thousand six are effective for tax years beginning on or after the
101 first day of January, two thousand six.

102 (g) An annual reconciliation of West Virginia personal
103 income tax withheld shall be submitted by the employer on or
104 before the twenty-eighth day of February following the close of
105 the calendar year, together with Tax Division copies of all
106 withholding tax statements for that preceding calendar year.
107 The reconciliation shall be accompanied by a list of the
108 amounts of income withheld for each employee in such form as
109 the Tax Commissioner prescribes and shall be filed separately
110 from the employer's monthly or quarterly return.

111 (h) Any employer required to file a withholding return for
112 two hundred fifty or more employees shall file its return using
113 electronic filing as defined in section fifty-four of this article.
114 An employer that is required to file electronically but does not
115 do so is subject to a penalty in the amount of twenty-five dollars
116 per employee for whom the return was not filed electronically,
117 unless the employer shows that the failure is due to reasonable
118 cause and not due to willful neglect.

CHAPTER 240

**(S. B. 530 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed March 8, 2006; in effect from passage.]

[Approved by the Governor on March 23, 2006.]

AN ACT to amend and reenact §11-24-3 of the Code of West Virginia, 1931, as amended, relating to updating meaning of

federal taxable income and certain other terms used in West Virginia Corporation Net Income Tax Act; and specifying effective dates.

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 laws
8 of the United States that relate to the determination of income
9 for federal income tax purposes. All amendments made to the
10 laws of the United States after the thirty-first day of December,
11 two thousand four, but prior to the first day of January, two
12 thousand six, shall be given effect in determining the taxes
13 imposed by this article to the same extent those changes are
14 allowed for federal income tax purposes, whether the changes
15 are retroactive or prospective, but no amendment to the laws of
16 the United States made on or after the first day of January, two
17 thousand six, shall be given any effect.

18 (b) The term “Internal Revenue Code of 1986” means the
19 Internal Revenue Code of the United States enacted by the
20 federal Tax Reform Act of 1986 and includes the provisions of
21 law formerly known as the Internal Revenue Code of 1954, as
22 amended, and in effect when the federal Tax Reform Act of
23 1986 was enacted that were not amended or repealed by the

24 federal Tax Reform Act of 1986. Except when inappropriate,
25 any reference in any law, executive order or 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 two thousand six are retroactive to the
33 extent allowable under federal income tax law. With respect to
34 taxable years that began prior to the first day of January, two
35 thousand six, the law in effect for each of those years shall be
36 fully preserved as to that year, except as provided in this
37 section.

CHAPTER 241

(H. B. 3295 — By Delegates Morgan, Howard and Sobonya)

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §11A-2-13 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11A-3-2 and §11A-3-13 of said code, all relating to delinquent property taxes; and increasing certain fees charged to collect the taxes.

Be it enacted by the Legislature of West Virginia:

That §11A-2-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11A-3-2 and §11A-3-13 of said code be amended and reenacted, all to read as follows:

Article

2. Delinquency and Methods of Enforcing Payment.

3. Sale of Tax Liens and Nonentered, Escheated and Waste and Unappropriated Lands.

ARTICLE 2. DELINQUENCY AND METHODS OF ENFORCING PAYMENT.

§11A-2-13. Publication and posting of delinquent tax lists.

1 A copy of each of the delinquent lists shall be posted at the
2 front door of the courthouse of the county at least two weeks
3 before the session of the county commission at which they are
4 to be presented for examination. At the same time a copy of
5 each list shall be published as a Class I-O legal advertisement
6 in compliance with the provisions of article three, chapter fifty-
7 nine of this code, and the publication area for such publication
8 shall be the county. Only the aggregate amount of the taxes
9 owed by each person need be published. To cover the costs of
10 preparing, publishing and posting the delinquent lists, a charge
11 of twenty dollars shall be added to the taxes and interest already
12 due on each item listed.

13 Any person whose taxes were delinquent on May first may
14 have his name removed from the delinquent lists prior to the
15 time the same is delivered to the newspapers for publication by
16 paying to the sheriff the full amount of the taxes and costs owed
17 by such person at the date of such redemption. The sheriff shall
18 collect a charge of only three dollars if redemption is made
19 before the list is delivered for publication. Costs collected by
20 the sheriff hereunder which are not expended for publication
21 shall be paid into the general county fund.

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHATED AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-2. Second publication of list of delinquent real estate; notice.

§11A-3-13. Publication by sheriff of sales list.

***§11A-3-2. Second publication of list of delinquent real estate; notice.**

1 (a) On or before the tenth day of September of each year,
2 the sheriff shall prepare a second list of delinquent lands, which
3 shall include all real estate in his or her county remaining
4 delinquent as of the first day of September, together with a
5 notice of sale, in form or effect as follows:

6 Notice is hereby given that tax liens for the following
7 described tracts or lots of land or undivided interests therein in
8 the County of _____ which are delinquent for the
9 nonpayment of taxes for the year (or years) 20____, will be
10 offered for sale by the undersigned sheriff (or collector) at
11 public auction at the front door of the courthouse of the county,
12 between the hours of nine in the morning and four in the
13 afternoon, on the ____ day of _____, 20____.

14 Tax liens on each unredeemed tract or lot, or each unre-
15 deemed part thereof or undivided interest therein, will be sold
16 at public auction to the highest bidder in an amount which shall
17 not be less than the taxes, interest and charges which shall be
18 due thereon to the date of sale, as set forth in the following
19 table:

Name of person charged with taxes	Quantity of land	Local description	Total amount of taxes, interest and charges due to date of sale

* **CLERK'S NOTE:** This section was also amended by H. B. 2947 (Chapter 242), which passed prior to this act.

20 Any of the aforesaid tracts or lots, or part thereof or an
21 undivided interest therein, may be redeemed by the payment to
22 the undersigned sheriff (or collector) before sale, of the total
23 amount of taxes, interest and charges due thereon up to the date
24 of redemption. Payment received within fourteen business days
25 prior to the date of sale must be paid by cashier check, money
26 order, certified check or United States currency.

27 Given under my hand this _____ day of
28 _____, 20____.

29 _____

30 Sheriff (or collector).

31 The sheriff shall publish the list and notice prior to the sale
32 date fixed in the notice as a Class III-0 legal advertisement in
33 compliance with the provisions of article three, chapter
34 fifty-nine of this code, and the publication area for such
35 publication shall be the county.

36 (b) In addition to such publication, no less than thirty days
37 prior to the sale, the sheriff shall send a notice of the delin-
38 quency and the date of sale by certified mail: (1) To the last
39 known address of each person listed in the land books whose
40 taxes are delinquent; (2) to each person having a lien on real
41 property upon which the taxes are due as disclosed by a
42 statement filed with the sheriff pursuant to the provisions of
43 section three of this article; (3) to each other person with an
44 interest in the property or with a fiduciary relationship to a
45 person with an interest in the property who has in writing
46 delivered to the sheriff on a form prescribed by the tax
47 commissioner a request for such notice of delinquency; and (4)
48 in the case of property which includes a mineral interest but
49 does not include an interest in the surface other than an interest
50 for the purpose of developing the minerals, to each person who
51 has in writing delivered to the sheriff, on a form prescribed by

52 the tax commissioner, a request for such notice which identifies
53 the person as an owner of an interest in the surface of real
54 property that is included in the boundaries of such property:
55 *Provided*, That in a case where one owner owns more than one
56 parcel of real property upon which taxes are delinquent, the
57 sheriff may, at his or her option, mail separate notices to the
58 owner and each lienholder for each parcel or may prepare and
59 mail to the owner and each lienholder a single notice which
60 pertains to all such delinquent parcels. If the sheriff elects to
61 mail only one notice, that notice shall set forth a legally
62 sufficient description of all parcels of property on which taxes
63 are delinquent. In no event shall failure to receive the mailed
64 notice by the landowner or lienholder affect the validity of the
65 title of the property conveyed if it is conveyed pursuant to
66 section twenty-seven or fifty-nine of this article.

67 (c) (1) To cover the cost of preparing and publishing the
68 second delinquent list, a charge of twenty-five dollars shall be
69 added to the taxes, interest and charges already due on each
70 item and all such charges shall be stated in the list as a part of
71 the total amount due.

72 (2) To cover the cost of preparing and mailing notice to the
73 landowner, lienholder or any other person entitled thereto
74 pursuant to this section, a charge of ten dollars per addressee
75 shall be added to the taxes, interest and charges already due on
76 each item and all such charges shall be stated in the list as a part
77 of the total amount due.

78 (d) Any person whose taxes were delinquent on the first day
79 of September may have his or her name removed from the
80 delinquent list prior to the time the same is delivered to the
81 newspapers for publication by paying to the sheriff the full
82 amount of taxes and costs owed by the person at the date of
83 such redemption. In such case, the sheriff shall include but three
84 dollars of the costs provided in this section in making such
85 redemption. Costs collected by the sheriff hereunder which are

86 not expended for publication and mailing shall be paid into the
87 general county fund.

§11A-3-13. Publication by sheriff of sales list.

1 Within one month after completion of the sale, the sheriff
2 shall prepare and publish a list of all the sales and certifications
3 made by him or her, in form or effect as follows, which list
4 shall be published as a Class II-0 legal advertisement in
5 compliance with the provisions of article three, chapter fifty-
6 nine of this code, and the publication area for such publication
7 shall be the county.

8 List of tax liens on real estate sold in the county of
9 _____, in the
10 month (or months) of _____,
11 20____, for nonpayment of taxes thereon for the year (or years)
12 20____, and purchased by individuals or certified to the auditor
13 of the State of West Virginia:

Name of person charged with taxes	Local description of lands	Quantity of land charged	Quantity of land for which tax lien is sold	Name of purchaser	Whole amount paid by purchaser

14 The owner of any real estate listed above, or any other
15 person entitled to pay the taxes thereon, may, however, redeem
16 such real estate as provided by law.

17 Given under my hand this _____ day of
18 _____, 20____.

19 _____

20

Sheriff

21 To cover the costs of preparing and publishing such list, a
22 charge of fifteen shall be added to the taxes, interest and
23 charges already due on each item listed.

CHAPTER 242

(Com. Sub. for H. B. 2947 — By Delegates Hamilton, Stemple,
H. White, Schadler, Sobonya, Ellem, Poling and Crosier)

[Passed March 9, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §11A-3-2 and §11A-3-4 of the Code of West Virginia, 1931, as amended, all relating to requiring payments for delinquent real estate taxes submitted within fourteen days prior to the date of the sheriff's sale be made by cashier's check, money order, certified check or United States currency.

Be it enacted by the Legislature of West Virginia:

That §11A-3-2 and §11A-3-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHEATED AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-2. Second publication of list of delinquent real estate; notice.

§11A-3-4. Redemption after second publication and before sale.

***§11A-3-2. Second publication of list of delinquent real estate; notice.**

* **CLERK'S NOTE:** This section was also amended by H. B. 3295 (Chapter 241), which passed subsequent to this act.

1 (a) On or before the tenth day of September of each year,
 2 the sheriff shall prepare a second list of delinquent lands, which
 3 shall include all real estate in his or her county remaining
 4 delinquent as of the first day of September, together with a
 5 notice of sale, in form or effect as follows:

1 Notice is hereby given that tax liens for the following
 2 described tracts or lots of land or undivided interests therein in
 3 the County of _____ which are delinquent for the
 4 nonpayment of taxes for the year (or years) 20____, will be
 5 offered for sale by the undersigned sheriff (or collector) at
 6 public auction at the front door of the courthouse of the county,
 7 between the hours of nine in the morning and four in the
 8 afternoon, on the ____ day of _____, 20____.

9 Tax liens on each unredeemed tract or lot, or each unre-
 10 deemed part thereof or undivided interest therein, will be sold
 11 at public auction to the highest bidder in an amount which shall
 12 not be less than the taxes, interest and charges which shall be
 13 due thereon to the date of sale, as set forth in the following
 14 table:

Name of person charged with taxes	Quantity of land	Local description	Total amount of taxes, interest and charges due to date of sale

15 Any of the aforesaid tracts or lots, or part thereof or an
 16 undivided interest therein, may be redeemed by the payment to
 17 the undersigned sheriff (or collector) before sale, of the total
 18 amount of taxes, interest and charges due thereon up to the date
 19 of redemption. Payments received within fourteen business
 20 days prior to the date of sale must be paid by cashier check,
 21 money order, certified check or United States currency.

22 Given under my hand this _____ day of

23 _____, 20_____.

24 _____

25 Sheriff (or collector).

26 The sheriff shall publish the list and notice prior to the sale
27 date fixed in the notice as a Class III-0 legal advertisement in
28 compliance with the provisions of article three, chapter
29 fifty-nine of this code, and the publication area for such
30 publication shall be the county.

31 (b) In addition to such publication, no less than thirty days
32 prior to the sale the sheriff shall send a notice of the delin-
33 quency and the date of sale by certified mail: (1) To the last
34 known address of each person listed in the land books whose
35 taxes are delinquent; (2) to each person having a lien on real
36 property upon which the taxes are due as disclosed by a
37 statement filed with the sheriff pursuant to the provisions of
38 section three of this article; (3) to each other person with an
39 interest in the property or with a fiduciary relationship to a
40 person with an interest in the property who has in writing
41 delivered to the sheriff on a form prescribed by the Tax
42 Commissioner a request for such notice of delinquency; and (4)
43 in the case of property which includes a mineral interest but
44 does not include an interest in the surface other than an interest
45 for the purpose of developing the minerals, to each person who
46 has in writing delivered to the sheriff, on a form prescribed by
47 the Tax Commissioner, a request for such notice which
48 identifies the person as an owner of an interest in the surface of
49 real property that is included in the boundaries of such property:
50 *Provided*, That in a case where one owner owns more than one
51 parcel of real property upon which taxes are delinquent, the
52 sheriff may, at his option, mail separate notices to the owner
53 and each lienholder for each parcel or may prepare and mail to

54 the owner and each lienholder a single notice which pertains to
55 all such delinquent parcels. If the sheriff elects to mail only one
56 notice, that notice shall set forth a legally sufficient description
57 of all parcels of property on which taxes are delinquent. In no
58 event shall failure to receive the mailed notice by the landowner
59 or lienholder affect the validity of the title of the property
60 conveyed if it is conveyed pursuant to section twenty-seven or
61 fifty-nine of this article.

62 (c) (1) To cover the cost of preparing and publishing the
63 second delinquent list, a charge of twelve dollars and fifty cents
64 shall be added to the taxes, interest and charges already due on
65 each item and all such charges shall be stated in the list as a part
66 of the total amount due.

67 (2) To cover the cost of preparing and mailing notice to the
68 landowner, lienholder or any other person entitled thereto
69 pursuant to this section, a charge of five dollars per addressee
70 shall be added to the taxes, interest and charges already due on
71 each item and all such charges shall be stated in the list as a part
72 of the total amount due.

73 (d) Any person whose taxes were delinquent on the first day
74 of September may have his or her name removed from the
75 delinquent list prior to the time the same is delivered to the
76 newspapers for publication by paying to the sheriff the full
77 amount of taxes and costs owed by the person at the date of
78 such redemption. In such case, the sheriff shall include but three
79 dollars of the costs provided in this section in making such
80 redemption. Costs collected by the sheriff hereunder which are
81 not expended for publication and mailing shall be paid into the
82 general county fund.

§11A-3-4. Redemption after second publication and before sale.

1 Any of the real estate included in the list published pursuant
2 to the provisions of section two of this article may be redeemed

3 at any time before sale as provided in section eighteen, article
4 two of this chapter. All payments for delinquent real estate
5 taxes received within fourteen business days prior to the date of
6 sale must be paid by cashier check, money order, certified
7 check or United States currency.

CHAPTER 243

**(Com. Sub. for S. B. 653 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §5A-6-1, §5A-6-2, §5A-6-4, §5A-6-5, §5A-6-6 and §5A-6-8 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto three new sections, designated §5A-6-4a, §5A-6-4b and §5A-6-4c; and to amend and reenact §5A-7-4 of said code, all relating to the Office of Technology; making legislative findings; defining terms; providing duties, powers and authority of the Chief Technology Officer; requiring a four-year strategic plan; authorizing promulgation of legislative rules; providing authority over security of state government information; managing information technology and establishing a Project Management Office; requiring state spending units to provide notice and obtain approval of Chief Technology Officer for certain information technology and telecommunication projects; limiting when fees may be charged; disallowing certain expenditures in excess of spending authority; transferring duties relating to disaster recovery centers to the Chief Technology Officer; requiring at least two redundant sites

for disaster recovery centers; and exempting and limiting application to certain state entities.

Be it enacted by the Legislature of West Virginia:

That §5A-6-1, §5A-6-2, §5A-6-4, §5A-6-5, §5A-6-6 and §5A-6-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto three new sections, designated §5A-6-4a, §5A-6-4b and §5A-6-4c; and that §5A-7-4 of said code be amended and reenacted, all to read as follows:

Article

6. Office of Technology.

7. Information Services and Communications Divisions.

ARTICLE 6. OFFICE OF TECHNOLOGY.

§5A-6-1. Findings and purposes.

§5A-6-2. Definitions.

§5A-6-4. Powers and duties of the Chief Technology Officer; generally.

§5A-6-4a. Duties of the Chief Technology Officer relating to security of government information.

§5A-6-4b. Project management duties of the Chief Technology Officer; establishment of the Project Management Office and duties of the director of the Project Management Office.

§5A-6-4c. Major information technology projects proposals and the establishment of steering committees.

§5A-6-5. Notice of request for proposals by state spending units required to make purchases through the State Purchasing Division.

§5A-6-6. Notice of request for proposals by state spending units exempted from submitting purchases to the State Purchasing Division.

§5A-6-8. Exemptions.

§5A-6-1. Findings and purposes.

1 The Legislature finds and declares that information
2 technology is essential to finding practical solutions to the
3 everyday problems of government and that the management
4 goals and purposes of government are furthered by the
5 development of compatible, linked information systems across

6 government. Therefore, it is the purpose of this article to create,
7 as an integral part of the Department of Administration, the
8 Office of Technology with the authority to advise and make
9 recommendations to all state spending units on their informa-
10 tion systems and to have the authority to oversee coordination
11 of the state's technical infrastructure.

§5A-6-2. Definitions.

1 As used in this article:

2 (a) "Information systems" means computer-based informa-
3 tion equipment and related services designed for the automated
4 transmission, storage, manipulation and retrieval of data by
5 electronic or mechanical means;

6 (b) "Information technology" means data processing and
7 telecommunications hardware, software, services, supplies,
8 personnel, maintenance, training and includes the programs and
9 routines used to employ and control the capabilities of data
10 processing hardware;

11 (c) "Information equipment" includes central processing
12 units, front-end processing units, miniprocessors, microproces-
13 sors and related peripheral equipment, including data storage
14 devices, networking equipment, services, routers, document
15 scanners, data entry equipment, terminal controllers, data
16 terminal equipment, computer-based word processing systems
17 other than memory typewriters;

18 (d) "Related services" includes feasibility studies, systems
19 design, software development and time-sharing services
20 whether provided by state employees or others;

21 (e) "Telecommunications" means any transmission,
22 emission or reception of signs, signals, writings, images or
23 sounds of intelligence of any nature by wire, radio or other

24 electromagnetic or optical systems. The term includes all
25 facilities and equipment performing those functions that are
26 owned, leased or used by the executive agencies of state
27 government;

28 (f) “Chief Technology Officer” means the person holding
29 the position created in section three of this article and vested
30 with authority to oversee state spending units in planning and
31 coordinating information systems that serve the effectiveness
32 and efficiency of the state and individual state spending units
33 and further the overall management goals and purposes of
34 government;

35 (g) “Technical infrastructure” means all information
36 systems, information technology, information equipment,
37 telecommunications and related services as defined in this
38 section;

39 (h) “Information technology project” means the process by
40 which telecommunications, automated data processing,
41 databases, the internet, management information systems and
42 related information, equipment, goods and services are planned,
43 procured and implemented;

44 (i) “Major information technology project” means any
45 information technology project estimated to cost more than one
46 hundred thousand dollars or require more than three hundred
47 man hours to complete; and

48 (j) “Steering committee” means an internal agency
49 oversight committee established jointly by the Chief Technol-
50 ogy Officer and the agency requesting the project, which shall
51 include representatives from the Office of Technology and at
52 least one representative from the agency requesting the project.

**§5A-6-4. Powers and duties of the Chief Technology Officer;
generally.**

1 (a) With respect to all state spending units the Chief
2 Technology Officer may:

3 (1) Develop an organized approach to information resource
4 management for this state;

5 (2) Provide, with the assistance of the Information Services
6 and Communications Division of the Department of Adminis-
7 tration, technical assistance to the administrators of the various
8 state spending units in the design and management of informa-
9 tion systems;

10 (3) Evaluate, in conjunction with the Information Services
11 and Communications Division, the economic justification,
12 system design and suitability of information equipment and
13 related services, and review and make recommendations on the
14 purchase, lease or acquisition of information equipment and
15 contracts for related services by the state spending units;

16 (4) Develop a mechanism for identifying those instances
17 where systems of paper forms should be replaced by direct use
18 of information equipment and those instances where applicable
19 state or federal standards of accountability demand retention of
20 some paper processes;

21 (5) Develop a mechanism for identifying those instances
22 where information systems should be linked and information
23 shared, while providing for appropriate limitations on access
24 and the security of information;

25 (6) Create new technologies to be used in government,
26 convene conferences and develop incentive packages to
27 encourage the utilization of technology;

28 (7) Engage in any other activities as directed by the
29 Governor;

30 (8) Charge a fee to the state spending units for evaluations
31 performed and technical assistance provided under the provi-
32 sions of this section, to be based entirely on direct personnel
33 costs incurred in providing the evaluation or technical assis-
34 tance and charged only after the evaluation or technical
35 assistance has been provided. All fees collected by the Chief
36 Technology Officer shall be deposited in a special account in
37 the State Treasury to be known as the Chief Technology Officer
38 Administration Fund. Expenditures from the fund shall be made
39 by the Chief Technology Officer for the purposes set forth in
40 this article and are not authorized from collections but are to be
41 made only in accordance with appropriation by the Legislature
42 and in accordance with the provisions of article three, chapter
43 twelve of this code and upon the fulfillment of the provisions
44 set forth in article two, chapter eleven-b of this code: *Provided,*
45 That the provisions of section eighteen, article two, chapter
46 eleven-b of this code shall not operate to permit expenditures in
47 excess of the spending authority authorized by the Legislature.
48 Amounts collected which are found to exceed the funds needed
49 for purposes set forth in this article may be transferred to other
50 accounts or funds and redesignated for other purposes by
51 appropriation of the Legislature;

52 (9) Monitor trends and advances in information technology
53 and technical infrastructure;

54 (10) Direct the formulation and promulgation of policies,
55 guidelines, standards and specifications for the development
56 and maintenance of information technology and technical
57 infrastructure, including, but not limited to:

58 (A) Standards to support state and local government
59 exchange, acquisition, storage, use, sharing and distribution of
60 electronic information;

61 (B) Standards concerning the development of electronic
62 transactions, including the use of electronic signatures;

63 (C) Standards necessary to support a unified approach to
64 information technology across the totality of state government,
65 thereby assuring that the citizens and businesses of the state
66 receive the greatest possible security, value and convenience
67 from investments made in technology;

68 (D) Guidelines directing the establishment of statewide
69 standards for the efficient exchange of electronic information
70 and technology, including technical infrastructure, between the
71 public and private sectors;

72 (E) Technical and data standards for information technol-
73 ogy and related systems to promote efficiency and uniformity;

74 (F) Technical and data standards for the connectivity,
75 priorities and interoperability of technical infrastructure used
76 for homeland security, public safety and health and systems
77 reliability necessary to provide continuity of government
78 operations in times of disaster or emergency for all state, county
79 and local governmental units; and

80 (G) Technical and data standards for the coordinated
81 development of infrastructure related to deployment of
82 electronic government services among state, county and local
83 governmental units;

84 (11) Periodically evaluate the feasibility of subcontracting
85 information technology resources and services, and to subcon-
86 tract only those resources that are feasible and beneficial to the
87 state;

88 (12) Direct the compilation and maintenance of an
89 inventory of information technology and technical infrastruc-
90 ture of the state, including infrastructure and technology of all
91 state, county and local governmental units, which may include
92 personnel, facilities, equipment, goods and contracts for
93 service, wireless tower facilities, geographic information

94 systems and any technical infrastructure or technology that is
95 used for law enforcement, homeland security or emergency
96 services;

97 (13) Develop job descriptions and qualifications necessary
98 to perform duties related to information technology as outlined
99 in this article; and

100 (14) Promulgate legislative rules, in accordance with the
101 provisions of chapter twenty-nine-a of this code, as may be
102 necessary to standardize and make effective the administration
103 of the provisions of article six of this chapter.

104 (b) With respect to executive agencies, the Chief Technol-
105 ogy Officer may:

106 (1) Develop a unified and integrated structure for informa-
107 tion systems for all executive agencies;

108 (2) Establish, based on need and opportunity, priorities and
109 time lines for addressing the information technology require-
110 ments of the various executive agencies of state government;

111 (3) Exercise authority delegated by the Governor by
112 executive order to overrule and supersede decisions made by
113 the administrators of the various executive agencies of
114 government with respect to the design and management of
115 information systems and the purchase, lease or acquisition of
116 information equipment and contracts for related services;

117 (4) Draw upon staff of other executive agencies for advice
118 and assistance in the formulation and implementation of
119 administrative and operational plans and policies; and

120 (5) Recommend to the Governor transfers of equipment and
121 human resources from any executive agency and the most
122 effective and efficient uses of the fiscal resources of executive

123 agencies, to consolidate or centralize information-processing
124 operations.

125 (c) The Chief Technology Officer may employ the
126 personnel necessary to carry out the work of the Office of
127 Technology and may approve reimbursement of costs incurred
128 by employees to obtain education and training.

129 (d) The Chief Technology Officer shall develop a compre-
130 hensive, statewide, four-year strategic information technology
131 and technical infrastructure policy and development plan to be
132 submitted to the Governor and the Joint Committee on
133 Government and Finance. A preliminary plan shall be submit-
134 ted by the first day of December, two thousand six, and the final
135 plan shall be submitted by the first day of June, two thousand
136 seven. The plan shall include, but not limited to:

137 (A) A discussion of specific projects to implement the plan;

138 (B) A discussion of the acquisition, management and use of
139 information technology by state agencies;

140 (C) A discussion of connectivity, priorities and
141 interoperability of the state's technical infrastructure with the
142 technical infrastructure of political subdivisions and encourag-
143 ing the coordinated development of facilities and services
144 regarding homeland security, law enforcement and emergency
145 services to provide for the continuity of government operations
146 in times of disaster or emergency;

147 (D) A discussion identifying potential market demand areas
148 in which expanded resources and technical infrastructure may
149 be expected;

150 (E) A discussion of technical infrastructure as it relates to
151 higher education and health;

152 (F) A discussion of the use of public-private partnerships in
153 the development of technical infrastructure and technology
154 services; and

155 (G) A discussion of coordinated initiatives in website
156 architecture and technical infrastructure to modernize and
157 improve government to citizen services, government to business
158 services, government to government relations and internal
159 efficiency and effectiveness of services, including a discussion
160 of common technical data standards and common portals to be
161 utilized by state, county and local governmental units.

162 (e) The Chief Technology Officer shall oversee telecommu-
163 nications services used by state spending units for the purpose
164 of maximizing efficiency to the fullest possible extent. The
165 Chief Technology Officer shall establish microwave or other
166 networks and LATA hops; audit telecommunications services
167 and usage; recommend and develop strategies for the discon-
168 tinuance of obsolete or excessive utilization; participate in the
169 renegotiation of telecommunications contracts; and encourage
170 the use of technology and take other actions necessary to
171 provide the greatest value to the state.

**§5A-6-4a. Duties of the Chief Technology Officer relating to
security of government information.**

1 (a) To ensure the security of state government information
2 and the data communications infrastructure from unauthorized
3 uses, intrusions or other security threats. At a minimum, these
4 policies, procedures and standards shall identify and require the
5 adoption of practices to safeguard information systems, data
6 and communications infrastructures, as well as define the scope
7 and regularity of security audits and which bodies are autho-
8 rized to conduct security audits. The audits may include reviews
9 of physical security practices.

10 (b) (1) The Chief Technology Officer shall at least annually
11 perform security audits of all executive branch agencies
12 regarding the protection of government databases and data
13 communications.

14 (2) Security audits may include, but are not limited to, on-
15 site audits as well as reviews of all written security procedures
16 and documented practices.

17 (c) The Chief Technology Officer may contract with a
18 private firm or firms that specialize in conducting these audits.

19 (d) All public bodies subject to the audits required by this
20 section shall fully cooperate with the entity designated to
21 perform the audit.

22 (e) The Chief Technology Officer may direct specific
23 remediation actions to mitigate findings of insufficient
24 administrative, technical and physical controls necessary to
25 protect state government information or data communication
26 infrastructures.

27 (f) The Chief Technology Officer shall promulgate
28 legislative rules in accordance with the provisions of chapter
29 twenty-nine-a of this code to minimize vulnerability to threats
30 and to regularly assess security risks, determine appropriate
31 security measures and perform security audits of government
32 information systems and data communications infrastructures.

33 (g) To ensure compliance with confidentiality restrictions
34 and other security guidelines applicable to state law-enforce-
35 ment agencies, emergency response personnel and emergency
36 management operations, the provisions of this section may not
37 apply to the West Virginia State Police or the Division of
38 Homeland Security and Emergency Management.

39 (h) The provisions of this section shall not infringe upon the
40 responsibilities assigned to the State Comptroller, the Auditor
41 or the Legislative Auditor, or other statutory requirements.

42 (i) In consultation with the Adjutant General, Chairman of
43 the Public Service Commission, the Superintendent of the State
44 Police and the Director of the Division of Homeland Security
45 and Emergency Management, the Chief Technology Officer is
46 responsible for the development and maintenance of an
47 information systems disaster recovery system for the State of
48 West Virginia with redundant sites in two or more locations
49 isolated from reasonably perceived threats to the primary
50 operation of state government. The Chief Technology Officer
51 shall develop specifications, funding mechanisms and participa-
52 tion requirements for all executive branch agencies to protect
53 the state's essential data, information systems and critical
54 government services in times of emergency, inoperativeness or
55 disaster. Each executive branch agency shall assist the Chief
56 Technology Officer in planning for its specific needs and
57 provide to the Chief Technology Officer any information or
58 access to information systems or equipment that may be
59 required in carrying out this purpose. No statewide or executive
60 branch agency procurement of disaster recovery services may
61 be initiated, let or extended without the expressed consent of
62 the Chief Technology Officer.

**§5A-6-4b. Project management duties of the Chief Technology
Officer; establishment of the Project Management
Office and duties of the director of the Project
Management Office.**

1 (a) Concerning the management of information technology
2 projects, the Chief Technology Officer shall:

3 (1) Develop an approval process for proposed major
4 information technology projects by state agencies to ensure that

5 all projects conform to the statewide strategic plan and the
6 information management plans of agencies;

7 (2) Establish a methodology for conceiving, planning,
8 scheduling and providing appropriate oversight for information
9 technology projects, including oversight for the projects and a
10 process for approving the planning, development and procure-
11 ment of information technology projects;

12 (3) Establish minimum qualifications and training standards
13 for project managers;

14 (4) Direct the development of any statewide and
15 multiagency enterprise project; and

16 (5) Develop and update a project management methodology
17 to be used by agencies in the development of information
18 technology.

19 (b) The Chief Technology Officer shall create a Project
20 Management Office within the Office of Technology.

21 (c) The Director of the Project Management Office shall:

22 (1) Implement the approval process for information
23 technology projects;

24 (2) Assist the Chief Technology Officer in the development
25 and implementation of a project management methodology to
26 be used in the development and implementation of information
27 technology projects in accordance with this article;

28 (3) Provide ongoing assistance and support to state agencies
29 and public institutions of higher education in the development
30 of information technology projects;

31 (4) Establish a program providing training to agency project
32 managers;

33 (5) Review information management and information
34 technology plans submitted by agencies and recommend to the
35 Chief Technology Officer the approval of the plans and any
36 amendments thereto;

37 (6) Monitor the implementation of information manage-
38 ment and information technology plans and periodically report
39 its findings to the Chief Technology Officer;

40 (7) Assign project managers to review and recommend
41 information technology project proposals.

42 (8) The director shall create criteria upon which informa-
43 tion technology project proposal plans may be based including:

44 (A) The degree to which the project is consistent with the
45 state's overall strategic plan;

46 (B) The technical feasibility of the project;

47 (C) The benefits of the project to the state, including
48 customer service improvements;

49 (D) The risks associated with the project;

50 (E) Any continued funding requirements; and

51 (F) The past performance on other projects by the agency.

52 (9) Provide oversight for state agency information technol-
53 ogy projects.

**§5A-6-4c. Major information technology projects proposals and
the establishment of steering committees.**

1 (a) Prior to proceeding with a major information technology
2 project, an agency shall submit a project proposal, outlining the
3 business need for the project, the proposed technology solution,

4 if known, and an explanation of how the project will support the
5 agency's business objective and the state's strategic plan for
6 information technology. The project manager may require the
7 submission of additional information as needed to adequately
8 review any proposal.

9 (b) The proposal will further include:

10 (1) A detailed business case plan, including a cost-benefit
11 analysis;

12 (2) A business process analysis, if applicable;

13 (3) System requirements, if known;

14 (4) A proposed development plan and project management
15 structure;

16 (5) Business goals and measurement criteria, as appropri-
17 ate; and

18 (6) A proposed resource or funding plan.

19 (c) The project manager assigned to review the project
20 development proposal shall recommend its approval or
21 rejection to the Chief Technology Officer. If the Chief Technol-
22 ogy Officer approves the proposal, then he or she shall notify
23 the agency of its approval.

24 (d) Whenever an agency has received approval from the
25 Chief Technology Officer to proceed with the development and
26 acquisition of a major information technology project, the Chief
27 Technology Officer shall establish a steering committee.

28 (e) The steering committee shall provide ongoing oversight
29 for the major information technology project and have the
30 authority to approve or reject any changes to the project's
31 scope, schedule or budget.

32 (f) The Chief Technology Officer shall ensure that the
33 major information technology project has in place adequate
34 project management and oversight structures for addressing the
35 project's scope, schedule or budget and shall address issues that
36 cannot be resolved by the steering committee.

**§5A-6-5. Notice of request for proposals by state spending units
required to make purchases through the State
Purchasing Division.**

1 Any state spending unit that pursues an information
2 technology purchase that does not meet the definition of a
3 "major technology project" and that is required to submit a
4 request for proposal to the State Purchasing Division prior to
5 purchasing goods or services shall obtain the approval of the
6 Chief Technology Officer, in writing, of any proposed purchase
7 of goods or services related to its information technology and
8 telecommunication systems. The notice shall contain a brief
9 description of the goods and services to be purchased. The state
10 spending unit shall provide the notice to the Chief Technology
11 Officer prior to the time it submits its request for proposal to
12 the State Purchasing Division.

**§5A-6-6. Notice of request for proposals by state spending units
exempted from submitting purchases to the State
Purchasing Division.**

1 (a) Any state spending unit that is not required to submit a
2 request for proposal to the State Purchasing Division prior to
3 purchasing goods or services shall notify the Chief Technology
4 Officer, in writing, of any proposed purchase of goods or
5 services related to its information technology or telecommuni-
6 cation systems. The notice shall contain a detailed description
7 of the goods and services to be purchased. The state spending
8 unit shall provide the notice to the Chief Technology Officer a
9 minimum of ten days prior to the time it requests bids on the
10 provision of the goods or services.

11 (b) If the Chief Technology Officer evaluates the suitability
12 of the information technology and telecommunication equip-
13 ment and related services under the provisions of subdivision
14 (3), subsection (a), section four of this article and determines
15 that the goods or services to be purchased are not suitable, he or
16 she shall, within ten days of receiving the notice from the state
17 spending unit, notify the state spending unit, in writing, of any
18 recommendations he or she has regarding the proposed
19 purchase of the goods or services. If the state spending unit
20 receives a written notice from the Chief Technology Officer
21 within the time period required by this section, the state
22 spending unit shall not put the goods or services out for bid less
23 than fifteen days following receipt of the notice from the Chief
24 Technology Officer.

§5A-6-8. Exemptions.

1 (a) The provisions of this article do not apply to the
2 Legislature, the judiciary or any state constitutional officer
3 designated in section two, article seven, chapter six of this code.

4 (b) Notwithstanding any other provision of this article to
5 the contrary, except for participation in the compilation and
6 maintenance of an inventory of information technology and
7 technical infrastructure of the state authorized by section four
8 of this article, the provisions of this article do not apply to the
9 West Virginia Board of Education, the West Virginia Depart-
10 ment of Education or the county boards of education. However,
11 the West Virginia Board of Education, the West Virginia
12 Department of Education and the county boards of education
13 will attempt to cooperate and collaborate with the Chief
14 Technology Officer to the extent feasible.

15 (c) The Governor may by executive order exempt from the
16 provisions of this article any entity created and organized to
17 facilitate the public and private use of health care information
18 and the use of electronic medical records throughout the state.

**ARTICLE 7. INFORMATION SERVICES AND COMMUNICATIONS
DIVISION.****§5A-7-4. Powers and duties of division generally; professional
staff; telephone service.**

1 (a) The division is responsible for providing technical
2 services and assistance to the various state spending units with
3 respect to developing and improving data processing and
4 telecommunications functions. The division may provide
5 training and direct data processing services to the various state
6 agencies. The division shall, upon request of the Chief Technol-
7 ogy Officer, provide technical assistance in evaluating the
8 economic justification, system design and suitability of
9 equipment and systems used in state government. The director
10 shall report to the Chief Technology Officer.

11 (b) The director is responsible for the development of
12 personnel to carry out the technical work of the division and
13 may approve reimbursement of costs incurred by employees to
14 obtain education and training.

15 (c) The director may assess each state spending unit for the
16 cost of any evaluation of the economic justification, system
17 design and suitability of equipment and systems used by the
18 state spending unit or any other technical assistance that is
19 provided or performed by the Chief Technology Officer and the
20 division under the provisions of section four, article six of this
21 chapter.

22 (d) The director shall transfer any moneys received as a
23 result of the assessments that he or she makes under subsection
24 (c) of this section to the Office of Technology. The director
25 shall report quarterly to the Joint Committee on Government
26 and Finance on all assessments made pursuant to subsection (c)
27 of this section.

28 (e) The director shall maintain an accounting system for all
29 telephone service to the state.

30 (f) The provisions of this article do not apply to the
31 Legislature or the judiciary.

CHAPTER 244

**(H. B. 4116 — By Delegates Hamilton, Beach, Stevens,
Evans, Ellem, Poling, Talbott and Schadler)**

[Passed March 10, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2006.]

AN ACT to amend and reenact §20-1-7 of the Code of West Virginia, 1931, as amended, relating to increasing the amount of timber that can be sold on state Wildlife Management Areas, without sealed bids, from five hundred dollars to five thousand dollars.

Be it enacted by the Legislature of West Virginia:

That §20-1-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-7. Additional powers, duties and services of director.

1 In addition to all other powers, duties and responsibilities
2 granted and assigned to the director in this chapter and
3 elsewhere by law, the director is hereby authorized and
4 empowered to:

5 (1) With the advice of the commission, prepare and
6 administer, through the various divisions created by this
7 chapter, a long-range comprehensive program for the conserva-
8 tion of the natural resources of the state which best effectuates
9 the purpose of this chapter and which makes adequate provi-
10 sions for the natural resources laws of the state;

11 (2) Sign and execute in the name of the state by the
12 “Division of Natural Resources” any contract or agreement with
13 the federal government or its departments or agencies, subdivi-
14 sions of the state, corporations, associations, partnerships or
15 individuals;

16 (3) Conduct research in improved conservation methods
17 and disseminate information matters to the residents of the
18 state;

19 (4) Conduct a continuous study and investigation of the
20 habits of wildlife, and for purposes of control and protection, to
21 classify by regulation the various species into such categories
22 as may be established as necessary;

23 (5) Prescribe the locality in which the manner and method
24 by which the various species of wildlife may be taken, or
25 chased, unless otherwise specified by this chapter;

26 (6) Hold at least six meetings each year at such time and at
27 such points within the state, as in the discretion of the Natural
28 Resources Commission may appear to be necessary and proper
29 for the purpose of giving interested persons in the various
30 sections of the state an opportunity to be heard concerning open
31 season for their respective areas, and report the results of the
32 meetings to the Natural Resources Commission before such
33 season and bag limits are fixed by it;

34 (7) Suspend open hunting season upon any or all wildlife in
35 any or all counties of the state with the prior approval of the

36 Governor in case of an emergency such as a drought, forest fire
37 hazard or epizootic disease among wildlife. The suspension
38 shall continue during the existence of the emergency and until
39 rescinded by the director. Suspension, or reopening after such
40 suspension, of open seasons may be made upon twenty-four
41 hours' notice by delivery of a copy of the order of suspension
42 or reopening to the wire press agencies at the State Capitol;

43 (8) Supervise the fiscal affairs and responsibilities of the
44 division;

45 (9) Designate such localities as he or she shall determine to
46 be necessary and desirable for the perpetuation of any species
47 of wildlife;

48 (10) Enter private lands to make surveys or inspections for
49 conservation purposes, to investigate for violations of provi-
50 sions of this chapter, to serve and execute warrants and
51 processes, to make arrests and to otherwise effectively enforce
52 the provisions of this chapter;

53 (11) Acquire for the state in the name of the "Division of
54 Natural Resources" by purchase, condemnation, lease or
55 agreement, or accept or reject for the state, in the name of the
56 Division of Natural Resources, gifts, donations, contributions,
57 bequests or devises of money, security or property, both real
58 and personal, and any interest in such property, including lands
59 and waters, which he or she deems suitable for the following
60 purposes:

61 (a) For state forests for the purpose of growing timber,
62 demonstrating forestry, furnishing or protecting watersheds or
63 providing public recreation;

64 (b) For state parks or recreation areas for the purpose of
65 preserving scenic, aesthetic, scientific, cultural, archaeological
66 or historical values or natural wonders, or providing public
67 recreation;

68 (c) For public hunting, trapping or fishing grounds or
69 waters for the purpose of providing areas in which the public
70 may hunt, trap or fish, as permitted by the provisions of this
71 chapter, and the rules issued hereunder;

72 (d) For fish hatcheries, game farms, wildlife research areas
73 and feeding stations;

74 (e) For the extension and consolidation of lands or waters
75 suitable for the above purposes by exchange of other lands or
76 waters under his or her supervision;

77 (f) For such other purposes as may be necessary to carry out
78 the provisions of this chapter;

79 (12) Capture, propagate, transport, sell or exchange any
80 species of wildlife as may be necessary to carry out the
81 provisions of this chapter;

82 (13) Sell timber for not less than the value thereof, as
83 appraised by a qualified appraiser appointed by the director,
84 from all lands under the jurisdiction and control of the director,
85 except those lands that are designated as state parks and those
86 in the Kanawha State Forest. The appraisal shall be made within
87 a reasonable time prior to any sale, reduced to writing, filed in
88 the office of the director and shall be available for public
89 inspection. The director must obtain the written permission of
90 the Governor to sell timber when the appraised value is more
91 than five thousand dollars. The director shall receive sealed bids
92 therefor, after notice by publication as a Class II legal advertise-
93 ment in compliance with the provisions of article three, chapter
94 fifty-nine of this code, and the publication area for such
95 publication shall be each county in which the timber is located.
96 The timber so advertised shall be sold at not less than the
97 appraised value to the highest responsible bidder, who shall
98 give bond for the proper performance of the sales contract as
99 the director shall designate; but the director shall have the right

100 to reject any and all bids and to readvertise for bids. If the
101 foregoing provisions of this section have been complied with,
102 and no bid equal to or in excess of the appraised value of the
103 timber is received, the director may, at any time, during a
104 period of six months after the opening of the bids, sell the
105 timber in such manner as he or she deems appropriate, but the
106 sale price shall not be less than the appraised value of the
107 timber advertised. No contract for sale of timber made pursuant
108 to this section shall extend for a period of more than ten years.
109 And all contracts heretofore entered into by the state for the sale
110 of timber shall not be validated by this section if the same be
111 otherwise invalid. The proceeds arising from the sale of the
112 timber so sold, shall be paid to the Treasurer of the State of
113 West Virginia, and shall be credited to the division and used
114 exclusively for the purposes of this chapter: *Provided*, That
115 nothing contained herein shall prohibit the sale of timber which
116 otherwise would be removed from rights-of-way necessary for
117 and strictly incidental to the extraction of minerals;

118 (14) Sell or lease, with the approval in writing of the
119 Governor, coal, oil, gas, sand, gravel and any other minerals
120 that may be found in the lands under the jurisdiction and control
121 of the director, except those lands that are designated as state
122 parks. The director, before making sale or lease thereof, shall
123 receive sealed bids therefor, after notice by publication as a
124 Class II legal advertisement in compliance with the provisions
125 of article three, chapter fifty-nine of this code, and the publica-
126 tion area for such publication shall be each county in which
127 such lands are located. The minerals so advertised shall be sold
128 or leased to the highest responsible bidder, who shall give bond
129 for the proper performance of the sales contract or lease as the
130 director shall designate; but the director shall have the right to
131 reject any and all bids and to readvertise for bids. The proceeds
132 arising from any such sale or lease shall be paid to the Treasurer
133 of the State of West Virginia and shall be credited to the
134 division and used exclusively for the purposes of this chapter;

135 (15) Exercise the powers granted by this chapter for the
136 protection of forests, and regulate fires and smoking in the
137 woods or in their proximity at such times and in such localities
138 as may be necessary to reduce the danger of forest fires;

139 (16) Cooperate with departments and agencies of state,
140 local and federal governments in the conservation of natural
141 resources and the beautification of the state;

142 (17) Report to the Governor each year all information
143 relative to the operation and functions of the division and the
144 director shall make such other reports and recommendations as
145 may be required by the Governor, including an annual financial
146 report covering all receipts and disbursements of the division
147 for each fiscal year, and he or she shall deliver such report to
148 the Governor on or before the first day of December next after
149 the end of the fiscal year so covered. A copy of such report
150 shall be delivered to each house of the Legislature when
151 convened in January next following;

152 (18) Keep a complete and accurate record of all proceed-
153 ings, record and file all bonds and contracts taken or entered
154 into, and assume responsibility for the custody and preservation
155 of all papers and documents pertaining to his or her office,
156 except as otherwise provided by law;

157 (19) Offer and pay, in his or her discretion, rewards for
158 information respecting the violation, or for the apprehension
159 and conviction of any violators, of any of the provisions of this
160 chapter;

161 (20) Require such reports as he or she may deem to be
162 necessary from any person issued a license or permit under the
163 provisions of this chapter, but no person shall be required to
164 disclose secret processes or confidential data of competitive
165 significance;

166 (21) Purchase as provided by law all equipment necessary
167 for the conduct of the division;

168 (22) Conduct and encourage research designed to further
169 new and more extensive uses of the natural resources of this
170 state and to publicize the findings of such research;

171 (23) Encourage and cooperate with other public and private
172 organizations or groups in their efforts to publicize the
173 attractions of the state;

174 (24) Accept and expend, without the necessity of appropri-
175 ation by the Legislature, any gift or grant of money made to the
176 division for any and all purposes specified in this chapter, and
177 he or she shall account for and report on all such receipts and
178 expenditures to the Governor;

179 (25) Cooperate with the state historian and other appropri-
180 ate state agencies in conducting research with reference to the
181 establishment of state parks and monuments of historic, scenic
182 and recreational value, and to take such steps as may be
183 necessary in establishing such monuments or parks as he or she
184 deems advisable;

185 (26) Maintain in his or her office at all times, properly
186 indexed by subject matter, and also, in chronological sequence,
187 all rules made or issued under the authority of this chapter.
188 Such records shall be available for public inspection on all
189 business days during the business hours of working days;

190 (27) Delegate the powers and duties of his or her office,
191 except the power to execute contracts, to appointees and
192 employees of the division, who shall act under the direction and
193 supervision of the director and for whose acts he or she shall be
194 responsible;

195 (28) Conduct schools, institutions and other educational
196 programs, apart from or in cooperation with other governmental

197 agencies, for instruction and training in all phases of the natural
198 resources programs of the state;

199 (29) Authorize the payment of all or any part of the
200 reasonable expenses incurred by an employee of the division in
201 moving his or her household furniture and effects as a result of
202 a reassignment of the employee: *Provided*, That no part of the
203 moving expenses of any one such employee shall be paid more
204 frequently than once in twelve months; and

205 (30) Promulgate rules, in accordance with the provisions of
206 chapter twenty-nine-a of this code, to implement and make
207 effective the powers and duties vested in him or her by the
208 provisions of this chapter and take such other steps as may be
209 necessary in his or her discretion for the proper and effective
210 enforcement of the provisions of this chapter.

CHAPTER 245

(S. B. 722 — By Senator Caruth)

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §38-1-4a, relating to providing a statute of limitations for sales by a trustee.

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 §38-1-4a, to read as follows:

ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.**§38-1-4a. Statute of limitations for sales by trustees.**

1 Provided the grantor on the deed of trust or the agent or
2 personal representative of the grantor is provided notice as
3 required by section four of this article, no action or proceeding
4 to set aside a trustee's sale due to the failure to follow any
5 notice, service, process or other procedural requirement relating
6 to a sale of property under a trust deed shall be filed or
7 commenced more than one year from the date of the sale.

CHAPTER 246

**(H. B. 4458 — By Delegates Amores, Armstead,
Morgan, Ellem and Schadler)**

[Passed March 9, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §11-12C-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §46-9-523 of said code, all relating to the sale of bulk data in electronic format from the Uniform Commercial Code and Corporation Data Bases electronically stored in the Secretary of State's Office.

Be it enacted by the Legislature of West Virginia:

That §11-12C-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §46-9-523 be amended and reenacted, all to read as follows:

Chapter**11. Taxation.****46. Uniform Commercial Code.****CHAPTER 11. TAXATION.****ARTICLE 12C. CORPORATE LICENSE TAX.****§11-12C-3. Payment and collection of tax; deposit of money; return required.**

1 (a) *Payment and collection of tax.* — When application is
2 made to the Secretary of State for a certificate of incorporation
3 or authority to do business in this state, the applicant shall pay
4 all taxes and fees due under this article; and the Secretary of
5 State shall collect the corporate license tax for the first year
6 before issuing the certificate. Thereafter, on or before the first
7 day of the license tax year next following the date of the
8 certificate, and on or before the first day of each succeeding
9 license tax year, the corporation shall pay and the Tax Commis-
10 sioner shall collect the tax for a full license tax year together
11 with the statutory attorney fee: *Provided*, That if the application
12 is made on or after the first day of the second month preceding
13 the beginning of the next license tax year, and before the first
14 day of the license tax year, the Secretary of State shall collect
15 the tax for the full year beginning on the first day of the next
16 license tax year in addition to the initial tax, together with the
17 statutory attorney fee.

18 (b) *Deposit of money.* — The first year license tax received
19 by the Secretary of State pursuant to the provisions of this
20 article shall be deposited by the Secretary of State as follows:
21 One-half shall be deposited in the state general revenue fund
22 and one-half shall be deposited in the services fees and
23 collections account established by section two, article one,
24 chapter fifty-nine of this code. The license tax received by the
25 Tax Commissioner every year after the initial registration shall
26 be deposited into the state general revenue fund.

27 (c) *Returns.* — Payment of the tax and statutory attorney
28 fee required under the provisions of this section shall be
29 accompanied by a return on forms provided by the tax commis-
30 sioner for that purpose. The Tax Commissioner shall upon
31 completion of processing the return, forward it to the Secretary
32 of State, together with a list of all corporations which have paid
33 the tax. The return shall contain: (1) The address of the
34 corporation's principal office; (2) the names and mailing
35 addresses of its officers and directors; (3) the name and mailing
36 address of the person on whom notice of process may be
37 served; (4) the name and address of the corporation's parent
38 corporation and of each subsidiary of the corporation licensed
39 to do business in this state; (5) the county or county code in
40 which the principal office address or mailing address of the
41 company is located in; (6) business class code; and (7) any
42 other information the Tax Commissioner considers appropriate.
43 Notwithstanding any other provision of law to the contrary, the
44 Secretary of State shall, upon request of any person, disclose:
45 (A) The address of the corporation's principal office; (B) the
46 names and addresses of its officers and directors; (C) the name
47 and mailing address of the person on whom notice of process
48 may be served; (D) the name and address of each subsidiary of
49 the corporation and the corporation's parent corporation; (E) the
50 county or county code in which the principal office address or
51 mailing address of the company is located; and (F) the business
52 class code.

53 (d) *Purchase of data.* — The Secretary of State will provide
54 electronically, for purchase, any data maintained in the
55 Secretary of State's Business Organizations Database. For the
56 electronic purchase of the entire Business Organizations
57 Database, the cost is twelve thousand dollars and for the
58 electronic purchase of the monthly updates of the Business
59 Organizations Database the cost is one thousand dollars.

CHAPTER 46. UNIFORM COMMERCIAL CODE.

ARTICLE 9. SECURED TRANSACTIONS.**§46-9-523. Information from filing office; sale or license of records.**

1 (a) *Acknowledgment of filing written record.* — If a person
2 that files a written record requests an acknowledgment of the
3 filing, the filing office shall send to the person an image of the
4 record showing the number assigned to the record pursuant to
5 section 9-519(a)(1) and the date and time of the filing of the
6 record. However, if the person furnishes a copy of the record to
7 the filing office, the filing office may instead:

8 (1) Note upon the copy the number assigned to the record
9 pursuant to section 9-519(a)(1) and the date and time of the
10 filing of the record; and

11 (2) Send the copy to the person.

12 (b) *Acknowledgment of filing other record.* — If a person
13 files a record other than a written record, the filing office shall
14 communicate to the person an acknowledgment that provides:

15 (1) The information in the record;

16 (2) The number assigned to the record pursuant to section
17 9-519(a)(1); and

18 (3) The date and time of the filing of the record.

19 (c) *Communication of requested information.* — The filing
20 office shall communicate or otherwise make available in a
21 record the following information to any person that requests it:

22 (1) Whether there is on file on a date and time specified by
23 the filing office, but not a date earlier than three business days
24 before the filing office receives the request, any financing
25 statement that:

- 26 (A) Designates a particular debtor;
- 27 (B) Has not lapsed under section 9-515 with respect to all
28 secured parties of record; and
- 29 (C) If the request so states, has lapsed under section 9-515
30 and a record of which is maintained by the filing office under
31 section 9-522(a);
- 32 (2) The date and time of filing of each financing statement;
33 and
- 34 (3) The information provided in each financing statement.
- 35 (d) *Medium for communicating information.* — In comply-
36 ing with its duty under subsection (c) of this section, the filing
37 office may communicate information in any medium. However,
38 if requested, the filing office shall communicate information by
39 issuing its written certificate.
- 40 (e) *Timeliness of filing office performance.* — The filing
41 office shall perform the acts required by subsections (a) through
42 (d), inclusive, of this section at the time and in the manner
43 prescribed by filing-office rule, but not later than two business
44 days after the filing office receives the request.
- 45 (f) *Public availability of records.* — At least weekly, the
46 Secretary of State shall offer to sell or license to the public on
47 a nonexclusive basis, in bulk, copies of all records filed in it
48 under this part, in every medium from time to time available to
49 the filing office. The Secretary of State will provide electroni-
50 cally, for purchase, any data maintained in the Secretary of
51 State's UCC Bulk Sale Database. The cost for purchase of the
52 UCC Bulk Database in the electronic medium shall be as
53 follows:
- 54 (1) The entire UCC Bulk Sale Database - twelve thousand,
55 three hundred sixty dollars;

56 (2) The weekly updates of the UCC Bulk Sale Database -
57 two hundred fifty eight dollars, and

58 (3) The weekly updates of the UCC Bulk Sale Database in
59 monthly form — one thousand thirty dollars.

CHAPTER 247

**(Com. Sub. for S. B. 742 — By Senators Jenkins, Dempsey,
Minard, Unger, Caruth, Harrison and Yoder)**

[Passed March 10, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2006.]

AN ACT to repeal §46-1-109, §46-1-207 and §46-1-208 of the Code of West Virginia, 1931, as amended; to repeal §46-2-208 of said code; to repeal §46-2A-207 of said code; to amend and reenact §46-1-101, §46-1-102, §46-1-103, §46-1-104, §46-1-105, §46-1-106, §46-1-107, §46-1-108, §46-1-201, §46-1-202, §46-1-203, §46-1-204, §46-1-205 and §46-1-206 of said code; to amend said code by adding thereto ten new sections, designated §46-1-301, §46-1-302, §46-1-303, §46-1-304, §46-1-305, §46-1-306, §46-1-307, §46-1-308, §46-1-309 and §46-1-310; to amend and reenact §46-2-103, §46-2-104, §46-2-202, §46-2-310, §46-2-323, §46-2-401, §46-2-503, §46-2-505, §46-2-506, §46-2-509, §46-2-605 and §46-2-705 of said code; to amend and reenact §46-2A-103, §46-2A-501, §46-2A-514, §46-2A-518, §46-2A-519, §46-2A-526, §46-2A-527 and §46-2A-528 of said code; to amend and reenact §46-3-103 of said code; to amend and reenact §46-4-104 and §46-4-210 of said code; to amend and reenact §46-4A-105, §46-4A-106 and §46-4A-204 of said code; to amend and reenact §46-5-103 of said code; to amend and reenact §46-7-101,

§46-7-102, §46-7-103, §46-7-104, §46-7-105, §46-7-201, §46-7-202, §46-7-203, §46-7-204, §46-7-205, §46-7-206, §46-7-207, §46-7-208, §46-7-209, §46-7-210, §46-7-301, §46-7-302, §46-7-303, §46-7-304, §46-7-305, §46-7-306, §46-7-307, §46-7-308, §46-7-309, §46-7-401, §46-7-402, §46-7-403, §46-7-404, §46-7-501, §46-7-502, §46-7-503, §46-7-504, §46-7-505, §46-7-506, §46-7-507, §46-7-508, §46-7-509, §46-7-601, §46-7-602 and §46-7-603 of said code; to amend said code by adding thereto three new sections, designated §46-7-106, §46-7-701 and §46-7-702; to amend and reenact §46-8-102 and §46-8-103 of said code; to amend and reenact §46-9-102, §46-9-203, §46-9-207, §46-9-208, §46-9-301, §46-9-310, §46-9-312, §46-9-313, §46-9-314, §46-9-317, §46-9-338, §46-9-516 and §46-9-601 of said code, all relating to revising the Uniform Commercial Code, articles one and seven; making conforming amendments to other articles; and authorizing administrative review by secretary of state of certain fillings in connection with secured transactions.

Be it enacted by the Legislature of West Virginia:

That §46-1-109, §46-1-207 and §46-1-208 of the Code of West Virginia, 1931, be repealed; that §46-2-208 of said code be repealed; that §46-2A-207 of said code be repealed; that §46-1-101, §46-1-102, §46-1-103, §46-1-104, §46-1-105, §46-1-106, §46-1-107, §46-1-108, §46-1-201, §46-1-202, §46-1-203, §46-1-204, §46-1-205 and §46-1-206 of said code be amended and reenacted; that said code be amended by adding thereto ten new sections, designated §46-1-301, §46-1-302, §46-1-303, §46-1-304, §46-1-305, §46-1-306, §46-1-307, §46-1-308, §46-1-309 and §46-1-310; that §46-2-103, §46-2-104, §46-2-202, §46-2-310, §46-2-323, §46-2-401, §46-2-503, §46-2-505, §46-2-506, §46-2-509, §46-2-605 and §46-2-705 of said code be amended and reenacted; that §46-2A-103, §46-2A-501, §46-2A-514, §46-2A-518, §46-2A-519, §46-2A-526, §46-2A-527 and §46-2A-528 of said code be amended and reenacted; that §46-3-103 of said code be amended and reenacted; that §46-4-104 and §46-4-210 of said code be amended and reenacted; that §46-4A-105, §46-4A-106 and §46-

4A-204 of said code be amended and reenacted; that §46-5-103 of said code be amended and reenacted; that §46-7-101, §46-7-102, §46-7-103, §46-7-104, §46-7-105, §46-7-201, §46-7-202, §46-7-203, §46-7-204, §46-7-205, §46-7-206, §46-7-207, §46-7-208, §46-7-209, §46-7-210, §46-7-301, §46-7-302, §46-7-303, §46-7-304, §46-7-305, §46-7-306, §46-7-307, §46-7-308, §46-7-309, §46-7-401, §46-7-402, §46-7-403, §46-7-404, §46-7-501, §46-7-502, §46-7-503, §46-7-504, §46-7-505, §46-7-506, §46-7-507, §46-7-508, §46-7-509, §46-7-601, §46-7-602 and §46-7-603 of said code be amended and reenacted; that said code be amended by adding thereto three new sections, designated §46-7-106, §46-7-701 and §46-7-702; that §46-8-102 and §46-8-103 of said code be amended and reenacted; and that §46-9-102, §46-9-203, §46-9-207, §46-9-208, §46-9-301, §46-9-310, §46-9-312, §46-9-313, §46-9-314, §46-9-317, §46-9-338, §46-9-516 and §46-9-601 of said code be amended and reenacted, all to read as follows:

Article

- 1. General Provisions.**
- 2. Sales.**
- 2A. Leases.**
- 3. Negotiable Instruments.**
- 4. Bank Deposits and Collections.**
- 4A. Fund Transfers.**
- 5. Letters of Credit.**
- 7. Warehouse Receipts, Bill of Lading and Other Documents of Title.**
- 8. Investment Securities.**
- 9. Secured Transactions.**

ARTICLE 1. GENERAL PROVISIONS.

PART 1. GENERAL PROVISIONS.

§46-1-101. Short titles.

§46-1-102. Scope of article.

§46-1-103. Construction of uniform commercial code to promote its purposes and policies; applicability of supplemental principles of law.

§46-1-104. Construction against implied repeal.

§46-1-105. Severability.

§46-1-106. Use of singular and plural; gender.

§46-1-107. Section captions.

- §46-1-108. Relation to electronic signatures in global and national commerce act.
- §46-1-201. General definitions.
- §46-1-202. Notice; knowledge.
- §46-1-203. Lease distinguished from security interest.
- §46-1-204. Value.
- §46-1-205. Reasonable time; seasonableness.
- §46-1-206. Presumptions.
- §46-1-301. Territorial applicability; parties' power to choose applicable law.
- §46-1-302. Variation by agreement.
- §46-1-303. Course of performance, course of dealing, and usage of trade.
- §46-1-304. Obligation of good faith.
- §46-1-305. Remedies to be liberally administered.
- §46-1-306. Waiver or renunciation of claim or right after breach.
- §46-1-307. Prima facie evidence by third-party documents.
- §46-1-308. Performance or acceptance under reservation of rights.
- §46-1-309. Option to accelerate at will.
- §46-1-310. Subordinated obligations.

§46-1-101. Short titles.

- 1 (a) This chapter may be cited as the Uniform Commercial
- 2 Code.

- 3 (b) This article may be cited as Uniform Commercial
- 4 Code – General Provisions.

§46-1-102. Scope of article.

- 1 This article applies to a transaction to the extent that it is
- 2 governed by another article of this chapter.

§46-1-103. Construction of uniform commercial code to promote its purposes and policies; applicability of supplemental principles of law.

- 1 (a) This chapter must be liberally construed and applied to
- 2 promote its underlying purposes and policies, which are:

- 3 (1) To simplify, clarify and modernize the law governing
- 4 commercial transactions;

5 (2) To permit the continued expansion of commercial
6 practices through custom, usage and agreement of the parties;
7 and

8 (3) To make uniform the law among the various jurisdic-
9 tions.

10 (b) Unless displaced by the particular provisions of this
11 chapter, the principles of law and equity, including the law
12 merchant and the law relative to capacity to contract, principal
13 and agent, estoppel, fraud, misrepresentation, duress, coercion,
14 mistake, bankruptcy and other validating or invalidating cause
15 supplement its provisions.

§46-1-104. Construction against implied repeal.

1 The Uniform Commercial Code being a general act
2 intended as a unified coverage of its subject matter, no part of
3 it shall be deemed to be impliedly repealed by subsequent
4 legislation if such construction can reasonably be avoided.

§46-1-105. Severability.

1 If any provision or clause of this chapter or its application
2 to any person or circumstance is held invalid, the invalidity
3 does not affect other provisions or applications of this chapter
4 which can be given effect without the invalid provision or
5 application, and to this end the provisions of this chapter are
6 severable.

§46-1-106. Use of singular and plural; gender.

1 In this chapter, unless the statutory context otherwise
2 requires:

3 (1) Words in the singular number include the plural, and
4 those in the plural include the singular; and

5 (2) Words of any gender also refer to any other gender.

§46-1-107. Section captions.

1 Section captions are part of this chapter.

§46-1-108. Relation to electronic signatures in global and national commerce act.

1 This chapter 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, or
4 supersede Section 101(c) of that 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 that act (15 U.S.C. Section
7 103(b)).

PART 2. GENERAL DEFINITIONS AND
PRINCIPLES OF INTERPRETATION.

§46-1-201. General definitions.

1 (a) Unless the context otherwise requires, words or phrases
2 defined in this section, or in the additional definitions contained
3 in other articles of this chapter that apply to particular articles
4 or parts thereof, have the meanings stated.

5 (b) Subject to definitions contained in other articles of this
6 chapter that apply to particular articles or parts thereof:

7 (1) “Action”, in the sense of a judicial proceeding, includes
8 recoupment, counterclaim, set-off, suit in equity and any other
9 proceeding in which rights are determined.

10 (2) “Aggrieved party” means a party entitled to pursue a
11 remedy.

12 (3) “Agreement”, as distinguished from “contract”, means
13 the bargain of the parties in fact, as found in their language or
14 inferred from other circumstances, including course of
15 performance, course of dealing, or usage of trade as provided in
16 section 1-303.

17 (4) “Bank” means a person engaged in the business of
18 banking and includes a savings bank, savings and loan associa-
19 tion, credit union, and trust company.

20 (5) “Bearer” means a person in control of a negotiable
21 electronic document of title or a person in possession of a
22 negotiable instrument, document of title or certificated security
23 that is payable to bearer or indorsed in blank.

24 (6) “Bill of lading” means a document of title evidencing
25 the receipt of goods for shipment issued by a person engaged in
26 the business of directly or indirectly transporting or forwarding
27 goods. The term does not include a warehouse receipt.

28 (7) “Branch” includes a separately incorporated foreign
29 branch of a bank.

30 (8) “Burden of establishing” a fact means the burden of
31 persuading the trier of fact that the existence of the fact is more
32 probable than its nonexistence.

33 (9) “Buyer in ordinary course of business” means a person
34 that buys goods in good faith, without knowledge that the sale
35 violates the rights of another person in the goods, and in the
36 ordinary course from a person, other than a pawnbroker, in the
37 business of selling goods of that kind. A person buys goods in
38 the ordinary course if the sale to the person comports with the
39 usual or customary practices in the kind of business in which
40 the seller is engaged or with the seller’s own usual or customary
41 practices. A person that sells oil, gas or other minerals at the
42 wellhead or minehead is a person in the business of selling

43 goods of that kind. A buyer in ordinary course of business may
44 buy for cash, by exchange of other property, or on secured or
45 unsecured credit, and may acquire goods or documents of title
46 under a preexisting contract for sale. Only a buyer that takes
47 possession of the goods or has a right to recover the goods from
48 the seller under article 2 may be a buyer in ordinary course of
49 business. “Buyer in ordinary course of business” does not
50 include a person that acquires goods in a transfer in bulk or as
51 security for or in total or partial satisfaction of a money debt.

52 (10) “Conspicuous”, with reference to a term, means so
53 written, displayed, or presented that a reasonable person against
54 which it is to operate ought to have noticed it. Whether a term
55 is “conspicuous” or not is a decision for the court. Conspicuous
56 terms include the following:

57 (A) A heading in capitals equal to or greater in size than the
58 surrounding text, or in contrasting type, font or color to the
59 surrounding text of the same or lesser size; and

60 (B) Language in the body of a record or display in larger
61 type than the surrounding text, or in contrasting type, font, or
62 color to the surrounding text of the same size, or set off from
63 surrounding text of the same size by symbols or other marks
64 that call attention to the language.

65 (11) “Consumer” means an individual who enters into a
66 transaction primarily for personal, family or household
67 purposes.

68 (12) “Contract”, as distinguished from “agreement”, means
69 the total legal obligation that results from the parties’ agree-
70 ment as determined by this chapter as supplemented by any
71 other applicable laws.

72 (13) “Creditor” includes a general creditor, a secured
73 creditor, a lien creditor and any representative of creditors,

74 including an assignee for the benefit of creditors, a trustee in
75 bankruptcy, a receiver in equity, and an executor or administra-
76 tor of an insolvent debtor's or assignor's estate.

77 (14) "Defendant" includes a person in the position of
78 defendant in a counterclaim, cross-claim or third-party claim.

79 (15) "Delivery", with respect to an electronic document of
80 title means voluntary transfer of control and with respect to an
81 instrument, document of title or chattel paper, means voluntary
82 transfer of possession.

83 (16) "Document of title" means a record: (i) that in the
84 regular course of business or financing is treated as adequately
85 evidencing that the person in possession or control of the record
86 is entitled to receive, control, hold, and dispose of the record
87 and the goods the record covers and (ii) that purports to be
88 issued by or addressed to a bailee and to cover goods in the
89 bailee's possession which are either identified or are fungible
90 portions of an identified mass. The term includes a bill of
91 lading, transport document, dock warrant, dock receipt,
92 warehouse receipt, and order for delivery of goods. An
93 electronic document of title means a document of title evi-
94 denced by a record consisting of information stored in an
95 electronic medium. A tangible document of title means a
96 document of title evidenced by a record consisting of informa-
97 tion that is inscribed on a tangible medium.

98 (17) "Fault" means a default, breach or wrongful act or
99 omission.

100 (18) "Fungible goods" means:

101 (A) Goods of which any unit, by nature or usage of trade,
102 is the equivalent of any other like unit; or

103 (B) Goods that by agreement are treated as equivalent.

104 (19) “Genuine” means free of forgery or counterfeiting.

105 (20) “Good faith”, except as otherwise provided in article
106 5, means honesty in fact and the observance of reasonable
107 commercial standards of fair dealing.

108 (21) “Holder” means:

109 (A) The person in possession of a negotiable instrument
110 that is payable either to bearer or to an identified person that is
111 the person in possession; or

112 (B) The person in possession of a negotiable tangible
113 document of title if the goods are deliverable either to bearer or
114 to the order of the person in possession; or

115 (C) The person in control of the negotiable electronic
116 document of title.

117 (22) “Insolvency proceeding” includes an assignment for
118 the benefit of creditors or other proceeding intended to liquidate
119 or rehabilitate the estate of the person involved.

120 (23) “Insolvent” means:

121 (A) Having generally ceased to pay debts in the ordinary
122 course of business other than as a result of bona fide dispute;

123 (B) Being unable to pay debts as they become due; or

124 (C) Being insolvent within the meaning of federal bank-
125 ruptcy law.

126 (24) “Money” means a medium of exchange currently
127 authorized or adopted by a domestic or foreign government.
128 The term includes a monetary unit of account established by an
129 intergovernmental organization or by agreement between two
130 or more countries.

131 (25) “Organization” means a person other than an individ-
132 ual.

133 (26) “Party”, as distinguished from “third party”, means a
134 person that has engaged in a transaction or made an agreement
135 subject to this chapter.

136 (27) “Person” means an individual, corporation, business
137 trust, estate, trust, partnership, limited liability company,
138 association, joint venture, government, governmental subdivi-
139 sion, agency, or instrumentality, public corporation or any other
140 legal or commercial entity.

141 (28) “Present value” means the amount as of a date certain
142 of one or more sums payable in the future, discounted to the
143 date certain by use of either an interest rate specified by the
144 parties if that rate is not manifestly unreasonable at the time the
145 transaction is entered into or, if an interest rate is not so
146 specified, a commercially reasonable rate that takes into
147 account the facts and circumstances at the time the transaction
148 is entered into.

149 (29) “Purchase” means taking by sale, lease, discount,
150 negotiation, mortgage, pledge, lien, security interest, issue or
151 reissue, gift or any other voluntary transaction creating an
152 interest in property.

153 (30) “Purchaser” means a person that takes by purchase.

154 (31) “Record” means information that is inscribed on a
155 tangible medium or that is stored in an electronic or other
156 medium and is retrievable in perceivable form.

157 (32) “Remedy” means any remedial right to which an
158 aggrieved party is entitled with or without resort to a tribunal.

159 (33) “Representative” means a person empowered to act for
160 another, including an agent, an officer of a corporation or
161 association, and a trustee, executor or administrator of an estate.

162 (34) “Right” includes remedy.

163 (35) “Security interest” means an interest in personal
164 property or fixtures which secures payment or performance of
165 an obligation. “Security interest” includes any interest of a
166 consignor and a buyer of accounts, chattel paper, a payment
167 intangible or a promissory note in a transaction that is subject
168 to article 9. “Security interest” does not include the special
169 property interest of a buyer of goods on identification of those
170 goods to a contract for sale under section 2-401, but a buyer
171 may also acquire a “security interest” by complying with article
172 9. Except as otherwise provided in section 2-505, the right of a
173 seller or lessor of goods under article 2 or 2A to retain or
174 acquire possession of the goods is not a “security interest”, but
175 a seller or lessor may also acquire a “security interest” by
176 complying with article 9. The retention or reservation of title by
177 a seller of goods notwithstanding shipment or delivery to the
178 buyer under section 2-401 is limited in effect to a reservation of
179 a “security interest”. Whether a transaction in the form of a
180 lease creates a “security interest” is determined pursuant to
181 section 1-203.

182 (36) “Send” in connection with a writing, record, or notice
183 means:

184 (A) To deposit in the mail or deliver for transmission by
185 any other usual means of communication with postage or cost
186 of transmission provided for and properly addressed and, in the
187 case of an instrument, to an address specified thereon or
188 otherwise agreed, or if there be none to any address reasonable
189 under the circumstances; or

190 (B) In any other way to cause to be received any record or
191 notice within the time it would have arrived if properly sent.

192 (37) "Signed" includes using any symbol executed or
193 adopted with present intention to adopt or accept a writing.

194 (38) "State" means a state of the United States, the District
195 of Columbia, Puerto Rico, the United States Virgin Islands, or
196 any territory or insular possession subject to the jurisdiction of
197 the United States.

198 (39) "Surety" includes a guarantor or other secondary
199 obligor.

200 (40) "Term" means a portion of an agreement that relates
201 to a particular matter.

202 (41) "Unauthorized signature" means a signature made
203 without actual, implied or apparent authority. The term includes
204 a forgery.

205 (42) "Warehouse receipt" means a document of title issued
206 by a person engaged in the business of storing goods for hire.

207 (43) "Writing" includes printing, typewriting, or any other
208 intentional reduction to tangible form. "Written" has a corre-
209 sponding meaning.

§46-1-202. Notice; knowledge.

1 (a) Subject to subsection (f), a person has "notice" of a fact
2 if the person:

3 (1) Has actual knowledge of it;

4 (2) Has received a notice or notification of it; or

5 (3) From all the facts and circumstances known to the
6 person at the time in question, has reason to know that it exists.

7 (b) "Knowledge" means actual knowledge. "Knows" has a
8 corresponding meaning.

9 (c) “Discover”, “learn”, or words of similar import refer to
10 knowledge rather than to reason to know.

11 (d) A person “notifies” or “gives” a notice or notification to
12 another person by taking such steps as may be reasonably
13 required to inform the other person in ordinary course, whether
14 or not the other person actually comes to know of it.

15 (e) Subject to subsection (f), a person “receives” a notice or
16 notification when:

17 (1) It comes to that person’s attention; or

18 (2) It is duly delivered in a form reasonable under the
19 circumstances at the place of business through which the
20 contract was made or at another location held out by that person
21 as the place for receipt of such communications.

22 (f) Notice, knowledge, or a notice or notification received
23 by an organization is effective for a particular transaction from
24 the time it is brought to the attention of the individual conduct-
25 ing that transaction and, in any event, from the time it would
26 have been brought to the individual’s attention if the organiza-
27 tion had exercised due diligence. An organization exercises due
28 diligence if it maintains reasonable routines for communicating
29 significant information to the person conducting the transaction
30 and there is reasonable compliance with the routines. Due
31 diligence does not require an individual acting for the organiza-
32 tion to communicate information unless the communication is
33 part of the individual’s regular duties or the individual has
34 reason to know of the transaction and that the transaction would
35 be materially affected by the information.

§46-1-203. Lease distinguished from security interest.

1 (a) Whether a transaction in the form of a lease creates a
2 lease or security interest is determined by the facts of each case.

3 (b) A transaction in the form of a lease creates a security
4 interest if the consideration that the lessee is to pay the lessor
5 for the right to possession and use of the goods is an obligation
6 for the term of the lease and is not subject to termination by the
7 lessee, and:

8 (1) The original term of the lease is equal to or greater than
9 the remaining economic life of the goods;

10 (2) The lessee is bound to renew the lease for the remaining
11 economic life of the goods or is bound to become the owner of
12 the goods;

13 (3) The lessee has an option to renew the lease for the
14 remaining economic life of the goods for no additional
15 consideration or for nominal additional consideration upon
16 compliance with the lease agreement; or

17 (4) The lessee has an option to become the owner of the
18 goods for no additional consideration or for nominal additional
19 consideration upon compliance with the lease agreement.

20 (c) A transaction in the form of a lease does not create a
21 security interest merely because:

22 (1) The present value of the consideration the lessee is
23 obligated to pay the lessor for the right to possession and use of
24 the goods is substantially equal to or is greater than the fair
25 market value of the goods at the time the lease is entered into;

26 (2) The lessee assumes risk of loss of the goods;

27 (3) The lessee agrees to pay, with respect to the goods,
28 taxes, insurance, filing, recording, or registration fees, or
29 service or maintenance costs;

30 (4) The lessee has an option to renew the lease or to become
31 the owner of the goods;

32 (5) The lessee has an option to renew the lease for a fixed
33 rent that is equal to or greater than the reasonably predictable
34 fair market rent for the use of the goods for the term of the
35 renewal at the time the option is to be performed; or

36 (6) The lessee has an option to become the owner of the
37 goods for a fixed price that is equal to or greater than the
38 reasonably predictable fair market value of the goods at the
39 time the option is to be performed.

40 (d) Additional consideration is nominal if it is less than the
41 lessee's reasonably predictable cost of performing under the
42 lease agreement if the option is not exercised. Additional
43 consideration is not nominal if:

44 (1) When the option to renew the lease is granted to the
45 lessee, the rent is stated to be the fair market rent for the use of
46 the goods for the term of the renewal determined at the time the
47 option is to be performed; or

48 (2) When the option to become the owner of the goods is
49 granted to the lessee, the price is stated to be the fair market
50 value of the goods determined at the time the option is to be
51 performed.

52 (e) The "remaining economic life of the goods" and
53 "reasonably predictable" fair market rent, fair market value or
54 cost of performing under the lease agreement must be deter-
55 mined with reference to the facts and circumstances at the time
56 the transaction is entered into.

§46-1-204. Value.

1 Except as otherwise provided in articles 3, 4, and 5 of this
2 chapter, a person gives value for rights if the person acquires
3 them:

4 (1) In return for a binding commitment to extend credit or
5 for the extension of immediately available credit, whether or
6 not drawn upon and whether or not a charge-back is provided
7 for in the event of difficulties in collection;

8 (2) As security for, or in total or partial satisfaction of, a
9 preexisting claim;

10 (3) By accepting delivery under a preexisting contract for
11 purchase; or

12 (4) In return for any consideration sufficient to support a
13 simple contract.

§46-1-205. Reasonable time; seasonableness.

1 (a) Whether a time for taking an action required by this
2 chapter is reasonable depends on the nature, purpose and
3 circumstances of the action.

4 (b) An action is taken seasonably if it is taken at or within
5 the time agreed or, if no time is agreed, at or within a reason-
6 able time.

§46-1-206. Presumptions.

1 Whenever this chapter creates a “presumption” with respect
2 to a fact, or provides that a fact is “presumed”, the trier of fact
3 must find the existence of the fact unless and until evidence is
4 introduced that supports a finding of its nonexistence.

PART 3. TERRITORIAL APPLICABILITY AND GENERAL RULES.

**§46-1-301. Territorial applicability; parties’ power to choose
applicable law.**

1 (a) Except as otherwise provided in this section, when a
2 transaction bears a reasonable relation to this state and also to

3 another state or nation the parties may agree that the law either
4 of this state or of such other state or nation shall govern their
5 rights and duties.

6 (b) In the absence of an agreement effective under subsec-
7 tion (a), and except as provided in subsection (c), this chapter
8 applies to transactions bearing an appropriate relation to this
9 state.

10 (c) If one of the following provisions of this chapter
11 specifies the applicable law, that provision governs and a
12 contrary agreement is effective only to the extent permitted by
13 the law so specified:

14 (1) Section 2-402;

15 (2) Sections 2A-105 and 2A-106;

16 (3) Section 4-102;

17 (4) Section 4A-507;

18 (5) Section 5-116;

19 (6) Section 8-110;

20 (7) Sections 9-301 through 9-307.

§46-1-302. Variation by agreement.

1 (a) Except as otherwise provided in subsection (b) or
2 elsewhere in this chapter, the effect of provisions of this chapter
3 may be varied by agreement.

4 (b) The obligations of good faith, diligence, reasonableness,
5 and care prescribed by this chapter may not be disclaimed by
6 agreement. The parties, by agreement, may determine the
7 standards by which the performance of those obligations is to

8 be measured if those standards are not manifestly unreasonable.
9 Whenever this chapter requires an action to be taken within a
10 reasonable time, a time that is not manifestly unreasonable may
11 be fixed by agreement.

12 (c) The presence in certain provisions of this chapter of the
13 phrase “unless otherwise agreed”, or words of similar import,
14 does not imply that the effect of other provisions may not be
15 varied by agreement under this section.

**§46-1-303. Course of performance, course of dealing, and usage
of trade.**

1 (a) A “course of performance” is a sequence of conduct
2 between the parties to a particular transaction that exists if:

3 (1) The agreement of the parties with respect to the
4 transaction involves repeated occasions for performance by a
5 party; and

6 (2) The other party, with knowledge of the nature of the
7 performance and opportunity for objection to it, accepts the
8 performance or acquiesces in it without objection.

9 (b) A “course of dealing” is a sequence of conduct concern-
10 ing previous transactions between the parties to a particular
11 transaction that is fairly to be regarded as establishing a
12 common basis of understanding for interpreting their expres-
13 sions and other conduct.

14 (c) A “usage of trade” is any practice or method of dealing
15 having such regularity of observance in a place, vocation, or
16 trade as to justify an expectation that it will be observed with
17 respect to the transaction in question. The existence and scope
18 of such a usage must be proved as facts. If it is established that
19 such a usage is embodied in a trade code or similar record, the
20 interpretation of the record is a question of law.

21 (d) A course of performance or course of dealing between
22 the parties or usage of trade in the vocation or trade in which
23 they are engaged or of which they are or should be aware is
24 relevant in ascertaining the meaning of the parties' agreement,
25 may give particular meaning to specific terms of the agreement,
26 and may supplement or qualify the terms of the agreement. A
27 usage of trade applicable in the place in which part of the
28 performance under the agreement is to occur may be so utilized
29 as to that part of the performance.

30 (e) Except as otherwise provided in subsection (f), the
31 express terms of an agreement and any applicable course of
32 performance, course of dealing, or usage of trade must be
33 construed whenever reasonable as consistent with each other.
34 If such a construction is unreasonable:

35 (1) Express terms prevail over course of performance,
36 course of dealing, and usage of trade;

37 (2) Course of performance prevails over course of dealing
38 and usage of trade; and

39 (3) Course of dealing prevails over usage of trade.

40 (f) Subject to section 2-209, a course of performance is
41 relevant to show a waiver or modification of any term inconsis-
42 tent with the course of performance.

43 (g) Evidence of a relevant usage of trade offered by one
44 party is not admissible unless that party has given the other
45 party notice that the court finds sufficient to prevent unfair
46 surprise to the other party.

§46-1-304. Obligation of good faith.

1 Every contract or duty within this chapter imposes an
2 obligation of good faith in its performance and enforcement.

§46-1-305. Remedies to be liberally administered.

1 (a) The remedies provided by this chapter must be liberally
2 administered to the end that the aggrieved party may be put in
3 as good a position as if the other party had fully performed but
4 neither consequential or special damages nor penal damages
5 may be had except as specifically provided in this chapter or by
6 other rule of law.

7 (b) Any right or obligation declared by this chapter is
8 enforceable by action unless the provision declaring it specifies
9 a different and limited effect.

§46-1-306. Waiver or renunciation of claim or right after breach.

1 A claim or right arising out of an alleged breach may be
2 discharged, in whole or in part, without consideration by
3 agreement of the aggrieved party in an authenticated record.

§46-1-307. Prima facie evidence by third-party documents.

1 A document in due form purporting to be a bill of lading,
2 policy or certificate of insurance, official weigher's or inspec-
3 tor's certificate, consular invoice, or any other document
4 authorized or required by the contract to be issued by a third
5 party is prima facie evidence of its own authenticity and
6 genuineness and of the facts stated in the document by the third
7 party.

§46-1-308. Performance or acceptance under reservation of rights.

1 (a) A party that with explicit reservation of rights performs
2 or promises performance or assents to performance in a manner
3 demanded or offered by the other party does not thereby
4 prejudice the rights reserved. Such words as "without preju-
5 dice", "under protest", or the like are sufficient.

6 (b) Subsection (a) does not apply to an accord and satisfac-
7 tion.

§46-1-309. Option to accelerate at will.

1 A term providing that one party or that party's successor in
2 interest may accelerate payment or performance or require
3 collateral or additional collateral "at will" or when the party
4 "deems itself insecure", or words of similar import, means that
5 the party has power to do so only if that party in good faith
6 believes that the prospect of payment or performance is
7 impaired. The burden of establishing lack of good faith is on the
8 party against which the power has been exercised.

§46-1-310. Subordinated obligations.

1 An obligation may be issued as subordinated to perfor-
2 mance of another obligation of the person obligated, or a
3 creditor may subordinate its right to performance of an
4 obligation by agreement with either the person obligated or
5 another creditor of the person obligated. Subordination does not
6 create a security interest as against either the common debtor or
7 a subordinated creditor.

ARTICLE 2. SALES.

**PART 1. SHORT TITLE, GENERAL
CONSTRUCTION AND SUBJECT MATTER.**

§46-2-103. Definitions and index of definitions.

§46-2-104. Definitions: "merchant"; "between merchants"; "financing agency".

§46-2-202. Final written expression: parol or extrinsic evidence.

§46-2-310. Open time for payment or running of credit; authority to ship under reservation.

§46-2-323. Form of bill of lading required in overseas shipment, "overseas".

§46-2-401. Passing of title; reservation for security; limited application of this section.

§46-2-503. Manner of seller's tender of delivery.

§46-2-505. Seller's shipment under reservation.

§46-2-506. Rights of financing agency.

§46-2-509. Risk of loss in the absence of breach.

§46-2-605. Waiver of buyer's objections by failure to particularize.

§46-2-705. Seller's stoppage of delivery in transit or otherwise.

§46-2-103. Definitions and index of definitions.

1 (1) In this article unless the context otherwise requires:

2 (a) "Buyer" means a person who buys or contracts to buy
3 goods.

4 (b) [Reserved.]

5 (c) "Receipt" of goods means taking physical possession of
6 them.

7 (d) "Seller" means a person who sells or contracts to sell
8 goods.

9 (2) Other definitions applying to this article or to specified
10 parts thereof, and the sections in which they appear are:

11 "Acceptance". Section 2-606.

12 "Banker's credit". Section 2-325.

13 "Between merchants". Section 2-104.

14 "Cancellation". Section 2-106 (4).

15 "Commercial unit". Section 2-105.

16 "Confirmed credit". Section 2-325.

17 "Conforming to contract". Section 2-106.

18 "Contract for sale". Section 2-106.

19 "Cover". Section 2-712.

20 "Entrusting". Section 2-403.

21 "Financing agency". Section 2-104.

22 "Future goods". Section 2-105.

23 "Goods". Section 2-105.

24 "Identification". Section 2-501.

25 "Installment contract". Section 2-612.

26	“Letter of credit”.	Section 2-325.
27	“Lot”.	Section 2-105.
28	“Merchant”.	Section 2-104.
29	“Overseas”.	Section 2-323.
30	“Person in position of seller”.	Section 2-707.
31	“Present sale”.	Section 2-106.
32	“Sale”.	Section 2-106.
33	“Sale on approval”.	Section 2-326.
34	“Sale or return”.	Section 2-326.
35	“Termination”.	Section 2-106.

36 (3) “Control” as provided in Section 7-106 and the
37 following definitions in other articles of this chapter apply to
38 this article:

39	“Check.”	Section 3-104.
40	“Consignee.”	Section 7-102.
41	“Consignor.”	Section 7-102.
42	“Consumer goods.”	Section 9-102.
43	“Dishonor.”	Section 3-502.
44	“Draft.”	Section 3-104.

45 (4) In addition article one of this chapter contains general
46 definitions and principles of construction and interpretation
47 applicable throughout this article.

**§46-2-104. Definitions: “merchant”; “between merchants”;
“financing agency”.**

1 (1) “Merchant” means a person who deals in goods of the
2 kind or otherwise by his occupation holds himself out as having
3 knowledge or skill peculiar to the practices or goods involved
4 in the transaction or to whom such knowledge or skill may be
5 attributed by his or her employment of an agent or broker or
6 other intermediary who by his occupation holds himself out as
7 having such knowledge or skill.

8 (2) “Financing agency” means a bank, finance company or
9 other person who in the ordinary course of business makes
10 advances against goods or documents of title or who by
11 arrangement with either the seller or the buyer intervenes in
12 ordinary course to make or collect payment due or claimed
13 under the contract for sale, as by purchasing or paying the
14 seller’s draft or making advances against it or by merely taking
15 it for collection whether or not documents of title accompany
16 or are associated with the draft. “Financing agency” includes
17 also a bank or other person who similarly intervenes between
18 persons who are in the position of seller and buyer in respect to
19 the goods (section 2-707).

20 (3) “Between merchants” means in any transaction with
21 respect to which both parties are chargeable with the knowledge
22 or skill of merchants.

§46-2-202. Final written expression: parol or extrinsic evidence.

1 Terms with respect to which the confirmatory memoranda
2 of the parties agree or which are otherwise set forth in a writing
3 intended by the parties as a final expression of their agreement
4 with respect to such terms as are included therein may not be
5 contradicted by evidence of any prior agreement or of a
6 contemporaneous oral agreement but may be explained or
7 supplemented:

8 (a) By course of performance, course of dealing, or usage
9 of trade (section 1-303); and

10 (b) By evidence of consistent additional terms unless the
11 court finds the writing to have been intended also as a complete
12 and exclusive statement of the terms of the agreement.

**§46-2-310. Open time for payment or running of credit; authority
to ship under reservation.**

1 Unless otherwise agreed:

2 (a) Payment is due at the time and place at which the buyer
3 is to receive the goods even though the place of shipment is the
4 place of delivery; and

5 (b) If the seller is authorized to send the goods he may ship
6 them under reservation, and may tender the documents of title,
7 but the buyer may inspect the goods after their arrival before
8 payment is due unless such inspection is inconsistent with the
9 terms of the contract (section 2-513); and

10 (c) If delivery is authorized and made by way of documents
11 of title otherwise than by subsection (b) then payment is due
12 regardless of where the goods are to be received: (i) at the time
13 and place at which the buyer is to receive delivery of the
14 tangible documents; or (ii) at the time the buyer is to receive
15 delivery of the electronic documents and at the seller's place of
16 business or if none, the seller's residence; and

17 (d) Where the seller is required or authorized to ship the
18 goods on credit the credit period runs from the time of shipment
19 but postdating the invoice or delaying its dispatch will corre-
20 spondingly delay the starting of the credit period.

**§46-2-323. Form of bill of lading required in overseas shipment,
“overseas”.**

1 (1) Where the contract contemplates overseas shipment
2 and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller
3 unless otherwise agreed must obtain a negotiable bill of lading
4 stating that the goods have been loaded on board or, in the case
5 of a term C.I.F. or C. & F., received for shipment.

6 (2) Where in a case within subsection (1) a tangible bill of
7 lading has been issued in a set of parts, unless otherwise agreed
8 if the documents are not to be sent from abroad the buyer may

9 demand tender of the full set; otherwise only one part of the bill
10 of lading need be tendered. Even if the agreement expressly
11 requires a full set:

12 (a) Due tender of a single part is acceptable within the
13 provisions of this article on cure of improper delivery (subsec-
14 tion (1) of section 2-508); and

15 (b) Even though the full set is demanded, if the documents
16 are sent from abroad the person tendering an incomplete set
17 may nevertheless require payment upon furnishing an indem-
18 nity which the buyer in good faith deems adequate.

19 (3) A shipment by water or by air or a contract contemplat-
20 ing such shipment is “overseas” insofar as by usage of trade or
21 agreement it is subject to the commercial, financing or shipping
22 practices characteristic of international deep water commerce.

**§46-2-401. Passing of title; reservation for security; limited
application of this section.**

1 Each provision of this article with regard to the rights,
2 obligations and remedies of the seller, the buyer, purchasers or
3 other third parties applies irrespective of title to the goods
4 except where the provision refers to such title. Insofar as
5 situations are not covered by the other provisions of this article
6 and matters concerning title become material the following
7 rules apply:

8 (1) Title to goods cannot pass under a contract for sale prior
9 to their identification to the contract (section 2-501), and unless
10 otherwise explicitly agreed the buyer acquires by their identifi-
11 cation a special property as limited by this chapter. Any
12 retention or reservation by the seller of the title (property) in
13 goods shipped or delivered to the buyer is limited in effect to a
14 reservation of a security interest. Subject to these provisions
15 and to the provisions of the article on secured transactions

16 (article 9), title to goods passes from the seller to the buyer in
17 any manner and on any conditions explicitly agreed on by the
18 parties.

19 (2) Unless otherwise explicitly agreed title passes to the
20 buyer at the time and place at which the seller completes his
21 performance with reference to the physical delivery of the
22 goods, despite any reservation of a security interest and even
23 though a document of title is to be delivered at a different time
24 or place; and in particular and despite any reservation of a
25 security interest by the bill of lading.

26 (a) If the contract requires or authorizes the seller to send
27 the goods to the buyer but does not require him to deliver them
28 at destination, title passes to the buyer at the time and place of
29 shipment; but

30 (b) If the contract requires delivery at destination, title
31 passes on tender there.

32 (3) Unless otherwise explicitly agreed where delivery is to
33 be made without moving the goods;

34 (a) If the seller is to deliver a tangible document of title,
35 title passes at the time when and the place where he delivers
36 such documents and if the seller is to deliver an electronic
37 document of title, title passes when the seller delivers the
38 document; or

39 (b) If the goods are at the time of contracting already
40 identified and no documents of title are to be delivered, title
41 passes at the time and place of contracting.

42 (4) A rejection or other refusal by the buyer to receive or
43 retain the goods, whether or not justified, or a justified
44 revocation of acceptance reverts title to the goods in the seller.
45 Such reversion occurs by operation of law and is not a "sale".

§46-2-503. Manner of seller's tender of delivery.

1 (1) Tender of delivery requires that the seller put and hold
2 conforming goods at the buyer's disposition and give the buyer
3 any notification reasonably necessary to enable him to take
4 delivery. The manner, time and place for tender are determined
5 by the agreement and this article, and in particular.

6 (a) Tender must be at a reasonable hour, and if it is of
7 goods they must be kept available for the period reasonably
8 necessary to enable the buyer to take possession; but

9 (b) Unless otherwise agreed the buyer must furnish
10 facilities reasonably suited to the receipt of the goods.

11 (2) Where the case is within the next section respecting
12 shipment tender requires that the seller comply with its
13 provisions.

14 (3) Where the seller is required to deliver at a particular
15 destination tender requires that he comply with subsection (1)
16 and also in any appropriate case tender documents as described
17 in subsections (4) and (5) of this section.

18 (4) Where goods are in the possession of a bailee and are to
19 be delivered without being moved.

20 (a) Tender requires that the seller either tender a negotiable
21 document of title covering such goods or procure acknowledg-
22 ment by the bailee of the buyer's right to possession of the
23 goods; but

24 (b) Tender to the buyer of a nonnegotiable document of title
25 or of a record directing the bailee to deliver is sufficient tender
26 unless the buyer seasonably objects, and except as otherwise
27 provided in Article 9 receipt by the bailee of notification of the
28 buyer's rights fixes those rights as against the bailee and all

29 third persons; but risk of loss of the goods and of any failure by
30 the bailee to honor the nonnegotiable document of title or to
31 obey the direction remains on the seller until the buyer has had
32 a reasonable time to present the document or direction, and a
33 refusal by the bailee to honor the document or obey the
34 direction defeats the tender.

35 (5) Where the contract requires the seller to deliver
36 documents.

37 (a) He must tender all such documents in correct form,
38 except as provided in this article with respect to bills of lading
39 in a set (subsection (2) of section 2-323); and

40 (b) Tender through customary banking channels is suffi-
41 cient and dishonor of a draft accompanying or associated with
42 the documents constitutes nonacceptance or rejection.

§46-2-505. Seller's shipment under reservation.

1 (1) Where the seller has identified goods to the contract by
2 or before shipment:

3 (a) His procurement of a negotiable bill of lading to his own
4 order or otherwise reserves in him a security interest in the
5 goods. His procurement of the bill to the order of a financing
6 agency or of the buyer indicates in addition only the seller's
7 expectation of transferring that interest to the person named.

8 (b) A nonnegotiable bill of lading to himself or his nominee
9 reserves possession of the goods as security but except in a case
10 of conditional delivery (subsection (2) of section 2-507) a
11 nonnegotiable bill of lading naming the buyer as consignee
12 reserves no security interest even though the seller retains
13 possession or control of the bill of lading.

14 (2) When shipment by the seller with reservation of a
15 security interest is in violation of the contract for sale it

16 constitutes an improper contract for transportation within the
17 preceding section but impairs neither the rights given to the
18 buyer by shipment and identification of the goods to the
19 contract nor the seller's powers as a holder of a negotiable
20 document of title.

§46-2-506. Rights of financing agency.

1 (1) A financing agency by paying or purchasing for value
2 a draft which relates to a shipment of goods acquires to the
3 extent of the payment or purchase and in addition to its own
4 rights under the draft and any document of title securing it any
5 rights of the shipper in the goods including the right to stop
6 delivery and the shipper's right to have the draft honored by the
7 buyer.

8 (2) The right to reimbursement of a financing agency which
9 has in good faith honored or purchased the draft under commit-
10 ment to or authority from the buyer is not impaired by subse-
11 quent discovery of defects with reference to any relevant
12 document which was apparently regular.

§46-2-509. Risk of loss in the absence of breach.

1 (1) Where the contract requires or authorizes the seller to
2 ship the goods by carrier:

3 (a) If it does not require him to deliver them at a particular
4 destination, the risk of loss passes to the buyer when the goods
5 are duly delivered to the carrier even though the shipment is
6 under reservation (section 2-505); but

7 (b) If it does require him to deliver them at a particular
8 destination and the goods are there duly tendered while in the
9 possession of the carrier, the risk of loss passes to the buyer
10 when the goods are there duly so tendered as to enable the
11 buyer to take delivery.

12 (2) Where the goods are held by a bailee to be delivered
13 without being moved, the risk of loss passes to the buyer.

14 (a) On his receipt of possession or control of a negotiable
15 document of title covering the goods; or

16 (b) On acknowledgment by the bailee of the buyer's right
17 to possession of the goods; or

18 (c) After his receipt of possession or control a nonnegotia-
19 ble document of title or other direction to deliver in a record, as
20 provided in subsection (4) (b) of section 2-503.

21 (3) In any case not within subsection (1) or (2), the risk of
22 loss passes to the buyer on his receipt of the goods if the seller
23 is a merchant; otherwise the risk passes to the buyer on tender
24 of delivery.

25 (4) The provisions of this section are subject to contrary
26 agreement of the parties and to the provisions of this article on
27 sale on approval (section 2-327) and on effect of breach on risk
28 of loss (section 2-510).

**§46-2-605. Waiver of buyer's objections by failure to particular-
ize.**

1 (1) The buyer's failure to state in connection with rejection
2 a particular defect which is ascertainable by reasonable
3 inspection precludes him from relying on the unstated defect to
4 justify rejection or to establish breach:

5 (a) Where the seller could have cured it if stated season-
6 ably; or

7 (b) Between merchants when the seller has after rejection
8 made a request in writing for a full and final written statement
9 of all defects on which the buyer proposes to rely.

10 (2) Payment against documents made without reservation
11 of rights precludes recovery of the payment for defects apparent
12 in the documents.

§46-2-705. Seller's stoppage of delivery in transit or otherwise.

1 (1) The seller may stop delivery of goods in the possession
2 of a carrier or other bailee when he discovers the buyer to be
3 insolvent (section 2-702) and may stop delivery of carload,
4 truckload, planeload or larger shipments of express or freight
5 when the buyer repudiates or fails to make a payment due
6 before delivery or if for any other reason the seller has a right
7 to withhold or reclaim the goods.

8 (2) As against such buyer the seller may stop delivery until;

9 (a) Receipt of the goods by the buyer; or

10 (b) Acknowledgment to the buyer by any bailee of the
11 goods except a carrier that the bailee holds the goods for the
12 buyer; or

13 (c) Such acknowledgment to the buyer by a carrier by
14 reshipment or as a warehouse; or

15 (d) Negotiation to the buyer of any negotiable document of
16 title covering the goods.

17 (3)(a) To stop delivery the seller must so notify as to enable
18 the bailee by reasonable diligence to prevent delivery of the
19 goods.

20 (b) After such notification the bailee must hold and deliver
21 the goods according to the directions of the seller but the seller
22 is liable to the bailee for any ensuing charges or damages.

23 (c) If a negotiable document of title has been issued for
24 goods the bailee is not obliged to obey a notification to stop
25 until surrender of possession or control of the document.

26 (d) A carrier who has issued a nonnegotiable bill of lading
27 is not obligated to obey a notification to stop received from a
28 person other than the consignor.

ARTICLE 2A. LEASES.

PART 1. GENERAL PROVISIONS.

§46-2A-103. Definitions and index of definitions.

§46-2A-501. Default; procedure.

§46-2A-514. Waiver of lessee's objections.

§46-2A-518. Cover; substitute goods.

§46-2A-519. Lessee's damages for non-delivery, repudiation, default, and breach of warranty in regard to accepted goods.

§46-2A-526. Lessor's stoppage of delivery in transit or otherwise.

§46-2A-527. Lessor's rights to dispose of goods.

§46-2A-528. Lessor's damages for non-acceptance, failure to pay, repudiation, or other default.

§46-2A-103. Definitions and index of definitions.

1 (1) In this article unless the context otherwise requires:

2 (a) "Buyer in ordinary course of business" means a person
3 who in good faith and without knowledge that the sale to him
4 or her is in violation of the ownership rights or security interest
5 or leasehold interest of a third party in the goods, buys in
6 ordinary course from a person in the business of selling goods
7 of that kind but does not include a pawnbroker. "Buying" may
8 be for cash or by exchange of other property or on secured or
9 unsecured credit and includes acquiring goods or documents of
10 title under a preexisting contract for sale but does not include a
11 transfer in bulk or as security for or in total or partial satisfac-
12 tion of a money debt.

13 (b) "Cancellation" occurs when either party puts an end to
14 the lease contract for default by the other party.

15 (c) "Commercial unit" means such a unit of goods as by
16 commercial usage is a single whole for purposes of lease and

17 division of which materially impairs its character or value on
18 the market or in use. A commercial unit may be a single article,
19 as a machine, or a set of articles, as a suite of furniture or a line
20 of machinery, or a quantity, as a gross or carload, or any other
21 unit treated in use or in the relevant market as a single whole.

22 (d) "Conforming" goods or performance under a lease
23 contract means goods or performance that are in accordance
24 with the obligations under the lease contract.

25 (e) "Consumer lease" shall have the same meaning as that
26 ascribed to it in section one hundred two, article one, chapter
27 forty-six-a of this code.

28 (f) "Fault" means wrongful act, omission, breach or default.

29 (g) "Finance lease" means a lease with respect to which:

30 (i) The lessor does not select, manufacture or supply the
31 goods;

32 (ii) The lessor acquires the goods or the right to possession
33 and use of the goods in connection with the lease; and

34 (iii) One of the following occurs:

35 (A) The lessee receives a copy of the contract by which the
36 lessor acquired the goods or the right to possession and use of
37 the goods before signing the lease contract;

38 (B) The lessee's approval of the contract by which the
39 lessor acquired the goods or the right to possession and use of
40 the goods is a condition to effectiveness of the lease contract;

41 (C) The lessee, before signing the lease contract, receives
42 an accurate and complete statement designating the promises
43 and warranties, and any disclaimers of warranties, limitations
44 or modifications of remedies, or liquidated damages, including

45 those of a third party, such as the manufacturer of the goods,
46 provided to the lessor by the person supplying the goods in
47 connection with or as part of the contract by which the lessor
48 acquired the goods or the right to possession and use of the
49 goods; or

50 (D) If the lease is not a consumer lease, the lessor, before
51 the lessee signs the lease contract, informs the lessee in writing:
52 (a) Of the identity of the person supplying the goods to the
53 lessor, unless the lessee has selected that person and directed
54 the lessor to acquire the goods or the right to possession and use
55 of the goods from that person; (b) that the lessee is entitled
56 under this article to the promises and warranties, including
57 those of any third party, provided to the lessor by the person
58 supplying the goods in connection with or as part of the
59 contract by which the lessor acquired the goods or the right to
60 possession and use of the goods; and (c) that the lessee may
61 communicate with the person supplying the goods to the lessor
62 and receive an accurate and complete statement of those
63 promises and warranties, including any disclaimers and
64 limitations of them or of remedies.

65 (h) “Goods” means all things that are movable at the time
66 of identification to the lease contract, or are fixtures (section
67 2A-309), but the term does not include money, documents,
68 instruments, accounts, chattel paper, general intangibles or
69 minerals or the like, including oil and gas, before extraction.
70 The term also includes the unborn young of animals.

71 (i) “Installment lease contract” means a lease contract that
72 authorizes or requires the delivery of goods in separate lots to
73 be separately accepted, even though the lease contract contains
74 a clause “each delivery is a separate lease” or its equivalent.

75 (j) “Lease” means a transfer of the right to possession and
76 use of goods for a term in return for consideration, but a sale,
77 including a sale on approval or a sale or return, or retention or

78 creation of a security interest is not a lease. Unless the context
79 clearly indicates otherwise, the term includes a sublease.

80 (k) “Lease agreement” means the bargain, with respect to
81 the lease, of the lessor and the lessee in fact as found in their
82 language or by implication from other circumstances including
83 course of dealing or usage of trade or course of performance as
84 provided in this article. Unless the context clearly indicates
85 otherwise, the term includes a sublease agreement.

86 (l) “Lease contract” means the total legal obligation that
87 results from the lease agreement as affected by this article and
88 any other applicable rules of law. Unless the context clearly
89 indicates otherwise, the term includes a sublease contract.

90 (m) “Leasehold interest” means the interest of the lessor or
91 the lessee under a lease contract.

92 (n) “Lessee” means a person who acquires the right to
93 possession and use of goods under a lease. Unless the context
94 clearly indicates otherwise, the term includes a sublessee.

95 (o) “Lessee in ordinary course of business” means a person
96 who in good faith and without knowledge that the lease to him
97 or her is in violation of the ownership rights or security interest
98 or leasehold interest of a third party in the goods leases in
99 ordinary course from a person in the business of selling or
100 leasing goods of that kind but does not include a pawnbroker.
101 “Leasing” may be for cash or by exchange of other property or
102 on secured or unsecured credit and includes acquiring goods or
103 documents of title under a preexisting lease contract but does
104 not include a transfer in bulk or as security for or in total or
105 partial satisfaction of a money debt.

106 (p) “Lessor” means a person who transfers the right to
107 possession and use of goods under a lease. Unless the context
108 clearly indicates otherwise, the term includes a sublessor.

109 (q) “Lessor’s residual interest” means the lessor’s interest
110 in the goods after expiration, termination or cancellation of the
111 lease contract.

112 (r) “Lien” means a charge against or interest in goods to
113 secure payment of a debt or performance of an obligation, but
114 the term does not include a security interest.

115 (s) “Lot” means a parcel or a single article that is the
116 subject matter of a separate lease or delivery, whether or not it
117 is sufficient to perform the lease contract.

118 (t) “Merchant lessee” means a lessee that is a merchant with
119 respect to goods of the kind subject to the lease.

120 (u) “Present value” means the amount as of a date certain
121 of one or more sums payable in the future, discounted to the
122 date certain. The discount is determined by the interest rate
123 specified by the parties if the rate was not manifestly unreason-
124 able at the time the transaction was entered into; otherwise, the
125 discount is determined by a commercially reasonable rate that
126 takes into account the facts and circumstances of each case at
127 the time the transaction was entered into.

128 (v) “Purchase” includes taking by sale, lease, mortgage,
129 security interest, pledge, gift or any other voluntary transaction
130 creating an interest in goods.

131 (w) “Sublease” means a lease of goods the right to
132 possession and use of which was acquired by the lessor as a
133 lessee under an existing lease.

134 (x) “Supplier” means a person from whom a lessor buys or
135 leases goods to be leased under a finance lease.

136 (y) “Supply contract” means a contract under which a lessor
137 buys or leases goods to be leased.

138 (z) “Termination” occurs when either party pursuant to a
139 power created by agreement or law puts an end to the lease
140 contract otherwise than for default.

141 (2) Other definitions applying to this article and the
142 sections in which they appear are:

143	“Accessions”.	Section 2A-310(1).
144	“Construction mortgage”.	Section 2A-309(1)(d).
145	“Encumbrance”.	Section 2A-309(1)(e).
146	“Fixtures”.	Section 2A-309(1)(a).
147	“Fixture filing”.	Section 2A-309(1)(b).
148	“Purchase money lease”.	Section 2A-309(1)(c).

149 (3) The following definitions in other articles apply to this
150 article:

151	“Account”.	Section 9-102(a)(2).
152	“Between merchants”.	Section 2-104(3).
153	“Buyer”.	Section 2-103(1)(a).
154	“Chattel paper”.	Section 9-102(a)(11).
155	“Consumer goods”.	Section 9-102(a)(23).
156	“Document”.	Section 9-102(a)(30).
157	“Entrusting”.	Section 2-403(3).
158	“General intangible”.	Section 9-102(a)(42).
159	“Instrument”.	Section 9-102(a)(47).
160	“Merchant”.	Section 2-104(1).
161	“Mortgage”.	Section 9-102(a)(55).
162	“Pursuant to commitment”.	Section 9-102(a)(68).
163	“Receipt”.	Section 2-103(1)(c).
164	“Sale”.	Section 2-106(1).
165	“Sale on approval”.	Section 2-326.
166	“Sale or return”.	Section 2-326.
167	“Seller”.	Section 2-103(1)(d).

168 (4) In addition, article one contains general definitions and
169 principles of construction and interpretation applicable
170 throughout this article.

PART 5. DEFAULT.

A. IN GENERAL.

§46-2A-501. Default; procedure.

1 (1) Whether the lessor or the lessee is in default under a
2 lease contract is determined by the lease agreement and this
3 article.

4 (2) If the lessor or the lessee is in default under the lease
5 contract, the party seeking enforcement has rights and remedies
6 as provided in this article and, except as limited by this article,
7 as provided in the lease agreement.

8 (3) If the lessor or the lessee is in default under the lease
9 contract, the party seeking enforcement may reduce the party's
10 claim to judgment, or otherwise enforce the lease contract by
11 self-help or any available judicial procedure or nonjudicial
12 procedure, including administrative proceeding, arbitration, or
13 the like, in accordance with this article.

14 (4) Except as otherwise provided in section 1-305(a) or this
15 article or the lease agreement, the rights and remedies referred
16 to in subsections (2) and (3) are cumulative.

17 (5) If the lease agreement covers both real property and
18 goods, the party seeking enforcement may proceed under this
19 part as to the goods, or under other applicable law as to both the
20 real property and the goods in accordance with that party's
21 rights and remedies in respect of the real property, in which
22 case this part does not apply.

§46-2A-514. Waiver of lessee's objections.

1 (1) In rejecting goods, a lessee's failure to state a particular
2 defect that is ascertainable by reasonable inspection precludes

3 the lessee from relying on the defect to justify rejection or to
4 establish default:

5 (a) If, stated seasonably, the lessor or the supplier could
6 have cured it (section 2A-513); or

7 (b) Between merchants if the lessor or the supplier after
8 rejection has made a request in writing for a full and final
9 written statement of all defects on which the lessee proposes to
10 rely.

11 (2) A lessee's failure to reserve rights when paying rent or
12 other consideration against documents precludes recovery of
13 the payment for defects apparent in the documents.

§46-2A-518. Cover; substitute goods.

1 (1) After a default by a lessor under the lease contract of the
2 type described in section 2A-508(1), or, if agreed, after other
3 default by the lessor, the lessee may cover by making any
4 purchase or lease of or contract to purchase or lease goods in
5 substitution for those due from the lessor.

6 (2) Except as otherwise provided with respect to damages
7 liquidated in the lease agreement (section 2A-504) or otherwise
8 determined pursuant to agreement of the parties (sections 1-302
9 and 2A-503), if a lessee's cover is by a lease agreement
10 substantially similar to the original lease agreement and the new
11 lease agreement is made in good faith and in a commercially
12 reasonable manner, the lessee may recover from the lessor as
13 damages: (i) The present value, as of the date of the commence-
14 ment of the term of the new lease agreement, of the rent under
15 the new lease agreement applicable to that period of the new
16 lease term which is comparable to the then remaining term of
17 the original lease agreement minus the present value as of the
18 same date of the total rent for the then remaining lease term of
19 the original lease agreement; and (ii) any incidental or conse-

20 sequential damages, less expenses saved in consequence of the
21 lessor's default.

22 (3) If a lessee's cover is by lease agreement that for any
23 reason does not qualify for treatment under subsection (2), or is
24 by purchase or otherwise, the lessee may recover from the
25 lessor as if the lessee had elected not to cover and section 2A-
26 519 governs.

**§46-2A-519. Lessee's damages for non-delivery, repudiation,
default, and breach of warranty in regard to
accepted goods.**

1 (1) Except as otherwise provided with respect to damages
2 liquidated in the lease agreement (section 2A-504) or otherwise
3 determined pursuant to agreement of the parties (sections 1-302
4 and 2A-503), if a lessee elects not to cover or a lessee elects to
5 cover and the cover is by lease agreement that for any reason
6 does not qualify for treatment under section 2A-518(2), or is by
7 purchase or otherwise, the measure of damages for non-delivery
8 or repudiation by the lessor or for rejection or revocation of
9 acceptance by the lessee is the present value, as of the date of
10 the default, of the then market rent minus the present value as
11 of the same date of the original rent, computed for the remain-
12 ing lease term of the original lease agreement, together with
13 incidental and consequential damages, less expenses saved in
14 consequence of the lessor's default.

15 (2) Market rent is to be determined as of the place for
16 tender or, in cases of rejection after arrival or revocation of
17 acceptance, as of the place of arrival.

18 (3) Except as otherwise agreed, if the lessee has accepted
19 goods and given notification (section 2A-516(3)), the measure
20 of damages for nonconforming tender or delivery or other
21 default by a lessor is the loss resulting in the ordinary course of

22 events from the lessor's default as determined in any manner
23 that is reasonable together with incidental and consequential
24 damages, less expenses saved in consequence of the lessor's
25 default.

26 (4) Except as otherwise agreed, the measure of damages for
27 breach of warranty is the present value at the time and place of
28 acceptance of the difference between the value of the use of the
29 goods accepted and the value if they had been as warranted for
30 the lease term, unless special circumstances show proximate
31 damages of a different amount, together with incidental and
32 consequential damages, less expenses saved in consequence of
33 the lessor's default or breach of warranty.

§46-2A-526. Lessor's stoppage of delivery in transit or otherwise.

1 (1) A lessor may stop delivery of goods in the possession
2 of a carrier or other bailee if the lessor discovers the lessee to
3 be insolvent and may stop delivery of carload, truckload,
4 planeload or larger shipments of express or freight if the lessee
5 repudiates or fails to make a payment due before delivery,
6 whether for rent, security or otherwise under the lease contract,
7 or for any other reason the lessor has a right to withhold or take
8 possession of the goods.

9 (2) In pursuing its remedies under subsection (1), the lessor
10 may stop delivery until:

11 (a) Receipt of the goods by the lessee;

12 (b) Acknowledgment to the lessee by any bailee of the
13 goods, except a carrier, that the bailee holds the goods for the
14 lessee; or

15 (c) Such an acknowledgment to the lessee by a carrier via
16 reshipment or as a warehouse.

17 (3)(a) To stop delivery, a lessor shall so notify as to enable
18 the bailee by reasonable diligence to prevent delivery of the
19 goods.

20 (b) After notification, the bailee shall hold and deliver the
21 goods according to the directions of the lessor, but the lessor is
22 liable to the bailee for any ensuing charges or damages.

23 (c) A carrier who has issued a nonnegotiable bill of lading
24 is not obliged to obey a notification to stop received from a
25 person other than the consignor.

§46-2A-527. Lessor's rights to dispose of goods.

1 (1) After a default by a lessee under the lease contract of
2 the type described in section 2A-523(1) or 2A-523(3)(a) or after
3 the lessor refuses to deliver or takes possession of goods
4 (section 2A-525 or 2A-526), or, if agreed, after other default by
5 a lessee, the lessor may dispose of the goods concerned or the
6 undelivered balance thereof by lease, sale or otherwise.

7 (2) Except as otherwise provided with respect to damages
8 liquidated in the lease agreement (section 2A-504) or otherwise
9 determined pursuant to agreement of the parties (sections 1-302
10 and 2A-503), if the disposition is by lease agreement substan-
11 tially similar to the original lease agreement and the new lease
12 agreement is made in good faith and in a commercially
13 reasonable manner, the lessor may recover from the lessee as
14 damages: (i) Accrued and unpaid rent as of the date of the
15 commencement of the term of the new lease agreement; (ii) the
16 present value, as of the same date, of the total rent for the then
17 remaining lease term of the original lease agreement minus the
18 present value, as of the same date, of the rent under the new
19 lease agreement applicable to that period of the new lease term
20 which is comparable to the then remaining term of the original
21 lease agreement; and (iii) any incidental damages allowed under
22 section 2A-530, less expenses saved in consequence of the
23 lessee's default.

24 (3) If the lessor's disposition is by lease agreement that for
25 any reason does not qualify for treatment under subsection (2),
26 or is by sale or otherwise, the lessor may recover from the
27 lessee as if the lessor had elected not to dispose of the goods
28 and section 2A-528 governs.

29 (4) A subsequent buyer or lessee who buys or leases from
30 the lessor in good faith for value as a result of a disposition
31 under this section takes the goods free of the original lease
32 contract and any rights of the original lessee even though the
33 lessor fails to comply with one or more of the requirements of
34 this article.

35 (5) The lessor is not accountable to the lessee for any profit
36 made on any disposition. A lessee who has rightfully rejected
37 or justifiably revoked acceptance shall account to the lessor for
38 any excess over the amount of the lessee's security interest
39 (section 2A-508(5)).

**§46-2A-528. Lessor's damages for non-acceptance, failure to pay,
repudiation, or other default.**

1 (1) Except as otherwise provided with respect to damages
2 liquidated in the lease agreement (section 2A-504) or otherwise
3 determined pursuant to agreement of the parties (sections 1-302
4 and 2A-503), if a lessor elects to retain the goods or a lessor
5 elects to dispose of the goods and the disposition is by lease
6 agreement that for any reason does not qualify for treatment
7 under section 2A-527(2), or is by sale or otherwise, the lessor
8 may recover from the lessee as damages for a default of the
9 type described in section 2A-523(1) or 2A-523(3)(a), or, if
10 agreed, for other default of the lessee: (i) Accrued and unpaid
11 rent as of the date of default if the lessee has never taken
12 possession of the goods, or, if the lessee has taken possession
13 of the goods, as of the date the lessor repossesses the goods or
14 an earlier date on which the lessee makes a tender of the goods

15 to the lessor; (ii) the present value as of the date determined
16 under clause (I) of the total rent for the then remaining lease
17 term of the original lease agreement minus the present value as
18 of the same date of the market rent at the place where the goods
19 are located computed for the same lease term; and (iii) any
20 incidental damages allowed under section 2A-530, less
21 expenses saved in consequence of the lessee's default.

22 (2) If the measure of damages provided in subsection (1) of
23 this section is inadequate to put a lessor in as good a position as
24 performance would have, the measure of damages is the present
25 value of the profit, including reasonable overhead, the lessor
26 would have made from full performance by the lessee, together
27 with any incidental damages allowed under section 2A-530, due
28 allowance for costs reasonably incurred and due credit for
29 payments or proceeds of disposition.

ARTICLE 3. NEGOTIABLE INSTRUMENTS.

§46-3-103. Definitions.

1 (a) In this article:

2 (1) "Acceptor" means a drawee who has accepted a draft.

3 (2) "Drawee" means a person ordered in a draft to make
4 payment.

5 (3) "Drawer" means a person who signs or is identified in
6 a draft as a person ordering payment.

7 (4) [reserved]

8 (5) "Maker" means a person who signs or is identified in a
9 note as a person undertaking to pay.

10 (6) "Order" means a written instruction to pay money
11 signed by the person giving the instruction. The instruction may

12 be addressed to any person, including the person giving the
13 instruction, or to one or more persons jointly or in the alterna-
14 tive but not in succession. An authorization to pay is not an
15 order unless the person authorized to pay is also instructed to
16 pay.

17 (7) "Ordinary care" in the case of a person engaged in
18 business means observance of reasonable commercial stan-
19 dards, prevailing in the area in which the person is located, with
20 respect to the business in which the person is engaged. In the
21 case of a bank that takes an instrument for processing for
22 collection or payment by automated means, reasonable
23 commercial standards do not require the bank to examine the
24 instrument if the failure to examine does not violate the bank's
25 prescribed procedures and the bank's procedures do not vary
26 unreasonably from general banking usage not disapproved by
27 this article or article four.

28 (8) "Party" means a party to an instrument.

29 (9) "Promise" means a written undertaking to pay money
30 signed by the person undertaking to pay. An acknowledgment
31 of an obligation by the obligor is not a promise unless the
32 obligor also undertakes to pay the obligation.

33 (10) "Prove" with respect to a fact means to meet the
34 burden of establishing the fact (section 1-201(b)(8)).

35 (11) "Remitter" means a person who purchases an instru-
36 ment from its issuer if the instrument is payable to an identified
37 person other than the purchaser.

38 (b) Other definitions applying to this article and the sections
39 in which they appear are:

40 "Acceptance" Section 3-409.

41 "Accommodated party" Section 3-419.

42	“Accommodation party”	Section 3-419.
43	“Alteration”	Section 3-407.
44	“Anomalous indorsement”	Section 3-205.
45	“Blank indorsement”	Section 3-205.
46	“Cashier’s check”	Section 3-104.
47	“Certificate of deposit”	Section 3-104.
48	“Certified check”	Section 3-409.
49	“Check”	Section 3-104.
50	“Consideration”	Section 3-303.
51	“Draft”	Section 3-104.
52	“Holder in due course”	Section 3-302.
53	“Incomplete instrument”	Section 3-115.
54	“Indorsement”	Section 3-204.
55	“Indorser”	Section 3-204.
56	“Instrument”	Section 3-104.
57	“Issue”	Section 3-105.
58	“Issuer”	Section 3-105.
59	“Negotiable instrument”	Section 3-104.
60	“Negotiation”	Section 3-201.
61	“Note”	Section 3-104.
62	“Payable at a definite time”	Section 3-108.
63	“Payable on demand”	Section 3-108.
64	“Payable to bearer”	Section 3-109.
65	“Payable to order”	Section 3-109.
66	“Payment”	Section 3-602.
67	“Person entitled to enforce”	Section 3-301.
68	“Presentment”	Section 3-501.
69	“Reacquisition”	Section 3-207.
70	“Special indorsement”	Section 3-205.
71	“Teller’s check”	Section 3-104.
72	“Transfer of instrument”	Section 3-203.
73	“Traveler’s check”	Section 3-104.
74	“Value”	Section 3-303.

75 (c) The following definitions in other articles apply to this
76 article:

77	“Bank”	Section 4-105.
78	“Banking day”	Section 4-104.
79	“Clearing house”	Section 4-104.
80	“Collecting bank”	Section 4-105.
81	“Depository bank”	Section 4-105.
82	“Documentary draft”	Section 4-104.
83	“Intermediary bank”	Section 4-105.
84	“Item”	Section 4-104.
85	“Payor bank”	Section 4-105.
86	“Suspends payments”	Section 4-104.

87 (d) In addition article one contains general definitions and
88 principles of construction and interpretation applicable
89 throughout this article.

ARTICLE 4. BANK DEPOSITS AND COLLECTIONS.

§46-4-104. Definitions and index of definitions.

§46-4-210. Security interest of collecting bank in items, accompanying documents
and proceeds.

§46-4-104. Definitions and index of definitions.

1 (a) In this article unless the context otherwise requires:

2 (1) “Account” means any deposit or credit account with a
3 bank, including demand, time, savings, passbook, share draft,
4 or like account, other than an account evidenced by a certificate
5 of deposit;

6 (2) “Afternoon” means the period of a day between noon
7 and midnight;

8 (3) “Banking day” means the part of a day on which a bank
9 is open to the public for carrying on substantially all of its
10 banking functions;

11 (4) “Clearing house” means an association of banks or other
12 payors regularly clearing items;

13 (5) “Customer” means a person having an account with a
14 bank or for whom a bank has agreed to collect items, including
15 a bank that maintains an account at another bank;

16 (6) “Documentary draft” means a draft to be presented for
17 acceptance or payment if specified documents, certificated
18 securities (section 8-102) or instructions for uncertificated
19 securities (section 8-102), or other certificates, statements or the
20 like are to be received by the drawee or other payor before
21 acceptance or payment of the draft;

22 (7) “Draft” means a draft as defined in section 3-104 or an
23 item, other than an instrument, that is an order;

24 (8) “Drawee” means a person ordered in a draft to make
25 payment;

26 (9) “Item” means an instrument or a promise or order to pay
27 money handled by a bank for collection or payment. The term
28 does not include a payment order governed by article four-a or
29 a credit or debit card slip;

30 (10) “Midnight deadline” with respect to a bank is midnight
31 on its next banking day following the banking day on which it
32 receives the relevant item or notice or from which the time for
33 taking action commences to run, whichever is later;

34 (11) “Settle” means to pay in cash, by clearing-house
35 settlement, in a charge or credit or by remittance, or otherwise
36 as agreed. A settlement may be either provisional or final;

37 (12) “Suspends payments” with respect to a bank means
38 that it has been closed by order of the supervisory authorities,
39 that a public officer has been appointed to take it over or that it
40 ceases or refuses to make payments in the ordinary course of
41 business.

42 (b) Other definitions applying to this article and the
43 sections in which they appear are:

44	“Agreement for electronic presentment”	Section 4-110.
45	“Bank”	Section 4-105.
46	“Collecting bank”	Section 4-105.
47	“Depositary bank”	Section 4-105.
48	“Intermediary bank”	Section 4-105.
49	“Payor bank”	Section 4-105.
50	“Presenting bank”	Section 4-105.
51	“Presentment notice”	Section 4-110.

52 (c) “Control” as provided in section 7-106 and the follow-
53 ing definitions in other articles apply to this article:

54	“Acceptance”	Section 3-409.
55	“Alteration”	Section 3-407.
56	“Cashier’s check”	Section 3-104.
57	“Certificate of deposit”	Section 3-104.
58	“Certified check”	Section 3-409.
59	“Check”	Section 3-104.
60	“Draft”	Section 3-104.
61	“Holder in due course”	Section 3-302.
62	“Instrument”	Section 3-104.
63	“Notice of dishonor”	Section 3-503.
64	“Order”	Section 3-103.
65	“Ordinary care”	Section 3-103.
66	“Person entitled to enforce”	Section 3-301.
67	“Presentment”	Section 3-501.
68	“Promise”	Section 3-103.
69	“Prove”	Section 3-103.
70	“Teller’s check”	Section 3-104.
71	“Unauthorized signature”	Section 3-403.

72 (d) In addition, article one contains general definitions and
73 principles of construction and interpretation applicable
74 throughout this article.

§46-4-210. Security interest of collecting bank in items, accompanying documents and proceeds.

1 (a) A collecting bank has a security interest in an item and
2 any accompanying documents or the proceeds of either:

3 (1) In case of an item deposited in an account, to the extent
4 to which credit given for the item has been withdrawn or
5 applied;

6 (2) In case of an item for which it has given credit available
7 for withdrawal as of right, to the extent of the credit given,
8 whether or not the credit is drawn upon or there is a right of
9 charge-back; or

10 (3) If it makes an advance on or against the item.

11 (b) If credit given for several items received at one time or
12 pursuant to a single agreement is withdrawn or applied in part,
13 the security interest remains upon all the items, any accompa-
14 nying documents or the proceeds of either. For the purpose of
15 this section, credits first given are first withdrawn.

16 (c) Receipt by a collecting bank of a final settlement for an
17 item is a realization on its security interest in the item, accom-
18 panying documents and proceeds. So long as the bank does not
19 receive final settlement for the item or give up possession of the
20 item or possession or control of the accompanying documents
21 for purposes other than collection, the security interest contin-
22 ues to that extent and is subject to article nine but:

23 (1) No security agreement is necessary to make the security
24 interest enforceable (section 9-203(b)(3)(A));

25 (2) No filing is required to perfect the security interest; and

26 (3) The security interest has priority over conflicting
27 perfected security interests in the item, accompanying docu-
28 ments or proceeds.

ARTICLE 4A. FUND TRANSFERS.

§46-4A-105. Other definitions.

§46-4A-106. Time payment order is received.

§46-4A-204. Refund of payment and duty of customer to report with respect to unauthorized payment order.

§46-4A-105. Other definitions.

1 (a) In this article:

2 (1) “Authorized account” means a deposit account of a
3 customer in a bank designated by the customer as a source of
4 payment of payment orders issued by the customer to the bank.
5 If a customer does not so designate an account, any account of
6 the customer is an authorized account if payment of a payment
7 order from that account is not inconsistent with a restriction on
8 the use of that account.

9 (2) “Banker” means a person engaged in the business of
10 banking and includes a savings bank, savings and loan associa-
11 tion, credit union, and trust company. A branch or separate
12 office of a bank is a separate bank for purposes of this article.

13 (3) “Customer” means a person, including a bank, having
14 an account with a bank or from whom a bank has agreed to
15 receive payment orders.

16 (4) “Funds-transfer business day” of a receiving bank
17 means the part of a day during which the receiving bank is open
18 for the receipt, processing and transmittal of payment orders
19 and cancellations and amendments of payment orders.

20 (5) “Funds-transfer system” means a wire transfer network,
21 automated clearing house or other communication system of a
22 clearing house or other association of banks through which a
23 payment order by a bank may be transmitted to the bank to
24 which the order is addressed.

25 (6) [reserved]

26 (7) “Prove” with respect to a fact means to meet the burden
27 of establishing the fact (section 1–201(b)(8)).

28 (b) Other definitions applying to this article and the
29 sections in which they appear are:

30 (1) “Acceptance”, §46-4A-209.

31 (2) “Beneficiary”, §46-4A-103.

32 (3) “Beneficiary’s bank”, §46-4A-103.

33 (4) “Executed”, §46-4A-301.

34 (5) “Execution date”, §46-4A-301.

35 (6) “Funds transfer”, §46-4A-104.

36 (7) “Funds-transfer system rule”, §46-4A-501.

37 (8) “Intermediary bank”, §46-4A-104.

38 (9) “Originator”, §46-4A-104.

39 (10) “Originator’s bank”, §46-4A-104.

40 (11) “Payment by beneficiary’s bank to beneficiary”, §46-
41 4A-405.

42 (12) “Payment by originator to beneficiary”, §46-4A-406.

43 (13) “Payment by sender to receiving bank”, §46-4A-403.

44 (14) “Payment date”, §46-4A-401.

45 (15) “Payment order”, §46-4A-103.

46 (16) “Receiving bank”, §46-4A-103.

47 (17) “Security procedure”, §46-4A-201.

48 (18) “Sender”, §46-4A-103.

49 (c) The following definitions in article four of this chapter
50 apply to this article:

51 (1) “Clearing house”, §46-4-104.

52 (2) “Item”, §46-4-104.

53 (3) “Suspends payments”, §46-4-104.

54 (d) In addition, article one of this chapter contains general
55 definitions and principles of construction and interpretation
56 applicable throughout this article.

§46-4A-106. Time payment order is received.

1 (a) The time of receipt of a payment order or communica-
2 tion cancelling or amending a payment order is determined by
3 the rules applicable to receipt of a notice stated in section 1-
4 202. A receiving bank may fix a cut-off time or times on a
5 funds-transfer business day for the receipt and processing of
6 payment orders and communications cancelling or amending
7 payment orders. Different cut-off times may apply to payment
8 orders, cancellations, or amendments, or to different categories
9 of payment orders, cancellations, or amendments. A cut-off
10 time may apply to senders generally or different cut-off times
11 may apply to different senders or categories of payment orders.
12 If a payment order or communication cancelling or amending
13 a payment order is received after the close of a funds-transfer
14 business day or after the appropriate cut-off time on a
15 funds-transfer business day, the receiving bank may treat the
16 payment order or communication as received at the opening of
17 the next funds-transfer business day.

18 (b) If this article refers to an execution date or payment date
19 or states a day on which a receiving bank is required to take
20 action, and the date or day does not fall on a funds-transfer
21 business day, the next day that is a funds-transfer business day
22 is treated as the date or day stated, unless the contrary is stated
23 in this article.

**§46-4A-204. Refund of payment and duty of customer to report
with respect to unauthorized payment order.**

1 (a) If a receiving bank accepts a payment order issued in the
2 name of its customer as sender which is: (1) Not authorized and
3 not effective as the order of the customer under §46-4A-202; or
4 (2) not enforceable, in whole or in part, against the customer
5 under §46-4A-203, the bank shall refund any payment of the
6 payment order received from the customer to the extent the
7 bank is not entitled to enforce payment, and shall pay interest
8 on the refundable amount calculated from the date the bank
9 received payment to the date of the refund. However, the
10 customer is not entitled to interest from the bank on the amount
11 to be refunded if the customer fails to exercise ordinary care to
12 determine that the order was not authorized by the customer and
13 to notify the bank of the relevant facts within a reasonable time
14 not exceeding ninety days after the date the customer received
15 notification from the bank that the order was accepted or that
16 the customer's account was debited with respect to the order.
17 The bank is not entitled to any recovery from the customer on
18 account of a failure by the customer to give notification as
19 stated in this section.

20 (b) Reasonable time under subsection (a) of this section
21 may be fixed by agreement as stated in section 1-302(b), but the
22 obligation of a receiving bank to refund payment as stated in
23 subsection (a) of this section may not otherwise be varied by
24 agreement.

ARTICLE 5. LETTERS OF CREDIT.**§46-5-103. Scope.**

1 (a) This article applies to letters of credit and to certain
2 rights and obligations arising out of transactions involving
3 letters of credit.

4 (b) The statement of a rule in this article does not by itself
5 require, imply, or negate application of the same or a different
6 rule to a situation not provided for, or to a person not specified,
7 in this article.

8 (c) With the exception of this subsection, subsections (a)
9 and (d), sections 5-102(a)(9) and (10), 5-106(d), and 5-114(d),
10 and except to the extent prohibited in sections 1-302 and
11 5-117(d), the effect of this article may be varied by agreement
12 or by a provision stated or incorporated by reference in an
13 undertaking. A term in an agreement or undertaking generally
14 excusing liability or generally limiting remedies for failure to
15 perform obligations is not sufficient to vary obligations
16 prescribed by this article.

17 (d) Rights and obligations of an issuer to a beneficiary or a
18 nominated person under a letter of credit are independent of the
19 existence, performance, or nonperformance of a contract or
20 arrangement out of which the letter of credit arises or which
21 underlies it, including contracts or arrangements between the
22 issuer and the applicant and between the applicant and the
23 beneficiary.

**ARTICLE 7. WAREHOUSE RECEIPTS, BILL OF LADING AND OTHER
DOCUMENTS OF TITLE.****PART 1. GENERAL.**

§46-7-101. Short title.

§46-7-102. Definitions and index of definitions.

§46-7-103. Relation of article to treaty or statute.

- §46-7-104. Negotiable and nonnegotiable document of title.
- §46-7-105. Reissuance in alternative medium.
- §46-7-106. Control of electronic document of title.
- §46-7-201. Person that may issue a warehouse receipt; storage under bond.
- §46-7-202. Form of warehouse receipt; effect of omission.
- §46-7-203. Liability for nonreceipt or misdescription.
- §46-7-204. Duty of care; contractual limitation of warehouse's liability.
- §46-7-205. Title under warehouse receipt defeated in certain cases.
- §46-7-206. Termination of storage of warehouse's option.
- §46-7-207. Goods must be kept separate; fungible goods.
- §46-7-208. Altered warehouse receipts.
- §46-7-209. Lien of warehouse.
- §46-7-210. Enforcement of warehouse's lien.
- §46-7-301. Liability for nonreceipt or misdescription; "said to contain"; "shipper's weight, load and count"; improper handling.
- §46-7-302. Through bills of lading and similar documents of title.
- §46-7-303. Diversion; reconsignment; change of instructions.
- §46-7-304. Tangible bills of lading in a set.
- §46-7-305. Destination bills.
- §46-7-306. Altered bills of lading.
- §46-7-307. Lien of carrier.
- §46-7-308. Enforcement of carrier's lien.
- §46-7-309. Duty of care; contractual limitation of carrier's liability.
- §46-7-401. Irregularities in issue of receipt or bill or conduct of issuer.
- §46-7-402. Duplicate document of title; overissuance.
- §46-7-403. Obligation of bailee to deliver; excuse.
- §46-7-404. No liability for good-faith delivery pursuant to document of title.
- §46-7-501. Form of negotiation and requirements of due negotiation.
- §46-7-502. Rights acquired by due negotiation.
- §46-7-503. Document of title to goods defeated in certain cases.
- §46-7-504. Rights acquired in absence of due negotiation; effect of diversion; stoppage of delivery.
- §46-7-505. Indorser not guarantor for other parties.
- §46-7-506. Delivery without indorsement: right to compel indorsement.
- §46-7-507. Warranties on negotiation or delivery of document of title.
- §46-7-508. Warranties of collecting bank as to documents of title.
- §46-7-509. Adequate compliance with commercial contract.
- §46-7-601. Lost, stolen or destroyed title.
- §46-7-602. Judicial process against goods covered by negotiable document of title.
- §46-7-603. Conflicting claims; interpleader.
- §46-7-701. Applicability.
- §46-7-702. Savings clause.

§46-7-101. Short title.

1 This article may be cited as Uniform Commercial
2 Code—Documents of Title.

§46-7-102. Definitions and index of definitions.

1 (a) In this article, unless the context otherwise requires:

2 (1) “Bailee” means a person that by a warehouse receipt,
3 bill of lading, or other document of title acknowledges
4 possession of goods and contracts to deliver them.

5 (2) “Carrier” means a person that issues a bill of lading.

6 (3) “Consignee” means a person named in a bill of lading
7 to which or to whose order the bill promises delivery.

8 (4) “Consignor” means a person named in a bill of lading
9 as the person from which the goods have been received for
10 shipment.

11 (5) “Delivery order” means a record that contains an order
12 to deliver goods directed to a warehouse, carrier, or other
13 person that in the ordinary course of business issues warehouse
14 receipts or bills of lading.

15 (6) “Good faith” means honesty in fact and the observance
16 of reasonable commercial standards of fair dealing.

17 (7) “Goods” means all things that are treated as movable for
18 the purposes of a contract for storage or transportation.

19 (8) “Issuer” means a bailee that issues a document of title
20 or, in the case of an unaccepted delivery order, the person that
21 orders the possessor of goods to deliver. The term includes a
22 person for which an agent or employee purports to act in
23 issuing a document if the agent or employee has real or

24 apparent authority to issue documents, even if the issuer did not
25 receive any goods, the goods were misdescribed, or in any other
26 respect the agent or employee violated the issuer's instructions.

27 (9) "Person entitled under the document" means the holder,
28 in the case of a negotiable document of title, or the person to
29 which delivery of the goods is to be made by the terms of, or
30 pursuant to instructions in a record under, a nonnegotiable
31 document of title.

32 (10) "Record" means information that is inscribed on a
33 tangible medium or that is stored in an electronic or other
34 medium and is retrievable in perceivable form.

35 (11) "Sign" means, with present intent to authenticate or
36 adopt a record:

37 (A) To execute or adopt a tangible symbol; or

38 (B) To attach to or logically associate with the record an
39 electronic sound, symbol, or process.

40 (12) "Shipper" means a person that enters into a contract of
41 transportation with a carrier.

42 (13) "Warehouse" means a person engaged in the business
43 of storing goods for hire.

44 (b) Definitions in other articles applying to this article and
45 the sections in which they appear are:

46 (1) "Contract for sale", Section 2-106.

47 (2) "Lessee in the ordinary course of business", Section 2A-
48 103.

49 (3) "Receipt" of goods, Section 2-103.

50 (c) In addition, Article 1 contains general definitions and
51 principles of construction and interpretation applicable
52 throughout this article.

§46-7-103. Relation of article to treaty or statute.

1 (a) This article is subject to any treaty or statute of the
2 United States or regulatory statute of this state to the extent the
3 treaty, statute or regulatory statute is applicable.

4 (b) This article does not modify or repeal any law prescrib-
5 ing the form or content of a document of title or the services or
6 facilities to be afforded by a bailee, or otherwise regulating a
7 bailee's business in respects not specifically treated in this
8 article. However, violation of such a law does not affect the
9 status of a document of title that otherwise is within the
10 definition of a document of title.

11 (c) This [act] modifies, limits, and supersedes the federal
12 Electronic Signatures in Global and National Commerce Act
13 (15 U.S.C. Section 7001, et. seq.) but does not modify, limit, or
14 supersede Section 101(c) of that act (15 U.S.C. Section
15 7001(c)) or authorize electronic delivery of any of the notices
16 described in Section 103(b) of that act (15 U.S.C. Section
17 7003(b)).

18 (d) To the extent there is a conflict between article one,
19 chapter thirty-nine A and this article, this article governs.

§46-7-104. Negotiable and nonnegotiable document of title.

1 (a) Except as otherwise provided in subsection (c), a
2 document of title is negotiable if by its terms the goods are to
3 be delivered to bearer or to the order of a named person.

4 (b) A document of title other than one described in
5 subsection (a) is nonnegotiable. A bill of lading that states that

6 the goods are consigned to a named person is not made
7 negotiable by a provision that the goods are to be delivered only
8 against an order in a record signed by the same or another
9 named person.

10 (c) A document of title is nonnegotiable if, at the time it is
11 issued, the document has a conspicuous legend, however
12 expressed, that it is nonnegotiable.

§46-7-105. Reissuance in alternative medium.

1 (a) Upon request of a person entitled under an electronic
2 document of title, the issuer of the electronic document may
3 issue a tangible document of title as a substitute for the
4 electronic document if:

5 (1) The person entitled under the electronic document
6 surrenders control of the document to the issuer; and

7 (2) The tangible document when issued contains a state-
8 ment that it is issued in substitution for the electronic document.

9 (b) Upon issuance of a tangible document of title in
10 substitution for an electronic document of title in accordance
11 with subsection (a):

12 (1) The electronic document ceases to have any effect or
13 validity; and

14 (2) The person that procured issuance of the tangible
15 document warrants to all subsequent persons entitled under the
16 tangible document that the warrantor was a person entitled
17 under the electronic document when the warrantor surrendered
18 control of the electronic document to the issuer.

19 (c) Upon request of a person entitled under a tangible
20 document of title, the issuer of the tangible document may issue

21 an electronic document of title as a substitute for the tangible
22 document if:

23 (1) The person entitled under the tangible document
24 surrenders possession of the document to the issuer; and

25 (2) The electronic document when issued contains a
26 statement that it is issued in substitution for the tangible
27 document.

28 (d) Upon issuance of an electronic document of title in
29 substitution for a tangible document of title in accordance with
30 subsection (c):

31 (1) The tangible document ceases to have any effect or
32 validity; and

33 (2) The person that procured issuance of the electronic
34 document warrants to all subsequent persons entitled under the
35 electronic document that the warrantor was a person entitled
36 under the tangible document when the warrantor surrendered
37 possession of the tangible document to the issuer.

§46-7-106. Control of electronic document of title.

1 (a) A person has control of an electronic document of title
2 if a system employed for evidencing the transfer of interests in
3 the electronic document reliably establishes that person as the
4 person to which the electronic document was issued or
5 transferred.

6 (b) A system satisfies subsection (a), and a person is
7 deemed to have control of an electronic document of title, if the
8 document is created, stored, and assigned in such a manner that:

9 (1) A single authoritative copy of the document exists
10 which is unique, identifiable, and, except as otherwise provided
11 in paragraphs (4), (5), and (6), unalterable;

12 (2) The authoritative copy identifies the person asserting
13 control as:

14 (A) The person to which the document was issued; or

15 (B) If the authoritative copy indicates that the document has
16 been transferred, the person to which the document was most
17 recently transferred;

18 (3) The authoritative copy is communicated to and
19 maintained by the person asserting control or its designated
20 custodian;

21 (4) Copies or amendments that add or change an identified
22 assignee of the authoritative copy can be made only with the
23 consent of the person asserting control;

24 (5) Each copy of the authoritative copy and any copy of a
25 copy is readily identifiable as a copy that is not the authoritative
26 copy; and

27 (6) Any amendment of the authoritative copy is readily
28 identifiable as authorized or unauthorized.

PART 2 - WAREHOUSE RECEIPTS: SPECIAL PROVISIONS.

§46-7-201. Person that may issue a warehouse receipt; storage under bond.

1 (a) A warehouse receipt may be issued by any warehouse.

2 (b) If goods, including distilled spirits and agricultural
3 commodities, are stored under a statute requiring a bond against
4 withdrawal or a license for the issuance of receipts in the nature
5 of warehouse receipts, a receipt issued for the goods is deemed
6 to be a warehouse receipt even if issued by a person that is the
7 owner of the goods and is not a warehouse.

§46-7-202. Form of warehouse receipt; effect of omission.

1 (a) A warehouse receipt need not be in any particular form.

2 (b) Unless a warehouse receipt provides for each of the
3 following, the warehouse is liable for damages caused to a
4 person injured by its omission:

5 (1) A statement of the location of the warehouse facility
6 where the goods are stored;

7 (2) The date of issue of the receipt;

8 (3) The unique identification code of the receipt;

9 (4) A statement whether the goods received will be
10 delivered to the bearer, to a named person, or to a named person
11 or its order;

12 (5) The rate of storage and handling charges, unless goods
13 are stored under a field warehousing arrangement, in which
14 case a statement of that fact is sufficient on a nonnegotiable
15 receipt;

16 (6) A description of the goods or the packages containing
17 them;

18 (7) The signature of the warehouse or its agent;

19 (8) If the receipt is issued for goods that the warehouse
20 owns, either solely, jointly, or in common with others, a
21 statement of the fact of that ownership; and

22 (9) A statement of the amount of advances made and of
23 liabilities incurred for which the warehouse claims a lien or
24 security interest, unless the precise amount of advances made
25 or liabilities incurred, at the time of the issue of the receipt, is
26 unknown to the warehouse or to its agent that issued the receipt,

27 in which case a statement of the fact that advances have been
28 made or liabilities incurred and the purpose of the advances or
29 liabilities is sufficient.

30 (c) A warehouse may insert in its receipt any terms that are
31 not contrary to [the Uniform Commercial Code] and do not
32 impair its obligation of delivery under section 7-403 or its duty
33 of care under section 7-204. Any contrary provision is ineffec-
34 tive.

§46-7-203. Liability for nonreceipt or misdescription.

1 A party to or purchaser for value in good faith of a
2 document of title, other than a bill of lading, that relies upon the
3 description of the goods in the document may recover from the
4 issuer damages caused by the nonreceipt or misdescription of
5 the goods, except to the extent that:

6 (1) The document conspicuously indicates that the issuer
7 does not know whether all or part of the goods in fact were
8 received or conform to the description, such as a case in which
9 the description is in terms of marks or labels or kind, quantity,
10 or condition, or the receipt or description is qualified by
11 “contents, condition, and quality unknown”, “said to contain”,
12 or words of similar import, if the indication is true; or

13 (2) The party or purchaser otherwise has notice of the
14 nonreceipt or misdescription.

§46-7-204. Duty of care; contractual limitation of warehouse’s liability.

1 (a) A warehouse is liable for damages for loss of or injury
2 to the goods caused by its failure to exercise care with regard to
3 the goods that a reasonably careful person would exercise under
4 similar circumstances. Unless otherwise agreed, the warehouse
5 is not liable for damages that could not have been avoided by
6 the exercise of that care.

7 (b) Damages may be limited by a term in the warehouse
8 receipt or storage agreement limiting the amount of liability in
9 case of loss or damage beyond which the warehouse is not
10 liable. Such a limitation is not effective with respect to the
11 warehouse's liability for conversion to its own use. On request
12 of the bailor in a record at the time of signing the storage
13 agreement or within a reasonable time after receipt of the
14 warehouse receipt, the warehouse's liability may be increased
15 on part or all of the goods covered by the storage agreement or
16 the warehouse receipt. In this event, increased rates may be
17 charged based on an increased valuation of the goods.

18 (c) Reasonable provisions as to the time and manner of
19 presenting claims and commencing actions based on the
20 bailment may be included in the warehouse receipt or storage
21 agreement.

§46-7-205. Title under warehouse receipt defeated in certain cases.

1 A buyer in ordinary course of business of fungible goods
2 sold and delivered by a warehouse that is also in the business of
3 buying and selling such goods takes the goods free of any claim
4 under a warehouse receipt even if the receipt is negotiable and
5 has been duly negotiated.

§46-7-206. Termination of storage at warehouse's option.

1 (a) A warehouse, by giving notice to the person on whose
2 account the goods are held and any other person known to claim
3 an interest in the goods, may require payment of any charges
4 and removal of the goods from the warehouse at the termination
5 of the period of storage fixed by the document of title or, if a
6 period is not fixed, within a stated period not less than 30 days
7 after the warehouse gives notice. If the goods are not removed
8 before the date specified in the notice, the warehouse may sell
9 them pursuant to section 7-210.

10 (b) If a warehouse in good faith believes that goods are
11 about to deteriorate or decline in value to less than the amount
12 of its lien within the time provided in subsection (a) and section
13 7-210, the warehouse may specify in the notice given under
14 subsection (a) any reasonable shorter time for removal of the
15 goods and, if the goods are not removed, may sell them at
16 public sale held not less than one week after a single advertise-
17 ment or posting.

18 (c) If, as a result of a quality or condition of the goods of
19 which the warehouse did not have notice at the time of deposit,
20 the goods are a hazard to other property, the warehouse
21 facilities, or other persons, the warehouse may sell the goods at
22 public or private sale without advertisement or posting on
23 reasonable notification to all persons known to claim an interest
24 in the goods. If the warehouse, after a reasonable effort, is
25 unable to sell the goods, it may dispose of them in any lawful
26 manner and does not incur liability by reason of that disposi-
27 tion.

28 (d) A warehouse shall deliver the goods to any person
29 entitled to them under this article upon due demand made at any
30 time before sale or other disposition under this section.

31 (e) A warehouse may satisfy its lien from the proceeds of
32 any sale or disposition under this section but shall hold the
33 balance for delivery on the demand of any person to which the
34 warehouse would have been bound to deliver the goods.

§46-7-207. Goods must be kept separate; fungible goods.

1 (a) Unless the warehouse receipt provides otherwise, a
2 warehouse shall keep separate the goods covered by each
3 receipt so as to permit at all times identification and delivery of
4 those goods . However, different lots of fungible goods may be
5 commingled.

6 (b) If different lots of fungible goods are commingled, the
7 goods are owned in common by the persons entitled thereto and
8 the warehouse is severally liable to each owner for that owner's
9 share. If, because of overissue, a mass of fungible goods is
10 insufficient to meet all the receipts the warehouse has issued
11 against it, the persons entitled include all holders to which
12 overissued receipts have been duly negotiated.

§46-7-208. Altered warehouse receipts.

1 If a blank in a negotiable tangible warehouse receipt has
2 been filled in without authority, a good-faith purchaser for
3 value and without notice of the lack of authority may treat the
4 insertion as authorized. Any other unauthorized alteration
5 leaves any tangible or electronic warehouse receipt enforceable
6 against the issuer according to its original tenor.

§46-7-209. Lien of warehouse.

1 (a) A warehouse has a lien against the bailor on the goods
2 covered by a warehouse receipt or storage agreement or on the
3 proceeds thereof in its possession for charges for storage or
4 transportation, including demurrage and terminal charges,
5 insurance, labor, or other charges, present or future, in relation
6 to the goods, and for expenses necessary for preservation of the
7 goods or reasonably incurred in their sale pursuant to law. If the
8 person on whose account the goods are held is liable for similar
9 charges or expenses in relation to other goods whenever
10 deposited and it is stated in the warehouse receipt or storage
11 agreement that a lien is claimed for charges and expenses in
12 relation to other goods, the warehouse also has a lien against the
13 goods covered by the warehouse receipt or storage agreement
14 or on the proceeds thereof in its possession for those charges
15 and expenses, whether or not the other goods have been
16 delivered by the warehouse. However, as against a person to
17 which a negotiable warehouse receipt is duly negotiated, a

18 warehouse's lien is limited to charges in an amount or at a rate
19 specified in the warehouse receipt or, if no charges are so
20 specified, to a reasonable charge for storage of the specific
21 goods covered by the receipt subsequent to the date of the
22 receipt.

23 (b) A warehouse may also reserve a security interest against
24 the bailor for the maximum amount specified on the receipt for
25 charges other than those specified in subsection(a), such as for
26 money advanced and interest. The security interest is governed
27 by article 9.

28 (c) A warehouse's lien for charges and expenses under
29 subsection (a) or a security interest under subsection(b) is also
30 effective against any person that so entrusted the bailor with
31 possession of the goods that a pledge of them by the bailor to a
32 good-faith purchaser for value would have been valid. How-
33 ever, the lien or security interest is not effective against a
34 person that before issuance of a document of title had a legal
35 interest or a perfected security interest in the goods and that did
36 not:

37 (1) Deliver or entrust the goods or any document of title
38 covering the goods to the bailor or the bailor's nominee with:

39 (A) Actual or apparent authority to ship, store, or sell;

40 (B) Power to obtain delivery under section 7-403; or

41 (C) Power of disposition under sections 2-403, 2A-304(2),
42 2A-305(2), 9-320, or 9-321(c) or other statute or rule of law; or

43 (2) Acquiesce in the procurement by the bailor or its
44 nominee of any document.

45 (d) A warehouse's lien on household goods for charges and
46 expenses in relation to the goods under subsection (a) is also

47 effective against all persons if the depositor was the legal
48 possessor of the goods at the time of deposit. In this subsection,
49 “household goods” means furniture, furnishings, or personal
50 effects used by the depositor in a dwelling.

51 (e) A warehouse loses its lien on any goods that it volun-
52 tarily delivers or unjustifiably refuses to deliver.

§46-7-210. Enforcement of warehouse’s lien.

1 (a) Except as otherwise provided in subsection(b), a
2 warehouse’s lien may be enforced by public or private sale of
3 the goods, in bulk or in packages, at any time or place and on
4 any terms that are commercially reasonable, after notifying all
5 persons known to claim an interest in the goods. The notifica-
6 tion must include a statement of the amount due, the nature of
7 the proposed sale, and the time and place of any public sale.
8 The fact that a better price could have been obtained by a sale
9 at a different time or in a method different from that selected by
10 the warehouse is not of itself sufficient to establish that the sale
11 was not made in a commercially reasonable manner. The
12 warehouse sells in a commercially reasonable manner if the
13 warehouse sells the goods in the usual manner in any recog-
14 nized market therefore, sells at the price current in that market
15 at the time of the sale, or otherwise sells in conformity with
16 commercially reasonable practices among dealers in the type of
17 goods sold. A sale of more goods than apparently necessary to
18 be offered to ensure satisfaction of the obligation is not
19 commercially reasonable, except in cases covered by the
20 preceding sentence.

21 (b) A warehouse may enforce its lien on goods, other than
22 goods stored by a merchant in the course of its business, only
23 if the following requirements are satisfied:

24 (1) All persons known to claim an interest in the goods
25 must be notified.

26 (2) The notification must include an itemized statement of
27 the claim, a description of the goods subject to the lien, a
28 demand for payment within a specified time not less than 10
29 days after receipt of the notification, and a conspicuous
30 statement that unless the claim is paid within that time the
31 goods will be advertised for sale and sold by auction at a
32 specified time and place.

33 (3) The sale must conform to the terms of the notification.

34 (4) The sale must be held at the nearest suitable place to
35 where the goods are held or stored.

36 (5) After the expiration of the time given in the notification,
37 an advertisement of the sale must be published once a week for
38 two weeks consecutively in a newspaper of general circulation
39 where the sale is to be held. The advertisement must include a
40 description of the goods, the name of the person on whose
41 account the goods are being held, and the time and place of the
42 sale. The sale must take place at least 15 days after the first
43 publication. If there is no newspaper of general circulation
44 where the sale is to be held, the advertisement must be posted
45 at least 10 days before the sale in not fewer than six conspicu-
46 ous places in the neighborhood of the proposed sale.

47 (c) Before any sale pursuant to this section, any person
48 claiming a right in the goods may pay the amount necessary to
49 satisfy the lien and the reasonable expenses incurred in
50 complying with this section. In that event, the goods may not be
51 sold but must be retained by the warehouse subject to the terms
52 of the receipt and this article.

53 (d) A warehouse may buy at any public sale held pursuant
54 to this section.

55 (e) A purchaser in good faith of goods sold to enforce a
56 warehouse's lien takes the goods free of any rights of persons

57 against which the lien was valid, despite the warehouse's
58 noncompliance with this section.

59 (f) A warehouse may satisfy its lien from the proceeds of
60 any sale pursuant to this section but shall hold the balance, if
61 any, for delivery on demand to any person to which the
62 warehouse would have been bound to deliver the goods.

63 (g) The rights provided by this section are in addition to all
64 other rights allowed by law to a creditor against a debtor.

65 (h) If a lien is on goods stored by a merchant in the course
66 of its business, the lien may be enforced in accordance with
67 subsection (a) or (b).

68 (i) A warehouse is liable for damages caused by failure to
69 comply with the requirements for sale under this section and, in
70 case of willful violation, is liable for conversion.

PART 3—BILLS OF LADING: SPECIAL PROVISIONS.

§46-7-301. Liability for nonreceipt or misdescription; “said to contain”; “shipper’s weight, load and count”; improper handling.

1 (a) A consignee of a nonnegotiable bill of lading which has
2 given value in good faith, or a holder to which a negotiable bill
3 has been duly negotiated, relying upon the description of the
4 goods in the bill or upon the date shown in the bill, may recover
5 from the issuer damages caused by the misdating of the bill or
6 the nonreceipt or misdescription of the goods, except to the
7 extent that the bill indicates that the issuer does not know
8 whether any part or all of the goods in fact were received or
9 conform to the description, such as in a case in which the
10 description is in terms of marks or labels or kind, quantity, or
11 condition or the receipt or description is qualified by “contents
12 or condition of contents of packages unknown”, “said to

13 contain”, “shipper’s weight, load, and count”, or words of
14 similar import, if that indication is true.

15 (b) If goods are loaded by the issuer of a bill of lading;

16 (1) The issuer shall count the packages of goods if shipped
17 in packages and ascertain the kind and quantity if shipped in
18 bulk; and

19 (2) Words such as “shipper’s weight, load, and count” or
20 words of similar import indicating that the description was
21 made by the shipper are ineffective except as to goods con-
22 cealed in packages.

23 (c) If bulk goods are loaded by a shipper that makes
24 available to the issuer of a bill of lading adequate facilities for
25 weighing those goods, the issuer shall ascertain the kind and
26 quantity within a reasonable time after receiving the shipper’s
27 request in a record to do so. In that case, “shipper’s weight” or
28 words of similar import are ineffective.

29 (d) The issuer of a bill of lading, by including in the bill the
30 words “shipper’s weight, load, and count”, or words of similar
31 import, may indicate that the goods were loaded by the shipper,
32 and, if that statement is true, the issuer is not liable for damages
33 caused by the improper loading. However, omission of such
34 words does not imply liability for damages caused by improper
35 loading.

36 (e) A shipper guarantees to an issuer the accuracy at the
37 time of shipment of the description, marks, labels, number,
38 kind, quantity, condition, and weight, as furnished by the
39 shipper, and the shipper shall indemnify the issuer against
40 damage caused by inaccuracies in those particulars. This right
41 of indemnity does not limit the issuer’s responsibility or
42 liability under the contract of carriage to any person other than
43 the shipper.

§46-7-302. Through bills of lading and similar documents of title.

1 (a) The issuer of a through bill of lading, or other document
2 of title embodying an undertaking to be performed in part by a
3 person acting as its agent or by a performing carrier, is liable to
4 any person entitled to recover on the bill or other document for
5 any breach by the other person or the performing carrier of its
6 obligation under the bill or other document. However, to the
7 extent that the bill or other document covers an undertaking to
8 be performed overseas or in territory not contiguous to the
9 continental United States or an undertaking including matters
10 other than transportation, this liability for breach by the other
11 person or the performing carrier may be varied by agreement of
12 the parties.

13 (b) If goods covered by a through bill of lading or other
14 document of title embodying an undertaking to be performed in
15 part by a person other than the issuer are received by that
16 person, the person is subject, with respect to its own perfor-
17 mance while the goods are in its possession, to the obligation of
18 the issuer. The person's obligation is discharged by delivery of
19 the goods to another person pursuant to the bill or other
20 document and does not include liability for breach by any other
21 person or by the issuer.

22 (c) The issuer of a through bill of lading or other document
23 of title described in subsection (a) is entitled to recover from the
24 performing carrier, or other person in possession of the goods
25 when the breach of the obligation under the bill or other
26 document occurred:

27 (1) The amount it may be required to pay to any person
28 entitled to recover on the bill or other document for the breach,
29 as may be evidenced by any receipt, judgment, or transcript of
30 judgment; and

31 (2) The amount of any expense reasonably incurred by the
32 issuer in defending any action commenced by any person
33 entitled to recover on the bill or other document for the breach.

§46-7-303. Diversion; reconsignment; change of instructions.

1 (a) Unless the bill of lading otherwise provides, a carrier
2 may deliver the goods to a person or destination other than that
3 stated in the bill or may otherwise dispose of the goods, without
4 liability for misdelivery, on instructions from:

5 (1) The holder of a negotiable bill;

6 (2) The consignor on a nonnegotiable bill, even if the
7 consignee has given contrary instructions;

8 (3) The consignee on a nonnegotiable bill in the absence of
9 contrary instructions from the consignor, if the goods have
10 arrived at the billed destination or if the consignee is in
11 possession of the tangible bill or in control of the electronic bill;
12 or

13 (4) The consignee on a nonnegotiable bill, if the consignee
14 is entitled as against the consignor to dispose of the goods.

15 (b) Unless instructions described in subsection (a) are
16 included in a negotiable bill of lading, a person to which the bill
17 is duly negotiated may hold the bailee according to the original
18 terms.

§46-7-304. Tangible bills of lading in a set.

1 (a) Except as customary in international transportation, a
2 tangible bill of lading may not be issued in a set of parts. The
3 issuer is liable for damages caused by violation of this subsec-
4 tion.

5 (b) If a tangible bill of lading is lawfully issued in a set of
6 parts, each of which contains an identification code and is
7 expressed to be valid only if the goods have not been delivered
8 against any other part, the whole of the parts constitutes one
9 bill.

10 (c) If a tangible negotiable bill of lading is lawfully issued
11 in a set of parts and different parts are negotiated to different
12 persons, the title of the holder to which the first due negotiation
13 is made prevails as to both the document of title and the goods
14 even if any later holder may have received the goods from the
15 carrier in good faith and discharged the carrier's obligation by
16 surrendering its part.

17 (d) A person that negotiates or transfers a single part of a
18 tangible bill of lading issued in a set is liable to holders of that
19 part as if it were the whole set.

20 (e) The bailee shall deliver in accordance with Part 4
21 against the first presented part of a tangible bill of lading
22 lawfully issued in a set. Delivery in this manner discharges the
23 bailee's obligation on the whole bill.

§46-7-305. Destination bills.

1 (a) Instead of issuing a bill of lading to the consignor at the
2 place of shipment, a carrier, at the request of the consignor, may
3 procure the bill to be issued at destination or at any other place
4 designated in the request.

5 (b) Upon request of any person entitled as against a carrier
6 to control the goods while in transit and on surrender of
7 possession or control of any outstanding bill of lading or other
8 receipt covering the goods, the issuer, subject to section 7-105,
9 may procure a substitute bill to be issued at any place desig-
10 nated in the request.

§46-7-306. Altered bills of lading.

1 An unauthorized alteration or filling in of a blank in a bill
2 of lading leaves the bill enforceable according to its original
3 tenor.

§46-7-307. Lien of carrier.

1 (a) A carrier has a lien on the goods covered by a bill of
2 lading or on the proceeds thereof in its possession for charges
3 after the date of the carrier's receipt of the goods for storage or
4 transportation, including demurrage and terminal charges, and
5 for expenses necessary for preservation of the goods incident to
6 their transportation or reasonably incurred in their sale pursuant
7 to law. However, against a purchaser for value of a negotiable
8 bill of lading, a carrier's lien is limited to charges stated in the
9 bill or the applicable tariffs or, if no charges are stated, a
10 reasonable charge.

11 (b) A lien for charges and expenses under subsection(a) on
12 goods that the carrier was required by law to receive for
13 transportation is effective against the consignor or any person
14 entitled to the goods unless the carrier had notice that the
15 consignor lacked authority to subject the goods to those charges
16 and expenses. Any other lien under subsection(a) is effective
17 against the consignor and any person that permitted the bailor
18 to have control or possession of the goods unless the carrier had
19 notice that the bailor lacked authority.

20 (c) A carrier loses its lien on any goods that it voluntarily
21 delivers or unjustifiably refuses to deliver.

§46-7-308. Enforcement of carrier's lien.

1 (a) A carrier's lien on goods may be enforced by public or
2 private sale of the goods, in bulk or in packages, at any time or
3 place and on any terms that are commercially reasonable, after

4 notifying all persons known to claim an interest in the goods.
5 The notification must include a statement of the amount due,
6 the nature of the proposed sale, and the time and place of any
7 public sale. The fact that a better price could have been
8 obtained by a sale at a different time or in a method different
9 from that selected by the carrier is not of itself sufficient to
10 establish that the sale was not made in a commercially reason-
11 able manner. The carrier sells goods in a commercially
12 reasonable manner if the carrier sells the goods in the usual
13 manner in any recognized market therefor, sells at the price
14 current in that market at the time of the sale, or otherwise sells
15 in conformity with commercially reasonable practices among
16 dealers in the type of goods sold. A sale of more goods than
17 apparently necessary to be offered to ensure satisfaction of the
18 obligation is not commercially reasonable, except in cases
19 covered by the preceding sentence.

20 (b) Before any sale pursuant to this section, any person
21 claiming a right in the goods may pay the amount necessary to
22 satisfy the lien and the reasonable expenses incurred in
23 complying with this section. In that event, the goods may not be
24 sold but must be retained by the carrier, subject to the terms of
25 the bill of lading and this article.

26 (c) A carrier may buy at any public sale pursuant to this
27 section.

28 (d) A purchaser in good faith of goods sold to enforce a
29 carrier's lien takes the goods free of any rights of persons
30 against which the lien was valid, despite the carrier's noncom-
31 pliance with this section.

32 (e) A carrier may satisfy its lien from the proceeds of any
33 sale pursuant to this section but shall hold the balance, if any,
34 for delivery on demand to any person to which the carrier
35 would have been bound to deliver the goods.

36 (f) The rights provided by this section are in addition to all
37 other rights allowed by law to a creditor against a debtor.

38 (g) A carrier's lien may be enforced pursuant to either
39 subsection(a) or the procedure set forth in section 7-210(b).

40 (h) A carrier is liable for damages caused by failure to
41 comply with the requirements for sale under this section and, in
42 case of willful violation, is liable for conversion.

§46-7-309. Duty of care; contractual limitation of carrier's liability.

1 (a) A carrier that issues a bill of lading, whether negotiable
2 or nonnegotiable, shall exercise the degree of care in relation to
3 the goods which a reasonably careful person would exercise
4 under similar circumstances. This subsection does not affect
5 any statute, regulation, or rule of law that imposes liability upon
6 a common carrier for damages not caused by its negligence.

7 (b) Damages may be limited by a term in the bill of lading
8 or in a transportation agreement that the carrier's liability may
9 not exceed a value stated in the bill or transportation agreement
10 if the carrier's rates are dependent upon value and the consignor
11 is afforded an opportunity to declare a higher value and the
12 consignor is advised of the opportunity. However, such a
13 limitation is not effective with respect to the carrier's liability
14 for conversion to its own use.

15 (c) Reasonable provisions as to the time and manner of
16 presenting claims and commencing actions based on the
17 shipment may be included in a bill of lading or a transportation
18 agreement.

§46-7-401. Irregularities in issue of receipt or bill or conduct of issuer.

1 The obligations imposed by this article on an issuer apply
2 to a document of title even if:

3 (1) The document does not comply with the requirements
4 of this article or of any other statute, rule, or regulation
5 regarding its issuance, form, or content;

6 (2) The issuer violated laws regulating the conduct of its
7 business;

8 (3) The goods covered by the document were owned by the
9 bailee when the document was issued; or

10 (4) The person issuing the document is not a warehouse but
11 the document purports to be a warehouse receipt.

§46-7-402. Duplicate document of title; overissue.

1 A duplicate or any other document of title purporting to
2 cover goods already represented by an outstanding document of
3 the same issuer does not confer any right in the goods, except
4 as provided in the case of tangible bills of lading in a set of
5 parts, overissue of documents for fungible goods, substitutes for
6 lost, stolen, or destroyed documents, or substitute documents
7 issued pursuant to section 7-105. The issuer is liable for
8 damages caused by its overissue or failure to identify a
9 duplicate document by a conspicuous notation.

§46-7-403. Obligation of bailee to deliver; excuse.

1 (a) A bailee shall deliver the goods to a person entitled
2 under a document of title if the person complies with subsec-
3 tions (b) and (c), unless and to the extent that the bailee
4 establishes any of the following:

5 (1) Delivery of the goods to a person whose receipt was
6 rightful as against the claimant;

7 (2) Damage to or delay, loss, or destruction of the goods for
8 which the bailee is not liable;

9 (3) Previous sale or other disposition of the goods in lawful
10 enforcement of a lien or on a warehouse's lawful termination of
11 storage;

12 (4) The exercise by a seller of its right to stop delivery
13 pursuant to section 2-705 or by a lessor of its right to stop
14 delivery pursuant to section 2A-526;

15 (5) A diversion, reconsignment, or other disposition
16 pursuant to section 7-303;

17 (6) Release, satisfaction, or any other personal defense
18 against the claimant; or

19 (7) Any other lawful excuse.

20 (b) A person claiming goods covered by a document of title
21 shall satisfy the bailee's lien if the bailee so requests or if the
22 bailee is prohibited by law from delivering the goods until the
23 charges are paid.

24 (c) Unless a person claiming the goods is a person against
25 which the document of title does not confer a right under
26 section 7-503(a):

27 (1) The person claiming under a document shall surrender
28 possession or control of any outstanding negotiable document
29 covering the goods for cancellation or indication of partial
30 deliveries; and

31 (2) The bailee shall cancel the document or conspicuously
32 indicate in the document the partial delivery or the bailee is
33 liable to any person to which the document is duly negotiated.

§46-7-404. No liability for good-faith delivery pursuant to document of title.

1 A bailee that in good faith has received goods and delivered
2 or otherwise disposed of the goods according to the terms of a
3 document of title or pursuant to this article is not liable for the
4 goods even if:

5 (1) The person from which the bailee received the goods
6 did not have authority to procure the document or to dispose of
7 the goods; or

8 (2) The person to which the bailee delivered the goods did
9 not have authority to receive the goods.

PART 5— WAREHOUSE RECEIPTS AND
BILLS OF LADING: NEGOTIATION AND TRANSFER.

§46-7-501. Form of negotiation and requirements of due negotiation.

1 (a) The following rules apply to a negotiable tangible
2 document of title:

3 (1) If the document's original terms run to the order of a
4 named person, the document is negotiated by the named
5 person's indorsement and delivery. After the named person's
6 indorsement in blank or to bearer, any person may negotiate the
7 document by delivery alone.

8 (2) If the document's original terms run to bearer, it is
9 negotiated by delivery alone.

10 (3) If the document's original terms run to the order of a
11 named person and it is delivered to the named person, the effect
12 is the same as if the document had been negotiated.

13 (4) Negotiation of the document after it has been indorsed
14 to a named person requires indorsement by the named person
15 and delivery.

16 (5) A document is duly negotiated if it is negotiated in the
17 manner stated in this subsection to a holder that purchases it in
18 good faith, without notice of any defense against or claim to it
19 on the part of any person, and for value, unless it is established
20 that the negotiation is not in the regular course of business or
21 financing or involves receiving the document in settlement or
22 payment of a monetary obligation.

23 (b) The following rules apply to a negotiable electronic
24 document of title:

25 (1) If the document's original terms run to the order of a
26 named person or to bearer, the document is negotiated by
27 delivery of the document to another person. Indorsement by the
28 named person is not required to negotiate the document.

29 (2) If the document's original terms run to the order of a
30 named person and the named person has control of the docu-
31 ment, the effect is the same as if the document had been
32 negotiated.

33 (3) A document is duly negotiated if it is negotiated in the
34 manner stated in this subsection to a holder that purchases it in
35 good faith, without notice of any defense against or claim to it
36 on the part of any person, and for value, unless it is established
37 that the negotiation is not in the regular course of business or
38 financing or involves taking delivery of the document in
39 settlement or payment of a monetary obligation.

40 (c) Indorsement of a nonnegotiable document of title
41 neither makes it negotiable nor adds to the transferee's rights.

42 (d) The naming in a negotiable bill of lading of a person to
43 be notified of the arrival of the goods does not limit the

44 negotiability of the bill or constitute notice to a purchaser of the
45 bill of any interest of that person in the goods.

§46-7-502. Rights acquired by due negotiation.

1 (a) Subject to sections 7-205 and 7-503, a holder to which
2 a negotiable document of title has been duly negotiated acquires
3 thereby:

4 (1) Title to the document;

5 (2) Title to the goods;

6 (3) All rights accruing under the law of agency or estoppel,
7 including rights to goods delivered to the bailee after the
8 document was issued; and

9 (4) The direct obligation of the issuer to hold or deliver the
10 goods according to the terms of the document free of any
11 defense or claim by the issuer except those arising under the
12 terms of the document or under this article, but in the case of a
13 delivery order, the bailee's obligation accrues only upon the
14 bailee's acceptance of the delivery order and the obligation
15 acquired by the holder is that the issuer and any indorser will
16 procure the acceptance of the bailee.

17 (b) Subject to section 7-503, title and rights acquired by due
18 negotiation are not defeated by any stoppage of the goods
19 represented by the document of title or by surrender of the
20 goods by the bailee and are not impaired even if:

21 (1) The due negotiation or any prior due negotiation
22 constituted a breach of duty;

23 (2) Any person has been deprived of possession of a
24 negotiable tangible document or control of a negotiable
25 electronic document by misrepresentation, fraud, accident,
26 mistake, duress, loss, theft, or conversion; or

27 (3) A previous sale or other transfer of the goods or
28 document has been made to a third person.

§46-7-503. Document of title to goods defeated in certain cases.

1 (a) A document of title confers no right in goods against a
2 person that before issuance of the document had a legal interest
3 or a perfected security interest in the goods and that did not:

4 (1) Deliver and entrust them the goods or any document of
5 title covering the goods to the bailor or the bailor's nominee
6 with:

7 (A) Actual or apparent authority to ship, store, or sell;

8 (B) Power to obtain delivery under section 7-403; or

9 (C) Power of disposition under section 2-403, 2A-304(2),
10 2A-305(2), 9-320, or 9-321(c) or other statute or rule of law; or

11 (2) Acquiesce in the procurement by the bailor or its
12 nominee of any document.

13 (b) Title to goods based upon an unaccepted delivery order
14 is subject to the rights of any person to which a negotiable
15 warehouse receipt or bill of lading covering the goods has been
16 duly negotiated. That title may be defeated under section 7-504
17 to the same extent as the rights of the issuer or a transferee from
18 the issuer.

19 (c) Title to goods based upon a bill of lading issued to a
20 freight forwarder is subject to the rights of any person to which
21 a bill issued by the freight forwarder is duly negotiated.
22 However, delivery by the carrier in accordance with Part 4
23 pursuant to its own bill of lading discharges the carrier's
24 obligation to deliver.

§46-7-504. Rights acquired in absence of due negotiation; effect of diversion; stoppage of delivery.

1 (a) A transferee of a document of title, whether negotiable
2 or nonnegotiable, to which the document has been delivered but
3 not duly negotiated, acquires the title and rights that its
4 transferor had or had actual authority to convey.

5 (b) In the case of a transfer of a nonnegotiable document of
6 title, until but not after the bailee receives notice of the transfer,
7 the rights of the transferee may be defeated:

8 (1) By those creditors of the transferor which could treat the
9 transfer as void under section 2-402 or 2A-308;

10 (2) By a buyer from the transferor in ordinary course of
11 business if the bailee has delivered the goods to the buyer or
12 received notification of the buyer's rights;

13 (3) By a lessee from the transferor in ordinary course of
14 business if the bailee has delivered the goods to the lessee or
15 received notification of the lessee's rights; or

16 (4) As against the bailee, by good-faith dealings of the
17 bailee with the transferor.

18 (c) A diversion or other change of shipping instructions by
19 the consignor in a nonnegotiable bill of lading which causes the
20 bailee not to deliver the goods to the consignee defeats the
21 consignee's title to the goods if the goods have been delivered
22 to a buyer in ordinary course of business or a lessee in ordinary
23 course of business and, in any event, defeats the consignee's
24 rights against the bailee.

25 (d) Delivery of the goods pursuant to a nonnegotiable
26 document of title may be stopped by a seller under section 2-
27 705 or a lessor under section 2A-526, subject to the require-

28 ments of due notification in those sections. A bailee that honors
29 the seller's or lessor's instructions is entitled to be indemnified
30 by the seller or lessor against any resulting loss or expense.

§46-7-505. Indorser not guarantor for other parties.

1 The indorsement of a tangible document of title issued by
2 a bailee does not make the indorser liable for any default by the
3 bailee or previous indorsers.

§46-7-506. Delivery without indorsement: right to compel indorsement.

1 The transferee of a negotiable tangible document of title has
2 a specifically enforceable right to have its transferor supply any
3 necessary indorsement, but the transfer becomes a negotiation
4 only as of the time the indorsement is supplied.

§46-7-507. Warranties on negotiation or delivery of document of title.

1 If a person negotiates or delivers a document of title for
2 value, otherwise than as a mere intermediary under section 7-
3 508, unless otherwise agreed the transferor, in addition to any
4 warranty made in selling or leasing the goods, warrants to its
5 immediate purchaser only that:

6 (1) The document is genuine;

7 (2) The transferor does not have knowledge of any fact that
8 would impair the document's validity or worth; and

9 (3) The negotiation or delivery is rightful and fully
10 effective with respect to the title to the document and the goods
11 it represents.

§46-7-508. Warranties of collecting bank as to documents of title.

1 A collecting bank or other intermediary known to be
2 entrusted with documents of title on behalf of another or with
3 collection of a draft or other claim against delivery of docu-
4 ments warrants by the delivery of the documents only its own
5 good faith and authority, even if the collecting bank or other
6 intermediary has purchased or made advances against the claim
7 or draft to be collected.

§46-7-509. Adequate compliance with commercial contract.

1 Whether a document of title is adequate to fulfill the
2 obligations of a contract for sale, a contract for lease, or the
3 conditions of a letter of credit is determined by article 2, 2A, or
4 5.

PART 6 - WAREHOUSE RECEIPTS AND
BILLS OF LADING: MISCELLANEOUS PROVISIONS.

§46-7-601. Lost, stolen or destroyed documents of title.

1 (a) If a document of title is lost, stolen, or destroyed, a court
2 may order delivery of the goods or issuance of a substitute
3 document and the bailee may without liability to any person
4 comply with the order. If the document was negotiable, a court
5 may not order delivery of the goods or issuance of a substitute
6 document without the claimant's posting security unless it finds
7 that any person that may suffer loss as a result of nonsurrender
8 of possession or control of the document is adequately pro-
9 tected against the loss. If the document was nonnegotiable, the
10 court may require security. The court may also order payment
11 of the bailee's reasonable costs and attorney's fees in any action
12 under this subsection.

13 (b) A bailee that, without a court order, delivers goods to a
14 person claiming under a missing negotiable document of title is
15 liable to any person injured thereby. If the delivery is not in
16 good faith, the bailee is liable for conversion. Delivery in good

17 faith is not conversion if the claimant posts security with the
18 bailee in an amount at least double the value of the goods at the
19 time of posting to indemnify any person injured by the delivery
20 which files a notice of claim within one year after the delivery.

§46-7-602. Judicial process against goods covered by negotiable document of title.

1 Unless a document of title was originally issued upon
2 delivery of the goods by a person that did not have power to
3 dispose of them, a lien does not attach by virtue of any judicial
4 process to goods in the possession of a bailee for which a
5 negotiable document of title is outstanding unless possession or
6 control of the document is first surrendered to the bailee or the
7 document's negotiation is enjoined. The bailee may not be
8 compelled to deliver the goods pursuant to process until
9 possession or control of the document is surrendered to the
10 bailee or to the court. A purchaser of the document for value
11 without notice of the process or injunction takes free of the lien
12 imposed by judicial process.

§46-7-603. Conflicting claims; interpleader.

1 If more than one person claims title to or possession of the
2 goods, the bailee is excused from delivery until the bailee has
3 a reasonable time to ascertain the validity of the adverse claims
4 or to commence an action for interpleader. The bailee may
5 assert an interpleader either in defending an action for
6 nondelivery of the goods or by original action.

PART 7 - MISCELLANEOUS PROVISIONS.

§46-7-701. Applicability.

1 This article applies to a document of title that is issued or
2 a bailment that arises on or after the effective date of this
3 article. This article does not apply to a document of title that is
4 issued or a bailment that arises before the effective date of this

5 article even if the document of title or bailment would be
6 subject to this article if the document of title had been issued or
7 bailment had arisen on or after the effective date of this article.
8 This article does not apply to a right of action that has accrued
9 before the effective date of this article.

§46-7-702. Savings clause.

1 A document of title issued or a bailment that arises before
2 the effective date of this article and the rights, obligations, and
3 interests flowing from that document or bailment are governed
4 by any statute or other rule amended or repealed by this article
5 as if amendment or repeal had not occurred and may be
6 terminated, completed, consummated, or enforced under that
7 statute or other rule.

ARTICLE 8. INVESTMENT SECURITIES.

§46-8-102. Definitions.

§46-8-103. Rules for determining whether certain obligations and interests are securities or financial assets.

§46-8-102. Definitions.

1 (a) In this article:

2 (1) “Adverse claim” means a claim that a claimant has a
3 property interest in a financial asset and that it is a violation of
4 the rights of the claimant for another person to hold, transfer, or
5 deal with the financial asset.

6 (2) “Bearer form”, as applied to a certificated security,
7 means a form in which the security is payable to the bearer of
8 the security certificate according to its terms but not by reason
9 of an indorsement.

10 (3) “Broker” means a person defined as a broker or dealer
11 under the federal securities laws, but without excluding a bank
12 acting in that capacity.

13 (4) “Certificated security” means a security that is repre-
14 sented by a certificate.

15 (5) “Clearing corporation” means:

16 (i) A person that is registered as a “clearing agency” under
17 the federal securities laws;

18 (ii) A federal reserve bank; or

19 (iii) Any other person that provides clearance or settlement
20 services with respect to financial assets that would require it to
21 register as a clearing agency under the federal securities laws
22 but for an exclusion or exemption from the registration
23 requirement, if its activities as a clearing corporation, including
24 promulgation of rules, are subject to regulation by a federal or
25 state governmental authority.

26 (6) “Communicate” means to:

27 (i) Send a signed writing; or

28 (ii) Transmit information by any mechanism agreed upon
29 by the persons transmitting and receiving the information.

30 (7) “Entitlement holder” means a person identified in the
31 records of a securities intermediary as the person having a
32 security entitlement against the securities intermediary. If a
33 person acquires a security entitlement by virtue of section
34 8-501(b)(2) or (3), that person is the entitlement holder.

35 (8) “Entitlement order” means a notification communicated
36 to a securities intermediary directing transfer or redemption of
37 a financial asset to which the entitlement holder has a security
38 entitlement.

39 (9) “Financial asset”, except as otherwise provided in
40 section 8-103, means:

41 (i) A security;

42 (ii) An obligation of a person or a share, participation, or
43 other interest in a person or in property or an enterprise of a
44 person, which is, or is of a type, dealt in or traded on financial
45 markets or which is recognized in any area in which it is issued
46 or dealt in as a medium for investment; or

47 (iii) Any property that is held by a securities intermediary
48 for another person in a securities account if the securities
49 intermediary has expressly agreed with the other person that the
50 property is to be treated as a financial asset under this article.
51 As context requires, the term means either the interest itself or
52 the means by which a person's claim to it is evidenced,
53 including a certificated or uncertificated security, a security
54 certificate or a security entitlement.

55 (10)[reserved]

56 (11) "Indorsement" means a signature that alone or
57 accompanied by other words is made on a security certificate in
58 registered form or on a separate document for the purpose of
59 assigning, transferring or redeeming the security or granting a
60 power to assign, transfer or redeem it.

61 (12) "Instruction" means a notification communicated to
62 the issuer of an uncertificated security which directs that the
63 transfer of the security be registered or that the security be
64 redeemed.

65 (13) "Registered form", as applied to a certificated security,
66 means a form in which:

67 (i) The security certificate specifies a person entitled to the
68 security; and

69 (ii) A transfer of the security may be registered upon books
70 maintained for that purpose by or on behalf of the issuer, or the
71 security certificate so states.

72 (14) “Securities intermediary” means:

73 (i) A clearing corporation; or

74 (ii) A person, including a bank or broker, that in the
75 ordinary course of its business maintains securities accounts for
76 others and is acting in that capacity.

77 (15) “Security”, except as otherwise provided in section
78 8-103, means an obligation of an issuer or a share, participation
79 or other interest in an issuer or in property or an enterprise of an
80 issuer:

81 (i) Which is represented by a security certificate in bearer
82 or registered form, or the transfer of which may be registered
83 upon books maintained for that purpose by or on behalf of the
84 issuer;

85 (ii) Which is one of a class or series or by its terms is
86 divisible into a class or series of shares, participations, interests
87 or obligations; and

88 (iii) Which:

89 (A) Is, or is of a type, dealt in or traded on securities
90 exchanges or securities markets; or

91 (B) Is a medium for investment and by its terms expressly
92 provides that it is a security governed by this article.

93 (16) “Security certificate” means a certificate representing
94 a security.

95 (17) “Security entitlement” means the rights and property
96 interest of an entitlement holder with respect to a financial asset
97 specified in Part 5.

98 (18) “Uncertificated security” means a security that is not
99 represented by a certificate.

100 (b) Other definitions applying to this article and the
101 sections in which they appear are:

102	“Appropriate person”	Section 8-107
103	“Control”	Section 8-106
104	“Delivery”	Section 8-301
105	“Investment company security”	Section 8-103
106	“Issuer”	Section 8-201
107	“Overissue”	Section 8-210
108	“Protected purchaser”	Section 8-303
109	“Securities account”	Section 8-501

110 (c) In addition, article one contains general definitions and
111 principles of construction and interpretation applicable
112 throughout this article.

113 (d) The characterization of a person, business or transaction
114 for purposes of this article does not determine the characteriza-
115 tion of the person, business or transaction for purposes of any
116 other law, regulation or rule.

**§46-8-103. Rules for determining whether certain obligations and
interests are securities or financial assets.**

1 (a) A share or similar equity interest issued by a corpora-
2 tion, business trust, joint stock company or similar entity is a
3 security.

4 (b) An “investment company security” is a security.
5 “Investment company security” means a share or similar equity

6 interest issued by an entity that is registered as an investment
7 company under the federal investment company laws, an
8 interest in a unit investment trust that is so registered or a
9 face-amount certificate issued by a face-amount certificate
10 company that is so registered. Investment company security
11 does not include an insurance policy or endowment policy or
12 annuity contract issued by an insurance company.

13 (c) An interest in a partnership or limited liability company
14 is not a security unless it is dealt in or traded on securities
15 exchanges or in securities markets, its terms expressly provide
16 that it is a security governed by this article or it is an investment
17 company security. However, an interest in a partnership or
18 limited liability company is a financial asset if it is held in a
19 securities account.

20 (d) A writing that is a security certificate is governed by
21 this article and not by article three of this chapter, even though
22 it also meets the requirements of that article. However, a
23 negotiable instrument governed by article three is a financial
24 asset if it is held in a securities account.

25 (e) An option or similar obligation issued by a clearing
26 corporation to its participants is not a security, but is a financial
27 asset.

28 (f) A commodity contract, as defined in section
29 9-102(a)(15), is not a security or a financial asset.

30 (g) A document of title is not a financial asset unless
31 section 8-102(a)(9)(iii) applies.

ARTICLE 9. SECURED TRANSACTIONS.

§46-9-102. Definitions and index of definitions.

§46-9-203. Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.

§46-9-207. Rights and duties of secured party having possession or control of collateral.

- §46-9-208. Additional duties of secured party having control of collateral.
- §46-9-301. Law governing perfection and priority of security interests.
- §46-9-310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.
- §46-9-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.
- §46-9-313. When possession by or delivery to secured party perfects security interest without filing.
- §46-9-314. Perfection by control.
- §46-9-317. Interests that take priority over or take free of security interest or agricultural lien.
- §46-9-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.
- §46-9-516. What constitute filing; effectiveness of filing.
- §46-9-601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles or promissory notes.

§46-9-102. Definitions and index of definitions.

1 (a) **Article 9 definitions.** In this article:

2 (1) “Accession” means goods that are physically united
3 with other goods in such a manner that the identity of the
4 original goods is not lost.

5 (2) “Account”, except as used in “account for”, means a
6 right to payment of a monetary obligation, whether or not
7 earned by performance: (i) For property that has been or is to be
8 sold, leased, licensed, assigned or otherwise disposed of; (ii) for
9 services rendered or to be rendered; (iii) for a policy of
10 insurance issued or to be issued; (iv) for a secondary obligation
11 incurred or to be incurred; (v) for energy provided or to be
12 provided; (vi) for the use or hire of a vessel under a charter or
13 other contract; (vii) arising out of the use of a credit or charge
14 card or information contained on or for use with the card; or
15 (viii) as winnings in a lottery or other game of chance operated
16 or sponsored by a state, governmental unit of a state or person

17 licensed or authorized to operate the game by a state or
18 governmental unit of a state. The term includes
19 health-care-insurance receivables. The term does not include:
20 (i) Rights to payment evidenced by chattel paper or an instru-
21 ment; (ii) commercial tort claims; (iii) deposit accounts; (iv)
22 investment property; (v) letter-of-credit rights or letters of
23 credit; or (vi) rights to payment for money or funds advanced
24 or sold, other than rights arising out of the use of a credit or
25 charge card or information contained on or for use with the
26 card.

27 (3) “Account debtor” means a person obligated on an
28 account, chattel paper or general intangible. The term does not
29 include persons obligated to pay a negotiable instrument, even
30 if the instrument constitutes part of chattel paper.

31 (4) “Accounting”, except as used in “accounting for”,
32 means a record:

33 (A) Authenticated by a secured party;

34 (B) Indicating the aggregate unpaid secured obligations as
35 of a date not more than thirty-five days earlier or thirty-five
36 days later than the date of the record; and

37 (C) Identifying the components of the obligations in
38 reasonable detail.

39 (5) “Agricultural lien” means an interest, other than a
40 security interest, in farm products:

41 (A) Which secures payment or performance of an obliga-
42 tion for:

43 (i) Goods or services furnished in connection with a
44 debtor’s farming operation; or

45 (ii) Rent on real property leased by a debtor in connection
46 with its farming operation;

47 (B) Which is created by statute in favor of a person that:

48 (i) In the ordinary course of its business furnished goods or
49 services to a debtor in connection with a debtor's farming
50 operation; or

51 (ii) Leased real property to a debtor in connection with the
52 debtor's farming operation; and

53 (C) Whose effectiveness does not depend on the person's
54 possession of the personal property.

55 (6) "As-extracted collateral" means:

56 (A) Oil, gas or other minerals that are subject to a security
57 interest that:

58 (i) Is created by a debtor having an interest in the minerals
59 before extraction; and

60 (ii) Attaches to the minerals as extracted; or

61 (B) Accounts arising out of the sale at the wellhead or
62 minehead of oil, gas or other minerals in which the debtor had
63 an interest before extraction.

64 (7) "Authenticate" means:

65 (A) To sign; or

66 (B) To execute or otherwise adopt a symbol, or encrypt or
67 similarly process a record, in whole or in part, with the present
68 intent of the authenticating person to identify the person and
69 adopt or accept a record.

70 (8) "Bank" means an organization that is engaged in the
71 business of banking. The term includes savings banks, savings
72 and loan associations, credit unions and trust companies.

73 (9) “Cash proceeds” means proceeds that are money,
74 checks, deposit accounts or the like.

75 (10) “Certificate of title” means a certificate of title with
76 respect to which a statute provides for the security interest in
77 question to be indicated on the certificate as a condition or
78 result of the security interest’s obtaining priority over the rights
79 of a lien creditor with respect to the collateral.

80 (11) “Chattel paper” means a record or records that
81 evidence both a monetary obligation and a security interest in
82 specific goods, a security interest in specific goods and software
83 used in the goods, a security interest in specific goods and
84 license of software used in the goods, a lease of specific goods
85 or a lease of specific goods and license of software used in the
86 goods. In this paragraph, “monetary obligation” means a
87 monetary obligation secured by the goods or owed under a lease
88 of the goods and includes a monetary obligation with respect to
89 software used in the goods. The term does not include: (i)
90 Charters or other contracts involving the use or hire of a vessel;
91 or (ii) records that evidence a right to payment arising out of the
92 use of a credit or charge card or information contained on or for
93 use with the card. If a transaction is evidenced by records that
94 include an instrument or series of instruments, the group of
95 records taken together constitutes chattel paper.

96 (12) “Collateral” means the property subject to a security
97 interest or agricultural lien. The term includes:

98 (A) Proceeds to which a security interest attaches;

99 (B) Accounts, chattel paper, payment intangibles and
100 promissory notes that have been sold; and

101 (C) Goods that are the subject of a consignment.

102 (13) “Commercial tort claim” means a claim arising in tort
103 with respect to which:

104 (A) The claimant is an organization; or

105 (B) The claimant is an individual and the claim:

106 (i) Arose in the course of the claimant's business or
107 profession; and

108 (ii) Does not include damages arising out of personal injury
109 to or the death of an individual.

110 (14) "Commodity account" means an account maintained
111 by a commodity intermediary in which a commodity contract
112 is carried for a commodity customer.

113 (15) "Commodity contract" means a commodity futures
114 contract, an option on a commodity futures contract, a com-
115modity option or another contract if the contract or option is:

116 (A) Traded on or subject to the rules of a board of trade that
117 has been designated as a contract market for such a contract
118 pursuant to federal commodities laws; or

119 (B) Traded on a foreign commodity board of trade,
120 exchange or market and is carried on the books of a commodity
121 intermediary for a commodity customer.

122 (16) "Commodity customer" means a person for which a
123 commodity intermediary carries a commodity contract on its
124 books.

125 (17) "Commodity intermediary" means a person that:

126 (A) Is registered as a futures commission merchant under
127 federal commodities law; or

128 (B) In the ordinary course of its business provides clearance
129 or settlement services for a board of trade that has been

130 designated as a contract market pursuant to federal commodi-
131 ties law.

132 (18) “Communicate” means:

133 (A) To send a written or other tangible record;

134 (B) To transmit a record by any means agreed upon by the
135 persons sending and receiving the record; or

136 (C) In the case of transmission of a record to or by a filing
137 office, to transmit a record by any means prescribed by filing-
138 office rule.

139 (19) “Consignee” means a merchant to which goods are
140 delivered in a consignment.

141 (20) “Consignment” means a transaction, regardless of its
142 form, in which a person delivers goods to a merchant for the
143 purpose of sale and:

144 (A) The merchant:

145 (i) Deals in goods of that kind under a name other than the
146 name of the person making delivery;

147 (ii) Is not an auctioneer; and

148 (iii) Is not generally known by its creditors to be substan-
149 tially engaged in selling the goods of others;

150 (B) With respect to each delivery, the aggregate value of
151 the goods is one thousand dollars or more at the time of
152 delivery;

153 (C) The goods are not consumer goods immediately before
154 delivery; and

155 (D) The transaction does not create a security interest that
156 secures an obligation.

157 (21) “Consignor” means a person that delivers goods to a
158 consignee in a consignment.

159 (22) “Consumer debtor” means a debtor in a consumer
160 transaction.

161 (23) “Consumer goods” means goods that are used or
162 bought for use primarily for personal, family or household
163 purposes.

164 (24) “Consumer-goods transaction” means a consumer
165 transaction in which:

166 (A) An individual incurs an obligation primarily for
167 personal, family or household purposes; and

168 (B) A security interest in consumer goods secures the
169 obligation.

170 (25) “Consumer obligor” means an obligor who is an
171 individual and who incurred the obligation as part of a transac-
172 tion entered into primarily for personal, family or household
173 purposes.

174 (26) “Consumer transaction” means a transaction in which:
175 (i) An individual incurs an obligation primarily for personal,
176 family or household purposes; (ii) a security interest secures the
177 obligation; and (iii) the collateral is held or acquired primarily
178 for personal, family or household purposes. The term includes
179 consumer-goods transactions.

180 (27) “Continuation statement” means an amendment of a
181 financing statement which:

182 (A) Identifies, by its file number, the initial financing
183 statement to which it relates; and

184 (B) Indicates that it is a continuation statement for, or that
185 it is filed to continue the effectiveness of, the identified
186 financing statement.

187 (28) “Debtor” means:

188 (A) A person having an interest, other than a security
189 interest or other lien, in the collateral, whether or not the person
190 is an obligor;

191 (B) A seller of accounts, chattel paper, payment intangibles
192 or promissory notes; or

193 (C) A consignee.

194 (29) “Deposit account” means a demand, time, savings,
195 passbook or similar account maintained with a bank. The term
196 does not include investment property or accounts evidenced by
197 an instrument.

198 (30) “Document” means a document of title or a receipt of
199 the type described in section 7-201(b).

200 (31) “Electronic chattel paper” means chattel paper
201 evidenced by a record or records consisting of information
202 stored in an electronic medium.

203 (32) “Encumbrance” means a right, other than an ownership
204 interest, in real property. The term includes mortgages and
205 other liens on real property.

206 (33) “Equipment” means goods other than inventory, farm
207 products or consumer goods.

208 (34) “Farm products” means goods, other than standing
209 timber, with respect to which the debtor is engaged in a farming
210 operation and which are:

211 (A) Crops grown, growing or to be grown, including:

212 (i) Crops produced on trees, vines and bushes; and

213 (ii) Aquatic goods produced in aquacultural operations;

214 (B) Livestock, born or unborn, including aquatic goods
215 produced in aquacultural operations;

216 (C) Supplies used or produced in a farming operation; or

217 (D) Products of crops or livestock in their unmanufactured
218 states.

219 (35) “Farming operation” means raising, cultivating,
220 propagating, fattening, grazing or any other farming, livestock
221 or aquacultural operation.

222 (36) “File number” means the number assigned to an initial
223 financing statement pursuant to section 9-519(a).

224 (37) “Filing office” means an office designated in section
225 9-501 as the place to file a financing statement.

226 (38) “Filing-office rule” means a rule adopted pursuant to
227 section 9-526.

228 (39) “Financing statement” means a record or records
229 composed of an initial financing statement and any filed record
230 relating to the initial financing statement.

231 (40) “Fixture filing” means the filing of a financing
232 statement covering goods that are or are to become fixtures and
233 satisfying section 9-502(a) and (b). The term includes the filing

234 of a financing statement covering goods of a transmitting utility
235 which are or are to become fixtures.

236 (41) “Fixtures” means goods that have become so related to
237 particular real property that an interest in them arises under real
238 property law.

239 (42) “General intangible” means any personal property,
240 including things in action, other than accounts, chattel paper,
241 commercial tort claims, deposit accounts, documents, goods,
242 instruments, investment property, letter-of-credit rights, letters
243 of credit, money and oil, gas or other minerals before extrac-
244 tion. The term includes payment intangibles and software.

245 (43) [reserved].

246 (44) “Goods” means all things that are movable when a
247 security interest attaches. The term includes: (i) Fixtures; (ii)
248 standing timber that is to be cut and removed under a convey-
249 ance or contract for sale; (iii) the unborn young of animals; (iv)
250 crops grown, growing or to be grown, even if the crops are
251 produced on trees, vines or bushes; and (v) manufactured
252 homes. The term also includes a computer program embedded
253 in goods and any supporting information provided in connec-
254 tion with a transaction relating to the program if: (i) The
255 program is associated with the goods in such a manner that it
256 customarily is considered part of the goods; or (ii) by becoming
257 the owner of the goods, a person acquires a right to use the
258 program in connection with the goods. The term does not
259 include a computer program embedded in goods that consist
260 solely of the medium in which the program is embedded. The
261 term also does not include accounts, chattel paper, commercial
262 tort claims, deposit accounts, documents, general intangibles,
263 instruments, investment property, letter-of-credit rights, letters
264 of credit, money or oil, gas, or other minerals before extraction.

265 (45) “Governmental unit” means a subdivision, agency,
266 department, county, parish, municipality or other unit of the

267 government of the United States, a state or a foreign country.
268 The term includes an organization having a separate corporate
269 existence if the organization is eligible to issue debt on which
270 interest is exempt from income taxation under the laws of the
271 United States.

272 (46) “Health-care-insurance receivable” means an interest
273 in or claim under a policy of insurance which is a right to
274 payment of a monetary obligation for health-care goods or
275 services provided.

276 (47) “Instrument” means a negotiable instrument or any
277 other writing that evidences a right to the payment of a
278 monetary obligation, is not itself a security agreement or lease,
279 and is of a type that in ordinary course of business is transferred
280 by delivery with any necessary indorsement or assignment. The
281 term does not include: (i) Investment property; (ii) letters of
282 credit; or (iii) writings that evidence a right to payment arising
283 out of the use of a credit or charge card or information con-
284 tained on or for use with the card.

285 (48) “Inventory” means goods, other than farm products,
286 which:

287 (A) Are leased by a person as lessor;

288 (B) Are held by a person for sale or lease or to be furnished
289 under a contract of service;

290 (C) Are furnished by a person under a contract of service;
291 or

292 (D) Consist of raw materials, work in process or materials
293 used or consumed in a business.

294 (49) “Investment property” means a security, whether
295 certificated or uncertificated, security entitlement, securities
296 account, commodity contract or commodity account.

297 (50) “Jurisdiction of organization”, with respect to a
298 registered organization, means the jurisdiction under whose law
299 the organization is organized.

300 (51) “Letter-of-credit right” means a right to payment or
301 performance under a letter of credit, whether or not the
302 beneficiary has demanded or is at the time entitled to demand
303 payment or performance. The term does not include the right of
304 a beneficiary to demand payment or performance under a letter
305 of credit.

306 (52) “Lien creditor” means:

307 (A) A creditor that has acquired a lien on the property
308 involved by attachment, levy or the like;

309 (B) An assignee for benefit of creditors from the time of
310 assignment;

311 (C) A trustee in bankruptcy from the date of the filing of
312 the petition; or

313 (D) A receiver in equity from the time of appointment.

314 (53) “Manufactured home” means a structure, transportable
315 in one or more sections, which, in the traveling mode, is eight
316 body feet or more in width or forty body feet or more in length,
317 or, when erected on site, is three hundred twenty or more square
318 feet, and which is built on a permanent chassis and designed to
319 be used as a dwelling with or without a permanent foundation
320 when connected to the required utilities, and includes the
321 plumbing, heating, air-conditioning and electrical systems
322 contained therein. The term includes any structure that meets all
323 of the requirements of this paragraph except the size require-
324 ments and with respect to which the manufacturer voluntarily
325 files a certification required by the United States secretary of
326 housing and urban development and complies with the
327 standards established under Title 42 of the United States Code.

328 (54) “Manufactured-home transaction” means a secured
329 transaction:

330 (A) That creates a purchase-money security interest in a
331 manufactured home, other than a manufactured home held as
332 inventory; or

333 (B) In which a manufactured home, other than a manufac-
334 tured home held as inventory, is the primary collateral.

335 (55) “Mortgage” means a consensual interest in real
336 property, including fixtures, which secures payment or
337 performance of an obligation.

338 (56) “New debtor” means a person that becomes bound as
339 debtor under section 9-203(d) by a security agreement previ-
340 ously entered into by another person.

341 (57) “New value” means: (i) Money; (ii) money’s worth in
342 property, services or new credit; or (iii) release by a transferee
343 of an interest in property previously transferred to the trans-
344 feree. The term does not include an obligation substituted for
345 another obligation.

346 (58) “Noncash proceeds” means proceeds other than cash
347 proceeds.

348 (59) “Obligor” means a person that, with respect to an
349 obligation secured by a security interest in or an agricultural
350 lien on the collateral: (i) Owes payment or other performance
351 of the obligation; (ii) has provided property other than the
352 collateral to secure payment or other performance of the
353 obligation; or (iii) is otherwise accountable, in whole or in part,
354 for payment or other performance of the obligation. The term
355 does not include issuers or nominated persons under a letter of
356 credit.

357 (60) “Original debtor” except as used in section 9-310(c),
358 means a person that, as debtor, entered into a security agree-
359 ment to which a new debtor has become bound under section
360 9-203(d).

361 (61) “Payment intangible” means a general intangible under
362 which the account debtor’s principal obligation is a monetary
363 obligation.

364 (62) “Person related to”, with respect to an individual,
365 means:

366 (A) The spouse of the individual;

367 (B) A brother, brother-in-law, sister or sister-in-law of the
368 individual;

369 (C) An ancestor or lineal descendant of the individual or the
370 individual’s spouse; or

371 (D) Any other relative, by blood or marriage, of the
372 individual or the individual’s spouse who shares the same home
373 with the individual.

374 (63) “Person related to”, with respect to an organization,
375 means:

376 (A) A person directly or indirectly controlling, controlled
377 by or under common control with the organization;

378 (B) An officer or director of, or a person performing similar
379 functions with respect to, the organization;

380 (C) An officer or director of, or a person performing similar
381 functions with respect to, a person described in subparagraph
382 (A);

383 (D) The spouse of an individual described in subparagraph
384 (A), (B) or (C); or

385 (E) An individual who is related by blood or marriage to an
386 individual described in subparagraph (A), (B), (C) or (D) and
387 shares the same home with the individual.

388 (64) “Proceeds”, except as used in section 9-609(b), means
389 the following property:

390 (A) Whatever is acquired upon the sale, lease, license,
391 exchange or other disposition of collateral;

392 (B) Whatever is collected on, or distributed on account of,
393 collateral;

394 (C) Rights arising out of collateral;

395 (D) To the extent of the value of collateral, claims arising
396 out of the loss, nonconformity, or interference with the use of,
397 defects or infringement of rights in, or damage to, the collateral;
398 or

399 (E) To the extent of the value of collateral and to the extent
400 payable to the debtor or the secured party, insurance payable by
401 reason of the loss or nonconformity of, defects or infringement
402 of rights in, or damage to, the collateral.

403 (65) “Production-money crops” means crops that secure a
404 production-money obligation incurred with respect to the
405 production of those crops.

406 (66) “Production-money obligation” means an obligation of
407 an obligor incurred for new value given to enable the debtor to
408 produce crops if the value is in fact used for the production of
409 the crops.

410 (67) “Production of crops” includes tilling and otherwise
411 preparing land for growing, planting, cultivating, fertilizing,
412 irrigating, harvesting and gathering crops and protecting them
413 from damage or disease.

414 (68) “Promissory note” means an instrument that evidences
415 a promise to pay a monetary obligation, does not evidence an
416 order to pay, and does not contain an acknowledgment by a
417 bank that the bank has received for deposit a sum of money or
418 funds.

419 (69) “Proposal” means a record authenticated by a secured
420 party which includes the terms on which the secured party is
421 willing to accept collateral in full or partial satisfaction of the
422 obligation it secures pursuant to sections 9-620, 9-621 and
423 9-622.

424 (70) “Public-finance transaction” means a secured transac-
425 tion in connection with which:

426 (A) Debt securities are issued;

427 (B) All or a portion of the securities issued have an initial
428 stated maturity of at least twenty years; and

429 (C) The debtor, obligor, secured party, account debtor or
430 other person obligated on collateral, assignor or assignee of a
431 secured obligation, or assignor or assignee of a security interest
432 is a state or a governmental unit of a state.

433 (71) “Pursuant to commitment”, with respect to an advance
434 made or other value given by a secured party, means pursuant
435 to the secured party’s obligation, whether or not a subsequent
436 event of default or other event not within the secured party’s
437 control has relieved or may relieve the secured party from its
438 obligation.

439 (72) “Record”, except as used in “for record”, “of record”,
440 “record or legal title” and “record owner”, means information
441 that is inscribed on a tangible medium or which is stored in an
442 electronic or other medium and is retrievable in perceivable
443 form.

444 (73) “Registered organization” means an organization
445 organized solely under the law of a single state or the United
446 States and as to which the state or the United States must
447 maintain a public record showing the organization to have been
448 organized.

449 (74) “Secondary obligor” means an obligor to the extent
450 that:

451 (A) The obligor’s obligation is secondary; or

452 (B) The obligor has a right of recourse with respect to an
453 obligation secured by collateral against the debtor, another
454 obligor or property of either.

455 (75) “Secured party” means:

456 (A) A person in whose favor a security interest is created or
457 provided for under a security agreement, whether or not any
458 obligation to be secured is outstanding;

459 (B) A person that holds an agricultural lien;

460 (C) A consignor;

461 (D) A person to which accounts, chattel paper, payment
462 intangibles or promissory notes have been sold;

463 (E) A trustee, indenture trustee, agent, collateral agent or
464 other representative in whose favor a security interest or
465 agricultural lien is created or provided for; or

466 (F) A person that holds a security interest arising under
467 section 2-401, 2-505, 2-711(3), 2A-508(5), 4-210 or 5-118.

468 (76) “Security agreement” means an agreement that creates
469 or provides for a security interest.

470 (77) “Send,” in connection with a record or notification,
471 means:

472 (A) To deposit in the mail, deliver for transmission, or
473 transmit by any other usual means of communication, with
474 postage or cost of transmission provided for, addressed to any
475 address reasonable under the circumstances; or

476 (B) To cause the record or notification to be received within
477 the time that it would have been received if properly sent under
478 paragraph (A).

479 (78) “Software” means a computer program and any
480 supporting information provided in connection with a transac-
481 tion relating to the program. The term does not include a
482 computer program that is included in the definition of goods.

483 (79) “State” means a state of the United States, the District
484 of Columbia, Puerto Rico, the United States Virgin Islands or
485 any territory or insular possession subject to the jurisdiction of
486 the United States.

487 (80) “Supporting obligation” means a letter-of-credit right
488 or secondary obligation that supports the payment or perfor-
489 mance of an account, chattel paper, a document, a general
490 intangible, an instrument or investment property.

491 (81) “Tangible chattel paper” means chattel paper evi-
492 denced by a record or records consisting of information that is
493 inscribed on a tangible medium.

494 (82) "Termination statement" means an amendment of a
495 financing statement which:

496 (A) Identifies, by its file number, the initial financing
497 statement to which it relates; and

498 (B) Indicates either that it is a termination statement or that
499 the identified financing statement is no longer effective.

500 (83) "Transmitting utility" means a person primarily
501 engaged in the business of:

502 (A) Operating a railroad, subway, street railway or trolley
503 bus;

504 (B) Transmitting communications electrically, electromag-
505 netically or by light;

506 (C) Transmitting goods by pipeline or sewer; or

507 (D) Transmitting or producing and transmitting electricity,
508 steam, gas, or water.

509 (b) Definitions in other articles. "Control" as provided in
510 section 7-106 and the following definitions in other articles
511 apply to this article:

512	"Applicant"	Section 5-102.
513	"Beneficiary"	Section 5-102.
514	"Broker"	Section 8-102.
515	"Certificated security"	Section 8-102.
516	"Check"	Section 3-104.
517	"Clearing corporation"	Section 8-102.
518	"Contract for sale"	Section 2-106.
519	"Customer"	Section 4-104.
520	"Entitlement holder"	Section 8-102.
521	"Financial asset"	Section 8-102.

522	“Holder in due course”	Section 3-302.
523	“Issuer” (with respect to a letter of	
524	credit or letter-of-credit right)	Section 5-102.
525	“Issuer” (with respect to a security)	Section 8-201.
526	“Issuer” (with respect to	
527	documents of title)	Section 7-102.
528	“Lease”	Section 2A-103.
529	“Lease agreement”	Section 2A-103.
530	“Lease contract”	Section 2A-103.
531	“Leasehold interest”	Section 2A-103.
532	“Lessee”	Section 2A-103.
533	“Lessee in ordinary course of business”	Section 2A-103.
534	“Lessor”	Section 2A-103.
535	“Lessor’s residual interest”	Section 2A-103.
536	“Letter of credit”	Section 5-102.
537	“Merchant”	Section 2-104.
538	“Negotiable instrument”	Section 3-104.
539	“Nominated person”	Section 5-102.
540	“Note”	Section 3-104.
541	“Proceeds of a letter of credit”	Section 5-114.
542	“Prove”	Section 3-103.
543	“Sale”	Section 2-106.
544	“Securities account”	Section 8-501.
545	“Securities intermediary”	Section 8-102.
546	“Security”	Section 8-102.
547	“Security certificate”	Section 8-102.
548	“Security entitlement”	Section 8-102.
549	“Uncertificated security”	Section 8-102.

550 (c) Article 1 definitions and principles. Article 1 contains
 551 general definitions and principles of construction and interpre-
 552 tation applicable throughout this article.

**§46-9-203. Attachment and enforceability of security interest;
 proceeds; supporting obligations; formal requi-
 sites.**

1 (a) Attachment. A security interest attaches to collateral
2 when it becomes enforceable against the debtor with respect to
3 the collateral, unless an agreement expressly postpones the time
4 of attachment.

5 (b) Enforceability. Except as otherwise provided in
6 subsections (c) through (i), inclusive, of this section, a security
7 interest is enforceable against the debtor and third parties with
8 respect to the collateral only if:

9 (1) Value has been given;

10 (2) The debtor has rights in the collateral or the power to
11 transfer rights in the collateral to a secured party; and

12 (3) One of the following conditions is met:

13 (A) The debtor has authenticated a security agreement that
14 provides a description of the collateral and, if the security
15 interest covers timber to be cut, a description of the land
16 concerned;

17 (B) The collateral is not a certificated security and is in the
18 possession of the secured party under section 9-313 pursuant to
19 the debtor's security agreement;

20 (C) The collateral is a certificated security in registered
21 form and the security certificate has been delivered to the
22 secured party under section 8-301 pursuant to the debtor's
23 security agreement; or

24 (D) The collateral is deposit accounts, electronic chattel
25 paper, investment property letter-of-credit rights, or electronic
26 documents, and the secured party has control under section 7-
27 106, 9-104, 9-105, 9-106 or 9-107 pursuant to the debtor's
28 security agreement.

29 (c) Other UCC provisions. Subsection (b) of this section is
30 subject to section 4-210 on the security interest of a collecting
31 bank, section 5-118 on the security interest of a letter-of-credit
32 issuer or nominated person, section 9-110 on a security interest
33 arising under article two or two-a of this chapter and section
34 9-206 on security interests in investment property.

35 (d) When person becomes bound by another person's
36 security. A person becomes bound as debtor by a security
37 agreement entered into by another person if, by operation of
38 law other than this article or by contract:

39 (1) The security agreement becomes effective to create a
40 security interest in the person's property; or

41 (2) The person becomes generally obligated for the
42 obligations of the other person, including the obligation secured
43 under the security agreement, and acquires or succeeds to all or
44 substantially all of the assets of the other person.

45 (e) Effect of new debtor becoming bound. If a new debtor
46 becomes bound as debtor by a security agreement entered into
47 by another person:

48 (1) The agreement satisfies subsection (b)(3) of this section
49 with respect to existing or after-acquired property of the new
50 debtor to the extent the property is described in the agreement;
51 and

52 (2) Another agreement is not necessary to make a security
53 interest in the property enforceable.

54 (f) Proceeds and supporting obligations. The attachment of
55 a security interest in collateral gives the secured party the rights
56 to proceeds provided by section 9-315 and is also attachment of
57 a security interest in a supporting obligation for the collateral.

58 (g) Lien securing right to payment. The attachment of a
59 security interest in a right to payment or performance secured
60 by a security interest or other lien on personal or real property
61 is also attachment of a security interest in the security interest,
62 mortgage or other lien.

63 (h) Security entitlement carried in securities account. The
64 attachment of a security interest in a securities account is also
65 attachment of a security interest in the security entitlements
66 carried in the securities account.

67 (i) Commodity contracts carried in commodity account.
68 The attachment of a security interest in a commodity account is
69 also attachment of a security interest in the commodity
70 contracts carried in the commodity account.

**§46-9-207. Rights and duties of secured party having possession
or control of collateral.**

1 (a) Duty of care when secured party in possession. Except
2 as otherwise provided in subsection (d), a secured party shall
3 use reasonable care in the custody and preservation of collateral
4 in the secured party's possession. In the case of chattel paper or
5 an instrument, reasonable care includes taking necessary steps
6 to preserve rights against prior parties unless otherwise agreed.

7 (b) Expenses, risks, duties and rights when secured party in
8 possession. Except as otherwise provided in subsection (d), if
9 a secured party has possession of collateral:

10 (1) Reasonable expenses, including the cost of insurance
11 and payment of taxes or other charges, incurred in the custody,
12 preservation, use or operation of the collateral are chargeable to
13 the debtor and are secured by the collateral;

14 (2) The risk of accidental loss or damage is on the debtor to
15 the extent of a deficiency in any effective insurance coverage;

16 (3) The secured party shall keep the collateral identifiable,
17 but fungible collateral may be commingled; and

18 (4) The secured party may use or operate the collateral:

19 (A) For the purpose of preserving the collateral or its value;

20 (B) As permitted by an order of a court having competent
21 jurisdiction; or

22 (C) Except in the case of consumer goods, in the manner
23 and to the extent agreed by the debtor.

24 (c) Duties and rights when secured party in possession or
25 control. Except as otherwise provided in subsection (d) of this
26 section, a secured party having possession of collateral or
27 control of collateral under section 7-106, 9-104, 9-105, 9-106
28 or 9-107:

29 (1) May hold as additional security any proceeds, except
30 money or funds, received from the collateral;

31 (2) Shall apply money or funds received from the collateral
32 to reduce the secured obligation, unless remitted to the debtor;
33 and

34 (3) May create a security interest in the collateral.

35 (d) Buyer of certain rights to payment. If the secured party
36 is a buyer of accounts, chattel paper, payment intangibles, or
37 promissory notes or a consignor:

38 (1) Subsection (a) of this section does not apply unless the
39 secured party is entitled under an agreement:

40 (A) To charge back uncollected collateral; or

41 (B) Otherwise to full or limited recourse against the debtor
42 or a secondary obligor based on the nonpayment or other

43 default of an account debtor or other obligor on the collateral;
44 and

45 (2) Subsections (b) and (c) of this section do not apply.

§46-9-208. Additional duties of secured party having control of collateral.

1 (a) Applicability of section. This section applies to cases in
2 which there is no outstanding secured obligation and the
3 secured party is not committed to make advances, incur
4 obligations, or otherwise give value.

5 (b) Duties of secured party after receiving demand from
6 debtor. Within ten days after receiving an authenticated demand
7 by the debtor:

8 (1) A secured party having control of a deposit account
9 under section 9-104(a)(2) shall send to the bank with which the
10 deposit account is maintained an authenticated statement that
11 releases the bank from any further obligation to comply with
12 instructions originated by the secured party;

13 (2) A secured party having control of a deposit account
14 under section 9-104(a)(3) shall:

15 (A) Pay the debtor the balance on deposit in the deposit
16 account; or

17 (B) Transfer the balance on deposit into a deposit account
18 in the debtor's name;

19 (3) A secured party, other than a buyer, having control of
20 electronic chattel paper under section 9-105 shall:

21 (A) Communicate the authoritative copy of the electronic
22 chattel paper to the debtor or its designated custodian;

23 (B) If the debtor designates a custodian that is the desig-
24 nated custodian with which the authoritative copy of the
25 electronic chattel paper is maintained for the secured party,
26 communicate to the custodian an authenticated record releasing
27 the designated custodian from any further obligation to comply
28 with instructions originated by the secured party and instructing
29 the custodian to comply with instructions originated by the
30 debtor; and

31 (C) Take appropriate action to enable the debtor or its
32 designated custodian to make copies of or revisions to the
33 authoritative copy which add or change an identified assignee
34 of the authoritative copy without the consent of the secured
35 party;

36 (4) A secured party having control of investment property
37 under section 8-106(d)(2) or 9-106(b) shall send to the
38 securities intermediary or commodity intermediary with which
39 the security entitlement or commodity contract is maintained an
40 authenticated record that releases the securities intermediary or
41 commodity intermediary from any further obligation to comply
42 with entitlement orders or directions originated by the secured
43 party;

44 (5) A secured party having control of a letter-of-credit right
45 under section 9-107 shall send to each person having an
46 unfulfilled obligation to pay or deliver proceeds of the letter of
47 credit to the secured party an authenticated release from any
48 further obligation to pay or deliver proceeds of the letter of
49 credit to the secured party; and

50 (6) A secured party having control of an electronic
51 document shall:

52 (A) Give control of the electronic document to the debtor
53 or its designated custodian;

54 (B) If the debtor designates a custodian that is the desig-
55 nated custodian with which the authoritative copy of the
56 electronic document is maintained for the secured party,
57 communicate to the custodian an authenticated record releasing
58 the designated custodian from any further obligation to comply
59 with instructions originated by the secured party and instructing
60 the custodian to comply with instructions originated by the
61 debtor; and

62 (C) Take appropriate action to enable the debtor or its
63 designated custodian to make copies of or revisions to the
64 authoritative copy which add or change an identified assignee
65 of the authoritative copy without the consent of the secured
66 party.

§46-9-301. Law governing perfection and priority of security interests.

1 Except as otherwise provided in sections 9-303 through
2 9-306, the following rules determine the law governing
3 perfection, the effect of perfection or nonperfection and the
4 priority of a security interest in collateral:

5 (1) Except as otherwise provided in this section, while a
6 debtor is located in a jurisdiction, the local law of that jurisdic-
7 tion governs perfection, the effect of perfection or
8 nonperfection, and the priority of a security interest in collat-
9 eral.

10 (2) While collateral is located in a jurisdiction, the local law
11 of that jurisdiction governs perfection, the effect of perfection
12 or nonperfection, and the priority of a possessory security
13 interest in that collateral.

14 (3) Except as otherwise provided in paragraph (4) of this
15 section, while tangible negotiable documents, goods, instru-
16 ments, money or tangible chattel paper is located in a jurisdic-
17 tion, the local law of that jurisdiction governs:

18 (A) Perfection of a security interest in the goods by filing
19 a fixture filing;

20 (B) Perfection of a security interest in timber to be cut; and

21 (C) The effect of perfection or nonperfection and the
22 priority of a nonpossessory security interest in the collateral.

23 (4) The local law of the jurisdiction in which the wellhead
24 or minehead is located governs perfection, the effect of
25 perfection or nonperfection, and the priority of a security
26 interest in as-extracted collateral.

**§46-9-310. When filing required to perfect security interest or
agricultural lien; security interests and agricul-
tural liens to which filing provisions do not apply.**

1 (a) General rule: perfection by filing. Except as otherwise
2 provided in subsection (b) of this section and section 9-312(b),
3 a financing statement must be filed to perfect all security
4 interests and agricultural liens.

5 (b) Exceptions: filing not necessary. The filing of a
6 financing statement is not necessary to perfect a security
7 interest:

8 (1) That is perfected under section 9-308(d), (e), (f) or (g);

9 (2) That is perfected under section 9-309 when it attaches;

10 (3) In property subject to a statute, regulation or treaty
11 described in section 9-311(a);

12 (4) In goods in possession of a bailee which is perfected
13 under section 9-312(d)(1) or (2);

14 (5) In certificated securities, documents, goods or instru-
15 ments which is perfected without filing, control, or possession
16 under section 9-312(e), (f) or (g);

17 (6) In collateral in the secured party's possession under
18 section 9-313;

19 (7) In a certificated security which is perfected by delivery
20 of the security certificate to the secured party under section
21 9-313;

22 (8) In deposit accounts, electronic chattel paper, electronic
23 documents, investment property or letter-of-credit rights which
24 is perfected by control under section 9-314;

25 (9) In proceeds which is perfected under section 9-315; or

26 (10) That is perfected under section 9-316.

27 (c) Assignment of perfected security interest. If a secured
28 party assigns a perfected security interest or agricultural lien, a
29 filing under this article is not required to continue the perfected
30 status of the security interest against creditors of and transferees
31 from the original debtor.

**§46-9-312. Perfection of security interests in chattel paper,
deposit accounts, documents, goods covered by
documents, instruments, investment property,
letter-of-credit rights and money; perfection by
permissive filing; temporary perfection without
filing or transfer of possession.**

1 (a) Perfection by filing permitted. A security interest in
2 chattel paper, negotiable documents, instruments or investment
3 property may be perfected by filing.

4 (b) Control or possession of certain collateral. Except as
5 otherwise provided in section 9-315(c) and (d) for proceeds:

6 (1) A security interest in a deposit account may be per-
7 fected only by control under section 9-314; and

8 (2) Except as otherwise provided in section 9-308(d), a
9 security interest in a letter-of-credit right may be perfected only
10 by control under section 9-314; and

11 (3) A security interest in money may be perfected only by
12 the secured party's taking possession under section 9-313.

13 (c) Goods covered by negotiable document. While goods
14 are in the possession of a bailee that has issued a negotiable
15 document covering the goods:

16 (1) A security interest in the goods may be perfected by
17 perfecting a security interest in the document; and

18 (2) A security interest perfected in the document has
19 priority over any security interest that becomes perfected in the
20 goods by another method during that time.

21 (d) Goods covered by nonnegotiable document. While
22 goods are in the possession of a bailee that has issued a
23 nonnegotiable document covering the goods, a security interest
24 in the goods may be perfected by:

25 (1) Issuance of a document in the name of the secured
26 party;

27 (2) The bailee's receipt of notification of the secured
28 party's interest; or

29 (3) Filing as to the goods.

30 (e) Temporary perfection: new value. A security interest in
31 certificated securities, negotiable documents or instruments is
32 perfected without filing or the taking of possession or control
33 for a period of twenty days from the time it attaches to the
34 extent that it arises for new value given under an authenticated
35 security agreement.

36 (f) Temporary perfection: goods or documents made
37 available to debtor. A perfected security interest in a negotiable
38 document or goods in possession of a bailee, other than one that
39 has issued a negotiable document for the goods, remains
40 perfected for twenty days without filing if the secured party
41 makes available to the debtor the goods or documents repre-
42 senting the goods for the purpose of:

43 (1) Ultimate sale or exchange; or

44 (2) Loading, unloading, storing, shipping, transshipping,
45 manufacturing, processing or otherwise dealing with them in a
46 manner preliminary to their sale or exchange.

47 (g) Temporary perfection: delivery of security certificate or
48 instrument to debtor. A perfected security interest in a certifi-
49 cated security or instrument remains perfected for twenty days
50 without filing if the secured party delivers the security certifi-
51 cate or instrument to the debtor for the purpose of:

52 (1) Ultimate sale or exchange; or

53 (2) Presentation, collection, enforcement, renewal or
54 registration of transfer.

55 (h) Expiration of temporary perfection. After the
56 twenty-day period specified in subsection (e), (f) or (g) of this
57 section expires, perfection depends upon compliance with this
58 article.

**§46-9-313. When possession by or delivery to secured party
perfects security interest without filing.**

1 (a) Perfection by possession or delivery. Except as
2 otherwise provided in subsection (b) of this section, a secured
3 party may perfect a security interest in tangible negotiable
4 documents, goods, instruments, money or tangible chattel paper

5 by taking possession of the collateral. A secured party may
6 perfect a security interest in certificated securities by taking
7 delivery of the certificated securities under section 8-301.

8 (b) Goods covered by certificate of title. With respect to
9 goods covered by a certificate of title issued by this state, a
10 secured party may perfect a security interest in the goods by
11 taking possession of the goods only in the circumstances
12 described in section 9-316(d).

13 (c) Collateral in possession of person other than debtor.
14 With respect to collateral other than certificated securities and
15 goods covered by a document, a secured party takes possession
16 of collateral in the possession of a person other than the debtor,
17 the secured party or a lessee of the collateral from the debtor in
18 the ordinary course of the debtor's business, when:

19 (1) The person in possession authenticates a record
20 acknowledging that it holds possession of the collateral for the
21 secured party's benefit; or

22 (2) The person takes possession of the collateral after
23 having authenticated a record acknowledging that it will hold
24 possession of collateral for the secured party's benefit.

25 (d) Time of perfection by possession; continuation of
26 perfection. If perfection of a security interest depends upon
27 possession of the collateral by a secured party, perfection
28 occurs no earlier than the time the secured party takes posses-
29 sion and continues only while the secured party retains
30 possession.

31 (e) Time of perfection by delivery; continuation of
32 perfection. A security interest in a certificated security in
33 registered form is perfected by delivery when delivery of the
34 certificated security occurs under section 8-301 and remains
35 perfected by delivery until the debtor obtains possession of the
36 security certificate.

37 (f) Acknowledgment not required. A person in possession
38 of collateral is not required to acknowledge that it holds
39 possession for a secured party's benefit.

40 (g) Effectiveness of acknowledgment; no duties or
41 confirmation. If a person acknowledges that it holds possession
42 for the secured party's benefit:

43 (1) The acknowledgment is effective under subsection (c)
44 of this section or section 8-301(a), even if the acknowledgment
45 violates the rights of a debtor; and

46 (2) Unless the person otherwise agrees or law other than
47 this article otherwise provides, the person does not owe any
48 duty to the secured party and is not required to confirm the
49 acknowledgment to another person.

50 (h) Secured party's delivery to person other than debtor. A
51 secured party having possession of collateral does not relin-
52 quish possession by delivering the collateral to a person other
53 than the debtor or a lessee of the collateral from the debtor in
54 the ordinary course of the debtor's business if the person was
55 instructed before the delivery or is instructed contemporane-
56 ously with the delivery:

57 (1) Effect of delivery under subsection (h); no duties or
58 confirmation. To hold possession of the collateral for the
59 secured party's benefit; or

60 (2) To redeliver the collateral to the secured party.

61 (i) A secured party does not relinquish possession, even if
62 a delivery under subsection (h) of this section violates the rights
63 of a debtor. A person to which collateral is delivered under
64 subsection (h) of this section does not owe any duty to the
65 secured party and is not required to confirm the delivery to
66 another person unless the person otherwise agrees or law other
67 than this article otherwise provides.

§46-9-314. Perfection by control.

1 (a) Perfection by control. A security interest in investment
2 property, deposit accounts, letter-of-credit rights, electronic
3 chattel paper, or electronic documents may be perfected by
4 control of the collateral under section 7-106, 9-104, 9-105,
5 9-106 or 9-107.

6 (b) Specified collateral: time of perfection by control;
7 continuation of perfection. A security interest in deposit
8 accounts, electronic chattel paper, letter-of-credit rights, or
9 electronic documents is perfected by control under section 7-
10 106, 9-104, 9-105 or 9-107 when the secured party obtains
11 control and remains perfected by control only while the secured
12 party retains control.

13 (c) Investment property: time of perfection by control;
14 continuation of perfection. A security interest in investment
15 property is perfected by control under section 9-106 from the
16 time the secured party obtains control and remains perfected by
17 control until:

18 (1) The secured party does not have control; and

19 (2) One of the following occurs:

20 (A) If the collateral is a certificated security, the debtor has
21 or acquires possession of the security certificate;

22 (B) If the collateral is an uncertificated security, the issuer
23 has registered or registers the debtor as the registered owner; or

24 (C) If the collateral is a security entitlement, the debtor is
25 or becomes the entitlement holder.

§46-9-317. Interests that take priority over or take free of security interest or agricultural lien.

1 (a) Conflicting security interests and rights of lien
2 creditors. A security interest or agricultural lien is subordinate
3 to the rights of:

4 (1) A person entitled to priority under section 9-322; and

5 (2) Except as otherwise provided in subsection (e) of this
6 section, a person that becomes a lien creditor before the earlier
7 of the time: (A) The security interest or agricultural lien is
8 perfected; or (B) one of the conditions specified in section
9 9-203(b)(3) is met and a financing statement covering the
10 collateral is filed.

11 (b) Buyers that receive delivery. Except as otherwise
12 provided in subsection (e) of this section, a buyer, other than a
13 secured party, of tangible chattel paper, tangible documents,
14 goods, instruments or a security certificate takes free of a
15 security interest or agricultural lien if the buyer gives value and
16 receives delivery of the collateral without knowledge of the
17 security interest or agricultural lien and before it is perfected.

18 (c) Lessees that receive delivery. Except as otherwise
19 provided in subsection (e) of this section, a lessee of goods
20 takes free of a security interest or agricultural lien if the lessee
21 gives value and receives delivery of the collateral without
22 knowledge of the security interest or agricultural lien and
23 before it is perfected.

24 (d) Licensees and buyers of certain collateral. A licensee of
25 a general intangible or a buyer, other than a secured party, of
26 accounts, electronic chattel paper, electronic documents,
27 general intangibles or investment property other than a
28 certificated security takes free of a security interest if the
29 licensee or buyer gives value without knowledge of the security
30 interest and before it is perfected.

31 (e) Purchase-money security interest. Except as otherwise
32 provided in sections 9-320 and 9-321, if a person files a

33 financing statement with respect to a purchase-money security
34 interest before or within twenty days after the debtor receives
35 delivery of the collateral, the security interest takes priority
36 over the rights of a buyer, lessee or lien creditor which arise
37 between the time the security interest attaches and the time of
38 filing.

§46-9-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

1 If a security interest or agricultural lien is perfected by a
2 filed financing statement providing information described in
3 section 9-516(b)(5) which is incorrect at the time the financing
4 statement is filed:

5 (1) The security interest or agricultural lien is subordinate
6 to a conflicting perfected security interest in the collateral to the
7 extent that the holder of the conflicting security interest gives
8 value in reasonable reliance upon the incorrect information; and

9 (2) A purchaser, other than a secured party, of the collateral
10 takes free of the security interest or agricultural lien to the
11 extent that, in reasonable reliance upon the incorrect information,
12 the purchaser gives value and, in the case of tangible
13 chattel paper, tangible documents, goods, instruments, or a
14 security certificate, receives delivery of the collateral.

§46-9-516. What constitutes filing; effectiveness of filing.

1 (a) **What constitutes filing.** Except as otherwise provided
2 in subsection (b) of this section, communication of a record to
3 a filing office and tender of the filing fee or acceptance of the
4 record by the filing office constitutes filing.

5 (b) **Refusal to accept record; filing does not occur.** Filing
6 does not occur with respect to a record that a filing office
7 refuses to accept because:

8 (1) The record is not communicated by a method or
9 medium of communication authorized by the filing office;

10 (2) An amount equal to or greater than the applicable filing
11 fee is not tendered;

12 (3) The filing office is unable to index the record because:

13 (A) In the case of an initial financing statement, the record
14 does not provide a name for the debtor;

15 (B) In the case of an amendment or correction statement,
16 the record:

17 (i) Does not identify the initial financing statement as
18 required by section 9-512 or 9-518, as applicable; or

19 (ii) Identifies an initial financing statement whose effective-
20 ness has lapsed under section 9-515;

21 (C) In the case of an initial financing statement that
22 provides the name of a debtor identified as an individual or an
23 amendment that provides a name of a debtor identified as an
24 individual which was not previously provided in the financing
25 statement to which the record relates, the record does not
26 identify the debtor's last name; or

27 (D) In the case of a record filed or recorded in the filing
28 office described in section 9-501(a)(1), the record does not
29 provide a sufficient description of the real property to which it
30 relates;

31 (4) In the case of an initial financing statement or an
32 amendment that adds a secured party of record, the record does
33 not provide a name and mailing address for the secured party of
34 record;

35 (5) In the case of an initial financing statement or an
36 amendment that provides a name of a debtor which was not
37 previously provided in the financing statement to which the
38 amendment relates, the record does not:

39 (A) Provide a mailing address for the debtor;

40 (B) Indicate whether the debtor is an individual or an
41 organization; or

42 (C) If the financing statement indicates that the debtor is an
43 organization, provide:

44 (i) A type of organization for the debtor;

45 (ii) A jurisdiction of organization for the debtor; or

46 (iii) An organizational identification number for the debtor
47 or indicate that the debtor has none;

48 (6) In the case of an assignment reflected in an initial
49 financing statement under section 9-514(a) or an amendment
50 filed under section 9-514(b), the record does not provide a
51 name and mailing address for the assignee; or

52 (7) In the case of a continuation statement, the record is not
53 filed within the six-month period prescribed by section
54 9-515(d).

55 (c) **Rules applicable to subsection (b).** For purposes of
56 subsection (b):

57 (1) A record does not provide information if the filing
58 office is unable to read or decipher the information; and

59 (2) A record that does not indicate that it is an amendment
60 or identify an initial financing statement to which it relates, as
61 required by section 9-512, 9-514 or 9-518, is an initial financing
62 statement.

63 (d) **Refusal to accept record; record effective as filed**
64 **record.** A record that is communicated to the filing office with
65 tender of the filing fee, but which the filing office refuses to
66 accept for a reason other than one set forth in subsection (b) of
67 this section, is effective as a filed record except as against a
68 purchaser of the collateral which gives value in reasonable
69 reliance upon the absence of the record from the files.

70 (e) **Administrative review.** If the Secretary of State
71 determines that a financing statement which identifies a public
72 official or employee as a debtor is fraudulent or that an
73 individual debtor and an individual secured party would appear
74 to be the same individual on the financing statement or that the
75 individual debtor claims to be a transmitting utility, without
76 supporting documents, the Secretary may commence adminis-
77 trative proceedings to remove the statement from its records in
78 accordance with the provisions of article five, chapter twenty-
79 nine-a of this code.

80 (1) Upon the commencement of proceedings pursuant to
81 this subsection, the Secretary of State shall identify the
82 financing statement in its records as subject to administrative
83 review and publish a notice in the *West Virginia Register*
84 regarding the proceedings.

85 (2) A financing statement may be found to be fraudulent
86 only if, based upon clear and convincing evidence, no good
87 faith basis exists upon which to conclude that the secured party
88 was authorized to file the statement and the statement was
89 submitted for the purpose of harassment or intimidation or
90 fraudulent intent of the alleged debtor.

91 (3) If upon the completion of administrative review, it is
92 determined that the filing of a financing statement was
93 fraudulent, the filing party shall be assessed all costs incurred
94 by the Secretary in reaching a final determination, including

95 reimbursement for all costs of the hearing. The filing party may
96 also be subject to a civil penalty not exceeding five hundred
97 dollars per fraudulent filing. If upon completion of administra-
98 tive review or any subsequent appeal of a decision of the
99 Secretary of State, it is determined that a filing subject to appeal
100 is not fraudulent, the secretary or court may award the prevail-
101 ing party reasonable costs and expenses, including attorney
102 fees.

103 (4) The Secretary of State shall annually submit a report to
104 the Legislature regarding actions taken against fraudulent
105 filings pursuant to this section which identifies the number and
106 characteristics of such proceedings, identifies any creditors
107 found to have made fraudulent filings, describes proceedings
108 initiated by the secretary in which it is ultimately determined
109 that fraudulent filings did not occur, describes the number and
110 type of complaints received by the Secretary in which it is
111 alleged that fraudulent filings have occurred, and describes the
112 actions taken by the secretary to investigate complaints
113 concerning allegedly fraudulent filings and the results of the
114 investigations.

115 (5) A decision by the secretary to remove a financing
116 statement determined to have been fraudulently filed subject to
117 appeal *de novo* to the Circuit Court of Kanawha County.
118 Pending the outcome of an appeal, the financing statement may
119 not be removed from the records of the Secretary, but shall be
120 identified in the records as having been adjudicated to be
121 fraudulent, subject to a pending appeal by the putative creditor.

122 (6) A financing statement filed by a regulated financial
123 institution is not subject to the provisions of this section. For
124 the purposes of this section, a regulated financial institution is
125 a bank, bank and trust company, trust company, savings bank,
126 savings association, building and loan association, credit union,
127 consumer finance company, insurance company, investment

128 company, mortgage lender or broker, securities broker, dealer
129 or underwriter, or other institution chartered, licensed, regis-
130 tered or otherwise authorized under federal law, the law of this
131 state or any other state, to engage in secured lending.

**§46-9-601. Rights after default; judicial enforcement; consignor
or buyer of accounts, chattel paper, payment
intangibles or promissory notes.**

1 (a) Rights of secured party after default. After default, a
2 secured party has the rights provided in this part and, except as
3 otherwise provided in section 9-602, those provided by
4 agreement of the parties. A secured party:

5 (1) May reduce a claim to judgment, foreclose or otherwise
6 enforce the claim, security interest or agricultural lien by any
7 available judicial procedure; and

8 (2) If the collateral is documents, may proceed either as to
9 the documents or as to the goods they cover.

10 (b) Rights and duties of secured party in possession or
11 control. A secured party in possession of collateral or control of
12 collateral under section 7-106, 9-104, 9-105, 9-106 or 9-107 has
13 the rights and duties provided in section 9-207.

14 (c) Rights cumulative; simultaneous exercise. The rights
15 under subsections (a) and (b) of this section are cumulative and
16 may be exercised simultaneously.

17 (d) Rights of debtor and obligor. Except as otherwise
18 provided in subsection (g) of this section and section 9-605,
19 after default, a debtor and an obligor have the rights provided
20 in this part and by agreement of the parties.

21 (e) Lien of levy after judgment. If a secured party has
22 reduced its claim to judgment, the lien of any levy that may be

23 made upon the collateral by virtue of an execution based upon
24 the judgment relates back to the earliest of:

25 (1) The date of perfection of the security interest or
26 agricultural lien in the collateral;

27 (2) The date of filing a financing statement covering the
28 collateral; or

29 (3) Any date specified in a statute under which the
30 agricultural lien was created.

31 (f) Execution sale. A sale pursuant to an execution is a
32 foreclosure of the security interest or agricultural lien by
33 judicial procedure within the meaning of this section. A secured
34 party may purchase at the sale and thereafter hold the collateral
35 free of any other requirements of this article.

36 (g) Consignor or buyer of certain rights to payment. Except
37 as otherwise provided in section 9-607(c), this part imposes no
38 duties upon a secured party that is a consignor or is a buyer of
39 accounts, chattel paper, payment intangibles or promissory
40 notes.



CHAPTER 248

(Com. Sub. for H. B. 4536 — By Delegate Amores)



[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2006.]



AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §24-2E-2, relating

generally to improving competition among telephone public utilities providing landline services to business customers; limiting termination fees charged by telephone public utilities for landline service to business customers and providing method of computing termination fee; specifying how this act applies to existing landline business customer services agreements, whether in their original term or in a rollover term; and providing that act does not apply to services agreements between two telephone public utilities.

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 §24-2E-2, to read as follows:

ARTICLE 2E. REQUIREMENTS FOR PHONE SERVICE SALES.

§24-2E-2. Telephone services agreements.

1 (a) *Limitation on termination fees.* — On and after the
2 effective date of this section, no telephone public utility may,
3 in connection with its continued provision of landline telephone
4 service pursuant to an automatic renewal provision contained
5 in a customer service agreement with a business customer,
6 impose a termination fee that is greater than the charges for one
7 month's service, which fee shall be computed by averaging the
8 service charges invoiced to the terminating customer during the
9 preceding four months.

10 (b) *Service agreements already automatically renewed.* —
11 If, as of the effective date of this section, a telephone public
12 utility is providing landline telephone service to a customer
13 pursuant to an automatic renewal provision contained in a
14 customer service agreement with a business customer, the
15 telephone public utility may not impose a termination fee that
16 is greater than the charges for two months' service, which fee

17 shall be computed by averaging the service charges invoiced to
18 the terminating customer during the preceding four months.

19 (c) *Limitation on applicability.* —

20 (1) Nothing herein shall be construed as preventing a
21 telephone public utility and its business customers from
22 entering into customer service agreements, governing, among
23 other matters, any termination fee that may be imposed on the
24 customer for terminating the service agreement during its initial
25 term.

26 (2) The provisions of this section do not apply to service
27 agreements between one telephone public utility and another
28 telephone public utility.

CHAPTER 249

**(Com. Sub. for H. B. 4565 — By Delegates Beane,
Ennis, Talbott and G. White)**

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2006.]

AN ACT to repeal §16-5-12a, §16-5-12b, §16-5-18a and §16-5-18b of the Code of West Virginia, 1931, as amended; to amend and reenact §16-5-1, §16-5-2, §16-5-3, §16-5-4, §16-5-5, §16-5-6, §16-5-7, §16-5-8, §16-5-9, §16-5-10, §16-5-11, §16-5-12, §16-5-13, §16-5-14, §16-5-15, §16-5-16, §16-5-17, §16-5-18, §16-5-19, §16-5-20, §16-5-21, §16-5-22, §16-5-23, §16-5-24, §16-5-25, §16-5-26, §16-5-27, §16-5-28, §16-5-29, §16-5-30, §16-5-31, §16-5-32, §16-5-33, §16-5-34, §16-5-35 and §16-5-36 of said code; and to amend said code by adding thereto two new

sections, designated §16-5-37 and §16-5-38, all relating to vital statistics; defining terms; establishing section of vital statistics in Bureau for Public Health; authorizing the Department of Health and Human Resources to propose legislative rules; authorizing the appointment of a State Registrar; delineating duties and powers of State Registrar; authorizing registration districts; authorizing appointment and removal of local registrars and deputy local registrars; delineating duties of local registrars and deputy local registrars; authorizing State Registrar to approve document forms; requiring the filing of certificates of birth; establishing criteria for paternity to be indicated on birth certificate; allowing for amendment of birth records; requiring the reporting of specified birth defects; requiring notations of missing children on birth records; requiring reporting of infants of unknown parentage; providing for delayed registration of births; providing for establishment of facts of birth through judicial procedure; requiring courts to report adoptions, annulments of adoptions or amendments of orders of adoptions; requiring courts to report paternity determinations; providing for new birth certificates following adoption, legitimation, or paternity acknowledgment or determination; requiring reporting of death, fetal death and induced termination of pregnancy; providing for delayed registration of death; authorizing disposition, disinterment and reinterment permits; authorizing corrections and amendments to vital records; authorizing reproduction and disposal of vital records; providing for disclosure of information for research purposes; providing for issuance of certified copies of vital records; authorizing fees for copies and record searches; setting forth duties to keep records and furnish vital information; authorizing registrar to match birth and death records; limiting use of social security numbers; authorizing the establishment of system of registering records of marriage, divorce and annulment; requiring reporting of marriages, divorces and annulments; and providing criminal penalties for violations.

Be it enacted by the Legislature of West Virginia:

That §16-5-12a, §16-5-12b, §16-5-18a and §16-5-18b of the Code of West Virginia, 1931, as amended, be repealed; that §16-5-1, §16-5-2, §16-5-3, §16-5-4, §16-5-5, §16-5-6, §16-5-7, §16-5-8, §16-5-9, §16-5-10, §16-5-11, §16-5-12, §16-5-13, §16-5-14, §16-5-15, §16-5-16, §16-5-17, §16-5-18, §16-5-19, §16-5-20, §16-5-21, §16-5-22, §16-5-23, §16-5-24, §16-5-25, §16-5-26, §16-5-27, §16-5-28, §16-5-29, §16-5-30, §16-5-31, §16-5-32, §16-5-33, §16-5-34, §16-5-35 and §16-5-36 of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §16-5-37 and §16-5-38, all to read as follows:

ARTICLE 5. VITAL STATISTICS.

- §16-5-1. Definitions.
- §16-5-2. Establishment of section of vital statistics in Bureau for Public Health.
- §16-5-3. Department of Health and Human Resources to propose legislative rules.
- §16-5-4. Appointment of State Registrar of Vital Statistics.
- §16-5-5. Powers and duties of State Registrar.
- §16-5-6. Registration districts.
- §16-5-7. Appointment and removal of local registrars and deputy local registrars.
- §16-5-8. Duties of local registrars and deputy local registrars.
- §16-5-9. Content of certificates and reports.
- §16-5-10. Birth registration acknowledgment and rescission of paternity.
- §16-5-11. Registration of infants and minors born with specified birth defects.
- §16-5-12. Notation on birth records of missing children.
- §16-5-13. Registration of infants of unknown parentage.
- §16-5-14. Delayed registration of births.
- §16-5-15. Judicial procedure to establish facts of birth.
- §16-5-16. Certificate of adoption.
- §16-5-17. Court reports of determination of paternity.
- §16-5-18. Certificates of birth following adoption, legitimation, paternity acknowledgment and court determination of paternity.
- §16-5-19. Death registration.
- §16-5-20. Delayed registration of death.
- §16-5-21. Reports of fetal death.
- §16-5-22. Reports of induced termination of pregnancy.
- §16-5-23. Authorization for disposition and disinterment and reinterment permits.
- §16-5-24. Extension of time for filing certificates, reports and authorizations.
- §16-5-25. Correction and amendment of vital records.
- §16-5-26. Reproduction and preservation of records.
- §16-5-27. Disclosure of information from vital records or vital reports.

- §16-5-28. Copies from the system of vital statistics.
- §16-5-29. Fees for copies and searches.
- §16-5-30. Persons required to keep records.
- §16-5-31. Duty to furnish information relative to vital events.
- §16-5-32. Matching of birth and death certificates.
- §16-5-33. Limitation on use of social security numbers.
- §16-5-34. Uniform system of registration of marriage, divorce and annulment of marriage.
- §16-5-35. Registration of marriages.
- §16-5-36. Registration of divorces and annulments of marriages.
- §16-5-37. Applicability to previously received certificates and reports.
- §16-5-38. Penalties.

§16-5-1. Definitions.

1 As used in this article, unless the context otherwise
2 requires, the following terms have the following meanings:

3 (1) “Bureau” means the Bureau for Public Health within the
4 Department of Health and Human Resources.

5 (2) “Commissioner” means the Commissioner of the
6 Bureau for Public Health within the Department of Health and
7 Human Resources.

8 (3) “Date of filing” means the date a vital record is accepted
9 for registration by the section of vital statistics of the state
10 Bureau for Public Health.

11 (4) “Dead body” means a human body or parts of a human
12 body or bones from the condition of which it reasonably may be
13 concluded that death occurred.

14 (5) “Department” means the Department of Health and
15 Human Resources.

16 (6) “Deputy local registrar” means a person appointed by
17 and working under the supervision of a local registrar in the
18 discharge of the vital statistics functions specified to be

19 performed in and for the county or other district of the local
20 registrar.

21 (7) “Fetal death” means death prior to the complete
22 expulsion or extraction from its mother of a product of human
23 conception, irrespective of the duration of pregnancy and which
24 is not an induced termination of pregnancy, such death being
25 indicated by the fact that after such expulsion or extraction the
26 fetus does not breathe or show any other evidence of life^e such
27 as beating of the heart, pulsation of the umbilical cord or
28 definite movement of voluntary muscles.

29 (8) “Filing” means the presentation and acceptance of a
30 vital record or report provided in this article for registration by
31 the section of vital statistics of the state Bureau for Public
32 Health.

33 (9) “Final disposition” means the burial, interment,
34 cremation, removal from the state, or other authorized disposi-
35 tion of a dead body or fetus.

36 (10) “Induced termination of pregnancy” means the
37 purposeful interruption of an intrauterine pregnancy with the
38 intention other than to produce a live-born infant, and which
39 does not result in live birth. The definition excludes manage-
40 ment of prolonged retention of products of conception follow-
41 ing fetal death.

42 (11) “Institution” means any establishment, public or
43 private, which provides inpatient or outpatient medical,
44 surgical, or diagnostic care or treatment, or nursing, custodial
45 or domiciliary care to two or more unrelated individuals or to
46 which persons are committed by law.

47 (12) “Licensed health professional” means an individual
48 who is licensed by the State of West Virginia to practice a
49 health profession.

50 (13) "Live birth" means the complete expulsion or
51 extraction from its mother of a product of human conception,
52 irrespective of the duration of pregnancy, which, after such
53 expulsion or extraction, breathes or shows any other evidence
54 of life such as beating of the heart, pulsation of the umbilical
55 cord or definite movement of voluntary muscles, whether or not
56 the umbilical cord has been cut or the placenta is attached.

57 (14) "Local registrar" means the person appointed by the
58 State Registrar of Vital Statistics for a county or other district
59 to perform the vital statistics functions specified to be per-
60 formed in and for the county or other district.

61 (15) "Physician" means a person licensed to practice
62 medicine or osteopathy pursuant to the laws of this state.

63 (16) "Registration" means the process by which vital
64 records are completed, filed and incorporated into the official
65 records of the section of vital statistics.

66 (17) "Research" means a systematic investigation designed
67 primarily to develop or contribute to general knowledge.

68 (18) "System of vital statistics" means the registration,
69 collection, preservation, amendment, certification of vital
70 records, the collection of other reports required by this article,
71 and related activities, including, but not limited to, the tabula-
72 tion, analysis, publication and dissemination of vital statistics.

73 (19) "Vital records" means certificates or reports and data
74 related to birth, death, and marriage, including divorce,
75 dissolution of marriage, and annulment.

76 (20) "Vital reports" means reports and related data
77 designated in this article and in rules.

78 (21) “Vital statistics” means the data derived from certifi-
79 cates and reports of birth, death, fetal death, marriage, divorce,
80 annulment and related records and reports.

**§16-5-2. Establishment of section of vital statistics in Bureau for
Public Health.**

1 (a) There is established in the state Bureau for Public
2 Health a section of vital statistics which shall install, maintain
3 and operate the only system of vital statistics throughout this
4 state.

5 (b) The section of vital statistics shall be provided with
6 sufficient staff, suitable offices with a fire-proof vault and a
7 nonliquid fire suppression system for the protection of paper
8 records and magnetic media and other resources for the proper
9 administration of the system of vital statistics and for the
10 preservation and security of its official records.

**§16-5-3. Department of Health and Human Resources to propose
legislative rules.**

1 (a) The Department of Health and Human Resources shall
2 propose rules for legislative approval in accordance with the
3 provisions of article three, chapter twenty-nine-a of this code to
4 provide for:

5 (1) Adequate standards of security and confidentiality of
6 vital records;

7 (2) Requirements for individuals in the state who may be
8 designated by the State Registrar to aid in the administration of
9 the system of vital statistics;

10 (3) Criteria for registration districts throughout the state;

11 (4) Requirements for the completion, filing, correction and
12 amendment of certificates, reports and other documents
13 required by this article;

14 (5) Requirements for registering a delayed certificate of
15 birth, including provisions for dismissing an application which
16 is not actively pursued;

17 (6) Inspection of evidence of adoption, annulment of
18 adoption, legitimation or court determination of paternity;

19 (7) Completion of the medical certification of the cause of
20 death;

21 (8) Record keeping requirements for receipt, removal,
22 delivery, burial, cremation or other final disposition of a dead
23 body or a fetus;

24 (9) Authorization for the disinterment and reinterment of a
25 dead body or a fetus;

26 (10) Extension of prescribed time periods for the filing of
27 certificates of death, reports of fetal death and authorizations
28 for disposition and disinterment and reinterment, including
29 authorization for disposition prior to filing a certificate of
30 death;

31 (11) Disposal of original records from which permanent
32 reproductions have been made;

33 (12) Disclosure of confidential information for administra-
34 tive, statistical or research purposes;

35 (13) Release of records of birth, death, fetal death, mar-
36 riage, divorce or annulment, subject to the provisions of section
37 twenty-seven of this article;

38 (14) Authorization for preparing, issuing or obtaining
39 copies of vital records;

40 (15) Requirements for matching and marking certificates of
41 birth and death for the purpose of preventing the fraudulent use
42 of birth certificates;

43 (16) Utilization of social security numbers to meet
44 requirements of federal law;

45 (17) Requirements for a statewide system of registering,
46 indexing and preserving records of marriage, divorce and
47 annulment of marriage; and

48 (18) Any other purpose to carry out the requirements of this
49 article.

50 (b) Any rules in effect as of the passage of this article will
51 remain in effect until amended, modified, repealed or replaced,
52 except that references to provisions of former enactments of
53 this article are interpreted to mean provisions of this article.

§16-5-4. Appointment of State Registrar of Vital Statistics.

1 The Commissioner of the Bureau for Public Health shall
2 appoint the State Registrar of Vital Statistics, hereinafter
3 referred to as the "State Registrar."

§16-5-5. Powers and duties of State Registrar.

1 (a) The State Registrar shall:

2 (1) Administer and enforce the provisions of this article and
3 the rules promulgated pursuant to this article, and issue
4 instructions for the efficient administration of the system of
5 vital statistics;

6 (2) Direct and supervise the system of vital statistics and
7 the operation of the section of vital statistics, and act as
8 custodian of its records;

9 (3) Direct, supervise, and control all activities pertaining to
10 the operation of the system of vital statistics;

11 (4) Conduct training programs to promote uniformity of
12 policy and procedures throughout the state in matters pertaining
13 to the system of vital statistics;

14 (5) Prescribe, furnish, and distribute forms required by this
15 article and the rules promulgated pursuant to this article, and
16 prescribe means for transmission of data to accomplish the
17 purpose of complete and accurate reporting and registration;

18 (6) Prepare and publish annual reports of vital statistics of
19 this state, and other reports required by the commissioner;

20 (7) Provide to local health agencies copies of or data
21 derived from certificates and reports required under this article
22 as the State Registrar may determine are necessary for local
23 health planning and program activities: *Provided*, That the
24 copies and data remain the property of the section of vital
25 statistics, and the uses that may be made of them are governed
26 by the State Registrar; and

27 (8) Offer voluntary paternity establishment services in
28 accordance with federal regulations set forth in 45 CFR
29 303.5(g).

30 (b) The State Registrar may:

31 (1) Designate individuals in the state as meet the require-
32 ments provided by rule to aid in the efficient administration of
33 the system of vital statistics;

34 (2) Delegate functions and duties to employees of the
35 section of vital statistics and to individuals designated under
36 subdivision (1) of this subsection;

37 (3) Investigate, personally or by a duly delegated represen-
38 tative, cases of irregularity or violation of law arising under the
39 provisions of this article;

40 (4) Report cases of violation of any of the provisions of this
41 article to the prosecuting attorney of the county, with a
42 statement of the facts and circumstances. The prosecuting
43 attorney may prosecute the person or corporation responsible
44 for the alleged violation of law. Upon request of the State
45 Registrar, the Attorney General shall assist in the enforcement
46 of the provisions of this article.

§16-5-6. Registration districts.

1 Subject to the rules promulgated by the department, the
2 commissioner may establish, eliminate, consolidate, subdivide
3 or alter the boundaries of, registration districts throughout the
4 state.

§16-5-7. Appointment and removal of local registrars and deputy local registrars.

1 (a) The State Registrar may appoint one or more local
2 registrars and deputy local registrars, and may assign them to
3 one or more registration districts.

4 (b) The State Registrar may remove a local registrar or a
5 deputy local registrar for reasonable cause.

§16-5-8. Duties of local registrars and deputy local registrars.

1 (a) A local registrar shall:

2 (1) Administer and enforce the provisions of this article and
3 the rules promulgated pursuant to this article, according to the
4 instructions of the State Registrar;

5 (2) Require that certificates be completed and filed in
6 accordance with provisions of this article and the rules
7 promulgated pursuant to this article;

8 (3) Transmit, by mail or an approved electronic process, all
9 certificates, reports or other returns to the State Registrar on a
10 schedule to be determined by the State Registrar;

11 (4) Maintain records, make reports and perform other duties
12 as required by the State Registrar.

13 (b) A deputy local registrar shall perform the duties of the
14 local registrar in the absence or incapacity of the local registrar,
15 and shall perform other duties as prescribed by the State
16 Registrar.

§16-5-9. Content of certificates and reports.

1 (a) To promote uniformity in the system of vital statistics,
2 in addition to the items required by state law, the forms of
3 certificates, reports and other returns required by this article or
4 by rules promulgated pursuant to this article shall include the
5 items recommended by the federal agency responsible for
6 national vital statistics, subject to the commissioner's approval
7 or modification.

8 (b) The State Registrar shall approve the form and format
9 for each certificate, report, and other documents required by
10 this article.

11 (c) All vital records shall contain the date of filing.

12 (d) Information required in certificates, forms, records, or
13 reports authorized by this article may be filed, verified,

14 registered and stored by photographic, electronic, or other
15 means as prescribed by the State Registrar.

**§16-5-10. Birth registration acknowledgment and rescission of
paternity.**

1 (a) A certificate of birth for each live birth which occurs in
2 this state shall be filed with the section of vital statistics, or as
3 otherwise directed by the State Registrar, within seven days
4 after the birth and shall be registered if it has been completed
5 and filed in accordance with this section.

6 (b) When a birth occurs in transit to or in an institution, the
7 person in charge of the institution or his or her authorized
8 designee shall obtain all data required by the certificate, prepare
9 the certificate, certify either by signature or by an approved
10 electronic process that the child was born alive at the place and
11 time and on the date stated, and file the certificate as directed
12 in subsection (a) of this section. The physician or other person
13 in attendance, or any person providing prenatal care shall
14 provide the medical information required by the certificate
15 within seventy-two hours after the birth.

16 (c) When a birth occurs other than in transit to or in an
17 institution, the certificate shall be prepared and filed by one of
18 the following persons in the indicated order of priority in
19 accordance with legislative rule:

20 (1) The physician in attendance at or immediately after the
21 birth;

22 (2) Any other person in attendance at or immediately after
23 the birth;

24 (3) The father or the mother, or, in the absence of the father
25 and the inability of the mother, the person in charge of the
26 premises where the birth occurred; or

27 (4) Any other person qualified by the department by rule to
28 establish the facts of birth.

29 (d) When a birth occurs on a moving conveyance within the
30 United States and the child is first removed from the convey-
31 ance in this state, the birth shall be registered in this state, and
32 the place where it is first removed shall be considered the place
33 of birth. When a birth occurs on a moving conveyance while in
34 international waters or air space or in a foreign country or its air
35 space and the child is first removed from the conveyance in this
36 state, the birth shall be registered in this state, but the certificate
37 shall show the actual place of birth insofar as can be deter-
38 mined.

39 (e) For the purposes of birth registration, the woman who
40 gives birth to the child is presumed to be the mother, unless
41 otherwise specifically provided by state law or determined by
42 a court of competent jurisdiction prior to the filing of the
43 certificate of birth.

44 (f) If the mother was married at the time of either concep-
45 tion or birth, or between conception and birth, the name of the
46 most recent husband shall be entered on the certificate as the
47 father of the child, unless:

48 (1) Paternity has been determined otherwise by a court of
49 competent jurisdiction pursuant to the provisions of article
50 twenty-four, chapter forty-eight of this code or other applicable
51 law, in which case the name of the father as determined by the
52 court shall be entered on the certificate; or

53 (2) Genetic testing shows that the alleged father is the
54 biological father of the child pursuant to the following guide-
55 lines:

56 (A) The tests show that the inherited characteristics
57 including, but not limited to, blood types, have been determined

58 by appropriate testing procedures at a hospital, independent
59 medical institution or independent medical laboratory duly
60 licensed under the laws of this state, or any other state, and an
61 expert qualified as an examiner of genetic markers has
62 analyzed, interpreted and reported on the results; and

63 (B) The blood or tissue or other genetic test results show a
64 statistical probability of paternity of more than ninety-eight
65 percent; or

66 (3) The mother, her husband, and an alleged father ac-
67 knowledge that the husband is not the biological father and that
68 the alleged father is the true biological father: *Provided*, That
69 the conditions set forth in paragraphs (A) through (D) are met:

70 (A) The mother executes an affidavit of nonpaternity
71 attesting that her husband is not the biological father of the
72 child and that another man is the biological father; and

73 (B) The man named as the alleged biological father
74 executes an affidavit of paternity attesting that he is the
75 biological father; and

76 (C) The husband executes an affidavit of nonpaternity
77 attesting that he is not the biological father; and

78 (D) Affidavits executed pursuant to the provisions of this
79 subdivision may be joint or individual or a combination thereof,
80 and each signature shall be individually notarized. If one of the
81 parties is an unemancipated minor, his or her parent or legal
82 guardian must also sign the respective affidavit.

83 (4) If the affidavits are executed as specified in subdivision
84 (3) of this section, or genetic tests as specified in subdivision
85 (2) of this section verify that the alleged father is the biological
86 father, the alleged father shall be shown as the father on the
87 certificate of live birth. Paternity established pursuant to

88 subdivision (2) or (3) of this section establishes the father for all
89 legal purposes including, but not limited to, the establishment
90 and enforcement of child support orders, and may be rescinded
91 only by court order upon a showing of fraud, duress or material
92 mistake of fact.

93 (5) Paternity may be established pursuant to subdivision (2)
94 or (3) of this section only when the husband's name does not
95 appear as the father of a child on a registered and filed certifi-
96 cate of live birth and the affidavits or genetic tests are com-
97 pleted and submitted to the section of vital statistics within one
98 year of the date of birth of the child.

99 (g) If the mother was not married at the time of either
100 conception or birth, or between conception and birth, the name
101 of the father shall not be entered on the certificate of birth
102 without an affidavit of paternity signed by the mother and the
103 person to be named as the father. The affidavit may be joint or
104 individual and each signature shall be individually notarized.

105 (h) A notarized affidavit of paternity, signed by the mother
106 and the man to be named as the father, acknowledging that the
107 man is the father of the child, legally establishes the man as the
108 father of the child for all purposes, and child support may be
109 established pursuant to the provisions of chapter forty-eight of
110 this code.

111 (1) The notarized affidavit of paternity shall include filing
112 instructions, the parties' social security number and addresses
113 and a statement that parties were given notice of the alternatives
114 to, the legal consequences of, and the rights and obligations of
115 acknowledging paternity, including, but not limited to, the duty
116 to support a child. If either of the parents is a minor, the
117 statement shall include an explanation of any rights that may be
118 afforded due to the minority status.

119 (2) The failure or refusal to include all information required
120 by subdivision (1) of this subsection shall not affect the validity
121 of the affidavit of paternity, in the absence of a finding by a
122 court of competent jurisdiction that it was obtained by fraud,
123 duress or material mistake of fact, as provided in subdivision
124 (4) of this subsection.

125 (3) The original notarized affidavit of paternity shall be
126 filed with the State Registrar. If a certificate of birth for the
127 child has been previously issued which is incorrect or incom-
128 plete, a new certificate of birth will be created and placed on
129 file. The new certificate of birth will not be marked
130 "Amended".

131 (4) Upon receipt of any notarized affidavit of paternity
132 executed pursuant to this section, the State Registrar shall
133 forward a copy to the Bureau for Child Support Enforcement.

134 (5) An acknowledgment executed under the provisions of
135 this subsection may be rescinded as follows:

136 (A) The parent wishing to rescind the acknowledgment
137 shall file with the clerk of the circuit court of the county in
138 which the child resides a verified complaint stating the name of
139 the child, the name of the other parent, the date of the birth of
140 the child, the date of the signing of the affidavit of paternity,
141 and a statement that he or she wishes to rescind the acknowl-
142 edgment of the paternity. If the complaint is filed more than
143 sixty days from the date of execution of the affidavit of
144 paternity or the date of an administrative or judicial proceeding
145 relating to the child in which the signatory of the affidavit of
146 paternity is a party, the complaint shall include specific
147 allegations concerning the elements of fraud, duress or material
148 mistake of fact.

149 (B) The complaint shall be served upon the other parent as
150 provided in Rule 4 of the West Virginia Rules of Civil Proce-
151 dure.

152 (C) The family court judge shall hold a hearing within sixty
153 days of the service of process upon the other parent.

154 (D) If the complaint was filed within sixty days of the date
155 the affidavit of paternity was executed, the court shall order the
156 acknowledgment to be rescinded without any requirement of a
157 showing of fraud, duress, or material mistake of fact.

158 (E) If the complaint was filed more than sixty days from the
159 date of execution of the affidavit of paternity or the date of an
160 administrative or judicial proceeding relating to the child in
161 which the signatory of the affidavit of paternity is a party, the
162 court may set aside the acknowledgment only upon a finding,
163 by clear and convincing evidence, that the affidavit of paternity
164 was executed under circumstances of fraud, duress or material
165 mistake of fact.

166 (F) The circuit clerk shall forward a copy of any order
167 entered pursuant to this proceeding to the State Registrar by
168 certified mail. The order shall state all changes to be made, if
169 any, to the certificate of birth. The certificate of birth may not
170 be marked "Amended."

171 (i) In any case in which paternity of a child is determined
172 by a court of competent jurisdiction pursuant to the provisions
173 of article twenty-four, chapter forty-eight of this code or other
174 applicable law, the name of the father and surname of the child
175 shall be entered on the certificate of birth in accordance with
176 the finding and order of the court.

177 (j) If the father is not named on the certificate of birth, no
178 other information about the father may be entered on the
179 certificate.

180 (k) In order to permit the filing of the certificate of birth
181 within the seven days prescribed in subsection (a) of this
182 section, one of the parents of the child must verify the accuracy

183 of the personal data to be entered on the certificate. Certificates
184 of birth filed after seven days, but within one year from the date
185 of birth, will be registered on the standard form of the certifi-
186 cate of birth and will not be marked "Delayed." The State
187 Registrar may require additional evidence in support of the
188 facts of birth for certificates filed after seven days from the date
189 of birth.

190 (l) In addition to the personal data furnished for the
191 certificate of birth issued for a live birth in accordance with the
192 provisions of this section, a person whose name is to appear on
193 the certificate of birth as a parent shall contemporaneously
194 furnish to the person preparing and filing the certificate of birth
195 the social security number or numbers issued to the parent. A
196 record of the social security number or numbers shall be filed
197 with the local registrar of the district in which the birth occurs
198 within seven days after the birth, and the local registrar shall
199 transmit the number or numbers to the State Registrar in the
200 same manner as other personal data is transmitted to the State
201 Registrar.

202 (m) The local registrar shall transmit by mail or an
203 approved electronic process each month to the county clerk of
204 each county the copies of the certificates of all births occurring
205 in the county or the data extracted therefrom, from which
206 copies the clerk shall compile records of the births and shall
207 create an index to the birth records that shall be a matter of
208 public record. The State Registrar shall prescribe the form of
209 the index of births.

**§16-5-11. Registration of infants and minors born with specified
birth defects.**

1 (a) When a live birth occurs, the physician or midwife in
2 attendance at, or present immediately after, the birth shall
3 examine the infant for any of the following birth defects:

- 4 (1) Anencephaly;
- 5 (2) Spina bifida;
- 6 (3) Hydrocephaly;
- 7 (4) Cleft palate;
- 8 (5) Total cleft lip;
- 9 (6) Esophageal atresia and atenosis;
- 10 (7) Rectal and anal atresia;
- 11 (8) Hypospadias;
- 12 (9) Reduction and deformity - upper limb;
- 13 (10) Reduction and deformity - lower limb;
- 14 (11) Congenital dislocation of the hip;
- 15 (12) Down's syndrome;
- 16 (13) Visual impairments;
- 17 (14) Sickle cell anemia; and
- 18 (15) Others as may be requested by the commissioner.

19 (b) If any such impairment is found in an infant, or in any
20 subsequent examination of any minor which has not been
21 previously diagnosed, the examining physician, midwife or
22 other health care provider licensed under chapter thirty of the
23 code shall within thirty days of the examination make a report
24 of the diagnosis to the State Registrar or other agency within
25 the bureau as designated by the commissioner on forms
26 provided by the bureau. The report shall include the name of the
27 child, the name or names of the parents or parent or guardian,

28 a description of the impairment and other related information
29 as specified by the commissioner.

30 (c) The information received by the State Registrar or other
31 agency within the bureau as designated by the commissioner
32 pursuant to this section pertaining to the identity of the persons
33 named shall be kept confidential: *Provided*, That if consent of
34 a parent, or of the guardian is obtained, the State Registrar or
35 other agency within the bureau as designated by the commis-
36 sioner may provide the information to federal, state, and local
37 government agencies so that the information can be utilized to
38 provide assistance or services for the benefit of the child.

§16-5-12. Notation on birth records of missing children.

1 (a) Upon receiving a report of the disappearance of any
2 child born in this state, the State Registrar shall indicate in a
3 clear and conspicuous manner in the child's birth record or by
4 an electronic process that the child has been reported as
5 missing, including the title and location of the law-enforcement
6 agency providing the report.

7 (b) Upon receiving a request for any birth records contain-
8 ing a report of the disappearance of any child, the State
9 Registrar shall immediately notify the local law-enforcement
10 agency which provided the missing child report. The State
11 Registrar shall transmit any relevant information concerning the
12 applicant's identity, address and other pertinent data immedi-
13 ately to the relevant local law-enforcement agency.

14 (c) The State Registrar shall retain the original written
15 request, or the details in an electronic format, until notified of
16 the missing child's recovery or the child attains the age of
17 eighteen.

18 (d) Upon notification that any missing child has been
19 recovered, the State Registrar shall remove the report of the
20 disappearance from the child's birth record.

§16-5-13. Registration of infants of unknown parentage.

1 (a) Whoever assumes the custody of a live-born infant of
2 unknown parentage shall report, to the State Registrar, on a
3 form and in a manner prescribed by the State Registrar, the
4 following information:

5 (1) The date and city or county, or both, of finding;

6 (2) Sex and approximate birth date of child;

7 (3) Name and address of the person with whom or the
8 institution with which the child has been placed for care;

9 (4) Name given to the child by the custodian of the child;
10 and

11 (5) Other data required by the State Registrar.

12 (b) The place where the child was found shall be entered as
13 the place of birth.

14 (c) A report registered under this section shall constitute the
15 certificate of birth for the child.

16 (d) If the child is identified and a certificate of birth is
17 found or obtained, the report registered under this section shall
18 be placed in a special file and may not be subject to inspection
19 except upon order of a court of competent jurisdiction or as
20 provided by rule.

§16-5-14. Delayed registration of births.

1 (a) The State Registrar may register a delayed certificate of
2 birth in accordance with a legislative rule to be promulgated by
3 the department, which rule will provide for qualifications for
4 applicants and the evidentiary documentation required. The rule
5 may provide for the dismissal of an application which is not
6 actively pursued.

7 (b) When a certificate of birth of a person born in West
8 Virginia has not been filed within one year, a delayed certificate
9 of birth may be filed in accordance with the legislative rule.

10 (c) A certificate of birth registered one year or more after
11 the date of birth shall be registered on a delayed certificate of
12 birth form. The delayed certificate of birth will show on its face
13 the date of registration and will contain a summary statement of
14 the evidentiary documentation submitted in support of the
15 delayed registration.

16 (d) A delayed certificate of birth may not be registered for
17 a deceased person.

18 (e) If the evidentiary documentation required is not filed
19 with the application for a delayed registration of birth or the
20 State Registrar has cause to question the validity or adequacy
21 of the evidentiary documentation, the State Registrar may not
22 register the delayed certificate of birth and shall advise the
23 applicant of his or her right to seek an order from a court of
24 competent jurisdiction.

25 (f) In addition to the required documentation and other data
26 furnished in an application for a delayed registration of birth in
27 accordance with the provisions of this section, a person whose
28 name is to appear on the certificate of birth as a parent shall
29 contemporaneously furnish with the application the social
30 security number or numbers issued to the parent.

§16-5-15. Judicial procedure to establish facts of birth.

1 (a) If the State Registrar refuses to file a certificate of birth
2 under the provisions of section ten or section fourteen of this
3 article, a petition signed and sworn to by the petitioner may be
4 filed in the circuit court of the county in which the petitioner
5 resides or in the circuit court of Kanawha County for an order

6 establishing a record of the date and place of the birth and the
7 parentage of the person whose birth is to be registered.

8 (b) The petition may be made on a form prescribed and
9 furnished or approved by the State Registrar, and must allege:

10 (1) That the person for whom a certificate of birth is sought
11 was born in this state;

12 (2) That no certificate of birth can be found in the section
13 of vital statistics or the office of any local custodian of
14 certificates of birth;

15 (3) That diligent efforts by the petitioner have failed to
16 obtain the evidence required in accordance with section ten or
17 section fourteen of this article and of any rules promulgated
18 pursuant to this article;

19 (4) That the State Registrar has refused to register a
20 certificate of birth; and

21 (5) Such other allegations as may be required.

22 (c) The petition must be accompanied by a copy of the
23 statement of the State Registrar made in accordance with
24 section ten or section fourteen of this article and by copies of all
25 evidentiary documentation which was submitted to the State
26 Registrar in support of the registration.

27 (d) The court shall fix a time and place for hearing the
28 petition and shall give the State Registrar not less than twenty
29 days' notice of the hearing. The State Registrar, or his or her
30 authorized representative, may appear and testify in the
31 proceeding.

32 (e) If the court finds from the evidence presented that the
33 person for whom a certificate of birth is sought was born in this
34 state, it shall make findings as to the place and date of birth,

35 parentage, and other findings as may be required and shall issue
36 an order, on a form prescribed and furnished or approved by the
37 State Registrar, to establish a record of birth. This order shall
38 include the birth data to be registered, a description of the
39 evidence presented, and the date of the court's action.

40 (f) The clerk of the court shall forward each order establish-
41 ing a record of birth to the State Registrar not later than the
42 tenth day of the calendar month following the month in which
43 it was entered. The State Registrar shall register the order,
44 which shall constitute the court order certificate of birth.

45 (g) Any order is final unless reversed, vacated or modified
46 on appeal, and any appeal must be sought in the manner and
47 within the time provided by law for appeals in other civil cases.

48 (h) In addition to the evidence presented to establish a court
49 order certificate of birth in accordance with the provisions of
50 this section, a person whose name is to appear on the court
51 order certificate of birth as a parent shall furnish to the clerk of
52 the circuit court the social security number or numbers issued
53 to the parent. A record of the social security number or numbers
54 shall be forwarded to the State Registrar along with the order
55 establishing a court order certificate of birth.

§16-5-16. Certificate of adoption.

1 (a) When a court of competent jurisdiction has entered an
2 order of adoption in this state, it shall require the preparation of
3 a certificate of adoption on a form prescribed and furnished by
4 the State Registrar. The certificate of adoption shall be certified
5 by the clerk of the court and shall provide:

6 (1) Facts necessary to locate and identify the certificate of
7 birth of the person adopted or, in the case of a person who was
8 born in a foreign country, evidence from sources determined to
9 be reliable by the court as to the date and place of birth;

10 (2) Information necessary to establish a new certificate of
11 birth of the person adopted; and

12 (3) Information sufficient to identify the order of adoption.

13 (b) Each petitioner shall furnish the information necessary
14 to prepare the certificate of adoption. The court may require any
15 social service or welfare agency or any person having knowl-
16 edge of the facts to provide the additional information as may
17 be necessary to complete the certificate of adoption.

18 (c) Whenever an order of adoption is amended, vacated or
19 annulled, the clerk of the court shall prepare a report, which
20 shall include the facts necessary to identify the original
21 certificate of adoption and the facts in the new order necessary
22 to amend the birth record.

23 (d) Not later than the tenth day of each calendar month, the
24 clerk of the court shall forward to the State Registrar certifi-
25 cates of adoption and reports of annulments or amendments
26 entered in the preceding month, together with the related reports
27 as the State Registrar shall require.

28 (e) When the State Registrar receives a certificate of
29 adoption, report of annulment of adoption, or amendment of an
30 order of adoption for a person born in a state other than West
31 Virginia, he or she shall forward the certificate or report to the
32 State Registrar in the state of birth.

33 (f) When the State Registrar receives a certificate of
34 adoption, report of annulment of adoption, or amendment of an
35 order of adoption for a person born in a foreign country, and the
36 person was not a citizen of the United States at the time of birth,
37 the State Registrar shall prepare a "Certificate of Foreign Birth"
38 as provided by subsection (h), section eighteen of this article.
39 If the person was born in Canada, the State Registrar shall send
40 a copy of the certificate of adoption, report of annulment of

41 adoption, or amendment of an order of adoption to the registra-
42 tion authority in Canada.

43 (g) When the State Registrar receives a certificate of
44 adoption, report of annulment of adoption, or amendment of
45 order of adoption for a person born in a foreign country who
46 was a citizen of the United States at the time of birth, the State
47 Registrar may not prepare a “Certificate of Foreign Birth” but
48 shall notify the adoptive parents or the registrant of the
49 procedures for obtaining a revised certificate of birth through
50 the United States Department of State.

51 (h) In addition to the information furnished in accordance
52 with subsection (b) of this section, each person whose name is
53 to appear on the certificate of adoption as a parent, whether as
54 an adoptive parent or as a natural parent who joins in the
55 adoption without relinquishing parental rights, shall furnish to
56 the clerk of the circuit court the social security number or
57 numbers issued to the parent. A record of the social security
58 number or numbers shall be forwarded to the State Registrar
59 along with the certificate of adoption, as provided in subsection
60 (d) of this section.

§16-5-17. Court reports of determination of paternity.

1 (a) When a court of competent jurisdiction has entered an
2 order of paternity, the petitioner shall provide the information
3 necessary for the clerk of the court to complete and certify a
4 certificate of paternity on a form prescribed and furnished by
5 the State Registrar. The certificate of paternity shall provide:

6 (1) Facts necessary to locate and identify the certificate of
7 birth of the person whose paternity is determined;

8 (2) Information necessary to establish a new certificate of
9 birth of the person whose paternity is determined; and

10 (3) Information sufficient to identify the order of paternity.

11 (b) Not later than the tenth day of each calendar month, the
12 clerk of the court shall forward to the State Registrar certifi-
13 cates of paternity entered in the preceding month, together with
14 related reports as the State Registrar shall require.

15 (c) In addition to providing the information necessary to
16 establish a new certificate of birth of the person whose paternity
17 has been determined, a person whose name is to appear on the
18 certificate of paternity as a parent shall furnish to the clerk of
19 the circuit court the social security number or numbers issued
20 to the parent. A record of the social security number or numbers
21 shall be forwarded to the State Registrar along with the certifi-
22 cate of paternity, as provided in subsection (b) of this section.

**§16-5-18. Certificates of birth following adoption, legitimation,
paternity acknowledgment and court determination
of paternity.**

1 (a) The State Registrar shall establish a new certificate of
2 birth for a person born in West Virginia when he or she receives
3 the following:

4 (1) A certificate of adoption as provided in section sixteen
5 of this article or a certificate of adoption prepared and filed in
6 accordance with the laws of another state, or a certified copy of
7 the order of adoption, together with the information necessary
8 to identify the original certificate of birth and to establish a new
9 certificate of birth; or

10 (2) A request that a new certificate be established as
11 prescribed by legislative rule, based upon evidence that:

12 (A) The person for whom the certificate is sought has been
13 legitimated;

14 (B) A court of competent jurisdiction has determined the
15 paternity of the person; or

16 (C) Both parents have acknowledged the paternity of the
17 person.

18 (b) A new certificate of birth shall show the actual city,
19 county and date of birth, if known, and shall be substituted for
20 the original certificate of birth on file. The original certificate
21 of birth and the evidence of adoption, legitimation, court
22 determination of paternity, or affidavit of paternity may not be
23 inspected except for the administration of the system of vital
24 statistics or the Bureau for Child Support Enforcement, or upon
25 order of a court of competent jurisdiction, or, in the case of an
26 affidavit of paternity, the signatories to the affidavit or the adult
27 subject of the affidavit, or as provided by legislative rule or as
28 otherwise provided by state law.

29 (c) Upon receipt of a report of an amended order of
30 adoption, the State Registrar shall amend the certificate of birth
31 as provided by legislative rule.

32 (d) Upon receipt of a report or order of annulment of
33 adoption, the State Registrar shall restore the original certificate
34 of birth to its place in the files and the new certificate and
35 evidence may not be inspected except for the administration of
36 the system of vital statistics or Bureau for Child Support
37 Enforcement, or upon order of a court of competent jurisdic-
38 tion, or as provided by legislative rule or as otherwise provided
39 by state law.

40 (e) Upon receipt of a written request and a sworn affidavit
41 of paternity signed by both parents of a child born out of
42 wedlock, the State Registrar shall place the name of the father
43 on the certificate of birth and, if the child is under the age of
44 eighteen and at the request of the parents, change the surname
45 of the child in the manner prescribed by legislative rule.

46 (f) If no certificate of birth is on file for the person for
47 whom a new certificate of birth is to be established under this

48 section, a delayed certificate of birth must be filed with the
49 State Registrar as provided in section fourteen or fifteen of this
50 article before a new certificate of birth is established, except
51 that when the date and place of birth and parentage have been
52 established by a court of competent jurisdiction, a delayed
53 certificate is not required.

54 (g) When a new certificate of birth is established by the
55 State Registrar, all copies of the original certificate of birth in
56 the custody of any other custodian of vital records in this state
57 shall be sealed from inspection or forwarded to the State
58 Registrar, as he or she shall direct.

59 (h) Upon receipt of the documentation set forth in subdivi-
60 sion (1) of this subsection, the State Registrar shall prepare and
61 register a certificate in this state for a person born in a foreign
62 country who is not a citizen of the United States and who was
63 adopted through a court of competent jurisdiction in this state.

64 (1) The State Registrar shall establish the certificate upon
65 receipt of:

66 (A) A certificate of adoption from the court ordering the
67 adoption;

68 (B) Proof of the date and place of the child's birth; and

69 (C) A request that the certificate be prepared, from the
70 court, the adopting parents, or the adopted person if he or she
71 has attained the age of eighteen years.

72 (2) The certificate shall be labeled "Certificate of Foreign
73 Birth" and shall show the actual country of birth. The certificate
74 shall include a statement that it is not evidence of United States
75 citizenship for the person for whom it is issued.

76 (3) After registration of the certificate of birth in the new
77 name of the adopted person, the State Registrar shall seal and

78 file the certificate of adoption, which may not be inspected
79 except for the administration of the system of vital statistics, or
80 upon order of a court of competent jurisdiction, or as provided
81 by legislative rule or as otherwise provided by state law.

§16-5-19. Death registration.

1 (a) A certificate of death for each death which occurs in this
2 state shall be filed with the section of vital statistics, or as
3 otherwise directed by the State Registrar, within five days after
4 death, and prior to final disposition, and shall be registered if it
5 has been completed and filed in accordance with this section.

6 (1) If the place of death is unknown, but the dead body is
7 found in this state, the place where the body was found shall be
8 shown as the place of death.

9 (2) If the date of death is unknown, it shall be approxi-
10 mated. If the date cannot be approximated, the date found shall
11 be shown as the date of death.

12 (3) If death occurs in a moving conveyance in the United
13 States and the body is first removed from the conveyance in this
14 state, the death shall be registered in this state and the place
15 where it is first removed shall be considered the place of death.

16 (4) If death occurs in a moving conveyance while in
17 international waters or air space or in a foreign country or its air
18 space and the body is first removed from the conveyance in this
19 state, the death shall be registered in this state but the certificate
20 shall show the actual place of death insofar as can be deter-
21 mined.

22 (5) In all other cases, the place where death is pronounced
23 shall be considered the place where death occurred.

24 (b) The funeral director or other person who assumes
25 custody of the dead body shall: (1) Obtain the personal data

26 from the next of kin or the best qualified person or source
27 available including the deceased person's social security
28 number or numbers, which shall be placed in the records
29 relating to the death and recorded on the certificate of death;

30 (2) Within forty-eight hours after death, provide the
31 certificate of death containing sufficient information to identify
32 the decedent to the physician responsible for completing the
33 medical certification as provided in subsection (c) of this
34 section; and

35 (3) Upon receipt of the medical certification, file the
36 certificate of death: *Provided*, That for implementation of
37 electronic filing of death certificates, the person who certifies
38 to cause of death will be responsible for filing the electronic
39 certification of cause of death as directed by the State Registrar
40 and in accordance with legislative rule.

41 (c) The medical certification shall be completed and signed
42 within twenty-four hours after receipt of the certificate of death
43 by the physician in charge of the patient's care for the illness or
44 condition which resulted in death except when inquiry is
45 required pursuant to chapter sixty-one, article twelve or other
46 applicable provisions of this code.

47 (1) In the absence of the physician or with his or her
48 approval, the certificate may be completed by his or her
49 associate physician, any physician who has been placed in a
50 position of responsibility for any medical coverage of the
51 decedent, the chief medical officer of the institution in which
52 death occurred, or the physician who performed an autopsy
53 upon the decedent, provided inquiry is not required pursuant to
54 chapter sixty-one, article twelve of this code.

55 (2) The person completing the cause of death shall attest to
56 its accuracy either by signature or by an approved electronic
57 process.

58 (d) When inquiry is required pursuant to article twelve,
59 chapter sixty one, or other applicable provisions of this code,
60 the State Medical Examiner or designee or county medical
61 examiner or county coroner in the jurisdiction where the death
62 occurred or where the body was found shall determine the cause
63 of death and shall complete the medical certification within
64 forty-eight hours after taking charge of the case.

65 (1) If the cause of death cannot be determined within forty-
66 eight hours after taking charge of the case, the medical
67 examiner shall complete the medical certification with a
68 "Pending" cause of death to be amended upon completion of
69 medical investigation.

70 (2) After investigation of a report of death for which
71 inquiry is required, if the State Medical Examiner or designee
72 or county medical examiner or county coroner decline jurisdic-
73 tion, the State Medical Examiner or designee or county medical
74 examiner or county coroner may direct the decedent's family
75 physician or the physician who pronounces death to complete
76 the certification of death: *Provided*, That the physician is not
77 civilly liable for inaccuracy or other incorrect statement of
78 death unless the physician willfully and knowingly provides
79 information he or she knows to be false.

80 (e) When death occurs in an institution and the person
81 responsible for the completion of the medical certification is not
82 available to pronounce death, another physician may pronounce
83 death. If there is no physician available to pronounce death,
84 then a designated licensed health professional who views the
85 body may pronounce death, attest to the pronouncement by
86 signature or an approved electronic process, and, with the
87 permission of the person responsible for the medical certifica-
88 tion, release the body to the funeral director or other person for
89 final disposition: *Provided*, That if the death occurs in an
90 institution during court-ordered hospitalization, in a correc-

91 tional facility or under custody of law-enforcement authorities,
92 the death shall be reported directly to a medical examiner or
93 coroner for investigation, pronouncement and certification.

94 (f) If the cause of death cannot be determined within the
95 time prescribed, the medical certification shall be completed as
96 provided by legislative rule. The attending physician or medical
97 examiner, upon request, shall give the funeral director or other
98 person assuming custody of the body notice of the reason for
99 the delay, and final disposition of the body may not be made
100 until authorized by the attending physician, medical examiner
101 or other persons authorized by this article to certify the cause of
102 death.

103 (g) Upon receipt of autopsy results, additional scientific
104 study, or where further inquiry or investigation provides
105 additional information that would change the information on the
106 certificate of death from that originally reported, the certifier,
107 or any State Medical Examiner who provides such inquiry
108 under authority of article twelve, chapter sixty-one of this code
109 shall immediately file a supplemental report of cause of death
110 or other information with the section of vital statistics to amend
111 the record, but only for purposes of accuracy.

112 (h) When death is presumed to have occurred within this
113 state but the body cannot be located, a certificate of death may
114 be prepared by the State Registrar only upon receipt of an order
115 of a court of competent jurisdiction which shall include the
116 finding of facts required to complete the certificate of death.
117 The certificate of death will be marked "Presumptive" and will
118 show on its face the date of death as determined by the court
119 and the date of registration, and shall identify the court and the
120 date of the order.

121 (i) The local registrar shall transmit each month to the
122 county clerk of his or her county a copy of the certificates of all
123 deaths occurring in the county, and if any person dies in a

124 county other than the county within the state in which the
125 person last resided prior to death, then the State Registrar shall
126 furnish a copy of the death certificate to the clerk of the county
127 commission of the county where the person last resided, from
128 which copies the clerk shall compile a register of deaths, in a
129 form prescribed by the State Registrar. The register shall be a
130 public record.

§16-5-20. Delayed registration of death.

1 (a) When a death occurring in this state has not been
2 registered within the time period described by section nineteen
3 of this article, a certificate of death may be filed subject to
4 evidentiary documentation and other requirements as prescribed
5 by legislative rule.

6 (b) If the required evidentiary documentation is not filed
7 with the application for a delayed registration of death or the
8 State Registrar has cause to question the validity or adequacy
9 of the evidentiary documentation, the State Registrar may not
10 register the delayed certificate of death and shall advise the
11 applicant of his or her right to seek an order from a court of
12 competent jurisdiction.

13 (c) A certificate of death registered one year or more after
14 the date of death shall be marked "Delayed" and shall show on
15 its face the date of the delayed registration.

§16-5-21. Reports of fetal death.

1 (a) Each fetal death of three hundred fifty grams or more,
2 and if weight is unknown, of twenty completed weeks of
3 gestation or more, calculated from the date the last normal
4 menstrual period began to the date of delivery, which occurs in
5 this state, shall be reported within five days after delivery to the
6 section of vital statistics or as otherwise directed by the State
7 Registrar.

8 (1) When a fetal death occurs, the person in charge of the
9 institution or his or her designated representative shall prepare
10 and file the report. In obtaining the information required by the
11 report, all institutions shall use information gathering proce-
12 dures, including worksheets, provided or approved by the State
13 Registrar.

14 (2) When a fetal death occurs, the physician in attendance
15 at or immediately after delivery shall prepare and file the report.

16 (3) When inquiry is required pursuant to article twelve,
17 chapter sixty-one, or other applicable provisions of this code,
18 the State Medical Examiner or designee or county medical
19 examiner or county coroner shall investigate the cause of fetal
20 death and shall prepare and file the report within five days. If
21 after investigation, the State Medical Examiner or designee or
22 county medical examiner or county coroner decline jurisdiction,
23 the person declining jurisdiction may direct the local health
24 officer to investigate the cause of fetal death and prepare and
25 file the report.

26 (4) When a fetal death occurs in a moving conveyance and
27 the fetus is first removed from the conveyance in this state, the
28 place where the fetus was first removed from the conveyance
29 will be considered the place of fetal death.

30 (b) When a fetus is found in this state and the place of death
31 is unknown, the fetal death shall be recorded in this state, and
32 the place where the fetus was found will be considered the place
33 of fetal death.

§16-5-22. Reports of induced termination of pregnancy.

1 (a) Each induced termination of pregnancy which occurs in
2 this state, regardless of the length of gestation, shall be reported
3 to the section of vital statistics no later than the tenth day of the
4 month following the month the procedure was performed by the

5 person in charge of the institution in which the induced
6 termination of pregnancy was performed. If the induced
7 termination of pregnancy was performed outside an institution,
8 it shall be reported by the attending physician. The State
9 Registrar shall prepare a form or provide a suitable electronic
10 process for the transmission of the reports from the institution
11 or physician to the section of vital statistics. Information to be
12 collected shall include:

13 (1) The gestational age of the fetus;

14 (2) The state and county of residence of the woman;

15 (3) The age of the woman;

16 (4) The type of medical or surgical procedure performed;

17 (5) The method of payment for the procedure;

18 (6) Whether birth defects were known, and if so, what birth
19 defects; and

20 (7) Related information as required by the commissioner,
21 other applicable sections of this code, or by the legislative rule:
22 *Provided, That:*

23 (A) No personal identifiers, including, but not limited to,
24 name, street address, city, zip code, or social security number,
25 will be collected; and

26 (B) Individual records may only be released for research
27 purposes as approved by the State Registrar and may be
28 released in a format designed to further protect the confidential-
29 ity of the woman as the State Registrar deems necessary.

30 (b) An analysis of the compiled information relating to
31 induced terminations of pregnancy shall be included in the
32 annual report of vital statistics.

§16-5-23. Authorization for disposition and disinterment and reinterment permits.

1 (a) The funeral director or other person who assumes
2 custody of a dead body shall obtain authorization prior to final
3 disposition of the body.

4 (1) The physician or State Medical Examiner, county
5 medical examiner or designee shall authorize final disposition
6 of the body on a form or in a format prescribed by the State
7 Registrar.

8 (2) If the body is to be cremated, authorization for crema-
9 tion must be obtained from the State Medical Examiner, county
10 medical examiner or county coroner on a form or in a format
11 prescribed by the State Medical Examiner's office.

12 (b) Prior to final disposition of a fetus, irrespective of the
13 duration of pregnancy, the funeral director, the person in charge
14 of the institution, or other person assuming responsibility for
15 final disposition of the fetus shall obtain from a parent authori-
16 zation for final disposition on a form or in a format prescribed
17 by the State Registrar.

18 (c) With the consent of the physician or State Medical
19 Examiner or county medical examiner or designee who is to
20 certify the cause of death, a dead body may be moved from the
21 place of death for the purpose of being prepared for final
22 disposition.

23 (d) An authorization for disposition issued under the law of
24 another state which accompanies a dead body or fetus brought
25 into this state shall be authority for final disposition of the body
26 or fetus in this state.

27 (e) No sexton or other person in charge of any place in
28 which interment or other disposition of dead bodies is made
29 may inter or allow interment or other disposition of a dead body

30 or fetus unless it is accompanied by authorization for final
31 disposition.

32 (f) Each person in charge of any place for final disposition
33 shall return all authorizations to the funeral director or person
34 acting as such within ten days after the date of disposition and
35 shall indicate the date of disposition on the authorization.

36 (g) Each person in charge of any place for final disposition
37 shall keep a record of all bodies interred or otherwise disposed
38 of on the premises under his or her charge. The record must
39 contain the name of the deceased person, place of death, date of
40 burial or disposal, name and address of the funeral director or
41 person acting for him or her, and other information as may be
42 required by legislative rule. The record shall at all times be
43 open to official inspection.

44 (h) When there is no person in charge of the place for final
45 disposition, the funeral director or person acting as such shall
46 complete the authorization and write across the face of the
47 authorization "No person in charge."

48 (i) Not later than the tenth day of each month, the funeral
49 director or person acting as such shall transmit to the State
50 Registrar, in the state where the death occurred, all authoriza-
51 tions received during the month.

52 (j) Authorization for disinterment and reinterment is
53 required prior to disinterment of a dead body or fetus, except as
54 authorized by legislative rule or otherwise provided by law or
55 by order of a court of competent jurisdiction. The authorization
56 must be issued by the local registrar to a licensed funeral
57 director, embalmer, or other persons acting on their behalf,
58 upon proper application.

§16-5-24. Extension of time for filing certificates, reports and authorizations.

1 (a) The department shall, by legislative rule, provide for the
2 extension of the time periods prescribed in sections nineteen,
3 twenty-one, twenty-two and twenty-three of this article for the
4 filing of certificates of death, reports of fetal death, reports of
5 induced termination of pregnancy, medical certifications of the
6 cause of death, and for obtaining authorization for disposition,
7 in cases in which compliance with the applicable prescribed
8 period would result in undue hardship.

9 (b) The legislative rules shall provide for the authorization
10 for disposition under section twenty-three of this article prior to
11 the filing of a certificate of death in circumstances in which
12 compliance with the requirement that the certificate be filed
13 prior to the issuance of the permit would result in undue
14 hardship.

§16-5-25. Correction and amendment of vital records.

1 (a) In order to protect the integrity and accuracy of vital
2 records, a certificate or report registered under this article may
3 be amended only in accordance with the provisions of this
4 article or legislative rule.

5 (b) A certificate or report that is amended under this section
6 must indicate that it has been amended, except as otherwise
7 provided in this section or by legislative rule: *Provided*, That
8 the department shall prescribe by legislative rule the conditions
9 under which additions or corrections of minor deficiencies,
10 including, but not limited to, the omission or misspelling of a
11 first name, may be made to certificates or records within one
12 year of the event without the certificate indicating that it has
13 been amended.

14 (c) The State Registrar shall maintain a record which
15 identifies the evidence upon which the amendment was based,
16 the date of amendment, and the identity of the person making
17 the amendment.

18 (d) Upon receipt of a certified copy of a court order of a
19 court of competent jurisdiction changing the name of a person
20 born in this state, and upon request of the person whose name
21 is to be changed or his or her parent, guardian or legal represen-
22 tative, the State Registrar shall amend the certificate of birth to
23 reflect the new name.

24 (e) If the required evidentiary documentation is not filed
25 with the application for amending a vital record or the State
26 Registrar has cause to question the validity or adequacy of the
27 evidentiary documentation, the State Registrar may not amend
28 the vital record and shall advise the applicant of his or her right
29 to seek an order from a court of competent jurisdiction.

30 (f) When the State Registrar amends a certificate or report,
31 he or she shall report the amendment to any other custodian of
32 the vital record.

33 (g) When an amendment is made to a certificate of
34 marriage or record of divorce or annulment, the local official
35 issuing the marriage license or the court ordering the divorce or
36 annulment shall forward copies of the amendment to the State
37 Registrar.

38 (h) In addition to providing the information necessary to
39 amend a certificate or record, a person whose name is to appear
40 on the amended certificate as a parent shall furnish the social
41 security number or numbers, issued to the parent, which must
42 be forwarded to the State Registrar along with the information
43 required for the amended certificate.

§16-5-26. Reproduction and preservation of records.

1 To preserve vital records and other original documents, the
2 State Registrar is authorized to prepare typewritten, photo-
3 graphic, electronic, or other reproductions of certificates or
4 reports and files in the section of vital statistics. When verified

5 and approved by the State Registrar, the reproductions shall be
6 accepted as the original records, and the documents from which
7 permanent reproductions have been made may be disposed of
8 as provided by legislative rule or other provisions of state law.

§16-5-27. Disclosure of information from vital records or vital reports.

1 In accordance with section twenty-six of this article and the
2 legislative rules promulgated thereunder:

3 (a) The department shall, by legislative rule, provide for the
4 disclosure of confidential information contained in vital records
5 and reports for statistical research purposes. The legislative rule
6 must require the submission of written requests for information
7 and the execution of research agreements between the re-
8 searcher and the State Registrar or local custodian of vital
9 records and reports, which prohibit the release by the researcher
10 of any information that may identify any person except as
11 provided in the agreement.

12 (b) To protect the integrity and to ensure the proper use of
13 vital records or reports, and to ensure the efficient and proper
14 operation of the system of vital statistics, it shall be unlawful
15 for any person to permit inspection of, or to disclose, confiden-
16 tial information contained in vital records or reports, or to copy
17 or issue a copy of all or part of any vital record or report unless
18 authorized by this article, by legislative rule or by order of a
19 court of competent jurisdiction: *Provided*, That nothing in this
20 article prohibits the release of information or data that would
21 not identify any person named in a vital record or report.

22 (c) Appeals from decisions of the custodians of permanent
23 local records refusing to disclose confidential information, or
24 to permit inspection of or copying of confidential information
25 under the authority of this section and legislative rules shall be
26 made to the State Registrar, whose decisions shall be binding
27 upon the local custodians of permanent local records.

28 (d) When one hundred years have elapsed after the date of
29 birth, or fifty years have elapsed after the date of death, fetal
30 death, marriage, or divorce or annulment, the records of these
31 events in the custody of the State Registrar and local custodians
32 shall, become available to the public without restriction unless
33 otherwise prohibited or restricted by law, except for the release
34 of social security numbers recorded on certificates or reports of
35 birth, marriage, fetal death, or divorce, in accordance with
36 legislative rule: *Provided*, That confidential information
37 contained in the “Information for Medical and Health Use
38 Only” section of the certificate of birth or report of fetal death
39 shall never become available to the public.

40 (e) The federal agency responsible for national vital
41 statistics may be furnished copies of records, reports, or data
42 from the system of vital statistics as it may require for national
43 statistics. The department shall enter into an agreement with the
44 federal agency indicating the statistical or research purposes for
45 which records, reports, or data may be used, and setting forth
46 the support to be provided by the federal agency for the
47 collection, processing and transmission of the records, reports
48 or data. Upon written request, the State Registrar may approve,
49 in writing, additional statistical or research uses of the records,
50 reports or data supplied under the agreement.

51 (f) The State Registrar may furnish copies of records or
52 data from the system of vital statistics to federal, state and local
53 governmental agencies, provided that the copies or data are
54 used solely in the conduct of their official duties.

55 (g) The State Registrar may, by agreement, transmit copies
56 of records and other reports required by this article to offices of
57 vital statistics outside this state when the records or other
58 reports relate to residents of those jurisdictions or persons born
59 in those jurisdictions. The agreement must specify the statistical
60 and administrative purposes for which the records may be used

61 and must provide instructions for the proper retention and
62 disposition of the copies. Copies received by the section of vital
63 statistics from offices of vital statistics in other states must be
64 handled in the same manner as prescribed in this section.

§16-5-28. Copies from the system of vital statistics.

1 In accordance with section twenty-seven of this article and
2 the legislative rules promulgated thereunder:

3 (a) The State Registrar and other custodians of vital records
4 authorized to issue certified copies shall upon receipt of an
5 application, issue a certified copy of a vital record in his or her
6 custody to the registrant, his or her parents, spouse, adult
7 children, grandchildren or great-grandchildren, legal guardian,
8 or their respective authorized representative. Others may be
9 authorized to obtain certified copies when they demonstrate that
10 the record is needed for the determination or protection of his
11 or her personal or property right. The department may promul-
12 gate rules to further define others who may obtain copies of
13 vital records filed under this article.

14 (b) All forms and procedures used in the issuance of
15 certified copies of vital records in the state shall be approved by
16 the State Registrar. All certified copies of certificates of birth
17 issued shall have security features that deter the document from
18 being altered, counterfeited, duplicated or simulated without
19 ready detection in compliance with regulations issued by the
20 federal government.

21 (c) Each copy or abstract issued shall show the date of
22 registration, and copies or abstracts issued from records marked
23 "Amended" shall be similarly marked and, when possible, show
24 the effective date of the amendment. Copies issued from
25 records marked "Delayed" shall be similarly marked and shall
26 include the date of registration and a description of the evidence
27 used to establish the delayed certificate. Any copy issued of a

28 “Certificate of Foreign Birth” shall indicate the foreign birth
29 and show the actual place of birth and the statement that the
30 certificate is not proof of United States citizenship for the
31 person for whom it is issued.

32 (d) A certified copy of a vital record issued in accordance
33 with this section shall be considered for all purposes the same
34 as the original, and shall be prima facie evidence of the facts
35 stated in the record: *Provided*, That the evidentiary value of a
36 certificate or record filed more than one year after the event, or
37 a record which has been amended, or a certificate of foreign
38 birth, shall be determined by the judicial or administrative body
39 or official before whom the certificate is offered as evidence.

40 (e) Nothing in this section shall be construed to permit
41 disclosure of information contained in the “Information for
42 Medical and Health Use Only” section of the certificate of birth
43 or the “Information for Statistical Purposes Only” section of the
44 certificate of marriage or certificate of divorce or annulment
45 unless specifically authorized by the State Registrar for
46 statistical or research purposes. This information is not subject
47 to subpoena or court order and is not admissible before any
48 court, tribunal, or judicial body. Information collected for
49 administrative use may not be included on certified copies of
50 records, and may be disclosed only for administrative, statisti-
51 cal, or research purposes authorized by state or federal law and
52 legislative rule.

53 (f) When the State Registrar receives information that a
54 certificate may have been registered through fraud or misrepres-
55 entation, he or she may withhold issuance of any copy of that
56 certificate.

57 (1) The State Registrar shall inform the registrant or the
58 registrant’s authorized representative of the right to request a
59 hearing by the commissioner.

60 (2) The secretary of the department may authorize the State
61 Registrar or another person to hold an investigation or hearing
62 to determine if fraud or misrepresentation has occurred.

63 (3) If upon conclusion of a hearing or investigation no fraud
64 or misrepresentation is found, copies may be issued.

65 (4) If fraud or misrepresentation is found by a preponder-
66 ance of the evidence, the State Registrar shall remove the
67 certificate from the file. The certificate and evidence will be
68 retained but will not be subject to inspection or copying except
69 upon order of a court of competent jurisdiction or by the State
70 Registrar for purposes of prosecution or administration of the
71 system of vital statistics.

72 (g) No person may prepare or issue any certificate which
73 purports to be an original, certified copy, or copy of a vital
74 record, except as authorized by this article, or by legislative
75 rule.

§16-5-29. Fees for copies and searches.

1 (a) The commissioner shall prescribe the fees to be charged
2 and collected by the State Registrar for certified copies of
3 certificates or records, not to exceed ten dollars per copy, or for
4 a search of the files or records when no copy is made: *Provided,*
5 That the fee may be increased to a maximum of twelve dollars
6 per copy, at the discretion of the commissioner, after the first
7 day of July, two thousand eight.

8 (b) The commissioner may prescribe additional fees for the
9 priority production or express delivery of certified copies.

10 (c) The State Registrar may furnish certified copies of birth
11 and death records to state agencies and to organized charities
12 free of charge when the certificates are needed in presenting
13 claims to the federal government or to a state for public

14 assistance. The State Registrar will keep a record of all
15 certificates furnished pursuant to this subsection.

16 (d) Subject to the provisions set forth in section two, article
17 two, chapter twelve of this code, there is hereby continued in
18 the State Treasury a separate account which shall be designated
19 “the vital statistics account.”

20 (e) After the first day of July, two thousand six, and subject
21 to the provisions set forth in section two, article two, chapter
22 twelve of this code, there is established in the State Treasury a
23 separate account which shall be designated “the vital statistics
24 improvement fund.” Funds deposited in this account will be
25 used to modernize and automate the system of vital statistics in
26 this state and may not be used to supplant existing funding
27 necessary for the daily operation of the system of vital statistics.
28 Funds in this account will be retained in a nonlapsing fund for
29 the improvement of the system of vital statistics.

30 (f) The commissioner shall deposit one dollar received
31 under the provisions of this section for each certified copy to
32 the “vital statistics improvement fund” and shall deposit four
33 dollars received under the provisions of this section for each
34 certified copy to the general revenue fund account. The
35 commissioner shall deposit the remainder of all fees received
36 under the provisions of this section for certified copies and for
37 priority production and express delivery to the vital statistics
38 account.

39 (g) The commissioner is authorized to expend the moneys
40 deposited in the vital statistics account in accordance with the
41 laws of this state as necessary to implement this article. The
42 Legislature shall appropriate all moneys in the vital statistics
43 account as part of the annual state budget.

44 (h) The commissioner shall make an annual report to the
45 Legislature on the vital statistics account, including the

46 previous fiscal year's expenditures and projected expenditures
47 for the next fiscal year.

§16-5-30. Persons required to keep records.

1 (a) Every person in charge of an institution as defined in
2 this article shall keep a record of personal data concerning each
3 person admitted or confined to the institution. The record must
4 include information required for the certificates of birth and
5 death and the reports of fetal death required by this article. The
6 record shall be made at the time of admission from information
7 provided by the person being admitted or confined, but when it
8 cannot be so obtained, the information will be obtained from
9 relatives or other persons acquainted with the facts. The name
10 and address of the person providing the information will be
11 included in the record.

12 (b) When a dead body or fetus is released or disposed of by
13 an institution, the person in charge of the institution shall keep
14 a record showing the name of the decedent, date of death, name
15 and address of the person to whom the body or fetus is released,
16 and date of removal from the institution. If final disposition is
17 made by the institution, the date, place and manner of disposi-
18 tion will be recorded.

19 (c) A funeral director, embalmer, sexton or other person
20 who removes from the place of death or transports or makes
21 final disposition of a dead body or fetus, in addition to filing
22 any certificate or other report required by this article or
23 legislative rule, shall keep a record which identifies the body,
24 and information as required by legislative rule pertaining to the
25 receipt, removal, delivery, and burial or cremation of the body.

26 (d) Records maintained under this section must be retained
27 for at least three years and must be made available for inspec-
28 tion by the State Registrar or his or her representative upon
29 request.

§16-5-31. Duty to furnish information relative to vital events.

1 (a) Any person or institution required under this article to
2 collect and maintain information regarding any birth, death,
3 fetal death, marriage, or divorce or annulment, shall furnish the
4 information to the State Registrar upon request.

5 (b) Any person or institution that in good faith provides
6 information required by this article or legislative rules shall not
7 be subject to criminal prosecution or any action for damages.

8 (c) Not later than the tenth day of the month following the
9 month of occurrence, the administrator of each institution shall
10 send to the section of vital statistics a list showing all births,
11 deaths and fetal deaths occurring in that institution during the
12 preceding month, on forms provided or approved by the State
13 Registrar.

14 (d) Not later than the tenth day of the month following the
15 month of occurrence, each funeral director shall send to the
16 section of vital statistics a list showing all dead bodies em-
17 balmed or otherwise prepared for final disposition, or dead
18 bodies finally disposed of, by the funeral director during the
19 preceding month, on forms provided or approved by the State
20 Registrar.

§16-5-32. Matching of birth and death certificates.

1 To protect the integrity of vital records and to prevent the
2 fraudulent use of certificates of birth of deceased persons, the
3 State Registrar is authorized to match certificates of birth and
4 death, in accordance with legislative rule which requires that
5 the fact of death and the matching identities be determined with
6 reasonable certainty and to post the fact of death to the
7 appropriate birth certificate. Copies issued from certificates of
8 birth marked deceased shall be similarly marked.

§16-5-33. Limitation on use of social security numbers.

1 (a) A social security number obtained in the filing of a
2 certificate of live birth, an application for a delayed registration
3 of birth, a judicial order establishing a record of birth, an order
4 of adoption, an affidavit of paternity or a judicial order
5 establishing paternity, or any other record may not be transmit-
6 ted to the clerk of the county commission.

7 (b) No social security number may appear upon the public
8 record of the index of births or upon any certificate of birth
9 registration issued by the State Registrar, local registrar, county
10 clerk or any other issuing authority.

11 (c) The State Registrar may make social security numbers
12 available to the Bureau for Child Support Enforcement upon its
13 request, to be used solely in connection with the enforcement of
14 child support orders.

15 (d) The section of vital statistics may utilize social security
16 numbers in accordance with legislative rules of the department,
17 as allowed by or to meet the requirements of federal regula-
18 tions.

§16-5-34. Uniform system of registration of marriage, divorce and annulment of marriage.

1 (a) To encourage an efficient and uniform system of
2 registration of marriage, divorce and annulment of marriage
3 may be established in this state, the State Registrar shall
4 provide for the registration of each marriage, divorce and
5 annulment of marriage which occurs in this state.

6 (b) The commissioner may, subject to legislative rule:

7 (1) Install a statewide system of registering, indexing, and
8 preserving records of marriage, divorce and annulment of
9 marriage;

10 (2) Give instructions, and prescribe and furnish forms, for
11 collecting, transcribing, compiling and preserving records and
12 statistics of marriage, divorce and annulment of marriage; and

13 (3) Make and publish a statistical report of marriage,
14 divorce and annulment of marriage in this state.

§16-5-35. Registration of marriages.

1 (a) On or before the tenth day of each month, the county
2 clerk of each county shall forward to the State Registrar a report
3 of all marriage records made by him or her during the previous
4 month, on a form prescribed or furnished by the State Registrar.

5 (b) The State Registrar shall preserve and index all records
6 received under the provisions of this section and shall upon
7 request issue a certified copy of the records, which shall be
8 prima facie evidence of the facts stated in the certified copies
9 in all courts in this state.

§16-5-36. Registration of divorces and annulments of marriages.

1 (a) On and after the first day of July, 2006, a record of each
2 divorce or annulment ordered by any court of competent
3 jurisdiction in this state shall be filed by the clerk of the court
4 with the section of vital statistics, and shall be registered if it
5 has been completed and filed in accordance with this section.
6 The record shall be prepared by the petitioner or his or her legal
7 representative in the form prescribed or furnished by the State
8 Registrar and shall be presented to the clerk of the court with
9 the petition.

10 (b) The clerk of the court shall complete and certify each
11 record. On or before the tenth day of each calendar month, the
12 clerk shall forward to the section of vital statistics the records
13 of each divorce or annulment order entered during the preced-
14 ing calendar month.

15 (c) Failure of the clerk of the court to comply with the
16 provisions of this section does not affect the validity of any
17 order of divorce or annulment of marriage.

18 (d) The State Registrar shall preserve and index all records
19 received under provisions of this section and shall upon request
20 issue certified copies of the records, which shall be prima facie
21 evidence of the facts stated in the certified copies in all courts
22 in this state.

§16-5-37. Applicability to previously received certificates and reports.

1 The provisions of this article apply to all certificates of
2 birth, death, marriage and divorce or annulment, reports of fetal
3 death and induced terminations of pregnancy previously
4 received by the section of vital statistics and in the custody of
5 the State Registrar or any other custodian of vital records.

§16-5-38. Penalties.

1 (a) For acts which occur on or after the effective date of this
2 section, a person shall be guilty of a felony and, upon conviction
3 thereof, shall be fined not more than ten thousand dollars
4 or imprisoned in a state correctional facility not more than five
5 years, or both fined and imprisoned, if he or she:

6 (1) Willfully and knowingly makes any false statement in
7 a report, record or certificate required to be filed under this
8 article, or in an application for an amendment thereof, or
9 willfully and knowingly supplies false information intending
10 that the information be used in the preparation of any report,
11 record or certificate, or amendment thereof, or in an application
12 for a certified copy of a vital record required by this article; or

13 (2) Without lawful authority and with the intent to deceive,
14 makes, counterfeits, alters, amends or mutilates any record,

15 report, or certificate required by this article, or any certified
16 copy of the record, report or certificate; or

17 (3) Willfully and knowingly obtains, possesses, uses, sells,
18 furnishes or attempts to obtain, possess, use, sell or furnish to
19 another, for any purpose of deception, any certificate, record,
20 report, or certified copy required by this article, which was
21 made, counterfeited, altered, amended, or mutilated, or that is
22 false, in whole or in part, or that relates to the birth of another
23 person, whether living or deceased; or

24 (4) Is an employee of the section of vital statistics or of any
25 office of any custodian of vital records, and willfully and
26 knowingly furnishes or processes a certificate of birth, or
27 certified copy of a certificate of birth, with the knowledge or
28 intention that it be used for the purposes of deception; or

29 (5) Without lawful authority, possesses any certificate,
30 record or report required by this article or a copy or a certified
31 copy of the certificate, record or report knowing it to have been
32 stolen or otherwise unlawfully obtained.

33 (b) A person shall be guilty of a misdemeanor and, upon
34 conviction thereof, shall be fined not more than one thousand
35 dollars, or confined in jail not more than one year, or both fined
36 and confined, if he or she:

37 (1) Willfully and knowingly transports or accepts for
38 transportation, interment or other disposition a dead body
39 without an accompanying permit as provided in this article;

40 (2) Willfully and knowingly refuses to provide information
41 required by this article or legislative rules adopted pursuant to
42 this article; or

43 (3) Willfully and knowingly violates any of the provisions
44 of this article or refuses to perform any of the duties imposed
45 upon him or her by this article.

CHAPTER 250

(H. B. 4550 — By Delegates Amores and Mahan)

[Passed March 10, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2006.]

AN ACT to amend and reenact §22-11-7b of the Code of West Virginia, 1931, as amended, relating to designation of streams as waters of special concern; and clarifying current law requiring legislative approval of final designation of streams of special concern.

Be it enacted by the Legislature of West Virginia:

That §22-11-7b of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-7b. Water quality standards; implementation of anti-degradation procedures.

1 (a) All authority to promulgate rules and implement water
2 quality standards vested in the Environmental Quality Board is
3 hereby transferred from the Environmental Quality Board to the
4 secretary of the department of Environmental Protection as of
5 the effective date of the amendment and reenactment of this
6 section during the two thousand five regular session of the
7 Legislature: *Provided*, That the legislative rule containing the
8 state's water quality standards shall remain in force and effect
9 as if promulgated by the department of Environmental Protec-
10 tion until the secretary amends the rule in accordance with the

11 provisions of article three, chapter twenty-nine-a of this code.
12 Any proceedings, including notices of proposed rulemaking
13 pending before the Environmental Quality Board, and any other
14 functions, actions or authority transferred to the secretary shall
15 continue in effect as actions of the secretary.

16 (b) All meetings with the secretary or any employee of the
17 department and any interested party which are convened for the
18 purpose of making a decision or deliberating toward a decision
19 as to the form and substance of the rule governing water quality
20 standards or variances thereto shall be held in accordance with
21 the provisions of article nine-a, chapter six of this code. When
22 the secretary is considering the form and substance of the rule
23 governing water quality standards, the following are not
24 meetings pursuant to article nine-a, chapter six of this code: (i)
25 Consultations between the department's employees or its
26 consultants, contractors or agents; (ii) consultations with other
27 state or federal agencies and the department's employees or its
28 consultants, contractors or agents; or (iii) consultations between
29 the secretary, the department's employees or its consultants,
30 contractors or agents with any interested party for the purpose
31 of collecting facts and explaining state and federal requirements
32 relating to a site specific change or variance.

33 (c) In order to carry out the purposes of this chapter, the
34 secretary shall promulgate legislative rules in accordance with
35 the provisions of article three, chapter twenty-nine-a of this
36 code setting standards of water quality applicable to both the
37 surface waters and groundwaters of this state. Standards of
38 quality with respect to surface waters shall protect the public
39 health and welfare, wildlife, fish and aquatic life and the present
40 and prospective future uses of the water for domestic, agricul-
41 tural, industrial, recreational, scenic and other legitimate
42 beneficial uses thereof. The water quality standards of the
43 secretary may not specify the design of equipment, type of

44 construction or particular method which a person shall use to
45 reduce the discharge of a pollutant.

46 (d) The secretary shall establish the antidegradation
47 implementation procedures as required by 40 C.F.R. 131.12(a)
48 which apply to regulated activities that have the potential to
49 affect water quality. The secretary shall propose for legislative
50 approval, pursuant to article three, chapter twenty-nine-a of the
51 code, legislative rules to establish implementation procedures
52 which include specifics of the review depending upon the
53 existing uses of the water body segment that would be affected,
54 the level of protection or “tier” assigned to the applicable water
55 body segment, the nature of the activity and the extent to which
56 existing water quality would be degraded. Any final classifica-
57 tion determination of a water as a Tier 2.5 water (Water of
58 Special Concern) does not become effective until that determi-
59 nation is approved by the Legislature through the legislative
60 rulemaking process as provided for in article three, chapter
61 twenty-nine-a of the code.

62 (e) All remaining variances shall be applied for and consid-
63 ered by the secretary and any variance granted shall be
64 consistent with 33 U.S.C. Section 1311(p) of the Federal Water
65 Control Act. At a minimum, when considering an application
66 for a remaining variance the secretary shall consider the data and
67 information submitted by the applicant for the variance; and
68 comments received at a public comment period and public
69 hearing. The secretary may not grant a variance without
70 requiring the applicant to improve the instream water quality as
71 much as is reasonably possible by applying best available
72 technology economically achievable using best professional
73 judgment. Any such requirement will be included as a permit
74 condition. The secretary may not grant a variance without a
75 demonstration by the applicant that the coal remaining operation
76 will result in the potential for improved instream water quality
77 as a result of the remaining operation. The secretary may not

78 grant a variance where he or she determines that degradation of
 79 the instream water quality will result from the remaining
 80 operation.

CHAPTER 251

**(S. B. 461 — By Senators Kessler, Dempsey, Fanning, Foster,
 Hunter, Jenkins, Minard, Oliverio, White, Barnes, Caruth,
 Deem, Lanham, McKenzie and Weeks)**

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §22-3-24 of the Code of West Virginia, 1931, as amended, relating to underground water supply replacement; altering requirements for mine operators for replacement of water supply; and requiring prior department approval before discontinuing water supply replacement.

Be it enacted by the Legislature of West Virginia:

That §22-3-24 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.

§22-3-24. Water rights and replacement; waiver of replacement.

1 (a) Nothing in this article affects in any way the rights of
 2 any person to enforce or protect, under applicable law, the
 3 person's interest in water resources affected by a surface
 4 mining operation.

5 (b) Any operator shall replace the water supply of an owner
 6 of interest in real property who obtains all or part of the owner's

7 supply of water for domestic, agricultural, industrial or other
8 legitimate use from an underground or surface source where the
9 supply has been affected by contamination, diminution or
10 interruption proximately caused by the surface mining opera-
11 tion, unless waived by the owner.

12 (c) There is a rebuttable presumption that a mining
13 operation caused damage to an owner's underground water
14 supply if the inspector determines the following: (1) Contami-
15 nation, diminution or damage to an owner's underground water
16 supply exists; and (2) a preblast survey was performed,
17 consistent with the provisions of section thirteen-a of this
18 article, on the owner's property, including the underground
19 water supply, that indicated that contamination, diminution or
20 damage to the underground water supply did not exist prior to
21 the mining conducted at the mining operation.

22 (d) The operator conducting the mining operation shall: (1)
23 Provide an emergency drinking water supply within twenty-four
24 hours; (2) provide temporary water supply within seventy-two
25 hours; (3) within thirty days begin activities to establish a
26 permanent water supply or submit a proposal to the secretary
27 outlining the measures and timetables to be utilized in establish-
28 ing a permanent supply. The total time for providing a perma-
29 nent water supply may not exceed two years. If the operator
30 demonstrates that providing a permanent replacement water
31 supply can not be completed within two years, the secretary
32 may extend the time frame on case-by-case basis; and (4) pay
33 all reasonable costs incurred by the owner in securing a water
34 supply.

35 (e) An owner aggrieved under the provisions of subsections
36 (b), (c) or (d) of this section may seek relief in court or pursuant
37 to the provisions of section five, article three-a of this chapter.

38 (f) The director shall propose rules for legislative approval
39 in accordance with the provisions of article three, chapter

40 twenty-nine-a of this code to implement the requirements of
41 this section.

42 (g) The provisions of subsection (c) of this section shall not
43 apply to the following: (1) Underground coal mining opera-
44 tions; (2) the surface operations and surface impacts incident to
45 an underground coal mine; and (3) the extraction of minerals by
46 underground mining methods or the surface impacts of the
47 underground mining methods.

48 (h) Notwithstanding the denial of the operator of responsi-
49 bility for the damage of the owners water supply or the status
50 of any appeal on determination of liability for the damage to the
51 owners water supply, the operator may not discontinue
52 providing the required water service until authorized by the
53 division.

54 Notwithstanding the provisions of subsection (g) of this
55 section, on and after the effective date of the amendment and
56 reenactment of this section during the regular legislative session
57 of two thousand six, the provisions of this section shall apply to
58 all mining operations for water replacement claims resulting
59 from mining operations regardless of when the claim arose.

CHAPTER 252

**(Com. Sub. for H. B. 3119 — By Mr. Speaker, Mr. Kiss, and
Delegates Varner, Williams, Crosier, Kominar, Stemple,
Beane, Perry, H. White, Michael and Campbell)**

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2006.]

AN ACT to amend and reenact §20-1-10 of the Code of West
Virginia, 1931, as amended, relating to wildlife management

areas; revising areas subject to property management requirements; altering reporting requirements; establishing requirements of land use for recreational hunting and shooting; preserving net habitat for hunting and shooting; and establishing reporting requirements for the Division of Natural Resources.

Be it enacted by the Legislature of West Virginia:

That §20-1-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-10. Property management.

1 (a) The division shall maintain at all times an accurate
2 record of all of its lands, interests in lands, buildings, structures,
3 equipment and other tangible properties and assets. The record
4 shall reflect the location, utility, condition and estimated value
5 of all such properties and assets. The division shall provide for
6 the maintenance, preservation and custody of all such properties
7 and assets, and when any item or items thereof become obsolete
8 or are no longer needed, the division shall report thereon to the
9 Public Lands Corporation for disposition thereof.

10 (b) The director shall select and designate a competent and
11 qualified person as division property officer, who shall be
12 responsible for the division's records relating to its properties
13 and assets and for the maintenance, preservation, custody and
14 disposition of all such properties and assets as herein provided.

15 (c) Subject to valid existing rights, division owned wildlife
16 management area lands shall be open to access and use for
17 recreational hunting and shooting except as limited by the
18 division for reasons of public safety, fish and wildlife manage-
19 ment or homeland security or as otherwise limited by law.

20 (d) The division shall exercise its authority consistent with
21 subsection (c) to support, promote and enhance recreational

22 hunting and shooting opportunities, to the extent authorized by
23 statute. The division shall give preference to hunting and
24 shooting over other uses of division owned wildlife manage-
25 ment area lands.

26 (e) Division land management decisions and actions may
27 not result in a net loss of habitat land acreage available for
28 hunting and shooting opportunities on division owned wildlife
29 management area lands that exists on the effective date of this
30 section.

31 (f) On or before the first day of December, the division
32 shall submit an annual report to the Governor and to the Joint
33 Committee on Government and Finance, including the follow-
34 ing:

35 (1) The acreage administered by the division that has been
36 closed during the previous year to recreational hunting and the
37 reasons for the closures; and

38 (2) The acreage administered by the division that, in order
39 to comply with the provisions of subsection (e) was opened to
40 recreational hunting to compensate for that acreage.

CHAPTER 253

**(S. B. 781 — By Senators Helmick, Sharpe, Chafin, Prezioso,
Plymale, Edgell, Love, Bailey, Bowman, McCabe, Minear,
Boley, Facemyer, Yoder, Guills and Sprouse)**

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 5, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §5A-3-40a; and to

amend and reenact §5A-3-42 of said code, all relating to long-term leases for wireless communication towers on public lands; authorizing the Secretary of the Department of Administration to negotiate and enter into long-term lease agreements; excluding public lands under the jurisdiction of the Division of Natural Resources; limiting the duration and conditions of such agreements; requiring leases to be recorded with the clerk of the county commission; and directing the secretary 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 section, designated §5A-3-40a; and that §5A-3-42 of said code be amended and reenacted, all to read as follows:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-40a. Long-term leases of public lands for wireless communication towers.

§5A-3-42. Leasing for space rules and regulations.

§5A-3-40a. Long-term leases of public lands for wireless communication towers.

1 (a) Notwithstanding any provision of law to the contrary,
2 the secretary shall have sole authority to negotiate and enter
3 into long-term lease agreements for lease of public lands to be
4 used for placement of wireless communication towers:
5 *Provided*, That such long-term lease agreements may not be for
6 periods in excess of thirty years: *Provided, however*, That for
7 the governmental units named in subsection (d) of this section,
8 any lease proposed by the secretary may only be entered into
9 upon approval in writing of the ranking administrator of the
10 respective governmental unit described in said subsection.

11 (b) All revenues derived from leases established upon the
12 enactment of this section shall be deposited into the General
13 Revenue Fund except as provided in subsections (c) and (d) of
14 this section.

15 (c) Revenues from leases initiated prior to the enactment of
16 this section or subsequently renewed shall continue to be
17 treated as they were prior to the enactment of this section.

18 (d) Revenues derived from the lease of property under the
19 control of the Department of Transportation shall be deposited
20 into the State Road Fund. Revenues derived from the lease of
21 property under the control of the Division of Natural Resources
22 shall be deposited into the State Park Improvement Fund.
23 Revenues derived from the lease of property under the control
24 of the Department of Agriculture shall be deposited into the
25 Agriculture Fees Fund. Revenues derived from the lease of
26 property under the control of the Division of Forestry shall be
27 deposited into the Division of Forestry Fund. Revenues derived
28 from the lease of property under the control of institutions of
29 higher education shall be deposited into the institution's
30 education and general capital fees fund. Revenues derived from
31 the lease of property under the control of Higher Education
32 Policy Commission shall be deposited into the commission's
33 State Gifts Grants and Contracts Fund. Revenues derived from
34 the lease of property under the control of the West Virginia
35 Council for Community and Technical College Education shall
36 be deposited into the council's Tuition and Required Educa-
37 tional and General Fees Fund.

38 (e) Any long-term lease agreement entered into pursuant to
39 this section shall contain provisions allowing for the nonexclu-
40 sive use of the public lands and allowance for use of the same
41 public space for additional towers by competing persons or
42 corporations.

43 (f) The secretary is further authorized to enter into long-
44 term lease agreements for additional wireless communication
45 towers by other persons or corporations upon the same public
46 lands in which there already exists a lease and tower provided
47 for under this section.

48 (g) Any long-term lease agreement entered into pursuant to
49 this section shall be recorded in the office of the county clerk
50 where public land which is the subject of the lease agreement
51 is located.

§5A-3-42. Leasing for space rules and regulations.

1 The secretary shall have the power and authority to
2 promulgate such rules and regulations as he may deem
3 necessary to carry out the provisions of sections thirty-eight,
4 thirty-nine, forty, forty-a and forty-one of this article.

CHAPTER 254

**(S. B. 790 — By Senators Kessler, Dempsey, Fanning,
Foster, Hunter, Jenkins, Minard, Oliverio, Barnes, Caruth,
Deem, Harrison, Lanham, McKenzie and Weeks)**

[Passed March 9, 2006; in effect from passage.]

[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §23-5-12 of the Code of West Virginia, 1931, as amended, relating to filing appeals of workers' compensation decisions to the board of review.

Be it enacted by the Legislature of West Virginia:

That §23-5-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. REVIEW.

§23-5-12. Appeal to board; procedure; remand and supplemental hearing.

1 (a) Any employer, employee, claimant or dependent who
2 shall feel aggrieved at any final action of the administrative law
3 judge taken after a hearing held in accordance with the
4 provisions of section nine of this article shall have the right to
5 appeal to the board created in section eleven of this article for
6 a review of such action. The Workers' Compensation Commis-
7 sion, the successor to the commission, other private insurance
8 carriers and self-insured employers, whichever is applicable,
9 shall likewise have the right to appeal to the board any final
10 action taken by the administrative law judge. The aggrieved
11 party shall file a written notice of appeal with the board of
12 review, with a copy to the office of judges, within thirty days
13 after receipt of notice of the action complained of or, in any
14 event, regardless of notice, within sixty days after the date of
15 the action complained of, and unless the notice of appeal is filed
16 within the time specified, no appeal shall be allowed, the time
17 limitation is a condition of the right to appeal and hence
18 jurisdictional. The board shall notify the other parties immedi-
19 ately upon the filing of a notice of appeal. The notice of appeal
20 shall state the ground for review and whether oral argument is
21 requested. The office of judges, after receiving a copy of the
22 notice of appeal, shall forthwith make up a transcript of the
23 proceedings before the office of judges and certify and transmit
24 it to the board. The certificate shall incorporate a brief recital of
25 the proceedings in the case and recite each order entered and
26 the date thereof.

27 (b) The board shall set a time and place for the hearing of
28 arguments on each claim and shall notify the interested parties
29 thereof. The review by the board shall be based upon the record
30 submitted to it and such oral argument as may be requested and
31 received. The board may affirm, reverse, modify or supplement
32 the decision of the administrative law judge and make such
33 disposition of the case as it determines to be appropriate. Briefs
34 may be filed by the interested parties in accordance with the
35 rules of procedure prescribed by the board. The board may

36 affirm the order or decision of the administrative law judge or
37 remand the case for further proceedings. It shall reverse, vacate
38 or modify the order or decision of the administrative law judge
39 if the substantial rights of the petitioner or petitioners have been
40 prejudiced because the administrative law judge's findings are:

41 (1) In violation of statutory provisions; or

42 (2) In excess of the statutory authority or jurisdiction of the
43 administrative law judge; or

44 (3) Made upon unlawful procedures; or

45 (4) Affected by other error of law; or

46 (5) Clearly wrong in view of the reliable, probative and
47 substantial evidence on the whole record; or

48 (6) Arbitrary or capricious or characterized by abuse of
49 discretion or clearly unwarranted exercise of discretion.

50 (c) After a review of the case, the board shall issue a written
51 decision and send a copy by mail to the parties.

52 (1) All decisions, findings of fact and conclusions of law of
53 the board of review shall be in writing and state with specificity
54 the laws and facts relied upon to sustain, reverse or modify the
55 administrative law judge's decision.

56 (2) Decisions of the board of review shall be made by a
57 majority vote of the board of review.

58 (3) A decision of the board of review is binding upon the
59 executive director and the commission and the successor to the
60 commission, other private insurance carriers and self-insured
61 employers, whichever is applicable, with respect to the parties
62 involved in the particular appeal. The executive director, the
63 successor to the commission, other private insurance carriers

64 and self-insured employers, whichever is applicable, shall have
65 the right to seek judicial review of a board of review decision
66 irrespective of whether or not he or she appeared or participated
67 in the appeal to the board of review.

68 (d) Instead of affirming, reversing or modifying the
69 decision of the administrative law judge, the board may, upon
70 motion of any party or upon its own motion, for good cause
71 shown, to be set forth in the order of the board, remand the case
72 to the chief administrative law judge for the taking of such new,
73 additional or further evidence as in the opinion of the board
74 may be necessary for a full and complete development of the
75 facts of the case. In the event the board shall remand the case to
76 the chief administrative law judge for the taking of further
77 evidence, the administrative law judge shall proceed to take
78 new, additional or further evidence in accordance with any
79 instruction given by the board within thirty days after receipt of
80 the order remanding the case. The chief administrative law
81 judge shall give to the interested parties at least ten days'
82 written notice of the supplemental hearing, unless the taking of
83 evidence is postponed by agreement of parties, or by the
84 administrative law judge for good cause. After the completion
85 of a supplemental hearing, the administrative law judge shall,
86 within sixty days, render his or her decision affirming, revers-
87 ing or modifying the former action of the administrative law
88 judge. The decision shall be appealable to and proceeded with
89 by the board of review in the same manner as other appeals. In
90 addition, upon a finding of good cause, the board may remand
91 the case to the Workers' Compensation Commission, the
92 successor to the commission, other private insurance carriers
93 and self-insured employers, whichever is applicable, for further
94 development. Any decision made by the commission, the
95 successor to the commission, other private insurance carriers
96 and self-insured employers, whichever applicable, following a
97 remand shall be subject to objection to the office of judges and
98 not to the board. The board may remand any case as often as in

99 its opinion is necessary for a full development and just decision
100 of the case.

101 (e) All appeals from the action of the administrative law
102 judge shall be decided by the board at the same session at which
103 they are heard, unless good cause for delay thereof be shown
104 and entered of record.

105 (f) In all proceedings before the board, any party may be
106 represented by counsel.

CHAPTER 255

(S. B. 505 — By Senators Prezioso and Oliverio)

[Passed February 17, 2006; in effect from passage.]

[Approved by the Governor on February 27, 2006.]

AN ACT to extend the time for the city council of Fairmont, Marion County, to meet as a levying body for the purpose of presenting to the voters of the city an election for a municipal excess levy for purposes of providing funding for the operation, maintenance and repair of the streets and roadways of the city of Fairmont from between the seventh and twenty-eighth days of March and the third Tuesday in April until the nineteenth day of May, two thousand six.

Be it enacted by the Legislature of West Virginia:

**THE CITY COUNCIL OF THE CITY OF FAIRMONT MEETING AS
LEVYING BODY EXTENDED.**

**§1. Extending time for the council for the city of Fairmont to meet
as a levying body for an election authorizing a municipal**

excess levy to provide funding for the operation, maintenance and repair of the streets and roadways.

1 Notwithstanding the provision of article eight, chapter
2 eleven of the Code of West Virginia, 1931, as amended, the city
3 council for the city of Fairmont, Marion County, is hereby
4 authorized to extend the time for its meeting as a levying body,
5 setting the levy rate and certifying its actions to the State
6 Auditor and the State Tax Commissioner from between the
7 seventh and twenty-eighth days of March and the third Tuesday
8 in April until the nineteenth day of May, two thousand six, for
9 the purpose of submitting to the voters of the city of Fairmont
10 the question of authorizing a municipal excess levy for
11 providing funding for the operation, maintenance and repair of
12 the streets and roadways of the city of Fairmont.

CHAPTER 256

**(H. B. 4751 — By Delegate Proudfoot, Tabb, Palumbo, Wysong,
Tansill, Caputo, Yost, Hunt, Schadler and Walters)**

[Passed March 6, 2006; in effect from passage.]

[Approved by the Governor on March 14, 2006.]

AN ACT to extend the time for the Board of Education of Grant County to meet as a levying body for the purpose of presenting to the voters of the county an election for an additional excess levy to provide funding for the operation, maintenance and repair of schools and to pay school personnel from between the seventh and twenty-eighth days of March and the third Tuesday in April until the third Tuesday in May, two thousand six.

Be it enacted by the Legislature of West Virginia:

**THE BOARD OF EDUCATION OF GRANT COUNTY MEETING AS
LEVYING BODY EXTENDED.**

**§1. Extending time for the board of education of Grant County to
meet as a levying body for an election for an additional
excess levy.**

1 Notwithstanding the provision of article eight, chapter
2 eleven of the Code of West Virginia, 1931, as amended, the
3 board of education of Grant County is hereby authorized to
4 extend the time for its meeting as a levying body, setting the
5 levy rate and certifying its actions to the State Tax Commis-
6 sioner from between the seventh and twenty-eighth days of
7 March and the third Tuesday in April until the third Tuesday in
8 May, two thousand six, for the purpose of presenting to the
9 voters of the county an election for an additional excess levy to
10 provide funding for the operation, maintenance and repair of
11 schools and to pay school personnel.

CHAPTER 257

(H. B. 4569 — By Delegates Miley, Fragale, Iauinta and Cann)

[Passed March 10, 2006; in effect from passage.]

[Approved by the Governor on March 28, 2006.]

AN ACT extending the time for the county commission of Harrison County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of the county an election on the question of continuing the excess levy for bus services in Harrison County from between the seventh and twenty-eighth days of March until the first Thursday in June, two thousand six.

Be it enacted by the Legislature of West Virginia:

**HARRISON COUNTY COMMISSION MEETING AS LEVYING BODY
EXTENDED.**

**§1. Extending time for the Harrison County Commission to meet
as a levying body for an election continuing the excess levy
for bus services.**

1 Notwithstanding the provisions of article eight, chapter
2 eleven of the Code of West Virginia, 1931, as amended, to the
3 contrary, the county commission of Harrison County, West
4 Virginia is hereby authorized to extend the time for its meeting
5 as a levying body, setting the levy rate and certifying its actions
6 to the State Tax Commissioner from between the seventh and
7 twenty-eighth days of March and the third Tuesday in April
8 until the first Thursday in June, two thousand six, for the
9 purpose of submitting to the voters of Harrison County the
10 question of continuing the excess levy for bus services in
11 Harrison County.

CHAPTER 258

(H. B. 4484 — By Delegates Caputo, Manchin and Longstreth)

[Passed March 11, 2006; in effect from passage.]

[Approved by the Governor on April 3, 2006.]

AN ACT to extend the time for the County Commission of Marion County to meet as a levying body for the purpose of presenting to the voters of the county an election for continuing an excess levy to provide funding for vital public services from between the

seventh and twenty-eighth days of March and the third Tuesday in April until the first Thursday in June, two thousand six.

Be it enacted by the Legislature of West Virginia:

MARION COUNTY COMMISSION MEETING AS LEVYING BODY EXTENDED.

§1. Extending time for the Marion County commission to meet as a levying body for an election continuing excess levies for vital public services.

1 Notwithstanding the provisions of article eight, chapter
2 eleven of the code of West Virginia, 1931, as amended, the
3 county commission of Marion County, West Virginia, is hereby
4 authorized to extend the time for its meeting as a levying body,
5 setting the levy rate and certifying its actions to the state tax
6 commissioner from between the seventh and twenty-eighth
7 days of March until the first Thursday in June, two thousand
8 six, for the purpose of submitting to the voters of Marion
9 County the question of continuing excess levies for vital public
10 services.

CHAPTER 259

(H. B. 4112 — By Delegates Schadler, Evans and Rowan)

[Passed March 11, 2006; in effect from passage.]

[Approved by the Governor on March 29, 2006.]

AN ACT to extend the time for the County Commission of Mineral County to meet as a levying body for the purpose of presenting to the voters of the county an election for continuing excess levies

to provide funding for volunteer fire departments and the ambulance authority from between the seventh and twenty-eighth days of March and the third Tuesday in April until the third Tuesday in May, two thousand six.

Be it enacted by the Legislature of West Virginia:

**MINERAL COUNTY COMMISSION MEETING AS LEVYING BODY
EXTENDED.**

**§1. Extending time for the Mineral County Commission to meet
as a levying body for an election to continue excess levies
for volunteer fire departments and the ambulance
authority.**

1 Notwithstanding the provision of article eight, chapter
2 eleven of the Code of West Virginia, 1931, as amended, the
3 County Commission of Mineral County, West Virginia, is
4 hereby authorized to extend the time for its meeting as a
5 levying body, setting the levy rate and certifying its actions to
6 the State Tax Commissioner, from between the seventh and
7 twenty-eighth days of March and the third Tuesday in April
8 until the third Tuesday in May, two thousand six, for the
9 purpose of presenting to the voters of the county an election for
10 continuing excess levies to provide funding for the volunteer
11 fire departments and the ambulance authority.

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 2006

CHAPTER 1

**(H. B. 111 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed June 14, 2006; in effect from passage.]

[Approved by the Governor on June 19, 2006.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand seven, to the Department of Commerce - Miners' Health, Safety and Training Fund, fund 3355, fiscal year 2007, organization 0314, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand seven.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the Department of Commerce - Miners' Health, Safety and Training Fund, fund 3355, fiscal year 2007,

organization 0314, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 3355, fiscal year 2007, organization 0314, be supplemented and amended by decreasing and increasing items of appropriation to hereafter read as follows:

1 TITLE II – APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**

3 **DEPARTMENT OF COMMERCE**

4 *134-Miners’ Health, Safety and Training Fund*

5 (WV Code Chapter 22A)

6 Fund 3355 FY 2007 Org 0314

			Act-	Other
			ivity	Funds
9	1	Personal Services	001	\$ 792,000
10	2	Annual Increment	004	550
11	3	Employee Benefits	010	225,892
12	4	WV Mining Extension Service	026	150,000
13	5	Unclassified	099	<u>1,428,130</u>
14	6	Total		\$ 2,596,572

15 The purpose of this supplementary appropriation bill is to
16 supplement, decrease and increase items of appropriation and
17 delete language in the aforesaid account for the designated
18 spending unit for expenditure during the fiscal year two
19 thousand seven with no new funds being appropriated.

CHAPTER 2

**(H. B. 112 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed June 14, 2006; in effect from passage.]

[Approved by the Governor on June 19, 2006.]

AN ACT supplementing, amending, and increasing items of the existing appropriation to the Auditor's Office - Land Operating Fund, fund 1206, fiscal year 2006, organization 1200, to the Department of Agriculture - Donated Food Fund, fund 1446, fiscal year 2006, organization 1400, and to the Department of Health and Human Resources - Division of Health - West Virginia Birth to Three Fund, fund 5214, fiscal year 2006, organization 0506 by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand six.

WHEREAS, The Governor has established there remains an unappropriated balance of moneys in the Auditor's Office - Land Operating Fund, fund 1206, fiscal year 2006, organization 1200, in the Department of Agriculture - Donated Food Fund, fund 1446, fiscal year 2006, organization 1400, and in the Department of Health and Human Resources - Division of Health - West Virginia Birth to Three Fund, fund 5214, fiscal year 2006, organization 0506, available for expenditure in the fiscal year ending the thirtieth day of June, two thousand six; therefore

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 1206, fiscal year

2006, organization 1200, be amended and increased in the existing line item as follows:

1 TITLE II – APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**

3 **EXECUTIVE**

4 *94-Auditor’s Office-*

5 *Land Operating Fund*

6 (WV Code Chapters 11A, 12 and 36)

7 Fund 1206 FY 2006 Org 1200

8			Act-	
9			ivity	Other
				Funds

10	4	Unclassified	099	\$ 310,800
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11 And, that the items of the total appropriation for the fiscal
12 year ending the thirtieth day of June, two thousand six, to fund
13 1446, fiscal year 2006, organization 1400, be amended and
14 increased in the existing line item as follows:

15 TITLE II – APPROPRIATIONS.

16 **Sec. 3. Appropriations from other funds.**

17 **DEPARTMENT OF ADMINISTRATION**

18 *104-Department of Agriculture-*

19 *Donated Food Fund*

20 (WV Code Chapter 19)

21 Fund 1446 FY 2006 Org 1400

CHAPTER 3

**(H. B. 113 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed June 14, 2006; in effect from passage.]

[Approved by the Governor on June 19, 2006.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand seven, to a new item of appropriation designated to the Department of Commerce - Division of Labor - Weights and Measures Fund, fund 3196, fiscal year 2007, organization 0308, supplementing and amending chapter six, Acts of the Legislature, regular session, two thousand six, known as the Budget Bill.

WHEREAS, The Governor has established that there remains an unappropriated balance in the Department of Commerce - Division of Labor - Weights and Measures Fund, fund 3196, fiscal year 2007, organization 0308, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand seven, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter six, Acts of the Legislature, regular session, two thousand six, 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

127a-Division of Labor-

5

Weights and Measures Fund

6

(WV Code Chapter 47)

7

Fund 3196 FY 2007 Org 0308

8

Act-

Other

9

ivity

Funds

10

1

Unclassified - Total 096 \$ 50,000

11

12

13

14

15

16

The purpose of this supplementary appropriation bill is to supplement the accounts in the budget act for fiscal year ending the thirtieth day of June, two thousand seven, by providing for a new item of appropriation to be established therein to appropriate funds for the designated spending unit for expenditure during the fiscal year two thousand seven.



CHAPTER 4

(H. B. 114 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)

[By Request of the Executive]



[Passed June 14, 2006; in effect from passage.]

[Approved by the Governor on June 19, 2006.]



AN ACT supplementing, amending, reducing, and increasing items of the existing appropriation from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2006, organization 0803, all supplementing and

12 And, that the items of the total appropriation from the State
13 Road Fund, fund 9017, fiscal year 2006, organization 0803, be
14 amended and increased in the line items as follows:

15 **TITLE II - APPROPRIATIONS.**

16 **Sec. 2. Appropriations from state road fund.**

17 **DEPARTMENT OF TRANSPORTATION**

18 *91-Division of Highways*

19 (WV Code Chapters 17 and 17C)

20 Fund 9017 FY 2006 Org 0803

21			State
22			Road
23			Fund
		Act- ivity	
24	7 Equipment Revolving	276	\$ 7,000,000
25	10 Other Federal Aid Programs	279	50,000,000

26 The purpose of this supplementary appropriation bill is to
27 supplement, amend, reduce, and increase existing line items in
28 the aforesaid account for the designated spending unit for
29 expenditure during the fiscal year ending the thirtieth day of
30 June, two thousand six.



CHAPTER 5

**(H. B. 115 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed June 14, 2006; in effect from passage.]

[Approved by the Governor on June 19, 2006.]

AN ACT making a supplementary appropriation of Federal Funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand seven, to the Department of Agriculture - State Conservation Committee, fund 8783, fiscal year 2007, organization 1400, to the Department of Education and the Arts, State Board of Rehabilitation, Division of Rehabilitation Services, fund 8734, fiscal year 2007, organization 0932, to a new item of appropriation designated to the Department of Education and the Arts, State Board of Rehabilitation, Division of Rehabilitation Services - Disability Determination Services, fund 8890, fiscal year 2007, organization 0932, and to the Department of Military Affairs and Public Safety - Division of Veterans' Affairs, fund 8858, fiscal year 2007, organization 0613, all supplementing and amending chapter six, Acts of the Legislature, regular session, two thousand six, known as the Budget Bill.

WHEREAS, The Governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand seven, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 8783, fiscal year 2007, organization 1400, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 **Sec. 6. Appropriations of federal funds.**

3 **EXECUTIVE**

4 *268-Department of Agriculture-*

5 *State Conservation Committee*

6 (WV Code Chapter 19)

7 Fund 8783 FY 2007 Org 1400

8		Act-	Federal
9		ivity	Funds

10	1	Unclassified - Total	096	\$ 1,514,314
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11 And, that the total appropriation for the fiscal year ending
12 the thirtieth day of June, two thousand seven, to fund 8734,
13 fiscal year 2007, organization 0932, be supplemented and
14 amended by decreasing the total appropriation as follows:

15 TITLE II – APPROPRIATIONS.

16 **Sec. 6. Appropriations of federal funds.**

17 **DEPARTMENT OF EDUCATION AND THE ARTS**

18 *287-State Board of Rehabilitation-*

19 *Division of Rehabilitation Services*

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20 (WV Code Chapter 18)

21 Fund 8734 FY 2007 Org 0932

22		Act-	Federal
23		ivity	Funds

24	1	Unclassified - Total	096	\$ 21,500,000
----	---	--------------------------------	-----	---------------

25 And, that chapter six, Acts of the Legislature, regular
26 session, two thousand six, known as the Budget Bill, be
27 supplemented and amended by adding to Title II, Section Six
28 thereof the following:

29 TITLE II – APPROPRIATIONS.

30 **Sec. 6. Appropriations of federal funds.**

31 **DEPARTMENT OF EDUCATION AND THE ARTS**

32 *287a-State Board of Rehabilitation-*

33 *Division of Rehabilitation Services-*

34 *Disability Determination Services*

35 (WV Code Chapter 18)

36 Fund 8890 FY 2007 Org 0932

37		Act-	Federal
38		ivity	Funds

39	1	Unclassified - Total	096	\$ 21,500,000
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40 And, that the total appropriation for the fiscal year ending
41 the thirtieth day of June, two thousand seven, to fund 8858,
42 fiscal year 2007, organization 0613, be supplemented and
43 amended by increasing the total appropriation as follows:

44

TITLE II – APPROPRIATIONS.

45

Sec. 6. Appropriations of federal funds.

46

DEPARTMENT OF MILITARY AFFAIRS

47

AND PUBLIC SAFETY

48

300-Division of Veterans' Affairs

49

(WV Code Chapter 9A)

50

Fund 8858 FY 2007 Org 0613

51

Act- Federal

52

ivity Funds

53

1 Unclassified - Total 096 \$ 6,000,000

54

The purpose of this supplementary appropriation bill is to supplement these accounts in the budget act for fiscal year ending the thirtieth day of June, two thousand seven, by decreasing and increasing existing items of appropriation and by providing for a new item of appropriation to be established therein to appropriate federal funds for the designated spending units for expenditure during the fiscal year two thousand seven.



CHAPTER 6

**(H. B. 116 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed June 14, 2006; in effect from passage.]
[Approved by the Governor on June 19, 2006.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the

thirtieth day of June, two thousand seven, to the Department of Agriculture - Agriculture Fees Fund, fund 1401, fiscal year 2007, organization 1400, to the Department of Agriculture - General John McCausland Memorial Farm, fund 1409, fiscal year 2007, organization 1400, to the Department of Agriculture - Donated Food Fund, fund 1446, fiscal year 2007, organization 1400, to the Department of Administration - Division of Information Services and Communications, fund 2220, fiscal year 2007, organization 0210, to the Department of Administration - Division of Personnel, fund 2440, fiscal year 2007, organization 0222, to the Department of Military Affairs and Public Safety - Division of Veterans' Affairs - Veterans' Facilities Support Fund, fund 6703, fiscal year 2007, organization 0613, to the Department of Revenue - Racing Commission - Administration and Promotion, fund 7304, fiscal year 2007, organization 0707, to the Department of Revenue - Racing Commission - Administration, Promotion and Education Fund, fund 7307, fiscal year 2007, organization 0707, and to the WV Board of Examiners for Speech-Language Pathology and Audiology, fund 8646, fiscal year 2007, organization 0930, all supplementing and amending chapter six, Acts of the Legislature, regular session, two thousand six, known as the Budget Bill.

WHEREAS, The Governor has established there remains an unappropriated balance of moneys in the Department of Agriculture - Agriculture Fees Fund, fund 1401, fiscal year 2007, organization 1400, in the Department of Agriculture - General John McCausland Memorial Farm, fund 1409, fiscal year 2007, organization 1400, in the Department of Agriculture - Donated Food Fund, fund 1446, fiscal year 2007, organization 1400, in the Department of Administration - Division of Information Services and Communications, fund 2220, fiscal year 2007, organization 0210, in the Department of Administration - Division of Personnel, fund 2440, fiscal year 2007, organization 0222, in the Department of Military Affairs and Public Safety - Division of Veterans' Affairs - Veterans' Facilities Support Fund, fund 6703, fiscal year 2007, organization 0613, in the Department of

Revenue - Racing Commission - Administration and Promotion, fund 7304, fiscal year 2007, organization 0707, in the Department of Revenue - Racing Commission - Administration, Promotion and Education Fund, fund 7307, fiscal year 2007, organization 0707, and in the WV Board of Examiners for Speech-Language Pathology and Audiology, fund 8646, fiscal year 2007, organization 0930 available for expenditure in the fiscal year ending the thirtieth day of June, two thousand seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 1401, fiscal year 2007, organization 1400, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**

3 **EXECUTIVE**

4 *101-Department of Agriculture-*

5 *Agriculture Fees Fund*

6 (WV Code Chapter 19)

7 Fund 1401 FY 2007 Org 1400

			Act-	Other
			ivity	Funds
10	1	Personal Services	001	\$ 137,000
11	3	Employee Benefits	010	48,000

12 And, that the total appropriation for the fiscal year ending
 13 the thirtieth day of June, two thousand seven, to fund 1401,

14 fiscal year 2007, organization 1400, be supplemented and
15 amended by decreasing the total appropriation as follows:

16 TITLE II – APPROPRIATIONS.

17 **Sec. 3. Appropriations from other funds.**

18 EXECUTIVE

19 *101-Department of Agriculture-*

20 *Agriculture Fees Fund*

21 (WV Code Chapter 19)

22 Fund 1401 FY 2007 Org 1400

23	24	Act-	Other
		ivity	Funds
25	1 Unclassified	099	\$ 185,000

26 And, that the total appropriation for the fiscal year ending
27 the thirtieth day of June, two thousand seven, to fund 1409,
28 fiscal year 2007, organization 1400, be supplemented and
29 amended by increasing the total appropriation as follows:

30 TITLE II – APPROPRIATIONS.

31 **Sec. 3. Appropriations from other funds.**

32 EXECUTIVE

33 *103-Department of Agriculture-*

34 *General John McCausland Memorial Farm*

35 (WV Code Chapter 19)

36 Fund 1409 FY 2007 Org 1400

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APPROPRIATIONS

[Ch. 6

61 *113-Division of Information Services and Communications*

62 (WV Code Chapter 5A)

63 Fund 2220 FY 2007 Org 0210

64			Act-	Other
65			ivity	Funds
66	4	Unclassified	099	\$ 7,060,000

67 And, that the total appropriation for the fiscal year ending
68 the thirtieth day of June, two thousand seven, to fund 2440,
69 fiscal year 2007, organization 0222, be supplemented and
70 amended by increasing the total appropriation as follows:

71 TITLE II – APPROPRIATIONS.

72 **Sec. 3. Appropriations from other funds.**

73 **DEPARTMENT OF ADMINISTRATION**

74 *114-Division of Personnel*

75 (WV Code Chapter 29)

76 Fund 2440 FY 2007 Org 0222

77			Act-	Other
78			ivity	Funds
79	4	Unclassified	099	\$ 200,000

80 And, that the total appropriation for the fiscal year ending
81 the thirtieth day of June, two thousand seven, to fund 6703,
82 fiscal year 2007, organization 0613, be supplemented and
83 amended by increasing the total appropriation as follows:

84 TITLE II – APPROPRIATIONS.

85 **Sec. 3. Appropriations from other funds.**

86 **DEPARTMENT OF MILITARY**
87 **AFFAIRS AND PUBLIC SAFETY**

88 *185-Division of Veterans' Affairs-*

89 *Veterans' Facilities Support Fund*

90 (WV Code Chapter 9A)

91 Fund 6703 FY 2007 Org 0613

92			Act-	
93			ivity	Other
				Funds

94	1	Unclassified - Total	096	\$ 2,000,000
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95 And, that the total appropriation for the fiscal year ending
96 the thirtieth day of June, two thousand seven, to fund 7304,
97 fiscal year 2007, organization 0707, be supplemented and
98 amended by increasing the total appropriation as follows:

99 TITLE II – APPROPRIATIONS.

100 **Sec. 3. Appropriations from other funds.**

101 **DEPARTMENT OF REVENUE**

102 *207-Racing Commission-*

103 *Administration and Promotion*

104 (WV Code Chapter 19)

105 Fund 7304 FY 2007 Org 0707

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106			Act-	Other
107			ivity	Funds
108	1	Personal Services	001	\$ 50,000
109	3	Employee Benefits	010	7,500
110	4	Unclassified	099	42,500

111 And, that the total appropriation for the fiscal year ending
112 the thirtieth day of June, two thousand seven, to fund 7307,
113 fiscal year 2007, organization 0707, be supplemented and
114 amended by increasing the total appropriation as follows:

115 TITLE II – APPROPRIATIONS.

116 **Sec. 3. Appropriations from other funds.**

117 **DEPARTMENT OF REVENUE**

118 *209-Racing Commission-*

119 *Administration, Promotion and Education Fund*

120 (WV Code Chapter 19)

121 Fund 7307 FY 2007 Org 0707

122			Act-	Other
123			ivity	Funds
124	1	Unclassified - Total	096	\$ 188,575

125 And, that the total appropriation for the fiscal year ending
126 the thirtieth day of June, two thousand seven, to fund 8646,
127 fiscal year 2007, organization 0930, be supplemented and
128 amended by increasing the total appropriation as follows:

129 TITLE II – APPROPRIATIONS.

130 **Sec. 3. Appropriations from other funds.**

131 MISCELLANEOUS BOARDS AND COMMISSIONS

132 232-WV Board of Examiners for Speech-Language

133 Pathology and Audiology

134 (WV Code Chapter 30)

135 Fund 8646 FY 2007 Org 0930

136		Act-	Other
137		ivity	Funds
138	1	Unclassified - Total	096 \$ 20,000

139 The purpose of this supplementary appropriation bill is to
 140 supplement, amend, increase, and decrease the aforesaid
 141 accounts for the designated spending units, for fiscal year
 142 ending the thirtieth day of June, two thousand seven, for
 143 expenditure during the fiscal year two thousand seven.



CHAPTER 7

**(Com. Sub. for H. B. 118 — By Mr. Speaker,
 Mr. Kiss, and Delegate Trump)
 [By Request of the Executive]**

[Passed June 14, 2006; in effect from passage.]
 [Approved by the Governor on June 19, 2006.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the State Fund, General Revenue, to the Department of Military Affairs and Public Safety - Division of Veterans' Affairs, fund 0456, fiscal year 2007, organization

0613, to the Department of Administration - Department of Administration - Office of the Secretary, fund 0186, fiscal year 2007, organization 0201, to the Department of Administration - Consolidated Public Retirement Board, fund 0195, fiscal year 2007, organization 0205, to the Department of Administration - Public Defender Services, fund 0226, fiscal year 2007, organization 0221, to the Department of Commerce - Division of Forestry, fund 0250, fiscal year 2007, organization 0305, to the Department of Commerce - Geological and Economic Survey, fund 0253, fiscal year 2007, organization 0306, to the Department of Commerce - West Virginia Development Office, fund 0256, fiscal year 2007, organization 0307, to the Department of Commerce - Division of Labor, fund 0260, fiscal year 2007, organization 0308, to the Department of Commerce - Division of Natural Resources, fund 0265, fiscal year 2007, organization 0310, to the Department of Commerce - Department of Commerce - Office of the Secretary, fund 0606, fiscal year 2007, organization 0327, to the Department of Education and the Arts - Department of Education and the Arts - Office of the Secretary, fund 0294, fiscal year 2007, organization 0431, to the Department of Education and the Arts - Division of Culture and History, fund 0293, fiscal year 2007, organization 0432, to the Department of Education and the Arts - Library Commission, fund 0296, fiscal year 2007, organization 0433, to the Department of Education and the Arts - Educational Broadcasting Authority, fund 0300, fiscal year 2007, organization 0439, to the Department of Education and the Arts - State Board of Rehabilitation - Division of Rehabilitation Services, fund 0310, fiscal year 2007, organization 0932, to the Department of Environmental Protection - Division of Environmental Protection, fund 0273, fiscal year 2007, organization 0313, to the Department of Health and Human Resources - Department of Health and Human Resources - Office of the Secretary, fund 0400, fiscal year 2007, organization 0501, to the Department of Health and Human Resources - Division of Health - Central Office, fund 0407, fiscal year 2007, organization 0506, to the Department of Health and Human Resources - Consolidated Medical Service Fund, fund 0525, fiscal year 2007, organization

0506, to the Department of Health and Human Resources - Human Rights Commission, fund 0416, fiscal year 2007, organization 0510, to the Department of Health and Human Resources - Division of Human Services, fund 0403, fiscal year 2007, organization 0511, to the Department of Military Affairs and Public Safety - Department of Military Affairs and Public Safety - Office of the Secretary, fund 0430, fiscal year 2007, organization 0601, to the Department of Military Affairs and Public Safety - Division of Corrections - Central Office, fund 0446, fiscal year 2007, organization 0608, to the Department of Military Affairs and Public Safety - Division of Corrections - Correctional Units, fund 0450, fiscal year 2007, organization 0608, to the Department of Military Affairs and Public Safety - West Virginia State Police, fund 0453, fiscal year 2007, organization 0612, to the Department of Military Affairs and Public Safety - Division of Veterans' Affairs, fund 0456, fiscal year 2007, organization 0613, to the Department of Military Affairs and Public Safety - Fire Commission, fund 0436, fiscal year 2007, organization 0619, to the Department of Military Affairs and Public Safety - Division of Juvenile Services, fund 0570, fiscal year 2007, organization 0621, to the Department of Revenue - Office of the Secretary, fund 0465, fiscal year 2007, organization 0701, to the Department of Revenue - Tax Division, fund 0470, fiscal year 2007, organization 0702, to the Department of Transportation - State Rail Authority, fund 0506, fiscal year 2007, organization 0804, to the Department of Transportation - Aeronautics Commission, fund 0582, fiscal year 2007, organization 0807, to Higher Education - West Virginia Council for Community and Technical College Education - Control Account, fund 0596, fiscal year 2007, organization 0420, and to Higher Education - Higher Education Policy Commission - System - Control Account, fund 0586, fiscal year 2007, organization 0442, all supplementing and amending chapter six, acts of the Legislature, regular session, two thousand six, known as the Budget Bill.

Be it enacted by the Legislature of West Virginia:

That the total appropriation from the State Fund, General Revenue, to the Department of Military Affairs and Public Safety - Division of Veterans' Affairs, fund 0456, fiscal year 2007, organization 0613, be amended and reduced in the existing line item as follows:

1 TITLE II – APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 DEPARTMENT OF MILITARY AFFAIRS
4 AND PUBLIC SAFETY

5 *72-Division of Veterans' Affairs*

6 (WV Code Chapter 9A)

7 Fund 0456 FY 2007 Org 0613

8			General
9		Act-	Revenue
10		ivity	Funds
11	6	Veterans' Nursing Home	286 \$ 1,000,000

12 And, that the items of the total appropriation from the State
13 Fund, General Revenue, to the Department of Administration -
14 Department of Administration - Office of the Secretary, fund
15 0186, fiscal year 2007, organization 0201, be amended and
16 increased in the existing line item as follows:

17 TITLE II – APPROPRIATIONS.

18 Section 1. Appropriations from General Revenue.

19 DEPARTMENT OF ADMINISTRATION

20 *18-Department of Administration-*

46 expenditure during the fiscal year 2007 and may be expended
47 for all administrative costs related to the pension merger,
48 including but not limited to attorney fees and expenses, witness
49 fees and expenses and court costs.

50 The above appropriation for Unclassified - Total - Transfer
51 (fund 0195, activity 402) shall be transferred to the Consoli-
52 dated Public Retirement Board - West Virginia Teachers'
53 Retirement System Employers Accumulation Fund (fund 2601)
54 only after all other funding required by Title II - Appropria-
55 tions, Section One, Appropriations from General Revenue have
56 been satisfied as determined by the Director of the Budget.
57 Further, the above appropriation shall not be considered in the
58 aggregate eligible for consideration of the five percent secretary
59 transfer authority granted in "Title I - General Provisions, Sec.
60 3. Classifications and appropriations."

61 Should the actual revenues accruing to the General Revenue
62 Fund be insufficient to fully fund all appropriations of "Title II
63 - Appropriations, Section One, Appropriations from General
64 Revenue," the appropriation to the Unclassified - Total -
65 Transfer (fund 0195, activity 402) shall be reduced to the extent
66 funds are available and the appropriation made in the reduced
67 amount and thereafter transferred to the Unclassified - Total -
68 Transfer (fund 0195, activity 402).

69 The Division of Highways, Division of Motor Vehicles,
70 Bureau of Employment Programs, Public Service Commission
71 and other departments, bureaus, divisions, or commissions
72 operating from special revenue funds and/or federal funds shall
73 pay their proportionate share of the retirement costs for their
74 respective divisions. When specific appropriations are not
75 made, such payments may be made from the balances in the
76 various special revenue funds in excess of specific appropria-
77 tions.

78 And, that the items of the total appropriation from the State
79 Fund, General Revenue, to the Department of Administration -
80 Public Defender Services, fund 0226, fiscal year 2007, organi-
81 zation 0221, be amended and increased in the existing line item
82 as follows:

83 TITLE II – APPROPRIATIONS.

84 Section 1. Appropriations from General Revenue.

85 DEPARTMENT OF ADMINISTRATION

86 26-Public Defender Services

87 (WV Code Chapter 29)

88 Fund 0226 FY 2007 Org 0221

89			General
90			Revenue
91			Funds
		Act- ivity	
92	1 Personal Services	001	\$ 5,000

93 And, that the items of the total appropriation from the State
94 Fund, General Revenue, to the Department of Commerce -
95 Division of Forestry, fund 0250, fiscal year 2007, organization
96 0305, be amended and increased in the existing line item as
97 follows:

98 TITLE II – APPROPRIATIONS.

99 Section 1. Appropriations from General Revenue.

100 DEPARTMENT OF COMMERCE

101 32-Division of Forestry

2148 APPROPRIATIONS [Ch. 7

102 (WV Code Chapter 19)

103 Fund 0250 FY 2007 Org 0305

104				General
105			Act-	Revenue
106			ivity	Funds

107	1	Personal Services	001	\$	5,000
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108 And, that the items of the total appropriation from the State
109 Fund, General Revenue, to the Department of Commerce -
110 Geological and Economic Survey, fund 0253, fiscal year 2007,
111 organization 0306, be amended and increased in the existing
112 line item as follows:

113 TITLE II – APPROPRIATIONS.

114 **Section 1. Appropriations from General Revenue.**

115 **DEPARTMENT OF COMMERCE**

116 *33-Geological and Economic Survey*

117 (WV Code Chapter 29)

118 Fund 0253 FY 2007 Org 0306

119					General
120			Act-		Revenue
121			ivity		Funds

122	1	Personal Services	001	\$	5,000
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123 And, that the items of the total appropriation from the State
124 Fund, General Revenue, to the Department of Commerce -
125 West Virginia Development Office, fund 0256, fiscal year

126 2007, organization 0307, be supplemented, decreased and
127 amended to hereafter read as follows:

128 TITLE II – APPROPRIATIONS.

129 Section 1. Appropriations from General Revenue.

130 DEPARTMENT OF COMMERCE

131 *34-West Virginia Development Office*

132 (WV Code Chapter 5B)

133 Fund 0256 FY 2007 Org 0307

134				General
135			Act-	Revenue
136			ivity	Funds
137	1	Personal Services	001	\$ 3,967,506
138	2	Annual Increment	004	63,218
139	3	Employee Benefits	010	1,191,418
140	4	ARC-WV Home for Your		
141	5	Own Alliance	048	40,000
142	6	Southern WV Career Center	071	191,750
143	7	Unclassified	099	1,431,181
144	8	Partnership Grants (R)	131	1,950,000
145	9	National Youth Science Camp	132	200,000
146	10	Local Economic Development		
147	11	Partnerships (R)	133	1,870,000
148	12	ARC Assessment	136	167,308
149	13	Institute for Software Research	217	76,213
150	14	Mid-Atlantic Aerospace		
151	15	Complex (R)	231	176,783
152	16	Guaranteed Work Force Grant (R)	242	2,247,000
153	17	Mingo County Surface		
154	18	Mine Project	296	125,000

155	19	Robert C. Byrd Institute for Advanced/		
156	20	Flexible Manufacturing-Technology		
157	21	Outreach and Programs for		
158	22	Environmental and		
159	23	Advanced Technologies	367	519,800
160	24	Advantage Valley	389	74,300
161	25	Chemical Alliance Zone	390	38,300
162	26	WV High Tech Consortium	391	159,570
163	27	Charleston Farmers Market	476	100,000
164	28	Industrial Park Assistance (R)	480	650,000
165	29	International Offices (R)	593	690,644
166	30	Grant Programs	694	0
167	31	Small Business Development	703	273,187
168	32	WV Manufacturing		
169	33	Extension Partnership	731	144,000
170	34	Polymer Alliance	754	115,000
171	35	National Institute of		
172	36	Chemical Studies	805	70,500
173	37	Local Economic Development		
174	38	Assistance (R)	819	6,050,000
175	39	Community College Workforce		
176	40	Development	878	0
177	41	BRIM Premium	913	26,096
178	42	Hardwood Alliance Zone	992	42,600
179	43	Regional Councils	784	440,000
180	44	Mainstreet Program	794	50,000
181	45	I-79 Development Council	824	<u>50,000</u>
182	46	Total		\$ 23,191,374

183 Any unexpended balances remaining in the appropriations
184 for Tourism-Unclassified-Surplus (fund 0256, activity 075),
185 Partnership Grants (fund 0256, activity 131), Local Economic
186 Development Partnerships (fund 0256, activity 133), Mid-
187 Atlantic Aerospace Complex (fund 0256, activity 231), Guaran-
188 teed Work Force Grant (fund 0256, activity 242), Local
189 Economic Development Assistance-Surplus (fund 0256,

190 activity 266), Small Business Financial Assistance (fund 0256,
191 activity 360), Industrial Park Assistance (fund 0256, activity
192 480), Leverage Technology and Small Business Development
193 Program (fund 0256, activity 525), International Offices (fund
194 0256, activity 593), Small Business Work Force (fund 0256,
195 activity 735), Local Economic Development Assistance (fund
196 0256, activity 819), and Economic Development Assistance
197 (fund 0256, activity 900) at the close of the fiscal year 2006 are
198 hereby reappropriated for expenditure during the fiscal year
199 2007.

200 The above appropriation to Local Economic Development
201 Partnerships shall be used by the West Virginia development
202 office for the award of funding assistance to county and
203 regional economic development corporations or authorities
204 participating in the certified development community program
205 developed under the provisions of section fourteen, article two,
206 chapter five-b of the code. The West Virginia development
207 office shall award the funding assistance through a matching
208 grant program, based upon a formula whereby funding assis-
209 tance may not exceed thirty-four thousand dollars per county
210 served by an economic development corporation or authority.

211 And, that the items of the total appropriation from the State
212 Fund, General Revenue, to the Department of Commerce -
213 Division of Labor, fund 0260, fiscal year 2007, organization
214 0308, be amended and increased in the existing line item as
215 follows:

216 TITLE II – APPROPRIATIONS.

217 **Section 1. Appropriations from General Revenue.**

218 **DEPARTMENT OF COMMERCE**

219 *35-Division of Labor*

2152 APPROPRIATIONS [Ch. 7

220 (WV Code Chapters 21 and 47)

221 Fund 0260 FY 2007 Org 0308

222			General
223		Act-	Revenue
224		ivity	Funds

225	1	Personal Services	001	\$	5,000
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226 And, that the items of the total appropriation from the State
227 Fund, General Revenue, to the Department of Commerce -
228 Division of Natural Resources, fund 0265, fiscal year 2007,
229 organization 0310, be amended and increased in the existing
230 line item as follows:

231 TITLE II – APPROPRIATIONS.

232 **Section 1. Appropriations from General Revenue.**

233 **DEPARTMENT OF COMMERCE**

234 *36-Division of Natural Resources*

235 (WV Code Chapter 20)

236 Fund 0265 FY 2007 Org 0310

237				General
238			Act-	Revenue
239			ivity	Funds

240	1	Personal Services	001	\$	5,000
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241 And, that the items of the total appropriation from the State
242 Fund, General Revenue, to the Department of Commerce -
243 Department of Commerce - Office of the Secretary, fund 0606,

244 fiscal year 2007, organization 0327, be amended and increased
245 in the existing line item as follows:

246 TITLE II – APPROPRIATIONS.

247 Section 1. Appropriations from General Revenue.

248 DEPARTMENT OF COMMERCE

249 *40-Department of Commerce-*

250 *Office of the Secretary*

251 (WV Code Chapter 19)

252 Fund 0606 FY 2007 Org 0327

253	254	255	Act- ivity	General Revenue Funds
256	1	Unclassified	099	\$ 5,000

257 And, that the items of the total appropriation from the State
258 Fund, General Revenue, to the Department of Education and the
259 Arts - Department of Education and the Arts - Office of the
260 Secretary, fund 0294, fiscal year 2007, organization 0431, be
261 amended and increased in the existing line item as follows:

262 TITLE II – APPROPRIATIONS.

263 Section 1. Appropriations from General Revenue.

264 DEPARTMENT OF EDUCATION AND THE ARTS

265 *50-Department of Education and the Arts-*

266 *Office of the Secretary*

2154 APPROPRIATIONS [Ch. 7

267 (WV Code Chapter 5F)

268 Fund 0294 FY 2007 Org 0431

269			General
270		Act-	Revenue
271		ivity	Funds

272	1	Unclassified (R)	099	\$	5,000
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273 And, that the items of the total appropriation from the State
 274 Fund, General Revenue, to the Department of Education and the
 275 Arts - Division of Culture and History, fund 0293, fiscal year
 276 2007, organization 0432, be amended and increased in the
 277 existing line item as follows:

278 TITLE II – APPROPRIATIONS.

279 Section 1. Appropriations from General Revenue.

280 DEPARTMENT OF EDUCATION AND THE ARTS

281 *51-Division of Culture and History*

282 (WV Code Chapter 29)

283 Fund 0293 FY 2007 Org 0432

284			General
285		Act-	Revenue
286		ivity	Funds

287	1	Personal Services	001	\$	5,000
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288 And, that the items of the total appropriation from the State
 289 Fund, General Revenue, to the Department of Education and the
 290 Arts - Library Commission, fund 0296, fiscal year 2007,

291 organization 0433, be amended and increased in the existing
292 line item as follows:

293 TITLE II – APPROPRIATIONS.

294 Section 1. Appropriations from General Revenue.

295 DEPARTMENT OF EDUCATION AND THE ARTS

296 52-Library Commission

297 (WV Code Chapter 10)

298 Fund 0296 FY 2007 Org 0433

299			General
300		Act-	Revenue
301		ivity	Funds

302	1	Personal Services	001	\$	5,000
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303 And, that the items of the total appropriation from the State
304 Fund, General Revenue, to the Department of Education and the
305 Arts - Educational Broadcasting Authority, fund 0300, fiscal
306 year 2007, organization 0439, be amended and increased in the
307 existing line item as follows:

308 TITLE II – APPROPRIATIONS.

309 Section 1. Appropriations from General Revenue.

310 DEPARTMENT OF EDUCATION AND THE ARTS

311 53-Educational Broadcasting Authority

312 (WV Code Chapter 10)

313 Fund 0300 FY 2007 Org 0439

2156 APPROPRIATIONS [Ch. 7

314 **General**
315 **Revenue**
316 **Funds**

317 1 Personal Services 001 \$ 5,000

318 And, that the items of the total appropriation from the State
319 Fund, General Revenue, to the Department of Education and the
320 Arts - State Board of Rehabilitation - Division of Rehabilitation
321 Services, fund 0310, fiscal year 2007, organization 0932, be
322 supplemented, increased and amended to hereafter read as
323 follows:

324 TITLE II – APPROPRIATIONS.

325 **Section 1. Appropriations from General Revenue.**

326 **DEPARTMENT OF EDUCATION AND THE ARTS**

327 *54-State Board of Rehabilitation-*

328 *Division of Rehabilitation Services*

329 (WV Code Chapter 18)

330 Fund 0310 FY 2007 Org 0932

331 **General**
332 **Revenue**
333 **Funds**

334 1 Personal Services 001 \$ 7,026,238
335 2 Annual Increment 004 134,049
336 3 Independent Living Services 009 24,000
337 4 Employee Benefits 010 2,776,615
338 5 Workshop Development 163 1,816,149
339 6 Supported Employment
340 7 Extended Services 206 119,032

341	8	Ron Yost Personal		
342	9	Assistance Fund (R)	407	340,000
343	10	Employment Attendant		
344	11	Care Program	598	179,000
345	12	Capital Outlay and		
346	13	Maintenance (R)	755	200,000
347	14	BRIM Premium	913	<u>67,033</u>
348	15	Total		\$ 12,682,116

349 Any unexpended balances remaining in the appropriations
 350 for the Unclassified-Surplus (fund 0310, activity 097), Ron
 351 Yost Personal Assistance Fund (fund 0310, activity 407), and
 352 Capital Outlay, Repairs and Equipment - Surplus (fund 0310,
 353 activity 677) at the close of the fiscal year 2006 are hereby
 354 reappropriated for expenditure during the fiscal year 2007.

355 Any unexpended balance remaining in the appropriation for
 356 Technology-Related Assistance Revolving Loan Fund for
 357 Individuals with Disabilities (fund 0310, activity 766) is hereby
 358 reappropriated for expenditure during the fiscal year 2007 and
 359 may be transferred to a special account for the purpose of
 360 disbursement or loan.

361 From the above appropriation for Workshop Development
 362 (activity 163), funds shall be used exclusively with the private
 363 non-profit community rehabilitation program organizations
 364 known as work centers or sheltered workshops. The appropria-
 365 tion shall also be used to continue the support of the program,
 366 services, and individuals with disabilities currently in place at
 367 those 31 organizations.

368 And, that the items of the total appropriation from the State
 369 Fund, General Revenue, to the Department of Environmental
 370 Protection - Division of Environmental Protection, fund 0273,
 371 fiscal year 2007, organization 0313, be amended and increased
 372 in the existing line item as follows:

2158 APPROPRIATIONS [Ch. 7

373 TITLE II – APPROPRIATIONS.

374 **Section 1. Appropriations from General Revenue.**

375 **DEPARTMENT OF ENVIRONMENTAL**
376 **PROTECTION**

377 *56-Division of Environmental Protection*

378 (WV Code Chapter 22)

379 Fund 0273 FY 2007 Org 0313

380			General
381		Act-	Revenue
382		ivity	Funds

383	1	Personal Services	001	\$	5,000
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384 And, that the items of the total appropriation from the State
385 Fund, General Revenue, to the Department of Health and
386 Human Resources - Department of Health and Human Re-
387 sources - Office of the Secretary, fund 0400, fiscal year 2007,
388 organization 0501, be amended and increased in the existing
389 line items as follows:

390 TITLE II – APPROPRIATIONS.

391 **Section 1. Appropriations from General Revenue.**

392 **DEPARTMENT OF HEALTH AND**
393 **HUMAN RESOURCES**

394 *58-Department of Health and Human Resources-*

395 *Office of the Secretary*

2160		APPROPRIATIONS		[Ch. 7
422	4	Level 1, 2 and 3 Trauma Centers . . .	013	250,000
423	5	Chief Medical Examiner	045	515
424	9	Basic Public Health		
425	10	Services Support	212	1,030
426	12	Cancer Registry	225	515
427	14	State EMS Technical Assistance . . .	379	515
428	16	Statewide EMS		
429	17	Program Support	383	515
430	31	Primary Care Support	628	386

431 And, that the items of the total appropriation from the State
432 Fund, General Revenue, to the Department of Health and
433 Human Resources - Consolidated Medical Service Fund, fund
434 0525, fiscal year 2007, organization 0506, be amended and
435 increased in the existing line items as follows:

436 TITLE II – APPROPRIATIONS.

437 Section 1. Appropriations from General Revenue.

438 DEPARTMENT OF HEALTH AND
439 HUMAN RESOURCES

440 *60-Consolidated Medical Service Fund*

441 (WV Code Chapter 16)

442 Fund 0525 FY 2007 Org 0506

443				General
444			Act-	Revenue
445			ivity	Funds
446	1	Personal Services	001	\$ 1,442
447	8	Institutional Facilities		
448	9	Operations	335	17,900

449 And, that the items of the total appropriation from the State
450 Fund, General Revenue, to the Department of Health and
451 Human Resources - Human Rights Commission, fund 0416,
452 fiscal year 2007, organization 0510, be amended and increased
453 in the existing line item as follows:

454 TITLE II – APPROPRIATIONS.

455 Section 1. Appropriations from General Revenue.

456 DEPARTMENT OF HEALTH AND
457 HUMAN RESOURCES

458 *62-Human Rights Commission*

459 (WV Code Chapter 5)

460 Fund 0416 FY 2007 Org 0510

461	462	463	Act-	ivity	General	Revenue	Funds
464	1	Personal Services	001		\$	5,000	

465 And, that the items of the total appropriation from the State
466 Fund, General Revenue, to the Department of Health and
467 Human Resources - Division of Human Services, fund 0403,
468 fiscal year 2007, organization 0511, be amended and increased
469 in the existing line items as follows:

470 TITLE II – APPROPRIATIONS.

471 Section 1. Appropriations from General Revenue.

472 DEPARTMENT OF HEALTH AND
473 HUMAN RESOURCES

2162 APPROPRIATIONS [Ch. 7

474 63-Division of Human Services

475 (WV Code Chapters 9, 48 and 49)

476 Fund 0403 FY 2007 Org 0511.

477			General
478			Revenue
479			Funds
			Act- ivity
480	1	Personal Services	001 \$ 97,182
481	5	Child Care Development	114 2,575
482	6	Medical Services Contracts and Office	
483	7	Of Managed Care	183 515
484	18	Child Protective Services	
485	19	Case Workers	468 95,637
486	22	OSCAR and RAPIDS	515 2,318
487	25	Child Welfare System	603 5,150
488	27	Medicaid Auditing	706 1,803

489 Any unexpended balance remaining in the appropriation for
490 Women’s Commission (fund 0403, activity 191) at the close of
491 the fiscal year two thousand six is hereby reappropriated and
492 redesignated to fund 0400, activity 191 for expenditure during
493 the fiscal year two thousand seven.

494 And, that the items of the total appropriation from the State
495 Fund, General Revenue, to the Department of Military Affairs
496 and Public Safety - Department of Military Affairs and Public
497 Safety - Office of the Secretary, fund 0430, fiscal year 2007,
498 organization 0601, be amended and increased in the existing
499 line item as follows:

500 TITLE II – APPROPRIATIONS.

501 **Section 1. Appropriations from General Revenue.**

502 **DEPARTMENT OF MILITARY AFFAIRS**
503 **AND PUBLIC SAFETY**

504 *64-Department of Military Affairs and Public Safety-*

505 *Office of the Secretary*

506 (WV Code Chapter 5F)

507 Fund 0430 FY 2007 Org 0601

508			General
509		Act-	Revenue
510		ivity	Funds

511	1	Unclassified (R)	099	\$	5,000
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512 And, that the items of the total appropriation from the State
513 Fund, General Revenue, to the Department of Military Affairs
514 and Public Safety - Division of Corrections - Central Office,
515 fund 0446, fiscal year 2007, organization 0608, be amended and
516 increased in the existing line item as follows:

517 **TITLE II – APPROPRIATIONS.**

518 **Section 1. Appropriations from General Revenue.**

519 **DEPARTMENT OF MILITARY AFFAIRS**
520 **AND PUBLIC SAFETY**

521 *69-Division of Corrections-*

522 *Central Office*

523 (WV Code Chapters 25, 28, 49 and 62)

524 Fund 0446 FY 2007 Org 0608

2164 APPROPRIATIONS [Ch. 7

525 **General**
526 **Revenue**
527 **Funds**

528 1 Personal Services 001 \$ 5,000

529 And, that the items of the total appropriation from the State
530 Fund, General Revenue, to the Department of Military Affairs
531 and Public Safety - Division of Corrections - Correctional
532 Units, fund 0450, fiscal year 2007, organization 0608, be
533 amended and increased in existing line items and by adding
534 thereto a new item of appropriation as follows:

535 TITLE II – APPROPRIATIONS.

536 **Section 1. Appropriations from General Revenue.**

537 **DEPARTMENT OF MILITARY AFFAIRS**
538 **AND PUBLIC SAFETY**

539 *70-Division of Corrections-*

540 *Correctional Units*

541 (WV Code Chapters 25, 28, 49 and 62)

542 Fund 0450 FY 2007 Org 0608

543 **General**
544 **Revenue**
545 **Funds**

546 4 Beckley Correctional Center 490 \$ 457
547 6 Anthony Center 504 915
548 11 Pruntytown Correctional
549 12 Center 543 2,288
550 26 St. Mary’s Correctional
551 27 Facility 881 1,830

2166		APPROPRIATIONS		[Ch. 7
580	12	Handgun Administration		
581	13	Expense	747	73,448
582	14	Capital Outlay and Maintenance . . .	755	500,000
583	15	Automated Fingerprint		
584	16	Identification System	898	629,984
585	17	BRIM Premium	913	6,043,110
586	18	Childrens Protection Act	090	<u>885,000</u>
587	19	Total		\$ 67,220,103

588 Any unexpended balances remaining in the appropriations
589 for Barracks Maintenance and Construction (fund 0453, activity
590 494), Trooper Class (fund 0453, activity 521), Communications
591 and Other Equipment (fund 0453, activity 558), Barracks
592 Maintenance and Construction - Surplus (fund 0453, activity
593 669), and Law Enforcement - Special Projects (fund 0453,
594 activity 787) at the close of the fiscal year 2006 are hereby
595 reappropriated for expenditure during the fiscal year 2007.

596 From the above appropriation for Personal Services, an
597 amount not less than \$25,000 shall be expended to offset the
598 costs associated with providing police services for the West
599 Virginia State Fair.

600 And, that the items of the total appropriation from the State
601 Fund, General Revenue, to the Department of Military Affairs
602 and Public Safety - Division of Veterans' Affairs, fund 0456,
603 fiscal year 2007, organization 0613, be amended and increased
604 in the existing line item as follows:

605 **TITLE II – APPROPRIATIONS.**

606 **Section 1. Appropriations from General Revenue.**

607 **DEPARTMENT OF MILITARY AFFAIRS**
608 **AND PUBLIC SAFETY**

609 *72-Division of Veterans' Affairs*

2168 APPROPRIATIONS [Ch. 7

635 fiscal year 2007, organization 0621, be amended and increased
636 in the existing line items as follows:

637 TITLE II – APPROPRIATIONS.

638 **Section 1. Appropriations from General Revenue.**

639 **DEPARTMENT OF MILITARY AFFAIRS**
640 **AND PUBLIC SAFETY**

641 *76-Division of Juvenile Services*

642 (WV Code Chapter 49)

643 Fund 0570 FY 2007 Org 0621

644				General
645			Act-	Revenue
646			ivity	Funds
647	3	Central Office (R)	701	\$ 5,000
648	6	Southern WV Youth Diagnostic		
649	7	Center (R)	792	915
650	13	Davis Center (R)	980	458

651 And, that the items of the total appropriation from the State
652 Fund, General Revenue, to the Department of Revenue - Office
653 of the Secretary, fund 0465, fiscal year 2007, organization
654 0701, be amended and increased in the existing line item as
655 follows:

656 TITLE II – APPROPRIATIONS.

657 **Section 1. Appropriations from General Revenue.**

658 **DEPARTMENT OF REVENUE**

659 *78-Office of the Secretary*

2170 APPROPRIATIONS [Ch. 7

685 TITLE II – APPROPRIATIONS.

686 Section 1. Appropriations from General Revenue.

687 DEPARTMENT OF TRANSPORTATION

688 83-State Rail Authority

689 (WV Code Chapter 29)

690 Fund 0506 FY 2007 Org 0804

691					General
692					Revenue
693					Funds
			Act-		
			ivity		
694	1	Unclassified	099	\$	5,000

695 And, that the items of the total appropriation from State
696 Fund, General Revenue, to the Department of Transportation -
697 Aeronautics Commission, fund 0582, fiscal year 2007, organi-
698 zation 0807, be supplemented and amended to hereafter read as
699 follows:

700 TITLE II – APPROPRIATIONS.

701 Section 1. Appropriations from General Revenue.

702 DEPARTMENT OF TRANSPORTATION

703 86-Aeronautics Commission

704 (WV Code Chapter 29)

705 Fund 0582 FY 2007 Org 0807

706					General
707					Revenue
708					Funds
			Act-		
			ivity		
709	1	Unclassified (R)	099	\$	1,366,394

2172 APPROPRIATIONS [Ch. 7

737	1	New River Community and		
738	2	Technical College	358	\$ 4,429,955
739	3	West Virginia Council for Community		
740	4	and Technical Education (R)	392	707,600
741	5	Eastern West Virginia Community and		
742	6	Technical College	412	1,990,948
743	7	Fairmont State Community and		
744	8	Technical College	421	0
745	9	Shepherd Community and		
746	10	Technical College	434	0
747	11	West Virginia State Community and		
748	12	Technical College	445	3,074,167
749	13	Southern West Virginia Community and		
750	14	Technical College	446	8,053,214
751	15	West Virginia Northern Community and		
752	16	Technical College	447	6,565,528
753	17	West Virginia University -		
754	18	Parkersburg	471	8,428,561
755	19	West Virginia University Institute		
756	20	For Technology Community and		
757	21	Technical College	486	3,263,224
758	22	Marshall Community and		
759	23	Technical College	487	5,483,460
760	24	Blue Ridge Community and		
761	25	Technical College	885	2,531,131
762	26	College Transition Program	887	333,500
763	27	West Virginia Advance Workforce		
764	28	Development	893	2,000,000
765	29	Technical Program Development . .	894	1,000,000
766	30	Pierpont Community and		
767	31	Technical College	930	<u>7,892,952</u>
768	32	Total		\$ 55,754,240

769 Any unexpended balance remaining in the appropriation for
770 the West Virginia Council for Community and Technical
771 Education (fund 0596, activity 392) and Community College
772 Workforce Development (fund 0596, activity 878) at the close

773 of the fiscal year 2006 are hereby reappropriated for expendi-
774 ture during the fiscal year 2007.

775 The institutions operating with special revenue funds and/or
776 federal funds shall pay their proportionate share of the Board of
777 Risk and Insurance Management total insurance premium cost
778 for their respective institutions.

779 From the reappropriated amount for the Community
780 College Workforce Development (activity 878), \$200,000 shall
781 be expended on the Mine Training Program in Southern West
782 Virginia.

783 And, that the items of the total appropriation from the State
784 Fund, General Revenue, to Higher Education - Higher Educa-
785 tion Policy Commission - System - Control Account, fund
786 0586, fiscal year 2007, organization 0442, be amended and
787 reduced in the existing line item as follows:

788 TITLE II – APPROPRIATIONS.

789 **Section 1. Appropriations from General Revenue.**

790 **HIGHER EDUCATION**

791 *89-Higher Education Policy Commission-*

792 *System-*

793 *Control Account*

794 (WV Code Chapter 18B)

795 Fund 0586 FY 2007 Org 0442

796				General
797			Act-	Revenue
798			ivity	Funds
799	17	West Virginia State University	441	\$ 1,908,000

800 And, that the items of the total appropriation from the State
 801 Fund, General Revenue, to Higher Education - Higher Educa-
 802 tion Policy Commission - System - Control Account, fund
 803 0586, fiscal year 2007, organization 0442, be supplemented and
 804 amended by adding a new line item of appropriation as follows:

805 TITLE II – APPROPRIATIONS.

806 Section 1. Appropriations from General Revenue.

807 HIGHER EDUCATION

808 *89-Higher Education Policy Commission-*

809 *System-*

810 *Control Account*

811 (WV Code Chapter 18B)

812 Fund 0586 FY 2007 Org 0442

813			General
814		Act-	Revenue
815		ivity	Funds

816 17a West Virginia State University

817 17b Land Grant Match 956 \$ 1,908,000

818 The purpose of this supplementary appropriation bill is to
 819 supplement, amend, reduce and increase items of existing
 820 appropriations, amend language and add reappropriation
 821 language in the aforesaid accounts for the designated spending
 822 units. The funds are for expenditure during the fiscal year two
 823 thousand seven with no new money being appropriated.

CHAPTER 8

**(Com. Sub. for H. B. 124 — By Mr. Speaker,
Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed June 14, 2006; in effect from passage.]

[Approved by the Governor on June 19, 2006.]

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 - Consolidated Public Retirement Board, fund 0195, fiscal year 2006, organization 0205, to the Department of Administration - Division of General Services, fund 0230, fiscal year 2006, organization 0211, to the Department of Administration - Public Defender Services, fund 0226, fiscal year 2006, organization 0221, to the Department of Administration - Public Employees Insurance Agency, fund 0200, fiscal year 2006, organization 0225, to the Department of Commerce - West Virginia Development Office, fund 0256, fiscal year 2006, organization 0307, to the Department of Commerce - Division of Miners' Health, Safety and Training, fund 0277, fiscal year 2006, organization 0314, to the Department of Education and the Arts - Division of Culture and History, fund 0293, fiscal year 2006, organization 0432, to the Department of Health and Human Resources - Division of Health - Central Office, fund 0407, fiscal year 2006, organization 0506, to the Department of Health and Human Resources - Consolidated Medical Service Fund, fund 0525, fiscal year 2006, organization 0506, to the Department of Health and Human Resources - Division of Human Services, fund 0403, fiscal year 2006, organization 0511, to the Department of

Military Affairs and Public Safety - Division of Corrections - Correctional Units, fund 0450, fiscal year 2006, organization 0608, to the Department of Military Affairs and Public Safety - West Virginia State Police, fund 0453, fiscal year 2006, organization 0612, to the Department of Revenue - Tax Division, fund 0470, fiscal year 2006, organization 0702, to Higher Education - West Virginia Council for Community and Technical College Education - Control Account, fund 0596, fiscal year 2006, organization 0420, and to Higher Education - Higher Education Policy Commission - System - Control Account, fund 0586, fiscal year 2006, organization 0442, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand six.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document which included a Statement of the State Fund, General Revenue, dated the eleventh day of January, two thousand six, setting forth therein the cash balance as of the first day of July, two thousand five; and further included the estimate of revenues for the fiscal year two thousand six, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand six; and

WHEREAS, It appears from the Governor's Statement of the State Fund - General Revenue there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 0195, fiscal year 2006, organization 0205, be supplemented and amended by increasing an existing item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 DEPARTMENT OF ADMINISTRATION

4 18-Consolidated Public Retirement Board

5 (WV Code Chapter 5)

6 Fund 0195 FY 2006 Org 0205.

7			General
8		Act-	Revenue
9		ivity	Funds

10 1 Unclassified - Total - Transfer 402 \$ 28,390,300

11 The above appropriation for Unclassified - Total - Transfer
12 (fund 0195, activity 402) shall be transferred to the Consoli-
13 dated Public Retirement Board - West Virginia Teachers'
14 Retirement System Employers Accumulation Fund (Fund
15 2601).

16 And, that the total appropriation for the fiscal year ending
17 the thirtieth day of June, two thousand six, to fund 0230, fiscal
18 year 2006, organization 0211, be supplemented and amended
19 by increasing an existing item of appropriation as follows:

20 TITLE II – APPROPRIATIONS.

21 Section 1. Appropriations from General Revenue.

22 DEPARTMENT OF ADMINISTRATION

23 20-Division of General Services

24 (WV Code Chapter 5A)

25 Fund 0230 FY 2006 Org 0211.

			General Revenue Funds
26			
27		Act-	
28		ivity	
29	4	Unclassified (R) 099	\$ 500,000

30 Any unexpended balance remaining in the appropriation for
 31 Unclassified (fund 0230, activity 099) at the close of the fiscal
 32 year two thousand six is hereby reappropriated for expenditure
 33 during the fiscal year two thousand seven.

34 And, that the total appropriation for the fiscal year ending
 35 the thirtieth day of June, two thousand six, to fund 0226, fiscal
 36 year 2006, organization 0221, be supplemented and amended
 37 by increasing existing items of appropriation as follows:

38 TITLE II – APPROPRIATIONS.

39 **Section 1. Appropriations from General Revenue.**

40 **DEPARTMENT OF ADMINISTRATION**

41 *25-Public Defender Services*

42 (WV Code Chapter 29)

43 Fund 0226 FY 2006 Org 0221

			General Revenue Funds
44			
45		Act-	
46		ivity	
47	7	Public Defender Corporation (R) 352	\$ 1,500,000
48	8	Appointed Counsel - Public Defender	
49	9	Conflicts (R) 568	1,300,000
50	10	Appointed Counsel Fees (R) 788	2,200,000

51 Any unexpended balance remaining in the appropriation for
 52 Appointed Counsel - Public Defender Conflicts (fund 0226,
 53 activity 568) at the close of the fiscal year two thousand six is

54 hereby reappropriated for expenditure during the fiscal year two
55 thousand seven.

56 And, that the total appropriation for the fiscal year ending
57 the thirtieth day of June, two thousand six, to fund 0200, fiscal
58 year 2006, organization 0225, be supplemented and amended
59 by adding thereto a new item of appropriation as follows:

60 TITLE II – APPROPRIATIONS.

61 Section 1. Appropriations from General Revenue.

62 DEPARTMENT OF ADMINISTRATION

63 27-Public Employees Insurance Agency

64 (WV Code Chapter 5)

65 Fund 0200 FY 2006 Org 0225

66			General
67		Act-	Revenue
68		ivity	Funds

69	1	Employees Subsidy (R)	922	\$ 3,900,000
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70 Any unexpended balance remaining in the appropriation for
71 Employees Subsidy (fund 0200, activity 922) at the close of the
72 fiscal year two thousand six is hereby reappropriated for
73 expenditure during the fiscal year two thousand seven.

74 And, that the items of the total appropriation from the State
75 Fund, General Revenue, to the Department of Commerce -
76 West Virginia Development Office, fund 0256, fiscal year
77 2006, organization 0307, be supplemented, increased and
78 amended by adding thereto new items of appropriation as
79 follows:

80 TITLE II – APPROPRIATIONS.

81 **Section 1. Appropriations from General Revenue.**

82 **DEPARTMENT OF COMMERCE**

83 *33-West Virginia Development Office*

84 (WV Code Chapter 5B)

85 Fund 0256 FY 2006 Org 0307

86			General
87			Revenue
88			Funds
89	42a	Infrastructure Projects	079
90	42b	Housing Development	
91		Fund Grants	089
			250,000

92 The above appropriation for Infrastructure Projects (fund
93 0256, activity 079) shall be transferred to the West Virginia
94 Infrastructure Fund (Fund 3384).

95 The above appropriation for Housing Development Fund
96 Grants (fund 0256, activity 089) shall be granted to the West
97 Virginia Housing Development Fund to assist families that
98 must be relocated away from the floodplains.

99 And, that the items of the total appropriation from the State
100 Fund, General Revenue, to the Department of Commerce -
101 Division of Miners’ Health, Safety and Training, fund 0277,
102 fiscal year 2006, organization 0314, be supplemented, increased
103 and amended to hereafter read as follows:

104 TITLE II – APPROPRIATIONS.

105 **Section 1. Appropriations from General Revenue.**

106

DEPARTMENT OF COMMERCE

107

36-Division of Miners' Health, Safety and Training

108

(WV Code Chapter 22)

109

Fund 0277 FY 2006 Org 0314

110

General

111

Act-

Revenue

112

ivity

Funds

113	1	Personal Services	001	\$ 4,102,856
114	2	Annual Increment	004	70,600
115	3	Employee Benefits	010	1,551,243
116	4	Unclassified (R)	099	647,893
117	5	WV Diesel Equipment Commission	712	38,034
118	6	BRIM Premium	913	<u>72,573</u>
119	7	Total		\$ 6,483,199

120 From the appropriation above (fund 0277) at least \$500,000
 121 shall be used in developing, procuring and/or deploying
 122 technologies to assist in locating and communicating with
 123 trapped miners, supporting life, transporting rescue personnel
 124 and rescued individuals through underground mines and
 125 otherwise assist with mine rescue operations.

126 Any unexpended balance remaining in the appropriation for
 127 Unclassified (fund 0277, activity 099) at the close of the fiscal
 128 year two thousand six is hereby reappropriated for expenditure
 129 during the fiscal year two thousand seven.

130 And, that the total appropriation for the fiscal year ending
 131 the thirtieth day of June, two thousand six, to fund 0293, fiscal
 132 year 2006, organization 0432, be supplemented and amended
 133 by adding thereto a new item of appropriation as follows:

2182 APPROPRIATIONS [Ch. 8

134 TITLE II – APPROPRIATIONS.

135 **Section 1. Appropriations from General Revenue.**

136 **DEPARTMENT OF EDUCATION AND THE ARTS**

137 *48-Division of Culture and History*

138 (WV Code Chapter 29)

139 Fund 0293 FY 2006 Org 0432

140			General
141		Act-	Revenue
142		ivity	Funds

143	7a	Capital Outlay, Repairs and		
144	7b	Equipment (R)	589	\$ 350,000

145 Any unexpended balance remaining in the appropriation for
146 Capital Outlay, Repairs and Equipment (fund 0293, activity
147 589) at the close of the fiscal year two thousand six is hereby
148 reappropriated for expenditure during the fiscal year two
149 thousand seven.

150 And, that the total appropriation for the fiscal year ending
151 the thirtieth day of June, two thousand six, to fund 0407, fiscal
152 year 2006, organization 0506, be supplemented and amended
153 by increasing existing items of appropriation as follows:

154 TITLE II – APPROPRIATIONS.

155 **Section 1. Appropriations from General Revenue.**

156 **DEPARTMENT OF HEALTH AND**
157 **HUMAN RESOURCES**

158 *56-Division of Health-*

159 Central Office

160 (WV Code Chapter 16)

161 Fund 0407 FY 2006 Org 0506

162			General
163		Act-	Revenue
164		ivity	Funds

165	15	Statewide EMS Program		
166		Support (R)	383	\$ 362,465

167 Any unexpended balance remaining in the appropriation for
168 Statewide EMS Program Support (fund 0407, activity 383) at
169 the close of the fiscal year two thousand six is hereby
170 reappropriated for expenditure during the fiscal year two
171 thousand seven.

172 And, that the total appropriation for the fiscal year ending
173 the thirtieth day of June, two thousand six, to fund 0525, fiscal
174 year 2006, organization 0506, be supplemented and amended
175 by increasing an existing item of appropriation and adding
176 thereto a new item of appropriation as follows:

177 TITLE II – APPROPRIATIONS.

178 Section 1. Appropriations from General Revenue.

179 DEPARTMENT OF HEALTH AND
180 HUMAN RESOURCES

181 57-Consolidated Medical Service Fund

182 (WV Code Chapter 16)

183 Fund 0525 FY 2006 Org 0506

2184 APPROPRIATIONS [Ch. 8

184 **General**
185 **Revenue**
186 **Funds**

187 8 Institutional Facilities Operations . 335 \$ 1,039,000
188 12b Capital Outlay (R) 511 8,673,000

189 And, that the total appropriation for the fiscal year ending
190 the thirtieth day of June, two thousand six, to fund 0403, fiscal
191 year 2006, organization 0511, be supplemented and amended
192 by increasing an existing item of appropriation as follows:

193 TITLE II – APPROPRIATIONS.

194 **Section 1. Appropriations from General Revenue.**

195 **DEPARTMENT OF HEALTH AND**
196 **HUMAN RESOURCES**

197 *60-Division of Human Services*

198 (WV Code Chapters 9, 48 and 49)

199 Fund 0403 FY 2006 Org 0511

200 **General**
201 **Revenue**
202 **Funds**

203 10 Social Services 195 \$ 1,000,000

204 And, that the total appropriation for the fiscal year ending
205 the thirtieth day of June, two thousand six, to fund 0450, fiscal
206 year 2006, organization 0608, be supplemented and amended
207 by increasing an existing item of appropriation and adding
208 thereto a new item of appropriation as follows:

209 TITLE II – APPROPRIATIONS.

210 Section 1. Appropriations from General Revenue.

211 DEPARTMENT OF MILITARY AFFAIRS
212 AND PUBLIC SAFETY

213 67-Division of Corrections-

214 Correctional Units

215 (WV Code Chapters 25, 28, 49 and 62)

216 Fund 0450 FY 2006 Org 0608

217			General
218		Act-	Revenue
219		ivity	Funds

220	11	Payments to Federal, County and/or		
221	12	Regional Jails (R)	555	\$ 8,266,546
222	23a	Capital Outlay and		
223		Maintenance (R)	755	2,879,500

224 Any unexpended balance remaining in the appropriation for
225 Payments to Federal, County and/or Regional Jails (fund 0450,
226 activity 555) at the close of the fiscal year two thousand six is
227 hereby reappropriated for expenditure during the fiscal year two
228 thousand seven.

229 And, that the total appropriation for the fiscal year ending
230 the thirtieth day of June, two thousand six, to fund 0453, fiscal
231 year 2006, organization 0612, be supplemented and amended
232 by adding thereto a new item of appropriation as follows:

233 TITLE II – APPROPRIATIONS.

234 Section 1. Appropriations from General Revenue.

235 **DEPARTMENT OF MILITARY AFFAIRS**
 236 **AND PUBLIC SAFETY**

237 *68-West Virginia State Police*

238 (WV Code Chapter 15)

239 Fund 0453 FY 2006 Org 0612

240			General
241		Act-	Revenue
242		ivity	Funds

243	16a Law Enforcement-		
244	Special Projects (R)	787	\$ 1,000,000

245 And, that the total appropriation for the fiscal year ending
 246 the thirtieth day of June, two thousand six, to fund 0470, fiscal
 247 year 2006, organization 0702, be supplemented and amended
 248 by increasing an existing item of appropriation as follows:

249 **TITLE II – APPROPRIATIONS.**

250 **Section 1. Appropriations from General Revenue.**

251 **DEPARTMENT OF REVENUE**

252 *76-Tax Division*

253 (WV Code Chapter 11)

254 Fund 0470 FY 2006 Org 0702

255			General
256		Act-	Revenue
257		ivity	Funds

258	4 Unclassified (R)	099	\$ 100,000
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259 And, that the items of the total appropriation from the State
 260 Fund, General Revenue, to Higher Education - West Virginia
 261 Council for Community and Technical College Education -
 262 Control Account, fund 0596, fiscal year 2006, organization
 263 0420, be supplemented and amended by adding thereto a new
 264 item of appropriation as follows:

265 TITLE II – APPROPRIATIONS.

266 Section 1. Appropriations from General Revenue.

267 HIGHER EDUCATION

268 *85-West Virginia Council for*

269 *Community and Technical College Education-*

270 *Control Account*

271 (WV Code Chapter 18B)

272 Fund 0596 FY 2006 Org 0420

273			General
274		Act-	Revenue
275		ivity	Funds

276 23a Community College Workforce

277 23b Development (R) 878 \$ 1,000,000

278 And, that the items of the total appropriation from the State
 279 Fund, General Revenue, to Higher Education - Higher Educa-
 280 tion Policy Commission - System - Control Account, fund
 281 0586, fiscal year 2006, organization 0442, be supplemented and
 282 amended by increasing an existing item of appropriation as
 283 follows:

284 TITLE II – APPROPRIATIONS.

285 Section 1. Appropriations from General Revenue.

2188 APPROPRIATIONS [Ch. 9

286 HIGHER EDUCATION

287 87-Higher Education Policy Commission-

288 System-

289 Control Account

290 (WV Code Chapter 18B)

291 Fund 0586 FY 2006 Org 0442

292			General
293		Act-	Revenue
294		ivity	Funds

295	19 West Virginia University	459	\$ 300,000
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296 The purpose of this supplemental appropriation bill is to
297 supplement, amend, increase and add items of appropriations in
298 the aforesaid accounts for the designated spending units for
299 expenditure during the fiscal year two thousand six.



CHAPTER 9

(S. B. 1010 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]



[Passed June 14, 2006; in effect from passage.]

[Approved by the Governor on June 19, 2006.]



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 Division of Natural

Resources, fund 3267, fiscal year 2006, organization 0310, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand six.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated the eleventh day of January, two thousand six, containing a Statement of the Lottery Net Profits, setting forth therein the cash balance as of the first day of July, two thousand five, and further included the estimate of revenues for the fiscal year 2006; and

WHEREAS, It appears from the Governor’s Executive Budget Document, Statement of Lottery Net Profits, there now remains an unappropriated balance which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 3267, fiscal year 2006, organization 0310, be supplemented and amended by adding a new item of appropriation as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 4. Appropriations from Lottery Net Profits.		
3	<i>236—Division of Natural Resources</i>		
4	(WV Code Chapter 20)		
5	Fund <u>3267</u> FY <u>2006</u> Org <u>0310</u>		
6		Act-	Lottery
7		ivity	Funds
8	9a Capital Outlay - Parks (R)	288	\$ 13,330,000

9 Any unexpended balance remaining in the appropriation for
10 Capital Outlay - Parks (fund 3267, activity 288) at the close of
11 the fiscal year 2006 is hereby reappropriated for expenditure
12 during the fiscal year 2007.

13 The purpose of this supplementary appropriation bill is to
14 supplement and add an item of appropriation in the aforesaid
15 account for the designated spending unit for expenditure during
16 the fiscal year 2006.

CHAPTER 10

**(S. B. 1011 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed June 14, 2006; in effect from passage.]

[Approved by the Governor on June 19, 2006.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriation from the State Fund, Lottery Net Profits, to the Bureau of Senior Services - Lottery Senior Citizens Fund, fund 5405, fiscal year 2007, organization 0508, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand seven.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the State Fund, Lottery Net Profits, to the Bureau of Senior Services - Lottery Senior Citizens Fund, fund 5405, fiscal year 2007, organization 0508, be amended and reduced in the existing line item as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 4. Appropriations from Lottery Net Profits.**

3 *246—Bureau of Senior Services—*

4 *Lottery Senior Citizens Fund*

5 (WV Code Chapter 29)

6 Fund 5405 FY 2007 Org 0508

7			General
8		Act-	Revenue
9		ivity	Fund

10	18	Roger Tompkins Alzheimer's		
11	19	Respite Care	643	\$ 5,000

12 And that the total appropriation from the State Fund,
13 Lottery Net Profits, to the Bureau of Senior Services - Lottery
14 Senior Citizens Fund, fund 5405, fiscal year 2007, organization
15 0508, be amended and increased in the existing line item as
16 follows:

17 TITLE II—APPROPRIATIONS.

18 **Sec. 4. Appropriations from Lottery Net Profits.**

19 *246—Bureau of Senior Services-*

20 *Lottery Senior Citizens Fund*

21 (WV Code Chapter 29)

22 Fund 5405 FY 2007 Org 0508

2192		APPROPRIATIONS		[Ch. 11
23				General
24			Act-	Revenue
25			ivity	Fund
26	1	Personal Services	001	\$ 5,000

27 The purpose of this supplementary appropriation bill is to
28 supplement, amend, reduce and increase items of existing
29 appropriation in the aforesaid account for the designated
30 spending unit. The funds are for expenditure during the fiscal
31 year 2007 with no new money being appropriated.



CHAPTER 11

**(S. B. 1012 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**



[Passed June 14, 2006; in effect from passage.]
[Approved by the Governor on June 19, 2006.]



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 Excess Lottery Revenue Fund to the Lottery Commission - Excess Lottery Revenue Fund Surplus, fund 7208, fiscal year 2006, organization 0705, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand six.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated the eleventh day of January, two thousand six, containing a Statement of the State Excess Lottery Revenue Fund, setting forth therein the cash balance as of the first day of July, two thousand five, and further included the estimate of

revenue for the fiscal year 2006, less regular appropriations for the fiscal year 2006; and

WHEREAS, It appears from the Governor’s Executive Budget Document, 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 the thirtieth day of June, two thousand six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 7208, fiscal year 2006, organization 0705, be supplemented and amended to hereafter read as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 5. Appropriations from State Excess Lottery Revenue		
3	Fund.		
4	<i>253—Lottery Commission—</i>		
5	<i>Excess Lottery Revenue Fund Surplus</i>		
6	Fund <u>7208</u> FY <u>2006</u> Org <u>0705</u>		
7			General
8		Act-	Revenue
9		ivity	Fund
10	1	Unclassified - Total - Transfer	402 \$ 12,900,000
11	2	Unclassified - Transfer	482 <u>133,023,642</u>
12	3	Total	\$ 145,923,642

13 The above appropriation for Unclassified - Total - Transfer
14 (activity 402) shall be transferred to the General Revenue Fund
15 only after all funding required by section eighteen-a, article

16 twenty-two, chapter twenty-nine of the code has been satisfied
17 as determined by the Director of the Lottery.

18 From the above appropriation for Unclassified - Transfer
19 (activity 482), eleven million dollars shall be transferred to the
20 Consolidated Public Retirement Board - West Virginia Depart-
21 ment of Public Safety Death, Disability and Retirement Fund
22 (fund 2160), one hundred eleven million twenty-three thousand
23 six hundred forty-two dollars shall be transferred to the
24 Consolidated Public Retirement Board - West Virginia Teach-
25 ers' Retirement System Employers Accumulation Fund (fund
26 2601), and eleven million dollars shall be transferred to the
27 State Road Fund - Division of Highways (fund 9017) only after
28 all other funding required, including that in the paragraph
29 above, has been satisfied as determined by the Director of the
30 Lottery.

31 The purpose of this supplementary appropriation bill is to
32 supplement and increase an existing item of appropriation in the
33 aforesaid account for the designated spending unit for expendi-
34 ture during the fiscal year 2006.

CHAPTER 12

(S. B. 1013 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed June 14, 2006; in effect from passage.]

[Approved by the Governor on June 19, 2006.]

AN ACT supplementing, amending and increasing items of the existing appropriation from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal

year 2007, organization 0803, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand seven.

WHEREAS, The Governor submitted to the Legislature a Statement of the State Road Fund, dated the thirteenth day of June, two thousand six, setting forth therein the cash balances and investments as of the first day of July, two thousand five, and further included the estimate of revenues for the fiscal year 2006, less net appropriation balances forwarded and regular appropriations for fiscal year 2006 and further included in the estimate of revenues for the fiscal year 2007, less net appropriation balances forwarded and regular appropriations for fiscal year 2007; and

WHEREAS, It 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 the thirtieth day of June, two thousand seven; 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 2007, organization 0803, be amended and increased in the line item as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 2. Appropriations from State Road Fund.**
- 3 **DEPARTMENT OF TRANSPORTATION**
- 4 *92—Division of Highways*
- 5 (WV Code Chapters 17 and 17C)
- 6 Fund 9017 FY 2007 Org 0803.

2196		APPROPRIATIONS		[Ch. 13
7				State
8			Act-	Road
9			ivity	Fund
10	2	Maintenance	237	\$ 11,000,000

11 The purpose of this supplementary appropriation bill is to
12 supplement, amend and increase an existing line item in the
13 aforesaid account for the designated spending unit for expendi-
14 ture during the fiscal year ending the thirtieth day of June, two
15 thousand seven.



CHAPTER 13

(S. B. 1016 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed June 14, 2006; in effect from passage.]
[Approved by the Governor on June 19, 2006.]

AN ACT supplementing and amending chapter six, Acts of the
Legislature, regular session, two thousand six, known as the
budget bill, by supplementing and amending the appropriation for
the fiscal year ending the thirtieth day of June, two thousand
seven.

Be it enacted by the Legislature of West Virginia:

That chapter six, Acts of the Legislature, regular session, two
thousand six, known as the budget bill, be supplemented and amended
by creating Title II, section eight-a, to read as follows:

Sec. 8a. Appropriations from Lottery Net Profits surplus accrued.

1 Any remaining surplus accrued balance in the Lottery Net
2 Profits as determined and certified by the Director of the
3 Lottery from the fiscal year ending the thirtieth day of June, two
4 thousand six, shall be transferred to the Consolidated Public
5 Retirement Board - West Virginia Teachers' Retirement System
6 Employers Accumulation Fund (fund 2601).

7 The purpose of this supplementary appropriation bill is to
8 amend chapter six, Acts of the Legislature, regular session, two
9 thousand six, to create a new section in Title II of the budget
10 bill and to transfer funds to the Consolidated Public Retirement
11 Board - West Virginia Teachers' Retirement System Employers
12 Accumulation Fund (fund 2601).

CHAPTER 14

**(S. B. 1017 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed June 14, 2006; in effect from passage.]

[Approved by the Governor on June 19, 2006.]

AN ACT supplementing and amending chapter six, Acts of the Legislature, regular session, two thousand six, known as the budget bill, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand seven.

Be it enacted by the Legislature of West Virginia:

That chapter six, Acts of the Legislature, regular session, two thousand six, known as the budget bill, be supplemented and amended by amending Title II, section nine, to read as follows:

60 thirtieth day of June, two thousand six, shall be transferred to
61 the Consolidated Public Retirement Board—West Virginia
62 Teachers' Retirement System Employers Accumulation Fund
63 (fund 2601).

64 The purpose of this supplementary appropriation bill is to
65 supplement, amend, add and increase items of appropriations in
66 the aforesaid accounts for the designated spending units for
67 expenditure during the fiscal year 2007.

CHAPTER 15

**(H. B. 101 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed June 14, 2006; in effect October 1, 2006.]
[Approved by the Governor on June 19, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15-11-1 and §15-11-2; to amend said code by adding thereto a new section, designated §15-2-15; to amend and reenact §15-2C-2 of said code; to amend and reenact §15-12-2, §15-12-3, §15-12-5, §15-12-8, §15-12-9 and §15-12-10 of said code; to amend said code by adding thereto a new section, designated §15-12-6a; to amend said code by adding thereto a new article, designated §15-13-1, §15-13-2, §15-13-3, §15-13-4, §15-13-5, §15-13-6, §15-13-7 and §15-13-8; to amend and reenact §17B-2-3 of said code; to amend and reenact §18-5-15c of said code; to amend said code by adding thereto a new section, designated §25-1-22; to amend said code by adding thereto a new section, designated §49-6A-11; to amend and reenact §61-8B-3 and §61-8B-7 of said code; to amend said code by adding thereto two new sections, designated §61-8B-9a and

§61-8B-9b; to amend said code by adding thereto a new article, designated §62-11D-1, §62-11D-2 and §62-11D-3; to amend said code by adding thereto a new article, designated §62-11E-1, §62-11E-2 and §62-11E-3; to amend and reenact §62-12-2 of said code; to amend and reenact §62-12-26 of said code; and to amend said code by adding thereto a new section, designated §62-12-27, all relating to enhancing government protection of children from abuse and neglect generally; establishing the Child Protection Act of 2006; setting forth legislative findings; creating a special unit within the State Police specializing in child abuse and neglect investigations; establishing duties of the unit; requiring state and local entities to report information to the unit; authorizing legislative and procedural rules; creating special account in State Treasury; requiring the reporting of information to the sex offender registry; requiring reporting of certain changes in sex offender information to sex offender registry; providing for the distribution and disclosure of information by the sex offender registry in certain circumstances; setting forth which information is ineligible for release by the sex offender registry; providing for the provision of information to the sex offender registry by the judiciary and agencies; providing for fines and terms of incarceration for failure to properly register with the sex offender registry and for assisting sex offenders in evading registration; providing for periodic verification of information by the sex offender registry; requiring periodic in-person reporting by sex offenders; establishing the child abuse and neglect registry; providing for procedures; requiring certain individuals convicted of child abuse or neglect to register and report changes in information; providing for the distribution and disclosure of information from the child abuse and neglect registry; providing for fines and terms of incarceration for persons that fail to properly register; providing for inclusion of information from the child abuse and neglect registry in the central abuse registry; providing for the creation and maintenance of statistical indexes of child abuse and neglect allegations and convictions; mandating coded driver's licenses or nondriver identification cards for sexually violent predators;

providing for fines and terms of incarceration for failure to comply with license and identification card requirements; prohibiting contractors and service providers convicted of certain offenses from accessing school grounds; authorizing individual county school boards to require verification of criminal history and to share said information with other county school boards; providing for the disclosure of information by the central abuse registry; setting an effective date; establishing a task force to study correctional facilities specifically for sex offenders; providing for increased terms of incarceration for sexual assault and sexual abuse in certain circumstances; eliminating eligibility for probation, home incarceration and alternative sentences for certain sex offenders; providing for increased terms of incarceration for certain subsequent sex offenses committed by certain recidivist sex offenders; definitions; providing for polygraph examinations as a condition of supervision for certain probationers, parolees or those on supervised release; providing for electronic monitoring of certain sex offenders on probation, parole and supervised release; providing for term of incarceration for tampering with or destroying an electronic monitoring device; establishing a task force to develop measures aimed at managing sexually violent predators released from confinement; setting forth legislative findings and intent; requiring a report to the Legislature and Governor; requiring public hearings; providing for conditions on probation eligibility; providing for extended supervision for certain offenders; providing for supervised release requirements for certain sex offenders; addressing terms of incarceration for violation of supervised release; authorizing the Secretary of Health and Human Resources to propose rules and emergency rules for legislative approval; and providing for prerelease risk assessments of certain offenders.

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 §15-1I-1 and §15-1I-2; that said code be amended by adding thereto a new section, designated

§15-2-15; that §15-2C-2 of said code be amended and reenacted; that §15-12-2, §15-12-3, §15-12-5, §15-12-8, §15-12-9 and §15-12-10 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §15-12-6a; that said code be amended by adding thereto a new article, designated §15-13-1, §15-13-2, §15-13-3, §15-13-4, §15-13-5, §15-13-6, §15-13-7 and §15-13-8; that §17B-2-3 of said code be amended and reenacted; that §18-5-15c of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §25-1-22; that said code be amended by adding thereto a new section, designated §49-6A-11; that §61-8B-3 and §61-8B-7 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §61-8B-9a and §61-8B-9b; that said code be amended by adding thereto a new article, designated §62-11D-1, §62-11D-2 and §62-11D-3; that said code be amended by adding thereto a new article, designated §62-11E-1, §62-11E-2 and §62-11E-3; that §62-12-2 of said code be amended and reenacted; that §62-12-26 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §62-12-27, all to read as follows:

Chapter

- 15. Public Safety.**
- 17B. Motor Vehicle Driver's Licenses.**
- 18. Education.**
- 25. Division of Corrections.**
- 49. Child Welfare.**
- 61. Crimes and Their Punishment.**
- 62. Criminal Procedure.**

CHAPTER 15. PUBLIC SAFETY.

Article

- 11. The Child Protection Act of 2006.**
- 2. West Virginia State Police.**
- 2C. Central Abuse Registry.**
- 12. Sex Offender Registration Act.**
- 13. Child Abuse and Neglect Registration.**

ARTICLE 11. THE CHILD PROTECTION ACT OF 2006.

§15-1I-1. The Child Protection Act of 2006.

§15-1I-2. Legislative findings.

§15-1I-1. The Child Protection Act of 2006.

1 This article and those other amendments and additions to
2 this code established by this Act, enacted during the first
3 extraordinary session of the West Virginia Legislature, two
4 thousand six shall be known as “The Child Protection Act of
5 2006.”

§15-1I-2. Legislative findings.

1 (a) The purpose of “The Child Protection Act of 2006” is to
2 put in place a series of programs, criminal law revisions and
3 other reforms to provide and promote the ability of the children
4 of this state to live their lives without being exposed and
5 subjected to neglect and physical and sexual abuse. The
6 targeted increases in terms of incarceration, enhanced treat-
7 ment, post-release supervision and new approaches toward the
8 state’s child protection system will, in the aggregate, strengthen
9 government’s ability to address this most serious problem. The
10 Legislature finds that the broad reaching measures encom-
11 passed in this Act will provide for greater intervention among
12 and punishment and monitoring of individuals who create a risk
13 to our children’s safety and well-being.

14 (b) The Legislature further finds that the following reforms
15 implemented as part of this Act will provide protections to the
16 children of this state and are all important to eliminate risks to
17 children and are essential elements of “The Child Protection
18 Act of 2006”:

19 (1) Creating a special unit in the State Police specializing
20 in the investigation of child abuse and neglect — section
21 fifteen, article two, chapter fifteen of this code;

22 (2) Modifying the Sex Offender Registration Act to ensure
23 more effective registration, identification and monitoring of
24 persons convicted of sexual offenses -- article twelve, chapter
25 fifteen of this code;

26 (3) Establishing the Child Abuse and Neglect Registry,
27 requiring the registry to disclose information to certain state and
28 local officials — article thirteen, chapter fifteen of this code;

29 (4) Providing for coded driver's licenses and nondriver
30 identification cards to more easily identify sexually violent
31 predators — section three, article two, chapter seventeen-b of
32 this code;

33 (5) Prohibiting contractors and service providers convicted
34 of certain offenses from accessing school grounds and provid-
35 ing for the release of criminal history information by the central
36 abuse registry to county school boards — section fifteen-c,
37 article five, chapter eighteen of this code;

38 (6) Establishing a task force to study the feasibility of
39 constructing separate correctional facilities for the incarceration
40 and treatment of sex offenders — section twenty-two, article
41 one, chapter twenty-five of this code;

42 (7) Requiring the State Police and the Department of Health
43 and Human Resources to maintain statewide child abuse and
44 neglect statistical indexes of all convictions and allegations,
45 respectively — section fifteen, article two, chapter fifteen and
46 section eleven, article six-a, chapter forty-nine of this code;

47 (8) Providing for increased terms of incarceration for first
48 degree sexual assault and first degree sexual abuse committed
49 against children under the age of twelve — sections three and
50 seven of article eight-b, chapter sixty-one of this code;

51 (9) Eliminating eligibility of certain sex offenders for
52 probation, home incarceration and alternative sentences and

53 providing for enhanced terms of incarceration for certain
54 subsequent sex offenses committed by recidivist sex offenders
55 — sections nine-a and nine-b of article eight-b, chapter sixty-
56 one of this code;

57 (10) Providing for polygraph examinations for certain sex
58 offenders on probation, parole or supervised release — article
59 eleven-d, chapter sixty-two of this code;

60 (11) Providing for electronic monitoring of certain sex
61 offenders on probation, parole and supervised release — article
62 eleven-d, chapter sixty-two of this code;

63 (12) Establishing a task force to develop measures aimed at
64 managing sexually violent predators released from confinement
65 — article eleven-e, chapter sixty-two of this code;

66 (13) Making psychiatric evaluations a condition of proba-
67 tion eligibility for certain sex offenders — section two, article
68 twelve, chapter sixty-two of this code;

69 (14) Authorizing the Department of Health and Human
70 Resources to establish qualifications for sex offender treatment
71 programs and counselors — sections two and twenty-six, article
72 twelve, chapter sixty-two of this code;

73 (15) Providing for extended supervision of certain offenders
74 and supervised release requirements for sexually violent
75 offenders — section twenty-six, article twelve, chapter sixty-
76 two of this code; and

77 (16) Providing for prerelease risk assessments of certain sex
78 offenders — section twenty-seven, article twelve, chapter
79 sixty-two of this code.

80 (c) In addition, the Legislature finds that those enhanced
81 terms of incarceration and post-conviction measures provided
82 for in this Act which impact certain offenders convicted of

83 sexual offenses against adults are necessary and appropriate to
84 protect children from neglect and physical and sexual abuse
85 given that: (1) Clinical research indicates that a substantial
86 percentage of sexual offenders “cross over” among age groups
87 in selecting their victims; (2) many of the risk factors prevalent
88 among sex offenders that “cross over” (e.g., substance abuse,
89 lack of empathy toward victim, inability to control inappropri-
90 ate impulses, childhood abuse) also are prevalent among
91 perpetrators of child abuse and neglect; and (3) enhanced terms
92 of incarceration, post-conviction supervision, monitoring and
93 treatment measures will enable the criminal justice system to
94 identify and address those “cross over” offenders before they
95 can victimize additional children.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-15. State Police Child Abuse and Neglect Investigations Unit.

1 (a) The superintendent shall establish a special unit of the
2 State Police, called the Child Abuse and Neglect Investigations
3 Unit. The purpose of the unit is to focus on identifying,
4 investigating and prosecuting criminal child abuse and neglect
5 cases, in coordination with Child Protective Services, estab-
6 lished pursuant to section nine, article six-a, chapter forty-nine
7 of this code. The unit shall assist other State Police members
8 with child abuse or neglect investigations as well as the
9 Division of Child Protective Services. The unit may provide
10 training, technical expertise and coordination of services for
11 other law-enforcement agencies, Child Protective Services
12 caseworkers, prosecuting attorneys and multidisciplinary teams
13 established pursuant to the provisions of section two, article
14 five-d, chapter forty-nine of this code, to identify, investigate,
15 report and prosecute criminal child abuse and criminal child
16 neglect cases. However, nothing in this section may be con-
17 strued to mean that the unit will assume the duties or investiga-
18 tions of other State Police members or other law-enforcement
19 officers.

20 (b) The unit will comprise, at a minimum, six members of
21 the State Police. The superintendent shall assign a unit director,
22 and shall assign five members regionally, to be dedicated and
23 trained to assist county Child Protective Services Offices and
24 caseworkers in investigating and coordinating with other law-
25 enforcement personnel, cases of suspected child abuse or
26 neglect. Cases to be investigated include allegations received
27 pursuant to section two, article six-a, chapter forty-nine of this
28 code, and any other credible child abuse or neglect allegations.

29 (c) The unit director's duties include:

30 (1) Overseeing State Police members assigned to the unit;

31 (2) Coordinating activities of the unit with Child Protection
32 Services;

33 (3) Assisting Child Protective Services in developing and
34 refining protocols for improving identification and prosecution
35 of suspected criminal acts of child abuse or neglect; and

36 (4) Assuring that all other directives and responsibilities of
37 the unit are fulfilled.

38 (d) The unit shall maintain a statewide statistical index on
39 child abuse and neglect convictions resulting from convictions
40 for violations of sections two, two-a, three, three-a, four and
41 four-a, article eight-d, of chapter sixty-one of this code, to
42 monitor the timely and proper investigation and disposition of
43 child abuse or neglect cases. The statistical data index main-
44 tained by the unit shall not contain information of a specific
45 nature that would identify individual cases or persons.

46 (e) On or before the thirty-first day of December of each
47 year, the unit director shall submit an annual report to the Joint
48 Committee on Government and Finance. The annual report is
49 to include the statistical index required under the provisions of
50 subsection (d) of this section, and may include recommenda-

51 tions for statutory or program reforms that will assist the unit
52 and further promote the goals of the unit. The report may not
53 contain information of a specific nature that would identify
54 individual cases or persons.

55 (f) Every state law-enforcement agency of this state shall
56 periodically provide statistical information regarding child
57 abuse and neglect cases investigated and prosecuted by that
58 law-enforcement agency to the unit.

59 (g) The superintendent may propose rules for legislative
60 approval or procedural rules as necessary to effectuate the
61 provisions of this section in accordance with the provisions of
62 article three, chapter twenty-nine-a of this code. The superinten-
63 dent shall provide forms to law-enforcement agencies, circuit
64 clerks and parole officers to facilitate submission of appropriate
65 information necessary to prepare the statistical reports required
66 by this section.

67 (h) There is hereby established a special account in the
68 State Treasury, into which shall be deposited any gifts, grants
69 or donations made to the unit, and any other funds directed to
70 be deposited into the account by appropriation of the Legisla-
71 ture, and to be expended for the purposes of this section
72 pursuant to appropriation of the Legislature.

ARTICLE 2C. CENTRAL ABUSE REGISTRY.

**§15-2C-2. Central Abuse Registry; required information; proce-
dures.**

1 (a) The Criminal Identification Bureau of the West Virginia
2 State Police shall establish a Central Abuse Registry, to contain
3 information relating to criminal convictions involving child
4 abuse or neglect, abuse or neglect of an incapacitated adult or
5 an adult receiving behavioral health services and misappropria-
6 tion of property by individuals specified in subsection (b) of

7 this section and information relating to individuals required to
8 be registered as a sex offender.

9 (b) The Central Abuse Registry shall contain, at a mini-
10 mum, information relating to: Convictions of a misdemeanor or
11 a felony involving abuse, neglect or misappropriation of
12 property, by an individual performing services for compensa-
13 tion, within the scope of the individual's employment or
14 contract to provide services, in a residential care facility, in a
15 licensed day care center in connection with providing behav-
16 ioral health services, or in connection with the provision of
17 home care services; information relating to individuals con-
18 victed of specific offenses enumerated in subsection (a), section
19 three of this article with respect to a child or an incapacitated
20 adult or an adult receiving behavioral health services; informa-
21 tion relating to all individuals required to register with the Child
22 Abuse and Neglect Registry established pursuant to article
23 thirteen, chapter fifteen of this code; and information relating
24 to all individuals required to register with the West Virginia
25 State Police as sex offenders pursuant to the provisions of
26 article twelve, chapter fifteen of this code. The Central Abuse
27 Registry shall contain the following information:

28 (1) The individual's full name;

29 (2) Sufficient information to identify the individual,
30 including date of birth, social security number and fingerprints
31 if available;

32 (3) Identification of the criminal offense constituting abuse,
33 neglect or misappropriation of property of a child or an incapac-
34 itated adult or an adult receiving behavioral health services;

35 (4) For cases involving abuse, neglect or misappropriation
36 of property of a child or an incapacitated adult or an adult
37 receiving behavioral health services in a residential care facility
38 or a day care center, or of a child or an incapacitated adult or an

39 adult receiving behavioral health services receiving home care
40 services, sufficient information to identify the location where
41 the documentation of any investigation by the Department of
42 Health and Human Resources is on file and the location of
43 pertinent court files; and

44 (5) Any statement by the individual disputing the convic-
45 tion, if he or she chooses to make and file one.

46 (c) Upon conviction in the criminal courts of this state of a
47 misdemeanor or a felony offense constituting child abuse or
48 neglect or abuse or neglect of an incapacitated adult or an adult
49 receiving behavioral health services, the individual so convicted
50 shall be placed on the Central Abuse Registry.

ARTICLE 12. SEX OFFENDER REGISTRATION ACT.

§15-12-2. Registration.

§15-12-3. Change in registry information.

§15-12-5. Distribution and disclosure of information; community information programs by prosecuting attorney and State Police; petition to circuit court.

§15-12-6a. Release of information to the Sex Offender Registry.

§15-12-8. Failure to register or provide notice of registration changes; penalty; penalty for aiding and abetting.

§15-12-9. Registration of out-of-state offenders.

§15-12-10. Address verification.

§15-12-2. Registration.

1 (a) The provisions of this article apply both retroactively
2 and prospectively.

3 (b) Any person who has been convicted of an offense or an
4 attempted offense or has been found not guilty by reason of
5 mental illness, mental retardation or addiction of an offense
6 under any of the following provisions of chapter sixty-one of
7 this code or under a statutory provision of another state, the
8 United States Code or the Uniform Code of Military Justice

9 which requires proof of the same essential elements shall
10 register as set forth in subsection (d) of this section and
11 according to the internal management rules promulgated by the
12 superintendent under authority of section twenty-five, article
13 two of this chapter:

14 (1) Article eight-b, including the provisions of former
15 section six of said article, relating to the offense of sexual
16 assault of a spouse, which was repealed by an Act of the
17 Legislature during the year two thousand legislative session;

18 (2) Article eight-c;

19 (3) Sections five and six, article eight-d;

20 (4) Section fourteen, article two;

21 (5) Sections six, seven, twelve and thirteen, article eight; or

22 (6) Section fourteen-b, article three-c, as it relates to
23 violations of those provisions of chapter sixty-one listed in this
24 subsection.

25 (c) Any person who has been convicted of a criminal
26 offense and the sentencing judge made a written finding that the
27 offense was sexually motivated shall also register as set forth in
28 this article.

29 (d) Persons required to register under the provisions of this
30 article shall register in person at the West Virginia State Police
31 detachment in the county of his or her residence, the county in
32 which he or she owns or leases habitable real property that he
33 or she visits regularly, the county of his or her place of employ-
34 ment or occupation and the county in which he or she attends
35 school or a training facility, and in doing so, provide or
36 cooperate in providing, at a minimum, the following when
37 registering:

38 (1) The full name of the registrant, including any aliases,
39 nicknames or other names used by the registrant;

40 (2) The address where the registrant intends to reside or
41 resides at the time of registration, the address of any habitable
42 real property owned or leased by the registrant that he or she
43 regularly visits: *Provided*, That a post office box may not be
44 provided in lieu of a physical residential address, the name and
45 address of the registrant's employer or place of occupation at
46 the time of registration, the names and addresses of any
47 anticipated future employers or places of occupation, the name
48 and address of any school or training facility the registrant is
49 attending at the time of registration and the names and ad-
50 dresses of any schools or training facilities the registrant
51 expects to attend;

52 (3) The registrant's social security number;

53 (4) A full-face photograph of the registrant at the time of
54 registration;

55 (5) A brief description of the crime or crimes for which the
56 registrant was convicted;

57 (6) Fingerprints;

58 (7) Information related to any motor vehicle, trailer or
59 motor home owned or regularly operated by a registrant,
60 including vehicle make, model, color and license plate number:
61 *Provided*, That for the purposes of this article, the term "trailer"
62 shall mean travel trailer, fold-down camping trailer and house
63 trailer as those terms are defined in section one, article one,
64 chapter seventeen-a of this code;

65 (8) Information relating to any Internet accounts the
66 registrant has and the screen names, user names or aliases the
67 registrant uses on the internet; and

68 (9) Information related to any telephone or electronic
69 paging device numbers that the registrant has or uses, including,
70 but not limited to, residential, work and mobile telephone
71 numbers.

72 (e) (1) On the date that any person convicted or found not
73 guilty by reason of mental illness, mental retardation or
74 addiction of any of the crimes listed in subsection (b) of this
75 section, hereinafter referred to as a “qualifying offense”,
76 including those persons who are continuing under some post-
77 conviction supervisory status, are released, granted probation or
78 a suspended sentence, released on parole, probation, home
79 detention, work release, conditional release or any other release
80 from confinement, the Commissioner of Corrections, regional
81 jail administrator, city official or sheriff operating a jail or
82 Secretary of the Department of Health and Human Resources
83 who releases the person and any parole or probation officer who
84 releases the person or supervises the person following the
85 release, shall obtain all information required by subsection (d)
86 of this section prior to the release of the person, inform the
87 person of his or her duty to register and send written notice of
88 the release of the person to the State Police within three
89 business days of receiving the information. The notice must
90 include the information required by said subsection. Any person
91 having a duty to register for a qualifying offense shall register
92 upon conviction, unless that person is confined or incarcerated,
93 in which case he or she shall register within three business days
94 of release, transfer or other change in disposition status.

95 (2) Notwithstanding any provision of this article to the
96 contrary, a court of this state shall, upon presiding over a
97 criminal matter resulting in conviction or a finding of not guilty
98 by reason of mental illness, mental retardation or addiction of
99 a qualifying offense, cause, within seventy-two hours of entry
100 of the commitment or sentencing order, the transmittal to the
101 sex offender registry for inclusion in the registry all information

102 required for registration by a registrant as well as the following
103 non-identifying information regarding the victim or victims:

104 (A) His or her sex;

105 (B) His or her age at the time of the offense; and

106 (C) The relationship between the victim and the perpetrator.

107 The provisions of this paragraph do not relieve a person
108 required to register pursuant to this section from complying
109 with any provision of this article.

110 (f) For any person determined to be a sexually violent
111 predator, the notice required by subsection (d) of this section
112 must also include:

113 (1) Identifying factors, including physical characteristics;

114 (2) History of the offense; and

115 (3) Documentation of any treatment received for the mental
116 abnormality or personality disorder.

117 (g) At the time the person is convicted or found not guilty
118 by reason of mental illness, mental retardation or addiction in
119 a court of this state of the crimes set forth in subsection (b) of
120 this section, the person shall sign in open court a statement
121 acknowledging that he or she understands the requirements
122 imposed by this article. The court shall inform the person so
123 convicted of the requirements to register imposed by this article
124 and shall further satisfy itself by interrogation of the defendant
125 or his or her counsel that the defendant has received notice of
126 the provisions of this article and that the defendant understands
127 the provisions. The statement, when signed and witnessed,
128 constitutes prima facie evidence that the person had knowledge
129 of the requirements of this article. Upon completion of the
130 statement, the court shall provide a copy to the registry. Persons

131 who have not signed a statement under the provisions of this
132 subsection and who are subject to the registration requirements
133 of this article must be informed of the requirement by the State
134 Police whenever the State Police obtain information that the
135 person is subject to registration requirements.

136 (h) The State Police shall maintain a central registry of all
137 persons who register under this article and shall release
138 information only as provided in this article. The information
139 required to be made public by the State Police by subdivision
140 (2), subsection (b), section five of this article is to be accessible
141 through the Internet. No information relating to telephone or
142 electronic paging device numbers a registrant has or uses may
143 be released through the Internet.

144 (i) For the purpose of this article, “sexually violent offense”
145 means:

146 (1) Sexual assault in the first degree as set forth in section
147 three, article eight-b, chapter sixty-one of this code or of a
148 similar provision in another state, federal or military jurisdic-
149 tion;

150 (2) Sexual assault in the second degree as set forth in
151 section four, article eight-b, chapter sixty-one of this code or of
152 a similar provision in another state, federal or military jurisdic-
153 tion;

154 (3) Sexual assault of a spouse as set forth in the former
155 provisions of section six, article eight-b, chapter sixty-one of
156 this code, which was repealed by an Act of the Legislature
157 during the two thousand legislative session, or of a similar
158 provision in another state, federal or military jurisdiction;

159 (4) Sexual abuse in the first degree as set forth in section
160 seven, article eight-b, chapter sixty-one of this code or of a
161 similar provision in another state, federal or military jurisdic-
162 tion.

163 (j) For purposes of this article, the term “sexually moti-
164 vated” means that one of the purposes for which a person
165 committed the crime was for any person’s sexual gratification.

166 (k) For purposes of this article, the term “sexually violent
167 predator” means a person who has been convicted or found not
168 guilty by reason of mental illness, mental retardation or
169 addiction of a sexually violent offense and who suffers from a
170 mental abnormality or personality disorder that makes the
171 person likely to engage in predatory sexually violent offenses.

172 (l) For purposes of this article, the term “mental abnormal-
173 ity” means a congenital or acquired condition of a person, that
174 affects the emotional or volitional capacity of the person in a
175 manner that predisposes that person to the commission of
176 criminal sexual acts to a degree that makes the person a menace
177 to the health and safety of other persons.

178 (m) For purposes of this article, the term “predatory act”
179 means an act directed at a stranger or at a person with whom a
180 relationship has been established or promoted for the primary
181 purpose of victimization.

182 (n) For the purposes of this article, the term “business
183 days”, means days exclusive of Saturdays, Sundays and legal
184 holidays as defined in section one, article two, chapter two of
185 this code.

§15-12-3. Change in registry information.

1 When any person required to register under this article
2 changes his or her residence, address, place of employment or
3 occupation, motor vehicle, trailer or motor home information
4 required by section two of this article, or school or training
5 facility which he or she is attending, or when any of the other
6 information required by this article changes, he or she shall,
7 within ten business days, inform the West Virginia State Police

8 of the changes in the manner prescribed by the Superintendent
9 of State Police in procedural rules promulgated in accordance
10 with the provisions of article three, chapter twenty-nine-a of
11 this code: *Provided*, That when any person required to register
12 under this article changes his or her residence, place of employ-
13 ment or occupation or school or training facility he or she is
14 attending from one county of this state to another county of this
15 state, he or she shall inform the West Virginia State Police
16 detachment in both counties within ten business days of the
17 change in the manner prescribed by the superintendent in
18 procedural rules promulgated in accordance with the provisions
19 of article three, chapter twenty-nine-a of this code.

**§15-12-5. Distribution and disclosure of information; community
information programs by prosecuting attorney
and State Police; petition to circuit court.**

1 (a) Within five business days after receiving any notifica-
2 tion as described in this article, the State Police shall distribute
3 a copy of the notification statement to:

4 (1) The supervisor of each county and municipal
5 law-enforcement office and any campus police department in
6 the city and county where the registrant resides, owns or leases
7 habitable real property that he or she regularly visits, is em-
8 ployed or attends school or a training facility;

9 (2) The county superintendent of schools in each county
10 where the registrant resides, owns or leases habitable real
11 property that he or she regularly visits, is employed or attends
12 school or a training facility;

13 (3) The child protective services office charged with
14 investigating allegations of child abuse or neglect in the county
15 where the registrant resides, owns or leases habitable real
16 property that he or she regularly visits, is employed or attends
17 school or a training facility;

18 (4) All community organizations or religious organizations
19 which regularly provide services to youths in the county where
20 the registrant resides, owns or leases habitable real property that
21 he or she regularly visits, is employed or attends school or a
22 training facility;

23 (5) Individuals and organizations which provide day care
24 services for youths or day care, residential or respite care, or
25 other supportive services for mentally or physically incapacitated
26 or infirm persons in the county where the registrant
27 resides, owns or leases habitable real property that he or she
28 regularly visits, is employed or attends school or a training
29 facility; and

30 (6) The Federal Bureau of Investigation (FBI).

31 (b) Information concerning persons whose names are
32 contained in the sex offender registry is not subject to the
33 requirements of the West Virginia Freedom of Information Act,
34 as set forth in chapter twenty-nine-b of this code, and may be
35 disclosed and disseminated only as otherwise provided in this
36 article and as follows:

37 (1) When a person has been determined to be a sexually
38 violent predator under the terms of section two-a of this article,
39 the State Police shall notify the prosecuting attorney of the
40 county in which the person resides, owns or leases habitable
41 real property that he or she regularly visits, is employed or
42 attends a school or training facility. The prosecuting attorney
43 shall cooperate with the State Police in conducting a commu-
44 nity notification program which is to include publication of the
45 offender's name, photograph, place of residence, location of
46 regularly visited habitable real property owned or leased by the
47 offender, county of employment and place at which the
48 offender attends school or a training facility, as well as informa-
49 tion concerning the legal rights and obligations of both the

50 offender and the community. Information relating to the victim
51 of an offense requiring registration may not be released to the
52 public except to the extent the prosecuting attorney and the
53 State Police consider it necessary to best educate the public as
54 to the nature of sexual offenses: *Provided*, That no victim's
55 name may be released in any public notification pursuant to this
56 subsection. No information relating to telephone or electronic
57 paging device numbers a registrant has or uses may be released
58 to the public with this notification program. The prosecuting
59 attorney and State Police may conduct a community notification
60 program in the county where a person who is required to
61 register for life under the terms of subdivision (2), subsection
62 (a), section four of this article resides, owns or leases habitable
63 real property that he or she regularly visits, is employed or
64 attends a school or training facility. Community notification
65 may be repeated when determined to be appropriate by the
66 prosecuting attorney;

67 (2) The State Police shall maintain and make available to
68 the public at least quarterly the list of all persons who are
69 required to register for life according to the terms of subdivi-
70 sion (2), subsection (a), section four of this article. No informa-
71 tion concerning the identity of a victim of an offense requiring
72 registration or telephone or electronic paging device numbers
73 a registrant has or uses may be released with this list. The
74 method of publication and access to this list are to be deter-
75 mined by the superintendent; and

76 (3) A resident of a county may petition the circuit court for
77 an order requiring the State Police to release information about
78 persons that reside or own or lease habitable real property that
79 the persons regularly visit in that county and who are required
80 to register under section two of this article. The court shall
81 determine whether information contained on the list is relevant
82 to public safety and whether its relevance outweighs the
83 importance of confidentiality. If the court orders information to

84 be released, it may further order limitations upon secondary
85 dissemination by the resident seeking the information. In no
86 event may information concerning the identity of a victim of an
87 offense requiring registration or information relating to tele-
88 phone or electronic paging device numbers a registrant has or
89 uses be released.

90 (c) The State Police may furnish information and documen-
91 tation required in connection with the registration to authorized
92 law-enforcement, campus police and governmental agencies of
93 the United States and its territories, of foreign countries duly
94 authorized to receive the same, of other states within the United
95 States and of the State of West Virginia upon proper request
96 stating that the records will be used solely for law-enforcement-
97 related purposes. The State Police may disclose information
98 collected under this article to federal, state and local govern-
99 mental agencies responsible for conducting preemployment
100 checks. The State Police also may disclose information col-
101 lected under this article to the Division of Motor Vehicles
102 pursuant to the provisions of section three, article two, chapter
103 seventeen-b of this code.

104 (d) An elected public official, public employee or public
105 agency is immune from civil liability for damages arising out
106 of any action relating to the provisions of this section except
107 when the official, employee or agency acted with gross negli-
108 gence or in bad faith.

§15-12-6a. Release of information to the Sex Offender Registry.

1 Upon the request of the West Virginia State Police,
2 agencies in possession of records produced in conjunction with
3 investigation, prosecution, adjudication, incarceration, probation,
4 parole or presentence review of a sex offender and any other
5 records produced in conjunction with a sex offense shall provide
6 those records to the State Police.

§15-12-8. Failure to register or provide notice of registration changes; penalty; penalty for aiding and abetting.

1 (a) Each time a person has a change in any of the registra-
2 tion information as required by this article and knowingly fails
3 to register the change or changes, each failure to register each
4 separate item of information changed shall constitute a separate
5 offense under this section.

6 (b) Except as provided in this section, any person required
7 to register for ten years pursuant to subdivision (1), subsection
8 (a), section four of this article who knowingly provides materi-
9 ally false information or who refuses to provide accurate
10 information when so required by the terms of this article, or
11 who knowingly fails to register or knowingly fails to provide a
12 change in any required information as required by this article,
13 is guilty of a misdemeanor and, upon conviction thereof, shall
14 be fined not less than two hundred fifty dollars nor more than
15 ten thousand dollars or confined in jail not more than one year,
16 or both. Any person convicted of a second offense under this
17 subsection is guilty of a felony and, upon conviction thereof,
18 shall be imprisoned in a state correctional facility for not less
19 than one year nor more than five years. Any person convicted
20 of a third or subsequent offense under this subsection is guilty
21 of a felony and, upon conviction thereof, shall be imprisoned in
22 a state correctional facility for not less than five nor more than
23 twenty-five years.

24 (c) Any person required to register for life pursuant to this
25 article who knowingly provides materially false information or
26 who refuses to provide accurate information when so required
27 by the terms of this article, or who knowingly fails to register
28 or knowingly fails to provide a change in any required informa-
29 tion as required by this article, is guilty of a felony and, upon
30 conviction thereof, shall be imprisoned in a state correctional
31 facility for not less than one year nor more than five years. Any

32 person convicted of a second or subsequent offense under this
33 subsection is guilty of a felony and, upon conviction thereof,
34 shall be imprisoned in a state correctional facility for not less
35 than ten nor more than twenty-five years.

36 (d) In addition to any other penalty specified for failure to
37 register under this article, any person under the supervision of
38 a probation officer, parole officer or any other sanction short of
39 confinement in jail or prison who knowingly refuses to register
40 or who knowingly fails to provide a change in information as
41 required by this article shall be subject to immediate revocation
42 of probation or parole and returned to confinement for the
43 remainder of any suspended or unserved portion of his or her
44 original sentence.

45 (e) Notwithstanding the provisions of subsection (c) of this
46 section, any person required to register as a sexually violent
47 predator pursuant to this article who knowingly provides
48 materially false information or who refuses to provide accurate
49 information when so required by terms of this article or who
50 knowingly fails to register or knowingly fails to provide a
51 change in any required information as required by this article is
52 guilty of a felony and, upon conviction thereof, shall, for a first
53 offense, be confined in a state correctional facility not less than
54 two nor more than ten years and for a second or subsequent
55 offense, is guilty of a felony and shall be confined in a state
56 correctional facility not less than fifteen nor more than thirty-
57 five years.

58 (f) Any person who knows or who has reason to know that
59 a sex offender is not complying, or has not complied, with the
60 requirements of this section and who, with the intent to assist
61 the sex offender in eluding a law-enforcement agency that is
62 seeking to find the sex offender to question the sex^o offender
63 about, or to arrest the sex offender for, his or her noncompli-
64 ance with the requirements of this section:

65 (1) Withholds information from, the law-enforcement
66 agency about the sex offender's noncompliance with the
67 requirements of this section and, if known, the whereabouts of
68 the sex offender; or

69 (2) Harbors, or attempts to harbor, or assists another person
70 in harboring or attempting to harbor, the sex offender; or

71 (3) Conceals or attempts to conceal, or assists another
72 person in concealing or attempting to conceal, the sex offender;
73 or

74 (4) Provides information to the law-enforcement agency
75 regarding the sex offender which the person knows to be false
76 information is guilty of a misdemeanor and, upon conviction
77 thereof, shall be fined not less than two hundred fifty dollars
78 nor more than ten thousand dollars or confined in jail not more
79 than one year, or both: *Provided*, That where the person assists
80 or seeks to assist a sex offender whose violation of this section
81 would constitute a felony, the person shall be guilty of a felony
82 and, upon conviction thereof, shall be imprisoned in a state
83 correctional facility for not less than one year nor more than
84 five years.

§15-12-9. Registration of out-of-state offenders.

1 (a) When any probation or parole officer accepts supervi-
2 sion of and has legal authority over any person required to
3 register under this article from another state under the terms and
4 conditions of the uniform act for out-of-state parolee supervi-
5 sion established under article six, chapter twenty-eight of this
6 code, the officer shall give the person written notice of the
7 registration requirements of this section and obtain a signed
8 statement from the person required to register acknowledging
9 the receipt of the notice. The officer shall obtain and submit to
10 the State Police the information required in subsection (d),
11 section two of this article.

12 (b) Any person:

13 (1) Who resides in another state or federal or military
14 jurisdiction;

15 (2) Who is employed, carries on a vocation, is a student in
16 this state, is a visitor to this state for a period of more than
17 fifteen continuous days or owns or leases habitable real
18 property in this state that he or she regularly visits; and

19 (3) Who is required by the state, federal or military jurisdic-
20 tion in which he or she resides to register in that state, federal
21 or military jurisdiction as a sex offender, or has been convicted
22 of a violation in that state, federal or military jurisdiction that
23 is similar to a violation in this article requiring registration as
24 a sex offender in this state, shall register in this state and
25 otherwise comply with the provisions of this article.

26 (c) Any person changing residence to this state from
27 another state or federal or military jurisdiction who is required
28 to register as a sex offender under the laws of that state or
29 federal or military jurisdiction shall register as a sex offender in
30 this state.

§15-12-10. Address verification.

1 All registrants, including those for whom there has been no
2 change in registration information since their initial registration
3 or previous address verification, must report, in the month of
4 their birth, or in the case of a sexually violent predator in the
5 months of January, April, July and October, to the State Police
6 detachment in their county or counties of registration and must
7 respond to all verification inquiries or requests made by the
8 State Police pursuant to this section. The State Police shall
9 verify addresses of those persons registered as sexually violent
10 predators every ninety days and all other registered persons
11 once a year. The State Police may require registrants to

12 periodically submit to new fingerprints and photographs as part
13 of the verification process. The method of verification shall be
14 in accordance with internal management rules pertaining
15 thereto promulgated by the superintendent under authority of
16 section twenty-five, article two, chapter fifteen of this code.

ARTICLE 13. CHILD ABUSE AND NEGLECT REGISTRATION.

§15-13-1. Intent and findings.

§15-13-2. Registration.

§15-13-3. Change in registry information.

§15-13-4. Duration.

§15-13-5. Distribution and disclosure of information.

§15-13-6. Duties of institution officials.

§15-13-7. Failure to register or provide notice of registration changes; penalty.

§15-13-8. Registration of out-of-state offenders.

§15-13-1. Intent and findings.

1 (a) It is the intent of this article to assist law-enforcement
2 agencies' efforts to protect children from abuse and neglect by
3 requiring persons convicted of child abuse or neglect to register
4 with the State Police detachment in the county of his or her
5 residence and to report information as required by section two
6 of this article. It is not the intent of the Legislature that this act
7 be used to inflict retribution or additional punishment on any
8 person convicted of any offense requiring registration under this
9 article. This article is intended to be regulatory in nature and
10 not penal, and is intended to provide for the safety of children
11 who are exposed to persons convicted of child abuse and
12 neglect.

13 (b) The Legislature finds and declares that there is a
14 compelling and necessary public interest that children be
15 protected from physical abuse and neglect, and that require-
16 ments of this article are appropriate and reasonable because of
17 this compelling state interest.

18 (c) The Legislature also finds and declares that persons
19 required to register for committing child abuse or neglect

20 pursuant to this article have a reduced expectation of privacy
21 because of the state's interest in public safety.

§15-13-2. Registration.

1 (a) The provisions of this article apply both retroactively
2 and prospectively.

3 (b) Any person who has been convicted of an offense or has
4 been found not guilty solely by reason of mental illness, mental
5 retardation or addiction of an offense under any of the provi-
6 sions of sections two, two-a, three, three-a, four and four-a,
7 article eight-d, of chapter sixty-one of this code or under a
8 statutory provision of another state, the United States Code or
9 the Uniform Code of Military Justice which requires proof of
10 the same essential elements shall register as set forth in
11 subsection (e) of this section and according to the internal
12 management rules promulgated by the superintendent under
13 authority of section twenty-five, article two of this chapter.

14 (c) The clerk of the court in which a person is convicted for
15 an offense described in subsection (b) of this section, or for an
16 offense described in a municipal ordinance which has the same
17 elements as an offense described in said section, shall forward
18 to the superintendent, at a minimum, information required on
19 forms provided by the State Police relating to the person
20 required to register.

21 (1) If the conviction is the judgment of a magistrate court,
22 mayor, police court judge or municipal court judge, the clerk or
23 recorder shall forward to the superintendent, at a minimum,
24 information required on forms provided by the State Police
25 relating to the person required to register when the person
26 convicted has not requested an appeal within thirty days of the
27 sentencing for such conviction.

28 (2) If the conviction is the judgment of a circuit court, the
29 circuit clerk shall submit, at a minimum, the required informa-

30 tion to the superintendent regarding the person convicted within
31 thirty days after the judgment was entered.

32 (d) If a person has been convicted of any criminal offense
33 against a child in his or her household or of whom he or she has
34 custodial responsibility, and the sentencing judge makes a
35 written finding that there is a continued likelihood that the
36 person will continue to have regular contact with that child or
37 other children and that as such it is in the best interest of the
38 child or children for that person to be monitored, then that
39 person is subject to the reporting requirements of this article.

40 (e) In addition to any other requirements of this article,
41 persons required to register under the provisions of this article
42 shall provide or cooperate in providing, at a minimum, the
43 following when registering:

44 (1) The full name of the registrant, including any aliases,
45 nicknames or other names used by the registrant;

46 (2) The address where the registrant intends to reside or
47 resides at the time of registration, the name and address of the
48 registrant's employer or place of occupation at the time of
49 registration, the names and addresses of any anticipated future
50 employers or places of occupation, the name and address of any
51 school or training facility the registrant is attending at the time
52 of registration and the names and addresses of any schools or
53 training facilities the registrant expects to attend: *Provided,*
54 That a post office box or other address that does not have a
55 physical street address of residence may not be provided in lieu
56 of a physical residence address;

57 (3) The registrant's social security number;

58 (4) Ages and names of any children in the household of the
59 registrant, and any children currently living or subsequently
60 born to the registrant.

61 (5) A brief description of the offense or offenses for which
62 the registrant was convicted; and

63 (6) A complete set of the registrant's fingerprints.

64 (f) On the date that any person convicted or found not
65 guilty solely by reason of mental illness, mental retardation or
66 addiction of any of the offenses listed in subsection (b) of this
67 section, hereinafter referred to as a "qualifying offense",
68 including those persons who are continuing under some
69 post-conviction supervisory status, are released, granted
70 probation or a suspended sentence, released on parole, proba-
71 tion, home detention, work release, conditional release or any
72 other release from confinement, the Commissioner of Correc-
73 tions, Regional Jail Administrator, city or sheriff operating a
74 jail or Secretary of the Department of Health and Human
75 Resources who releases the person, and any parole or probation
76 officer who releases the person or supervises the person
77 following the release, shall inform the person of his or her duty
78 to register and send written notice of the release to the superin-
79 tendent within three business days of release, and provide any
80 other information as directed by rule of the State Police. The
81 notice must include, at a minimum, the information required by
82 subsection (e) of this section.

83 (g) Any person having a duty to register for a qualifying
84 offense shall register upon conviction, unless that person is
85 confined or incarcerated, in which case he or she shall register
86 within three business days of release, transfer or other change
87 in disposition status.

88 (h) At the time the person is convicted or found not guilty
89 solely by reason of mental illness, mental retardation or
90 addiction in a court of this state of the offenses set forth in
91 subsection (b) of this section, the person shall sign in open court
92 a notification statement acknowledging that he or she under-
93 stands the requirements imposed by this article. The court shall

94 inform the person so convicted of the requirements to register
95 imposed by this article and shall further satisfy itself by
96 interrogation of the defendant or his or her counsel that the
97 defendant has received notice of the provisions of this article
98 and that the defendant understands the provisions. The state-
99 ment, when signed and witnessed, constitutes prima facie
100 evidence that the person had knowledge of the requirements of
101 this article. Upon completion of the statement, the court shall
102 provide a copy to the registry. Persons who have not signed a
103 statement under the provisions of this subsection and who are
104 subject to the registration requirements of this article must be
105 informed of the requirement by the State Police whenever the
106 State Police obtain information that the person is subject to
107 registration requirements.

108 (i) The State Police shall maintain a central registry of all
109 persons who register under this article and shall release
110 information only as provided in this article.

111 (j) The superintendent shall provide forms to law-enforce-
112 ment agencies, circuit clerks and parole officers to facilitate
113 submission of appropriate information necessary to administer
114 the child abuse and neglect registry established by this article.

115 (k) For the purposes of this article, the term “business
116 days”, means days exclusive of Saturdays, Sundays and legal
117 holidays as defined in section one, article two, chapter two of
118 this code.

§15-13-3. Change in registry information.

1 (a) When any person required to register under this article
2 changes his or her residence, address, or when any of the other
3 information required by this article changes, he or she shall,
4 within ten business days, inform the West Virginia State Police
5 of the changes in the manner prescribed by the Superintendent
6 of State Police in procedural rules promulgated in accordance

7 with the provisions of article three, chapter twenty-nine-a of
8 this code. Upon directive by the State Police, any person
9 required to register under this article may be required to appear
10 at the nearest State Police detachment from his or her residence,
11 to verify or provide additional information or documentation
12 necessary to have complete and accurate registry records.

13 (b) A person who is required to register pursuant to the
14 provisions of this article, who intends to move to another state
15 or country shall, prior to such move, notify the State Police of
16 his or her intent to move and of the location to which he or she
17 intends to move, or if that person is incarcerated he or she shall
18 notify correctional officials of his or her intent to reside in some
19 other state or country upon his or her release, and of the
20 location to which he or she intends to move. Upon such
21 notification, the State Police shall notify law-enforcement
22 officials of the jurisdiction where the person indicates he or she
23 intends to reside of the information provided by the person
24 under the provisions of this article.

§15-13-4. Duration.

1 (a) A person required to register pursuant to the provisions
2 of this article shall continue to comply with this section, except
3 during ensuing periods of incarceration or confinement, until
4 ten years have elapsed since the person was released from
5 prison, jail or a mental health facility or ten years have elapsed
6 since the person was placed on probation, parole or supervised
7 or conditional release. The ten-year registration period shall not
8 be reduced by the offender's release from probation, parole or
9 supervised or conditional release.

10 (b) A person whose conviction is overturned for the offense
11 which required them to register under this article shall, upon
12 petition to the court, have their name removed from the
13 registry.

§15-13-5. Distribution and disclosure of information.

1 (a) Within five business days after receiving any notifica-
2 tion as described in this article, the State Police shall transmit
3 a copy of the notification statement to the Department of Health
4 and Human Resources as provided in section two of this article.

5 (b) Within five business days after receiving any notifica-
6 tion statement pursuant to the provisions of subsection (a) of
7 this section, the Secretary of the Department of Health and
8 Human Resources shall distribute a copy of the notification
9 statement to:

10 (1) The supervisor of each county and municipal
11 law-enforcement office and any campus police department in
12 the city and county where the registrant resides, is employed or
13 attends school or a training facility;

14 (2) The county superintendent of schools where the
15 registrant resides, is employed or attends school or a training
16 facility; and

17 (3) The Child Protective Services office charged with
18 investigating allegations of child abuse or neglect in the county
19 where the registrant resides, is employed or attends school or a
20 training facility.

21 (c) The State Police may furnish information and documen-
22 tation required in connection with the registration to authorized
23 law enforcement, campus police and governmental agencies of
24 the United States and its territories, of foreign countries duly
25 authorized to receive the same, of other states within the United
26 States and of the State of West Virginia upon proper request
27 stating that the records will be used solely for law-enforce-
28 ment-related purposes. The State Police may disclose informa-
29 tion collected under this article to federal, state and local
30 governmental agencies responsible for conducting
31 preemployment checks.

32 (d) An elected public official, public employee or public
33 agency is immune from civil liability for damages arising out
34 of any action relating to the provisions of this section except
35 when the official, employee or agency acted with gross negli-
36 gence or in bad faith.

37 (e) The information contained in the child abuse and
38 neglect registry is confidential, and may not be disclosed except
39 as specifically provided in this article. The information con-
40 tained in the registry with respect to an individual shall be
41 provided to that individual promptly upon request. Individuals
42 on the registry requesting registry information shall be afforded
43 the opportunity to file statements correcting any misstatements
44 or inaccuracies contained in the registry. The State Police and
45 the Department of Health and Human Resources may disclose
46 registry information to authorized law-enforcement and
47 governmental agencies of the United States and its territories,
48 of foreign states and of the State of West Virginia upon proper
49 request stating that the information requested is necessary in the
50 interest of and will be used solely in the administration of
51 official duties and the criminal laws. Agreements with other
52 states providing for the reciprocal sharing of abuse and neglect
53 registry information are specifically authorized. Nothing in this
54 article would preclude disclosure of information authorized
55 pursuant to article two-c of this chapter.

56 (f) An active file on requests for information by requesters
57 shall be maintained by the State Police and the Department of
58 Health and Human Resources for a period of one year from the
59 date of a request.

60 (g) Information on the registry shall be exempt from
61 disclosure under the freedom of information act in article one,
62 chapter twenty-nine-b of this code.

§15-13-6. Duties of institution officials.

1 In addition to the duties imposed by sections two and four
2 of this article, the official in charge of the place of confinement
3 of any person required to register under this article shall, before
4 the person is paroled or released, inform that person of his or
5 her duty to register. Further, the official shall obtain the full
6 address of the person and a statement signed by the person
7 acknowledging that the person has been informed of his or her
8 duty to register.

**§15-13-7. Failure to register or provide notice of registration
changes; penalty.**

1 (a) Except as provided in this section, any person required
2 to register under this article who knowingly provides false
3 information or who refuses to provide accurate information
4 when so required by this article, or who knowingly fails to
5 register or knowingly fails to provide a change in any informa-
6 tion as required by this article, is guilty of a misdemeanor and,
7 upon conviction thereof, shall be fined not less than two
8 hundred fifty dollars nor more than ten thousand dollars or
9 imprisoned in jail not more than one year, or both: *Provided*,
10 That each time the person has a change in any of the registra-
11 tion information as required by this article and fails to register
12 the change or changes, each failure to register each separate
13 item of information changed shall constitute a separate offense.

14 (b) Any person required to register under this article who is
15 convicted of a second or subsequent offense of failing to
16 register or provide a change in any information as required by
17 this article who knowingly provides false information or who
18 refuses to provide accurate information when so required by
19 terms of this article or who knowingly fails to register or
20 knowingly fails to provide a change in information as required
21 by this article is guilty of a felony and, upon conviction thereof,
22 shall be imprisoned in a state correctional facility for not less
23 than one year nor more than five years.

24 (c) In addition to any other penalty specified for failure to
25 register under this article, any person under the supervision of
26 a probation officer, parole officer or any other sanction short of
27 confinement in jail or prison who knowingly refuses to register
28 or who knowingly fails to provide a change in information as
29 required by this article shall be subject to immediate revocation
30 of probation or parole and returned to confinement for the
31 remainder of any suspended or unserved portion of his or her
32 original sentence.

§15-13-8. Registration of out-of-state offenders.

1 (a) When any probation or parole officer accepts supervi-
2 sion of, and has legal authority over, any person required to
3 register under this article from another state under the terms and
4 conditions of the Interstate Compact for the Supervision of
5 Adult Offenders established under article seven, chapter
6 twenty-eight of this code, the officer shall give the person
7 written notice of the registration requirements of this section
8 and obtain a signed statement from the person required to
9 register acknowledging the receipt of the notice. The officer
10 shall obtain and submit to the State Police the information
11 required in subsection (e), section two of this article.

12 (b) Any person:

13 (1) Who resides in another state or federal or military
14 jurisdiction;

15 (2) Who is employed, carries on a vocation, is a student in
16 this state or is a visitor to this state for a period of more than
17 fifteen continuous days; and

18 (3) Who is required by the state, federal or military jurisdic-
19 tion in which he or she resides to register in that state, federal
20 or military jurisdiction for child abuse or neglect, or has been
21 convicted of a violation in that state, federal or military

22 jurisdiction that is similar to a violation in this article shall
23 register in this state and otherwise comply with the provisions
24 of this article.

25 (c) Any person changing residence to this state from
26 another state or federal or military jurisdiction who is required
27 to register because of a conviction for child abuse or neglect
28 under the laws of that state or federal or military jurisdiction
29 shall register in this state.

CHAPTER 17B. MOTOR VEHICLE DRIVER' S LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-3. What persons may not be licensed; exceptions.

1 (a) The division may not issue any license hereunder:

2 (1) To any person who is under the age of eighteen years:
3 *Provided*, That the division may issue a junior driver's license
4 or on or after the first day of January, two thousand one, a
5 graduated driver's license, to a person under the age of eighteen
6 years in accordance with the provisions of section three-a of
7 this article;

8 (2) To any person, as a Class A, B, C or D driver, who is
9 under the age of eighteen years;

10 (3) To any person, whose license has been suspended or
11 revoked, during the suspension or revocation;

12 (4) To any person who is an habitual drunkard or is
13 addicted to the use of narcotic drugs;

14 (5) To any person, who has previously been adjudged to be
15 afflicted with or suffering from any mental disability or disease
16 and who has not at the time of application been restored to
17 competency by judicial decree or released from a hospital for

18 the mentally incompetent upon the certificate of the superinten-
19 dent of the institution that the person is competent, and not then
20 unless the commissioner is satisfied that the person is compe-
21 tent to operate a motor vehicle with a sufficient degree of care
22 for the safety of persons or property;

23 (6) To any person who is required by this chapter to take an
24 examination, unless the person has successfully passed the
25 examination;

26 (7) To any person when the commissioner has good cause
27 to believe that the operation of a motor vehicle on the highways
28 by the person would be inimical to public safety or welfare.

29 (b) The division may not issue a license or nondriver
30 identification card to any person required to register as a
31 sexually violent predator pursuant to the provisions of article
32 twelve, chapter fifteen, unless he or she obtains a driver's
33 license or nondriver identification card coded by the commis-
34 sioner to denote that he or she is a sexually violent predator as
35 follows:

36 (1) If a person is judicially determined to be a sexually
37 violent predator after the effective date of this section, the
38 sentencing court shall order the person or the agency with
39 custody of the person's driver's license or nondriver identifica-
40 tion card to surrender said license or card to the court. The
41 sentencing court shall forward to the division all driver's
42 licenses or nondriver identification cards that it receives
43 pursuant to this section, along with a copy of the sentencing
44 order. If a person is registered as a sexually violent predator
45 pursuant to section nine, article twelve, chapter fifteen of this
46 code after the effective date of this section as amended and
47 reenacted during the first extraordinary session of the Legisla-
48 ture, two thousand six, the person shall surrender their driver's
49 license or nondriver identification card to the division within
50 ten days of their registration with the State Police. Any replace-

51 ment driver's license or nondriver identification card issued to
52 the person under this section must be coded by the commis-
53 sioner to denote the person is a sexually violent predator and
54 shall be issued at no cost to the person.

55 (2) Within ten business days of the effective date of the
56 amendments to this section made during the first extraordinary
57 session of the Legislature, two thousand six, the State Police
58 shall provide the division with the name, address and motor
59 vehicle information of every person registered as a sexually
60 violent predator in the state at that time and also provide notice
61 to said registrants of the requirements set forth in said amend-
62 ments. If a person is registered as a sexually violent predator
63 prior to the effective date of this section, as amended and
64 reenacted during the first extraordinary session of the Legisla-
65 ture, two thousand six, he or she shall surrender his or her
66 driver's license or nondriver identification card to the division
67 within ten business days of his or her receipt of the notice from
68 the State Police required by said amendments. Any replacement
69 driver's license or nondriver identification card issued to the
70 person under this section must be coded by the commissioner
71 to denote the person is a sexually violent predator and shall be
72 issued at no cost to the person.

73 (c) Upon receipt of a driver's license or nondriver identifi-
74 cation card from a sentencing court or individual pursuant to
75 subsection (b) of this section, the division shall cancel said
76 license or card and note the cancellation in its records system so
77 as to prevent the issuance of a replacement or duplicate license
78 or card lacking the coded notation required by subsection (b) of
79 this section.

80 (d) Upon showing proof that a person is no longer required
81 to register as a sexually violent predator, the division shall, at
82 no charge, issue a driver's license or nondriver identification
83 card without the coded notation printed upon the license. No
84 person issued a driver's license or nondriver identification card

85 pursuant to the amendments to this section made during the first
86 extraordinary session of the Legislature, two thousand six, may
87 alter or deface the license or card to obscure the special
88 marking identifying the holder as a sexually violent predator.

89 (e) Any person failing to comply with the provisions of
90 subsections (b), (c) or (d) is guilty of a misdemeanor and, upon
91 conviction thereof, shall be fined not less than fifty dollars nor
92 more than five hundred dollars or confined in jail not more than
93 one year, or both fined and imprisoned.

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15c. County boards of education; training in prevention of child abuse and neglect and child assault; regulations; funding.

1 (a) In recognition of the findings of the Legislature as set
2 forth in section one, article six-c, chapter forty-nine of this
3 code, the Legislature further finds that public schools are able
4 to provide a special environment for the training of children,
5 parents and school personnel in the prevention of child abuse
6 and neglect and child assault and that child abuse and neglect
7 prevention and child assault prevention programs in the public
8 schools are an effective and cost-efficient method of reducing
9 the incidents of child abuse and neglect, promoting a healthy
10 family environment and reducing the general vulnerability of
11 children.

12 (b) County boards of education shall be required, to the
13 extent funds are provided, to establish programs for the
14 prevention of child abuse and neglect and child assault. Such
15 programs shall be provided to pupils, parents and school
16 personnel as deemed appropriate. Such programs shall be in
17 compliance with regulations to be developed by the State Board

18 of Education with the advice and assistance of the state Depart-
19 ment of Health and Human Resources and the West Virginia
20 State Police: *Provided*, That any such programs which substan-
21 tially comply with the regulations adopted by the board and
22 were in effect prior to the adoption of the regulations may be
23 continued.

24 (c) Funds for implementing the child abuse and neglect
25 prevention and child assault prevention programs may be
26 allocated to the county boards of education from the children's
27 trust fund established pursuant to the provisions of article six-c,
28 chapter forty-nine of this code or appropriated for such purpose
29 by the Legislature.

30 (d) County boards of education shall request from the State
31 Criminal Identification Bureau the record of any and all
32 criminal convictions relating to child abuse, sex-related
33 offenses or possession of controlled substances with intent to
34 deliver same for all of its future employees. This request shall
35 be made immediately after the effective date of this section, and
36 thereafter as warranted.

37 (e) Contractors or service providers or their employees may
38 not make direct, unaccompanied contact with students or access
39 school grounds unaccompanied when students are present if it
40 cannot be verified that the contractors, service providers or
41 employees have not previously been convicted of a qualifying
42 offense, as defined in section two, article twelve, chapter fifteen
43 of this code. For the purposes of this section, contractor and
44 service provider shall be limited to any vendor, individual or
45 entity under contract with a county school board. County school
46 boards may require contractors and service providers to verify
47 the criminal records of their employees before granting the
48 above-mentioned contact or access. Where prior written consent
49 is obtained, county school boards may obtain information from
50 the Central Abuse Registry regarding contractors, service

51 providers and their employees for the purposes of this subsection.
52 tion. Where a contractor or service provider gives his or her
53 prior written consent, the county school board also may share
54 information provided by the Central Abuse Registry with other
55 county school boards for the purposes of satisfying the requirements
56 of this subsection. The requirements of this subsection
57 shall not go into effect until the first day of July, two thousand
58 seven.

CHAPTER 25. DIVISION OF CORRECTIONS.

ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.

§25-1-22. Task Force to Study the Feasibility of Establishing a Correctional Facility for the Incarceration and Treatment of Sex Offenders; members; duties.

1 (a) There is hereby created a Task Force to Study the
2 Feasibility of Establishing a Correctional Facility for the
3 Incarceration and Treatment of Sex Offenders.

4 (b) The task force consists of the following members:

5 (1) The Secretary of the Department of Military Affairs and
6 Public Safety, or his or her designee;

7 (2) The Commissioner of the Division of Corrections, or his
8 or her designee;

9 (3) The Secretary of the Department of Health and Human
10 Resources, or his or her designee;

11 (4) The Commissioner of the Bureau for Behavioral Health
12 and Health Facilities, or his or her designee; and

13 (5) The Director of the Division of Criminal Justice
14 Services, or his or her designee.

- 15 (c) The task force shall designate the chair of the task force.
- 16 (d) The Legislature directs the task force to:
- 17 (1) Study whether sex offenders can be treated and rehabili-
18 tated;
- 19 (2) Study the feasibility and cost effectiveness of operating
20 a separate correctional facility for the incarceration and
21 treatment of sex offenders;
- 22 (3) Study the findings and recommendations from relevant
23 national advisory committees, federal agencies, and peer-
24 reviewed medical, correctional, and legal literature; and
- 25 (4) Identify and recommend alternatives to establishing a
26 separate facility, if a separate facility is not feasible and cost
27 effective.
- 28 (e) The task force may conduct inquiries and hold hearings
29 in furtherance of its objectives and in order to provide utilities
30 subject to its jurisdiction and other interested persons the
31 opportunity to comment.
- 32 (f) All actual and necessary travel expenses of the members
33 of the task force shall be reimbursed by the member's employ-
34 ing agency. All other expenses incurred by the task force shall
35 be paid by the Division of Corrections.
- 36 (g) The task force shall make its final report to the Gover-
37 nor and the Legislature regarding its findings and recommenda-
38 tions not later than the first day of July, two thousand seven.

CHAPTER 49. CHILD WELFARE.

ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR NEGLECTED.

§49-6A-11. Statistical reports.

1 The Department of Health and Human Resources shall
2 maintain a statewide child abuse and neglect statistical index of
3 all substantiated allegations of child abuse or neglect cases to
4 include information contained in the reports required under this
5 article and any other information considered appropriate by the
6 Secretary of the Department of Health and Human Resources.
7 Nothing in the statistical data index maintained by the Depart-
8 ment of Health and Human Resources may contain information
9 of a specific nature that would identify individual cases or
10 persons. Notwithstanding the provisions of section one, article
11 seven, chapter forty-nine of this code, the Department of Health
12 and Human Resources shall provide copies of the statistical
13 data maintained pursuant to this subsection to the State Police
14 child abuse and neglect investigations unit to carry out its
15 responsibilities to protect children from abuse and neglect.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-3. Sexual assault in the first degree.

§61-8B-7. Sexual abuse in the first degree.

§61-8B-9a. Mandatory sentence for person committing certain sex offenses against children.

§61-8B-9b. Enhanced penalties for subsequent offenses committed by those previously convicted of sexually violent offenses against children.

§61-8B-3. Sexual assault in the first degree.

1 (a) A person is guilty of sexual assault in the first degree
2 when:

3 (1) The person engages in sexual intercourse or sexual
4 intrusion with another person and, in so doing:

5 (i) Inflicts serious bodily injury upon anyone; or

6 (ii) Employs a deadly weapon in the commission of the act;

7 or

8 (2) The person, being fourteen years old or more, engages
9 in sexual intercourse or sexual intrusion with another person
10 who is younger than twelve years old and is not married to that
11 person.

12 (b) Any person violating the provisions of this section is
13 guilty of a felony and, upon conviction thereof, shall be
14 imprisoned in a state correctional facility not less than fifteen
15 nor more than thirty-five years, or fined not less than one
16 thousand dollars nor more than ten thousand dollars and
17 imprisoned in a state correctional facility not less than fifteen
18 nor more than thirty-five years.

19 (c) Notwithstanding the provisions of subsection (b) of this
20 section, the penalty for any person violating the provisions of
21 subsection (a) of this section who is eighteen years of age or
22 older and whose victim is younger than twelve years of age,
23 shall be imprisonment in a state correctional facility for not less
24 than twenty-five nor more than one hundred years and a fine of
25 not less than five thousand dollars nor more than twenty-five
26 thousand dollars.

§61-8B-7. Sexual abuse in the first degree.

1 (a) A person is guilty of sexual abuse in the first degree
2 when:

3 (1) Such person subjects another person to sexual contact
4 without their consent, and the lack of consent results from
5 forcible compulsion; or

6 (2) Such person subjects another person to sexual contact
7 who is physically helpless; or

8 (3) Such person, being fourteen years old or more, subjects
9 another person to sexual contact who is younger than twelve
10 years old.

11 (b) Any person who violates the provisions of this section
12 shall be guilty of a felony, and, upon conviction thereof, shall
13 be imprisoned in a state correctional facility not less than one
14 year nor more than five years, or fined not more than ten
15 thousand dollars and imprisoned in a state correctional facility
16 not less than one year nor more than five years.

17 (c) Notwithstanding the provisions of subsection (b) of this
18 section, the penalty for any person violating the provisions of
19 subsection (a) of this section who is eighteen years of age or
20 older and whose victim is younger than twelve years of age,
21 shall be imprisonment for not less than five nor more than
22 twenty-five years and fined not less than one thousand dollars
23 nor more than five thousand dollars.

**§61-8B-9a. Mandatory sentence for person committing certain
sex offenses against children.**

1 (a) Notwithstanding the provisions of section one-a, article
2 eleven-a, section four, article eleven-b and section two, article
3 twelve of chapter sixty-two of this code, a person shall not be
4 eligible for probation, home incarceration or an alternative
5 sentence provided under this code if they are convicted of an
6 offense under section three, four, five, seven, eight or nine,
7 article eight-b, chapter sixty-one of this code, are eighteen years
8 of age or older, the victim is younger than twelve years of age
9 and the finder of fact determines that one of the following
10 aggravating circumstances exists:

11 (1) The person employed forcible compulsion in commis-
12 sion of the offense;

13 (2) The offense constituted, resulted from or involved a
14 predatory act as defined in subsection (m), section two, article
15 twelve, chapter fifteen of this code;

16 (3) The person was armed with a weapon or any article used
17 or fashioned in a manner to lead the victim to reasonably
18 believe it to be a dangerous weapon and used or threatened to
19 use the weapon or article to cause the victim to submit; or

20 (4) The person removed the victim from one place to
21 another and did not release the victim in a safe place. For the
22 purposes of this section, “release the victim in a safe place”
23 means release of a victim in a place and manner which realisti-
24 cally conveys to the victim that he or she is free from captivity
25 in circumstances and surroundings wherein aid is readily
26 available.

27 (b)(1) The existence of any fact which would make any
28 person ineligible for probation under subsection (a) of this
29 section because of the existence of an aggravating circumstance
30 shall not be applicable unless such fact is clearly stated and
31 included in the indictment or presentment by which such person
32 is charged and is either: (i) Found by the court upon a plea of
33 guilty or nolo contendere; or (ii) found by the jury, if the matter
34 be tried before a jury, upon submitting to such jury a special
35 interrogatory for such purpose; or (iii) found by the court, if the
36 matter be tried by the court, without a jury.

37 (2) Insofar as the provisions of this section relate to
38 mandatory sentences without probation, home incarceration or
39 alternative sentences, all such matters requiring such sentence
40 shall be proved beyond a reasonable doubt in all cases tried by
41 the jury or the court.

**§61-8B-9b. Enhanced penalties for subsequent offenses commit-
ted by those previously convicted of sexually
violent offenses against children.**

1 (a) Notwithstanding any provision of this article to the
2 contrary, any person who has been convicted of a sexually

3 violent offense, as defined in section two, article twelve,
4 chapter fifteen of this code, against a victim under the age of
5 twelve years old and thereafter commits and thereafter is
6 convicted of one of the following offenses shall be subject to
7 the following penalties unless another provision of this code
8 authorizes a longer sentence:

9 (1) For a violation of section three of this article, the
10 penalty shall be imprisonment in a state correctional facility for
11 not less than fifty nor more than one hundred fifty years;

12 (2) For a violation of section four of this article, the penalty
13 shall be imprisonment in a state correctional facility for not less
14 than thirty nor more than one hundred years;

15 (3) For a violation of section five of this article, the penalty
16 shall be imprisonment in a state correctional facility for not less
17 than five nor more than twenty-five years;

18 (4) For a violation of section seven of this article, the
19 penalty shall be imprisonment in a state correctional facility for
20 not less than ten nor more than thirty-five years; and

21 (5) Notwithstanding the penalty provisions of section eight
22 of this article, a violation of its provisions by a person previ-
23 ously convicted of a sexually violent offense, as defined in
24 section two, article twelve, chapter fifteen of this code, shall be
25 a felony and the penalty therefor shall be imprisonment in a
26 state correctional facility for not less than three nor more than
27 fifteen years.

28 (b) Notwithstanding the provisions of section two, article
29 twelve, chapter sixty-two of this code, any person sentenced
30 pursuant to this section shall not be eligible for probation.

31 (c) Notwithstanding the provisions of section one-a, article
32 eleven-a and section four, article eleven-b of chapter sixty-two

33 of this code, a person sentenced under this section shall not be
34 eligible for home incarceration or an alternative sentence.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 11D. HEIGHTENED EXAMINATION AND SUPERVISION FOR CERTAIN SEX OFFENDERS.

§62-11D-1. Definitions.

§62-11D-2. Polygraph examinations as a condition of supervision for certain sex offenders released on probation, parole or on supervised release.

§62-11D-3. Electronic monitoring of certain sex offenders under supervision; tampering with devices; offenses and penalties.

§62-11D-1. Definitions.

1 As used in this article:

2 (1) “Certified polygraph analyst” means a person licensed
3 pursuant to the provisions of section five-c, article five, chapter
4 twenty-one of this code and who:

5 (A) Is certified in post conviction sex offender testing as
6 prescribed by the American Polygraph Association;

7 (B) Has completed not less than twenty hours of American
8 Polygraph Association-approved sex offender testing training
9 every other calendar year; and

10 (C) Uses standards approved by the American Polygraph
11 Association for sex offender testing.

12 (2) “Electronic monitoring” means any one or a combina-
13 tion of the following technologies:

14 (A) Voice verification;

15 (B) Radio frequency;

16 (C) Video display/breath alcohol test;

17 (D) Global positioning satellite; or

18 (E) Global positioning satellite - cellular.

19 (3) “Full-disclosure polygraph” or “sexual history poly-
20 graph” means a polygraph examination administered to
21 determine the entire sexual history of the probationer or
22 parolee.

23 (4) “Maintenance test” means polygraph examination
24 administered to determine the probationer’s or parolee’s
25 compliance with the terms of supervision and treatment.

26 (5) “Sexually violent predator” means any person deter-
27 mined by a circuit court of this state to be a sexually violent
28 predator pursuant to the provisions of section two-a, article
29 twelve, chapter fifteen of this code or of a similar provision in
30 another state, federal or military jurisdiction.

**§62-11D-2. Polygraph examinations as a condition of supervision
for certain sex offenders released on probation,
parole or on supervised release.**

1 (a) Notwithstanding any provision of this code to the
2 contrary, any person:

3 (1) Who has been determined to be a sexually violent
4 predator pursuant to the provisions of section two-a, article
5 twelve, chapter fifteen of this code; or

6 (2) Who is required to register as a sex offender pursuant to
7 the provisions of article twelve, chapter fifteen of this code and
8 who is ordered by a circuit court or supervising entity to
9 undergo polygraph examination as a condition of probation,
10 parole or supervised release, shall, as a condition of said

11 probation, parole or supervised release, submit to polygraph
12 examinations as prescribed in this section.

13 (b) Any person required to undergo polygraph examination
14 pursuant to subsection (a) of this section shall, at his or her
15 expense, submit to at least one polygraph examination each
16 year to answer questions relating to his or her compliance with
17 conditions of supervision, including conditions related to
18 treatment. Additional examinations may be required, not to
19 exceed a total of five. The results of any examination are not
20 admissible in evidence and are to be used solely as a risk
21 assessment and treatment tool. Examination results shall be
22 made available to the person under supervision, upon request.

23 (c) In the event a person required to submit to polygraph
24 examinations as required by the provisions of this section is
25 unable to pay for the polygraph examination or examinations,
26 that person may present an affidavit reflecting the inability to
27 pay for such testing to the circuit court of the county of supervi-
28 sion. If it appears to the satisfaction of the court that such
29 person is in fact financially unable to pay for such testing, the
30 court shall issue an order reflecting such findings and forward
31 such order to the supervising entity. Upon receipt of such order,
32 the supervising entity shall then be responsible for paying for
33 such testing.

34 (d) Any polygraph examination conducted pursuant to the
35 provisions of this section shall be conducted by a certified
36 polygraph analyst.

37 (e) In the conduct of polygraph examinations of a sex
38 offender performed pursuant to the provisions of this section,
39 no certified polygraph analyst may:

40 (1) Conduct more than two full disclosure or sexual history
41 polygraph examinations in a twenty-four hour period;

42 (2) Disclose any information gained during any full
43 disclosure or sexual history polygraph examination to any law-
44 enforcement agency or other party, other than the supervising
45 entity, without the supervised person's consent, nor shall any
46 information or disclosure be admissible in any court of this
47 state, unless such information disclosed indicates the intention
48 or plan to commit a criminal violation of the laws of this or
49 another state or of the United States in which case such infor-
50 mation may be released only to such persons as might be
51 necessary solely to prevent the commission of such crime;

52 (3) Conduct more than two maintenance tests in a twenty-
53 four hour period;

54 (4) Conduct more than one full disclosure or sexual history
55 polygraph examination and more than two maintenance tests in
56 a twenty-four hour period; or

57 (5) Conduct more than five polygraph examinations of the
58 same sex offender in a calendar year.

59 (f) No polygraph examination performed pursuant to the
60 provisions this section may be conducted by a person who is a
61 sworn peace officer, within the boundaries of that officer's
62 jurisdiction.

**§62-11D-3. Electronic monitoring of certain sex offenders under
supervision; tampering with devices; offenses and
penalties.**

1 (a) Notwithstanding any provisions of this code to the
2 contrary, any person designated as a sexually violent predator
3 pursuant to the provisions of section two-a, article twelve,
4 chapter fifteen of this code who is on probation, parole or
5 supervised release, shall be subject to electronic monitoring as
6 a condition of probation, parole or supervised release. A person
7 required to register as a sex offender pursuant to the provisions

8 of article twelve, chapter fifteen of this code may, as a condi-
9 tion of probation, parole or supervised release, be subject to
10 electronic monitoring.

11 (b) Upon being placed on supervision, a person required to
12 undergo electronic monitoring pursuant to the provisions of this
13 section shall be placed at a minimum on radio frequency
14 monitoring with curfews enforced. Following an assessment
15 designed to determine the level and type of electronic monitor-
16 ing necessary to effectuate the protection of the public, a
17 supervised person may be placed on a system providing a
18 greater or lesser degree of monitoring.

19 (c) A person subject to the provisions of this section shall
20 be responsible for the cost of the electronic monitoring. In the
21 event a person required to submit to electronic monitoring as
22 required by the provisions of this section is unable to pay for
23 the electronic monitoring, that person may present an affidavit
24 reflecting the inability to pay for such monitoring to the circuit
25 court of the county of supervision. If it appears to the satisfac-
26 tion of the court that such person is in fact financially unable to
27 pay for such monitoring, the court shall issue an order reflecting
28 such findings and forward said order to the supervising entity.
29 Upon receipt of such order, the supervising entity shall then be
30 responsible for paying for each testing.

31 (d) The assessment required by the provisions of subsection
32 (b) of this section shall be completed not later than thirty days
33 after the supervised person begins serving probation or parole
34 or supervised release. Under no circumstances may a person of
35 whom electronic monitoring has been mandated as a condition
36 of supervision be on a type of monitoring less effective than
37 voice verification with a curfew.

38 (e) Any person who intentionally alters, tampers with,
39 damages or destroys any electronic monitoring equipment, with
40 the intent to remove the device or impair its effectiveness, is

41 guilty of a felony and, upon conviction thereof, shall be
42 confined in a state correctional facility for not less than one
43 year nor more than ten years.

ARTICLE 11E. SEXUALLY VIOLENT PREDATOR MANAGEMENT TASK FORCE.

§62-11E-1. Legislative findings and intent.

§62-11E-2. Sexually Violent Predator Management Task Force created; duties.

§62-11E-3. Schedule; public hearings.

§62-11E-1. Legislative findings and intent.

1 The Legislature finds:

2 (1) That a small but extremely dangerous group of sexually
3 violent offenders exist who do not have a mental disease or
4 defect that renders them appropriate for involuntary hospitaliza-
5 tion pursuant to chapter twenty-seven of this code, which is
6 intended to be a short-term civil commitment system that is
7 primarily designed to provide short-term treatment to individu-
8 als with serious mental disorders and then return them to the
9 community. In contrast, these offenders, known as sexually
10 violent predators, generally have personality disorders and/or
11 mental abnormalities which are largely unamenable to existing
12 mental illness treatment modalities and those conditions render
13 them likely to engage in sexually violent behavior.

14 (2) That the likelihood of sexually violent predators
15 engaging in repeat acts of predatory sexual violence is high.
16 The existing involuntary commitment procedure is inadequate
17 to address the risk to re-offend because during confinement
18 these predators do not have access to potential victims and
19 therefore they will not engage in an overt act during confine-
20 ment as required by the involuntary treatment act for continued
21 confinement.

22 (3) That the prognosis for curing sexually violent predators
23 is poor, the treatment needs of this population are very long

24 term, and the treatment modalities for this population are very
25 different from the traditional treatment modalities for people
26 appropriate for commitment under chapter twenty-seven of this
27 code.

28 (4) It is therefore the purpose of this article to establish a
29 public-private task force to identify and develop measures
30 providing for the appropriate treatment of sexually violent
31 predators lasting until they are no longer dangerous to the
32 public. The measures should reflect the need to protect the
33 public, to respect the needs of the victims of sexually violent
34 offenses, and to encourage full, meaningful participation of
35 sexually violent predators in treatment programs.

**§62-11E-2. Sexually Violent Predator Management Task Force
created; duties.**

1 (a) There is hereby created the “Sexually Violent Predator
2 Management Task Force.” The task force shall consist of the
3 following persons:

4 (1) The Commissioner of the Division of Corrections, or his
5 or her designee;

6 (2) The Commissioner of the Bureau for Behavioral Health
7 and Health Facilities, or his or her designee;

8 (3) The Executive Director of the West Virginia Prosecut-
9 ing Attorney’s Institute, or his or her designee;

10 (4) The Executive Director of Public Defender Services, or
11 his or her designee;

12 (5) The Director of the Division of Criminal Justice
13 Services, or his or her designee;

14 (6) The President of the Sex Offender Registration Advi-
15 sory Board, or his or her designee;

16 (7) The Superintendent of the West Virginia State Police,
17 or his or her designee; and

18 (8) Four public members appointed by the Governor with
19 the advice and consent of the Senate as follows:

20 (i) A forensic psychiatrist with experience evaluating
21 persons charged with sexually violent offenses;

22 (ii) A forensic psychologist with experience evaluating
23 persons charged with sexually violent offenses;

24 (iii) A prosecuting attorney with experience prosecuting
25 persons for sexually violent offenses; and

26 (iv) A public defender or private criminal defense attorney:
27 *Provided*, That the person have experience defending persons
28 charged with committing sexually violent offenses.

29 (b) The task force also may invite, as it deems necessary,
30 other individuals with certain specialties to join the task force
31 as members, including, but not limited to, probation officers
32 and current or former members of the judiciary in West
33 Virginia. The Commissioner of the Division of Corrections
34 shall chair the task force.

35 (c) Each *ex officio* member of the task force is entitled to
36 be reimbursed by their employing agency for actual and
37 necessary expenses incurred for each day or portion thereof
38 engaged in the discharge of official duties in a manner consis-
39 tent with guidelines of the travel management office of the
40 Department of Administration. All other expenses incurred by
41 the task force shall be paid by the Division of Corrections.

42 (d) It shall be the duty of the task force to develop measures
43 for the appropriate treatment of sexually violent predators,
44 assess resources and circumstances specific to West Virginia,

45 examine constitutional, statutory and regulatory requirements
46 with which such measures must comply, identify the adminis-
47 trative and financial impact of those measures and develop a
48 plan for implementation of the measures by a date certain. In
49 fulfilling those duties, the task force, at a minimum, shall:

50 (1) Consult with psychiatrists and psychologists regarding
51 the management of sexually violent predators, including, but
52 not limited to, their diagnosis and treatment;

53 (2) Evaluate current involuntary commitment procedures
54 set forth in chapter twenty-seven of this code and how they may
55 interact with the state's management of sexually violent
56 predators;

57 (3) Survey the mental health resources offered by state
58 agencies, including, but not limited to, current treatment
59 resources for sexually violent predators in all phases of the
60 correctional, probation and parole systems;

61 (4) Assess what, if any, state resources exist for use in the
62 confinement of sexually violent predators;

63 (5) Examine the interaction between criminal penalties for
64 sexually violent offenses and the management of sexually
65 violent predators;

66 (6) Consider other states' approaches to managing sexually
67 violent offenders released after the completion of their criminal
68 sentences;

69 (7) Conduct interviews with relevant personnel inside and
70 outside of state government; and

71 (8) Determine the fiscal impact of any of its recommenda-
72 tions.

§62-11E-3. Schedule; public hearings.

1 (a) On or before the first day of July, two thousand seven,
2 the task force shall submit a report setting forth their final
3 findings and recommendations to the Legislature and the
4 Governor.

5 (b) In recognition of the importance of public engagement,
6 the task force shall have two public hearings prior to the first
7 day of March, two thousand seven, to solicit input from
8 citizens, mental health professionals, local law-enforcement
9 officials, other stakeholders, and interested parties about the
10 state's management of sexually violent predators.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-2. Eligibility for probation.

§62-12-26. Extended supervision for certain sex offenders; sentencing; conditions;
supervision provisions; supervision fee.

§62-12-27. Mandatory prerelease risk assessment of certain sex offenders.

§62-12-2. Eligibility for probation.

1 (a) All persons who are found guilty of or plead guilty to
2 any felony, the maximum penalty for which is less than life
3 imprisonment, and all persons who are found guilty of or plead
4 guilty to any misdemeanor, shall be eligible for probation,
5 notwithstanding the provisions of sections eighteen and
6 nineteen, article eleven, chapter sixty-one of this code.

7 (b) The provisions of subsection (a) of this section to the
8 contrary notwithstanding, any person who commits or attempts
9 to commit a felony with the use, presentment or brandishing of
10 a firearm shall be ineligible for probation. Nothing in this
11 section shall apply to an accessory before the fact or a principal
12 in the second degree who has been convicted as if he or she
13 were a principal in the first degree if, in the commission of or
14 in the attempted commission of the felony, only the principal in
15 the first degree used, presented or brandished a firearm.

16 (c)(1) The existence of any fact which would make any
17 person ineligible for probation under subsection (b) of this
18 section because of the commission or attempted commission of
19 a felony with the use, presentment or brandishing of a firearm
20 shall not be applicable unless such fact is clearly stated and
21 included in the indictment or presentment by which such person
22 is charged and is either: (i) Found by the court upon a plea of
23 guilty or nolo contendere; or (ii) found by the jury, if the matter
24 be tried before a jury, upon submitting to such jury a special
25 interrogatory for such purpose; or (iii) found by the court, if the
26 matter be tried by the court, without a jury.

27 (2) The amendments to this subsection adopted in the year
28 one thousand nine hundred eighty-one:

29 (A) Shall apply to all applicable offenses occurring on or
30 after the first day of August of that year;

31 (B) Shall apply with respect to the contents of any indict-
32 ment or presentment returned on or after the first day of August
33 of that year irrespective of when the offense occurred;

34 (C) Shall apply with respect to the submission of a special
35 interrogatory to the jury and the finding to be made thereon in
36 any case submitted to such jury on or after the first day of
37 August of that year or to the requisite findings of the court upon
38 a plea of guilty or in any case tried without a jury: *Provided,*
39 That the state shall give notice in writing of its intent to seek
40 such finding by the jury or court, as the case may be, which
41 notice shall state with particularity the grounds upon which
42 such finding shall be sought as fully as such grounds are
43 otherwise required to be stated in an indictment, unless the
44 grounds therefor are alleged in the indictment or presentment
45 upon which the matter is being tried;

46 (D) Shall not apply with respect to cases not affected by
47 such amendment and in such cases the prior provisions of this

48 section shall apply and be construed without reference to such
49 amendment; and

50 Insofar as such amendments relate to mandatory sentences
51 without probation, all such matters requiring such sentence
52 shall be proved beyond a reasonable doubt in all cases tried by
53 the jury or the court.

54 (d) For the purpose of this section, the term “firearm” shall
55 mean any instrument which will, or is designed to, or may
56 readily be converted to, expel a projectile by the action of an
57 explosive, gunpowder, or any other similar means.

58 (e) In the case of any person who has been found guilty of,
59 or pleaded guilty to, a violation of the provisions of section
60 twelve, article eight, chapter sixty-one of this code, the provi-
61 sions of article eight-c or eight-b of said chapter, or under the
62 provisions of section five, article eight-d of said chapter, such
63 person shall only be eligible for probation after undergoing a
64 physical, mental and psychiatric study and diagnosis which
65 shall include an on-going treatment plan requiring active
66 participation in sexual abuse counseling at a mental health
67 facility or through some other approved program: *Provided,*
68 That nothing disclosed by the person during such study or
69 diagnosis shall be made available to any law-enforcement
70 agency, or other party without that person’s consent, or admis-
71 sible in any court of this state, unless such information dis-
72 closed shall indicate the intention or plans of the probationer to
73 do harm to any person, animal, institution or property, in which
74 case such information may be released only to such persons as
75 might be necessary for protection of the said person, animal,
76 institution or property.

77 Within ninety days of the effective date of this section as
78 amended and reenacted during the first extraordinary session of
79 the Legislature, two thousand six, the Secretary of the Depart-
80 ment of Health and Human Resources shall propose rules and

81 emergency rules for legislative approval in accordance with the
82 provisions of article three, chapter twenty-nine-a of this code
83 establishing qualifications for sex offender treatment programs
84 and counselors based on accepted treatment protocols among
85 licensed mental health professionals.

86 (f) Any person who has been convicted of a violation of the
87 provisions of article eight-b, eight-c or sections five and six,
88 article eight-d, chapter sixty-one of this code, or of section
89 fourteen, article two, or of sections twelve and thirteen, article
90 eight, chapter sixty-one of this code, or of a felony violation
91 involving a minor of section six or seven, article eight, chapter
92 sixty-one of this code, or of a similar provision in another
93 jurisdiction shall be required to be registered upon release on
94 probation. Any person who has been convicted of an attempt to
95 commit any of the offenses set forth in this subsection shall also
96 be registered upon release on probation.

97 (g) The probation officer shall within three days of release
98 of the offender, send written notice to the State Police of the
99 release of the offender. The notice shall include:

100 (1) The full name of the person;

101 (2) The address where the person shall reside;

102 (3) The person's social security number;

103 (4) A recent photograph of the person;

104 (5) A brief description of the crime for which the person
105 was convicted;

106 (6) Fingerprints; and

107 (7) For any person determined to be a sexually violent
108 predator as defined in section two-a, article twelve, chapter
109 fifteen of this code, the notice shall also include:

- 110 (i) Identifying factors, including physical characteristics;
- 111 (ii) History of the offense; and
- 112 (iii) Documentation of any treatment received for the
- 113 mental abnormality or personality disorder.

§62-12-26. Extended supervision for certain sex offenders; sentencing; conditions; supervision provisions; supervision fee.

1 (a) Notwithstanding any other provision of this code to the
2 contrary, any defendant convicted after the effective date of this
3 section of a violation of section twelve, article eight, chapter
4 sixty-one of this code or a felony violation of the provisions of
5 article eight-b, eight-c or eight-d of said chapter shall, as part of
6 the sentence imposed at final disposition, be required to serve,
7 in addition to any other penalty or condition imposed by the
8 court, a period of supervised release of up to fifty years:
9 *Provided*, That the period of supervised release imposed by the
10 court pursuant to this section for a defendant convicted after the
11 effective date of this section as amended and reenacted during
12 the first extraordinary session of the Legislature, two thousand
13 six, of a violation of sections three or seven, article eight-b,
14 chaptersixty-one of this code and sentenced pursuant to section
15 nine-a, article eight-b, chapter sixty-one of this code, shall be
16 no less than ten years: *Provided, however*, That a defendant
17 designated after the effective date of this section as amended
18 and reenacted during the first extraordinary session of the
19 Legislature, two thousand six, as a sexually violent predator
20 pursuant to the provisions of section two-a, article twelve,
21 chapter fifteen of this code shall be subject, in addition to any
22 other penalty or condition imposed by the court, to supervised
23 release for life: *Provided further*, That, pursuant to the provi-
24 sions of subsection (g) of this section, a court may modify,
25 terminate or revoke any term of supervised release imposed
26 pursuant to subsection (a) of this section.

27 (b) Any person required to be on supervised release for a
28 minimum term of ten years or for life pursuant to the provisos
29 of subsection (a) also shall be further prohibited from:

30 (1) Establishing a residence or accepting employment
31 within one thousand feet of a school or child care facility or
32 within one thousand feet of the residence of a victim or victims
33 of any sexually violent offenses for which the person was
34 convicted;

35 (2) Establishing a residence or any other living accommo-
36 dation in a household in which a child under sixteen resides if
37 the person has been convicted of a sexually violent offense
38 against a child, unless the person is one of the following:

39 (i) The child's parent;

40 (ii) The child's grandparent; or

41 (iii) The child's stepparent and the person was the steppar-
42 ent of the child prior to being convicted of a sexually violent
43 offense, the person's parental rights to any children in the home
44 have not been terminated, the child is not a victim of a sexually
45 violent offense perpetrated by the person, and the court deter-
46 mines that the person is not likely to cause harm to the child or
47 children with whom such person will reside: *Provided*, That
48 nothing in this subsection shall preclude a court from imposing
49 residency or employment restrictions as a condition of super-
50 vised release on defendants other than those subject to the
51 provision of this subsection.

52 (c) The period of supervised release imposed by the
53 provisions of this section shall begin upon the expiration of any
54 period of probation, the expiration of any sentence of incarceration
55 or the expiration of any period of parole supervision
56 imposed or required of the person so convicted, whichever
57 expires later.

58 (d) Any person sentenced to a period of supervised release
59 pursuant to the provisions of this section shall be supervised by
60 the probation office of the sentencing court or by the commu-
61 nity corrections program established in said circuit unless
62 jurisdiction is transferred elsewhere by order of the sentencing
63 court.

64 (e) A defendant sentenced to a period of supervised release
65 shall be subject to any or all of the conditions applicable to a
66 person placed upon probation pursuant to the provisions of
67 section nine, article twelve, chapter sixty-one of this code:
68 *Provided*, That any defendant sentenced to a period of super-
69 vised release pursuant to this section shall be required to
70 participate in appropriate offender treatment programs or
71 counseling during the period of supervised release unless the
72 court deems such to no longer be appropriate or necessary and
73 makes express findings in support thereof.

74 Within ninety days of the effective date of this section as
75 amended and reenacted during the first extraordinary session of
76 the Legislature, two thousand six, the Secretary of the Depart-
77 ment of Health and Human Resources shall propose rules and
78 emergency rules for legislative approval in accordance with the
79 provisions of article three, chapter twenty-nine-a of this code
80 establishing qualifications for sex offender treatment programs
81 and counselors based on accepted treatment protocols among
82 licensed mental health professionals.

83 (f) The sentencing court may, based upon defendant's
84 ability to pay, impose a supervision fee to offset the cost of
85 supervision. Said fee shall not exceed fifty dollars per month.
86 Said fee may be modified periodically based upon the defen-
87 dant's ability to pay.

88 (g) *Modification of conditions or revocation.* — The court
89 may:

90 (1) Terminate a term of supervised release and discharge
91 the defendant released at any time after the expiration of two
92 years of supervised release, pursuant to the provisions of the
93 West Virginia Rules of Criminal Procedure relating to the
94 modification of probation, if it is satisfied that such action is
95 warranted by the conduct of the defendant released and the
96 interests of justice;

97 (2) Extend a period of supervised release if less than the
98 maximum authorized period was previously imposed or modify,
99 reduce or enlarge the conditions of supervised release, at any
100 time prior to the expiration or termination of the term of
101 supervised release, consistent with the provisions of the West
102 Virginia Rules of Criminal Procedure relating to the modifica-
103 tion of probation and the provisions applicable to the initial
104 setting of the terms and conditions of post-release supervision;

105 (3) Revoke a term of supervised release and require the
106 defendant to serve in prison all or part of the term of supervised
107 release without credit for time previously served on supervised
108 release if the court, pursuant to the West Virginia Rules of
109 Criminal Procedure applicable to revocation of probation, finds
110 by clear and convincing evidence that the defendant violated a
111 condition of supervised release, except that a defendant whose
112 term is revoked under this subdivision may not be required to
113 serve more than the period of supervised release;

114 (4) Order the defendant to remain at his or her place of
115 residence during nonworking hours and, if the court so directs,
116 to have compliance monitored by telephone or electronic
117 signaling devices, except that an order under this paragraph
118 may be imposed only as an alternative to incarceration.

119 (h) *Written statement of conditions.* — The court shall
120 direct that the probation officer provide the defendant with a
121 written statement that sets forth all the conditions to which the
122 term of supervised release is subject and that it is sufficiently

123 clear and specific to serve as a guide for the defendant's
124 conduct and for such supervision as is required.

125 (i) *Supervised release following revocation.* — When a
126 term of supervised release is revoked and the defendant is
127 required to serve a term of imprisonment that is less than the
128 maximum term of imprisonment authorized under subsection
129 (a) of this section, the court may include a requirement that the
130 defendant be placed on a term of supervised release after
131 imprisonment. The length of such term of supervised release
132 shall not exceed the term of supervised release authorized by
133 this section less any term of imprisonment that was imposed
134 upon revocation of supervised release.

135 (j) *Delayed revocation.* — The power of the court to revoke
136 a term of supervised release for violation of a condition of
137 supervised release and to order the defendant to serve a term of
138 imprisonment and, subject to the limitations in subsection (h)
139 of this section, a further term of supervised release extends
140 beyond the expiration of the term of adjudication of matters
141 arising before its expiration if, before its expiration, a warrant
142 or summons has been issued on the basis of an allegation of
143 such a violation.

§62-12-27. Mandatory prerelease risk assessment of certain sex offenders.

1 Prior to discharging an inmate convicted of a violation of
2 section twelve, article eight, chapter sixty-one of this code or a
3 felony violation of the provisions of article eight-b or eight-d of
4 said chapter at the expiration of the term of their sentence, the
5 Division of Corrections shall perform an assessment to deter-
6 mine the statistical risk that the inmate will reoffend after being
7 released from the division's custody. Prior to releasing the
8 inmate, the division shall forward the results of the assessment
9 to the inmate's supervising entity.

CHAPTER 16

**(H. B. 105 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed June 14, 2006; in effect from passage.]

[Approved by the Governor on June 28, 2006.]

AN ACT to amend and reenact §44-10-3 of the Code of West Virginia, 1931, as amended, relating to confidentiality of circuit court records involving guardianship of minors.

Be it enacted by the Legislature of West Virginia:

That §44-10-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. GUARDIANS AND WARDS GENERALLY.

§44-10-3. Appointment and revocation of guardian by county commission.

1 (a) The circuit court or family court of the county in which
2 the minor resides, or if the minor is a nonresident of the state,
3 the county in which the minor has an estate, may appoint as the
4 minor's guardian a suitable person. The father or mother shall
5 receive priority. However, in every case, the competency and
6 fitness of the proposed guardian and the welfare and best
7 interests of the minor shall be given precedence by the court
8 when appointing the guardian.

9 (b) Within five days of the filing of a petition for the
10 appointment of a guardian, the circuit clerk shall notify the

11 court. The court shall hear the petition for the appointment of
12 a guardian within ten days after the petition is filed.

13 (c) The court, the guardian or the minor may revoke or
14 terminate the guardianship appointment when:

15 (1) The minor reaches the age of eighteen and executes a
16 release stating that the guardian estate was properly adminis-
17 tered and that the minor has received the assets of the estate
18 from the guardian;

19 (2) The guardian or the minor dies;

20 (3) The guardian petitions the court to resign and the court
21 enters an order approving the resignation; or

22 (4) A petition is filed by the guardian, the minor, an
23 interested person or upon the motion of the court stating that the
24 minor is no longer in need of the assistance or protection of a
25 guardian.

26 (d) A guardianship may not be terminated by the court if
27 there are any assets in the estate due and payable to the minor:
28 *Provided*, That another guardian may be appointed upon the
29 resignation of a guardian whenever there are assets in the estate
30 due and payable to the minor.

31 (e) Other than court orders and case indexes, all other
32 records of a guardian proceeding involving a minor are confi-
33 dential and shall not be disclosed to anyone who is not a party
34 to the proceeding, counsel of record for the proceeding or
35 presiding over the proceeding absent a court order permitting
36 examination of such records.

CHAPTER 17

**(H. B. 109 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed June 14, 2006; in effect from passage.]

[Approved by the Governor on June 28, 2006.]

AN ACT to amend and reenact §5-10-22i of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-7A-26t of said code, all relating to one-time supplements to retirement benefits for certain annuitants; establishing the amount and eligibility date for the one-time supplement to retirement benefits for certain annuitants under the Public Employees Retirement Act; and establishing the eligibility date for the one-time supplement to retirement benefits for certain annuitants under the State Teachers Retirement System.

Be it enacted by the Legislature of West Virginia:

That §5-10-22i of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §18-7A-26t 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.

18. Education.

**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 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.**§5-10-22i. One-time supplement for certain annuitants effective July 1, 2006.**

1 (a) A one-time supplement to retirement benefits of three
2 percent, as determined by appropriation of the Legislature, shall
3 be provided to all retirees that are age seventy or older and have
4 been annuitants for at least five consecutive years as of the first
5 day of July, two thousand six, and beneficiaries of deceased
6 members who would have been at least seventy years of age or
7 older and have been annuitants for at least five consecutive
8 years as of the first day of July, two thousand six.

9 (b) The one-time supplement provided in this section
10 applies only to members who have retired at least five years
11 prior to the first day of July, two thousand six, or, if applicable,
12 to beneficiaries of deceased members who have been receiving
13 benefits under the retirement system at least five years prior to
14 the first day of July, two thousand six: *Provided*, That the
15 supplement provided herein is subject to any applicable
16 limitations thereon under Section 415 of the Internal Revenue
17 Code of 1986, as amended.

CHAPTER 18. EDUCATION.**ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.****§18-7A-26t. One-time supplement for certain annuitants effective July 1, 2006.**

1 (a) A one-time supplement to retirement benefits of three
2 percent shall be provided to all retirees that are age seventy or
3 older and have been annuitants for at least five consecutive
4 years as of the first day of July, two thousand six, and benefi-
5 ciaries of deceased members who would have been at least
6 seventy years of age or older and have been annuitants for at
7 least five consecutive years as of the first day of July, two
8 thousand six.

9 (b) The one-time supplement provided in this section
10 applies only to members who have retired at least five years
11 prior to the first day of July, two thousand six, or, if applicable,
12 to beneficiaries of deceased members who have been receiving
13 benefits under the retirement system at least five years prior to
14 the first day of July, two thousand six: *Provided*, That the
15 supplement provided herein is subject to any applicable
16 limitations thereon under Section 415 of the Internal Revenue
17 Code of 1986, as amended.

CHAPTER 18

(S. B. 1009 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed June 14, 2006; in effect from passage.]

[Approved by the Governor on June 28, 2006.]

AN ACT to amend and reenact §5-10-48 of the Code of West Virginia, 1931, as amended, relating to reemployment after retirement.

Be it enacted by the Legislature of West Virginia:

That §5-10-48 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-48. Reemployment after retirement; options for holder of elected public office.

1 (a) The Legislature finds that a compelling state interest
2 exists in maintaining an actuarially sound retirement system

3 and that this interest necessitates that certain limitations be
4 placed upon an individual's ability to retire from the system and
5 to then later return to state employment as an employee with a
6 participating public employer while contemporaneously
7 drawing an annuity from the system. The Legislature hereby
8 further finds and declares that the interests of the public are
9 served when persons having retired from public employment
10 are permitted, within certain limitations, to render post-retire-
11 ment employment in positions of public service, either in
12 elected or appointed capacities. The Legislature further finds
13 and declares that it has the need for qualified employees and
14 that in many cases an employee of the Legislature will retire
15 and be available to return to work for the Legislature as a per
16 diem employee. The Legislature further finds and declares that
17 in many instances these employees have particularly valuable
18 expertise which the Legislature cannot find elsewhere. The
19 Legislature further finds and declares that reemploying these
20 persons on a limited per diem basis after they have retired is not
21 only in the best interests of this state, but has no adverse effect
22 whatsoever upon the actuarial soundness of this particular
23 retirement system.

24 (b) For the purposes of this section: (1) "Regularly em-
25 ployed on a full-time basis" means employment of an individ-
26 ual by a participating public employer, in a position other than
27 as an elected or appointed public official, which normally
28 requires twelve months per year service and/or requires at least
29 one thousand forty hours of service per year in that position; (2)
30 "temporary full-time employment or temporary part-time
31 employment" means employment of an individual on a tempo-
32 rary or provisional basis by a participating public employer,
33 other than as an elected or appointed public official, in a
34 position which does not otherwise render the individual as
35 regularly employed; (3) "former employee of the Legislature"
36 means any person who has retired from employment with the
37 Legislature and who has at least ten years' contributing service

38 with the Legislature; and (4) “reemployed by the Legislature”
39 means a former employee of the Legislature who has been
40 reemployed on a per diem basis not to exceed one hundred
41 seventy-five days per calendar year.

42 (c) In the event a retirant becomes regularly employed on
43 a full-time basis by a participating public employer, payment of
44 his or her annuity shall be suspended during the period of his or
45 her reemployment and he or she shall become a contributing
46 member to the retirement system. If his or her reemployment is
47 for a period of one year or longer, his or her annuity shall be
48 recalculated and he or she shall be granted an increased annuity
49 due to such additional employment, said annuity to be com-
50 puted according to section twenty-two of this article. A retirant
51 may accept temporary full-time or temporary part-time employ-
52 ment from a participating employer without suspending his or
53 her retirement annuity so long as he or she does not receive
54 annual compensation in excess of fifteen thousand dollars:
55 *Provided*, That a retirant may be employed by the Legislature
56 on a per diem basis without suspension of the retirement
57 annuity if the retirant’s annual compensation from the Legisla-
58 ture does not exceed twenty thousand dollars.

59 (d) In the event a member retires and is then subsequently
60 elected to a public office or is subsequently appointed to hold
61 an elected public office, or is a former employee of the Legisla-
62 ture who has been reemployed by the Legislature, he or she has
63 the option, notwithstanding subsection (c) of this section, to
64 either:

65 (1) Continue to receive payment of his or her annuity while
66 holding such public office or during any reemployment of a
67 former employee of the Legislature on a per diem basis, in
68 addition to the salary he or she may be entitled to as such office
69 holder or as a per diem reemployed former employee of the
70 Legislature; or

71 (2) Suspend the payment of his or her annuity and become
72 a contributing member of the retirement system as provided in
73 subsection (c) of this section. Notwithstanding the provisions of
74 this subsection, a member who is participating in the system as
75 an elected public official may not retire from his or her elected
76 position and commence to receive an annuity from the system
77 and then be reappointed to the same position unless and until a
78 continuous six-month period has passed since his or her
79 retirement from the position: *Provided*, That a former employee
80 of the Legislature may not be reemployed by the Legislature on
81 a per diem basis until at least sixty days after the employee has
82 retired: *Provided, however*, That the limitation on compensation
83 provided by subsection (b) of this section does not apply to the
84 reemployed former employee: *Provided further*, That in no
85 event may reemployment by the Legislature of a per diem
86 employee exceed one hundred seventy-five days per calendar
87 year.

88 (e) A member who is participating in the system simulta-
89 neously as both a regular, full-time employee of a participating
90 public employer and as an elected or appointed member of the
91 legislative body of the state or any political subdivision may,
92 upon meeting the age and service requirements of this article,
93 elect to retire from his or her regular full-time state employment
94 and may commence to receive an annuity from the system
95 without terminating his or her position as a member of the
96 legislative body of the state or political subdivision: *Provided*,
97 That the retired member shall not, during the term of his or her
98 retirement and continued service as a member of the legislative
99 body of a political subdivision, be eligible to continue his or her
100 participation as a contributing member of the system and shall
101 not continue to accrue any additional service credit or benefits
102 in the system related to the continued service.

103 (f) Notwithstanding the provisions of section twenty-seven-
104 b of this article, any publicly elected member of the legislative

105 body of any political subdivision or of the state Legislature, the
106 Clerk of the House of Delegates and the Clerk of the Senate
107 may elect to commence receiving in-service retirement distribu-
108 tions from this system upon attaining the age of seventy and
109 one-half years: *Provided*, That the member is eligible to retire
110 under the provisions of section twenty or twenty-one of this
111 article: *Provided, however*, That the member elects to stop
112 actively contributing to the system while receiving such in-
113 service distributions.

114 (g) The provisions of section twenty-two-h of this article
115 are not applicable to the amendments made to this section
116 during the two thousand six regular session.

CHAPTER 19

(H. B. 106 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed June 14, 2006; in effect from passage.]

[Approved by the Governor on June 28, 2006.]

AN ACT to amend and reenact §29-22-18 of the Code of West Virginia, 1931, as amended; to amend and reenact §29-22A-10 of said code; and to amend and reenact §29-22B-1408 of said code, all relating to surplus administrative funds of the state lottery commission; creating the Revenue Center Construction Fund; authorizing the deposit of certain lottery administrative funds into the fund for the construction of a new state office building; and providing for authorization to expend money in the fund.

Be it enacted by the Legislature of West Virginia:

That §29-22-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §29-22A-10 of said code be amended and reenacted; and that §29-22B-1408 of said code be amended and reenacted, all to read as follows:

Article

22. State Lottery Act.

22A. Racetrack Video Lottery.

22B. Limited Video Lottery.

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; Revenue Center Construction Fund.

1 (a) There is hereby continued a special revenue fund in the
2 state treasury which shall be designated and known as the “state
3 lottery fund”. The fund consists of all appropriations to the fund
4 and all interest earned from investment of the fund and any
5 gifts, grants or contributions received by the fund. All revenues
6 received from the sale of lottery tickets, materials and games
7 shall be deposited with the state treasurer and placed into the
8 “state lottery fund”. The revenue shall be disbursed in the
9 manner provided in this section for the purposes stated in this
10 section and shall not be treated by the auditor and treasurer as
11 part of the general revenue of the state.

12 (b) No appropriation, loan or other transfer of state funds
13 may be made to the commission or lottery fund after the initial
14 appropriation.

15 (c) A minimum annual average of forty-five percent of the
16 gross amount received from each lottery shall be allocated and
17 disbursed as prizes.

18 (d) Not more than fifteen percent of the gross amount
19 received from each lottery may be allocated to and may be
20 disbursed as necessary for fund operation and administration
21 expenses: *Provided*, That for the period beginning the first day
22 of January, two thousand two, through the thirtieth day of June,
23 two thousand three, not more than seventeen percent of the
24 gross amount received from each lottery shall be allocated to
25 and may be disbursed as necessary for fund operation and
26 administration expenses.

27 (e) The excess of the aggregate of the gross amount
28 received from all lotteries over the sum of the amounts allo-
29 cated by subsections (c) and (d) of this section shall be allo-
30 cated as net profit. In the event that the percentage allotted for
31 operations and administration generates a surplus, the surplus
32 shall be allowed to accumulate to an amount not to exceed two
33 hundred fifty thousand dollars. On a monthly basis, the director
34 shall report to the joint committee on government and finance
35 of the Legislature any surplus in excess of two hundred fifty
36 thousand dollars and remit to the state treasurer the entire
37 amount of those surplus funds in excess of two hundred fifty
38 thousand dollars which shall be allocated as net profit: *Pro-*
39 *vided*, That at the close of each of the fiscal years ending the
40 thirtieth day of June two thousand six, two thousand seven, two
41 thousand eight, two thousand nine, two thousand ten and two
42 thousand eleven, the portion of the fifteen percent allowance for
43 fund operation and administration expenses provided in
44 subsection (d) of this section that remains unspent for fund
45 operation and administrative expenses of the lottery in each
46 respective fiscal year, not to exceed twenty million dollars in
47 any fiscal year, shall be transferred to the Revenue Center
48 Construction Fund created by subsection (l) of this section for
49 the purpose of constructing a state office building.

50 (f) After first satisfying the requirements for funds dedi-
51 cated to the school building debt service fund in subsection (h)
52 of this section to retire the bonds authorized to be issued
53 pursuant to section eight, article nine-d, chapter eighteen of this
54 code, and then satisfying the requirements for funds dedicated
55 to the education, arts, sciences and tourism debt service fund in
56 subsection (i) of this section to retire the bonds authorized to be
57 issued pursuant to section eleven-a, article six, chapter five of
58 this code, any and all remaining funds in the state lottery fund
59 shall be made available to pay debt service in connection with
60 any revenue bonds issued pursuant to section eighteen-a of this
61 article, if and to the extent needed for such purpose from time
62 to time. The Legislature shall annually appropriate all of the
63 remaining amounts allocated as net profits in subsection (e) of
64 this section, in such proportions as it considers beneficial to the
65 citizens of this state, to: (1) The lottery education fund created
66 in subsection (g) of this section; (2) the school construction
67 fund created in section six, article nine-d, chapter eighteen of
68 this code; (3) the lottery senior citizens fund created in subsec-
69 tion (j) of this section; and (4) the division of natural resources
70 created in section three, article one, chapter twenty of this code
71 and the West Virginia development office as created in section
72 one, article two, chapter five-b of this code, in accordance with
73 subsection (k) of this section. No transfer to any account other
74 than the school building debt service account, the education,
75 arts, sciences and tourism debt service fund, the economic
76 development project fund created under section eighteen-a,
77 article twenty-two, chapter twenty-nine of this code, or any
78 fund from which debt service is paid under subsection (c),
79 section eighteen-a of this article, may be made in any period of
80 time in which a default exists in respect to debt service on
81 bonds issued by the school building authority, the state building
82 commission, the economic development authority or which are
83 otherwise secured by lottery proceeds. No additional transfer
84 may be made to any account other than the school building debt
85 service account and the education, arts, sciences and tourism

86 debt service fund when net profits for the preceding twelve
87 months are not at least equal to one hundred fifty percent of
88 debt service on bonds issued by the school building authority
89 and the state building commission which are secured by net
90 profits.

91 (g) There is hereby continued a special revenue fund in the
92 state treasury which shall be designated and known as the
93 "lottery education fund." The fund shall consist of the amounts
94 allocated pursuant to subsection (f) of this section, which shall
95 be deposited into the lottery education fund by the state
96 treasurer. The lottery education fund shall also consist of all
97 interest earned from investment of the lottery education fund
98 and any other appropriations, gifts, grants, contributions or
99 moneys received by the lottery education fund from any source.
100 The revenues received or earned by the lottery education fund
101 shall be disbursed in the manner provided below and may not
102 be treated by the auditor and treasurer as part of the general
103 revenue of the state. Annually, the Legislature shall appropriate
104 the revenues received or earned by the lottery education fund to
105 the state system of public and higher education for these
106 educational programs it considers beneficial to the citizens of
107 this state.

108 (h) On or before the twenty-eighth day of each month, as
109 long as revenue bonds or refunding bonds are outstanding, the
110 lottery director shall allocate to the school building debt service
111 fund created pursuant to the provisions of section six, article
112 nine-d, chapter eighteen of this code, as a first priority from the
113 net profits of the lottery for the preceding month, an amount
114 equal to one tenth of the projected annual principal, interest and
115 coverage ratio requirements on any and all revenue bonds and
116 refunding bonds issued, or to be issued, on or after the first day
117 of April, one thousand nine hundred ninety-four, as certified to
118 the lottery director in accordance with the provisions of section
119 six, article nine-d, chapter eighteen of this code. In no event

120 shall the monthly amount allocated exceed one million eight
121 hundred thousand dollars, nor may the total allocation of the net
122 profits to be paid into the school building debt service fund, as
123 provided in this section, in any fiscal year exceed the lesser of
124 the principal and interest requirements certified to the lottery
125 director or eighteen million dollars. In the event there are
126 insufficient funds available in any month to transfer the amount
127 required to be transferred pursuant to this subsection to the
128 school debt service fund, the deficiency shall be added to the
129 amount transferred in the next succeeding month in which
130 revenues are available to transfer the deficiency. A lien on the
131 proceeds of the state lottery fund up to a maximum amount
132 equal to the projected annual principal, interest and coverage
133 ratio requirements, not to exceed twenty-seven million dollars
134 annually, may be granted by the school building authority in
135 favor of the bonds it issues which are secured by the net lottery
136 profits.

137 When the school improvement bonds, secured by profits
138 from the lottery and deposited in the school debt service fund,
139 mature, the profits shall become available for debt service on
140 additional school improvement bonds as a first priority from the
141 net profits of the lottery or may at the discretion of the authority
142 be placed into the school construction fund created pursuant to
143 the provisions of section six, article nine-d, chapter eighteen of
144 this code.

145 (i) Beginning on or before the twenty-eighth day of July,
146 one thousand nine hundred ninety-six, and continuing on or
147 before the twenty-eighth day of each succeeding month
148 thereafter, as long as revenue bonds or refunding bonds are
149 outstanding, the lottery director shall allocate to the education,
150 arts, sciences and tourism debt service fund created pursuant to
151 the provisions of section eleven-a, article six, chapter five of
152 this code, as a second priority from the net profits of the lottery
153 for the preceding month, an amount equal to one tenth of the
154 projected annual principal, interest and coverage ratio require-

155 ments on any and all revenue bonds and refunding bonds
156 issued, or to be issued, on or after the first day of April, one
157 thousand nine hundred ninety-six, as certified to the lottery
158 director in accordance with the provisions of that section. In no
159 event may the monthly amount allocated exceed one million
160 dollars nor may the total allocation paid into the education, arts,
161 sciences and tourism debt service fund, as provided in this
162 section, in any fiscal year exceed the lesser of the principal and
163 interest requirements certified to the lottery director or ten
164 million dollars. In the event there are insufficient funds
165 available in any month to transfer the amount required pursuant
166 to this subsection to the education, arts, sciences and tourism
167 debt service fund, the deficiency shall be added to the amount
168 transferred in the next succeeding month in which revenues are
169 available to transfer the deficiency. A second-in-priority lien on
170 the proceeds of the state lottery fund up to a maximum amount
171 equal to the projected annual principal, interest and coverage
172 ratio requirements, not to exceed fifteen million dollars
173 annually, may be granted by the state building commission in
174 favor of the bonds it issues which are secured by the net lottery
175 profits.

176 When the bonds, secured by profits from the lottery and
177 deposited in the education, arts, sciences and tourism debt
178 service fund, mature, the profits shall become available for debt
179 service on additional bonds as a second priority from the net
180 profits of the lottery.

181 (j) There is hereby continued a special revenue fund in the
182 state treasury which shall be designated and known as the
183 "lottery senior citizens fund." The fund shall consist of the
184 amounts allocated pursuant to subsection (f) of this section,
185 which amounts shall be deposited into the lottery senior citizens
186 fund by the state treasurer. The lottery senior citizens fund shall
187 also consist of all interest earned from investment of the lottery
188 senior citizens fund and any other appropriations, gifts, grants,
189 contributions or moneys received by the lottery senior citizens

190 fund from any source. The revenues received or earned by the
191 lottery senior citizens fund shall be distributed in the manner
192 provided below and may not be treated by the auditor or
193 treasurer as part of the general revenue of the state. Annually,
194 the Legislature shall appropriate the revenues received or
195 earned by the lottery senior citizens fund to such senior citizens
196 medical care and other programs as it considers beneficial to
197 the citizens of this state.

198 (k) The division of natural resources and the West Virginia
199 development office, as appropriated by the Legislature, may use
200 the amounts allocated to them pursuant to subsection (f) of this
201 section for one or more of the following purposes: (1) The
202 payment of any or all of the costs incurred in the development,
203 construction, reconstruction, maintenance or repair of any
204 project or recreational facility, as these terms are defined in
205 section four, article five, chapter twenty of this code, pursuant
206 to the authority granted to it under article five, chapter twenty
207 of this code; (2) the payment, funding or refunding of the
208 principal of, interest on or redemption premiums on any bonds,
209 security interests or notes issued by the parks and recreation
210 section of the division of natural resources under article five,
211 chapter twenty of this code; or (3) the payment of any advertis-
212 ing and marketing expenses for the promotion and development
213 of tourism or any tourist facility or attraction in this state.

214 (l)(1) A special revenue account in the state treasury is
215 hereby created as of the twenty-first day of June, two thousand
216 six, which is designated and known as the "Revenue Center
217 Construction Fund." The fund shall consist of the amounts
218 allocated to the fund pursuant to subsection (e) of this section;
219 section ten, article twenty-two-a of this chapter; and section one
220 thousand four hundred eight, article twenty-two-b of this
221 chapter, which amounts shall be deposited into the fund by the
222 State Treasurer. In no fiscal year shall the transfer from these
223 three sources total more than twenty million dollars in the
224 aggregate. The fund shall also consist of all interest earned from

225 investment of the fund and any other appropriations, gifts,
226 grants, contributions or moneys received by the fund from any
227 source. The revenues received or earned by the fund shall be
228 used by the State Lottery Commission to construct a new state
229 office building subject to the provisions of subdivision (2) of
230 this subsection.

231 (2) No moneys of the Revenue Center Construction Fund
232 may be expended except upon appropriation of the Legislature
233 and until: (A) the Capitol Building Commission has approved
234 and submitted to the Secretary of Administration a comprehen-
235 sive long term master plan for the capital improvement and
236 development of the state capitol complex; (B) a copy of the
237 master plan has been provided to the Joint Committee on
238 Finance and Administration; and thereafter, (C) the Legislature
239 by concurrent resolution authorizes construction of a new state
240 office building and the expenditure of moneys from the fund for
241 that purpose.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

1 (a) The commission shall provide to manufacturers, or
2 applicants applying for a manufacturer's permit, the protocol
3 documentation data necessary to enable the respective manufac-
4 turer's video lottery terminals to communicate with the
5 commission's central computer for transmitting auditing
6 program information and for activation and disabling of video
7 lottery terminals.

8 (b) The gross terminal income of a licensed racetrack shall
9 be remitted to the commission through the electronic transfer of
10 funds. Licensed racetracks shall furnish to the commission all
11 information and bank authorizations required to facilitate the
12 timely transfer of moneys to the commission. Licensed race-
13 tracks must provide the commission thirty days' advance notice
14 of any proposed account changes in order to assure the uninter-
15 rupted electronic transfer of funds. From the gross terminal
16 income remitted by the licensee to the commission, the com-
17 mission shall deduct an amount sufficient to reimburse the
18 commission for its actual costs and expenses incurred in
19 administering racetrack video lottery at the licensed racetrack,
20 and the resulting amount after the deduction is the net terminal
21 income. The amount deducted for administrative costs and
22 expenses of the commission may not exceed four percent of
23 gross terminal income: *Provided*, That any amounts deducted
24 by the commission for its actual costs and expenses that
25 exceeds its actual costs and expenses shall be deposited into the
26 state lottery fund. For the fiscal years ending the thirtieth day of
27 June, two thousand six, two thousand seven, two thousand
28 eight, two thousand nine, two thousand ten and two thousand
29 eleven, the term "actual costs and expenses" shall include
30 transfers of no more than twenty million dollars in any year to
31 the Revenue Center Construction Fund created by subsection
32 (1), section eighteen, article twenty-two of this chapter for the
33 purpose of constructing a state office building. For all fiscal
34 years beginning on or after the first day of July, two thousand
35 one, the commission shall not receive an amount of gross
36 terminal income in excess of the amount of gross terminal
37 income received during the fiscal year ending on the thirtieth
38 day of June, two thousand one, but four percent of any amount
39 of gross terminal income received in excess of the amount of
40 gross terminal income received during the fiscal year ending on
41 the thirtieth day of June, two thousand one, shall be deposited
42 into the fund established in section eighteen-a, article twenty-
43 two of this chapter.

44 (c) Net terminal income shall be divided as set out in this
45 subsection. For all fiscal years beginning on or after the first
46 day of July, two thousand one, any amount of net terminal
47 income received in excess of the amount of net terminal income
48 received during the fiscal year ending on the thirtieth day of
49 June, two thousand one, shall be divided as set out in section
50 ten-b of this article. The licensed racetrack's share is in lieu of
51 all lottery agent commissions and is considered to cover all
52 costs and expenses required to be expended by the licensed
53 racetrack in connection with video lottery operations. The
54 division shall be made as follows:

55 (1) The commission shall receive thirty percent of net
56 terminal income, which shall be paid into the state lottery fund
57 as provided in section ten-a of this article;

58 (2) Until the first day of July, two thousand five, fourteen
59 percent of net terminal income at a licensed racetrack shall be
60 deposited in the special fund established by the licensee, and
61 used for payment of regular purses in addition to other amounts
62 provided for in article twenty-three, chapter nineteen of this
63 code, on and after the first day of July, two thousand five, the
64 rate shall be seven percent of net terminal income;

65 (3) The county where the video lottery terminals are located
66 shall receive two percent of the net terminal income: *Provided,*
67 That:

68 (A) Beginning the first day of July, one thousand nine
69 hundred ninety-nine, and thereafter, any amount in excess of
70 the two percent received during the fiscal year one thousand
71 nine hundred ninety-nine by a county in which a racetrack is
72 located that has participated in the West Virginia thoroughbred
73 development fund since on or before the first day of January,
74 one thousand nine hundred ninety-nine shall be divided as
75 follows:

76 (i) The county shall receive fifty percent of the excess
77 amount; and

78 (ii) The municipalities of the county shall receive fifty
79 percent of the excess amount, said fifty percent to be divided
80 among the municipalities on a per capita basis as determined by
81 the most recent decennial United States census of population;
82 and

83 (B) Beginning the first day of July, one thousand nine
84 hundred ninety-nine, and thereafter, any amount in excess of
85 the two percent received during the fiscal year one thousand
86 nine hundred ninety-nine by a county in which a racetrack other
87 than a racetrack described in paragraph (A) of this proviso is
88 located and where the racetrack has been located in a munici-
89 pality within the county since on or before the first day of
90 January, one thousand nine hundred ninety-nine shall be
91 divided, if applicable, as follows:

92 (i) The county shall receive fifty percent of the excess
93 amount; and

94 (ii) The municipality shall receive fifty percent of the
95 excess amount; and

96 (C) This proviso shall not affect the amount to be received
97 under this subdivision by any other county other than a county
98 described in paragraph (A) or (B) of this proviso;

99 (4) One percent of net terminal income shall be paid for and
100 on behalf of all employees of the licensed racing association by
101 making a deposit into a special fund to be established by the
102 racing commission to be used for payment into the pension plan
103 for all employees of the licensed racing association;

104 (5) The West Virginia thoroughbred development fund
105 created under section thirteen-b, article twenty-three, chapter

106 nineteen of this code and the West Virginia greyhound breeding
107 development fund created under section ten of said article shall
108 receive an equal share of a total of not less than one and one-
109 half percent of the net terminal income;

110 (6) The West Virginia racing commission shall receive one
111 percent of the net terminal income which shall be deposited and
112 used as provided in section thirteen-c, article twenty-three,
113 chapter nineteen of this code.

114 (7) A licensee shall receive forty-six and one-half percent
115 of net terminal income.

116 (8)(A) The tourism promotion fund established in section
117 twelve, article two, chapter five-b of this code shall receive
118 three percent of the net terminal income: *Provided*, That for the
119 fiscal year beginning the first day of July, two thousand three,
120 the tourism commission shall transfer from the tourism promo-
121 tion fund five million dollars of the three percent of the net
122 terminal income described in this section and section ten-b of
123 this article into the fund administered by the West Virginia
124 economic development authority pursuant to section seven,
125 article fifteen, chapter thirty-one of this code, five million
126 dollars into the capitol renovation and improvement fund
127 administered by the department of administration pursuant to
128 section six, article four, chapter five-a of this code and five
129 million dollars into the tax reduction and federal funding
130 increased compliance fund; and

131 (B) Notwithstanding any provision of paragraph (A) of this
132 subdivision to the contrary, for each fiscal year beginning after
133 the thirtieth day of June, two thousand four, this three percent
134 of net terminal income and the three percent of net terminal
135 income described in paragraph (B), subdivision (8), subsection
136 (a), section ten-b of this article shall be distributed as provided
137 in this paragraph as follows:

138 (i) 1.375 percent of the total amount of net terminal income
139 described in this section and in section ten-b of this article shall
140 be deposited into the tourism promotion fund created under
141 section twelve, article two, chapter five-b of this code;

142 (ii) 0.375 percent of the total amount of net terminal
143 income described in this section and in section ten-b of this
144 article shall be deposited into the development office promotion
145 fund created under section three-b, article two, chapter five-b of
146 this code;

147 (iii) 0.5 percent of the total amount of net terminal income
148 described in this section and in section ten-b of this article shall
149 be deposited into the research challenge fund created under
150 section ten, article one-b, chapter eighteen-b of this code;

151 (iv) 0.6875 percent of the total amount of net terminal
152 income described in this section and in section ten-b of this
153 article shall be deposited into the capitol renovation and
154 improvement fund administered by the department of adminis-
155 tration pursuant to section six, article four, chapter five-a of this
156 code; and

157 (v) 0.0625 percent of the total amount of net terminal
158 income described in this section and in section ten-b of this
159 article shall be deposited into the 2004 capitol complex parking
160 garage fund administered by the department of administration
161 pursuant to section five-a, article four, chapter five-a of this
162 code;

163 (9)(A) On and after the first day of July, two thousand five,
164 seven percent of net terminal income shall be deposited into the
165 workers' compensation debt reduction fund created in section
166 five, article two-d, chapter twenty-three of this code: *Provided,*
167 That in any fiscal year when the amount of money generated by
168 this subdivision totals eleven million dollars, all subsequent
169 distributions under this subdivision shall be deposited in the

170 special fund established by the licensee and used for the
171 payment of regular purses in addition to the other amounts
172 provided for in article twenty-three, chapter nineteen of this
173 code;

174 (B) The deposit of the seven percent of net terminal income
175 into the worker's compensation debt reduction fund pursuant to
176 this subdivision shall expire and not be imposed with respect to
177 these funds and shall be deposited in the special fund estab-
178 lished by the licensee and used for payment of regular purses in
179 addition to the other amounts provided for in article twenty-
180 three, chapter nineteen of this code, on and after the first day of
181 the month following the month in which the governor certifies
182 to the legislature that: (i) The revenue bonds issued pursuant to
183 article two-d, chapter twenty-three of this code, have been
184 retired or payment of the debt service provided for, and (ii) that
185 an independent certified actuary has determined that the
186 unfunded liability of the old fund, as defined in chapter twenty-
187 three of this code, has been paid or provided for in its entirety;
188 and

189 (10) The remaining one percent of net terminal income
190 shall be deposited as follows:

191 (A) For the fiscal year beginning the first day of July, two
192 thousand three, the veterans memorial program shall receive
193 one percent of the net terminal income until sufficient moneys
194 have been received to complete the veterans memorial on the
195 grounds of the state capitol complex in Charleston, West
196 Virginia. The moneys shall be deposited in the state treasury in
197 the division of culture and history special fund created under
198 section three, article one-I, chapter twenty-nine of this code:
199 *Provided*, That only after sufficient moneys have been depos-
200 ited in the fund to complete the veterans memorial and to pay
201 in full the annual bonded indebtedness on the veterans memo-
202 rial, not more than twenty thousand dollars of the one percent
203 of net terminal income provided for in this subdivision shall be

204 deposited into a special revenue fund in the state treasury, to be
205 known as the “John F. ‘Jack’ Bennett Fund”. The moneys in
206 this fund shall be expended by the division of veterans affairs
207 to provide for the placement of markers for the graves of
208 veterans in perpetual cemeteries in this state. The division of
209 veterans affairs shall promulgate legislative rules pursuant to
210 the provisions of article three, chapter twenty-nine-a of this
211 code specifying the manner in which the funds are spent,
212 determine the ability of the surviving spouse to pay for the
213 placement of the marker and setting forth the standards to be
214 used to determine the priority in which the veterans grave
215 markers will be placed in the event that there are not sufficient
216 funds to complete the placement of veterans grave markers in
217 any one year, or at all. Upon payment in full of the bonded
218 indebtedness on the veterans memorial, one hundred thousand
219 dollars of the one percent of net terminal income provided for
220 in this subdivision shall be deposited in the special fund in the
221 division of culture and history created under section three,
222 article one-I, chapter twenty-nine of this code and be expended
223 by the division of culture and history to establish a West
224 Virginia veterans memorial archives within the cultural center
225 to serve as a repository for the documents and records pertain-
226 ing to the veterans memorial, to restore and maintain the
227 monuments and memorial on the capitol grounds: *Provided,*
228 *however,* That five hundred thousand dollars of the one percent
229 of net terminal income shall be deposited in the state treasury
230 in a special fund of the department of administration, created
231 under section five, article four, chapter five-a of this code, to be
232 used for construction and maintenance of a parking garage on
233 the state capitol complex; and the remainder of the one percent
234 of net terminal income shall be deposited in equal amounts in
235 the capitol dome and improvements fund created under section
236 two, article four, chapter five-a of this code and cultural
237 facilities and capitol resources matching grant program fund
238 created under section three, article one of this chapter.

239 (B) For each fiscal year beginning after the thirtieth day of
240 June, two thousand four:

241 (i) Five hundred thousand dollars of the one percent of net
242 terminal income shall be deposited in the state treasury in a
243 special fund of the department of administration, created under
244 section five, article four, chapter five-a of this code, to be used
245 for construction and maintenance of a parking garage on the
246 state capitol complex; and

247 (ii) The remainder of the one percent of net terminal
248 income and all of the one percent of net terminal income
249 described in paragraph (B), subdivision (9), subsection (a),
250 section ten-b of this article twenty-two-a shall be distributed as
251 follows: The net terminal income shall be deposited in equal
252 amounts into the capitol dome and capitol improvements fund
253 created under section two, article four, chapter five-a of this
254 code and the cultural facilities and capitol resources matching
255 grant program fund created under section three, article one,
256 chapter twenty-nine of this code until a total of one million five
257 hundred thousand dollars is deposited into the cultural facilities
258 and capitol resources matching grant program fund; thereafter,
259 the remainder shall be deposited into the capitol dome and
260 capitol improvements fund.

261 (d) Each licensed racetrack shall maintain in its account an
262 amount equal to or greater than the gross terminal income from
263 its operation of video lottery machines, to be electronically
264 transferred by the commission on dates established by the
265 commission. Upon a licensed racetrack's failure to maintain
266 this balance, the commission may disable all of a licensed
267 racetrack's video lottery terminals until full payment of all
268 amounts due is made. Interest shall accrue on any unpaid
269 balance at a rate consistent with the amount charged for state
270 income tax delinquency under chapter eleven of this code. The
271 interest shall begin to accrue on the date payment is due to the
272 commission.

273 (e) The commission's central control computer shall keep
274 accurate records of all income generated by each video lottery
275 terminal. The commission shall prepare and mail to the licensed
276 racetrack a statement reflecting the gross terminal income
277 generated by the licensee's video lottery terminals. Each
278 licensed racetrack shall report to the commission any discrepan-
279 cies between the commission's statement and each terminal's
280 mechanical and electronic meter readings. The licensed
281 racetrack is solely responsible for resolving income discrepan-
282 cies between actual money collected and the amount shown on
283 the accounting meters or on the commission's billing statement.

284 (f) Until an accounting discrepancy is resolved in favor of
285 the licensed racetrack, the commission may make no credit
286 adjustments. For any video lottery terminal reflecting a discrep-
287 ancy, the licensed racetrack shall submit to the commission the
288 maintenance log which includes current mechanical meter
289 readings and the audit ticket which contains electronic meter
290 readings generated by the terminal's software. If the meter
291 readings and the commission's records cannot be reconciled,
292 final disposition of the matter shall be determined by the
293 commission. Any accounting discrepancies which cannot be
294 otherwise resolved shall be resolved in favor of the commis-
295 sion.

296 (g) Licensed racetracks shall remit payment by mail if the
297 electronic transfer of funds is not operational or the commission
298 notifies licensed racetracks that remittance by this method is
299 required. The licensed racetracks shall report an amount equal
300 to the total amount of cash inserted into each video lottery
301 terminal operated by a licensee, minus the total value of game
302 credits which are cleared from the video lottery terminal in
303 exchange for winning redemption tickets, and remit the amount
304 as generated from its terminals during the reporting period. The
305 remittance shall be sealed in a properly addressed and stamped
306 envelope and deposited in the United States mail no later than

307 noon on the day when the payment would otherwise be com-
308 pleted through electronic funds transfer.

309 (h) Licensed racetracks may, upon request, receive addi-
310 tional reports of play transactions for their respective video
311 lottery terminals and other marketing information not consid-
312 ered confidential by the commission. The commission may
313 charge a reasonable fee for the cost of producing and mailing
314 any report other than the billing statements.

315 (i) The commission has the right to examine all accounts,
316 bank accounts, financial statements and records in a licensed
317 racetrack's possession, under its control or in which it has an
318 interest and the licensed racetrack shall authorize all third
319 parties in possession or in control of the accounts or records to
320 allow examination of any of those accounts or records by the
321 commission.

ARTICLE 22B. LIMITED VIDEO LOTTERY.

§29-22B-1408. Distribution of state's share of gross terminal income.

1 (a) The state's share of gross terminal income is calculated
2 as follows:

3 (1) The commission shall deposit two percent of gross
4 terminal income into the state lottery fund for the commission's
5 costs and expenses incurred in administering this article. From
6 this amount, not less than one hundred fifty thousand dollars
7 nor more than one million dollars per fiscal year, as determined
8 by the commission each year, shall be transferred to the
9 compulsive gambling treatment fund created in section 29-22A-
10 19 of this chapter. In the event that the percentage allotted
11 under this subsection for the commission's costs and expenses
12 incurred in administering this article generates a surplus, the
13 surplus shall be allowed to accumulate to an amount not to

14 exceed two hundred fifty thousand dollars. On a monthly basis,
15 the director shall report to the joint committee on government
16 and finance of the Legislature any surplus in excess of two
17 hundred fifty thousand dollars and remit to the state treasurer
18 the entire amount of those surplus funds in excess of two
19 hundred fifty thousand dollars to be deposited in the fund
20 established in section 29-22-18a of this chapter: *Provided*, That
21 at the close of each of the fiscal years ending the thirtieth day
22 of June two thousand six, two thousand seven, two thousand
23 eight, two thousand nine, two thousand ten and two thousand
24 eleven, the portion of the two percent allowance for administra-
25 tive expenses provided in this subdivision (1) that remains
26 unspent for costs and expenses incurred in administering this
27 article, not to exceed twenty million dollars in any fiscal year,
28 shall be transferred to the Revenue Center Construction Fund
29 created by subsection (1) of section eighteen, article twenty-two
30 of this chapter for the purpose of constructing a state office
31 building.

32 (2) Gross profits are determined by deducting the percent-
33 age described in subdivision (1) of this subsection, from gross
34 terminal income.

35 (3) The commission shall receive thirty percent of gross
36 profits as defined in subdivision (2) of this subsection except as
37 otherwise provided in this subdivision. On the first day of June,
38 2002, the commission shall calculate the aggregate average
39 daily gross terminal income for all operating video lottery
40 terminals during the preceding three month period. Thereafter,
41 the commission shall make the calculation on the first day of
42 the month preceding the months of October, January, April and
43 July of each year. So long as the aggregate average gross
44 terminal income per day for the operating video lottery termi-
45 nals does not exceed sixty dollars, the commission's share of
46 gross profits shall continue to be thirty percent for the succeed-
47 ing quarter of the year beginning the first day of July. Begin-

48 ning on the first day of July, 2002 and the first days of October,
49 January, April and July in 2002 and thereafter, if the commis-
50 sion's calculation of aggregate average daily gross terminal
51 income per video lottery terminal yields an amount greater than
52 sixty dollars, one of the following schedules apply: If the
53 amount is greater than sixty dollars per day but not greater than
54 eighty dollars per day, the commission's share of gross profits
55 for the ensuing quarter beginning the first day of the quarter of
56 the year described in this subdivision shall be thirty-four
57 percent; if the amount is greater than eighty dollars per day but
58 not greater than one hundred dollars per day, the commission's
59 share of gross profits for the ensuing quarter beginning the first
60 day of the quarter of the year described in this subdivision shall
61 be thirty-eight percent; if the amount is greater than one
62 hundred dollars per day but not greater than one hundred twenty
63 dollars per day, the commission's share of gross profits for the
64 ensuing quarter beginning the first day of the quarter of the year
65 described in this subdivision shall be forty-two percent; if the
66 amount is greater than one hundred twenty dollars per day but
67 not greater than one hundred forty dollars per day, the commis-
68 sion's share of gross profits for the ensuing quarter beginning
69 the first day of the quarter of the year described in this subdivi-
70 sion shall be forty-six percent; if the amount is greater than one
71 hundred forty dollars per day, the commission's share of gross
72 profits for the ensuing quarter beginning the first day of the
73 quarter of the year described in this subdivision shall be fifty
74 percent. This amount shall be known as net terminal income.

75 (b) Net terminal income shall be distributed by the commis-
76 sion as follows:

77 (1)(A) Beginning the first day of July, 2002, a county and
78 the incorporated municipalities within that county shall receive
79 two percent of the net terminal income generated by limited
80 video lottery terminals located within the county;

81 (B) From this two percent of net terminal income, each
82 municipality shall receive a share that bears the same propor-
83 tion to the total two percent of net terminal income as the
84 population of the municipality bears to the total population of
85 the county as determined by the most recent decennial United
86 States census of population, and the county shall receive the
87 remaining portion of the two percent of net terminal income;
88 and

89 (2) Any remaining funds shall be deposited into the state
90 excess lottery revenue fund established in section eighteen-a,
91 article twenty-two of this chapter.

92 (c) The licensed operators and limited video lottery retailers
93 shall receive the balance of gross terminal income remaining
94 after deduction of the state's share as calculated pursuant to this
95 section.

CHAPTER 20

(H. B. 102 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed June 14, 2006; in effect July 1, 2006.]
[Approved by the Governor on June 28, 2006.]

AN ACT to amend and reenact §5A-6-4 of the Code of West Virginia, 1931, as amended, relating to the powers and duties of the Chief Technology Officer; providing for the authority to bill state spending units for evaluations performed and technical assistance provided by the Chief Technology Officer.

Be it enacted by the Legislature of West Virginia:

That §5A-6-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 6. OFFICE OF TECHNOLOGY.

§5A-6-4. Powers and duties of the Chief Technology Officer; generally.

1 (a) With respect to all state spending units the Chief
2 Technology Officer may:

3 (1) Develop an organized approach to information resource
4 management for this state;

5 (2) Provide, with the assistance of the Information Services
6 and Communications Division of the Department of Adminis-
7 tration, technical assistance to the administrators of the various
8 state spending units in the design and management of informa-
9 tion systems;

10 (3) Evaluate, in conjunction with the Information Services
11 and Communications Division, the economic justification,
12 system design and suitability of information equipment and
13 related services, and review and make recommendations on the
14 purchase, lease or acquisition of information equipment and
15 contracts for related services by the state spending units;

16 (4) Develop a mechanism for identifying those instances
17 where systems of paper forms should be replaced by direct use
18 of information equipment and those instances where applicable
19 state or federal standards of accountability demand retention of
20 some paper processes;

21 (5) Develop a mechanism for identifying those instances
22 where information systems should be linked and information
23 shared, while providing for appropriate limitations on access
24 and the security of information;

25 (6) Create new technologies to be used in government,
26 convene conferences and develop incentive packages to
27 encourage the utilization of technology;

28 (7) Engage in any other activities as directed by the
29 Governor;

30 (8) Charge a fee to the state spending units for evaluations
31 performed and technical assistance provided under the provi-
32 sions of this section. All fees collected by the Chief Technol-
33 ogy Officer shall be deposited in a special account in the State
34 Treasury to be known as the Chief Technology Officer Admin-
35 istration Fund. Expenditures from the fund shall be made by the
36 Chief Technology Officer for the purposes set forth in this
37 article and are not authorized from collections but are to be
38 made only in accordance with appropriation by the Legislature
39 and in accordance with the provisions of article three, chapter
40 twelve of this code and upon the fulfillment of the provisions
41 set forth in article two, chapter eleven-b of this code: *Provided,*
42 That the provisions of section eighteen, article two, chapter
43 eleven-b of this code shall not operate to permit expenditures in
44 excess of the spending authority authorized by the Legislature.
45 Amounts collected which are found to exceed the funds needed
46 for purposes set forth in this article may be transferred to other
47 accounts or funds and redesignated for other purposes by
48 appropriation of the Legislature;

49 (9) Monitor trends and advances in information technology
50 and technical infrastructure;

51 (10) Direct the formulation and promulgation of policies,
52 guidelines, standards and specifications for the development
53 and maintenance of information technology and technical
54 infrastructure, including, but not limited to:

55 (A) Standards to support state and local government
56 exchange, acquisition, storage, use, sharing and distribution of
57 electronic information;

58 (B) Standards concerning the development of electronic
59 transactions, including the use of electronic signatures;

60 (C) Standards necessary to support a unified approach to
61 information technology across the totality of state government,
62 thereby assuring that the citizens and businesses of the state
63 receive the greatest possible security, value and convenience
64 from investments made in technology;

65 (D) Guidelines directing the establishment of statewide
66 standards for the efficient exchange of electronic information
67 and technology, including technical infrastructure, between the
68 public and private sectors;

69 (E) Technical and data standards for information technol-
70 ogy and related systems to promote efficiency and uniformity;

71 (F) Technical and data standards for the connectivity,
72 priorities and interoperability of technical infrastructure used
73 for homeland security, public safety and health and systems
74 reliability necessary to provide continuity of government
75 operations in times of disaster or emergency for all state, county
76 and local governmental units; and

77 (G) Technical and data standards for the coordinated
78 development of infrastructure related to deployment of elec-
79 tronic government services among state, county and local
80 governmental units;

81 (11) Periodically evaluate the feasibility of subcontracting
82 information technology resources and services, and to subcon-
83 tract only those resources that are feasible and beneficial to the
84 state;

85 (12) Direct the compilation and maintenance of an inven-
86 tory of information technology and technical infrastructure of
87 the state, including infrastructure and technology of all state,
88 county and local governmental units, which may include

89 personnel, facilities, equipment, goods and contracts for
90 service, wireless tower facilities, geographic information
91 systems and any technical infrastructure or technology that is
92 used for law enforcement, homeland security or emergency
93 services;

94 (13) Develop job descriptions and qualifications necessary
95 to perform duties related to information technology as outlined
96 in this article; and

97 (14) Promulgate legislative rules, in accordance with the
98 provisions of chapter twenty-nine-a of this code, as may be
99 necessary to standardize and make effective the administration
100 of the provisions of article six of this chapter.

101 (b) With respect to executive agencies, the Chief Technol-
102 ogy Officer may:

103 (1) Develop a unified and integrated structure for informa-
104 tion systems for all executive agencies;

105 (2) Establish, based on need and opportunity, priorities and
106 time lines for addressing the information technology require-
107 ments of the various executive agencies of state government;

108 (3) Exercise authority delegated by the Governor by
109 executive order to overrule and supersede decisions made by
110 the administrators of the various executive agencies of govern-
111 ment with respect to the design and management of information
112 systems and the purchase, lease or acquisition of information
113 equipment and contracts for related services;

114 (4) Draw upon staff of other executive agencies for advice
115 and assistance in the formulation and implementation of
116 administrative and operational plans and policies; and

117 (5) Recommend to the Governor transfers of equipment and
118 human resources from any executive agency and the most

119 effective and efficient uses of the fiscal resources of executive
120 agencies, to consolidate or centralize information-processing
121 operations.

122 (c) The Chief Technology Officer may employ the person-
123 nel necessary to carry out the work of the Office of Technology
124 and may approve reimbursement of costs incurred by employ-
125 ees to obtain education and training.

126 (d) The Chief Technology Officer shall develop a compre-
127 hensive, statewide, four-year strategic information technology
128 and technical infrastructure policy and development plan to be
129 submitted to the Governor and the Joint Committee on Govern-
130 ment and Finance. A preliminary plan shall be submitted by the
131 first day of December, two thousand six, and the final plan shall
132 be submitted by the first day of June, two thousand seven. The
133 plan shall include, but not be limited to:

134 (A) A discussion of specific projects to implement the plan;

135 (B) A discussion of the acquisition, management and use of
136 information technology by state agencies;

137 (C) A discussion of connectivity, priorities and
138 interoperability of the state's technical infrastructure with the
139 technical infrastructure of political subdivisions and encourag-
140 ing the coordinated development of facilities and services
141 regarding homeland security, law enforcement and emergency
142 services to provide for the continuity of government operations
143 in times of disaster or emergency;

144 (D) A discussion identifying potential market demand areas
145 in which expanded resources and technical infrastructure may
146 be expected;

147 (E) A discussion of technical infrastructure as it relates to
148 higher education and health;

149 (F) A discussion of the use of public-private partnerships in
150 the development of technical infrastructure and technology
151 services; and

152 (G) A discussion of coordinated initiatives in website
153 architecture and technical infrastructure to modernize and
154 improve government to citizen services, government to business
155 services, government to government relations and internal
156 efficiency and effectiveness of services, including a discussion
157 of common technical data standards and common portals to be
158 utilized by state, county and local governmental units.

159 (e) The Chief Technology Officer shall oversee telecommu-
160 nications services used by state spending units for the purpose
161 of maximizing efficiency to the fullest possible extent. The
162 Chief Technology Officer shall establish microwave or other
163 networks and LATA hops; audit telecommunications services
164 and usage; recommend and develop strategies for the discon-
165 tinuance of obsolete or excessive utilization; participate in the
166 renegotiation of telecommunications contracts; and encourage
167 the use of technology and take other actions necessary to
168 provide the greatest value to the state.

CHAPTER 21

(H.B.104 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed June 14, 2006; in effect from passage.]
[Approved by the Governor on June 28, 2006.]

AN ACT to amend and reenact §36-8-13 of the Code of West Virginia, 1931, as amended, relating to unclaimed property;

increasing the maximum amount that may be transferred from the Unclaimed Property Trust Fund to the Prepaid Tuition Escrow Fund to one million dollars annually.

Be it enacted by the Legislature of West Virginia:

That §36-8-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 8. THE UNIFORM UNCLAIMED PROPERTY ACT.

§36-8-13. Deposit of funds.

1 (a) The administrator shall record the name and last known
2 address of each person appearing from the holders reports to be
3 entitled to the property and the name and last known address of
4 each insured person or annuitant and beneficiary and with
5 respect to each policy or annuity listed in the report of an
6 insurance company, its number, the name of the company and
7 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
12 this article. In addition to paying claims of unclaimed property
13 duly allowed, the administrator may deduct the following
14 expenses from the Unclaimed Property Fund:

15 (1) Expenses of the sale of abandoned property;

16 (2) Expenses incurred in returning the property to owners,
17 including without limitation the costs of mailing and publica-
18 tion 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 within
23 the State Treasury. After deducting the expenses specified in
24 subsection (b) of this section and maintaining a sum of money
25 from which to pay claims duly allowed, the administrator shall
26 transfer the remaining moneys in the Unclaimed Property Fund
27 to the Unclaimed Property Trust Fund.

28 (d) On or before the fifteenth day of December of each year
29 and after receipt of a report from the Chairman of the Board of
30 Trustees of the West Virginia College Prepaid Tuition and
31 Savings Program stating the amount certified by an actuary in
32 accordance with the provisions of section six, article thirty,
33 chapter eighteen of this code, notwithstanding any provision of
34 this code to the contrary, the administrator shall transfer the
35 sum of money certified by the actuary from the Unclaimed
36 Property Trust Fund to the Prepaid Tuition Trust Escrow Fund,
37 the amount transferred not to exceed one million dollars
38 annually.

39 (e) After transferring any money required by subsection (d)
40 of this section, the administrator shall transfer moneys remain-
41 ing in the Unclaimed Property Trust Fund to the General
42 Revenue Fund.

CHAPTER 22

(H. B. 107 — By Delegate Wysong)

[Passed June 14, 2006; in effect from passage.]

[Approved by the Governor on June 28, 2006.]

AN ACT to authorize the Jefferson County Parks and Recreation Commission to transfer ownership of certain properties owned by the Commission.

Be it enacted by the Legislature of West Virginia:

§1. JEFFERSON COUNTY PARKS AND RECREATION COMMISSION.

1 (a) The Jefferson County Parks and Recreation Commission
2 is authorized to convey ownership of any or all of the parcel or
3 parcels of land constituting Evitts Run Park, which is located
4 within the city limits of the city of Charles Town, to the city of
5 Charles Town, West Virginia.

6 (b) The Jefferson County Parks and Recreation Commis-
7 sion is further authorized to convey ownership to the Blue
8 Ridge Mountain Volunteer Fire Department for the purpose of
9 locating a new fire station for use by the fire department, any
10 portion of the parcel of land conveyed to the Commission by C
11 & R Development, L.L.C., described as “Parcel A, containing
12 10.99970 acres as the same is described on a plat entitled ‘Final
13 Plat Mission Ridge’ made by William H. Gordon Associated
14 Inc. dated February 24, 2006,” as recorded in the Office of the
15 Clerk of the County Commission of Jefferson County, West
16 Virginia, and conveyed to the Commission on the twelfth day
17 of April, two thousand six.

LEGISLATURE OF WEST VIRGINIA

ACTS

FOURTH EXTRAORDINARY SESSION, 2005

CHAPTER 1

**(Com. Sub. for H. B. 414 — By Mr. Speaker,
Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed September 13, 2005; in effect from passage.]

[Approved by the Governor on September 19, 2005.]

AN ACT supplementing and amending chapter sixteen, Acts of the Legislature, regular session, two thousand five, as amended known as the budget bill, all supplementing and amending the appropriations, as specified herein, with all necessary adjustments of increase, (all other items and language of appropriations of such funds, as set forth in the budget bill, to remain unchanged and unaffected), and new appropriations provided for by this legislation for the fiscal year ending the thirtieth day of June, two thousand six.

WHEREAS, The Governor submitted to the Legislature a statement of the state fund, general revenue, dated the seventh day of September, two thousand five, setting forth therein the cash balance as of the first day of July, two thousand five; and further included the estimate of revenues for the fiscal year 2006 less net appropriation balances forwarded and regular appropriations for fiscal year 2006; and

WHEREAS, It appears from the Governor's statement of the state fund - general revenue there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand six; and

WHEREAS, The Governor submitted to the legislature a statement of the state road fund, dated the seventh day of September, two thousand five, setting forth therein the cash balance as of the first day of July, two thousand five, and further included the estimate of revenues for the fiscal year two thousand six, less regular appropriations for the fiscal year two thousand six; and

WHEREAS, It appears from the governor's statement of the state road fund there now remains an unappropriated balance which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand six; and

WHEREAS, The Governor has established that there now remains an unappropriated balance in various other funds as specified herein, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand six; and

WHEREAS, The Governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand six, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

2308		APPROPRIATIONS		[Ch. 1
6				General
7				Revenue
8			Activity	Fund
9	1	Personal Services (R)	001	\$ 555,750
10		EXECUTIVE		
11		<i>5—Governor’s Office</i>		
12		(WV Code Chapter 5)		
13		Fund <u>0101</u> FY <u>2006</u> Org <u>0100</u>		
14	1	Personal Services	001	\$ 29,004
15	9	Pharmaceutical Cost		
16	10	Management Council	796	1,200
17		<i>6—Governor’s Office—</i>		
18		<i>Custodial Fund</i>		
19		(WV Code Chapter 5)		
20		Fund <u>0102</u> FY <u>2006</u> Org <u>0100</u>		
21	1	Unclassified—Total (R)	096	\$ 2,670
22		<i>8—Auditor’s Office—</i>		
23		<i>General Administration</i>		
24		(WV Code Chapter 12)		
25		Fund <u>0116</u> FY <u>2006</u> Org <u>1200</u>		
26	1	Personal Services	001	\$ 34,728

Ch. 1]	APPROPRIATIONS	2309
27	<i>9—Treasurer’s Office</i>	
28	(WV Code Chapter 12)	
29	Fund <u>0126</u> FY <u>2006</u> Org <u>1300</u>	
30	1 Personal Services 001	\$ 20,790
31	6 Abandoned Property Program 118	2,700
32	7 Tuition Trust Fund (R) 692	900
33	<i>10—Department of Agriculture</i>	
34	(WV Code Chapter 19)	
35	Fund <u>0131</u> FY <u>2006</u> Org <u>1400</u>	
36	1 Personal Services 001	\$ 65,298
37	5 Animal Identification Program 039	630
38	8 Gypsy Moth Program (R). 119	14,058
39	10 Black Fly Control (R) 137	600
40	14 Microbiology Program (R) 785	1,200
41	15 Moorefield Agriculture Center (R) . . 786	9,000
42	18 Logan Farmers Market 501	600
43	<i>11—West Virginia Conservation Agency</i>	
44	(WV Code Chapter 19)	
45	Fund <u>0132</u> FY <u>2006</u> Org <u>1400</u>	
46	1 Personal Services 001	\$ 8,400
47	5 Soil Conservation Projects (R) 120	13,728
48	6 Maintenance of Flood	
49	7 Control Projects (R) 522	19,200
50	<i>12—Department of Agriculture—</i>	
51	<i>Meat Inspection</i>	

2310 APPROPRIATIONS [Ch. 1

52 (WV Code Chapter 19)

53 Fund 0135 FY 2006 Org 1400

54 1 Unclassified-Total 096 \$ 11,700

55 *14—Attorney General*

56 (WV Code Chapters 5, 14, 46A and 47)

57 Fund 0150 FY 2006 Org 1500

58 1 Personal Services (R) 001 \$ 90,342

59 6 Better Government Bureau 740 1,992

60 *15—Secretary of State*

61 (WV Code Chapters 3, 5 and 59)

62 Fund 0155 FY 2006 Org 1600

63 1 Personal Services 001 \$ 13,380

64 **DEPARTMENT OF ADMINISTRATION**

65 *17—Department of Administration—*

66 *Office of the Secretary*

67 (WV Code Chapter 5F)

68 Fund 0186 FY 2006 Org 0201

69 1 Unclassified 099 \$ 1,308

70 *19—Division of Finance*

71 (WV Code Chapter 5A)

72 Fund 0203 FY 2006 Org 0209

Ch. 1]		APPROPRIATIONS		2311
73	1	Personal Services	001	\$ 780
74	5	GAAP Project (R)	125	3,960
75		<i>20—Division of General Services</i>		
76		(WV Code Chapter 5A)		
77		Fund <u>0230</u> FY <u>2006</u> Org <u>0211</u>		
78	1	Personal Services	001	\$ 13,338
79		<i>21-Division of Purchasing</i>		
80		(WV Code Chapter 5A)		
81		Fund <u>0210</u> FY <u>2006</u> Org <u>0213</u>		
82	1	Personal Services	001	\$ 9,750
83		<i>23-Education and State Employees' Grievance Board</i>		
84		(WV Code Chapter 18)		
85		Fund <u>0220</u> FY <u>2006</u> Org <u>0219</u>		
86	1	Personal Services	001	\$ 5,430
87		<i>24-Ethics Commission</i>		
88		(WV Code Chapter 6B)		
89		Fund <u>0223</u> FY <u>2006</u> Org <u>0220</u>		
90	1	Unclassified	099	\$ 2,430
91		<i>25-Public Defender Services</i>		
92		(WV Code Chapter 29)		

2312		APPROPRIATIONS		[Ch. 1
93		Fund <u>0226</u> FY <u>2006</u> Org <u>0221</u>		
94	1	Personal Services	001	\$ 7,800
95		<i>28-West Virginia Prosecuting Attorneys Institute</i>		
96		Fund <u>0557</u> FY <u>2006</u> Org <u>0228</u>		
97	1	Forensic Medical Examinations (R) .	683	\$ 654
98	2	Federal Funds/Grant Match (R)	749	600
99		<i>29-Children's Health Insurance Agency</i>		
100		(WV Code Chapter 5)		
101		Fund <u>0588</u> FY <u>2006</u> Org <u>0230</u>		
102	1	Unclassified-Total (R)	096	\$ 1,200
103		DEPARTMENT OF COMMERCE		
104		<i>29a-West Virginia Development Office-</i>		
105		<i>Division of Tourism</i>		
106		(WV Code Chapter 5B)		
107		Fund <u>0246</u> FY <u>2006</u> Org <u>0304</u>		
108	1	Tourism - Unclassified	662	\$ 43,140
109		<i>30-Division of Forestry</i>		
110		(WV Code Chapter 19)		
111		Fund <u>0250</u> FY <u>2006</u> Org <u>0305</u>		
112	1	Personal Services	001	\$ 31,200

Ch. 1]		APPROPRIATIONS		2313
113		<i>31-Department of Commerce-</i>		
114		<i>Office of the Secretary</i>		
115		(WV Code Chapter 19)		
116		Fund <u>0606</u> FY <u>2006</u> Org <u>0327</u>		
117	1	Unclassified-Total	096	\$ 1,200
118		<i>32-Geological and Economic Survey</i>		
119		(WV Code Chapter 29)		
120		Fund <u>0253</u> FY <u>2006</u> Org <u>0306</u>		
121	1	Personal Services	001	\$ 19,734
122	5	Mineral Mapping System (R)	207	9,222
123		<i>33-West Virginia Development Office</i>		
124		(WV Code Chapter 5B)		
125		Fund <u>0256</u> FY <u>2006</u> Org <u>0307</u>		
126	1	Personal Services	001	\$ 24,546
127	8	Partnership Grants (R)	131	1,200
128	17	Small Business Financial Assistance (R)	360	5,328
129	28	Leverage Technology and Small		
130	29	Business Development Program (R)	525	5,916
131	33	Small Business Work Force (R)	735	1,200
132		<i>34-Division of Labor</i>		
133		(WV Code Chapters 21 and 47)		
134		Fund <u>0260</u> FY <u>2006</u> Org <u>0308</u>		
135	1	Personal Services	001	\$ 30,258

2314		APPROPRIATIONS		[Ch. 1
136		<i>35-Division of Natural Resources</i>		
137		(WV Code Chapter 20)		
138		Fund <u>0265</u> FY <u>2006</u> Org <u>0310</u>		
139	1	Personal Services	001	\$ 183,348
140	7	Litter Control Conservation Officers	564	1,800
141	8	Upper Mud River Flood Control	654	1,200
142	9	Law Enforcement	806	12,300
143		<i>36-Division of Miners' Health, Safety and Training</i>		
144		(WV Code Chapter 22)		
145		Fund <u>0277</u> FY <u>2006</u> Org <u>0314</u>		
146	1	Personal Services	001	\$ 54,600
147		<i>37-Board of Coal Mine Health and Safety</i>		
148		(WV Code Chapter 22)		
149		Fund <u>0280</u> FY <u>2006</u> Org <u>0319</u>		
150	1	Personal Services	001	\$ 1,200
151		DEPARTMENT OF EDUCATION		
152		<i>39-State Department of Education-</i>		
153		<i>School Lunch Program</i>		
154		(WV Code Chapters 18 and 18A)		
155		Fund <u>0303</u> FY <u>2006</u> Org <u>0402</u>		
156	1	Personal Services	001	\$ 4,307

2316 APPROPRIATIONS [Ch. 1

181 (WV Code Chapters 18 and 18A)

182 Fund 0317 FY 2006 Org 0402

183	1	Other Current Expenses	022	\$ 4,319,702
184	2	Professional Educators	151	26,280,044
185	3	Service Personnel	152	8,277,566
186	4	Fixed Charges	153	3,165,477
187	13	Teachers' Retirement System	019	5,183,642

188 *44-State Board of Education-*

189 *Vocational Division*

190 (WV Code Chapters 18 and 18A)

191 Fund 0390 FY 2006 Org 0402

192	1	Personal Services	001	\$ 16,092
193	8	Vocational Aid	148	246,808
194	9	Adult Basic Education	149	74,906
195	11	Technical and Secondary Program		
196	12	Improvement Staff	330	2,138
197	13	GED Testing	339	3,524
198	14	Aquaculture Support	769	783

199 *45-State Board of Education-*

200 *Division of Educational Performance Audits*

201 (WV Code Chapters 18 and 18A)

202 Fund 0573 FY 2006 Org 0402

203	1	Personal Services	001	\$ 5,873
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204 *46-West Virginia Schools for the Deaf and the Blind*

205 (WV Code Chapters 18 and 18A)

2318 APPROPRIATIONS [Ch. 1

227 Fund 0300 FY 2006 Org 0439

228 1 Personal Services 001 \$ 52,800

229 *51-State Board of Rehabilitation-*

230 *Division of Rehabilitation Services*

231 (WV Code Chapter 18)

232 Fund 0310 FY 2006 Org 0932

233 1 Personal Services 001 \$ 141,244

234 **DEPARTMENT OF ENVIRONMENTAL**
235 **PROTECTION**

236 *52-Environmental Quality Board*

237 (WV Code Chapter 20)

238 Fund 0270 FY 2006 Org 0311

239 1 Personal Services 001 \$ 600

240 *53-Division of Environmental Protection*

241 (WV Code Chapter 22)

242 Fund 0273 FY 2006 Org 0313

243 1 Personal Services 001 \$ 41,412

244 11 Dam Safety 607 1,200

245 12 Office of Water Resources

246 13 Non-Enforcement Activity 855 11,820

247 *54-Air Quality Board*

248 (WV Code Chapter 16)

Ch. 1]		APPROPRIATIONS	2319
249		Fund <u>0550</u> FY <u>2006</u> Org <u>0325</u>	
250	1	Unclassified 099	\$ 600
251		DEPARTMENT OF HEALTH AND	
252		HUMAN RESOURCES	
253		<i>55-Department of Health and Human Resources-</i>	
254		<i>Office of the Secretary</i>	
255		(WV Code Chapter 5F)	
256		Fund <u>0400</u> FY <u>2006</u> Org <u>0501</u>	
257	1	Unclassified-Total 096	\$ 792
258		<i>56-Division of Health-</i>	
259		<i>Central Office</i>	
260		(WV Code Chapter 16)	
261		Fund <u>0407</u> FY <u>2006</u> Org <u>0506</u>	
262	1	Personal Services 001	\$ 110,214
263	4	Level 1, 2 and 3 Trauma Centers . . . 013	3,900
264	5	Chief Medical Examiner 045	18,000
265	7	Safe Drinking Water Program 187	7,800
266	9	Basic Public Health Services Support 212	6,150
267	11	Cancer Registry 225	3,342
268	13	State EMS Technical Assistance 379	6,000
269	14	EMS Program for Children 381	300
270	15	Statewide EMS Program Support . . . 383	4,500
271	21	Vaccine for Children 551	1,650
272	23	Tuberculosis Control 553	720
273	25	Maternal and Child Health Clinics,	
274	26	Clinicians and Medical Contracts	
275	27	and Fees (R) 575	5,700

2320		APPROPRIATIONS		[Ch. 1
276	28	Epidemiology Support	626	3,630
277	29	Primary Care Support	628	7,275
278	30	State Aid to Local Health Departments	702	500,000
279	32	Osteoporosis Prevention Fund	729	1,230
280		<i>57-Consolidated Medical Service Fund</i>		
281		(WV Code Chapter 16)		
282		Fund <u>0525</u> FY <u>2006</u> Org <u>0506</u>		
283	1	Personal Services	001	\$ 10,500
284	8	Institutional Facilities Operations . . .	335	692,010
285		<i>59-Human Rights Commission</i>		
286		(WV Code Chapter 5)		
287		Fund <u>0416</u> FY <u>2006</u> Org <u>0510</u>		
288	1	Personal Services	001	\$ 14,700
289		<i>60-Division of Human Services</i>		
290		(WV Code Chapters 9, 48 and 49)		
291		Fund <u>0403</u> FY <u>2006</u> Org <u>0511</u>		
292	1	Personal Services	001	\$ 507,873
293	5	Child Care Development	144	4,500
294	6	Medical Services Contracts and Office		
295	7	of Managed Care	183	3,150
296	16	Child Protective Services Case Workers	468	224,826
297	18	OSCAR and RAPIDS	515	6,375
298	21	Child Welfare System	603	15,000
299	22	Commission for the Deaf and		
300	23	Hard of Hearing	704	2,400
301	25	Medicaid Auditing	706	6,150

2322		APPROPRIATIONS		[Ch. 1
323		<i>66-Division of Corrections-</i>		
324		<i>Central Office</i>		
325		(WV Code Chapters 25, 28, 49 and 62)		
326		Fund <u>0446</u> FY <u>2006</u> Org <u>0608</u>		
327	1	Personal Services	001	\$ 5,880
328		<i>67-Division of Corrections-</i>		
329		<i>Correctional Units</i>		
330		(WV Code Chapters 25, 28, 49 and 62)		
331		Fund <u>0450</u> FY <u>2006</u> Org <u>0608</u>		
332	3	Charleston Work Release	456	\$ 15,300
333	4	Beckley Correctional Center	490	15,300
334	5	Huntington Work Release	495	13,200
335	6	Anthony Center	504	67,080
336	7	Huttonsville Correctional Center . . .	514	220,620
337	8	Northern Correctional Facility	534	93,030
338	10	Pruntytown Correctional Center	543	94,530
339	13	Corrections Academy	569	14,400
340	14	Martinsburg Correctional Center . . .	663	30,912
341	15	Parole Services	686	32,286
342	16	Special Services	687	21,480
343	18	St. Mary's Correctional Facility	881	178,008
344	19	Denmar Correctional Facility	882	61,530
345	20	Ohio County Correctional Facility . .	883	21,900
346	21	Mt. Olive Correctional Facility	888	250,020
347	22	Lakin Correctional Facility	896	102,930
348		<i>68-West Virginia State Police</i>		
349		(WV Code Chapter 15)		

2324 APPROPRIATIONS [Ch. 1

373 1 Personal Services 001 \$ 4,119
374 6 Statistical Analysis Program 597 414

375 *73-Division of Juvenile Services*

376 (WV Code Chapter 49)

377 Fund 0570 FY 2006 Org 0621

378 1 Robert L. Shell Juvenile Center (R) . 267 \$ 24,900
379 2 Central Office (R) 701 19,200
380 3 Southern WV Youth Diagnostic Center 792 36,300
381 4 Gene Spadaro Juvenile Center 793 31,200
382 6 WV Industrial Home for Youth (R) . 979 176,100
383 7 Davis Center (R) 980 33,900
384 8 Eastern Regional Juvenile Center (R) 981 15,900
385 10 North Central Regional Juvenile
386 11 Center (R) 983 27,000
387 12 Southern Regional Juvenile Center (R) . 984 29,700
388 13 Tiger Morton Center (R) 985 29,400
389 14 Donald R. Kuhn Juvenile Center (R) 986 30,600
390 15 J.M. "Chick" Buckbee
391 16 Juvenile Center (R) 987 25,500
392 17 Salem Canine (R) 988 1,800
393 18 Davis Canine (R) 989 1,500
394 19 The Academy (R) 990 600

395 *74-Division of Protective Services*

396 (WV Code Chapter 5F)

397 Fund 0585 FY 2006 Org 0622

398 1 Personal Services 001 \$ 23,400

399 **DEPARTMENT OF REVENUE**

400 *75-Office of the Secretary*

Ch. 1]	APPROPRIATIONS	2325
401	(WV Code Chapter 11)	
402	Fund <u>0465</u> FY <u>2006</u> Org <u>0701</u>	
403	1 Unclassified-Total (R) 096	\$ 3,000
404	<i>76-Tax Division</i>	
405	(WV Code Chapter 11)	
406	Fund <u>0470</u> FY <u>2006</u> Org <u>0702</u>	
407	1 Personal Services (R) 001	\$ 277,800
408	<i>77-State Budget Office</i>	
409	(WV Code Chapter 11B)	
410	Fund <u>0595</u> FY <u>2006</u> Org <u>0703</u>	
411	1 Unclassified 099	\$ 6,000
412	<i>78-West Virginia Office of Tax Appeals</i>	
413	(WV Code Chapter 11)	
414	Fund <u>0593</u> FY <u>2006</u> Org <u>0709</u>	
415	1 Unclassified-Total (R) 096	\$ 6,000
416	DEPARTMENT OF TRANSPORTATION	
417	<i>80-State Rail Authority</i>	
418	(WV Code Chapter 29)	
419	Fund <u>0506</u> FY <u>2006</u> Org <u>0804</u>	
420	1 Unclassified 099	\$ 2,700

2326		APPROPRIATIONS		[Ch. 1
421		<i>82-Public Port Authority</i>		
422		(WV Code Chapter 17)		
423		Fund <u>0581</u> FY <u>2006</u> Org <u>0806</u>		
424	1	Unclassified (R)	099	\$ 1,200
425		<i>83-Aeronautics Commission</i>		
426		(WV Code Chapter 29)		
427		Fund <u>0582</u> FY <u>2006</u> Org <u>0807</u>		
428	1	Unclassified (R)	099	\$ 1,200
429		BUREAU OF SENIOR SERVICES		
430		<i>84-Bureau of Senior Services</i>		
431		(WV Code Chapter 29)		
432		Fund <u>0420</u> FY <u>2006</u> Org <u>0508</u>		
433	1	Personal Services	001	\$ 1,953
434		HIGHER EDUCATION		
435		<i>85-West Virginia Council for</i>		
436		<i>Community and Technical College Education-</i>		
437		<i>Control Account</i>		
438		(WV Code Chapter 18B)		
439		Fund <u>0596</u> FY <u>2006</u> Org <u>0420</u>		
440	1	New River Community and Technical College		
441	2	of Bluefield State College	358	\$ 29,964

2328 APPROPRIATIONS [Ch. 1

472 87-Higher Education Policy Commission-

473 System-

474 Control Account

475 (WV Code Chapter 18B)

476 Fund 0586 FY 2006 Org 0442

477	1	WVU School of Health Science -		
478	2	Eastern Division	056	\$ 4,338
479	2a	School of Osteopathic Medicine	172	58,830
480	3	Marshall Medical School	173	106,410
481	4	WVU—School of Health Sciences . .	174	75,774
482	5	WVU School of Health Sciences -		
483	6	Charleston Division	175	17,670
484	7	Primary Health Education Medical School		
485	8	Program Support (R)	177	12,330
486	9	Bluefield State College	408	42,408
487	10	Concord University	410	80,730
488	11	Fairmont State University	414	106,122
489	12	Glenville State College	428	57,846
490	13	Shepherd University	432	79,224
491	14	West Liberty State College	439	80,148
492	15	West Virginia State University	441	95,220
493	16	Marshall University	448	391,272
494	19	West Virginia University	459	1,120,758
495	22	West Virginia University Institute		
496	23	for Technology	479	36,684
497	24	West Virginia University—		
498	25	Potomac State	994	43,644

499 The increased appropriations shall be used solely for
500 salary increases.

1 **Sec. 2. Appropriations from state road fund.**

2 **DEPARTMENT OF TRANSPORTATION**

3 *90-Division of Motor Vehicles*

4 (WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)

5 Fund 9007 FY 2006 Org 0802

6			State
7			Road
8		Activity	Fund

9	1	Personal Services	001	\$ 445,950
10	3	Employee Benefits	010	80,940

11 *91-Division of Highways*

12 (WV Code Chapters 17 and 17C)

13 Fund 9017 FY 2006 Org 0803

14	14	PSC Weight Enforcement	345	67,530
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1 **Sec. 3. Appropriations from other funds.**

2 **EXECUTIVE**

3 *94-Auditor's Office-*

4 *Land Operating Fund*

5 (WV Code Chapters 11A, 12 and 36)

6 Fund 1206 FY 2006 Org 1200

7				Other
8			Activity	Funds

9	1	Personal Services	001	\$ 6,786
10	3	Employee Benefits	010	1,232

2330		APPROPRIATIONS		[Ch. 1
11		<i>95-Auditor's Office-</i>		
12		<i>Securities Regulation Fund</i>		
13		(WV Code Chapter 32)		
14		Fund <u>1225</u> FY <u>2006</u> Org <u>1200</u>		
15	1	Personal Services	001	\$ 22,059
16	3	Employee Benefits	010	4,004
17		<i>97-Auditor's Office-</i>		
18		<i>Purchasing Card Administration Fund</i>		
19		(WV Code Chapter 12)		
20		Fund <u>1234</u> FY <u>2006</u> Org <u>1200</u>		
21	1	Unclassified-Total	096	\$ 9,571
22		<i>98-Auditor's Office-</i>		
23		<i>Office of the Chief Inspector</i>		
24		(WV Code Chapter 6)		
25		Fund <u>1235</u> FY <u>2006</u> Org <u>1200</u>		
26	1	Personal Services	001	\$ 37,863
27	3	Employee Benefits	010	6,873
28		<i>100-Department of Agriculture-</i>		
29		<i>Agriculture Fees Fund</i>		
30		(WV Code Chapter 19)		
31		Fund <u>1401</u> FY <u>2006</u> Org <u>1400</u>		

Ch. 1]		APPROPRIATIONS		2331
32	1	Personal Services	001	\$ 24,300
33	3	Employee Benefits	010	4,411
34		<i>101-Department of Agriculture-</i>		
35		<i>West Virginia Rural Rehabilitation Program</i>		
36		(WV Code Chapter 19)		
37		Fund <u>1408</u> FY <u>2006</u> Org <u>1400</u>		
38	1	Personal Services	001	\$ 900
39	3	Employee Benefits	010	164
40		<i>103-Department of Agriculture-</i>		
41		<i>Farm Operating Fund</i>		
42		(WV Code Chapter 19)		
43		Fund <u>1412</u> FY <u>2006</u> Org <u>1400</u>		
44	1	Unclassified-Total	096	\$ 3,191
45		<i>104-Department of Agriculture-</i>		
46		<i>Donated Food Fund</i>		
47		(WV Code Chapter 19)		
48		Fund <u>1446</u> FY <u>2006</u> Org <u>1400</u>		
49	1	Unclassified-Total	096	\$ 22,331
50		<i>105-Attorney General-</i>		
51		<i>Antitrust Enforcement</i>		
52		(WV Code Chapter 47)		
53		Fund <u>1507</u> FY <u>2006</u> Org <u>1500</u>		

2332 APPROPRIATIONS [Ch. 1

54	1	Personal Services	001	\$	2,718
55	3	Employee Benefits	010		494

56 *106-Attorney General-*

57 *Preneed Funeral Regulation Fund*

58 (WV Code Chapter 47)

59 Fund 1513 FY 2006 Org 1500

60	1	Unclassified-Total	096	\$	3,839
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61 *108-Secretary of State-*

62 *Service Fees and Collection Account*

63 (WV Code Chapters 3, 5, and 59)

64 Fund 1612 FY 2006 Org 1600

65	1	Personal Services	001	\$	26,100
66	3	Employee Benefits	010		4,738

67 **DEPARTMENT OF ADMINISTRATION**

68 *110-Office of the Secretary-*

69 *Tobacco Settlement Fund*

70 (WV Code Chapter 4)

71 Fund 2041 FY 2006 Org 0201

72	1	Tobacco Settlement Fund-Transfer . .	902	\$	529,336
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73 *111-Division of Information Services and Communications*

74 (WV Code Chapter 5A)

75 Fund 2220 FY 2006 Org 0210

Ch. 1]		APPROPRIATIONS	2333
76	1	Personal Services	001 \$ 202,491
77	3	Employee Benefits	010 36,753
78		<i>112-Division of Personnel</i>	
79		(WV Code Chapter 29)	
80		Fund <u>2440</u> FY <u>2006</u> Org <u>0222</u>	
81	1	Personal Services	001 \$ 58,320
82	3	Employee Benefits	010 10,586
83		<i>113-WV Prosecuting Attorneys Institute</i>	
84		(WV Code Chapter 7)	
85		Fund <u>2521</u> FY <u>2006</u> Org <u>0228</u>	
86	1	Unclassified-Total (R)	096 \$ 3,350
87		<i>113a-Chief Technology Officer Administration Fund</i>	
88		(WV Code Chapter 5)	
89		Fund <u>2531</u> FY <u>2006</u> Org <u>0231</u>	
90	1	Unclassified	099 \$ 7,444
91		DEPARTMENT OF COMMERCE	
92		<i>114-Division of Forestry</i>	
93		(WV Code Chapter 19)	
94		Fund <u>3081</u> FY <u>2006</u> Org <u>0305</u>	
95	1	Personal Services	001 \$ 6,075
96	3	Employee Benefits	010 1,103

2334		APPROPRIATIONS		[Ch. 1
97		<i>116-Division of Forestry-</i>		
98		<i>Severance Tax Operations</i>		
99		(WV Code Chapter 11)		
100		Fund <u>3084</u> FY <u>2006</u> Org <u>0305</u>		
101	1	Unclassified-Total	096	\$ 36,154
102		<i>117-Geological and Economic Survey</i>		
103		(WV Code Chapter 29)		
104		Fund <u>3100</u> FY <u>2006</u> Org <u>0306</u>		
105	1	Personal Services	001	\$ 662
106	3	Employee Benefits	010	121
107		<i>119-West Virginia Development Office-</i>		
108		<i>Office of Coal Field Community Development</i>		
109		(WV Code Chapter 5B)		
110		Fund <u>3162</u> FY <u>2006</u> Org <u>0307</u>		
111	1	Unclassified-Total (R)	096	\$ 4,254
112		<i>120-Division of Labor-</i>		
113		<i>Contractor Licensing Board Fund</i>		
114		(WV Code Chapter 21)		
115		Fund <u>3187</u> FY <u>2006</u> Org <u>0308</u>		
116	1	Personal Services	001	\$ 24,188
117	3	Employee Benefits	010	4,391

Ch. 1]		APPROPRIATIONS		2335
118		<i>121-Division of Labor-</i>		
119		<i>Elevator Safety Act</i>		
120		(WV Code Chapter 21)		
121		Fund <u>3188</u> FY <u>2006</u> Org <u>0308</u>		
122	1	Personal Services	001	\$ 1,125
123	3	Employee Benefits	010	205
124		<i>122-Division of Labor-</i>		
125		<i>Crane Operator Certification Fund</i>		
126		(WV Code Chapter 21)		
127		Fund <u>3191</u> FY <u>2006</u> Org <u>0308</u>		
128	1	Unclassified-Total	096	\$ 1,941
129		<i>123-Division of Labor-</i>		
130		<i>Amusement Rides and Amusement Attraction Safety Fund</i>		
131		(WV Code Chapter 21)		
132		Fund <u>3192</u> FY <u>2006</u> Org <u>0308</u>		
133	1	Unclassified-Total	096	\$ 1,037
134		<i>124-Division of Natural Resources</i>		
135		(WV Code Chapter 20)		
136		Fund <u>3200</u> FY <u>2006</u> Org <u>0310</u>		
137	1	Wildlife Resources	023	\$ 92,103
138	2	Administration	155	9,985

2336		APPROPRIATIONS		[Ch. 1
139	3	Capital Improvements and		
140	4	Land Purchase (R)	248	4,254
141	5	Law Enforcement	806	145,993
142		<i>126-Division of Natural Resources-</i>		
143		<i>Nongame Fund</i>		
144		(WV Code Chapter 20)		
145		Fund <u>3203</u> FY <u>2006</u> Org <u>0310</u>		
146	1	Personal Services	001	\$ 3,600
147	3	Employee Benefits	010	654
148		<i>127-Division of Natural Resources-</i>		
149		<i>Planning and Development Division</i>		
150		(WV Code Chapter 20)		
151		Fund <u>3205</u> FY <u>2006</u> Org <u>0310</u>		
152	1	Personal Services	001	\$ 4,500
153	3	Employee Benefits	010	817
154		<i>128-Division of Natural Resources-</i>		
155		<i>Whitewater Study and Improvement Fund</i>		
156		(WV Code Chapter 20)		
157		Fund <u>3253</u> FY <u>2006</u> Org <u>0310</u>		
158	1	Unclassified-Total	096	\$ 1,595

2338 APPROPRIATIONS [Ch. 1

180 1 Personal Services 001 \$ 22,233

181 3 Employee Benefits 010 5,036

182 **DEPARTMENT OF EDUCATION AND THE ARTS**

183 *135-Office of the Secretary-*

184 *Lottery Education Fund Interest Earnings-*

185 *Control Account*

186 (WV Code Chapter 29)

187 Fund 3508 FY 2006 Org 0431

188 1 EPSCoR—Total (R) 651 \$ 2,659

189 *136-Division of Culture and History-*

190 *Public Records and Preservation Revenue Account*

191 (WV Code Chapter 5A)

192 Fund 3542 FY 2006 Org 0432

193 1 Unclassified—Total 096 \$ 1,638

194 **DEPARTMENT OF ENVIRONMENTAL**
195 **PROTECTION**

196 *138-Solid Waste Management Board*

197 (WV Code Chapter 22C)

198 Fund 3288 FY 2006 Org 0312

199 1 Personal Services 001 \$ 9,450

200 3 Employee Benefits 010 1,716

Ch. 1]		APPROPRIATIONS		2339
201		<i>139-Division of Environmental Protection-</i>		
202		<i>The Hazardous Waste Management Fund</i>		
203		(WV Code Chapter 22)		
204		Fund <u>3023</u> FY <u>2006</u> Org <u>0313</u>		
205	1	Personal Services	001	\$ 1,800
206	3	Employee Benefits	010	327
207		<i>140-Division of Environmental Protection-</i>		
208		<i>Air Pollution Education and Environment Fund</i>		
209		(WV Code Chapter 22)		
210		Fund <u>3024</u> FY <u>2006</u> Org <u>0313</u>		
211	1	Unclassified—Total	096	\$ 4,786
212		<i>141-Division of Environmental Protection-</i>		
213		<i>Special Reclamation Fund</i>		
214		(WV Code Chapter 22)		
215		Fund <u>3321</u> FY <u>2006</u> Org <u>0313</u>		
216	1	Personal Services	001	\$ 10,800
217	3	Employee Benefits	010	1,961
218		<i>142-Division of Environmental Protection-</i>		
219		<i>Oil and Gas Reclamation Fund</i>		
220		(WV Code Chapter 22)		
221		Fund <u>3322</u> FY <u>2006</u> Org <u>0313</u>		
222	1	Unclassified-Total	096	\$ 1,064

2340		APPROPRIATIONS		[Ch. 1
223		<i>143-Division of Environmental Protection-</i>		
224		<i>Oil and Gas Operating Permit and Processing Fund</i>		
225		(WV Code Chapter 22)		
226		Fund <u>3323</u> FY <u>2006</u> Org <u>0313</u>		
227	1	Personal Services	001	\$ 7,785
228	3	Employee Benefits	010	1,413
229		<i>144-Division of Environmental Protection-</i>		
230		<i>Mining and Reclamation Operations Fund</i>		
231		(WV Code Chapter 22)		
232		Fund <u>3324</u> FY <u>2006</u> Org <u>0313</u>		
233	1	Personal Services	001	\$ 74,997
234	3	Employee Benefits	010	13,612
235		<i>145-Division of Environmental Protection-</i>		
236		<i>The Underground Storage Tank</i>		
237		<i>Administrative Fund</i>		
238		(WV Code Chapter 22)		
239		Fund <u>3325</u> FY <u>2006</u> Org <u>0313</u>		
240	1	Personal Services	001	\$ 5,400
241	3	Employee Benefits	010	981
242		<i>146-Division of Environmental Protection-</i>		
243		<i>The Hazardous Waste Emergency Response Fund</i>		

Ch. 1]		APPROPRIATIONS		2341
244		(WV Code Chapter 22)		
245		Fund <u>3331</u> FY <u>2006</u> Org <u>0313</u>		
246	1	Personal Services	001	\$ 5,850
247	3	Employee Benefits	010	1,062
248		<i>147-Division of Environmental Protection-</i>		
249		<i>Solid Waste Reclamation and</i>		
250		<i>Environmental Response Fund</i>		
251		(WV Code Chapter 22)		
252		Fund <u>3332</u> FY <u>2006</u> Org <u>0313</u>		
253	1	Personal Services	001	\$ 3,600
254	3	Employee Benefits	010	654
255		<i>148-Division of Environmental Protection-</i>		
256		<i>Solid Waste Enforcement Fund</i>		
257		(WV Code Chapter 22)		
258		Fund <u>3333</u> FY <u>2006</u> Org <u>0313</u>		
259	1	Personal Services	001	\$ 29,385
260	3	Employee Benefits	010	5,334
261		<i>149-Division of Environmental Protection-</i>		
262		<i>Air Pollution Control Fund</i>		
263		(WV Code Chapter 22)		
264		Fund <u>3336</u> FY <u>2006</u> Org <u>0313</u>		
265	1	Personal Services	001	\$ 71,910

2342		APPROPRIATIONS		[Ch. 1
266	3	Employee Benefits	010	13,052
267		<i>150-Division of Environmental Protection-</i>		
268		<i>Environmental Laboratory</i>		
269		<i>Certification Fund</i>		
270		(WV Code Chapter 22)		
271		Fund <u>3340</u> FY <u>2006</u> Org <u>0313</u>		
272	1	Personal Services	001	\$ 2,700
273	3	Employee Benefits	010	491
274		<i>151a-Division of Environmental Protection-</i>		
275		<i>Recycling Assistance Fund</i>		
276		(WV Code Chapter 22)		
277		Fund <u>3487</u> FY <u>2006</u> Org <u>0313</u>		
278	1	Personal Services	001	\$ 7,200
279	3	Employee Benefits	010	1,307
280		<i>152-Division of Environmental Protection-</i>		
281		<i>Mountaintop Removal Fund</i>		
282		(WV Code Chapter 22)		
283		Fund <u>3490</u> FY <u>2006</u> Org <u>0313</u>		
284	1	Personal Services	001	\$ 13,950
285	3	Employee Benefits	010	2,532
286		<i>153-Oil and Gas Conservation Commission—</i>		
287		<i>Special Oil and Gas Conservation Fund</i>		

2344		APPROPRIATIONS			[Ch. 1
310		<i>157-Division of Health-</i>			
311		<i>Vital Statistics</i>			
312		(WV Code Chapter 16)			
313		Fund <u>5144</u> FY <u>2006</u> Org <u>0506</u>			
314	1	Personal Services	001	\$	8,532
315	3	Employee Benefits	010		1,549
316		<i>158-Division of Health-</i>			
317		<i>Hospital Services Revenue Account</i>			
318		<i>(Special Fund)</i>			
319		<i>(Capital Improvement, Renovation and Operations)</i>			
320		(WV Code Chapter 16)			
321		Fund <u>5156</u> FY <u>2006</u> Org <u>0506</u>			
322	2	Institutional Facilities			
323	3	Operations (R)	335	\$	2,659
324		<i>159-Division of Health-</i>			
325		<i>Laboratory Services</i>			
326		(WV Code Chapter 16)			
327		Fund <u>5163</u> FY <u>2006</u> Org <u>0506</u>			
328	1	Personal Services	001	\$	11,880
329	3	Employee Benefits	010		2,157
330		<i>160-Division of Health-</i>			
331		<i>Health Facility Licensing</i>			

Ch. 1]		APPROPRIATIONS		2345
332		(WV Code Chapter 16)		
333		Fund <u>5172</u> FY <u>2006</u> Org <u>0506</u>		
334	1	Personal Services	001	\$ 3,600
335	3	Employee Benefits	010	654
336		<i>161-Division of Health-</i>		
337		<i>Hepatitis B Vaccine</i>		
338		(WV Code Chapter 16)		
339		Fund <u>5183</u> FY <u>2006</u> Org <u>0506</u>		
340	1	Personal Services	001	\$ 1,800
341	3	Employee Benefits	010	327
342		<i>163-Division of Health-</i>		
343		<i>West Virginia Birth to Three Fund</i>		
344		(WV Code Chapter 16)		
345		Fund <u>5214</u> FY <u>2006</u> Org <u>0506</u>		
346	1	Personal Services	001	\$ 12,150
347	3	Employee Benefits	010	2,206
348		<i>165-West Virginia Health Care Authority—</i>		
349		<i>Health Care Cost Review Fund</i>		
350		(WV Code Chapter 16)		
351		Fund <u>5375</u> FY <u>2006</u> Org <u>0507</u>		
352	1	Personal Services	001	\$ 34,200
353	3	Employee Benefits	010	6,208

2346		APPROPRIATIONS		[Ch. 1
354		<i>166-Division of Human Services-</i>		
355		<i>Health Care Provider Tax</i>		
356		(WV Code Chapter 11)		
357		Fund <u>5090</u> FY <u>2006</u> Org <u>0511</u>		
358	1	Unclassified-Total	096	\$ 3,988
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359		<i>167-Division of Human Services-</i>		
360		<i>Child Support Enforcement</i>		
361		(WV Code Chapter 48A)		
362		Fund <u>5094</u> FY <u>2006</u> Org <u>0511</u>		
363	1	Unclassified-Total (R)	096	\$ 588,352
364		<i>168-Division of Human Services-</i>		
365		<i>Medical Services Trust Fund</i>		
366		(WV Code Chapter 9)		
367		Fund <u>5185</u> FY <u>2006</u> Org <u>0511</u>		
368	2	Eligibility Expansion	582	\$ 22,012
369		<i>169-Division of Human Services-</i>		
370		<i>James "Tiger" Morton Catastrophic Illness Fund</i>		
371		(WV Code Chapter 16)		
372		Fund <u>5454</u> FY <u>2006</u> Org <u>0511</u>		
373	1	Unclassified-Total	096	\$ 1,064

2348		APPROPRIATIONS		[Ch. 1
396	1	Personal Services	001	\$ 25,200
397	3	Employee Benefits	010	4,574
398		<i>183-Fire Commission-</i>		
399		<i>Fire Marshal Fees</i>		
400		(WV Code Chapter 29)		
401		Fund <u>6152</u> FY <u>2006</u> Org <u>0619</u>		
402	1	Personal Services	001	\$ 31,950
403	3	Employee Benefits	010	5,799
404		<i>184-Division of Criminal Justice Services-</i>		
405		<i>WV Community Corrections Fund</i>		
406		(WV Code Chapter 62)		
407		Fund <u>6386</u> FY <u>2006</u> Org <u>0620</u>		
408	1	Unclassified-Total	096	\$ 2,425
409		DEPARTMENT OF REVENUE		
410		<i>186-Division of Banking</i>		
411		(WV Code Chapter 31A)		
412		Fund <u>3041</u> FY <u>2006</u> Org <u>0303</u>		
413	1	Personal Services	001	\$ 26,550
414	3	Employee Benefits	010	4,819
415		<i>188-Tax Division-</i>		
416		<i>Special Audit and Investigative Unit</i>		

Ch. 1]		APPROPRIATIONS	2349
417		(WV Code Chapter 11)	
418		Fund <u>7073</u> FY <u>2006</u> Org <u>0702</u>	
419	1	Personal Services 001	\$ 27,450
420	3	Employee Benefits 010	4,983
421		<i>190-Insurance Commissioner-</i>	
422		<i>Examination Revolving Fund</i>	
423		(WV Code Chapter 33)	
424		Fund <u>7150</u> FY <u>2006</u> Org <u>0704</u>	
425	1	Personal Services 001	\$ 4,950
426	3	Employee Benefits 010	899
427		<i>191-Insurance Commissioner-</i>	
428		<i>Consumer Advocate</i>	
429		(WV Code Chapter 33)	
430		Fund <u>7151</u> FY <u>2006</u> Org <u>0704</u>	
431	1	Personal Services 001	\$ 4,500
432	3	Employee Benefits 010	817
433		<i>192-Insurance Commissioner</i>	
434		(WV Code Chapter 33)	
435		Fund <u>7152</u> FY <u>2006</u> Org <u>0704</u>	
436	1	Personal Services (R) 001	\$ 104,850
437	3	Employee Benefits (R) 010	19,031

2350		APPROPRIATIONS		[Ch. 1
438		<i>199-Municipal Bond Commission</i>		
439		(WV Code Chapter 13)		
440		Fund <u>7253</u> FY <u>2006</u> Org <u>0706</u>		
441	1	Personal Services	001	\$ 3,600
442	3	Employee Benefits	010	654
443		<i>201-Racing Commission-</i>		
444		<i>Administration and Promotion</i>		
445		(WV Code Chapter 19)		
446		Fund <u>7304</u> FY <u>2006</u> Org <u>0707</u>		
447	1	Personal Services	001	\$ 1,800
448	3	Employee Benefits	010	327
449		<i>202-Racing Commission-</i>		
450		<i>General Administration</i>		
451		(WV Code Chapter 19)		
452		Fund <u>7305</u> FY <u>2006</u> Org <u>0707</u>		
453	1	Personal Services	001	\$ 28,800
454	3	Employee Benefits	010	5,228
455		<i>204-Alcohol Beverage Control Administration-</i>		
456		<i>Wine License Special Fund</i>		
457		(WV Code Chapter 60)		
458		Fund <u>7351</u> FY <u>2006</u> Org <u>0708</u>		
459	1	Personal Services	001	\$ 6,750
460	3	Employee Benefits	010	1,226

Ch. 1]		APPROPRIATIONS	2351
461		<i>205-Alcohol Beverage Control Administration</i>	
462		(WV Code Chapter 60)	
463		Fund <u>7352</u> FY <u>2006</u> Org <u>0708</u>	
464	1	Personal Services 001	\$ 99,450
465	3	Employee Benefits 010	18,051
466		DEPARTMENT OF TRANSPORTATION	
467		<i>206-Division of Motor Vehicles-</i>	
468		<i>Driver's License Reinstatement Fund</i>	
469		(WV Code Chapter 17B)	
470		Fund <u>8213</u> FY <u>2006</u> Org <u>0802</u>	
471	1	Personal Services 001	\$ 16,650
472	3	Employee Benefits 010	3,022
473		<i>207-Division of Motor Vehicles-</i>	
474		<i>Driver Rehabilitation</i>	
475		(WV Code Chapter 17C)	
476		Fund <u>8214</u> FY <u>2006</u> Org <u>0802</u>	
477	1	Unclassified-Total 096	\$ 4,254
478		<i>208-Division of Motor Vehicles-</i>	
479		<i>Insurance Certificate Fees</i>	
480		(WV Code Chapter 20)	
481		Fund <u>8215</u> FY <u>2006</u> Org <u>0802</u>	

2352		APPROPRIATIONS		[Ch. 1
482	1	Personal Services	001	\$ 21,150
483	3	Employee Benefits	010	3,839
484		<i>209-Division of Motor Vehicles-</i>		
485		<i>Motorboat Licenses</i>		
486		<i>(WV Code Chapter 20)</i>		
487		Fund <u>8216</u> FY <u>2006</u> Org <u>0802</u>		
488	1	Unclassified-Total	096	\$ 9,039
489		HIGHER EDUCATION POLICY COMMISSION		
490		<i>214-Higher Education Policy Commission-</i>		
491		<i>System-</i>		
492		<i>Tuition Fee Capital Improvement Fund</i>		
493		<i>(Capital Improvement and Bond Retirement Fund)</i>		
494		<i>Control Account</i>		
495		<i>(WV Code Chapters 18 and 18B)</i>		
496		Fund <u>4903</u> FY <u>2006</u> Org <u>0442</u>		
497	3	Facilities Planning		
498	4	and Administration (R)	386	\$ 5,881
499		<i>217-Health Sciences-</i>		
500		<i>West Virginia University Health Sciences Center</i>		
501		<i>(WV Code Chapters 18 and 18B)</i>		
502		Fund <u>4179</u> FY <u>2006</u> Org <u>0463</u>		
503	1	Unclassified-Total (R)	096	\$ 120,308

504 **MISCELLANEOUS BOARDS AND COMMISSIONS**505 *222-Hospital Finance Authority*

506 (WV Code Chapter 16)

507 Fund 5475 FY 2006 Org 0509

508 1 Personal Services 001 \$ 900

509 3 Employee Benefits 010 164

510 *223-WV State Board of Examiners for Licensed Practical*511 *Nurses*

512 (WV Code Chapter 30)

513 Fund 8517 FY 2006 Org 0906

514 1 Unclassified-Total 096 \$ 4,254

515 *224-WV Board of Examiners for Registered Professional*516 *Nurses*

517 (WV Code Chapter 30)

518 Fund 8520 FY 2006 Org 0907

519 1 Unclassified-Total 096 \$ 9,571

520 *225-Public Service Commission*

521 (WV Code Chapter 24)

522 Fund 8623 FY 2006 Org 0926

523 1 Personal Services 001 \$ 146,673

524 3 Employee Benefits 010 26,622

525 5 Weight Enforcement Program 345 67,530

2354		APPROPRIATIONS		[Ch. 1
526		<i>226-Public Service Commission-</i>		
527		<i>Gas Pipeline Division—</i>		
528		<i>Public Service Commission Pipeline Safety Fund</i>		
529		(WV Code Chapter 24B)		
530		Fund <u>8624</u> FY <u>2006</u> Org <u>0926</u>		
531	1	Personal Services	001	\$ 3,141
532	3	Employee Benefits	010	571
533		<i>227-Public Service Commission-</i>		
534		<i>Motor Carrier Division</i>		
535		(WV Code Chapter 24A)		
536		Fund <u>8625</u> FY <u>2006</u> Org <u>0926</u>		
537	1	Personal Services	001	\$ 31,613
538	3	Employee Benefits	010	5,738
539		<i>228-Public Service Commission-</i>		
540		<i>Consumer Advocate</i>		
541		(WV Code Chapter 24)		
542		Fund <u>8627</u> FY <u>2006</u> Org <u>0926</u>		
543	1	Personal Services	001	\$ 6,300
544	3	Employee Benefits	010	1,144
545		<i>229-Real Estate Commission</i>		
546		(WV Code Chapter 30)		
547		Fund <u>8635</u> FY <u>2006</u> Org <u>0927</u>		

2356		APPROPRIATIONS		[Ch. 1
7				Federal
8			Activity	Funds
9	1	Unclassified-Total	096	\$ 8,507
10		<i>263-Governor's Office-</i>		
11		<i>Commission for National and Community Service</i>		
12		(WV Code Chapter 5)		
13		Fund <u>8800</u> FY <u>2006</u> Org <u>0100</u>		
14	1	Unclassified-Total	096	\$ 7,976
15		<i>264-Auditor's Office-</i>		
16		<i>National White Collar Crime Center</i>		
17		(WV Code Chapter 12)		
18		Fund <u>8807</u> FY <u>2006</u> Org <u>1200</u>		
19	1	Unclassified-Total	096	\$ 1,425
20		<i>265-Department of Agriculture</i>		
21		(WV Code Chapter 19)		
22		Fund <u>8736</u> FY <u>2006</u> Org <u>1400</u>		
23	1	Unclassified-Total	096	\$ 15,908
24		<i>266-Department of Agriculture-</i>		
25		<i>Meat Inspection</i>		
26		(WV Code Chapter 19)		
27		Fund <u>8737</u> FY <u>2006</u> Org <u>1400</u>		
28	1	Unclassified-Total	096	\$ 20,736

2358		APPROPRIATIONS		[Ch. 1
50		Fund <u>8704</u> FY <u>2006</u> Org <u>0306</u>		
51	1	Unclassified-Total	096	\$ 2,202
52		<i>273-West Virginia Development Office</i>		
53		(WV Code Chapter 5B)		
54		Fund <u>8705</u> FY <u>2006</u> Org <u>0307</u>		
55	1	Unclassified-Total	096	\$ 40,865
56		<i>274-Division of Labor</i>		
57		(WV Code Chapters 21 and 47)		
58		Fund <u>8706</u> FY <u>2006</u> Org <u>0308</u>		
59	1	Unclassified-Total	096	\$ 7,853
60		<i>275-Division of Natural Resources</i>		
61		(WV Code Chapter 20)		
62		Fund <u>8707</u> FY <u>2006</u> Org <u>0310</u>		
63	1	Unclassified-Total	096	\$ 78,954
64		<i>276-Division of Miners' Health,</i>		
65		<i>Safety and Training</i>		
66		(WV Code Chapter 22)		
67		Fund <u>8709</u> FY <u>2006</u> Org <u>0314</u>		
68	1	Unclassified-Total	096	\$ 14,887

2360 APPROPRIATIONS [Ch. 1

89 **DEPARTMENT OF EDUCATION AND THE ARTS**

90 *283-Division of Culture and History*

91 (WV Code Chapter 29)

92 Fund 8718 FY 2006 Org 0432

93 1 Unclassified-Total 096 \$ 11,517

94 *284-Library Commission*

95 (WV Code Chapter 10)

96 Fund 8720 FY 2006 Org 0433

97 1 Unclassified-Total 096 \$ 6,381

98 *286-State Board of Rehabilitation-*

99 *Division of Rehabilitation Services*

100 (WV Code Chapter 18)

101 Fund 8734 FY 2006 Org 0932

102 1 Unclassified-Total 096 \$ 661,002

103 **DEPARTMENT OF ENVIRONMENTAL**
104 **PROTECTION**

105 *287-Division of Environmental Protection*

106 (WV Code Chapter 22)

107 Fund 8708 FY 2006 Org 0313

108 1 Unclassified-Total 096 \$ 347,227

2362		APPROPRIATIONS		[Ch. 1
131		(WV Code Chapter 15)		
132		Fund <u>8726</u> FY <u>2006</u> Org <u>0603</u>		
133	1	Unclassified-Total	096	\$ 233,672
134		<i>296-Office of Emergency Services</i>		
135		(WV Code Chapter 15)		
136		Fund <u>8727</u> FY <u>2006</u> Org <u>0606</u>		
137	1	Unclassified-Total	096	\$ 34,772
138		<i>298-West Virginia State Police</i>		
139		(WV Code Chapter 15)		
140		Fund <u>8741</u> FY <u>2006</u> Org <u>0612</u>		
141	1	Unclassified-Total	096	\$ 6,912
142		<i>300-Division of Veterans' Affairs-</i>		
143		<i>Veterans' Home</i>		
144		(WV Code Chapter 9A)		
145		Fund <u>8728</u> FY <u>2006</u> Org <u>0618</u>		
146	1	Unclassified-Total	096	\$ 12,761
147		<i>301-Division of Criminal Justice Services</i>		
148		(WV Code Chapter 15)		
149		Fund <u>8803</u> FY <u>2006</u> Org <u>0620</u>		
150	1	Unclassified-Total	096	\$ 23,261

2364		APPROPRIATIONS		[Ch. 1
171		<i>Motor Carrier Division</i>		
172		(WV Code Chapter 24A)		
173		Fund <u>8743</u> FY <u>2006</u> Org <u>0926</u>		
174	1	Unclassified-Total	096	\$ 23,527
175		<i>313-Public Service Commission-</i>		
176		<i>Gas Pipeline Division</i>		
177		(WV Code Chapter 24B)		
178		Fund <u>8744</u> FY <u>2006</u> Org <u>0926</u>		
179	1	Unclassified-Total	096	\$ 4,786

1 **Sec. 7. Appropriations from federal block grants.**

2		<i>317-Governor's Office-</i>		
3		<i>Office of Economic Opportunity</i>		
4		<i>Community Services</i>		
5		Fund <u>8799</u> FY <u>2006</u> Org <u>0100</u>		
6	1	Unclassified-Total	096	\$ 7,444
7		<i>318-West Virginia Development Office-</i>		
8		<i>Community Development</i>		
9		Fund <u>8746</u> FY <u>2006</u> Org <u>0307</u>		
10	1	Unclassified-Total	096	\$ 9,464
11		<i>319a-Governor's Workforce Investment Office-</i>		
12		<i>Workforce Investment Act</i>		

Ch. 1]		APPROPRIATIONS		2365
13		Fund <u>8888</u> FY <u>2006</u> Org <u>0331</u>		
14	1	Unclassified-Total	096	\$ 33,496
15		<i>320-Division of Health-</i>		
16		<i>Maternal and Child Health</i>		
17		Fund <u>8750</u> FY <u>2006</u> Org <u>0506</u>		
18	1	Unclassified-Total	096	\$ 41,471
19		<i>321-Division of Health-</i>		
20		<i>Preventive Health</i>		
21		Fund <u>8753</u> FY <u>2006</u> Org <u>0506</u>		
22	1	Unclassified-Total	096	\$ 2,553
23		<i>322-Division of Health-</i>		
24		<i>Substance Abuse Prevention and Treatment</i>		
25		Fund <u>8793</u> FY <u>2006</u> Org <u>0506</u>		
26	1	Unclassified-Total	096	\$ 11,697
27		<i>323-Division of Health-</i>		
28		<i>Community Mental Health Services</i>		
29		Fund <u>8794</u> FY <u>2006</u> Org <u>0506</u>		
30	1	Unclassified-Total	096	\$ 13,292
31		<i>324-Division of Health-</i>		
32		<i>Abstinence Education Program</i>		
33		Fund <u>8825</u> FY <u>2006</u> Org <u>0506</u>		
34	1	Unclassified-Total	096	\$ 1,064

2366		APPROPRIATIONS		[Ch. 1
35		<i>326-Division of Human Services-</i>		
36		<i>Social Services</i>		
37		Fund <u>8757</u> FY <u>2006</u> Org <u>0511</u>		
38	1	Unclassified-Total	096	\$ 340,326
39		<i>327-Division of Human Services-</i>		
40		<i>Temporary Assistance Needy Families</i>		
41		Fund <u>8816</u> FY <u>2006</u> Org <u>0511</u>		
42	1	Unclassified-Total	096	\$ 313,343
43		<i>328-Division of Human Services-</i>		
44		<i>Child Care and Development</i>		
45		Fund <u>8817</u> FY <u>2006</u> Org <u>0511</u>		
46	1	Unclassified-Total	096	\$ 23,926
47		<i>329-Division of Criminal Justice Services-</i>		
48		<i>Juvenile Accountability Incentive</i>		
49		Fund <u>8829</u> FY <u>2006</u> Org <u>0620</u>		
50	1	Unclassified-Total	096	\$ 1,936
51		<i>330-Division of Criminal Justice Services-</i>		
52		<i>Local Law Enforcement</i>		
53		Fund <u>8833</u> FY <u>2006</u> Org <u>0620</u>		
54	1	Unclassified-Total	096	\$ 288

55 The purpose of this supplementary appropriation bill is to
56 appropriate public money, as specified (general revenue fund,
57 state road fund, other funds, and federal funds) with insertion
58 of such moneys into funds amending chapter sixteen, acts of the
59 legislature, regular session two thousand five, as amended,
60 known as the budget bill, and specified items thereof, and with
61 all necessary adjustments of increase, in such specified funds
62 and new appropriations provided for by this legislation. These
63 public moneys, as newly provided for, shall be available for
64 such use and expenditure upon passage of the bill and in fiscal
65 year two thousand six, supplementing the budget bill for such
66 fiscal year earlier enacted.

CHAPTER 2

**(Com. Sub. for H. B. 417 — By Mr. Speaker,
Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed September 13, 2005; in effect from passage.]

[Approved by the Governor on September 19, 2005.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the Joint Expenses, fund 0175, fiscal year 2006, organization 2300, to the Supreme Court, fund 0180, fiscal year 2006, organization 2400, to the West Virginia Conservation Agency, fund 0132, fiscal year 2006, organization 1400, to the Department of Commerce - West Virginia Development Office, fund 0256, fiscal year 2006, organization 0307, to the Department of Education - State Department of Education, fund 0313, fiscal year 2006, organization 0402, to the Department of Health and Human

Resources – Office of the Secretary, fund 0400, fiscal year 2006, organization 0501, to the Department of Health and Human Resources - Division of Human Services, fund 0403, fiscal year 2006, organization 0511, to the Department of Military Affairs and Public Safety - Division of Veterans' Affairs, fund 0456, fiscal year 2006, organization 0613, and to the West Virginia Council for Community and Technical College Education - Control Account, fund 0596, fiscal year 2006, organization 0420, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand six.

WHEREAS, The Governor submitted to the Legislature a statement of the state fund, general revenue, dated the seventh day of September, two thousand five, setting forth therein the cash balance as of the first day of July, two thousand five; and further included the estimate of revenues for the fiscal year two thousand six, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand six; and

WHEREAS, It appears from the Governor's 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 the thirtieth day of June, two thousand six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 0175, fiscal year 2006, organization 2300, be supplemented and amended by adding thereto a new item of appropriation to read as follows:

1 TITLE II — APPROPRIATIONS.

2 **Section 1. Appropriations from general revenue.**

3 **LEGISLATIVE**

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APPROPRIATIONS

[Ch. 2

31 That the total appropriation for the fiscal year ending the
32 thirtieth day of June, two thousand six, to fund 0132, fiscal year
33 2006, organization 1400, be supplemented and amended by
34 increasing an existing item of appropriation as follows:

35 TITLE II — APPROPRIATIONS.

36 **Section 1. Appropriations from general revenue.**

37 **EXECUTIVE**

38 *11—West Virginia Conservation Agency*

39 (WV Code Chapter 19)

40 Fund 0132 FY 2006 Org 1400

41			General
42		Act-	Revenue
43		ivity	Fund

44	5	Soil Conservation Projects -		
45	5a	Surplus	269	\$ 3,750,000

46 And that the total appropriation for the fiscal year ending
47 the thirtieth day of June, two thousand six, to fund 0256, fiscal
48 year 2006, organization 0307, be supplemented and amended
49 by increasing an existing item of appropriation as follows:

50 TITLE II — APPROPRIATIONS.

51 **Section 1. Appropriations from general revenue.**

52 **DEPARTMENT OF COMMERCE**

53 *33—West Virginia Development Office*

54 (WV Code Chapter 5B)

55 Fund 0256 FY 2006 Org 0307

56			General
57		Act-	Revenue
58		ivity	Fund

59 37 Local Economic

60 38 Development Assistance

61 38a - Surplus 266 \$ 2,000,000

62 And that the total appropriation for the fiscal year ending
63 the thirtieth day of June, two thousand six, to fund 0313, fiscal
64 year 2006, organization 0402, be supplemented and amended
65 by increasing an existing item of appropriation as follows:

66 TITLE II — APPROPRIATIONS.

67 Section 1. Appropriations from general revenue.

68 DEPARTMENT OF EDUCATION

69 *41—State Department of Education*

70 (WV Code Chapters 18 and 18A)

71 Fund 0313 FY 2006 Org 0402

72			General
73		Act-	Revenue
74		ivity	Fund

75 4 Unclassified - Surplus 097 \$ 1,000,000

76 And, that the total appropriation for the fiscal year ending
77 the thirtieth day of June, two thousand six, to fund 0400, fiscal
78 year 2006, organization 0501, be supplemented and amended by
79 adding thereto a new item of appropriation to read as follows:

2372

APPROPRIATIONS

[Ch. 2

80

TITLE II — APPROPRIATIONS.

81

Section 1. Appropriations from general revenue.

82

DEPARTMENT OF HEALTH AND

83

HUMAN RESOURCES

84

55—Department of Health and Human Resources--

85

Office of the Secretary

86

(WV Code Chapter 5F)

87

Fund 0400 FY 2006 Org 0501

88

General

89

Act-

Revenue

90

ivity

Fund

91

1a Rural Health Care Providers

92

1b Revolving Loan Fund – Surplus . 674 \$ 1,000,000

93

And, that the total appropriation for the fiscal year ending

94

the thirtieth day of June, two thousand six, to fund 0403, fiscal

95

year 2006, organization 0511, be supplemented and amended

96

by increasing an existing item of appropriation as follows:

97

TITLE II — APPROPRIATIONS.

98

Section 1. Appropriations from general revenue.

99

DEPARTMENT OF HEALTH AND

100

HUMAN RESOURCES

101

60—Division of Human Services

102

(WV Code Chapters 9, 48 and 49)

103

Fund 0403 FY 2006 Org 0511

2374

APPROPRIATIONS

[Ch. 2

129 year 2006, organization 0420, be supplemented and amended
130 by increasing an existing item of appropriation as follows:

131 TITLE II — APPROPRIATIONS.

132 **Section 1. Appropriations from general revenue.**

133 **HIGHER EDUCATION**

134 *85—West Virginia Council for*

135 *Community and Technical College Education-*

136 *Control Account*

137 (WV Code Chapter 18B)

138 Fund 0596 FY 2006 Org 0420

139				General
140			Act-	Revenue
141			ivity	Fund

142	15	West Virginia Northern Community and			
143	16	Technical College - Surplus	671	\$	149,000

144 The purpose of this supplemental appropriation bill is to
145 supplement, amend and increase appropriations in the aforesaid
146 accounts for the designated spending units for expenditure
147 during the fiscal year two thousand six.

CHAPTER 3

**(H. B. 420 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed September 13, 2005; in effect from passage.]

[Approved by the Governor on September 19, 2005.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand six, in the amount of three million dollars from the tax reduction and federal funding increased compliance fund, fund 1732, fiscal year 2006, organization 2300, in the amount of five million dollars from the tax reduction and federal funding increased compliance lottery fund, fund 1735, fiscal year 2003, organization 2300, in the amount of thirteen million dollars from the special income tax refund reserve fund, fund 1313, fiscal year 2006, organization 1300, in the amount of four million dollars from the joint expenses, fund 0175, fiscal year 2005, organization 2300, activity 642, and in the amount of three million dollars from the joint expenses, fund 0175, fiscal year 2004, organization 2300, activity 642, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand six, to the department of administration - consolidated public retirement board, fund 0195, fiscal year 2006, organization 0205.

WHEREAS, The Legislature finds that the account balance in the tax reduction and federal funding increased compliance fund, fund 1732, fiscal year 2006, organization 2300, tax reduction and federal funding increased compliance lottery fund, fund 1735, fiscal year

2003, organization 2300, special income tax refund reserve fund, fund 1313, fiscal year 2006, organization 1300, joint expenses, fund 0175, fiscal year 2005, organization 2300, activity 642, and joint expenses, fund 0175, fiscal year 2004, organization 2300, activity 642, exceeds that which is necessary for the purposes for which the accounts were established; and

WHEREAS, By the provision of this legislation there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the tax reduction and federal funding increased compliance fund, fund 1732, fiscal year 2006, organization 2300, be decreased by expiring the amount of three million dollars, in the tax reduction and federal funding increased compliance lottery fund, fund 1735, fiscal year 2003, organization 2300, be decreased by expiring the amount of five million dollars, in the special income tax refund reserve fund, fund 1313, fiscal year 2006, organization 1300, be decreased by expiring the amount of thirteen million dollars, in the joint expenses, fund 0175, fiscal year 2005, organization 2300, activity 642, be decreased by expiring the amount of four million dollars, and the joint expenses, fund 0175, fiscal year 2004, organization 2300, activity 642, be decreased by expiring the amount of three million dollars, to the unappropriated surplus balance of the state fund, general revenue.

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 0195, fiscal year 2006, organization 0205, be supplemented and amended to read as follows:

1 TITLE II — APPROPRIATIONS.

2 **Section 1. Appropriations from general revenue.**

3 **DEPARTMENT OF ADMINISTRATION**4 *18—Consolidated Public Retirement Board*

5 (WV Code Chapter 5)

6 Fund 0195 FY 2006 Org 0205

7				General
8			Act-	Revenue
9			ivity	Fund

10	1	Unclassified - Total - Transfer	402	\$ 28,000,000
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11 The above appropriation for Unclassified - Total - Transfer
 12 (fund 0195, activity 402) shall be transferred to the West
 13 Virginia Department of Public Safety Death, Disability and
 14 Retirement Fund (Fund 2160).

15 The division of highways, division of motor vehicles,
 16 bureau of employment programs, public service commission
 17 and other departments, bureaus, divisions, or commissions
 18 operating from special revenue funds and/or federal funds shall
 19 pay their proportionate share of the retirement costs for their
 20 respective divisions. When specific appropriations are not
 21 made, such payments may be made from the balances in the
 22 various special revenue funds in excess of specific appropria-
 23 tions.

24 The purpose of this supplementary appropriation bill is to
 25 expire funds into the unappropriated surplus balance in the state
 26 fund, general revenue, and to supplement and increase an item
 27 of appropriation in the aforesaid account for the designated
 28 spending unit for expenditure during the fiscal year two
 29 thousand six.

CHAPTER 4

(H. B. 422 By Delegates Michael, Doyle, Stalnaker, Browning, H. White, Boggs, Proudfoot, Frederick, Border, Ashley and Wakim)

[Passed September 13, 2005; in effect from passage]
[Approved by the Governor on September 19, 2005.]

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 - consolidated public retirement board, fund 0195, fiscal year 2006, organization 0205.

WHEREAS, The Governor submitted to the Legislature a statement of the state fund, general revenue, dated the seventh day of September, two thousand five, setting forth therein the cash balance as of the first day of July, two thousand five; and further included the estimate of revenues for the fiscal year 2006 less net appropriation balances forwarded and regular appropriations for fiscal year 2006; and

WHEREAS, The Governor, by executive message dated the twelfth day of September, two thousand five, has revised the revenue estimates for the fiscal year ending the thirtieth day of June, two thousand six; and

WHEREAS, It appears from the Governor's statement of the state fund - general revenue and the executive message there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 0195, fiscal year 2006, organization 0205, be supplemented and amended by increasing an existing item of appropriation as follows:

1 TITLE II — APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF ADMINISTRATION

4 18—Consolidated Public Retirement Board

5 (WV Code Chapter 5)

6 Fund 0195 FY 2006 Org 0205

7			General
8		Act-	Revenue
9		ivity	Fund

10 1 Unclassified - Total - Transfer 402 \$ 30,000,000

11 The above appropriation for Unclassified - Total - Transfer
12 (fund 0195, activity 402) shall be transferred to the West
13 Virginia Department of Public Safety Death, Disability and
14 Retirement Fund (Fund 2160).

15 The purpose of this supplementary appropriation bill is to
16 supplement, amend, add and increase items of appropriations in
17 the aforesaid accounts for the designated spending units for
18 expenditure during the fiscal year two thousand five.

CHAPTER 5

(S. B. 4014 — By Senators Helmick, Sharpe, Chafin, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Minear, Boley, Facemyer, Yoder, Guills and Sprouse)

[Passed September 12, 2005; in effect from passage.]

[Approved by the Governor on September 19, 2005.]

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 Excess Lottery Revenue Fund, to the Lottery Commission - Excess Lottery Revenue Fund Surplus, fund 7208, fiscal year 2006, organization 0705, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand six.

WHEREAS, The Governor submitted to the Legislature a statement of the State Excess Lottery Revenue Fund, dated the seventh day of September, two thousand five, setting forth therein the cash balance as of the first day of July, two thousand five; and further included the estimate of revenue for the fiscal year two thousand six, less regular appropriations for the fiscal year two thousand six; 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 the thirtieth day of June, two thousand six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 7208, fiscal year 2006, organization 0705, be supplemented and amended to read as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 5. Appropriations from State Excess**
3 **Lottery Revenue Fund.**

4 *253—Lottery Commission—*

5 *Excess Lottery Revenue Fund Surplus*

6 Fund 7208 FY 2006 Org 0705

7	1	Unclassified - Total - Transfer	402	\$ 12,900,000
8	2	Unclassified - Transfer	482	34,930,942

9 The above appropriation for Unclassified - Total - Transfer
10 (activity 402) shall be transferred to the General Revenue Fund
11 only after all funding required by section eighteen-a, article
12 twenty-two, chapter twenty-nine of the code has been satisfied
13 as determined by the Director of the Lottery.

14 From the above appropriation for Unclassified - Transfer,
15 fund 7208 (activity 482), eleven million dollars shall be
16 transferred to the Consolidated Public Retirement Board - West
17 Virginia Department of Public Safety Death, Disability and
18 Retirement Fund (Fund 2160) and twenty-three million nine
19 hundred thirty thousand nine hundred forty-two dollars shall be
20 transferred to the Consolidated Public Retirement Board - West
21 Virginia Teachers' Retirement System Employers Accumula-
22 tion Fund (Fund 2601) only after all other funding required,
23 including that in the paragraph above, has been satisfied as
24 determined by the Director of the Lottery.

25 The purpose of this supplementary appropriation bill is to
26 add a new item of appropriation in the aforesaid account for the

6 (WV Code Chapter 19)

7 Fund 1401 FY 2006 Org 1400

8			Act-	Other
9			ivity	Funds

10	4	Unclassified	099	\$ 135,780
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11 And that the items of the total appropriation for the fiscal
 12 year ending the thirtieth day of June, two thousand six, to fund
 13 1401, fiscal year 2006, organization 1400, be amended and
 14 increased in the existing line item as follows:

15 TITLE II—APPROPRIATIONS.

16 **Sec. 3. Appropriations from other funds.**

17 **EXECUTIVE**

18 *100—Department of Agriculture—*

19 *Agriculture Fees Fund*

20 (WV Code Chapter 19)

21 Fund 1401 FY 2006 Org 1400

22			Act-	Other
23			ivity	Funds

24	1	Personal Services	001	\$ 52,000
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25	2	Annual Increment	004	5,450
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26	3	Employee Benefits	010	78,330
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27 The purpose of this supplementary appropriation bill is to
 28 supplement, amend, decrease and increase existing items in the
 29 aforesaid account for the designated spending unit for expendi-
 30 ture during the fiscal year ending the thirtieth day of June, two
 31 thousand six, with no additional funds being appropriated.

CHAPTER 7

(S. B. 4016 — By Senators Helmick, Sharpe, Chafin, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Minear, Boley, Facemyer, Yoder, Guills and Sprouse)

[Passed September 12, 2005; in effect from passage.]

[Approved by the Governor on September 19, 2005.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to a new item of appropriation designated to the Department of Agriculture - West Virginia Agricultural Land Protection Authority, fund 0607, fiscal year 2006, organization 1400, by supplementing and amending chapter sixteen, Acts of the Legislature, regular session, two thousand five, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature a statement of the State Fund, General Revenue, dated the seventh day of September, two thousand five, setting forth therein the cash balance as of the first day of July, two thousand five; and further included the estimate of revenues for the fiscal year two thousand six, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand six; and

WHEREAS, It appears from the Governor's statement of the State Fund - General Revenue there now remains an unappropriated surplus balance which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand six; therefore

Be it enacted by the Legislature of West Virginia:

That chapter sixteen, Acts of the Legislature, regular session, two thousand five, known as the budget bill, be supplemented and amended by adding to Title II, Section One thereof, the following:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 EXECUTIVE

4 13a—Department of Agriculture—

5 West Virginia Agricultural Land Protection Authority

6 Fund 0607 FY 2006 Org 1400

7 1 Unclassified - Total - Surplus 284 \$ 50,000

8 The purpose of this supplementary appropriation bill is to
9 supplement this account in the Budget Act for the fiscal year
10 ending the thirtieth day of June, two thousand six, by providing
11 for a new item of appropriation to be established therein for the
12 designated spending unit for expenditure during the fiscal year
13 two thousand six.



CHAPTER 8

**(S. B. 4017 — By Senators Helmick, Sharpe, Chafin, Prezioso,
Edgell, Love, Bailey, Bowman, McCabe, Unger, Minear,
Boley, Facemyer, Yoder, Guills and Sprouse)**

[Passed September 12, 2005; in effect from passage.]

[Approved by the Governor on September 19, 2005.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the State Fund, General Revenue,

to the Department of Health and Human Resources - Division of Human Services, fund 0403, fiscal year 2006, organization 0511 and Higher Education - Higher Education Policy Commission - System - Control Account, fund 0586, fiscal year 2006, organization 0442, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand six.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the State Fund, General Revenue, to the Department of Health and Human Resources - Division of Human Services, fund 0403, fiscal year 2006, organization 0511, be amended and decreased in the line item as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 DEPARTMENT OF HEALTH AND
4 HUMAN RESOURCES

5 60—Division of Human Services

6 (WV Code Chapters 9, 48 and 49)

7 Fund 0403 FY 2006 Org 0511

8			General
9			Revenue
10	Act- ivity		Fund
11	8 Medical Services (R)	189	\$ 4,861,531

12 And that the items of the total appropriation from the State
13 Fund, General Revenue, to Higher Education - Higher Educa-
14 tion Policy Commission - System - Control Account, fund

15 0586, fiscal year 2006, organization 0442, be amended and
16 increased in the line items as follows:

17 TITLE II—APPROPRIATIONS.

18 Section 1. Appropriations from General Revenue.

19 HIGHER EDUCATION

20 87—Higher Education Policy Commission—

21 System—

22 Control Account

23 (WV Code Chapter 18B)

24 Fund 0586 FY 2006 Org 0442

25 26 27		Act- ivity	General Revenue Fund
28	4 WVU - School of Health Sciences .	174	\$ 4,599,834
29	5 WVU - School of Health Sciences -		
30	6 Charleston Division	175	261,697

31 The purpose of this supplementary appropriation bill is to
32 supplement, amend, decrease and increase items of existing
33 appropriations in the aforesaid accounts for the designated
34 spending units. The funds are for expenditure during the fiscal
35 year two thousand six with no new money being appropriated.

CHAPTER 9

**(Com. Sub. for H. B. 402 — By Mr. Speaker,
Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed September 13, 2005; in effect from passage.]

[Approved by the Governor on September 30, 2005.]

AN ACT to repeal §3-8-5c of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto three new sections, designated §3-8-1a, §3-8-2b and §3-8-14; and to amend and reenact §3-8-2, §3-8-4, §3-8-5a, §3-8-7, §3-8-8 and §3-8-12 of said code, all relating to regulating elections; defining terms; requiring candidates and persons making electioneering communications to keep and make available for inspection records of campaign-related contributions and spending; requiring persons who engage in electioneering communications to file financial statements with Secretary of State; contents of statement and filing requirements; penalties for filing delinquent or incomplete financial statements; granting the Secretary of State legislative and emergency rule-making authority; clarifying that electioneering communications made in coordination with a candidate or political party are considered contributions to such candidate or political party; increasing penalty for violations of prohibitions on corporate contributions to candidates or for electioneering communications; requiring political organizations to register with the Secretary of State prior to soliciting or accepting contributions; prohibiting political organizations from accepting contributions in excess of one thousand dollars before the primary and general elections; making it unlawful to create more than one political organization with the intent to avoid or evade contribution limitations; and establishing an internal operating date.

Be it enacted by the Legislature of West Virginia:

That §3-8-5c of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto three new sections, designated §3-8-1a, §3-8-2b and §3-8-14; and that §3-8-2, §3-8-4, §3-8-5a, §3-8-7, §3-8-8 and §3-8-12 of said code be amended and reenacted, all to read as follows:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-1a. Definitions.

§3-8-2. Accounts for receipts and expenditures in elections; requirements for reporting independent expenditures.

§3-8-2b. Disclosure of electioneering communications.

§3-8-4. Treasurers and financial agents; written designation requirements.

§3-8-5a. Information required in financial statement.

§3-8-7. Failure to file statement; delinquent or incomplete filing; criminal and civil penalties.

§3-8-8. Corporation contributions forbidden; exceptions; penalties; promulgation of rules; additional powers of State Election Commission.

§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.

§3-8-14. Effective date of certain criminal offenses.

§3-8-1a. Definitions.

1 As used in this article, the following terms have the
2 following definitions:

3 (1) "Ballot issue" means a constitutional amendment,
4 special levy, bond issue, local option referendum, municipal
5 charter or revision, an increase or decrease of corporate limits
6 or any other question that is placed before the voters for a
7 binding decision.

8 (2) "Broadcast, cable, or satellite communication" means
9 a communication that is publicly distributed by a television
10 station, radio station, cable television system, or satellite
11 system.

12 (3) “Candidate” means an individual who:

13 (A) Has filed a certificate of announcement under section
14 seven, article five, of this chapter or a municipal charter;

15 (B) Has filed a declaration of candidacy under section
16 twenty-three, article five of this chapter;

17 (C) Has been named to fill a vacancy on a ballot; or

18 (D) Has declared a write-in candidacy or otherwise publicly
19 declared his or her intention to seek nomination or election for
20 any state, district, county or municipal office or party office to
21 be filled at any primary, general or special election.

22 (4) “Candidate’s committee” means a political committee
23 established with the approval of or in cooperation with one pre-
24 candidate or candidate to explore the possibilities of seeking a
25 particular office and/or to support or aid his or her nomination
26 or election to an office in one election cycle. If a candidate
27 directs or influences the activities of more than one committee,
28 those committees shall be considered one committee of the
29 purpose of contribution limits.

30 (5) “Clearly identified” means that the name, nickname,
31 photograph, drawing or other depiction of the candidate appears
32 or the identity of the candidate is otherwise apparent through an
33 unambiguous reference such as “the Governor”, “your Senator”
34 or “the incumbent”, or through an unambiguous reference to his
35 or her status as a candidate such as “the Democratic candidate
36 for Governor” or “the Republican candidate for Supreme Court
37 of Appeals”.

38 (6) “Contribution” means a gift subscription, assessment,
39 payment for services, dues, advance, donation, pledge, contract,
40 agreement, forbearance or promise of money or other tangible
41 thing of value, whether conditional or legally enforceable, or a
42 transfer of money or other tangible thing of value to a person,

43 made for the purpose of influencing the nomination, election or
44 defeat of a candidate. An offer or tender of a contribution is not
45 a contribution if expressly and unconditionally rejected or
46 returned. A contribution does not include volunteer personal
47 services provided without compensation.

48 (7) “Direct costs of purchasing, producing or disseminating
49 electioneering communications” means:

50 (A) Costs charged by a vendor, including, but not limited
51 to, studio rental time, compensation of staff and employees,
52 costs of video or audio recording media and talent, material and
53 printing costs and postage; or

54 (B) The cost of airtime on broadcast, cable or satellite radio
55 and television stations, the cost of disseminating printed
56 materials, establishing a telephone bank, studio time, use of
57 facilities and the charges for a broker to purchase airtime.

58 (8) “Disclosure date” means either of the following:

59 (A) The first date during any calendar year on which any
60 electioneering communication is disseminated after the person
61 paying for the communication has spent a total of five thousand
62 dollars or more for the direct costs of purchasing, producing or
63 disseminating electioneering communications; or

64 (B) Any other date during that calendar year after any
65 previous disclosure date on which the person has made addi-
66 tional expenditures totaling five thousand dollars or more for
67 the direct costs of purchasing, producing or disseminating
68 electioneering communications.

69 (9) “Election” means any primary, general or special
70 election conducted under the provisions of this code or under
71 the charter of any municipality at which the voters nominate or
72 elect candidates for public office. For purposes of this article,

73 each primary, general, special or local election constitutes a
74 separate election. This definition is not intended to modify or
75 abrogate the definition of the term “nomination” as used in this
76 article.

77 (10) (A) “Electioneering communication” means any paid
78 communication made by broadcast, cable or satellite signal,
79 mass mailing, telephone bank, leaflet, pamphlet, flyer or
80 outdoor advertising or published in any newspaper, magazine
81 or other periodical that:

82 (i) Refers to a clearly identified candidate for a statewide
83 office or the Legislature;

84 (ii) Is publicly disseminated within:

85 (a) Thirty days before a primary election at which the
86 nomination for office sought by the candidate is to be deter-
87 mined; or

88 (b) Sixty days before a general or special election at which
89 the office sought by the candidate is to be filled; and

90 (iii) Is targeted to the relevant electorate.

91 (B) “Electioneering communication” does not include:

92 (i) A news story, commentary or editorial disseminated
93 through the facilities of any broadcast, cable or satellite
94 television or radio station, newspaper, magazine or other
95 periodical publication not owned or controlled by a political
96 party, political committee or candidate: *Provided*, That a news
97 story disseminated through a medium owned or controlled by
98 a political party, political committee, or candidate is neverthe-
99 less exempt if the news is:

100 (a) A bona fide news account communicated in a publica-
101 tion of general circulation or on a licensed broadcasting facility;
102 and

103 (b) Is part of a general pattern of campaign-related news
104 that gives reasonably equal coverage to all opposing candidates
105 in the circulation, viewing or listening area;

106 (ii) A communication that is required to be reported to the
107 State Election Commission or the Secretary of State as an
108 expenditure pursuant to any provision of this article, other than
109 section two-b of this article, or the rules of the State Election
110 Commission or the Secretary of State promulgated pursuant to
111 such provision: *Provided*, That, independent expenditures
112 required to be reported pursuant to subsection (b), section two
113 of this article are not exempt from the reporting requirements
114 of this section;

115 (iii) A candidate debate or forum conducted pursuant to
116 rules adopted by the State Election Commission or the Secre-
117 tary of State or a communication promoting that debate or
118 forum made by or on behalf of its sponsor;

119 (iv) A communication paid for by any organization operat-
120 ing under Section 501(c)(3) of the Internal Revenue Code of
121 1986;

122 (v) A communication made while the Legislature is in
123 session which, incidental to promoting or opposing a specific
124 piece of legislation pending before the Legislature, urges the
125 audience to communicate with a member or members of the
126 Legislature concerning that piece of legislation;

127 (vi) A statement or depiction by a membership organiza-
128 tion, in existence prior to the date on which the individual
129 named or depicted became a candidate, made in a newsletter or
130 other communication distributed only to bona fide members of
131 that organization;

132 (vii) A communication made solely for the purpose of
133 attracting public attention to a product or service offered for

134 sale by a candidate or by a business owned or operated by a
135 candidate which does not mention an election, the office sought
136 by the candidate or his or her status as a candidate; or

137 (viii) A communication, such as a voter's guide, which
138 refers to all of the candidates for one or more offices, which
139 contains no appearance of endorsement for or opposition to the
140 nomination or election of any candidate and which is intended
141 as nonpartisan public education focused on issues and voting
142 history.

143 (11) "Financial agent" means any person acting for and by
144 himself or herself, or any two or more natural persons acting
145 together or cooperating in a financial way to aid or take part in
146 the nomination or election of any candidate for public office, or
147 to aid or promote the success or defeat of any political party at
148 any election.

149 (12) "Fund-raising event" means an event such as a dinner,
150 reception, testimonial, cocktail party, auction or similar affair
151 through which contributions are solicited or received by such
152 means as the purchase of a ticket, payment of an attendance fee
153 or by the purchase of goods or services.

154 (13) "Independent expenditure" means an expenditure made
155 by a person other than a candidate or a candidate's committee
156 in support of or opposition to the nomination or election of one
157 or more clearly identified candidates and without consultation
158 or coordination with or at the request or suggestion of the
159 candidate whose nomination or election the expenditure
160 supports or opposes or the candidate's agent. Supporting or
161 opposing the election of a clearly identified candidate includes
162 supporting or opposing the candidates of a clearly identified
163 political party. An expenditure which does not meet the criteria
164 for an independent expenditure is considered a contribution.

165 (14) “Mass mailing” means a mailing by United States
166 mail, facsimile or electronic mail of more than five hundred
167 pieces of mail matter of an identical or substantially similar
168 nature within any thirty-day period.

169 (15) “Membership organization” means a group that grants
170 bona fide rights and privileges, such as the right to vote, to elect
171 officers or directors and the ability to hold office, to its mem-
172 bers and which uses a majority of its membership dues for
173 purposes other than political purposes. “Membership organiza-
174 tion” does not include organizations that grant membership
175 upon receiving a contribution.

176 (16) “Name” means the full first name, middle name or
177 initial, if any, and full legal last name of an individual and the
178 full name of any association, corporation, committee or other
179 organization of individuals, making the identity of any person
180 who makes a contribution apparent by unambiguous reference.

181 (17) “Person” means an individual, partnership, committee,
182 association, and any other organization or group of individuals.

183 (18) “Political action committee” means a committee
184 organized by one or more persons for the purpose of supporting
185 or opposing the nomination or election of one or more candi-
186 dates or the passage or defeat of one or more ballot issues.

187 (19) “Political party” means a political party as defined by
188 section eight, article one, chapter three of this code or any
189 committee established, financed, maintained or controlled by
190 the party, including any subsidiary, branch or local unit thereof
191 and including national or regional affiliates of the party.

192 (20) “Political purposes” means supporting or opposing the
193 nomination, election or defeat of one or more candidates or the
194 passage or defeat of a ballot issue, supporting the retirement of
195 the debt of a candidate or political committee or the administra-

196 tion or activities of an established political party or an organiza-
197 tion which has declared itself a political party and determining
198 the advisability of becoming a candidate under the pre-candi-
199 dacy financing provisions of this chapter.

200 (21) “Targeted to the relevant electorate” means a commu-
201 nication which refers to a clearly identified candidate for
202 statewide office or the Legislature and which can be received
203 by ten thousand or more individuals in the state in the case of
204 a candidacy for statewide office and five hundred or more
205 individuals in the district in the case of a candidacy for the
206 Legislature.

207 (22) “Telephone bank” means telephone calls that are
208 targeted to the relevant electorate, other than telephone calls
209 made by volunteer workers, regardless of whether paid profes-
210 sionals designed the telephone bank system, developed calling
211 instructions or trained volunteers.

212 (23) “Two-year election cycle” means the twenty-four
213 month period that begins the day after a general election and
214 ends on the day of the subsequent general election.

**§3-8-2. Accounts for receipts and expenditures in elections;
requirements for reporting independent expendi-
tures.**

1 (a) Except for: (1) Candidates for party committeeman and
2 committeewoman; and (2) federal committees required to file
3 under the provisions 2 U.S.C. §434, all candidates for nomina-
4 tion or election and all persons supporting, aiding or opposing
5 the nomination, election or defeat of any candidate shall keep
6 for a period of six months records of receipts and expenditures
7 which are made for political purposes. All of the receipts and
8 expenditures are subject to regulation by the provisions of this
9 article. Verified financial statements of the records and expen-
10 ditures shall be made and filed as public records by all candi-

11 dates and by their financial agents, representatives or any
12 person acting for and on behalf of any candidate and by the
13 treasurers of all political party committees.

14 (b) In addition to any other reporting required by the
15 provisions of this chapter, any person making an independent
16 expenditure in the amount of one thousand dollars or more for
17 any statewide, legislative or multicounty judicial candidate or
18 in the amount of five hundred dollars or more for any county
19 office, single-county judicial candidate, committee supporting
20 or opposing a candidate on the ballot in more than one county,
21 or any municipal candidate on a municipal election ballot, after
22 the eleventh day but more than twelve hours before the day of
23 any election shall report the expenditure, on a form prescribed
24 by the Secretary of State, within twenty-four hours after the
25 expenditure is made or debt is incurred for a communication, to
26 the Secretary of State by hand-delivery, facsimile or other
27 means to assure receipt by the Secretary of State within the
28 twenty-four-hour period.

29 (c) Any independent expenditure must include a clear and
30 conspicuous public notice which identifies the name of the
31 person who paid for the expenditure and states that the commu-
32 nication is not authorized by the candidate or his or her commit-
33 tee.

34 (d) Any person who has spent a total of five thousand
35 dollars or more for the direct costs of purchasing, producing or
36 disseminating electioneering communications during any
37 calendar year shall maintain all financial records and receipts
38 related to such expenditure for a period of six months following
39 the filing of a disclosure pursuant to subsection (a) of this
40 section and, upon request, shall make such records and receipts
41 available to the Secretary of State or county clerk for the
42 purpose of an audit as provided in section seven of this article.
43 Any person who willfully fails to comply with this section is

44 guilty of a misdemeanor and, upon conviction thereof, shall be
45 fined not less than five hundred dollars, or confined in jail for
46 not more than one year, or both fined and confined.

§3-8-2b. Disclosure of electioneering communications.

1 (a) Every person who has spent a total of five thousand
2 dollars or more for the direct costs of purchasing, producing or
3 disseminating electioneering communications during any
4 calendar year shall, within twenty-four hours of each disclosure
5 date, file with the Secretary of State a statement which contains:

6 (1) The name of the person making the expenditure, the
7 name of any person sharing or exercising direction or control
8 over the activities of the person making the expenditure and the
9 name of the custodian of the books and accounts of the person
10 making the expenditure;

11 (2) If the person making the expenditure is not an individ-
12 ual, the principal place of business of the partnership, commit-
13 tee, association, organization or group which made the expendi-
14 ture;

15 (3) The amount of each expenditure of more than one
16 thousand dollars made for electioneering communications
17 during the period covered by the statement and the name of the
18 person to whom the expenditure was made;

19 (4) The elections to which the electioneering communica-
20 tions pertain and the names, if known, of the candidates referred
21 to or to be referred to therein; and

22 (5) The names and addresses of any contributors who
23 contributed a total of more than one thousand dollars between
24 the first day of the preceding calendar year and the disclosure
25 date and whose contributions were used to pay for electioneer-
26 ing communications.

27 (b) With regard to the contributors required to be listed
28 pursuant to subdivision (5), subsection (a) of this section, the
29 statement shall also include:

30 (1) The month, day and year that the contributions of any
31 single contributor exceeded two hundred fifty dollars;

32 (2) If the contributor is a political action committee, the
33 name and address the political action committee registered with
34 the State Election Commission;

35 (3) If the contributor is an individual, the name and address
36 of the individual, his or her occupation, the name and address
37 of the individual's current employer, if any, or, if the individual
38 is self-employed, the name and address of the individual's
39 business, if any;

40 (4) A description of the contribution, if other than money;

41 (5) The value in dollars and cents of the contribution.

42 (c)(1) Any person who makes a contribution for the purpose
43 of funding the direct costs of purchasing, producing or dissemi-
44 nating an electioneering communication under this section
45 shall, at the time the contribution is made, provide his or her
46 name and address to the recipient of the contribution;

47 (2) Any individual who makes contributions totaling two
48 hundred fifty dollars or more between the first day of the
49 preceding calendar year and the disclosure date for the purpose
50 of funding the direct costs of purchasing, producing or dissemi-
51 nating electioneering communications shall, at the time the
52 contribution is made, provide the name of his or her occupation
53 and of his or her current employer, if any, or, if the individual
54 is self-employed, the name of his or her business, if any, to the
55 recipient of the contribution.

56 (d) In each electioneering communication, a statement shall
57 appear or be presented in a clear and conspicuous manner that:

58 (1) Clearly indicates that the electioneering communication
59 is not authorized by the candidate or the candidate's committee;
60 and

61 (2) Clearly identifies the person making the expenditure for
62 the electioneering communication: *Provided*, That if the
63 electioneering communication appears on or is disseminated by
64 broadcast, cable or satellite transmission, the statement required
65 by this subsection must be both spoken clearly and appear in
66 clearly readable writing at the end of the communication.

67 (e) Within five business days after receiving a disclosure of
68 electioneering communications statement pursuant to this
69 section, the Secretary of State shall make information in the
70 statement available to the public through the Internet.

71 (f) For the purposes of this section, a person is considered
72 to have made an expenditure when the person has entered into
73 a contract to make the expenditure at a future time.

74 (g) The Secretary of State is hereby directed to propose
75 legislative rules and emergency rules implementing this section
76 for legislative approval in accordance with the provisions of
77 article three, chapter twenty-nine-a of this code.

78 (h) If any person, including but not limited to, a political
79 organization (as defined in section 527(e)(1) of the Internal
80 Revenue Code of 1986) makes, or contracts to make, any
81 expenditure for electioneering communications which is
82 coordinated with and made with the cooperation, consent or
83 prior knowledge of a candidate, candidate's committee or agent
84 of a candidate, the expenditure shall be treated as a contribution
85 and expenditure by the candidate. If the expenditure is coordi-

86 nated with and made with the cooperation or consent of a state
87 or local political party or committee, agent or official of that
88 party, the expenditure shall be treated as a contribution to and
89 expenditure by the candidate's party.

§3-8-4. Treasurers and financial agents; written designation requirements.

1 (a) No person may act as the treasurer of any political
2 committee, or as financial agent for any candidate for nomina-
3 tion or election to any statewide office, to any office encom-
4 passing an election district larger than a county or to any
5 legislative office or for any person supporting, aiding or
6 opposing the nomination, election or defeat of any candidate for
7 an office encompassing an election district larger than a county,
8 unless a written statement designating that person as the
9 treasurer or financial agent is filed with the Secretary of State
10 at least twenty-eight days before the election at which that
11 person is to act as a financial agent or treasurer and is received
12 by the Secretary of State before midnight, Eastern Standard
13 Time, of that day or if mailed, is postmarked before that hour:
14 *Provided*, That a change of treasurer or financial agent may be
15 made at any time by filing a written statement with the Secre-
16 tary of State.

17 (b) No person may act as treasurer of any committee or as
18 financial agent for any candidate to be nominated or elected by
19 the voters of a county or a district therein, except legislative
20 candidates, or as the financial agent for a candidate for the
21 nomination or election to any other office, unless a written
22 statement designating him or her as the treasurer or financial
23 agent is filed with the clerk of the county commission at least
24 twenty-eight days before the election at which he or she is to act
25 and is received before midnight, Eastern Standard Time, of that
26 day or if mailed, is postmarked before that hour: *Provided*, That

27 a change of treasurer may be made at any time by filing a
28 written statement with the clerk of the county commission.

29 (c) Notwithstanding the provisions of subsections (a) and
30 (b) of this section, a filing designating a treasurer for a state or
31 county political executive committee may be made anytime
32 before the committee either accepts or spends funds. Once a
33 designation is made by a state or county political executive
34 committee, no additional designations are required under this
35 section until a successor treasurer is designated. A state or
36 county political executive committee may terminate a designa-
37 tion made pursuant to this section by making a written request
38 to terminate the designation and by stating in the request that
39 the committee has no funds remaining in the committee's
40 account. This written request shall be filed with either the
41 Secretary of State or the clerk of the county commission as
42 provided by subsections (a) and (b) of this section.

§3-8-5a. Information required in financial statement.

1 (a) Each financial statement required by the provisions of
2 this article, other than a disclosure of electioneering communi-
3 cations pursuant to section two-b of this article, shall contain
4 only the following information:

5 (1) The name, residence and mailing address and telephone
6 number of each candidate, financial agent, treasurer or person
7 and the name, address and telephone number of each associa-
8 tion, organization or committee filing a financial statement.

9 (2) The balance of cash and any other sum of money on
10 hand at the beginning and the end of the period covered by the
11 financial statement.

12 (3) The name of any person making a contribution and the
13 amount of the contribution. If the total contributions of any one
14 person amount to two hundred fifty dollars or more, the
15 residence and mailing address of the contributor and, if the

16 contributor is an individual, his or her major business affiliation
17 and occupation shall also be reported. A contribution totaling
18 more than fifty dollars of currency of the United States or
19 currency of any foreign country by any one contributor is
20 prohibited and a violation of section five-d of this article. The
21 statement on which contributions are required to be reported by
22 this subdivision may not distinguish between contributions
23 made by individuals and contributions made by partnerships,
24 firms, associations committees, organizations or groups.

25 (4) The total amount of contributions received during the
26 period covered by the financial statement.

27 (5) The name, residence and mailing address of any
28 individual or the name and mailing address of each lending
29 institution making a loan or of the spouse cosigning a loan, as
30 appropriate, the amount of any loan received, the date and terms
31 of the loan, including the interest and repayment schedule, and
32 a copy of the loan agreement.

33 (6) The name, residence and mailing address of any
34 individual or the name and mailing address of each partnership,
35 firm, association, committee, organization or group having
36 previously made or cosigned a loan for which payment is made
37 or a balance is outstanding at the end of the period, together
38 with the amount of repayment on the loan made during the
39 period and the balance at the end of the period.

40 (7) The total outstanding balance of all loans at the end of
41 the period.

42 (8) The name, residence and mailing address of any
43 individual, or the name and mailing address of each partnership,
44 firm, association, committee, organization or group to whom
45 each expenditure was made or liability incurred, together with
46 the amount and purpose of each expenditure or liability
47 incurred and the date of each transaction.

48 (9) The total expenditure for the nomination, election or
49 defeat of a candidate or any person supporting, aiding or
50 opposing the nomination, election or defeat of any candidate in
51 whose behalf an expenditure was made or a contribution was
52 given for the primary or other election.

53 (10) The total amount of expenditures made during the
54 period covered by the financial statement.

55 (b) Any unexpended balance at the time of making the
56 financial statements herein provided for shall be properly
57 accounted for in that financial statement and shall appear as a
58 beginning balance in the next financial statement.

59 (c) Each financial statement required by this section shall
60 contain a separate section setting forth the following informa-
61 tion for each fund-raising event held during the period covered
62 by the financial statement:

63 (1) The type of event, date held and address and name, if
64 any, of the place where the event was held.

65 (2) All of the information required by subdivision (3),
66 subsection (a) of this section.

67 (3) The total of all moneys received at the fund-raising
68 event.

69 (4) The expenditures incident to the fund-raising event.

70 (5) The net receipts of the fund-raising event.

71 (d) When any lump sum payment is made to any advertis-
72 ing agency or other disbursing person who does not file a report
73 of detailed accounts and verified financial statements as
74 required in this section, such lump sum expenditures shall be
75 accounted for in the same manner as provided for herein.

76 (e) Any contribution or expenditure made by or on behalf
77 of a candidate for public office, to any other candidate or
78 committee for a candidate for any public office in the same
79 election shall be accounted for in accordance with the provi-
80 sions of this section.

81 (f) No person may make any contribution except from his,
82 her or its own funds, unless such person discloses in writing to
83 the person required to report under this section the name,
84 residence, mailing address, major business affiliation and
85 occupation of the person which furnished the funds to the
86 contributor. All such disclosures shall be included in the
87 statement required by this section.

88 (g) Any firm, association, committee or fund permitted by
89 section eight of this article to be a political committee shall
90 disclose on the financial statement its corporate or other
91 affiliation.

92 (h) No contribution may be made, directly or indirectly, in
93 a fictitious name, anonymously or by one person through an
94 agent, relative or other person so as to conceal the identity of
95 the source of the contribution or in any other manner so as to
96 effect concealment of the contributor's identity.

97 (i) No person may accept any contribution for the purpose
98 of influencing the nomination, election or defeat of a candidate
99 or for the passage or defeat of any ballot issue unless the
100 identity of the donor and the amount of the contribution is
101 known and reported.

102 (j) When any person receives an anonymous contribution
103 which cannot be returned because the donor cannot be identi-
104 fied, that contribution shall be donated to the General Revenue
105 Fund of the State. Any anonymous contribution shall be
106 recorded as such on the candidate's financial statement, but
107 may not be expended for election expenses. At the time of

108 filing, the financial statement shall include a statement of
109 distribution of anonymous contributions, which total amount
110 shall equal the total of all anonymous contributions received
111 during the period.

112 (k) Any membership organization which raises funds for
113 political purposes by payroll deduction, assessing them as part
114 of its membership dues or as a separate assessment, may report
115 the amount raised as follows:

116 (1) If the portion of dues or assessments designated for
117 political purposes equals twenty-five dollars or less per member
118 over the course of a calendar year, the total amount raised for
119 political purposes through membership dues or assessments
120 during the period is reported by showing the amount required
121 to be paid by each member and the number of members.

122 (2) If the total payroll deduction for political purposes of
123 each participating member equals twenty-five dollars or less
124 over the course of a calendar or fiscal year, as specified by the
125 organization, the organization shall report the total amount
126 received for political purposes through payroll deductions
127 during the reporting period and, to the maximum extent
128 possible, the amount of each yearly payroll deduction contribu-
129 tion level and the number of members contributing at each such
130 specified level. The membership organization shall maintain
131 records of the name and yearly payroll deduction amounts of
132 each participating member.

133 (3) If any member contributes to the membership organiza-
134 tion through individual voluntary contributions by means other
135 than payroll deduction, membership dues, or assessments as
136 provided in this subsection, the reporting requirements of
137 subdivision (3), subsection (a) of this section shall apply. Funds
138 raised for political purposes must be segregated from the funds
139 for other purposes and listed in its report.

140 (1) Notwithstanding the provisions of section five of this
141 article or of the provisions of this section to the contrary, an
142 alternative reporting procedure may be followed by a political
143 party executive committee or a political action committee
144 representing a political party in filing financial reports for
145 fund-raising events if the total profit does not exceed five
146 thousand dollars per year. A political party executive committee
147 or a political action committee representing a political party
148 may report gross receipts for the sale of food, beverages,
149 services, novelty items, raffle tickets or memorabilia, except
150 that any receipt of more than fifty dollars from an individual or
151 organization shall be reported as a contribution. A political
152 party executive committee or a political action committee
153 representing a political party using this alternative method of
154 reporting shall report: (i) The name of the committee; (ii) the
155 type of fund-raising activity undertaken; (iii) the location where
156 the activity occurred; (iv) the date of the fund raiser; (v) the
157 name of any individual who contributed more than fifty dollars
158 worth of items to be sold; (vi) the name and amount received
159 from any person or organization purchasing more than fifty
160 dollars worth of food, beverages, services, novelty items, raffle
161 tickets or memorabilia; (vii) the gross receipts of the fund
162 raiser; and (viii) the date, amount, purpose and name and
163 address of each person or organization from whom items with
164 a fair market value of more than fifty dollars were purchased
165 for resale.

**§3-8-7. Failure to file statement; delinquent or incomplete filing;
criminal and civil penalties.**

1 (a) Any person, candidate, financial agent or treasurer of a
2 political party committee who fails to file a sworn, itemized
3 statement required by this article within the time limitations
4 specified in this article or who willfully files a grossly incom-
5 plete or grossly inaccurate statement shall be guilty of a
6 misdemeanor and, upon conviction thereof, shall be fined not
7 less than five hundred dollars or imprisoned in jail for not more

8 than one year, or both, in the discretion of the court. Forty days
9 after any primary or other election, the Secretary of State, or
10 county clerk, or municipal recorder, as the case may be, shall
11 give notice of any failure to file a sworn statement or the filing
12 of any grossly incomplete or grossly inaccurate statement by
13 any person, candidate, financial agent or treasurer of a political
14 party committee and forward copies of any grossly incomplete
15 or grossly inaccurate statement to the prosecuting attorney of
16 the county where the person, candidate, financial agent, or
17 treasurer resides, is located or has its principal place of busi-
18 ness.

19 (b) (1) Any person, candidate, financial agent or treasurer
20 of a political party committee who fails to file a sworn, item-
21 ized statement as required in this article or who files a grossly
22 incomplete or grossly inaccurate statement may be assessed a
23 civil penalty by the Secretary of State of twenty-five dollars a
24 day for each day after the due date the statement is delinquent,
25 grossly incomplete or grossly inaccurate. Forty days after any
26 primary or other election, the county clerk shall give notice to
27 the Secretary of State of any failure to file a sworn statement or
28 the filing of any grossly incomplete or grossly inaccurate
29 statement by any person, candidate, financial agent or treasurer
30 of a political party committee and forward copies of such
31 delinquent, incomplete or inaccurate statements to the Secretary
32 of State.

33 (2) A civil penalty assessed pursuant to the provisions of
34 this section shall be payable to the State of West Virginia and
35 is collectable in any manner authorized by law for the collection
36 of debts.

37 (3) The Secretary of State may negotiate and enter into
38 settlement agreements for the payment of civil penalties
39 assessed as a result of the filing of a delinquent, grossly
40 incomplete or inaccurate statement.

41 (4) The Secretary of State and county clerk may review and
42 audit any sworn statement required to be filed pursuant to the
43 provisions of this article. The State Election Commission shall
44 propose legislative rules for promulgation, in accordance with
45 the provisions of chapter twenty-nine-a of this code, to establish
46 procedures for the assessment of civil penalties as provided in
47 this section.

48 (c) No candidate nominated at a primary election who has
49 failed to file a sworn statement, as required by the provisions of
50 this article, shall have his or her name placed on the official
51 ballot for the ensuing election, unless there has been filed by or
52 on behalf of such candidate, or by his or her financial agent, if
53 any, the financial statement relating to nominations required by
54 this article. It is unlawful to issue a commission or certificate of
55 election, or to administer the oath of office, to any person
56 elected to any public office who has failed to file a sworn
57 statement as required by the provisions of this article and no
58 person may enter upon the duties of his or her office until he or
59 she has filed such statement, nor may he or she receive any
60 salary or emolument for any period prior to the filing of such
61 statement.

§3-8-8. Corporation contributions forbidden; exceptions; penalties; promulgation of rules; additional powers of State Election Commission.

1 (a) No officer of any corporation, or agent or person on
2 behalf of such corporation, whether incorporated under the laws
3 of this or any other state, or foreign country, may pay, give or
4 lend, or authorize to be paid, given or lent, any money or other
5 thing of value belonging to such corporation, to any candidate,
6 financial agent, political committee or other person, for the
7 payment of any primary or other election expenses whatever.
8 No person may solicit or receive such payment, contribution or
9 other thing from any corporation, officer or agent thereof, or
10 other person acting on behalf of such corporation.

11 (b)(1) The provisions of this section shall not be deemed to
12 prohibit:

13 (A) Direct communications, other than by newspapers of
14 general circulation, radio, television or billboard advertising
15 likely to reach the general public, by a corporation to its
16 stockholders and executive or administrative personnel and
17 their families on any subject;

18 (B) Nonpartisan registration and get-out-the-vote cam-
19 paigns by a corporation aimed at its stockholders and execu-
20 tives or administrative personnel and their families; and

21 (C) The solicitation of contributions to a separate segre-
22 gated fund to be utilized for political purposes by any corporate
23 officer, agent or any person on behalf of a corporation. Any
24 separate segregated fund shall be deemed to be a political action
25 committee for the purpose of this article and subject to all
26 reporting requirements thereof.

27 (2) It shall be unlawful:

28 (A) For a separate segregated fund to make a contribution
29 or expenditure by utilizing money or anything of value secured
30 by physical force, job discrimination, financial reprisal or the
31 threat of force, job discrimination or financial reprisal, or as a
32 condition of employment, or by moneys obtained in any
33 commercial transaction;

34 (B) For any person soliciting a stockholder, executive or
35 administrative personnel and members of their family for a
36 contribution to such fund to fail to inform such person of the
37 political purposes of the separate segregated fund at the time of
38 such solicitation;

39 (C) For any person soliciting any other person for a
40 contribution to a separate segregated fund to fail to inform the

41 other person at the time of the solicitation of his or her right to
42 refuse to contribute without any reprisal;

43 (D) For a corporation or a separate segregated fund
44 established by a corporation to solicit contributions to the fund
45 from any person other than its stockholders and their families
46 and its executive or administrative personnel and their families
47 or to contribute any corporate funds;

48 (E) For a corporation or a separate segregated fund estab-
49 lished by a corporation to receive contributions to the fund from
50 any person other than its stockholders and their immediate
51 families and its executive or administrative personnel and their
52 immediate families;

53 (F) For a corporation to engage in job discrimination or to
54 discriminate in job promotion or transfer because of an em-
55 ployee's failure to make a contribution to a separate segregated
56 fund;

57 (G) For a separate segregated fund to make any contribu-
58 tion, directly or indirectly, in excess of one thousand dollars in
59 connection with any campaign for nomination or election to or
60 on behalf of any elective office in the State or any of its
61 subdivisions, or in connection with or on behalf of any commit-
62 tee or other organization or person engaged in furthering,
63 advancing, supporting or aiding the nomination or election of
64 any candidate for any such office;

65 (H) For a corporation to pay, give or lend, or authorize to
66 be paid, given or lent, any moneys or other things of value
67 belonging to the corporation to a separate segregated fund for
68 any purpose. This provision shall not be deemed to prohibit a
69 separate segregated fund from using the property, real or
70 personal, facilities and equipment of a corporation solely to
71 establish, administer and solicit contributions to the fund,
72 subject to the rules of the State Election Commission as

73 provided in subsection (d) of this section: *Provided*, That any
74 such corporation shall also permit any group of employees
75 thereof represented by a bona fide political action committee to
76 use the real property of the corporation solely to establish,
77 administer and solicit contributions to the fund of the political
78 action committee, subject to the rules of the State Election
79 Commission as provided in subsection (d) of this section. No
80 property, real or personal, facilities, equipment, materials or
81 services of a corporation may be used for the purpose of
82 influencing any voter or voters to vote for a particular candidate
83 or in any particular manner or to influence the result of any
84 election.

85 (3) For the purposes of this section, the term “executive or
86 administrative personnel” means individuals employed by a
87 corporation who are paid on a salary rather than hourly basis
88 and who have policy-making, managerial, professional or
89 supervisory responsibilities.

90 (c) Any person or corporation violating any provision of
91 this section shall be guilty of a misdemeanor and, on conviction,
92 shall be fined not more than ten thousand dollars. No
93 corporation may reimburse any person the amount of any fine
94 imposed pursuant to this section.

95 (d) To ensure uniform administration and application of the
96 provisions of this section and of those of the Federal Election
97 Campaign Act Amendments of 1976 relating to corporate
98 contributions, the State Election Commission shall propose
99 rules for legislative approval in accordance with the provisions
100 of article three, chapter twenty-nine-a of this code to implement
101 the provisions of this section consistent, insofar as practicable,
102 with the rules and regulations promulgated by the Federal
103 Election Commission to carry out similar or identical provisions
104 of 2 U.S.C. §441b.

105 (e) In addition to the powers and duties set forth in article
106 one-a of this chapter, the State Election Commission has the
107 following powers and duties:

108 (1) To investigate, upon complaint or on its own initiative,
109 any alleged violations or irregularities of this article.

110 (2) To administer oaths and affirmations, issue subpoenas
111 for the attendance of witnesses, issue subpoenas duces tecum to
112 compel the production of books, papers, records and all other
113 evidence necessary to any investigation.

114 (3) To involve the aid of any circuit court in the execution
115 of its subpoena power.

116 (4) To report any alleged violations of this article to the
117 appropriate prosecuting attorney having jurisdiction, which
118 prosecuting attorney shall present to the grand jury such alleged
119 violations, together with all evidence relating thereto, no later
120 than the next term of court after receiving the report.

121 (f) The Attorney General shall, when requested, provide
122 legal and investigative assistance to the State Election Commis-
123 sion.

124 (g) Any investigation either upon complaint or initiative,
125 shall be conducted in an executive session of the State Election
126 Commission and shall remain undisclosed except upon an
127 indictment by a grand jury.

128 (h) Any person who discloses the fact of any complaint,
129 investigation or report or any part thereof, or any proceedings
130 thereon, is guilty of a misdemeanor and, upon conviction shall
131 be fined not less than one thousand dollars, nor more than five
132 thousand dollars, and shall be imprisoned in jail not less than
133 six months nor more than one year.

§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.

1 (a) No person may publish, issue or circulate, or cause to be
2 published, issued or circulated, any anonymous letter, circular,
3 placard, radio or television advertisement or other publication
4 supporting or aiding the election or defeat of a clearly identified
5 candidate.

6 (b) No owner, publisher, editor or employee of a newspaper
7 or other periodical may insert, either in its advertising or
8 reading columns, any matter, paid for or to be paid for, which
9 tends to influence the voting at any election, unless directly
10 designating it as a paid advertisement and stating the name of
11 the person authorizing its publication and the candidate in
12 whose behalf it is published.

13 (c) No person may, in any room or building occupied for
14 the discharge of official duties by any officer or employee of
15 the State or a political subdivision of the State, solicit orally or
16 by written communication delivered within the room or
17 building, or in any other manner, any contribution of money or
18 other thing of value for any party or political purpose, from any
19 postmaster or any other officer or employee of the federal
20 government, or officer or employee of the State, or a political
21 subdivision of the State. No officer, agent, clerk or employee of
22 the federal government, or of this state, or any political subdivi-
23 sion of the State, who may have charge or control of any
24 building, office or room, occupied for any official purpose, may
25 knowingly permit any person to enter any building, office or
26 room, occupied for any official purpose for the purpose of
27 soliciting or receiving any political assessments from, or

28 delivering or giving written solicitations for, or any notice of,
29 any political assessments to, any officer or employee of the
30 State, or a political subdivision of the State.

31 (d) Except as provided in section eight of this article, no
32 person entering into any contract with the State or its subdivi-
33 sions, or any department or agency of the State, either for
34 rendition of personal services or furnishing any material,
35 supplies or equipment or selling any land or building to the
36 State, or its subdivisions, or any department or agency of the
37 State, if payment for the performance of the contract or
38 payment for the material, supplies, equipment, land or building
39 is to be made, in whole or in part, from public funds may,
40 during the period of negotiation for or performance under the
41 contract or furnishing of materials, supplies, equipment, land or
42 buildings, directly or indirectly, make any contribution to any
43 political party, committee or candidate for public office or to
44 any person for political purposes or use; nor may any person or
45 firm solicit any contributions for any purpose during any
46 period.

47 (e) No person may, directly or indirectly, promise any
48 employment, position, work, compensation or other benefit
49 provided for, or made possible, in whole or in part, by Act of
50 the Legislature, to any person as consideration, favor or reward
51 for any political activity for the support of or opposition to any
52 candidate, or any political party in any election.

53 (f) No person may, directly or indirectly, make any contri-
54 bution in excess of the value of one thousand dollars in connec-
55 tion with any campaign for nomination or election to or on
56 behalf of any statewide office, in connection with any other
57 campaign for nomination or election to or on behalf of any
58 other elective office in the state or any of its subdivisions, or in
59 connection with or on behalf of any person engaged in further-
60 ing, advancing, supporting or aiding the nomination or election
61 of any candidate for any of the offices.

62 (g) No political organization (as defined in Section
63 527(e)(1) of the Internal Revenue Code of 1986) may solicit or
64 accept contributions until it has notified the Secretary of State
65 of its existence and of the purposes for which it was formed.
66 During the two-year election cycle, a political organization (as
67 defined in Section 527 (e) (1) of the Internal Revenue Code of
68 1986) may not accept contributions totaling more than one
69 thousand dollars from any one person prior to the primary
70 election and contributions totaling more than one thousand
71 dollars from any one person after the primary and before the
72 general election.

73 (h) It shall be unlawful for any person to create, establish or
74 organize more than one political organization (as defined in
75 Section 527(e)(1) of the Internal Revenue Code of 1986) with
76 the intent to avoid or evade the contribution limitations con-
77 tained in subsection (g) of this section.

78 (i) Notwithstanding the provisions of subsection (f) of this
79 section to the contrary, no person may, directly or indirectly,
80 make contributions to a state party executive committee or state
81 party legislative caucus committee which, in the aggregate,
82 exceed the value of one thousand dollars in any calendar year.

83 (j) The limitations on contributions contained in this section
84 do not apply to transfers between and among a state party
85 executive committee or a state party's legislative caucus
86 political committee from national committees of the same
87 political party: *Provided*, That transfers permitted by this
88 subsection may not exceed fifty thousand dollars in the aggre-
89 gate in any calendar year to any state party executive committee
90 or state party legislative caucus political committee: *Provided*,
91 *however*, That the moneys transferred may only be used for
92 voter registration and get-out-the-vote activities of the state
93 committees.

94 (k) No person may solicit any contribution, other than
95 contributions to a campaign for or against a county or local
96 government ballot issue, from any nonelective salaried em-
97 ployee of the state government or of any of its subdivisions:
98 *Provided*, That in no event shall any person acting in a supervi-
99 sory role solicit a person who is a subordinate employee for any
100 contribution. No person may coerce or intimidate any
101 nonelective salaried employee into making a contribution. No
102 person may coerce or intimidate any nonsalaried employee of
103 the state government or any of its subdivisions into engaging in
104 any form of political activity. The provisions of this subsection
105 may not be construed to prevent any employee from making a
106 contribution or from engaging in political activity voluntarily
107 without coercion, intimidation or solicitation.

108 (l) No person may solicit a contribution from any other
109 person without informing the other person at the time of the
110 solicitation of the amount of any commission, remuneration or
111 other compensation that the solicitor or any other person will
112 receive or expect to receive as a direct result of the contribution
113 being successfully collected. Nothing in this subsection may be
114 construed to apply to solicitations of contributions made by any
115 person serving as an unpaid volunteer.

116 (m) No person may place any letter, circular, flyer, adver-
117 tisement, election paraphernalia, solicitation material or other
118 printed or published item tending to influence voting at any
119 election in a roadside receptacle unless it is: (1) Approved for
120 placement into a roadside receptacle by the business or entity
121 owning the receptacle; and (2) contains a written acknowledg-
122 ment of the approval. This subdivision does not apply to any
123 printed material contained in a newspaper or periodical pub-
124 lished or distributed by the owner of the receptacle. The term
125 “roadside receptacle” means any container placed by a newspa-
126 per or periodical business or entity to facilitate home or
127 personal delivery of a designated newspaper or periodical to its
128 customers.

129 (n) Any person violating any provision of this section is
130 guilty of a misdemeanor and, upon conviction thereof, shall be
131 fined not more than one thousand dollars, or confined in a
132 regional or county jail for not more than one year, or, in the
133 discretion of the court, be subject to both fine and confinement.

134 (o) The provisions of subsection (k) of this section,
135 permitting contributions to a campaign for or against a county
136 or local government ballot issue shall become operable on and
137 after the first day of January, two thousand five.

138 (p) The limitations on contributions established by subsec-
139 tion (g) of this section do not apply to contributions made for
140 the purpose of supporting or opposing a ballot issue, including
141 a constitutional amendment.

§3-8-14. Effective date of certain criminal offenses.

1 The criminal offenses created in sections two, seven and
2 twelve of this article by the provisions of Enrolled Committee
3 Substitute for House Bill No. 402 during the fourth extraordi-
4 nary session, two thousand five, shall be effective ninety days
5 from passage.

CHAPTER 10

(S. B. 4002 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed September 9, 2005; in effect from passage.]
[Approved by the Governor on September 28, 2005.]

AN ACT to amend and reenact §11-8-16 of the Code of West Virginia, 1931, as amended, relating to levy elections; allowing

levy elections in conjunction with primary elections; and conforming the statute to meet constitutional requirements.

Be it enacted by the Legislature of West Virginia:

That §11-8-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. LEVIES.

§11-8-16. What order for election to increase levies to show; vote required; amount and continuation of additional levy; issuance of bonds.

1 A local levying body may provide for an election to
2 increase the levies by entering on its record of proceedings an
3 order setting forth:

4 (1) The purpose for which additional funds are needed;

5 (2) The amount for each purpose;

6 (3) The total amount needed;

7 (4) The separate and aggregate assessed valuation of each
8 class of taxable property within its jurisdiction;

9 (5) The proposed additional rate of levy in cents on each
10 class of property;

11 (6) The proposed number of years, not to exceed five, to
12 which the additional levy applies;

13 (7) The fact that the local levying body will or will not
14 issue bonds, as provided by this section, upon approval of the
15 proposed increased levy.

16 The local levying body shall submit to the voters within
17 their political subdivision the question of the additional levy at

18 either a primary, general or special election. If at least sixty
19 percent of the voters cast their ballots in favor of the additional
20 levy, the county commission or municipality may impose the
21 additional levy. If at least a majority of voters cast their ballot
22 in favor of the additional levy, the county board of education
23 may impose the additional levy: *Provided*, That any additional
24 levy adopted by the voters, including any additional levy
25 adopted prior to the effective date of this section, shall be the
26 actual number of cents per each one hundred dollars of value
27 set forth in the ballot provision, which number shall not exceed
28 the maximum amounts prescribed in this section, regardless of
29 the rate of regular levy then or currently in effect, unless such
30 rate of additional special levy is reduced in accordance with the
31 provisions of section six-g of this article or otherwise changed
32 in accordance with the applicable ballot provisions. For county
33 commissions, this levy shall not exceed a rate greater than
34 seven and fifteen hundredths cents for each one hundred dollars
35 of value for Class I properties, and for Class II properties a rate
36 greater than twice the rate for Class I properties, and for Class
37 III and IV properties a rate greater than twice the rate for Class
38 II properties. For municipalities, this levy shall not exceed a
39 rate greater than six and twenty-five hundredths cents for each
40 one hundred dollars of value for Class I properties, and for
41 Class II properties a rate greater than twice the rate for Class I
42 properties, and for Class III and IV properties a rate greater than
43 twice the rate for Class II properties. For county boards of
44 education, this levy shall not exceed a rate greater than
45 twenty-two and ninety-five hundredths cents for each one
46 hundred dollars of value for Class I properties, and for Class II
47 properties a rate greater than twice the rate for Class I proper-
48 ties, and for Class III and IV properties a rate greater than twice
49 the rate for Class II properties.

50 Levies authorized by this section shall not continue for
51 more than five years without resubmission to the voters.

52 Upon approval of an increased levy as provided by this
53 section, a local levying body may immediately issue bonds in
54 an amount not exceeding the amount of the increased levy plus
55 the total interest thereon, but the term of the bonds shall not
56 extend beyond the period of the increased levy.

57 Insofar as they might concern the issuance of bonds as
58 provided in this section, the provisions of sections three and
59 four, article one, chapter thirteen of this code shall not apply.

CHAPTER 11

**(H. B. 401 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed September 13, 2005; in effect from passage.]

[Approved by the Governor on September 28, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-15-3a; and to amend and reenact §11-15B-2 and §11-15B-2a of said code, all relating generally to consumers sales and use taxes on food and food ingredients intended for human consumption; reducing rate of tax on sales, purchases and uses of food and food ingredients to five percent beginning on specified date; defining food and food ingredients and certain other terms; providing that lower rate does not apply to sales, purchases and uses of prepared food; authorizing legislative and emergency rules; and specifying internal effective dates.

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 §11-15-3a; and that §11-

15B-2 and §11-15B-2a of said code be amended and reenacted, all to read as follows:

Article

15. Consumers Sales and Service Tax.

15b. Streamlined Sales and Use Taxes.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-3a. Rate of tax on food and food ingredients intended for human consumption; reduction of tax beginning January 1, 2006; exceptions; legislative, emergency and other rules.

1 (a) *Rate of tax on food and food ingredients.* — Notwith-
2 standing any provision of this article or article fifteen-a of this
3 chapter to the contrary, the rate of tax on sales, purchases and
4 uses of food and food ingredients intended for human consump-
5 tion after the thirty-first day of December, two thousand five,
6 shall be five percent of its sales price, as defined in section two,
7 article fifteen-b of this chapter.

8 (b) *Calculation of tax on fractional parts of a dollar.* —
9 The tax computation under this section shall be carried to the
10 third decimal place, and the tax rounded up to the next whole
11 cent whenever the third decimal place is greater than four and
12 rounded down to the lower whole cent whenever the third
13 decimal place is four or less. The seller may elect to compute
14 the tax due on a transaction on a per item basis or on an invoice
15 basis provided the method used is consistently used during the
16 reporting period.

17 (c) *Exceptions.* — The reduced rate of tax provided in this
18 section shall not apply to sales, purchases and uses by consum-
19 ers of “Prepared food,” as defined in article fifteen-b of this
20 chapter, which shall remain taxable at the general rate of tax
21 specified in section three of this article and section two, article
22 fifteen-a of this chapter.

23 (d) *Federal food stamp and women, infants and children*
24 *programs, other exemptions.*— Nothing in this section shall
25 affect application of the exemption from tax provided in section
26 nine of this article for food purchased by an eligible person
27 using food stamps, electronic benefits transfer cards or vouch-
28 ers issued by or pursuant to authorization of the United States
29 Department of Agriculture to individuals participating in the
30 federal food stamp program, by whatever name called, or the
31 women, infants, and children (WIC) program, or application of
32 any other exemption from tax set forth in this article or article
33 fifteen-a of this chapter.

34 (e) *Legislative rules; emergency rules.* — The Tax Com-
35 missioner may promulgate legislative rules and emergency
36 rules explaining and implementing this section, which rules
37 shall be promulgated in accordance with the provisions of
38 article three, chapter twenty-nine-a of this code. The authority
39 to promulgate rules includes authority to amend or repeal those
40 rules. If proposed legislative rules for this section are filed in
41 the State Register before the fifteenth day of December, two
42 thousand five, those rules may be promulgated as emergency
43 legislative rules, as provided in article three of said chapter
44 twenty-nine-a.

ARTICLE 15B. STREAMLINED SALES AND USE TAXES.

§11-15B-2. Definitions.

§11-15B-2a. Streamlined sales and use tax agreement defined.

§11-15B-2. Definitions.

1 (a) *General.* — When used in this article and articles fifteen
2 and fifteen-a of this chapter, words defined in subsection (b) of
3 this section shall have the meanings ascribed to them in this
4 section, except in those instances where a different meaning is
5 distinctly expressed or the context in which the term is used
6 clearly indicates that a different meaning is intended by the
7 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 tax
12 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 nonitemized
20 price. A “bundled transaction” does not include the sale of any
21 products in which the “sales price” varies, or is negotiable,
22 based on the selection by the purchaser of the products included
23 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 immate-
30 rial include grocery sacks, shoeboxes, dry cleaning garment
31 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 or
41 other supporting sales-related documentation made available to
42 the customer in paper or electronic form including, but not
43 limited to, an invoice, bill of sale, receipt, contract, service
44 agreement, lease agreement, periodic notice of rates and
45 services, rate card, or price list.

46 (C) A transaction that otherwise meets the definition of a
47 “bundled transaction,” as defined in this subdivision, is not a
48 “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 the
51 use of the service, and is provided exclusively in connection
52 with the service, and the true object of the transaction is the
53 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 connec-
57 tion with the second service and the true object of the transac-
58 tion 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 the
64 total “purchase price” or “sales price” of the bundled products.

65 (II) Sellers shall use either the “purchase price” or the
66 “sales price” of the products to determine if the taxable
67 products are de minimis. Sellers may not use a combination of
68 the “purchase price” and “sales price” of the products to
69 determine if the taxable products are de minimis.

70 (III) Sellers shall use the full term of a service contract to
71 determine if the taxable products are de minimis; or

72 (iv) A transaction that includes products taxable at the
73 general rate of tax and food or food ingredients taxable at a
74 lower rate of tax and the “purchase price” or “sales price” of the
75 products taxable at the general sales tax rate is de minimis.

76 (I) “De minimis” means the seller’s “purchase price” or
77 “sales price” of the products taxable at the general sales tax rate
78 is ten percent or less of the total “purchase price” or “sales
79 price” of the bundled products.

80 (II) Sellers shall use either the “purchase price” or the
81 “sales price” of the products to determine if the products
82 taxable at the general rate of tax are de minimis. Sellers may
83 not use a combination of the “purchase price” and “sales price”
84 of the products to determine if the products taxable at the
85 general rate of tax are de minimis.

86 (III) Sellers shall use the full term of a service contract to
87 determine if the products taxable at the general rate of tax are
88 de minimis; or

89 (v) The “retail sale” of exempt tangible personal property,
90 or food and food ingredients taxable at a lower rate of tax, and
91 tangible personal property taxable at the general rate of tax
92 where:

93 (I) The transaction includes “food and food ingredients”,
94 “drugs”, “durable medical equipment”, “mobility enhancing
95 equipment”, “prosthetic devices” all as defined in article
96 fifteen-b of this chapter; and

97 (II) Where the seller’s “purchase price” or “sales price” of
98 the taxable tangible personal property taxable at the general rate
99 of tax is fifty percent or less of the total “purchase price” or

100 “sales price” of the bundled tangible personal property. Sellers
101 may not use a combination of the “purchase price” and “sales
102 price” of the tangible personal property when making the fifty
103 percent determination for a transaction.

104 (5) “Candy” means a preparation of sugar, honey or other
105 natural or artificial sweeteners in combination with chocolate,
106 fruits, nuts or other ingredients or flavorings in the form of bars,
107 drops or pieces. “Candy” shall not include any preparation
108 containing flour and shall require no refrigeration.

109 (6) “Certified automated system” or “CAS” means software
110 certified under the agreement to calculate the tax imposed by
111 each jurisdiction on a transaction, determine the amount of tax
112 to remit to the appropriate state, and maintain a record of the
113 transaction.

114 (7) “Certified service provider” or “CSP” means an agent
115 certified under the agreement to perform all of the seller’s sales
116 tax functions.

117 (8) “Computer” means an electronic device that accepts
118 information in digital or similar form and manipulates the
119 information for a result based on a sequence of instructions.

120 (9) “Computer software” means a set of coded instructions
121 designed to cause a “computer” or automatic data processing
122 equipment to perform a task.

123 (10) “Delivered electronically” means delivered to the
124 purchaser by means other than tangible storage media.

125 (11) “Delivery charges” means charges by the seller of
126 personal property or services for preparation and delivery to a
127 location designated by the purchaser of personal property or
128 services including, but not limited to, transportation, shipping,
129 postage, handling, crating, and packing.

130 (12) “Dietary supplement” means any product, other than
131 “tobacco”, intended to supplement the diet that:

132 (A) Contains one or more of the following dietary ingredi-
133 ents:

134 (i) A vitamin;

135 (ii) A mineral;

136 (iii) A herb or other botanical;

137 (iv) An amino acid;

138 (v) A dietary substance for use by humans to supplement
139 the diet by increasing the total dietary intake; or

140 (vi) A concentrate, metabolite, constituent, extract or
141 combination of any ingredient described in subparagraph (i)
142 through (v) of this subdivision;

143 (B) Is intended for ingestion in tablet, capsule, powder,
144 softgel, gelcap, or liquid form, or if not intended for ingestion
145 in such a form, is not represented as conventional food and is
146 not represented for use as a sole item of a meal or of the diet;
147 and

148 (C) Is required to be labeled as a dietary supplement,
149 identifiable by the “Supplemental Facts” box found on the label
150 as required pursuant to 21 CFR §101.36, or in any successor
151 section of the code of federal regulations.

152 (13) “Direct mail” means printed material delivered or
153 distributed by United States mail or other delivery service to a
154 mass audience or to addressees on a mailing list provided by the
155 purchaser or at the direction of the purchaser when the cost of
156 the items are not billed directly to the recipients. “Direct mail”
157 includes tangible personal property supplied directly or

158 indirectly by the purchaser to the direct mail seller for inclusion
159 in the package containing the printed material. “Direct mail”
160 does not include multiple items of printed material delivered to
161 a single address.

162 (14) “Drug” means a compound, substance or preparation,
163 and any component of a compound, substance or preparation,
164 other than food and food ingredients, dietary supplements or
165 alcoholic beverages:

166 (A) Recognized in the official United States pharmaco-
167 poeia, official homeopathic pharmacopoeia of the United
168 States, or official national formulary, and supplement to any of
169 them;

170 (B) Intended for use in the diagnosis, cure, mitigation,
171 treatment, or prevention of disease in humans; or

172 (C) Intended to affect the structure or any function of the
173 human body.

174 (15) “Durable medical equipment” means equipment
175 including repair and replacement parts for the equipment, but
176 does not include “mobility-enhancing equipment”, which:

177 (A) Can withstand repeated use;

178 (B) Is primarily and customarily used to serve a medical
179 purpose;

180 (C) Generally is not useful to a person in the absence of
181 illness or injury; and

182 (D) Is not worn in or on the body.

183 (16) “Electronic” means relating to technology having
184 electrical, digital, magnetic, wireless, optical, electromagnetic,
185 or similar capabilities.

186 (17) “Entity-based exemption” means an exemption based
187 on who purchases the product or service or who sells the
188 product or service.

189 (18) “Food and food ingredients” means substances,
190 whether in liquid, concentrated, solid, frozen, dried or dehy-
191 drated form, that are sold for ingestion or chewing by humans
192 and are consumed for their taste or nutritional value. “Food and
193 food ingredients” does not include alcoholic beverages,
194 prepared food, or tobacco.

195 (19) “Food sold through vending machines” means food
196 dispensed from a machine or other mechanical device that
197 accepts payment.

198 (20) “Includes” and “including” when used in a definition
199 contained in this article is not considered to exclude other
200 things otherwise within the meaning of the term being defined.

201 (21) “Lease” includes rental, hire and license. “Lease”
202 means any transfer of possession or control of tangible personal
203 property for a fixed or indeterminate term for consideration. A
204 lease or rental may include future options to purchase or extend.

205 (A) “Lease” does not include:

206 (i) A transfer of possession or control of property under a
207 security agreement or deferred payment plan that requires the
208 transfer of title upon completion of the required payments;

209 (ii) A transfer or possession or control of property under an
210 agreement that requires the transfer of title upon completion of
211 required payments and payment of an option price does not
212 exceed the greater of one hundred dollars or one percent of the
213 total required payments; or

214 (iii) Providing tangible personal property along with an
215 operator for a fixed or indeterminate period of time. A condi-

216 tion of this exclusion is that the operator is necessary for the
217 equipment to perform as designed. For the purpose of this
218 subparagraph, an operator must do more than maintain, inspect,
219 or set-up the tangible personal property.

220 (B) This definition shall be used for sales and use tax
221 purposes regardless if a transaction is characterized as a lease
222 or rental under generally accepted accounting principles, the
223 Internal Revenue Code, the Uniform Commercial Code, or
224 other provisions of federal, state or local law.

225 (22) “Load and leave” means delivery to the purchaser by
226 use of a tangible storage media where the tangible storage
227 media is not physically transferred to the purchaser.

228 (23) “Mobility enhancing equipment” means equipment,
229 including repair and replacement parts to the equipment, but
230 does not include “durable medical equipment”, which:

231 (A) Is primarily and customarily used to provide or increase
232 the ability to move from one place to another and which is
233 appropriate for use either in a home or a motor vehicle;

234 (B) Is not generally used by persons with normal mobility;
235 and

236 (C) Does not include any motor vehicle or equipment on a
237 motor vehicle normally provided by a motor vehicle manufac-
238 turer.

239 (24) “Model I seller” means a seller that has selected a
240 certified service provider as its agent to perform all the seller’s
241 sales and use tax functions, other than the seller’s obligation to
242 remit tax on its own purchases.

243 (25) “Model II seller” means a seller that has selected a
244 certified automated system to perform part of its sales and use
245 tax functions, but retains responsibility for remitting the tax.

246 (26) “Model III seller” means a seller that has sales in at
247 least five member states, has total annual sales revenue of at
248 least five hundred million dollars, has a proprietary system that
249 calculates the amount of tax due each jurisdiction, and has
250 entered into a performance agreement with the member states
251 that establishes a tax performance standard for the seller. As
252 used in this definition, a seller includes an affiliated group of
253 sellers using the same proprietary system.

254 (27) “Person” means an individual, trust, estate, fiduciary,
255 partnership, limited liability company, limited liability partner-
256 ship, corporation or any other legal entity.

257 (28) “Personal service” includes those:

258 (A) Compensated by the payment of wages in the ordinary
259 course of employment; and

260 (B) Rendered to the person of an individual without, at the
261 same time, selling tangible personal property, such as nursing,
262 barbering, manicuring and similar services.

263 (29)(A) “Prepared food” means:

264 (i) Food sold in a heated state or heated by the seller;

265 (ii) Two or more food ingredients mixed or combined by
266 the seller for sale as a single item; or

267 (iii) Food sold with eating utensils provided by the seller,
268 including plates, knives, forks, spoons, glasses, cups, napkins,
269 or straws. A plate does not include a container or packaging
270 used to transport the food.

271 (B) “Prepared food” in subparagraph (ii), paragraph (A) of
272 this subdivision (29) does not include food that is only cut,
273 repackaged, or pasteurized by the seller, and eggs, fish, meat,

274 poultry, and foods containing these raw animal foods requiring
275 cooking by the consumer as recommended by the Food and
276 Drug Administration in chapter 3, part 401.11 of its Food Code
277 of 2001 so as to prevent food borne illnesses.

278 (C) Additionally, “prepared food,” as defined in this
279 subdivision does not include:

280 (i) Food sold by a seller whose proper primary NAICS
281 classification is manufacturing in sector 311, except subsection
282 3118 (bakeries);

283 (ii) Food sold in an unheated state by weight or volume as
284 a single item; or

285 (iii) Bakery items, including bread, rolls, buns, biscuits,
286 bagels, croissants, pastries, donuts, danish, cakes, tortes, pies,
287 tarts, muffins, bars, cookies, tortillas.

288 (30) “Prescription” means an order, formula or recipe
289 issued in any form of oral, written, electronic, or other means
290 of transmission by a duly licensed practitioner authorized by the
291 laws of this state to issue prescriptions.

292 (31) “Prewritten computer software” means “computer
293 software”, including prewritten upgrades, which is not designed
294 and developed by the author or other creator to the specifica-
295 tions of a specific purchaser.

296 (A) The combining of two or more prewritten computer
297 software programs or prewritten portions thereof does not cause
298 the combination to be other than prewritten computer software.

299 (B) “Prewritten computer software” includes software
300 designed and developed by the author or other creator to the
301 specifications of a specific purchaser when it is sold to a person
302 other than the purchaser. Where a person modifies or enhances
303 computer software of which the person is not the author or

304 creator, the person is considered to be the author or creator only
305 of the person's modifications or enhancements.

306 (C) "Prewritten computer software" or a prewritten portion
307 thereof that is modified or enhanced to any degree, where the
308 modification or enhancement is designed and developed to the
309 specifications of a specific purchaser, remains prewritten
310 computer software: *Provided*, That where there is a reasonable,
311 separately stated charge or an invoice or other statement of the
312 price given to the purchaser for the modification or enhance-
313 ment, the modification or enhancement does not constitute
314 prewritten computer software.

315 (32) "Product-based exemption" means an exemption based
316 on the description of the product or service and not based on
317 who purchases the product or service or how the purchaser
318 intends to use the product or service.

319 (33) "Prosthetic device" means a replacement, corrective,
320 or supportive device, including repair and replacement parts for
321 the device worn on or in the body, to:

322 (A) Artificially replace a missing portion of the body;

323 (B) Prevent or correct physical deformity or malfunction of
324 the body; or

325 (C) Support a weak or deformed portion of the body.

326 (34) "Protective equipment" means items for human wear
327 and designed as protection of the wearer against injury or
328 disease or as protections against damage or injury of other
329 persons or property but not suitable for general use.

330 (35) "Purchase price" means the measure subject to the tax
331 imposed by article fifteen or article fifteen-a of this chapter and
332 has the same meaning as sales price.

333 (36) “Purchaser” means a person to whom a sale of
334 personal property is made or to whom a service is furnished.

335 (37) “Registered under this agreement” means registration
336 by a seller with the member states under the central registration
337 system provided in article four of the agreement.

338 (38) “Retail sale” or “sale at retail” means:

339 (A) Any sale or lease for any purpose other than for resale
340 as tangible personal property, sublease or subrent; and

341 (B) Any sale of a service other than a service purchased for
342 resale.

343 (39)(A) “Sales price” means the measure subject to the tax
344 levied by this article and includes the total amount of consider-
345 ation, including cash, credit, property and services, for which
346 personal property or services are sold, leased or rented, valued
347 in money, whether received in money or otherwise, without any
348 deduction for the following:

349 (i) The seller’s cost of the property sold;

350 (ii) The cost of materials used, labor or service cost,
351 interest, losses, all costs of transportation to the seller, all taxes
352 imposed on the seller, and any other expense of the seller;

353 (iii) Charges by the seller for any services necessary to
354 complete the sale, other than delivery and installation charges;

355 (iv) Delivery charges;

356 (v) Installation charges;

357 (vi) The value of exempt personal property given to the
358 purchaser where taxable and exempt personal property have
359 been bundled together and sold by the seller as a single product
360 or piece of merchandise; and

361 (vii) Credit for the fair market value of any trade-in.

362 (B) "Sales price" does not include:

363 (i) Discounts, including cash, term, or coupons that are not
364 reimbursed by a third party that are allowed by a seller and
365 taken by a purchaser on a sale;

366 (ii) Interest, financing and carrying charges from credit
367 extended on the sale of personal property, goods or services, if
368 the amount is separately stated on the invoice, bill of sale or
369 similar document given to the purchaser; and

370 (iii) Any taxes legally imposed directly on the consumer
371 that are separately stated on the invoice, bill of sale or similar
372 document given to the purchaser.

373 (40) "Sales tax" means the tax levied under article fifteen
374 of this chapter.

375 (41) "Seller" means any person making sales, leases or
376 rentals of personal property or services.

377 (42) "Service" or "selected service" includes all nonprofes-
378 sional activities engaged in for other persons for a consider-
379 ation, which involve the rendering of a service as distinguished
380 from the sale of tangible personal property, but does not include
381 contracting, personal services, services rendered by an em-
382 ployee to his or her employer, any service rendered for resale,
383 or any service furnished by a business that is subject to the
384 control of the Public Service Commission when the service or
385 the manner in which it is delivered is subject to regulation by
386 the Public Service Commission of this State. The term "service"
387 or "selected service" does not include payments received by a
388 vendor of tangible personal property as an incentive to sell a
389 greater volume of such tangible personal property under a
390 manufacturer's, distributor's or other third-party's marketing

391 support program, sales incentive program, cooperative advertis-
392 ing agreement or similar type of program or agreement, and
393 these payments are not considered to be payments for a
394 “service” or “selected service” rendered, even though the
395 vendor may engage in attendant or ancillary activities associ-
396 ated with the sales of tangible personal property as required
397 under the programs or agreements.

398 (43) “Soft drink” means nonalcoholic beverages that
399 contain natural or artificial sweeteners. “Soft drinks” do not
400 include beverages that contain milk or milk products, soy, rice
401 or similar milk substitutes, or greater than fifty percent of
402 vegetable or fruit juice by volume.

403 (44) “State” means any state of the United States and the
404 District of Columbia.

405 (45) “Tangible personal property” means personal property
406 that can be seen, weighed, measured, felt, or touched, or that is
407 in any manner perceptible to the senses. “Tangible personal
408 property” includes, but is not limited to, electricity, steam,
409 water, gas and prewritten computer software.

410 (46) “Tax” includes all taxes levied under articles fifteen
411 and fifteen-a of this chapter, and additions to tax, interest and
412 penalties levied under article ten of this chapter.

413 (47) “Tax Commissioner” means the State Tax Commis-
414 sioner or his or her delegate. The term “delegate” in the phrase
415 “or his or her delegate”, when used in reference to the Tax
416 Commissioner, means any officer or employee of the State Tax
417 Division duly authorized by the Tax Commissioner directly, or
418 indirectly by one or more redelegations of authority, to perform
419 the functions mentioned or described in this article or rules
420 promulgated for this article.

421 (48) “Taxpayer” means any person liable for the taxes
422 levied by articles fifteen and fifteen-a of this chapter or any
423 additions to tax, penalties imposed by article ten of this chapter.

424 (49) “Tobacco” means cigarettes, cigars, chewing or pipe
425 tobacco or any other item that contains tobacco.

426 (50) “Use tax” means the tax levied under article fifteen-a
427 of this chapter.

428 (51) “Use-based exemption” means an exemption based on
429 the purchaser’s use of the product or service.

430 (52) “Vendor” means any person furnishing services taxed
431 by article fifteen or fifteen-a of this chapter, or making sales of
432 tangible personal property or custom software. “Vendor” and
433 “seller” are used interchangeably in this article and in article
434 fifteen and fifteen-a of this chapter.

435 (c) *Additional definitions.* — Other terms used in this
436 article are defined in articles fifteen and fifteen-a of this
437 chapter, which definitions are incorporated by reference into
438 this article. Additionally, other sections of this article may
439 define terms primarily used in the section in which the term is
440 defined.

§11-15B-2a. Streamlined sales and use tax agreement defined.

1 As used in this article and articles fifteen and fifteen-a of
2 this chapter, the term “streamlined sales and use tax agreement”
3 or “agreement” means the agreement adopted the twelfth day of
4 November, two thousand two, by states that enacted authority
5 to engage in multistate discussions similar to that provided in
6 section four of this article, except when the context in which the
7 term is used clearly indicates that a different meaning is
8 intended by the Legislature. “Agreement” includes amendments
9 to the agreement adopted by the implementing states in

10 calendar years two thousand three, two thousand four, and two
11 thousand five, but does not include any substantive changes in
12 the agreement adopted after the sixteenth day of April, two
13 thousand five.

CHAPTER 12

**(Com. Sub. for H. B. 411 — By Mr. Speaker,
Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed September 13, 2005; in effect from passage.]

[Approved by the Governor on September 30, 2005.]

AN ACT to amend and reenact §19-23-9, §19-23-13b and §19-23-13c of the Code of West Virginia, 1931, as amended; and to amend and reenact §29-22A-10b of said code, all relating to amending certain provisions of the code involving horse and dog racing and distribution of certain proceeds; providing special funds, to be established by the Racing Commission, to be used for the payment of breeders' awards, restrictive races and stakes purses; deleting obsolete provisions; deleting the stated objective for the Fund to aid in the rejuvenation and development of horse tracks in the state for capital improvements and other purposes; providing that the Commission establish funds and accounts for each association and licensee rather than holding funds in deposit in one fund; deleting current provisions concerning the distribution of balances remaining in breeders, raisers, sire owners and purse supplement funds; clarifying the meaning of the phrase "sufficient horses" for purposes of pari-mutuel thoroughbred horse tracks' provision of restricted races; providing that the requirement increasing certain purses in restricted races is only applicable to

thoroughbred racetracks that have participated in the West Virginia Thoroughbred Development Fund for more than four consecutive years; providing the Racing Commission may transfer funds back to the general purse fund if less than seventy-five percent of the restricted races fail to receive enough entries; deleting the provision that prohibits associations and licensees who qualify for alternate tax provisions contained in subsection (b), section ten, article twenty-three, chapter nineteen of this code from eligibility for treatment under the provisions of section thirteen-b of said article; providing that on the first day of January, two thousand six, licensed racing associations must have a West Virginia Thoroughbred Racing Breeders' Program; clarifying disbursement of funds for the benefit of the West Virginia Breeders' Classic; requiring Racing Commission to conduct a study of the adequacy of funding of certain thoroughbred development funds and requiring a report thereon to the Legislature; allowing for different uses of thoroughbred development funds by thoroughbred racing tracks based upon differences in circumstance; deleting provisions of the Racetrack Video Lottery Act exempting certain licensees from paying into the thoroughbred and greyhound breeders' funds; increasing maximum amount from the general purse fund for purposes of restricted races for the thoroughbred racetrack which participated in the Thoroughbred Development Fund for at least four consecutive years prior to the thirty-first day of December, one thousand nine hundred ninety-two; and making technical corrections and providing reversion of racetrack video lottery excess net terminal income diverted from the racetrack purse funds to Workers' Compensation Debt Reduction Fund pursuant to Enrolled Senate Bill No. 1004 which took effect the twenty-ninth day of January, two thousand five, to revert to racetrack purse after a total amount of eleven million dollars of net terminal income and excess net terminal income has been diverted each fiscal year from the purse funds to the workers' compensation debt.

Be it enacted by the Legislature of West Virginia:

That §19-23-9, §19-23-13b and §19-23-13c of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §29-22A-10b of said code be amended and reenacted, all to read as follows:

Chapter

19. Agriculture.

29. Miscellaneous Boards and Officers.

CHAPTER 19. AGRICULTURE.

ARTICLE 23. HORSE AND DOG RACING.

§19-23-9. Pari-mutuel system of wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.

§19-23-13b. West Virginia Thoroughbred Development Fund; distribution; restricted races; nonrestricted purse supplements; preference for West Virginia accredited thoroughbreds.

§19-23-13c. Expenditure of racetrack video lottery distribution.

§19-23-9. Pari-mutuel system of wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.

1 (a) The pari-mutuel system of wagering upon the results of
2 any horse or dog race at any horse or dog race meeting con-
3 ducted or held by any licensee is hereby authorized if, and only
4 if, such pari-mutuel wagering is conducted by the licensee
5 within the confines of the licensee's horse racetrack or dog
6 racetrack and the provisions of section one, article ten, chapter
7 sixty-one of this code relating to gaming shall not apply to the
8 pari-mutuel system of wagering in manner and form as pro-
9 vided in this article at any horse or dog race meeting within this
10 state where horse or dog racing is permitted for any purse by
11 any licensee. A licensee shall permit or conduct only the
12 pari-mutuel system of wagering within the confines of the
13 licensee's racetrack at which any horse or dog race meeting is
14 conducted or held.

15 (b) A licensee is hereby expressly authorized to deduct a
16 commission from the pari-mutuel pools as follows:

17 (1) The commission deducted by any licensee from the
18 pari-mutuel pools on thoroughbred horse racing, except from
19 thoroughbred horse racing pari-mutuel pools involving what is
20 known as multiple betting in which the winning pari-mutuel
21 ticket or tickets are determined by a combination of two or
22 more winning horses, shall not exceed seventeen and one-fourth
23 percent of the total of the pari-mutuel pools for the day. Out of
24 the commission mentioned in this subdivision, the licensee: (i)
25 Shall pay the pari-mutuel pools tax provided in subsection (b),
26 section ten of this article; (ii) shall make a deposit into a special
27 fund to be established by the licensee and to be used for the
28 payment of regular purses offered for thoroughbred racing by
29 the licensee, which deposits out of pari-mutuel pools for each
30 day during the months of January, February, March, October,
31 November and December shall be seven and three hundred
32 seventy-five one-thousandths percent of the pari-mutuel pools
33 and which, out of pari-mutuel pools for each day during all
34 other months, shall be six and eight hundred seventy-five
35 one-thousandths percent of the pari-mutuel pools, which shall
36 take effect beginning fiscal year one thousand nine hundred
37 ninety; (iii) shall pay one tenth of one percent of the
38 pari-mutuel pools into the general fund of the county commis-
39 sion of the county in which the racetrack is located, except if
40 within a municipality, then to the Municipal General Fund; and
41 (iv) Any licensee which has participated in the West Virginia
42 Thoroughbred Development Fund for a period of more than
43 four consecutive calendar years prior to the thirty-first day of
44 December, one thousand nine hundred ninety-two, shall make
45 a deposit into a special fund to be established by the Racing
46 Commission and to be used for the payment of breeders awards,
47 restrictive races and stakes purses as authorized by section
48 thirteen-b of this article, which deposits out of pari-mutuel
49 pools shall, from the effective date of this section, be two

50 percent of the pools. The remainder of the commission shall be
51 retained by the licensee.

52 Each licensee that permits or conducts pari-mutuel wager-
53 ing at the licensee's thoroughbred horse racetrack shall annually
54 pay five hundred thousand dollars from the special fund
55 required by this section to be established by the licensee for the
56 payment of regular purses offered for thoroughbred racing by
57 the licensee into a special fund established by the Racing
58 Commission for transfer to a pension plan established by the
59 Racing Commission for all back stretch personnel, including,
60 but not limited to, exercise riders, trainers, grooms and stable
61 forepersons licensed by the Racing Commission to participate
62 in horse racing in this state and their dependents.

63 Each thoroughbred racetrack licensee is authorized to enter
64 into an agreement with its local Horsemen's Benevolent and
65 Protective Association under which an agreed upon percentage
66 of up to two percent of purses actually paid during the preced-
67 ing month may be paid to the local Horsemen's Benevolent and
68 Protective Association from the special fund required by this
69 section for their respective medical trusts for backstretch
70 personnel and administrative fees.

71 The commission deducted by any licensee from the
72 pari-mutuel pools on thoroughbred horse racing involving what
73 is known as multiple betting in which the winning pari-mutuel
74 ticket or tickets are determined by a combination of two
75 winning horses shall not exceed nineteen percent and by a
76 combination of three or more winning horses shall not exceed
77 twenty-five percent of the total of such pari-mutuel pools for
78 the day. Out of the commission, as is mentioned in this para-
79 graph, the licensee: (i) Shall pay the pari-mutuel pools tax
80 provided in subsection (b), section ten of this article; (ii) shall
81 make a deposit into a special fund to be established by the
82 licensee and to be used for the payment of regular purses
83 offered for thoroughbred racing by the licensee, which deposits

84 out of pari-mutuel pools for each day during the months of
85 January, February, March, October, November and December,
86 for pools involving a combination of two winning horses shall
87 be eight and twenty-five one-hundredths percent and out of
88 pari-mutuel pools for each day during all other months shall be
89 seven and seventy-five one-hundredths percent of the
90 pari-mutuel pools, and involving a combination of three or
91 more winning horses for the months of January, February,
92 March, October, November and December the deposits out of
93 the fund shall be eleven and twenty-five one-hundredths percent
94 of the pari-mutuel pools, and which, out of pari-mutuel pools
95 for each day during all other months, shall be ten and sev-
96 enty-five one-hundredths percent of the pari-mutuel pools; (iii)
97 shall pay one tenth of one percent of the pari-mutuel pools into
98 the general fund of the county commission of the county in
99 which the racetrack is located, except if within a municipality,
100 then to the Municipal General Fund; and (iv) any licensee
101 which has participated in the West Virginia Thoroughbred
102 Development Fund for a period of more than four consecutive
103 calendar years prior to the thirty-first day of December, one
104 thousand nine hundred ninety-two, shall make a deposit into a
105 special fund to be established by the Racing Commission and
106 to be used for the payment of breeder awards, for restrictive
107 races and stakes purses which deposits out of pari-mutuel pools
108 shall, from the effective date of this section, be two percent of
109 the pools. The remainder of the commission shall be retained by
110 the licensee.

111 The commission deducted by the licensee under this
112 subdivision may be reduced only by mutual agreement between
113 the licensee and a majority of the trainers and horse owners
114 licensed by subsection (a), section two of this article or their
115 designated representative. The reduction in licensee commis-
116 sions may be for a particular race, racing day or days or for a
117 horse race meeting. Fifty percent of the reduction shall be
118 retained by the licensee from the amounts required to be paid

119 into the special fund established by the licensee under the
120 provisions of this subdivision. The Racing Commission shall
121 promulgate any reasonable rules that are necessary to imple-
122 ment the foregoing provisions.

123 (2) The commission deducted by any licensee from the
124 pari-mutuel pools on harness racing shall not exceed seventeen
125 and one-half percent of the total of the pari-mutuel pools for the
126 day. Out of the commission the licensee shall pay the
127 pari-mutuel pools tax provided in subsection (c), section ten of
128 this article and shall pay one tenth of one percent into the
129 general fund of the county commission of the county in which
130 the racetrack is located, except if within a municipality, then to
131 the Municipal General Fund. The remainder of the commission
132 shall be retained by the licensee.

133 (3) The commission deducted by any licensee from the
134 pari-mutuel pools on dog racing, except from dog racing
135 pari-mutuel pools involving what is known as multiple betting
136 in which the winning pari-mutuel ticket or tickets are deter-
137 mined by a combination of two or more winning dogs, shall not
138 exceed sixteen and thirty one-hundredths percent of the total of
139 all pari-mutuel pools for the day. The commission deducted by
140 any licensee from the pari-mutuel pools on dog racing involv-
141 ing what is known as multiple betting in which the winning
142 pari-mutuel ticket or tickets are determined by a combination
143 of two winning dogs shall not exceed nineteen percent, by a
144 combination of three winning dogs shall not exceed twenty
145 percent and by a combination of four or more winning dogs
146 shall not exceed twenty-one percent of the total of such
147 pari-mutuel pools for the day. The foregoing commissions are
148 in effect for the fiscal years one thousand nine hundred ninety
149 and one thousand nine hundred ninety-one. Thereafter, the
150 commission shall be at the percentages in effect prior to the
151 effective date of this article unless the Legislature, after review,
152 determines otherwise. Out of the commissions, the licensee

153 shall pay the pari-mutuel pools tax provided in subsection (d),
154 section ten of this article and one tenth of one percent of such
155 pari-mutuel pools into the general fund of the county commis-
156 sion of the county in which the racetrack is located. In addition,
157 out of the commissions, if the racetrack is located within a
158 municipality, then the licensee shall also pay three tenths of one
159 percent of the pari-mutuel pools into the Municipal General
160 Fund; or, if the racetrack is located outside of a municipality,
161 then the licensee shall also pay three tenths of one percent of
162 the pari-mutuel pools into the State Road Fund for use by the
163 Division of Highways in accordance with the provisions of this
164 subdivision. The remainder of the commission shall be retained
165 by the licensee.

166 For the purposes of this section, “municipality” means and
167 includes any Class I, Class II and Class III city and any Class
168 IV town or village incorporated as a municipal corporation
169 under the laws of this state prior to the first day of January, one
170 thousand nine hundred eighty-seven.

171 Each dog racing licensee, when required by the provisions
172 of this subdivision to pay a percentage of its commissions to the
173 State Road Fund for use by the Division of Highways, shall
174 transmit the required funds, in such manner and at such times
175 as the Racing Commission shall by procedural rule direct, to the
176 State Treasurer for deposit in the State Treasury to the credit of
177 the Division of Highways State Road Fund. All funds collected
178 and received in the State Road Fund pursuant to the provisions
179 of this subdivision shall be used by the Division of Highways
180 in accordance with the provisions of article seventeen-a, chapter
181 seventeen of this code for the acquisition of right-of-way for,
182 the construction of, the reconstruction of and the improvement
183 or repair of any interstate or other highway, secondary road,
184 bridge and toll road in the state. If on the first day of July, one
185 thousand nine hundred eighty-nine, any area encompassing a
186 dog racetrack has incorporated as a Class I, Class II or Class III

187 city or as a Class IV town or village, whereas such city, town or
188 village was not incorporated as such on the first day of January,
189 one thousand nine hundred eighty-seven, then on and after the
190 first day of July, one thousand nine hundred eighty-nine, any
191 balances in the State Road Fund existing as a result of payments
192 made under the provisions of this subdivision may be used by
193 the State Road Fund for any purpose for which other moneys in
194 the fund may lawfully be used and in lieu of further payments
195 to the State Road Fund, the licensee of a racetrack which is
196 located in the municipality shall thereafter pay three tenths of
197 one percent of the pari-mutuel pools into the general fund of the
198 municipality. If no incorporation occurs before the first day of
199 July, one thousand nine hundred eighty-nine, then payments to
200 the State Road Fund shall thereafter continue as provided under
201 the provisions of this subdivision.

202 A dog racing licensee, before deducting the commissions
203 authorized by this subdivision, shall give written notification to
204 the Racing Commission not less than thirty days prior to any
205 change in the percentage rates for the commissions. The Racing
206 Commission shall prescribe blank forms for filing the notifica-
207 tion. The notification shall disclose the following: (A) The
208 revised commissions to be deducted from the pari-mutuel pools
209 each day on win, place and show betting and on different forms
210 of multiple bettings; (B) the dates to be included in the revised
211 betting; and (C) such other information as may be required by
212 the Racing Commission.

213 The licensee shall establish a special fund to be used only
214 for capital improvements or long-term debt amortization or
215 both: *Provided*, That any licensee, heretofore licensed for a
216 period of eight years prior to the effective date of the amend-
217 ment made to this section during the regular session of the
218 Legislature held in the year one thousand nine hundred
219 eighty-seven, shall establish the special fund to be used only for
220 capital improvements or physical plant maintenance, or both, at

221 the licensee's licensed facility or at the licensee's commonly
222 owned racing facility located within this state. Deposits made
223 into the funds shall be in an amount equal to twenty-five
224 percent of the increased rate total over and above the applicable
225 rate in effect as of the first day of January, one thousand nine
226 hundred eighty-seven, of the pari-mutuel pools for the day. Any
227 amount deposited into the funds must be expended or liability
228 therefor incurred within a period of two years from the date of
229 deposit. Any funds not expended shall be transferred immedi-
230 ately into the State General Fund after expiration of the
231 two-year period.

232 The licensee shall make a deposit into a special fund
233 established by the licensee and used for payment of regular
234 purses offered for dog racing, which deposits out of the li-
235 censee's commissions for each day shall be three and sev-
236 enty-five one-hundredths percent of the pari-mutuel pools.

237 The licensee shall further establish a special fund to be used
238 exclusively for marketing and promotion programs; the funds
239 shall be in an amount equal to five percent over and above the
240 applicable rates in effect as of the first day of January, one
241 thousand nine hundred eighty-seven, of the total pari-mutuel
242 pools for the day.

243 The Racing Commission shall prepare and transmit
244 annually to the Governor and the Legislature a report of the
245 activities of the Racing Commission under this subdivision. The
246 report shall include a statement of: The amount of commissions
247 retained by licensees; the amount of taxes paid to the state; the
248 amounts paid to municipalities, counties and the Division of
249 Highways Dog Racing Fund; the amounts deposited by licens-
250 ees into special funds for capital improvements or long-term
251 debt amortization and a certified statement of the financial
252 condition of any licensee depositing into the fund; the amounts
253 paid by licensees into special funds and used for regular purses

254 offered for dog racing; the amounts paid by licensees into
255 special funds and used for marketing and promotion programs;
256 and such other information as the racing commission may
257 consider appropriate for review.

258 (c) In addition to any commission, a licensee of horse race
259 or dog race meetings shall also be entitled to retain the legiti-
260 mate breakage, which shall be made and calculated to the dime,
261 and from the breakage, the licensee of a horse race meeting
262 (excluding dog race meetings), shall deposit daily fifty percent
263 of the total of the breakage retained by the licensee into the
264 special fund created pursuant to the provisions of subdivision
265 (1), subsection (b) of this section for the payment of regular
266 purses.

267 (d) The director of audit, and any other auditors employed
268 by the Racing Commission who are also certified public
269 accountants or experienced public accountants, shall have free
270 access to the space or enclosure where the pari-mutuel system
271 of wagering is conducted or calculated at any horse or dog race
272 meeting for the purpose of ascertaining whether or not the
273 licensee is deducting and retaining only a commission as
274 provided in this section and is otherwise complying with the
275 provisions of this section. They shall also, for the same pur-
276 poses only, have full and free access to all records and papers
277 pertaining to the pari-mutuel system of wagering and shall
278 report to the Racing Commission in writing, under oath,
279 whether or not the licensee has deducted and retained any
280 commission in excess of that permitted under the provisions of
281 this section or has otherwise failed to comply with the provi-
282 sions of this section.

283 (e) No licensee shall permit or allow any individual under
284 the age of eighteen years to wager at any horse or dog racetrack,
285 knowing or having reason to believe that the individual is under
286 the age of eighteen years.

287 (f) Notwithstanding the foregoing provisions of subdivision
288 (1), subsection (b) of this section, to the contrary, a thorough-
289 bred licensee qualifying for and paying the alternate reduced
290 tax on pari-mutuel pools provided in section ten of this article
291 shall distribute the commission authorized to be deducted by
292 subdivision (1), subsection (b) of this section as follows: (i) The
293 licensee shall pay the alternate reduced tax provided in section
294 ten of this article; (ii) the licensee shall pay one tenth of one
295 percent of the pari-mutuel pools into the general fund of the
296 county commission of the county in which the racetrack is
297 located, except if within a municipality, then to the Municipal
298 General Fund; (iii) the licensee shall pay one half of the
299 remainder of the commission into the special fund established
300 by the licensee and to be used for the payment of regular purses
301 offered for thoroughbred racing by the licensee; and (iv) the
302 licensee shall retain the amount remaining after making the
303 payments required in this subsection.

304 (g) Each kennel which provides or races dogs owned or
305 leased by others shall furnish to the Commission a surety bond
306 in an amount to be determined by the Commission to secure the
307 payment to the owners or lessees of the dogs the portion of any
308 purse owed to the owner or lessee.

**§19-23-13b. West Virginia Thoroughbred Development Fund;
distribution; restricted races; nonrestricted purse
supplements; preference for West Virginia ac-
credited thoroughbreds.**

1 (a) The Racing Commission shall deposit moneys required
2 to be withheld by an association or licensee in subsection (b),
3 section nine of this article in a banking institution of its choice
4 in a special account to be known as “West Virginia Racing
5 Commission Special Account — West Virginia Thoroughbred
6 Development Fund”: *Provided*, That after the West Virginia
7 Lottery Commission has divided moneys between the West

8 Virginia Thoroughbred Development Fund and the West
9 Virginia Greyhound Breeding Development Fund pursuant to
10 the provisions of sections ten and ten-b, article twenty-two-a,
11 chapter twenty-nine of this code, the Racing Commission shall,
12 beginning the first day of October, two thousand five, deposit
13 the remaining moneys required to be withheld from an associa-
14 tion or licensee designated to the Thoroughbred Development
15 Fund under the provisions of subsection (b), section nine of this
16 article, subdivision (3), subsection (e), section twelve-b of this
17 article, subsection (b), section twelve-c of this article, paragraph
18 (B), subdivision (3), subsection (b), section thirteen-c of this
19 article and sections ten and ten-b, article twenty-two-a, chapter
20 twenty-nine of this code into accounts for each thoroughbred
21 racetrack licensee with a banking institution of its choice with
22 a separate account for each association or licensee. Each
23 separate account shall be a special account to be known as
24 “West Virginia Racing Commission Special Account – West
25 Virginia Thoroughbred Development Fund” and shall name the
26 licensee for which the special account has been established:
27 *Provided, however,* That the Racing Commission shall deposit
28 all moneys paid into the Thoroughbred Development Fund by
29 a thoroughbred racetrack licensee that did not participate in the
30 Thoroughbred Development Fund for at least four consecutive
31 calendar years prior to the thirty-first day of December, one
32 thousand nine hundred ninety-two from the eighth day of July,
33 two thousand five until the effective date of the amendment to
34 this section passed during the fourth extraordinary session of
35 the seventy-seventh Legislature shall be paid into the purse
36 fund of that thoroughbred racetrack licensee: *Provided further,*
37 That the moneys paid into the Thoroughbred Development
38 Fund by a thoroughbred racetrack licensee that did not partici-
39 pate in the Thoroughbred Development Fund for at least four
40 consecutive calendar years prior to the thirty-first day of
41 December, one thousand nine hundred ninety-two, shall be
42 transferred into that licensee’s purse fund until the first day of
43 April, two thousand six. Notice of the amount, date and place

44 of the deposits shall be given by the Racing Commission, in
45 writing, to the State Treasurer. The purpose of the funds is to
46 promote better breeding and racing of thoroughbred horses in
47 the state through awards and purses for accredited breed-
48 ers/raisers, sire owners and thoroughbred race horse owners:
49 *And provided further*, That five percent of the deposits required
50 to be withheld by an association or licensee in subsection (b),
51 section nine of this article shall be placed in a special revenue
52 account hereby created in the State Treasury called the “Ad-
53 ministration and Promotion Account”.

54 (b) The Racing Commission is authorized to expend the
55 moneys deposited in the administration and promotion account
56 at times and in amounts as the Commission determines to be
57 necessary for purposes of administering and promoting the
58 thoroughbred development program: *Provided*, That during any
59 fiscal year in which the Commission anticipates spending any
60 money from the account, the Commission shall submit to the
61 executive department during the budget preparation period prior
62 to the Legislature convening before that fiscal year for inclusion
63 in the executive budget document and budget bill the recom-
64 mended expenditures, as well as requests of appropriations for
65 the purpose of administration and promotion of the program.
66 The Commission shall make an annual report to the Legislature
67 on the status of the administration and promotion account,
68 including the previous year’s expenditures and projected
69 expenditures for the next year.

70 (c) The fund or funds and the account or accounts estab-
71 lished in subsection (a) of this section shall operate on an
72 annual basis.

73 (d) Funds in the Thoroughbred Development Fund or funds
74 in the separate accounts for each association or licensee as
75 provided in subsection (a) of this section shall be expended for
76 awards and purses except as otherwise provided in this section.

77 Annually, the first three hundred thousand dollars of each fund
78 shall be available for distribution for stakes races at a racetrack
79 which has participated in the West Virginia Thoroughbred
80 Development Fund for a period of more than four consecutive
81 calender years prior to the thirty-first day of December, one
82 thousand nine hundred ninety-two. One of the stakes races shall
83 be the West Virginia Futurity and the second shall be the Frank
84 Gall Memorial Stakes. For the purpose of participating in the
85 West Virginia Futurity only, all mares, starting with the
86 breeding season beginning the first day of February through the
87 thirty-first day of July, two thousand four, and each successive
88 breeding season thereafter shall be bred back that year to an
89 accredited West Virginia stallion only which is registered with
90 the West Virginia Thoroughbred Breeders Association. The
91 remaining races may be chosen by the committee set forth in
92 subsection (f) of this section.

93 (e) Awards and purses shall be distributed as follows:

94 (1) The breeders/raisers of accredited thoroughbred horses
95 that earn a purse at a participating West Virginia meet shall
96 receive a bonus award calculated at the end of the year as a
97 percentage of the fund dedicated to the breeders/raisers, which
98 shall be sixty percent of the fund available for distribution in
99 any one year. The total amount available for the breed-
100 ers'/raisers' awards shall be distributed according to the ratio of
101 purses earned by an accredited race horse to the total amount
102 earned in the participating races by all accredited race horses
103 for that year as a percentage of the fund dedicated to the
104 breeders/raisers. However, no breeder/raiser may receive from
105 the fund dedicated to breeders'/raisers' awards an amount in
106 excess of the earnings of the accredited horse at West Virginia
107 meets. In addition, should a horse's breeder and raiser qualify
108 for the same award on the same horse, they will each be
109 awarded one half of the proceeds. The bonus referred to in this
110 subdivision may only be paid on the first one hundred thousand

111 dollars of any purse and not on any amounts in excess of the
112 first one hundred thousand dollars.

113 (2) The owner of a West Virginia sire of an accredited
114 thoroughbred horse that earns a purse in any race at a participat-
115 ing West Virginia meet shall receive a bonus award calculated
116 at the end of the year as a percentage of the fund dedicated to
117 sire owners, which shall be fifteen percent of the fund available
118 for distribution in any one year. The total amount available for
119 the sire owners' awards shall be distributed according to the
120 ratio of purses earned by the progeny of accredited West
121 Virginia stallions in the participating races for a particular
122 stallion to the total purses earned by the progeny of all accred-
123 ited West Virginia stallions in the participating races. However,
124 no sire owner may receive from the fund dedicated to sire
125 owners an amount in excess of thirty-five percent of the
126 accredited earnings for each sire. The bonus referred to in this
127 subdivision shall only be paid on the first one hundred thousand
128 dollars of any purse and not on any amounts in excess of the
129 first one hundred thousand dollars.

130 (3) The owner of an accredited thoroughbred horse that
131 earns a purse in any participating race at a West Virginia meet
132 shall receive a restricted purse supplement award calculated at
133 the end of the year, which shall be twenty-five percent of the
134 fund available for distribution in any one year, based on the
135 ratio of the earnings in the races of a particular race horse to the
136 total amount earned by all accredited race horses in the partici-
137 pating races during that year as a percentage of the fund
138 dedicated to purse supplements. However, the owners may not
139 receive from the fund dedicated to purse supplements an
140 amount in excess of thirty-five percent of the total accredited
141 earnings for each accredited race horse. The bonus referred to
142 in this subdivision shall only be paid on the first one hundred
143 thousand dollars of any purse and not on any amounts in excess
144 of the first one hundred thousand dollars.

145 (4) In no event may purses earned at a meet held at a track
146 which did not make a contribution to the Thoroughbred
147 Development Fund out of the daily pool on the day the meet
148 was held qualify or count toward eligibility for an award under
149 this subsection.

150 (5) Any balance in the breeders/raisers, sire owners and
151 purse supplement funds after yearly distributions shall first be
152 used to fund the races established in subsection (f) of this
153 section. Any amount not so used shall revert into the general
154 account of the Thoroughbred Development Fund for each
155 racing association or licensee for distribution in the next year.

156 Distribution shall be made on the fifteenth day of each
157 February for the preceding year's achievements.

158 (f) (1) Each pari-mutuel thoroughbred horse track shall
159 provide at least one restricted race per racing day: *Provided,*
160 That sufficient horses and funds are available. For purposes of
161 this subsection, there are sufficient horses if there are at least
162 seven single betting interests received for the race. The re-
163 stricted race required by this section must be included in the
164 first nine races written in the condition book for that racing day.

165 (2) The restricted races established in this subsection shall
166 be administered by a three-member committee at each track
167 consisting of:

168 (A) The racing secretary;

169 (B) A member appointed by the authorized representative
170 of a majority of the owners and trainers at the thoroughbred
171 track; and

172 (C) A member appointed by the West Virginia Thorough-
173 bred Breeders Association.

174 (3) The purses for the restricted races established in this
175 subsection shall be twenty percent larger than the purses for
176 similar type races at each track or equal to or of greater value
177 than a comparable race: *Provided*, That sufficient funds are
178 available: *Provided, however*, That the twenty percent require-
179 ment is applicable only to a thoroughbred racetrack which has
180 participated in the West Virginia Thoroughbred Development
181 Fund for a period of more than four consecutive calendar years
182 prior to the thirty-first day of December, one thousand nine
183 hundred ninety-two.

184 (4) Restricted races shall be funded by each racing associa-
185 tion from:

186 (A) Moneys placed in the general purse fund up to a
187 maximum of three hundred fifty thousand dollars per year:
188 *Provided*, That a thoroughbred horse racetrack which has
189 participated in the West Virginia Thoroughbred Development
190 fund for a period of more than four consecutive years prior to
191 the thirty-first day of December, one thousand nine hundred
192 ninety-two, may fund restricted races in an amount not to
193 exceed one million five hundred thousand dollars from the
194 general purse fund.

195 (B) Moneys as provided in subdivision (5), subsection (e)
196 of this section, which shall be placed in a special fund called the
197 "West Virginia Accredited Race Fund".

198 (5) The racing schedules, purse amounts and types of races
199 are subject to the approval of the West Virginia Racing Com-
200 mission.

201 (6) If less than seventy-five percent of the restricted races
202 required by this subsection fail to receive enough entries to
203 race, the Racing Commission shall, on a quarterly basis,
204 dedicate funds in each fund back to the general purse fund of
205 the racing association or licensee: *Provided*, That no moneys

206 may be dedicated back to a general purse fund if the dedication
207 would leave less than two hundred fifty thousand dollars in the
208 fund.

209 (g) As used in this section, “West Virginia bred-foal”
210 means a horse that was born in the State of West Virginia.

211 (h) To qualify for the West Virginia Accredited Race Fund,
212 the breeder must qualify under one of the following:

213 (1) The breeder of the West Virginia bred-foal is a West
214 Virginia resident;

215 (2) The breeder of the West Virginia bred-foal is not a West
216 Virginia resident, but keeps his or her breeding stock in West
217 Virginia year round; or

218 (3) The breeder of the West Virginia bred-foal is not a West
219 Virginia resident and does not qualify under subdivision (2) of
220 this subsection, but either the sire of the West Virginia
221 bred-foal is a West Virginia stallion, or the mare is covered by
222 a West Virginia stallion following the birth of that West
223 Virginia bred-foal.

224 (i) From the first day of July, two thousand one, West
225 Virginia accredited thoroughbred horses have preference for
226 entry in all accredited races at a thoroughbred race track at
227 which the licensee participates in the West Virginia Thorough-
228 bred Development Fund.

229 (j) Beginning the first day of July, two thousand six, any
230 racing association licensed by the Racing Commission to
231 conduct thoroughbred racing and permitting and conducting
232 pari-mutuel wagering under the provisions of this article must
233 have a West Virginia Thoroughbred Racing Breeders Program.

234 (k) The Commission shall, during calendar year two
235 thousand nine, conduct a study of the adequacy of funding

236 provided for the Thoroughbred Development Fund at any
237 thoroughbred racetrack which has not participated in the West
238 Virginia Thoroughbred Development Fund for a period of more
239 than four consecutive calendar years prior to the thirty-first day
240 of December, one thousand nine hundred ninety-two, and shall
241 report its findings and recommendations to the Joint Committee
242 on Government and Finance on or before the first day of
243 December, two thousand nine.

§19-23-13c. Expenditure of racetrack video lottery distribution.

1 (a) Funds received by the Racing Commission pursuant to
2 subdivision (6), subsection (c), section ten, article
3 twenty-two-a, chapter twenty-nine of this code, and subdivision
4 (5), subsection (a), section ten-b, article twenty-two-a, chapter
5 twenty-nine of this code, after the effective date of this section
6 together with the balance in the bank account previously
7 established by the Commission to receive those funds shall be
8 deposited in a banking institution of its choice in a special
9 account to be known as “West Virginia Racing Commission
10 Racetrack Video Lottery Account”. Notice of the amount, date
11 and place of each deposit shall be given by the Racing Commis-
12 sion, in writing, to the State Treasurer.

13 (b) Funds in this account shall be allocated and expended
14 as follows:

15 (1) For each fiscal year, the first eight hundred thousand
16 dollars deposited in the separate account plus the amount then
17 remaining of the June thirtieth, one thousand nine hundred
18 ninety-seven, balance in the separate account previously
19 established for the West Virginia breeders classic under section
20 thirteen of this article, shall be used by the Commission for
21 promotional activities, advertising, administrative costs and
22 purses for the West Virginia Thoroughbred Breeders Classic,
23 which shall give equal consideration to all horses qualifying

24 under the West Virginia breeders program for each stake race,
25 based solely on the horses' sex, age and earnings.

26 (2) For each fiscal year, the next two hundred thousand
27 dollars deposited into the separate account shall be used by the
28 Commission for promotional activities and purses for open
29 stake races for a race event to be known as the West Virginia
30 Derby to be held at a thoroughbred racetrack which does not
31 participate in the West Virginia Breeders Classic.

32 (3) For each fiscal year, once the amounts provided in
33 subdivisions (1) and (2) of this subsection have been deposited
34 into separate bank accounts for use in connection with the West
35 Virginia Thoroughbred Breeders Classics and the West Virginia
36 Derby, the Commission shall return to each racetrack all
37 additional amounts deposited which originate during that fiscal
38 year from each respective racetrack pursuant to subdivision (6),
39 subsection (c), section ten, article twenty-two-a, chapter
40 twenty-nine of this code, which returned excess funds shall be
41 used as follows:

42 (A) For each dog racetrack, one half of the returned excess
43 funds shall be used for capital improvements at the racetrack
44 and one half of the returned excess funds shall be deposited into
45 the West Virginia Racing Commission Special Account - West
46 Virginia Greyhound Breeding Development Fund.

47 (B) At those thoroughbred racetracks that have participated
48 in the West Virginia Thoroughbred Development Fund for a
49 period of more than four consecutive calendar years prior to the
50 thirty-first day of December, one thousand nine hundred
51 ninety-two, one half of the returned excess funds shall be used
52 for capital improvements at the licensee's racetrack and one
53 half of the returned excess funds shall be equally divided
54 between the West Virginia Thoroughbred Breeders Classic and
55 the West Virginia Thoroughbred Development Fund.

56 (C) At those thoroughbred horse racetracks which do not
57 participate in the West Virginia Breeders Classic, one half of
58 the returned excess funds shall be used for capital improve-
59 ments at the licensee's racetrack and one half of the returned
60 excess funds shall be used for purses for the open stakes race
61 event known as the West Virginia Derby.

62 (c) All expenditures that are funded under this section must
63 be approved in writing by the West Virginia Racing Commis-
64 sion before the funds are expended for any of the purposes
65 authorized by this section.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-10b. Distribution of excess net terminal income.

1 (a) For all years beginning on or after the first day of July,
2 two thousand one, any amount of net terminal income generated
3 annually by a licensed racetrack in excess of the amount of net
4 terminal income generated by that licensed racetrack during the
5 fiscal year ending on the thirtieth day of June, two thousand
6 one, shall be divided as follows:

7 (1) The Commission shall receive forty-one percent of net
8 terminal income, which the Commission shall deposit in the
9 State Excess Lottery Revenue Fund created in section eighteen-
10 a, article twenty-two of this chapter;

11 (2) Until the first day of July, two thousand five, eight
12 percent of net terminal income at a licensed racetrack shall be
13 deposited in the special fund established by the licensee and
14 used for payment of regular purses in addition to other amounts
15 provided in article twenty-three, chapter nineteen of this code;
16 on and after the first day of July, two thousand five, the rate
17 shall be four percent of net terminal income;

18 (3) The county where the video lottery terminals are located
19 shall receive two percent of the net terminal income *Provided*,
20 That:

21 (A) Any amount by which the total amount under this
22 section and subdivision (3), subsection (c), section ten of this
23 article is in excess of the two percent received during fiscal year
24 one thousand nine hundred ninety-nine by a county in which a
25 racetrack is located that has participated in the West Virginia
26 thoroughbred development fund since on or before the first day
27 of January, one thousand nine hundred ninety-nine, shall be
28 divided as follows:

29 (i) The county shall receive fifty percent of the excess
30 amount; and

31 (ii) The municipalities of the county shall receive fifty
32 percent of the excess amount, the fifty percent to be divided
33 among the municipalities on a per capita basis as determined by
34 the most recent decennial United States census of population;
35 and

36 (B) Any amount by which the total amount under this
37 section and subdivision (3), subsection (c), section ten of this
38 article is in excess of the two percent received during fiscal year
39 one thousand nine hundred ninety-nine by a county in which a
40 racetrack other than a racetrack described in paragraph (A) of
41 this proviso is located and where the racetrack has been located
42 in a municipality within the county since on or before the first
43 day of January, one thousand nine hundred ninety-nine, shall be
44 divided, if applicable, as follows:

45 (i) The county shall receive fifty percent of the excess
46 amount; and

47 (ii) The municipality shall receive fifty percent of the
48 excess amount; and

49 (C) This proviso shall not affect the amount to be received
50 under this subdivision by any county other than a county
51 described in paragraph (A) or (B) of this proviso;

52 (4) One half of one percent of net terminal income shall be
53 paid for and on behalf of all employees of the licensed racing
54 association by making a deposit into a special fund to be
55 established by the Racing Commission to be used for payment
56 into the pension plan for all employees of the licensed racing
57 association;

58 (5) The West Virginia Thoroughbred Development Fund
59 created under section thirteen-b, article twenty-three, chapter
60 nineteen of this code and the West Virginia greyhound breeding
61 development fund created under section ten of said article shall
62 receive an equal share of a total of not less than one and one-
63 half percent of the net terminal income.

64 (6) The West Virginia Racing Commission shall receive
65 one percent of the net terminal income which shall be deposited
66 and used as provided in section thirteen-c, article twenty-three,
67 chapter nineteen of this code;

68 (7) A licensee shall receive forty-two percent of net
69 terminal income;

70 (8) The tourism promotion fund established in section
71 twelve, article two, chapter five-b of this code shall receive
72 three percent of the net terminal income: *Provided*, That for
73 each fiscal year beginning after the thirtieth day of June, two
74 thousand four, this three percent of net terminal income shall be
75 distributed pursuant to the provisions of paragraph (B), subdivi-
76 sion (8), subsection (c), section ten of this article;

77 (9) (A) On and after the first day of July, two thousand five,
78 four percent of net terminal income shall be deposited into the
79 Workers' Compensation Debt Reduction Fund created in

80 section five, article two-d, chapter twenty-three of this code:
81 *Provided*, That in any fiscal year when the amount of money
82 generated by this subdivision together with the total allocation
83 transferred by the operation of subdivision (9), subsection (c),
84 section ten of this article totals eleven million dollars, all
85 subsequent distributions under this subdivision (9) during that
86 fiscal year shall be deposited in the special fund established by
87 the licensee and used for payment of regular purses in addition
88 to other amounts provided in article twenty-three, chapter
89 nineteen of this code;

90 (B) The deposit of the four percent of net terminal income
91 into the Worker's Compensation Debt Reduction Fund pursuant
92 to this subdivision shall expire and not be imposed with respect
93 to these funds, which shall be deposited in the special fund
94 established by the licensee and used for payment of regular
95 purses in addition to the other amounts provided in article
96 twenty-three, chapter nineteen of this code on and after the first
97 day of the month following the month in which the Governor
98 certifies to the Legislature that: (i) The revenue bonds issued
99 pursuant to article two-d, chapter twenty-three of this code have
100 been retired or payment of the debt service is provided for; and
101 (ii) that an independent certified actuary has determined that the
102 unfunded liability of the Old Fund, as defined in chapter
103 twenty-three of this code, has been paid or provided in its
104 entirety; and

105 (10) (A) One percent of the net terminal income shall be
106 deposited in equal amounts in the capitol dome and improve-
107 ments fund created under section two, article four, chapter five-
108 a of this code and cultural facilities and capitol resources
109 matching grant program fund created under section three,
110 article one of this chapter; and

111 (B) Notwithstanding any provision of paragraph (A) of this
112 subdivision to the contrary, for each fiscal year beginning after

113 the thirtieth day of June, two thousand four, this one percent of
 114 net terminal income shall be distributed pursuant to the provi-
 115 sions of subpara section ten of this article.

116 (b) The Commission may establish orderly and effective
 117 procedures for the collection graph (ii), paragraph (B), subdivi-
 118 sion (9), subsection (c), and distribution of funds under this
 119 section in accordance with the provisions of this section and
 120 section ten of this article.

CHAPTER 13

**(H. B. 406 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
 [By Request of the Executive]**

[Passed September 13, 2005; in effect from passage.]
 [Approved by the Governor on September 28, 2005.]

AN ACT to amend and reenact §2-2-1 of the Code of West Virginia, 1931, as amended, relating to state holidays; providing that the fourth Thursday and Friday of November shall be legal holidays; combining Lincoln's and Washington's birthdays into a single Presidents' Day holiday.

Be it enacted by the Legislature of West Virginia:

That §2-2-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.

§2-2-1. Legal holidays; official acts or court proceedings.

1 (a) The following days are legal holidays:

2 (1) The first day of January is “New Year’s Day”;

3 (2) The third Monday of January is “Martin Luther King’s
4 Birthday”;

5 (3) The third Monday of February is “Presidents’ Day”;

6 (4) The last Monday in May is “Memorial Day”;

7 (5) The twentieth day of June is “West Virginia Day”;

8 (6) The fourth day of July is “Independence Day”;

9 (7) The first Monday of September is “Labor Day”;

10 (8) The second Monday of October is “Columbus Day”;

11 (9) The eleventh day of November is “Veterans’ Day”;

12 (10) The fourth Thursday and Friday of November are the
13 “Thanksgiving Holidays”;

14 (11) The twenty-fifth day of December is “Christmas Day”;

15 (12) Any day on which a general, primary or special
16 election is held is a holiday throughout the state, a political
17 subdivision of the state, a district or an incorporated city, town
18 or village in which the election is conducted;

19 (13) General election day on even years shall be designated
20 Susan B. Anthony Day, in accordance with the provisions of
21 subsection (b), section one-a of this article; and

22 (14) Any day proclaimed or ordered by the Governor or the
23 President of the United States as a day of special observance or
24 Thanksgiving, or a day for the general cessation of business, is
25 a holiday.

26 (b) If a holiday otherwise described in subsection (a) of this
27 section falls on a Sunday, then the following Monday is the
28 legal holiday. If a holiday otherwise described in subsection (a)
29 of this section falls on a Saturday, then the preceding Friday is
30 the legal holiday: *Provided*, That this subsection (b) shall not
31 apply to subdivisions (12), (13) and (14), subsection (a) of this
32 section.

33 (c) Any day or part thereof designated by the Governor as
34 time off, without charge against accrued annual leave, for state
35 employees statewide may also be time off for county employees
36 if the county commission elects to designate the day or part
37 thereof as time off, without charge against accrued annual leave
38 for county employees. Any entire or part statewide day off
39 designated by the Governor may, for all courts, be treated as if
40 it were a legal holiday.

41 (d) In computing any period of time prescribed by any
42 applicable provision of this code or any legislative rule or other
43 administrative rule or regulation promulgated pursuant to the
44 provisions of this code, the day of the act, event, default or
45 omission from which the applicable period begins to run is not
46 included. The last day of the period so computed is included,
47 unless it is a Saturday, a Sunday, a legal holiday or a designated
48 day off in which event the prescribed period of time runs until
49 the end of the next day that is not a Saturday, Sunday, legal
50 holiday or designated day off.

51 (e) If any applicable provision of this code or any legisla-
52 tive rule or other administrative rule or regulation promulgated
53 pursuant to the provisions of this code designates a particular
54 date on, before or after which an act, event, default or omission
55 is required or allowed to occur, and if the particular date
56 designated falls on a Saturday, Sunday, legal holiday or
57 designated day off, then the date on which the act, event,
58 default or omission is required or allowed to occur is the next

59 day that is not a Saturday, Sunday, legal holiday or designated
60 day off.

61 (f) With regard to the courts of this state, the computation
62 of periods of time, the specific dates or days when an act, event,
63 default or omission is required or allowed to occur and the
64 relationship of those time periods and dates to Saturdays,
65 Sundays, legal holidays, or days designated as weather or other
66 emergency days pursuant to section two of this article are
67 governed by rules promulgated by the Supreme Court of
68 Appeals.

69 (g) The provisions of this section do not increase or
70 diminish the legal school holidays provided in section two,
71 article five, chapter eighteen-a of this code.

CHAPTER 14

(S. B. 4006 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed September 13, 2005; in effect from passage.]
[Approved by the Governor on September 30, 2005.]

AN ACT to amend and reenact §12-4-14 of the Code of West Virginia, 1931, as amended, relating to accountability of persons receiving state funds or grants; requiring reports or sworn statements for certain state funds or grants; giving Secretary of the Department of Administration rule-making authority; providing for the barring of persons from receiving state grants or funds; providing for the submission of information on sworn statements or reports to the Legislative Auditor; authorizing the Legislative Auditor to perform audits in certain circumstances;

requiring the Legislative Auditor to inform the State Treasurer if certain reports or sworn statements are not submitted within a certain period; and providing criminal penalties for filing a fraudulent sworn statement of expenditures, a fraudulent sworn statement or a fraudulent report.

Be it enacted by the Legislature of West Virginia:

That §12-4-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-14. Accountability of persons receiving state funds or grants; sworn statements by volunteer fire departments; criminal penalties.

1 (a) For the purposes of this section:

2 (1) "Grantor" means a state spending unit awarding a state
3 grant.

4 (2) "Person" includes any corporation, partnership, associa-
5 tion, individual or other legal entity. The term "person" does
6 not include a state spending unit or a local government as
7 defined in section one-a, article nine, chapter six of this code.

8 (3) "Report" means an engagement, such as an agreed-upon
9 procedures engagement or other attestation engagement,
10 performed and prepared by a certified public accountant to test
11 whether state grants were spent as intended. The term "report"
12 does not mean a full-scope audit or review of the person
13 receiving state funds.

14 (4) "State grant" means funding provided by a state spend-
15 ing unit, regardless of the original source of the funds, to a
16 person upon application for a specific purpose. The term "state
17 grant" does not include: (A) Payments for goods and services

18 purchased by a state spending unit; (B) compensation to state
19 employees and public officials; (C) reimbursements to state
20 employees and public officials for travel or incidental expenses;
21 (D) grants of student aid; (E) government transfer payments;
22 (F) direct benefits provided under state insurance and welfare
23 programs; (G) funds reimbursed to a person for expenditures
24 made for qualified purposes when receipts for the expenditures
25 are required prior to receiving the funds: *Provided*, That
26 notwithstanding the provisions of this subdivision, funding
27 provided pursuant to section twelve, article two, chapter five-b
28 is included within the term “state grant”; (H) retirement
29 benefits; and (I) federal pass-through funds that are subject to
30 the federal Single Audit Act Amendments of 1996, 31 U. S. C.
31 7501, *et seq.* The term “state grant” does not include formula
32 distributions to volunteer and part-volunteer fire departments
33 made pursuant to sections fourteen-d and thirty-three, article
34 three, chapter thirty-three of this code and section seven, article
35 twelve-c of said chapter.

36 (b) (1) Any person who receives one or more state grants in
37 the amount of fifty thousand dollars or more in the aggregate in
38 a state’s fiscal year shall file with the grantor a report of the
39 disbursement of the state grant funds. When the grantor causes
40 an audit, by an independent certified public accountant, to be
41 conducted of the grant funds, the audit is performed using
42 generally accepted government auditing standards and a copy
43 of the audit is available for public inspection, no report is
44 required to be filed under this section. An audit performed that
45 complies with Office of Management and Budget circular A-
46 133, as published on the twenty-seventh day of June, two
47 thousand three, and submitted within the period provided in this
48 section may be substituted for the report.

49 (2) Any person who receives a state grant in an amount less
50 than fifty thousand dollars or who is not required to file a report
51 because an audit has been conducted or substituted as provided

52 by subdivision (1) of this subsection shall file with the grantor
53 a sworn statement of expenditures made under the grant.

54 (3) Reports and sworn statements of expenditures required
55 by subdivisions (1) and (2) of this subsection shall be filed
56 within two years of the end of the person's fiscal year in which
57 the disbursement of state grant funds by the grantor was made.
58 The report shall be made by an independent certified public
59 accountant at the cost of the person receiving the state grant.
60 State grant funds may be used to pay for the report if the
61 applicable grant provisions allow. The scope of the report is
62 limited to showing that the state grant funds were spent for the
63 purposes intended when the grant was made.

64 (c) (1) Any person failing to file a required report or sworn
65 statement of expenditures within the two-year period provided
66 in subdivision (3), subsection (b) of this section for state grant
67 funds disbursed after the first day of July, two thousand three,
68 is barred from subsequently receiving state grants until the
69 person has filed the report or sworn statement of expenditures
70 and is otherwise in compliance with the provisions of this
71 section.

72 (2) Any grantor of a state grant shall report any persons
73 failing to file a required report or sworn statement of expendi-
74 tures within the required period provided in subdivision (3),
75 subsection (b) of this section for a state grant disbursed after the
76 first day of July, two thousand three, to the Legislative Auditor
77 for purposes of debarment from receiving state grants.

78 (d) (1) The state agency administering the state grant shall
79 notify the grantee of the reporting requirements set forth in this
80 section.

81 (2) All grantors awarding state grants shall, prior to
82 awarding a state grant, take reasonable actions to verify that the

83 person is not barred from receiving state grants pursuant to this
84 section. The verification process shall, at a minimum, include:

85 (A) A requirement that the person seeking the state grant
86 provide a sworn statement from an authorized representative
87 that the person has filed all reports and sworn statements of
88 expenditures for state grants received as required under this
89 section; and

90 (B) Confirmation from the Legislative Auditor by the
91 grantor that the person has not been identified as one who has
92 failed to file a report or sworn statement of expenditures under
93 this section. Confirmation may be accomplished by accessing
94 the computerized database provided in subsection (e) of this
95 section.

96 (3) If any report or sworn statement of expenditures
97 submitted pursuant to the requirements of this section provides
98 evidence of a reportable condition or violation, the grantor shall
99 provide a copy of the report or sworn statement of expenditures
100 to the Legislative Auditor within thirty days of receipt by the
101 grantor.

102 (4) The grantor shall maintain copies of reports and sworn
103 statements of expenditures required by this section and make
104 the reports or sworn statements of expenditures available for
105 public inspection, as well as for use in audits and performance
106 reviews of the grantor.

107 (5) The Secretary of the Department of Administration has
108 authority to promulgate procedural and interpretive rules and
109 propose legislative rules for promulgation in accordance with
110 the provisions of article three, chapter twenty-nine-a of this
111 code to assist in implementing the provisions of subsections (a),
112 (b), (c) and (d) of this section.

113 (e) (1) Any state agency administering a state grant shall,
114 in the manner designated by the Legislative Auditor, notify the
115 Legislative Auditor of the maximum amount of funds to be
116 disbursed, the identity of the person authorized to receive the
117 funds, the person's fiscal year and federal employer identifica-
118 tion number and the purpose and nature of the state grant within
119 thirty days of making the state grant or authorizing the dis-
120bursement of the funds, whichever is later. If the state grant was
121 awarded prior to the first day of October, two thousand five, the
122 grantor shall provide the information required by this section by
123 the first day of December, two thousand five.

124 (2) The State Treasurer shall provide the Legislative
125 Auditor the information concerning formula distributions to
126 volunteer and part-volunteer fire departments, made pursuant
127 to sections fourteen-d and thirty-three, article three, chapter
128 thirty-three of this code and section seven, article twelve-c of
129 said chapter, the Legislative Auditor requests and in the manner
130 designated by the Legislative Auditor.

131 (3) The Legislative Auditor shall maintain a list identifying
132 persons who have failed to file reports and sworn statements
133 required by this section. The list may be in the form of a
134 computerized database that may be accessed by state agencies
135 over the Internet.

136 (f) An audit of state grant funds may be authorized at any
137 time by the Joint Committee on Government and Finance to be
138 conducted by the Legislative Auditor at no cost to the grantee.

139 (g) (1) Volunteer and part-volunteer fire departments
140 receiving formula distributions pursuant to sections fourteen-d
141 and thirty-three, article three, chapter thirty-three of this code
142 and section seven, article twelve-c of said chapter shall either:

143 (A) File a report, as defined in subdivision (3), subsection
144 (a) of this section with the Legislative Auditor within the same

145 time frames as are required for sworn statements of annual
146 expenditures to be filed under this section. The report shall be
147 made by an independent certified public accountant at the cost
148 of the volunteer or part-volunteer fire department. The scope of
149 the report is limited to showing that the funds distributed were
150 spent for authorized purposes; or

151 (B) File a sworn statement of annual expenditures with the
152 Legislative Auditor on or before the fourteenth day of February
153 of each year. The sworn statement of expenditures shall be
154 signed by the chief or director of the volunteer fire department
155 and shall be made under oath and acknowledged before a notary
156 public.

157 (2) If the sworn statement or report required by this
158 subsection is not filed on or before the fifteenth day of May,
159 unless the time period is extended by the Legislative Auditor,
160 the Legislative Auditor may conduct an audit of the volunteer
161 or part-volunteer fire department.

162 (3) If the sworn statement of annual expenditures or report
163 required by this subsection is not filed with the Legislative
164 Auditor by the first day of July, unless the time period is
165 extended by the Legislative Auditor, the Legislative Auditor
166 shall notify the State Treasurer who shall withhold payment of
167 any amount that would otherwise be distributed to the fire
168 department under the provisions of sections fourteen-d and
169 thirty-three, article three, chapter thirty-three of this code and
170 section seven, article twelve-c of said chapter until the report is
171 complete. Moneys withheld pursuant to this subdivision are to
172 be deposited in the special revenue account created in the State
173 Treasury in subdivision (4) of this subsection.

174 (4) The Legislative Auditor may assign an employee or
175 employees to perform audits or reviews at the direction of the
176 Legislative Auditor of the disbursement of state grant funds to
177 volunteer fire departments. The volunteer fire department shall

178 cooperate with the Legislative Auditor, the Legislative Audi-
179 tor's employees and the State Auditor in performing their duties
180 under this section. If the Legislative Auditor determines a
181 volunteer fire department is not cooperating, the Legislative
182 Auditor shall notify the State Treasurer who shall withhold
183 payment of any amount that would otherwise be distributed to
184 the fire department under the provisions of sections fourteen-d
185 and thirty-three, article three, chapter thirty-three of this code
186 and section seven, article twelve-c of said chapter until the
187 Legislative Auditor informs the Treasurer that the fire depart-
188 ment has cooperated as required by this section. The State
189 Treasurer shall pay the amount withheld into a special revenue
190 account hereby created in the State Treasury and designated the
191 "Volunteer Fire Department Audit Account". If, after one year
192 from payment of the amount withheld into the special revenue
193 account, the Legislative Auditor informs the State Treasurer of
194 continued noncooperation by the fire department, the State
195 Treasurer shall pay the amount withheld to the fund from which
196 it was distributed to be redistributed the following year pursuant
197 to the applicable provisions of those sections.

198 (5) Whenever the State Auditor performs an audit of a
199 volunteer fire department for any purpose the Auditor shall also
200 conduct an audit of other state funds received by the fire
201 department pursuant to sections fourteen-d and thirty-three,
202 article three, chapter thirty-three of this code and section seven,
203 article twelve-c of said chapter. The Auditor shall send a copy
204 of the audit to the Legislative Auditor. The Legislative Auditor
205 may accept an audit performed by the Auditor in lieu of
206 performing an audit under this section.

207 (6) If the Legislative Auditor is notified by a grantor that a
208 fire department has failed to file a report or a sworn statement
209 of expenditures for a state grant it received, the Legislative
210 Auditor shall notify the Treasurer who shall withhold further

211 distributions to the fire department in the same manner pro-
212 vided in subdivision (3) of this subsection.

213 (h) Any report submitted pursuant to the provisions of this
214 section may be filed electronically in accordance with the
215 provisions of article one, chapter thirty-nine-a of this code.

216 (i) Any person who files a fraudulent sworn statement of
217 expenditures under subsection (b) or (g) of this section, a
218 fraudulent sworn statement under subsection (d) of this section
219 or a fraudulent report under this section is guilty of a felony
220 and, upon conviction thereof, shall be fined not less than one
221 thousand dollars nor more than five thousand dollars or
222 imprisoned in a state correctional facility for not less than one
223 year nor more than five years, or both fined and imprisoned.

CHAPTER 15

(H. B. 407 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed September 13, 2005; in effect from passage.]

[Approved by the Governor on September 28, 2005.]

AN ACT to amend and reenact §5F-2-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section designated §5F-2-7, relating to the power and authority of department secretaries to transfer employees between departments; establishing guidelines for transfer of employees; protecting rights of transferred employees; requiring annual reports; and requiring promulgation of emergency and legislative rules.

Be it enacted by the Legislature of West Virginia:

That §5F-2-2 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 §5F-2-7, all to read as follows:

**CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE
BRANCH OF STATE GOVERNMENT.**

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-2. Power and authority of secretary of each department.

§5F-2-7. Interdepartmental transfer of permanent state employees.

§5F-2-2. Power and authority of secretary of each department.

1 (a) Notwithstanding any other provision of this code to the
2 contrary, the secretary of each department shall have plenary
3 power and authority within and for the department to:

4 (1) Employ and discharge within the office of the secretary
5 employees as may be necessary to carry out the functions of the
6 secretary, which employees shall serve at the will and pleasure
7 of the secretary;

8 (2) Cause the various agencies and boards to be operated
9 effectively, efficiently and economically, and develop goals,
10 objectives, policies and plans that are necessary or desirable for
11 the effective, efficient and economical operation of the depart-
12 ment;

13 (3) Eliminate or consolidate positions, other than positions
14 of administrators or positions of board members, and name a
15 person to fill more than one position;

16 (4) Transfer permanent state employees between depart-
17 ments in accordance with the provisions of section seven of this
18 article;

19 (5) Delegate, assign, transfer or combine responsibilities or
20 duties to or among employees, other than administrators or
21 board members;

22 (6) Reorganize internal functions or operations;

23 (7) Formulate comprehensive budgets for consideration by
24 the Governor, and transfer within the department funds appro-
25 priated to the various agencies of the department which are not
26 expended due to cost savings resulting from the implementation
27 of the provisions of this chapter: *Provided*, That no more than
28 twenty-five percent of the funds appropriated to any one agency
29 or board may be transferred to other agencies or boards within
30 the department: *Provided, however*, That no funds may be
31 transferred from a special revenue account, dedicated account,
32 capital expenditure account or any other account or funds
33 specifically exempted by the Legislature from transfer, except
34 that the use of appropriations from the State Road Fund
35 transferred to the Office of the Secretary of the Department of
36 Transportation is not a use other than the purpose for which the
37 funds were dedicated and is permitted: *Provided further*, That
38 if the Legislature by subsequent enactment consolidates
39 agencies, boards or functions, the appropriate secretary may
40 transfer the funds formerly appropriated to the agency, board or
41 function in order to implement consolidation. The authority to
42 transfer funds under this section shall expire on the thirtieth day
43 of June, two thousand five;

44 (8) Enter into contracts or agreements requiring the
45 expenditure of public funds, and authorize the expenditure or
46 obligation of public funds as authorized by law: *Provided*, That
47 the powers granted to the secretary to enter into contracts or
48 agreements and to make expenditures or obligations of public
49 funds under this provision shall not exceed or be interpreted as
50 authority to exceed the powers granted by the Legislature to the
51 various commissioners, directors or board members of the

52 various departments, agencies or boards that comprise and are
53 incorporated into each secretary's department under this
54 chapter;

55 (9) Acquire by lease or purchase property of whatever kind
56 or character and convey or dispose of any property of whatever
57 kind or character as authorized by law: *Provided*, That the
58 powers granted to the secretary to lease, purchase, convey or
59 dispose of such property shall not exceed or be interpreted as
60 authority to exceed the powers granted by the Legislature to the
61 various commissioners, directors or board members of the
62 various departments, agencies or boards that comprise and are
63 incorporated into each secretary's department under this
64 chapter;

65 (10) Conduct internal audits;

66 (11) Supervise internal management;

67 (12) Promulgate rules, as defined in section two, article
68 one, chapter twenty-nine-a of this code, to implement and make
69 effective the powers, authority and duties granted and imposed
70 by the provisions of this chapter in accordance with the
71 provisions of chapter twenty-nine-a of this code;

72 (13) Grant or withhold written consent to the proposal of
73 any rule, as defined in section two, article one, chapter
74 twenty-nine-a of this code, by any administrator, agency or
75 board within the department. Without written consent, no
76 proposal for a rule shall have any force or effect;

77 (14) Delegate to administrators the duties of the secretary
78 as the secretary may deem appropriate from time to time to
79 facilitate execution of the powers, authority and duties dele-
80 gated to the secretary; and

81 (15) Take any other action involving or relating to internal
82 management not otherwise prohibited by law.

83 (b) The secretaries of the departments hereby created shall
84 engage in a comprehensive review of the practices, policies and
85 operations of the agencies and boards within their departments
86 to determine the feasibility of cost reductions and increased
87 efficiency which may be achieved therein, including, but not
88 limited to, the following:

89 (1) The elimination, reduction and restriction of the state's
90 vehicle or other transportation fleet;

91 (2) The elimination, reduction and restriction of state
92 government publications, including annual reports, informa-
93 tional materials and promotional materials;

94 (3) The termination or rectification of terms contained in
95 lease agreements between the state and private sector for
96 offices, equipment and services;

97 (4) The adoption of appropriate systems for accounting,
98 including consideration of an accrual basis financial accounting
99 and reporting system;

100 (5) The adoption of revised procurement practices to
101 facilitate cost-effective purchasing procedures, including
102 consideration of means by which domestic businesses may be
103 assisted to compete for state government purchases; and

104 (6) The computerization of the functions of the state
105 agencies and boards.

106 (c) Notwithstanding the provisions of subsections (a) and
107 (b) of this section, none of the powers granted to the secretaries
108 herein shall be exercised by the secretary if to do so would
109 violate or be inconsistent with the provisions of any federal law
110 or regulation, any federal-state program or federally delegated
111 program or jeopardize the approval, existence or funding of any
112 program.

113 (d) The layoff and recall rights of employees within the
114 classified service of the state as provided in subsections five
115 and six, section ten, article six, chapter twenty-nine of this code
116 shall be limited to the organizational unit within the agency or
117 board and within the occupational group established by the
118 classification and compensation plan for the classified service
119 of the agency or board in which the employee was employed
120 prior to the agency or board's transfer or incorporation into the
121 department: *Provided*, That the employee shall possess the
122 qualifications established for the job class. The duration of
123 recall rights provided in this subsection shall be limited to two
124 years or the length of tenure, whichever is less. Except as
125 provided in this subsection, nothing contained in this section
126 shall be construed to abridge the rights of employees within the
127 classified service of the state as provided in sections ten and
128 ten-a, article six, chapter twenty-nine of this code.

129 (e) Notwithstanding any other provision of this code to the
130 contrary, the secretary of each department with authority over
131 programs which are payors for prescription drugs, including but
132 not limited to, the Public Employees Insurance Agency, the
133 Children's Health Insurance Program, the Division of Correc-
134 tions, the Division of Juvenile Services, the Regional Jail and
135 Correctional Facility Authority, the Workers' Compensation
136 Fund, state colleges and universities, public hospitals, state or
137 local institutions including nursing homes and veteran's homes,
138 the Division of Rehabilitation, public health departments, the
139 Bureau of Medical Services and other programs that are payors
140 for prescription drugs, shall cooperate with the Office of the
141 Pharmaceutical Advocate established pursuant to section four,
142 article sixteen-d, chapter five of this code for the purpose of
143 purchasing prescription drugs for any program over which they
144 have authority.

**§5F-2-7. Interdepartmental transfer of permanent state employ-
ees.**

1 (a) A department secretary may enter into a memorandum
2 of understanding with another department secretary to transfer
3 a permanent state employee from a position that is to be
4 consolidated or eliminated, to a funded vacant position in
5 another Department, in accordance with the provisions of this
6 section and the law. To support the transfer of the employee, a
7 department secretary may also transfer furniture and equipment,
8 except motor vehicles and any assets purchased by designated
9 funds for specific uses and purposes, the removal of which is
10 prohibited by law or would jeopardize federal funds, grants or
11 other funding sources.

12 (b) The transferred employee shall receive the same level
13 of benefits and rate of compensation or higher, and shall retain
14 the same level of seniority.

15 (c) An employee shall be given notice of the proposed
16 transfer at least fifteen days prior to the transfer. During the
17 notice period, an affected employee may agree to be voluntarily
18 transferred.

19 (d) If an employee does not volunteer to be transferred, then
20 an involuntary transfer may be ordered. An involuntary transfer
21 shall begin with the least senior permanent employee who
22 qualifies for the position.

23 (e) A classified employee who is transferred shall retain his
24 or her classified status: *Provided*, That any transfer shall be
25 made in accordance with the law.

26 (f) An involuntary transfer may be rejected by an employee
27 if the involuntary transfer would require the employee to travel
28 thirty miles or more, one way, than the distance the employee
29 currently travels from his or her current job site.

30 (g) An employee who qualifies for and chooses to reject a
31 transfer shall be laid off in accordance with the law.

32 (h) Nothing in this section shall abridge any other rights
33 provided by law.

34 (i) Prior to the thirty-first day of December, two thousand
35 five, the Division of Personnel shall promulgate an emergency
36 rule in accordance with the provisions of article three, chapter
37 twenty-nine-a of this code, to effectuate the provisions of this
38 section.

39 (j) The Division of Personnel is authorized to promulgate
40 legislative rules in accordance with the provisions of article
41 three, chapter twenty-nine-a of this code, to effectuate the
42 provisions of this section.

43 (k) Annually, on or before the first day of January, the
44 Division of Personnel shall report to the Joint Committee on
45 Government and Finance, on all interdepartmental employee
46 transfers, including but not limited to, voluntary and involun-
47 tary transfers, furniture and equipment transfers, and the
48 Departments involved in the transfers.



CHAPTER 16

**(H. B. 403 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed September 10, 2005; in effect from passage.]

[Approved by the Governor on September 28, 2005.]

AN ACT to amend and reenact §15-2A-12 of the Code of West Virginia, 1931, as amended, relating to benefits to dependents of a state trooper who dies in performance of duties or dies after retirement due to service-related disability.

Be it enacted by the Legislature of West Virginia:

That §15-2A-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

**§15-2A-12. Awards and benefits to dependents of member –
When member dies in performance of duty, etc.;
dependent child scholarship and amount.**

1 The surviving spouse, the dependent child or children or
2 dependent parent or parents of any member who has lost or
3 shall lose his or her life by reason of injury, illness or disease
4 resulting from an occupational risk or hazard inherent in or
5 peculiar to the service required of members while the member
6 was engaged in the performance of his or her duties as a
7 member of the Department, or the survivor of a member who
8 dies from any cause after having been retired pursuant to the
9 provisions of section nine of this article, is entitled to receive
10 and shall be paid from the Fund benefits as follows: To the
11 surviving spouse annually, in equal monthly installments during
12 his or her lifetime, one or the other of two amounts, which shall
13 become immediately available and which shall be the greater
14 of:

15 (1) An amount equal to nine tenths of the base salary
16 received in the preceding twelve-month employment period by
17 the deceased member: *Provided*, That if the member had not
18 been employed with the Department for twelve months prior to
19 his or her death, the amount of monthly salary shall be annual-
20 ized for the purpose of determining the benefit; or

21 (2) The sum of ten thousand dollars.

22 In addition thereto, the surviving spouse is entitled to
23 receive and there shall be paid to the person one hundred

24 fifty dollars monthly for each dependent child or children. If the
25 surviving spouse dies or if there is no surviving spouse, there
26 shall be paid monthly to each dependent child or children from
27 the Fund a sum equal to one third of the surviving spouse's
28 entitlement. If there is no surviving spouse and no dependent
29 child or children, there shall be paid annually in equal monthly
30 installments from the Fund to the dependent parents of the
31 deceased member during their joint lifetimes a sum equal to the
32 amount which a surviving spouse, without children, would have
33 received: *Provided*, That when there is but one dependent
34 parent surviving, that parent is entitled to receive during his or
35 her lifetime one half the amount which both parents, if living,
36 would have been entitled to receive.

37 Any person qualifying as a surviving dependent child under
38 this section, in addition to any other benefits due under this or
39 other sections of this article, is entitled to receive a scholarship
40 to be applied to the career development education of that
41 person. This sum, up to but not exceeding seven thousand five
42 hundred dollars, shall be paid from the Fund to any university
43 or college in this state or to any trade or vocational school or
44 other entity in this state approved by the Board, to offset the
45 expenses of tuition, room and board, books, fees or other costs
46 incurred in a course of study at any of these institutions so long
47 as the recipient makes application to the Board on an approved
48 form and under rules provided by the Board, and maintains
49 scholastic eligibility as defined by the institution or the Board.
50 The Board may by appropriate rules define age requirements,
51 physical and mental requirements, scholastic eligibility,
52 disbursement methods, institutional qualifications and other
53 requirements as necessary and not inconsistent with this
54 section.

55 Awards and benefits for a surviving spouse or dependents
56 of a member received under any section or any of the provi-
57 sions of this retirement system are in lieu of receipt of any

58 benefits for these persons under the provisions of any other
59 state retirement system. Receipt of benefits under any other
60 state retirement system is in lieu of any right to receive any
61 benefits under this retirement system, so that only a single
62 receipt of state retirement benefits occurs.

* 63 It is the intent of the Legislature that the levels of benefits
64 provided by operation of this section from the effective date of
65 the enactment of this section during the regular session of the
66 Legislature, two thousand five, be the same levels of benefits as
67 provided by this section as amended and reenacted during the
68 fourth extraordinary session of the Legislature, two thousand
69 five. Accordingly, the effective date of the operation of this
70 section as amended and reenacted during the fourth extraordi-
71 nary session of the Legislature, two thousand five, is expressly
72 made retrospective to the ninth day of April, two thousand five.

CHAPTER 17

**(Com. Sub. for H. B. 413 — By Mr. Speaker,
Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed September 13, 2005; in effect November 1, 2005.]

[Approved by the Governor on September 28, 2005.]

AN ACT to amend and reenact §15-2-5 of the Code of West Virginia,
1931, as amended, relating to providing an increase in the annual
base salary of all sworn state police personnel.

Be it enacted by the Legislature of West Virginia:

That §15-2-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-5. Career progression system; salaries; exclusion from wage and hour law, with supplemental payment; legislative rule; bond; leave time for members called to duty in guard or reserves.

1 (a) The Superintendent shall establish within the West
2 Virginia State Police a system to provide for: The promotion of
3 members to the supervisory ranks of sergeant, first sergeant,
4 second lieutenant and first lieutenant; the classification of
5 nonsupervisory members within the field operations force to the
6 ranks of trooper, senior trooper, trooper first class or corporal;
7 the classification of members assigned to the forensic labora-
8 tory as criminalist I-VII; and the temporary reclassification of
9 members assigned to administrative duties as administrative
10 support specialist I-VIII.

11 (b) The Superintendent may propose legislative rules for
12 promulgation in accordance with article three, chapter
13 twenty-nine-a of this code for the purpose of ensuring consis-
14 tency, predictability and independent review of any system
15 developed under the provisions of this section.

16 (c) The Superintendent shall provide to each member a
17 written manual governing any system established under the
18 provisions of this section and specific procedures shall be
19 identified for the evaluation and testing of members for
20 promotion or reclassification and the subsequent placement of
21 any members on a promotional eligibility or reclassification
22 recommendation list.

23 (d) Beginning on the first day of November, two thousand
24 five, and continuing thereafter, members shall receive annual
25 salaries as follows:

26 ANNUAL SALARY SCHEDULE (BASE PAY)

27 SUPERVISORY AND NONSUPERVISORY RANKS

28	Cadet During Training	\$2,218.50 Mo.	\$26,622
29	Cadet Trooper After Training	2,621.50 Mo.	31,458
30	Trooper Second Year		31,922
31	Trooper Third Year		32,294
32	Trooper Fourth & Fifth Year		32,594
33	Senior Trooper		34,682
34	Trooper First Class		36,770
35	Corporal		38,858
36	Sergeant		43,034
37	First Sergeant		45,122
38	Second Lieutenant		47,210
39	First Lieutenant		49,298
40	Captain		51,386
41	Major		53,474
42	Lieutenant Colonel		55,562

43 ANNUAL SALARY SCHEDULE (BASE PAY)

44 ADMINISTRATION SUPPORT

45 SPECIALIST CLASSIFICATION

46	I		32,594
47	II		34,682
48	III		36,770
49	IV		38,858
50	V		43,034
51	VI		45,122
52	VII		47,210
53	VIII		49,298

54 ANNUAL SALARY SCHEDULE (BASE PAY)

55 CRIMINALIST CLASSIFICATION

56	I		32,594
57	II		34,682

58	III	36,770
59	IV	38,858
60	V	43,044
61	VI	45,122
62	VII	47,210

63 Each member of the West Virginia State Police whose
64 salary is fixed and specified in this annual salary schedule is
65 entitled to the length of service increases set forth in subsection
66 (e) of this section and supplemental pay as provided in subsec-
67 tion (g) of this section.

68 (e) Each member of the West Virginia State Police whose
69 salary is fixed and specified pursuant to this section shall
70 receive, and is entitled to, an increase in salary over that set
71 forth in subsection (d) of this section, for grade in rank, based
72 on length of service, including that service served before and
73 after the effective date of this section with the West Virginia
74 State Police as follows: At the end of five years of service with
75 the West Virginia State Police, the member shall receive a
76 salary increase of six hundred dollars to be effective during his
77 or her next three years of service and a like increase at
78 three-year intervals thereafter, with the increases to be cumula-
79 tive.

80 (f) In applying the salary schedules set forth in this section
81 where salary increases are provided for length of service,
82 members of the West Virginia State Police in service at the time
83 the schedules become effective shall be given credit for prior
84 service and shall be paid the salaries the same length of service
85 entitles them to receive under the provisions of this section.

86 (g) The Legislature finds and declares that because of the
87 unique duties of members of the West Virginia State Police, it
88 is not appropriate to apply the provisions of state wage and hour
89 laws to them. Accordingly, members of the West Virginia State
90 Police are excluded from the provisions of state wage and hour

91 law. This express exclusion shall not be construed as any
92 indication that the members were or were not covered by the
93 wage and hour law prior to this exclusion.

94 In lieu of any overtime pay they might otherwise have
95 received under the wage and hour law, and in addition to their
96 salaries and increases for length of service, members who have
97 completed basic training and who are exempt from federal Fair
98 Labor Standards Act guidelines may receive supplemental pay
99 as provided in this section.

100 The authority of the Superintendent to propose a legislative
101 rule or amendment thereto for promulgation in accordance with
102 article three, chapter twenty-nine-a of this code to establish the
103 number of hours per month which constitute the standard work
104 month for the members of the West Virginia State Police is
105 hereby continued. The rule shall further establish, on a gradu-
106 ated hourly basis, the criteria for receipt of a portion or all of
107 supplemental payment when hours are worked in excess of the
108 standard work month. The Superintendent shall certify monthly
109 to the West Virginia State Police's payroll officer the names of
110 those members who have worked in excess of the standard
111 work month and the amount of their entitlement to supplemen-
112 tal payment. The supplemental payment may not exceed two
113 hundred thirty-six dollars monthly. The Superintendent and
114 civilian employees of the West Virginia State Police are not
115 eligible for any supplemental payments.

116 (h) Each member of the West Virginia State Police, except
117 the Superintendent and civilian employees, shall execute,
118 before entering upon the discharge of his or her duties, a bond
119 with security in the sum of five thousand dollars payable to the
120 State of West Virginia, conditioned upon the faithful perfor-
121 mance of his or her duties, and the bond shall be approved as to
122 form by the Attorney General and as to sufficiency by the
123 Governor.

124 (i) Any member of the West Virginia State Police who is
125 called to perform active duty training or inactive duty training
126 in the National Guard or any reserve component of the Armed
127 Forces of the United States annually shall be granted, upon
128 request, leave time not to exceed thirty calendar days for the
129 purpose of performing the active duty training or inactive duty
130 training and the time granted may not be deducted from any
131 leave accumulated as a member of the West Virginia State
132 Police.

CHAPTER 18

**(S. B. 4010 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed September 13, 2005; in effect from passage.]

[Approved by the Governor on September 28, 2005.]

AN ACT to amend and reenact §18-7C-2, §18-7C-3, §18-7C-4, §18-7C-5, §18-7C-6, §18-7C-7, §18-7C-8, §18-7C-9, §18-7C-10, §18-7C-11, §18-7C-12 and §18-7C-13 of the Code of West Virginia, 1931, as amended, all relating to the proposed merger of the Teachers' Defined Contribution Retirement System with the State Teachers Retirement System; amending certain definitions; removing the requirement that the state deposit money to cover any additional unfunded liability before the merger; clarifying credit receipt and asset calculations for transfer; clarifying when certain contributions shall be paid; clarifying loan eligibility; establishing date on which money must be in a member's account to be eligible to vote in the merger election; requiring payment of contribution for full service credit; adding the Board's ability to do all things necessary to maintain the current retirement system during any transition period; clarifying provisions regarding

validity of election result; clarifying that the member may select either periodic payments or lump sum distribution of the member's total vested account at the date of merger if certain conditions are met; and technical corrections.

Be it enacted by the Legislature of West Virginia:

That §18-7C-2, §18-7C-3, §18-7C-4, §18-7C-5, §18-7C-6, §18-7C-7, §18-7C-8, §18-7C-9, §18-7C-10, §18-7C-11, §18-7C-12 and §18-7C-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7C. MERGER OF TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM WITH STATE TEACHERS RETIREMENT SYSTEM.

§18-7C-2. Legislative findings and purpose.

§18-7C-3. Definitions.

§18-7C-4. Merger.

§18-7C-5. Notice, education, record-keeping requirements.

§18-7C-6. Conversion of assets from Defined Contribution Retirement System to State Teachers Retirement System; contributions; loans.

§18-7C-7. Service credit in State Teachers Retirement System following merger; adjustments.

§18-7C-8. Election; board may contract for professional services.

§18-7C-9. Election considered final.

§18-7C-10. Qualified domestic relations orders.

§18-7C-11. Vesting.

§18-7C-12. Minimum guarantees.

§18-7C-13. Due process and right to appeal.

§18-7C-2. Legislative findings and purpose.

1 (a) The Legislature declares that the State of West Virginia
2 and its citizens have always believed in a strong public educa-
3 tion system. The Constitution of this state mandates a thorough
4 and efficient public education system. The Legislature notes
5 that the quality of our state's education system is dependent,
6 *inter alia*, upon the motivation and quality of its teachers and
7 educational service personnel.

8 (b) The Legislature finds and declares that the State of West
9 Virginia is privileged to be the home of some of the best
10 teachers and education service personnel in this nation and that
11 our teachers and education service personnel are dedicated and
12 hard-working individuals. The Legislature further finds and
13 declares that our teachers and education service personnel
14 deserve a retirement program whereby they know in advance
15 what their retirement benefit will be, a defined benefit retire-
16 ment program where our teachers and service personnel will not
17 have to bear the risk of investment performance to receive their
18 full retirement benefit. The Legislature notes that uncertainty
19 exists in the investment markets, especially in the post-Septem-
20 ber eleventh era, and that placing this risk and uncertainty upon
21 the state in the form of a defined benefit plan will protect and
22 ensure a meaningful retirement benefit for our teachers and
23 educational service personnel.

24 (c) The Legislature declares that it is in the best interests of
25 the teachers and public education in this state, and conducive to
26 the fiscal solvency of the State Teachers Retirement System,
27 that the Teachers' Defined Contribution Retirement System be
28 merged with the State Teachers Retirement System.

29 (d) The Legislature also finds that a fiscally sound retire-
30 ment program with an ascertainable benefit aids in the retention
31 and recruitment of teachers and school service personnel and
32 that the provisions of this article are designed to accomplish the
33 goals set forth in this section.

34 (e) The Legislature has studied this matter diligently and in
35 making the determination to merge the two plans has availed
36 itself of an actuarial study of the proposed merger by the
37 actuary of the Consolidated Public Retirement Board and has
38 engaged the service of two independent actuaries.

39 (f) The Legislature further finds and declares that members
40 of a defined contribution system who must bear the attendant

41 market risk and performance of their investments are truly
42 being provided a significant and greater benefit where the
43 defined contribution system is replaced with a defined benefit
44 system in which the employer bears the risk of market fluctua-
45 tions and investment performance, especially where those
46 members decide through an election process whether to trade
47 the defined contribution system for a defined benefit system.

§18-7C-3. Definitions.

1 As used in this article, unless the context clearly requires a
2 different meaning:

3 (1) “Assets” means all member contributions and employer
4 contributions made on the member’s behalf to the Defined
5 Contribution Retirement System and earnings thereon, less any
6 applicable fees as approved by the board: *Provided*, That if a
7 member has withdrawn or cashed out any amounts, the amounts
8 must have been repaid.

9 (2) “Board” means the Consolidated Public Retirement
10 Board established in article ten-d, chapter five of this code, and
11 its employees.

12 (3) “Date of merger” means, in the event of a positive vote
13 on the merger, the first day of July, two thousand six.

14 (4) “Defined Contribution Retirement System” means the
15 Teachers’ Defined Contribution Retirement System established
16 in article seven-b of this chapter.

17 (5) “Salary” means:

18 (A) For a member contributing to the Defined Contribution
19 Retirement System during the two thousand five fiscal year, the
20 actual salary earned for the two thousand five fiscal year
21 divided by the employment service earned in the two thousand
22 five fiscal year.

23 (B) For a member not contributing to the Defined Contribu-
24 tion Retirement System during the two thousand five fiscal
25 year, the contract salary on the date of rehire.

26 (6) "State Teachers Retirement System" means the State
27 Teachers Retirement System established in article seven-a of
28 this chapter.

§18-7C-4. Merger.

1 (a) Subject to the provisions of subsection (b) of this
2 section, on the first day of July, two thousand six, the Defined
3 Contribution Retirement System shall be merged and consoli-
4 dated with the State Teachers Retirement System pursuant to
5 the provisions of this article.

6 (b) If a majority of the eligible voting members of the
7 Teachers' Defined Contribution Retirement System do not elect
8 in favor of the merger, then all of the provisions of this article
9 are void and of no force and effect and the Defined Contribu-
10 tion Retirement System continues as the retirement system for
11 all members in that system as of the thirtieth day of June, two
12 thousand six.

§18-7C-5. Notice, education, record-keeping requirements.

1 (a) Commencing not later than the first day of August, two
2 thousand five, the Consolidated Public Retirement Board shall
3 begin an educational program with respect to the merger of the
4 Defined Contribution Retirement System with the State
5 Teachers Retirement System.

6 (1) This educational program shall address, at a minimum:

7 (A) The law providing for the merger;

8 (B) The mechanics of the merger;

9 (C) The election process;

10 (D) Relevant dates and time periods;

11 (E) The benefits, potential advantages and potential
12 disadvantages if members fail or refuse to approve the merger
13 and thereby elect to remain in the Defined Contribution
14 Retirement System;

15 (F) The benefits, potential advantages and potential
16 disadvantages of becoming a member of the State Teachers
17 Retirement System;

18 (G) Potential state and federal tax implications in general
19 attendant to the various options available to the members; and

20 (H) Any other pertinent information considered relevant by
21 the board.

22 (2) The board shall disseminate the information through:

23 (A) Its website;

24 (B) Computer programs;

25 (C) Written or electronic materials, or both, delivered to
26 each member;

27 (D) Classes or seminars, if in the best judgment of the
28 board classes or seminars are required to provide the necessary
29 education for a member to make an informed decision with
30 respect to the election;

31 (E) At the discretion of the board, through a program of
32 individual counseling which is optional on the part of the
33 member; and

34 (F) Through any other educational program considered
35 necessary by the board.

36 (b) The board shall provide each member with a copy of the
37 written or electronic educational materials and with a copy of
38 the notice of the election.

39 (1) The notice shall provide full and appropriate disclosure
40 regarding the merger and the election process, including the
41 date of the election.

42 (2) The board also shall cause notice of the election to be
43 published in at least ten newspapers of general circulation in
44 this state. This notice shall be:

45 (A) By Class III legal advertisement published in accor-
46 dance with the provisions of article three, chapter fifty-nine of
47 this code; and

48 (B) Published not later than thirty days prior to the begin-
49 ning of the election period and not sooner than sixty days prior
50 to the beginning of the election period pursuant to section eight
51 of this article.

52 (c) It is the responsibility of each member of the Defined
53 Contribution Retirement System to keep the board informed of
54 his or her current address. A member who does not is consid-
55 ered to have waived his or her right to receive any information
56 from the board with respect to the purposes of this article.

57 (d) Once the board has complied with the provisions of this
58 section, each member of the Defined Contribution Retirement
59 System is considered to have actual notice of the election and
60 all matters pertinent to the election.

§18-7C-6. Conversion of assets from Defined Contribution Retirement System to State Teachers Retirement System; contributions; loans.

1 (a) If a majority of members voting elect to merge the
2 Defined Contribution Retirement System into the State Teach-
3 ers Retirement System:

4 (1) The consolidation and merger is governed by the
5 provisions of this article;

6 (2) The Defined Contribution Retirement System does not
7 exist after the thirtieth day of June, two thousand six; and

8 (3) All members of that system become members of the
9 State Teachers Retirement System as provided in this article.

10 (b) Following the election, if the vote is in favor of the
11 merger, the board shall transfer all properties held in the
12 Defined Contribution Retirement System's Trust Fund to the
13 State Teachers Retirement System.

14 (c) To receive full credit in the State Teachers Retirement
15 System for service in the Defined Contribution Retirement
16 System for which assets are transferred, members shall pay into
17 the State Teachers Retirement System a one and one-half
18 percent contribution. This contribution shall be calculated as
19 one and one-half percent of the member's estimated total
20 earnings for which assets are transferred. Except as otherwise
21 provided in this section, each member shall pay the contribution
22 required no later than the thirtieth day of June, two thousand
23 seven.

24 (1) For a member contributing to the Defined Contribution
25 Retirement System at any time during the two thousand five
26 fiscal year and commencing membership in the State Teachers
27 Retirement System on the first day of July, two thousand six:

28 (A) The estimated total earnings shall be calculated based
29 on the member's salary and the member's age nearest birthday
30 on the thirtieth day of June, two thousand five;

31 (B) This calculation shall apply both an annual backward
32 salary scale from that date for prior years' salaries and a
33 forward salary scale for the salary for the two thousand six
34 fiscal year.

35 (2) For a member not contributing to the Defined Contribu-
36 tion Retirement System during the two thousand five fiscal
37 year:

38 (A) The estimated total earnings shall be calculated based
39 on the member's salary and the member's age nearest birthday
40 on the member's date of rehire.

41 (B) This calculation shall apply a backward salary scale
42 from the member's date of rehire for prior years' salaries.

43 (3) The calculations in subdivisions (1) and (2) of this
44 subsection are based upon the salary scale assumption applied
45 in the West Virginia Teachers Retirement System Actuarial
46 Valuation as of the first day of July, two thousand four,
47 prepared for the Consolidated Public Retirement Board. This
48 salary scale shall be applied regardless of breaks in service.

49 (d) The board shall make available to each member a loan
50 for the purpose of paying all or part of the one and one-half
51 percent contribution required in this section. The loan shall be
52 offered in accordance with the provisions of section thirty-four,
53 article seven-a of this chapter.

54 (1) Notwithstanding any provision of this code, rule or
55 policy of the board to the contrary, the interest rate on any such
56 loan may not exceed seven and one-half percent per annum.
57 The amount total borrowed may not exceed twelve thousand
58 dollars.

59 (2) In the event a loan made pursuant to this section is used
60 to pay the one and one-half percent, the board shall make any
61 necessary adjustments at the time the loan is made.

62 (3) Subject to the provisions of subdivision (4) of this
63 section, the board shall make this loan available for members
64 until the thirtieth day of June, two thousand seven.

65 (4) Upon returning to employment, a member who has left
66 employment but not withdrawn his or her funds shall pay the
67 one and one-half percent contribution within one year of being
68 rehired. The member is eligible for one year following the date
69 of rehire to obtain a loan for paying the contribution.

70 (e) The board shall develop and institute a payroll deduc-
71 tion program for repayment of the loan established in this
72 section.

73 (f) If the merger and consolidation is duly elected:

74 (1) As of the first day of July, two thousand six, the
75 members' contribution rate becomes six percent of his or her
76 salary or wages; and

77 (2) All members who make a contribution into the State
78 Teachers Retirement System on or after the first day of July,
79 two thousand six, are governed by the provisions of article
80 seven-a of this chapter, subject to the provisions of this article.

81 (g) Subject to the provisions of subdivision (1) of this
82 subsection, if a member has withdrawn or cashed out part of his
83 or her assets, that member will not receive credit for those
84 moneys cashed out or withdrawn. The board shall make a
85 determination as to the amount of credit a member loses based
86 on the periods of time and the amounts he or she has withdrawn
87 or cashed out, which shall be expressed as a loss of service
88 credit.

89 (1) A member may repay those amounts he or she previ-
90 ously cashed out or withdrew, along with interest as determined
91 by the board, and receive the same credit as if the withdrawal
92 or cash-out never occurred. Such a member also shall pay the
93 one and one-half percent contribution to receive full credit for
94 the cashed-out or withdrawn amounts being repaid to the State
95 Teachers Retirement System.

96 (2) The loan provided in this section is not available to
97 members to repay previously cashed out or withdrawn moneys.

98 (3) If the repayment occurs five or more years following the
99 cash-out or withdrawal, the member also shall repay any
100 forfeited employer contribution account balance along with
101 interest determined by the board.

102 (h) Notwithstanding any provision of subsection (g) to the
103 contrary, if a member has cashed out or withdrawn any of his
104 or her assets after the last day of June, two thousand one, and
105 that member chooses to repurchase that service after the
106 thirtieth day of June, two thousand six, the member shall repay
107 the previously distributed amounts and any applicable interest
108 to the State Teachers Retirement System.

109 (i) Any service in the State Teachers Retirement System a
110 member has before the date of the merger is not affected by the
111 provisions of this article.

**§18-7C-7. Service credit in State Teachers Retirement System
following merger; adjustments.**

1 (a) Any member transferring all of his or her assets from
2 the Defined Contribution Retirement System to the State
3 Teachers Retirement System pursuant to the provisions of this
4 article and who has not made any withdrawals or cash-outs
5 from his or her assets is entitled to service credit in the State
6 Teachers Retirement System for each year or part of a year, as
7 governed by the provisions of article seven-a of this chapter, the
8 member worked and contributed to the Defined Contribution
9 Retirement System.

10 (b) Any member who has made withdrawals or cash outs
11 will receive service credit based upon the amounts transferred.
12 The board shall make the appropriate adjustment to the service
13 credit the member will receive.

1 (c) Any member's Defined Contribution Retirement System
2 service credit will be reduced by twenty-five percent if the
3 member does not pay the one and one-half percent contribution
4 required by this article upon transfer to the State Teachers
5 Retirement System.

§18-7C-8. Election; board may contract for professional services.

1 (a) The board shall arrange for and hold an election for the
2 members of the Defined Contribution Retirement System who
3 are eligible to vote, pursuant to the provisions of subsection (d)
4 of this section, on the issue of merging and consolidating the
5 Defined Contribution Retirement System into the State Teach-
6 ers Retirement System.

7 (b) If a majority of the eligible voters casting ballots in the
8 election votes in the affirmative on the issue:

9 (1) All members of the Defined Contribution Retirement
10 System will transfer, or have transferred, all assets held by them
11 or on their behalf in the Defined Contribution Retirement
12 System to the State Teachers Retirement System;

13 (2) On the date of the merger each member becomes a
14 member and is entitled to the benefits of the State Teachers
15 Retirement System; and

16 (3) Each member is governed by the provisions of the State
17 Teachers Retirement System subject to the provisions of this
18 article.

19 (c) If fewer than one half of the members eligible to vote of
20 the Defined Contribution Plan cast ballots in the election, the
21 election is not valid and binding.

22 (d) Any person who has one dollar or more in assets in the
23 Defined Contribution Retirement System on the last day of

24 December, two thousand five, may and is eligible to vote in the
25 election.

26 (e) Notwithstanding any other provision of this code to the
27 contrary, the board may do all things necessary and convenient
28 to maintain the Defined Contribution Retirement System and
29 the State Teachers Retirement System during the transitional
30 period and may retain the services of the professionals it
31 considers necessary to do so. The board may also retain the
32 services of the professionals it deems necessary to:

33 (1) Assist in the preparation of educational materials for
34 members of the Defined Contribution Retirement System who
35 are eligible to vote on the merger to inform these members of
36 their options in the election;

37 (2) Assist in the educational process of the members who
38 are eligible to vote on the merger;

39 (3) Assist in the election process and the election; and

40 (4) Ensure compliance with all relevant state and federal
41 laws.

42 (f) Due to the time constraints inherent in the merger
43 process set forth in this article in specific, and due to the nature
44 of the professional services required by the Consolidated Public
45 Retirement Board in general, the provisions of article three,
46 chapter five-a of this code, relating to the Division of Purchas-
47 ing of the Department of Administration do not apply to any
48 contracts for any actuarial services, investment services, legal
49 services or other professional services authorized under the
50 provisions of this article.

51 (g) The election may be held through certified mail or in
52 any other method the board determines is in the best interest of
53 the members. Each ballot shall contain the following language,

54 in bold fifteen-point type: “By casting this ballot I am making
55 an educated, informed and voluntary choice as to my retirement
56 and the retirement system of which I wish to be a member. I am
57 also certifying that I understand the consequences of my vote
58 in this election.” Each ballot shall be signed by the member
59 voting. The board shall retain the ballots in a permanent file.
60 Any unsigned ballot is void.

61 (h) The election period shall begin not later than the first
62 day of March, two thousand six. The board shall ascertain the
63 results of the election not later than the last day of March, two
64 thousand six. The board shall certify the results of the election
65 to the Governor, the Legislature and the members not later than
66 the fifth day of April, two thousand six.

67 (i) The election period terminates and votes may not be cast
68 or counted after the twelfth day of March, two thousand six,
69 unless the election is conducted through the United States mail.
70 If conducted through the mail, any ballot postmarked later than
71 the twelfth day of March, two thousand six, is void and may not
72 be counted.

73 (j) The board shall take all necessary steps to see that the
74 merger does not affect the qualified status with the Internal
75 Revenue Service of either retirement plan.

§18-7C-9. Election considered final.

1 (a) The election is considered final and each member,
2 whether he or she voted or failed to vote, is bound by the results
3 of the election. Every member is considered to have made an
4 informed, educated, knowing and voluntary decision and choice
5 with respect to the election. Those members who failed or
6 refused to vote are also considered to have made an informed,
7 educated, knowing and voluntary decision and choice with
8 respect to the election and voting and are bound by the results
9 of the election as if he or she had voted in the election.

10 (b) Only one election may be held pursuant to the provi-
11 sions of this article.

§18-7C-10. Qualified domestic relations orders.

1 Any member having a qualified domestic relations order
2 against his or her defined contribution account is allowed to
3 repurchase service in the State Teachers Retirement System.
4 The member shall repay any moneys previously distributed to
5 the alternate payee along with the interest as set by the board.
6 The member shall repay by the last day of June, two thousand
7 twelve. The provisions of this section are void and of no effect
8 if the members fail to elect to merge and consolidate the
9 Defined Contribution Retirement System with the State
10 Teachers Retirement System.

§18-7C-11. Vesting.

1 Any member who works one hour or more after the date of
2 merger occurs is subject to the vesting schedule set forth in
3 article seven-a of this chapter: *Provided*, That if a member is
4 vested under the Defined Contribution Retirement System and
5 his or her last contribution was not made to the State Teachers
6 Retirement System, that member is subject to the vesting
7 schedule set forth in article seven-b of this chapter.

§18-7C-12. Minimum guarantees.

1 (a) Any member of the Defined Contribution Retirement
2 System who has made a contribution to the State Teachers
3 Retirement System after the date of merger is guaranteed a
4 minimum benefit equal to his or her member contributions plus
5 the vested portion of employer contributions made on his or her
6 behalf to the Defined Contribution Retirement System as of the
7 thirtieth day of June, two thousand six, plus any earnings
8 thereon, as stated by the board or the board's professional
9 contractor.

10 (b) A member of the Defined Contribution Retirement
11 System who has made contributions to the State Teachers
12 Retirement System after the thirtieth day of June, two thousand
13 six, where the Defined Contribution Retirement System has
14 been merged into the State Teachers Retirement System, upon
15 eligibility to receive a distribution under article seven-a of this
16 chapter, shall have at a minimum the following three options:

17 (1) The right to receive an annuity from the State Teachers
18 Retirement System based upon the provisions of article seven-a
19 of this chapter;

20 (2) The right to withdraw from the State Teachers Retirement
21 System and receive his or her member accumulated
22 contributions in the State Teachers Retirement System, plus
23 regular interest thereon, as set forth in article seven-a of this
24 chapter; or

25 (3) The right to withdraw and receive his or her member
26 contributions plus the vested portion of employer contributions
27 made on his or her behalf to the Defined Contribution Retirement
28 System, plus any earnings thereon as of the date of the
29 merger, as determined by the board or its professional third-
30 party benefits administrator pursuant to the vesting provisions
31 of section twelve of this article. This amount may be distributed
32 in a lump sum or in periodic payments as elected by the
33 member.

34 (c) Any member of the Defined Contribution Retirement
35 System who makes no contribution to the State Teachers
36 Retirement System following approval of the merger and
37 following the date of merger is guaranteed the receipt of the
38 amount in his or her total vested account in the Defined
39 Contribution Retirement System on the date of merger, plus
40 interest thereon, at four percent accruing from the date of
41 merger. This amount may be distributed in a lump sum or in
42 periodic payments as elected by the member.

§18-7C-13. Due process and right to appeal.

1 Any person aggrieved by any determination made by the
 2 board following the election, if the result of the election is in
 3 favor of merger and consolidation, may petition the board and
 4 receive an administrative hearing on the matter in dispute. The
 5 administrative decision may be appealed to a circuit court.

CHAPTER 19

**(S. B. 4008 — By Senators Tomblin, Mr. President, and Sprouse)
 [By Request of the Executive]**

[Passed September 13, 2005; in effect from passage.]
 [Approved by the Governor on September 30, 2005.]

AN ACT to amend and reenact §18A-4-2 and §18A-4-8a of the Code of West Virginia, 1931, as amended, all relating to salaries for teachers and school service personnel; adopting state minimum salary schedules for teachers; providing for incremental salary increases for teachers; and providing minimum pay grade scales for school service personnel.

Be it enacted by the Legislature of West Virginia:

That §18A-4-2 and §18A-4-8a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-2. State minimum salaries for teachers.

§18A-4-8a. Service personnel minimum monthly salaries.

§18A-4-2. State minimum salaries for teachers.

1 (a) Each teacher shall receive the amount prescribed in the
 2 2005-06 State Minimum Salary Schedule I as set forth in this

3 section, specific additional amounts prescribed in this section
4 or article and any county supplement in effect in a county
5 pursuant to section five-a of this article during the contract
6 year: *Provided*, That beginning on the first day of the second
7 quarter of the teacher's employment term in the school year two
8 thousand five-two thousand six through the thirtieth day of
9 June, two thousand six, each teacher shall receive the amount
10 prescribed in the 2005-06 State Minimum Salary Schedule II as
11 set forth in this section, specific additional amounts prescribed
12 in this section or article and any county supplement in effect in
13 a county pursuant to section five-a of this article during the
14 contract year: *Provided, however*, That any salary increase that
15 a teacher is entitled to receive as a result of the enactment of the
16 2005-06 State Minimum Salary Schedule II shall not be paid
17 until the first pay date after the first day of November, two
18 thousand five.

19 Effective the first day of July, two thousand six, through the
20 thirtieth day of June, two thousand seven, each teacher shall
21 receive the amount prescribed in the 2006-07 State Minimum
22 Salary Schedule as set forth in this section, specific additional
23 amounts prescribed in this section or article and any county
24 supplement in effect in a county pursuant to section five-a of
25 this article during the contract year.

26 Effective the first day of July, two thousand seven, through
27 the thirtieth day of June, two thousand eight, each teacher shall
28 receive the amount prescribed in the 2007-08 State Minimum
29 Salary Schedule as set forth in this section, specific additional
30 amounts prescribed in this section or article and any county
31 supplement in effect in a county pursuant to section five-a of
32 this article during the contract year.

33 Effective the first day of July, two thousand eight, and
34 thereafter, each teacher shall receive the amount prescribed in
35 the 2008-09 State Minimum Salary Schedule as set forth in this
36 section, specific additional amounts prescribed in this section

37 or article and any county supplement in effect in a county
 38 pursuant to section five-a of this article during the contract year.

2005-06 STATE MINIMUM SALARY SCHEDULE I

(1) Years Exp.	(2) 4th Class	(3) 3rd Class	(4) 2nd Class	(5) A.B. A.B.	(6) A.B. +15	(7) M.A. M.A.	(8) M.A. +15	(9) M.A. +30	(10) M.A. +45	(11) Doc- torate
0	21,888	22,525	22,780	23,990	24,725	26,433	27,168	27,903	28,638	29,638
1	22,205	22,842	23,097	24,491	25,226	26,934	27,669	28,404	29,139	30,139
2	22,522	23,160	23,415	24,992	25,727	27,435	28,170	28,905	29,640	30,640
3	22,840	23,477	23,732	25,493	26,228	27,936	28,671	29,406	30,141	31,141
4	23,393	24,030	24,286	26,230	26,965	28,673	29,408	30,143	30,878	31,878
5	23,710	24,348	24,603	26,731	27,466	29,174	29,909	30,644	31,379	32,379
6	24,028	24,665	24,920	27,232	27,967	29,675	30,410	31,145	31,880	32,880
7		24,982	25,238	27,733	28,468	30,176	30,911	31,646	32,381	33,381
8		25,300	25,555	28,234	28,969	30,677	31,412	32,147	32,882	33,882
9			25,872	28,735	29,470	31,178	31,913	32,648	33,383	34,383
10			26,189	29,237	29,972	31,680	32,415	33,150	33,885	34,885
11				29,738	30,473	32,181	32,916	33,651	34,386	35,386
12				30,239	30,974	32,682	33,417	34,152	34,887	35,887
13				30,740	31,475	33,183	33,918	34,653	35,388	36,388
14						33,684	34,419	35,154	35,889	36,889
15						34,185	34,920	35,655	36,390	37,390
16						34,686	35,421	36,156	36,891	37,891
17								36,657	37,392	38,392
18								37,158	37,893	38,893
19								37,659	38,394	39,394

2005-06 STATE MINIMUM SALARY SCHEDULE II

(1) Years Exp.	(2) 4th Class	(3) 3rd Class	(4) 2nd Class	(5) A.B. A.B.	(6) A.B. +15	(7) M.A. M.A.	(8) M.A. +15	(9) M.A. +30	(10) M.A. +45	(11) Doc- torate
0	23,238	23,875	24,130	25,340	26,075	27,783	28,518	29,253	29,988	30,988
1	23,555	24,192	24,447	25,841	26,576	28,284	29,019	29,754	30,489	31,489
2	23,872	24,510	24,765	26,342	27,077	28,785	29,520	30,255	30,990	31,990
3	24,190	24,827	25,082	26,843	27,578	29,286	30,021	30,756	31,491	32,491
4	24,743	25,380	25,636	27,580	28,315	30,023	30,758	31,493	32,228	33,228
5	25,060	25,698	25,953	28,081	28,816	30,524	31,259	31,994	32,729	33,729
6	25,378	26,015	26,270	28,582	29,317	31,025	31,760	32,495	33,230	34,230

7	25,696	26,332	26,588	29,083	29,818	31,526	32,261	32,996	33,731	34,731
8		26,650	26,905	29,584	30,319	32,027	32,762	33,497	34,232	35,232
9		26,968	27,222	30,085	30,820	32,528	33,263	33,998	34,733	35,733
10			27,539	30,587	31,322	33,030	33,765	34,500	35,235	36,235
11			27,856	31,088	31,823	33,531	34,266	35,001	35,736	36,736
12				31,589	32,324	34,032	34,767	35,502	36,237	37,237
13				32,090	32,825	34,533	35,268	36,003	36,738	37,738
14				32,591	33,326	35,034	35,769	36,504	37,239	38,239
15						35,535	36,270	37,005	37,740	38,740
16						36,036	36,771	37,506	38,241	39,241
17						36,537	37,272	38,007	38,742	39,742
18								38,508	39,243	40,243
19								39,009	39,744	40,744
<u>20</u>								39,510	40,245	41,245

2006-07 STATE MINIMUM SALARY SCHEDULE

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Years	4th	3rd	2nd		A.B.		M.A.	M.A.	M.A.	Doc-
Exp.	Class	Class	Class	A.B.	+15	M.A.	+15	+30	+45	torate
0	23,238	23,875	24,130	25,340	26,075	27,783	28,518	29,253	29,988	30,988
1	23,555	24,192	24,447	25,841	26,576	28,284	29,019	29,754	30,489	31,489
2	23,872	24,510	24,765	26,342	27,077	28,785	29,520	30,255	30,990	31,990
3	24,190	24,827	25,082	26,843	27,578	29,286	30,021	30,756	31,491	32,491
4	24,743	25,380	25,636	27,580	28,315	30,023	30,758	31,493	32,228	33,228
5	25,060	25,698	25,953	28,081	28,816	30,524	31,259	31,994	32,729	33,729
6	25,378	26,015	26,270	28,582	29,317	31,025	31,760	32,495	33,230	34,230
7	25,696	26,332	26,588	29,083	29,818	31,526	32,261	32,996	33,731	34,731
8	26,014	26,650	26,905	29,584	30,319	32,027	32,762	33,497	34,232	35,232
9	26,332	26,968	27,222	30,085	30,820	32,528	33,263	33,998	34,733	35,733
10	26,650	27,286	27,539	30,587	31,322	33,030	33,765	34,500	35,235	36,235
11		27,604	27,856	31,088	31,823	33,531	34,266	35,001	35,736	36,736
12		27,922	28,173	31,589	32,324	34,032	34,767	35,502	36,237	37,237
13			28,490	32,090	32,825	34,533	35,268	36,003	36,738	37,738
14			28,807	32,591	33,326	35,034	35,769	36,504	37,239	38,239
15				33,092	33,827	35,535	36,270	37,005	37,740	38,740
16				33,593	34,328	36,036	36,771	37,506	38,241	39,241
17				34,094	34,829	36,537	37,272	38,007	38,742	39,742
18						37,038	37,773	38,508	39,243	40,243
19						37,539	38,274	39,009	39,744	40,744
20						38,040	38,775	39,510	40,245	41,245
21								40,011	40,746	41,746

22	40,512	41,247	42,247
23	41,013	41,748	42,748

2007-08 STATE MINIMUM SALARY SCHEDULE

(1) Years Exp.	(2) 4th Class	(3) 3rd Class	(4) 2nd Class	(5) A.B. A.B.	(6) A.B. +15	(7) M.A. M.A.	(8) M.A. +15	(9) M.A. +30	(10) M.A. +45	(11) Doc- torate
0	23,238	23,875	24,130	25,340	26,075	27,783	28,518	29,253	29,988	30,988
1	23,555	24,192	24,447	25,841	26,576	28,284	29,019	29,754	30,489	31,489
2	23,872	24,510	24,765	26,342	27,077	28,785	29,520	30,255	30,990	31,990
3	24,190	24,827	25,082	26,843	27,578	29,286	30,021	30,756	31,491	32,491
4	24,743	25,380	25,636	27,580	28,315	30,023	30,758	31,493	32,228	33,228
5	25,060	25,698	25,953	28,081	28,816	30,524	31,259	31,994	32,729	33,729
6	25,378	26,015	26,270	28,582	29,317	31,025	31,760	32,495	33,230	34,230
7	25,696	26,332	26,588	29,083	29,818	31,526	32,261	32,996	33,731	34,731
8	26,014	26,650	26,905	29,584	30,319	32,027	32,762	33,497	34,232	35,232
9	26,332	26,968	27,222	30,085	30,820	32,528	33,263	33,998	34,733	35,733
10	26,650	27,286	27,539	30,587	31,322	33,030	33,765	34,500	35,235	36,235
11	26,968	27,604	27,856	31,088	31,823	33,531	34,266	35,001	35,736	36,736
12	27,286	27,922	28,173	31,589	32,324	34,032	34,767	35,502	36,237	37,237
13	27,604	28,240	28,490	32,090	32,825	34,533	35,268	36,003	36,738	37,738
14		28,558	28,807	32,591	33,326	35,034	35,769	36,504	37,239	38,239
15		28,876	29,124	33,092	33,827	35,535	36,270	37,005	37,740	38,740
16			29,441	33,593	34,328	36,036	36,771	37,506	38,241	39,241
17			29,758	34,094	34,829	36,537	37,272	38,007	38,742	39,742
18				34,595	35,330	37,038	37,773	38,508	38,243	40,243
19				35,096	35,831	37,539	38,274	39,009	39,744	40,744
20				35,597	36,332	38,040	38,775	39,510	40,245	41,245
21						38,541	39,276	40,011	40,746	41,746
22						39,042	39,777	40,512	41,247	42,247
23						39,543	40,278	41,013	41,748	42,748
24								41,514	42,249	43,249
25								42,015	42,750	43,750
26								42,516	43,251	44,251

2008-09 STATE MINIMUM SALARY SCHEDULE

(1) Years Exp.	(2) 4th Class	(3) 3rd Class	(4) 2nd Class	(5) A.B. A.B.	(6) A.B. +15	(7) M.A. M.A.	(8) M.A. +15	(9) M.A. +30	(10) M.A. +45	(11) Doc- torate
0	23,238	23,875	24,130	25,340	26,075	27,783	28,518	29,253	29,988	30,988
1	23,555	24,192	24,447	25,841	26,576	28,284	29,019	29,754	30,489	31,489

2	23,872	24,510	24,765	26,342	27,077	28,785	29,520	30,255	30,990	31,990
3	24,190	24,827	25,082	26,843	27,578	29,286	30,021	30,756	31,491	32,491
4	24,743	25,380	25,636	27,580	28,315	30,023	30,758	31,493	32,228	33,228
5	25,060	25,698	25,953	28,081	28,816	30,524	31,259	31,994	32,729	33,729
6	25,378	26,015	26,270	28,582	29,317	31,025	31,760	32,495	33,230	34,230
7	25,696	26,332	26,588	29,083	29,818	31,526	32,261	32,996	33,731	34,731
8	26,014	26,650	26,905	29,584	30,319	32,027	32,762	33,497	34,232	35,232
9	26,332	26,968	27,222	30,085	30,820	32,528	33,263	33,998	34,733	35,733
10	26,650	27,286	27,539	30,587	31,322	33,030	33,765	34,500	35,235	36,235
11	26,968	27,604	27,856	31,088	31,823	33,531	34,266	35,001	35,736	36,736
12	27,286	27,922	28,173	31,589	32,324	34,032	34,767	35,502	36,237	37,237
13	27,604	28,240	28,490	32,090	32,825	34,533	35,268	36,003	36,738	37,738
14	27,922	28,558	28,807	32,591	33,326	35,034	35,769	36,504	37,239	38,239
15	28,240	28,876	29,124	33,092	33,827	35,535	36,270	37,005	37,740	38,740
16	28,558	29,194	29,441	33,593	34,328	36,036	36,771	37,506	38,241	39,241
17	28,876	29,512	29,758	34,094	34,829	36,537	37,272	38,007	38,742	39,742
18	29,194	29,830	30,075	34,595	35,330	37,038	37,773	38,508	38,243	40,243
19	29,512	30,148	30,392	35,096	35,831	37,539	38,274	39,009	39,744	40,744
20	29,830	30,466	30,709	35,597	36,332	38,040	38,775	39,510	40,245	41,245
21	30,148	30,784	31,026	36,098	36,833	38,541	39,276	40,011	40,746	41,746
22	30,466	31,102	31,343	36,599	37,334	39,042	39,777	40,512	41,247	42,247
23	30,784	31,420	31,660	37,100	37,835	39,543	40,278	41,013	41,748	42,748
24	31,102	31,738	31,977	37,601	38,336	40,044	40,779	41,514	42,249	43,249
25	31,420	32,056	32,294	38,102	38,837	40,545	41,280	42,015	42,750	43,750
26	31,738	32,374	32,611	38,603	39,338	41,046	41,781	42,516	43,251	44,251
27	32,056	32,692	32,928	39,104	39,839	41,547	42,282	43,017	43,752	44,752
28	32,374	33,010	33,245	39,605	40,340	42,048	42,783	43,518	44,253	45,253
29	32,692	33,328	33,562	40,106	40,841	42,549	43,284	44,019	44,754	45,754
30	33,010	33,646	33,879	40,607	41,342	43,050	43,785	44,520	45,255	46,255
31	33,328	33,964	34,196	41,108	41,843	43,551	44,286	45,021	45,756	46,756
32	33,646	34,282	34,513	41,609	42,344	44,052	44,787	45,522	46,257	47,257
33	33,964	34,600	34,830	42,110	42,845	44,553	45,288	46,023	46,758	47,758
34	34,282	34,918	35,147	42,611	43,346	45,054	45,789	46,524	47,259	48,259
35	34,600	35,236	35,464	43,112	43,847	45,555	46,290	47,025	47,760	48,760

49 (b) Six hundred dollars shall be paid annually to each
50 classroom teacher who has at least twenty years of teaching
51 experience. The payments: (i) Shall be in addition to any
52 amounts prescribed in the applicable state minimum salary
53 schedule; (ii) shall be paid in equal monthly installments; and

54 (iii) shall be considered a part of the state minimum salaries
55 for teachers.

56 (c) Effective the first day of July, two thousand five,
57 through the thirtieth day of June, two thousand eight, in
58 addition to any amounts prescribed in the applicable state
59 minimum salary schedule, each professional educator shall be
60 paid annually the following incremental increases in accor-
61 dance with their years of experience. The payments shall be
62 paid in equal monthly installments and shall be considered a
63 part of the state minimum salaries for teachers.

64	Years of Experience	Increment
65	29	570
66	30	570
67	31	570
68	32	570
69	33	570
70	34	570
71	35	570

72 (d) Effective the first day of July, two thousand eight, the
73 incremental increases prescribed in subsection (c) of this
74 section are included as a part of the 2008-09 State Minimum
75 Salary Schedule, therefore, the additional incremental in-
76 creases prescribed in said subsection are discontinued.

§18A-4-8a. Service personnel minimum monthly salaries.

1 (1) The minimum monthly pay for each service employee
2 whose employment is for a period of more than three and
3 one-half hours a day shall be at least the amounts indicated in
4 the State Minimum Pay Scale Pay Grade I and the minimum
5 monthly pay for each service employee whose employment is
6 for a period of three and one-half hours or less a day shall be
7 at least one-half the amount indicated in the State Minimum
8 Pay Scale Pay Grade I set forth in this section: *Provided*, That

9 beginning on the first day of the second quarter of the service
 10 employee's employment term in the school year two thousand
 11 five-two thousand six, the minimum monthly pay for each
 12 service employee whose employment is for a period of more
 13 than three and one-half hours a day shall be at least the
 14 amounts indicated in the State Minimum Pay Scale Pay Grade
 15 II and the minimum monthly pay for each service employee
 16 whose employment is for a period of three and one-half hours
 17 or less a day shall be at least one-half the amount indicated in
 18 the State Minimum Pay Scale Pay Grade II set forth in this
 19 section: *Provided, however,* That any salary increase that a
 20 service employee is entitled to receive as a result of the
 21 enactment of the State Minimum Pay Scale Pay Grade II shall
 22 not be paid until the first pay date after the first day of Novem-
 23 ber, two thousand five.

STATE MINIMUM PAY SCALE PAY GRADE I

Years of Employment	Pay Grade							
	A	B	C	D	E	F	G	H
0	1,366	1,386	1,426	1,476	1,526	1,586	1,616	1,686
1	1,397	1,417	1,457	1,507	1,557	1,617	1,647	1,717
2	1,428	1,448	1,488	1,538	1,588	1,648	1,678	1,748
3	1,459	1,479	1,519	1,569	1,619	1,679	1,709	1,779
4	1,490	1,510	1,550	1,600	1,650	1,710	1,740	1,810
5	1,521	1,541	1,581	1,631	1,681	1,741	1,771	1,841
6	1,552	1,572	1,612	1,662	1,712	1,772	1,802	1,872
7	1,583	1,603	1,643	1,693	1,743	1,803	1,833	1,903
8	1,614	1,634	1,674	1,724	1,774	1,834	1,864	1,934
9	1,645	1,665	1,705	1,755	1,805	1,865	1,895	1,965
10	1,676	1,696	1,736	1,786	1,836	1,896	1,926	1,996
11	1,707	1,727	1,767	1,817	1,867	1,927	1,957	2,027
12	1,738	1,758	1,798	1,848	1,898	1,958	1,988	2,058
13	1,769	1,789	1,829	1,879	1,929	1,989	2,019	2,089
14	1,800	1,820	1,860	1,910	1,960	2,020	2,050	2,120
15	1,831	1,851	1,891	1,941	1,991	2,051	2,081	2,151
16	1,862	1,882	1,922	1,972	2,022	2,082	2,112	2,182

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TEACHERS SALARIES

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17	1,893	1,913	1,953	2,003	2,053	2,113	2,143	2,213
18	1,924	1,944	1,984	2,034	2,084	2,144	2,174	2,244
19	1,955	1,975	2,015	2,065	2,115	2,175	2,205	2,275
20	1,986	2,006	2,046	2,096	2,146	2,206	2,236	2,306
21	2,017	2,037	2,077	2,127	2,177	2,237	2,267	2,337
22	2,048	2,068	2,108	2,158	2,208	2,268	2,298	2,368
23	2,079	2,099	2,139	2,189	2,239	2,299	2,329	2,399
24	2,110	2,130	2,170	2,220	2,270	2,330	2,360	2,430
25	2,141	2,161	2,201	2,251	2,301	2,361	2,391	2,461
26	2,172	2,192	2,232	2,282	2,332	2,392	2,422	2,492
27	2,203	2,223	2,263	2,313	2,363	2,423	2,453	2,523
28	2,234	2,254	2,294	2,344	2,394	2,454	2,484	2,554
29	2,265	2,285	2,325	2,375	2,425	2,485	2,515	2,585
30	2,296	2,316	2,356	2,406	2,456	2,516	2,546	2,616
31	2,327	2,347	2,387	2,437	2,487	2,547	2,577	2,647
32	2,358	2,378	2,418	2,468	2,518	2,578	2,608	2,678
33	2,389	2,409	2,449	2,499	2,549	2,609	2,639	2,709
34	2,420	2,440	2,480	2,530	2,580	2,640	2,670	2,740
35	2,451	2,471	2,511	2,561	2,611	2,671	2,701	2,771
36	2,482	2,502	2,542	2,592	2,642	2,702	2,732	2,802
37	2,513	2,533	2,573	2,623	2,673	2,733	2,763	2,833
38	2,544	2,564	2,604	2,654	2,704	2,764	2,794	2,864
39	2,575	2,595	2,635	2,685	2,735	2,795	2,825	2,895
40	2,606	2,626	2,666	2,716	2,766	2,826	2,856	2,926

STATE MINIMUM PAY SCALE PAY GRADE II

Years of Employment	Pay Grade							
	A	B	C	D	E	F	G	H
0	1,456	1,476	1,516	1,566	1,616	1,676	1,706	1,776
1	1,487	1,507	1,547	1,597	1,647	1,707	1,737	1,807
2	1,518	1,538	1,578	1,628	1,678	1,738	1,768	1,838
3	1,549	1,569	1,609	1,659	1,709	1,769	1,799	1,869
4	1,580	1,600	1,640	1,690	1,740	1,800	1,830	1,900
5	1,611	1,631	1,671	1,721	1,771	1,831	1,861	1,931
6	1,642	1,662	1,702	1,752	1,802	1,862	1,892	1,962
7	1,673	1,693	1,733	1,783	1,833	1,893	1,923	1,993
8	1,704	1,724	1,764	1,814	1,864	1,924	1,954	2,024

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TEACHERS SALARIES

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9	1,735	1,755	1,795	1,845	1,895	1,955	1,985	2,055
10	1,766	1,786	1,826	1,876	1,926	1,986	2,016	2,086
11	1,797	1,817	1,857	1,907	1,957	2,017	2,047	2,117
12	1,828	1,848	1,888	1,938	1,988	2,048	2,078	2,148
13	1,859	1,879	1,919	1,969	2,019	2,079	2,109	2,179
14	1,890	1,910	1,950	2,000	2,050	2,110	2,140	2,210
15	1,921	1,941	1,981	2,031	2,081	2,141	2,171	2,241
16	1,952	1,972	2,012	2,062	2,112	2,172	2,202	2,272
17	1,983	2,003	2,043	2,093	2,143	2,203	2,233	2,303
18	2,014	2,034	2,074	2,124	2,174	2,234	2,264	2,334
19	2,045	2,065	2,105	2,155	2,205	2,265	2,295	2,365
20	2,076	2,096	2,136	2,186	2,236	2,296	2,326	2,396
21	2,107	2,127	2,167	2,217	2,267	2,327	2,357	2,427
22	2,138	2,158	2,198	2,248	2,298	2,358	2,388	2,458
23	2,169	2,189	2,229	2,279	2,329	2,389	2,419	2,489
24	2,200	2,220	2,260	2,310	2,360	2,420	2,450	2,520
25	2,231	2,251	2,291	2,341	2,391	2,451	2,481	2,551
26	2,262	2,282	2,322	2,372	2,422	2,482	2,512	2,582
27	2,293	2,313	2,353	2,403	2,453	2,513	2,543	2,613
28	2,324	2,344	2,384	2,434	2,484	2,544	2,574	2,644
29	2,355	2,375	2,415	2,465	2,515	2,575	2,605	2,675
30	2,386	2,406	2,446	2,496	2,546	2,606	2,636	2,706
31	2,417	2,437	2,477	2,527	2,577	2,637	2,667	2,737
32	2,448	2,468	2,508	2,558	2,608	2,668	2,698	2,768
33	2,479	2,499	2,539	2,589	2,639	2,699	2,729	2,799
34	2,510	2,530	2,570	2,620	2,670	2,730	2,760	2,830
35	2,541	2,561	2,601	2,651	2,701	2,761	2,791	2,861
36	2,572	2,592	2,632	2,682	2,732	2,792	2,822	2,892
37	2,603	2,623	2,663	2,713	2,763	2,823	2,853	2,923
38	2,634	2,654	2,694	2,744	2,794	2,854	2,884	2,954
39	2,665	2,685	2,725	2,775	2,825	2,885	2,915	2,985
40	2,696	2,716	2,756	2,806	2,856	2,916	2,946	3,016

CLASS TITLE**PAY
GRADE**

24 Accountant I
25 Accountant II

D
E

26	Accountant III	F
27	Accounts Payable Supervisor	G
28	Aide I	A
29	Aide II	B
30	Aide III	C
31	Aide IV	D
32	Audiovisual Technician	C
33	Auditor	G
34	Autism Mentor	E
35	Braille or Sign Language Specialist	E
36	Bus Operator	D
37	Buyer	F
38	Cabinetmaker	G
39	Cafeteria Manager	D
40	Carpenter I	E
41	Carpenter II	F
42	Chief Mechanic	G
43	Clerk I	B
44	Clerk II	C
45	Computer Operator	E
46	Cook I	A
47	Cook II	B
48	Cook III	C
49	Crew Leader	F
50	Custodian I	A
51	Custodian II	B
52	Custodian III	C
53	Custodian IV	D
54	Director or Coordinator of Services	H
55	Draftsman	D
56	Electrician I	F
57	Electrician II	G
58	Electronic Technician I	F
59	Electronic Technician II	G
60	Executive Secretary	G
61	Food Services Supervisor	G

62	Foreman	G
63	General Maintenance	C
64	Glazier	D
65	Graphic Artist	D
66	Groundsman	B
67	Handyman	B
68	Heating and Air Conditioning Mechanic I	E
69	Heating and Air Conditioning Mechanic II	G
70	Heavy Equipment Operator	E
71	Inventory Supervisor	D
72	Key Punch Operator	B
73	Locksmith	G
74	Lubrication Man	C
75	Machinist	F
76	Mail Clerk	D
77	Maintenance Clerk	C
78	Mason	G
79	Mechanic	F
80	Mechanic Assistant	E
81	Office Equipment Repairman I	F
82	Office Equipment Repairman II	G
83	Painter	E
84	Paraprofessional	F
85	Payroll Supervisor	G
86	Plumber I	E
87	Plumber II	G
88	Printing Operator	B
89	Printing Supervisor	D
90	Programmer	H
91	Roofing/Sheet Metal Mechanic	F
92	Sanitation Plant Operator	F
93	School Bus Supervisor	E
94	Secretary I	D
95	Secretary II	E
96	Secretary III	F
97	Supervisor of Maintenance	H

98	Supervisor of Transportation	H
99	Switchboard Operator-Receptionist	D
100	Truck Driver	D
101	Warehouse Clerk	C
102	Watchman	B
103	Welder	F
104	WVEIS Data Entry and Administrative Clerk	B

105 (2) An additional twelve dollars per month shall be added
 106 to the minimum monthly pay of each service employee who
 107 holds a high school diploma or its equivalent.

108 (3) Until the first day of July, two thousand two, an
 109 additional ten dollars per month also shall be added to the
 110 minimum monthly pay of each service employee for each of
 111 the following, and beginning the first day of July, two thou-
 112 sand two, the ten dollars per month shall be increased to an
 113 additional eleven dollars per month for each of subdivisions
 114 (A) through (J), inclusive, of this subsection only and begin-
 115 ning the first day of July, two thousand two, the ten dollars per
 116 month shall be increased to an additional forty dollars per
 117 month for each of subdivisions (K) through (N), inclusive, of
 118 this subsection only:

119 (A) A service employee who holds twelve college hours or
 120 comparable credit obtained in a trade or vocational school as
 121 approved by the state board;

122 (B) A service employee who holds twenty-four college
 123 hours or comparable credit obtained in a trade or vocational
 124 school as approved by the state board;

125 (C) A service employee who holds thirty-six college hours
 126 or comparable credit obtained in a trade or vocational school
 127 as approved by the state board;

128 (D) A service employee who holds forty-eight college
129 hours or comparable credit obtained in a trade or vocational
130 school as approved by the state board;

131 (E) A service employee who holds sixty college hours or
132 comparable credit obtained in a trade or vocational school as
133 approved by the state board;

134 (F) A service employee who holds seventy-two college
135 hours or comparable credit obtained in a trade or vocational
136 school as approved by the state board;

137 (G) A service employee who holds eighty-four college
138 hours or comparable credit obtained in a trade or vocational
139 school as approved by the state board;

140 (H) A service employee who holds ninety-six college
141 hours or comparable credit obtained in a trade or vocational
142 school as approved by the state board;

143 (I) A service employee who holds one hundred eight
144 college hours or comparable credit obtained in a trade or
145 vocational school as approved by the state board;

146 (J) A service employee who holds one hundred twenty
147 college hours or comparable credit obtained in a trade or
148 vocational school as approved by the state board;

149 (K) A service employee who holds an associate's degree;

150 (L) A service employee who holds a bachelor's degree;

151 (M) A service employee who holds a master's degree;

152 (N) A service employee who holds a doctorate degree.

153 (4) Effective the first day of July, two thousand two, an
154 additional eleven dollars per month shall be added to the

155 minimum monthly pay of each service employee for each of
156 the following:

157 (A) A service employee who holds a bachelor's degree
158 plus fifteen college hours;

159 (B) A service employee who holds a master's degree plus
160 fifteen college hours;

161 (C) A service employee who holds a master's degree plus
162 thirty college hours;

163 (D) A service employee who holds a master's degree plus
164 forty-five college hours; and

165 (E) A service employee who holds a master's degree plus
166 sixty college hours.

167 (5) When any part of a school service employee's daily
168 shift of work is performed between the hours of six o'clock
169 p.m. and five o'clock a.m. the following day, the employee
170 shall be paid no less than an additional ten dollars per month
171 and one half of the pay shall be paid with local funds.

172 (6) Any service employee required to work on any legal
173 school holiday shall be paid at a rate one and one-half times
174 the employee's usual hourly rate.

175 (7) Any full-time service personnel required to work in
176 excess of their normal working day during any week which
177 contains a school holiday for which they are paid shall be paid
178 for the additional hours or fraction of the additional hours at a
179 rate of one and one-half times their usual hourly rate and paid
180 entirely from county board funds.

181 (8) No service employee may have his or her daily work
182 schedule changed during the school year without the em-

183 ployee's written consent and the employee's required daily
184 work hours may not be changed to prevent the payment of
185 time and one-half wages or the employment of another
186 employee.

187 (9) The minimum hourly rate of pay for extra duty
188 assignments as defined in section eight-b of this article shall be
189 no less than one seventh of the employee's daily total salary
190 for each hour the employee is involved in performing the
191 assignment and paid entirely from local funds: *Provided*, That
192 an alternative minimum hourly rate of pay for performing
193 extra duty assignments within a particular category of employ-
194 ment may be utilized if the alternate hourly rate of pay is
195 approved both by the county board and by the affirmative vote
196 of a two-thirds majority of the regular full-time employees
197 within that classification category of employment within that
198 county: *Provided, however*, That the vote shall be by secret
199 ballot if requested by a service personnel employee within that
200 classification category within that county. The salary for any
201 fraction of an hour the employee is involved in performing the
202 assignment shall be prorated accordingly. When performing
203 extra duty assignments, employees who are regularly em-
204 ployed on a one-half day salary basis shall receive the same
205 hourly extra duty assignment pay computed as though the
206 employee were employed on a full-day salary basis.

207 (10) The minimum pay for any service personnel employ-
208 ees engaged in the removal of asbestos material or related
209 duties required for asbestos removal shall be their regular total
210 daily rate of pay and no less than an additional three dollars
211 per hour or no less than five dollars per hour for service
212 personnel supervising asbestos removal responsibilities for
213 each hour these employees are involved in asbestos related
214 duties. Related duties required for asbestos removal include,
215 but are not limited to, travel, preparation of the work site,
216 removal of asbestos decontamination of the work site, placing

217 and removal of equipment and removal of structures from the
218 site. If any member of an asbestos crew is engaged in asbestos
219 related duties outside of the employee's regular employment
220 county, the daily rate of pay shall be no less than the minimum
221 amount as established in the employee's regular employment
222 county for asbestos removal and an additional thirty dollars
223 per each day the employee is engaged in asbestos removal and
224 related duties. The additional pay for asbestos removal and
225 related duties shall be payable entirely from county funds.
226 Before service personnel employees may be utilized in the
227 removal of asbestos material or related duties, they shall have
228 completed a federal Environmental Protection Act-approved
229 training program and be licensed. The employer shall provide
230 all necessary protective equipment and maintain all records
231 required by the Environmental Protection Act.

232 (11) For the purpose of qualifying for additional pay as
233 provided in section eight, article five of this chapter, an aide
234 shall be considered to be exercising the authority of a supervi-
235 sory aide and control over pupils if the aide is required to
236 supervise, control, direct, monitor, escort or render service to
237 a child or children when not under the direct supervision of
238 certificated professional personnel within the classroom,
239 library, hallway, lunchroom, gymnasium, school building,
240 school grounds or wherever supervision is required. For
241 purposes of this section, "under the direct supervision of
242 certificated professional personnel" means that certificated
243 professional personnel is present, with and accompanying the
244 aide.

CHAPTER 20

**(H. B. 405 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed September 11, 2005; in effect ninety days from passage.]

[Approved by the Governor on September 28, 2005.]

AN ACT to amend and reenact §21A-1A-17 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §21A-5-10c, all relating to unemployment compensation generally; placing a limit on the amount of wages an election official can receive in a calendar year that is not considered employment wages for unemployment compensation purposes; preventing State Unemployment Tax Act (SUTA) dumping, a method to circumvent the paying of proper unemployment compensation taxes; and imposing criminal and civil penalties, including penalty rates, for dumping violations.

Be it enacted by the Legislature of West Virginia:

That §21A-1A-17 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 §21A-5-10c, all to read as follows:

Article

1A. Definitions.

5. Employer Coverage and Responsibility.

ARTICLE 1A. DEFINITIONS.

§21A-1A-17. Exclusions from employment.

1 The term “employment” does not include:

2 (1) Service performed in the employ of the United States or
3 any instrumentality of the United States exempt under the
4 Constitution of the United States from the payments imposed
5 by this law, except that to the extent that the Congress of the
6 United States permits states to require any instrumentalities of
7 the United States to make payments into an unemployment fund
8 under a state unemployment compensation law, all of the
9 provisions of this law are applicable to the instrumentalities and
10 to service performed for the instrumentalities in the same
11 manner, to the same extent and on the same terms as to all other
12 employers, employing units, individuals and services: *Provided,*
13 That if this state is not certified for any year by the Secretary of
14 Labor under 26 U.S.C. §3404, subsection (c), the payments
15 required of the instrumentalities with respect to the year shall
16 be refunded by the commissioner from the fund in the same
17 manner and within the same period as is provided in section
18 nineteen, article five of this chapter with respect to payments
19 erroneously collected;

20 (2) Service performed with respect to which unemployment
21 compensation is payable under the Railroad Unemployment
22 Insurance Act and service with respect to which unemployment
23 benefits are payable under an unemployment compensation
24 system for maritime employees established by an act of
25 Congress. The Commissioner may enter into agreements with
26 the proper agency established under an act of Congress to
27 provide reciprocal treatment to individuals who, after acquiring
28 potential rights to unemployment compensation under an Act
29 of Congress or who have, after acquiring potential rights to
30 unemployment compensation under an act of Congress,
31 acquired rights to benefit under this chapter. Such agreement
32 shall become effective ten days after the publications which
33 shall comply with the general rules of the Department;

34 (3) Service performed by an individual in agricultural labor,
35 except as provided in subdivision (12), section sixteen of this
36 article, the definition of "employment." For purposes of this

37 subdivision, the term “agricultural labor” includes all services
38 performed:

39 (A) On a farm, in the employ of any person, in connection
40 with cultivating the soil, or in connection with raising or
41 harvesting any agricultural or horticultural commodity, includ-
42 ing the raising, shearing, feeding, caring for, training and
43 management of livestock, bees, poultry and fur-bearing animals
44 and wildlife;

45 (B) In the employ of the owner or tenant or other operator
46 of a farm, in connection with the operation, management,
47 conservation, improvement or maintenance of the farm and its
48 tools and equipment, or in salvaging timber or clearing land of
49 brush and other debris left by a hurricane, if the major part of
50 the service is performed on a farm;

51 (C) In connection with the production or harvesting of any
52 commodity defined as an agricultural commodity in section
53 fifteen (g) of the Agricultural Marketing Act, as amended, as
54 codified in 12 U.S.C. §1141j, subsection (g), or in connection
55 with the ginning of cotton, or in connection with the operation
56 or maintenance of ditches, canals, reservoirs or waterways, not
57 owned or operated for profit, used exclusively for supplying
58 and storing water for farming purposes;

59 (D) (i) In the employ of the operator of a farm in handling,
60 planting, drying, packing, packaging, processing, freezing,
61 grading, storing or delivering to storage or to market or to a
62 carrier for transportation to market, in its unmanufactured state,
63 any agricultural or horticultural commodity; but only if the
64 operator produced more than one half of the commodity with
65 respect to which the service is performed; or (ii) in the employ
66 of a group of operators of farms (or a cooperative organization
67 of which the operators are members) in the performance of
68 service described in subparagraph (i) of this paragraph, but only
69 if the operators produced more than one half of the commodity

70 with respect to which the service is performed; but the provi-
71 sions of subparagraphs (i) and (ii) of this paragraph are not
72 applicable with respect to service performed in connection with
73 commercial canning or commercial freezing or in connection
74 with any agricultural or horticultural commodity after its
75 delivery to a terminal market for distribution for consumption;

76 (E) On a farm operated for profit if the service is not in the
77 course of the employer's trade or business or is domestic
78 service in a private home of the employer. As used in this
79 subdivision, the term "farm" includes stock, dairy, poultry,
80 fruit, fur-bearing animals, truck farms, plantations, ranches,
81 greenhouses, ranges and nurseries, or other similar land areas
82 or structures used primarily for the raising of any agricultural
83 or horticultural commodities;

84 (4) Domestic service in a private home except as provided
85 in subdivision (13), section sixteen of this article, the definition
86 of "employment";

87 (5) Service performed by an individual in the employ of his
88 or her son, daughter or spouse;

89 (6) Service performed by a child under the age of eighteen
90 years in the employ of his or her father or mother;

91 (7) Service as an officer or member of a crew of an Ameri-
92 can vessel, performed on or in connection with the vessel, if the
93 operating office, from which the operations of the vessel
94 operating on navigable waters within or without the United
95 States are ordinarily and regularly supervised, managed,
96 directed and controlled, is without this state;

97 (8) Service performed by agents of mutual fund broker-
98 dealers or insurance companies, exclusive of industrial insur-
99 ance agents, or by agents of investment companies, who are
100 compensated wholly on a commission basis;

101 (9) Service performed: (A) In the employ of a church or
102 convention or association of churches, or an organization which
103 is operated primarily for religious purposes and which is
104 operated, supervised, controlled or principally supported by a
105 church or convention or association of churches; or (B) by a
106 duly ordained, commissioned or licensed minister of a church
107 in the exercise of his or her ministry or by a member of a
108 religious order in the exercise of duties required by the order;
109 or (C) by an individual receiving rehabilitation or remunerative
110 work in a facility conducted for the purpose of carrying out a
111 program of either: (i) Rehabilitation for individuals whose
112 earning capacity is impaired by age or physical or mental
113 deficiency or injury; or (ii) providing remunerative work for
114 individuals who because of their impaired physical or mental
115 capacity cannot be readily absorbed in the competitive labor
116 market: *Provided*, That this exemption does not apply to
117 services performed by individuals if they are not receiving
118 rehabilitation or remunerative work on account of their im-
119 paired capacity; or (D) as part of an unemployment work-relief
120 or work-training program assisted or financed, in whole or in
121 part, by any federal agency or an agency of a state or political
122 subdivision thereof, by an individual receiving the work relief
123 or work training; or (E) by an inmate of a custodial or penal
124 institution;

125 (10) Service performed in the employ of a school, college
126 or university, if the service is performed: (A) By a student who
127 is enrolled and is regularly attending classes at the school,
128 college or university; or (B) by the spouse of a student, if the
129 spouse is advised, at the time the spouse commences to perform
130 the service, that: (i) The employment of the spouse to perform
131 the service is provided under a program to provide financial
132 assistance to the student by the school, college or university;
133 and (ii) the employment will not be covered by any program of
134 unemployment insurance;

135 (11) Service performed by an individual who is enrolled at
136 a nonprofit or public educational institution which normally
137 maintains a regular faculty and curriculum and normally has a
138 regularly organized body of students in attendance at the place
139 where its educational activities are carried on as a student in a
140 full-time program, taken for credit at the institution, which
141 combines academic instruction with work experience, if the
142 service is an integral part of the program and the institution has
143 so certified to the employer, except that this subdivision does
144 not apply to service performed in a program established for or
145 on behalf of an employer or group of employers;

146 (12) Service performed in the employ of a hospital, if the
147 service is performed by a patient of the hospital, as defined in
148 this article;

149 (13) Service in the employ of a governmental entity
150 referred to in subdivision (9), section sixteen of this article, the
151 definition of "employment," if the service is performed by an
152 individual in the exercise of duties: (A) As an elected official;
153 (B) as a member of a legislative body, or a member of the
154 judiciary, of a state or political subdivision; (C) as a member of
155 the state national guard or air national guard, except as provided
156 in section twenty-eight of this article; (D) as an employee
157 serving on a temporary basis in case of fire, storm, snow,
158 earthquake, flood or similar emergency; (E) in a position which,
159 under or pursuant to the laws of this state, is designated as: (i)
160 A major nontenured policymaking or advisory position; or (ii)
161 a policymaking or advisory position the performance of the
162 duties of which ordinarily does not require more than eight
163 hours per week; or (F) as any election official appointed to
164 serve during any municipal, county or state election, if the
165 amount of remuneration received by the individual during the
166 calendar year for services as an election official is less than one
167 thousand dollars;

168 (14) Service performed by a bona fide partner of a partner-
169 ship for the partnership; and

170 (15) Service performed by a person for his or her own sole
171 proprietorship.

172 Notwithstanding the foregoing exclusions from the defini-
173 tion of “employment,” services, except agricultural labor and
174 domestic service in a private home, are in employment if with
175 respect to the services a tax is required to be paid under any
176 federal law imposing a tax against which credit may be taken
177 for contributions required to be paid into a State Unemployment
178 Compensation Fund, or which as a condition for full tax credit
179 against the tax imposed by the federal Unemployment Tax Act
180 are required to be covered under this chapter.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-10c. Special rules regarding transfers of experience and assignment of rates.

1 Notwithstanding any other provision of law to the contrary,
2 the following shall apply regarding assignment of rates and
3 transfers of experience:

4 (a) (1) If an employer transfers its trade or business, or a
5 portion thereof, to another employer and, at the time of the
6 transfer, there is substantially common ownership, management
7 or control of the two employers, then the unemployment
8 experience attributable to the transferred trade or business shall
9 be transferred to the employer to whom such business is so
10 transferred. The rates of both employers shall be recalculated
11 and made effective immediately upon the date of the transfer of
12 trade or business. The transfer of some or all of an employer’s
13 workforce to another employer shall be considered a transfer of
14 trade or business when, as a result of such transfer, the transfer-
15 ring employer no longer performs the trade or business with

16 respect to the transferred workforce, and such trade or business
17 is performed by the employer to whom the workforce is
18 transferred.

19 (2) If, following a transfer of experience under paragraph
20 (1) of this section, the Commissioner determines that a substan-
21 tial purpose of the transfer of trade or business was to obtain a
22 reduced liability for contributions, then the experience rating
23 accounts of the employers involved shall be combined into a
24 single account and a single rate assigned to such account.

25 (b) Whenever a person who is not an employer, as defined
26 in section fifteen, article one-a of this chapter, at the time it
27 acquires the trade or business of an employer, the unemploy-
28 ment experience of the acquired business shall not be trans-
29 ferred to such person if the Commissioner or his or her repre-
30 sentative finds that such person acquired the business solely or
31 primarily for the purpose of obtaining a lower rate of contribu-
32 tions. Instead, such person shall be assigned the applicable new
33 employer rate under section five of this article. In determining
34 whether the business was acquired solely or primarily for the
35 purpose of obtaining a lower rate of contributions, the Commis-
36 sioner or his or her representative shall use objective factors
37 which may include the cost of acquiring the business, whether
38 the person continued the business enterprise of the acquired
39 business, how long such business enterprise was continued, or
40 whether a substantial number of new employees were hired for
41 performance of duties unrelated to the business activity
42 conducted prior to acquisition.

43 (c) (1) If a person knowingly violates or attempts to violate
44 subsection (a) or (b) of this section or any other provision of
45 this chapter related to determining the assignment of a contribu-
46 tion rate, or if a person knowingly advises another person in a
47 way that results in a violation of such provision, the person
48 shall be subject to the following penalties:

49 (A) If the person is an employer, then such employer shall
50 be assigned the highest rate assignable under this chapter for the
51 rate year during which such violation or attempted violation
52 occurred and the three rate years immediately following this
53 rate year. However, if the person's business is already at the
54 highest rate for any year, or if the amount of increase in the
55 person's rate would be less than two percent for that year, then
56 a penalty rate of contributions of two percent of taxable wages
57 shall be imposed for that year.

58 (B) If the person is not an employer, that person shall be
59 subject to a civil money penalty of not more than five thousand
60 dollars. Any fine collected pursuant to this paragraph shall be
61 deposited in the Special Administrative Fund Account estab-
62 lished under section five-a, article nine of this chapter.

63 (2) For purposes of this section, the term "knowingly"
64 means having actual knowledge of or acting with deliberate
65 ignorance or reckless disregard for the prohibition involved.

66 (3) For purposes of this section, the term "violates or
67 attempts to violate" includes, but is not limited to, intent to
68 evade, misrepresentation or willful nondisclosure.

69 (4) In addition to the penalty imposed by paragraph (1) of
70 this subsection, any violation of this chapter may be prosecuted
71 as a misdemeanor under section ten, article ten of this chapter.

72 (d) The Commissioner shall establish procedures to identify
73 the transfer or acquisition of a business for purposes of this
74 section.

75 (e) For purposes of this section:

76 (1) "Person" has the meaning given such term by section
77 7701(a)(1) of the Internal Revenue Code of 1986; and

78 (2) "Trade or business" shall include the employer's
79 workforce.

80 (f) This section shall be interpreted and applied in such a
81 manner as to meet the minimum requirements contained in any
82 guidance or regulations issued by the United States Department
83 of Labor in effect at the time this section becomes law.

CHAPTER 21

**(Com. Sub. for H. B. 412 — By Mr. Speaker,
Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed September 12, 2005; in effect from passage]

[Approved by the Governor on September 30, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §23-2C-24; and to amend and reenact §23-2D-4 of said code, all relating generally to Workers' Compensation; authorizing the Governor to condition the transfer of certain funds to the New Fund administered by the successor to the Workers' Compensation Commission upon repayment of the funds under surplus note or other loan arrangement; allowing additional flexibility in terms and method for issuance of Workers' Compensation debt reduction revenue bonds; and allowing use of derivative products to reduce debt service costs and manage interest rate exposure.

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 §23-2C-24; and that

§23-2D-4 of said code be amended and reenacted, all to read as follows:

Article

2C. Employers' Mutual Insurance Company.

2D. Workers' Compensation Debt Reduction Bonds.

ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.

§23-2C-24. Surplus note or other loan arrangement for new fund.

1 (a) Notwithstanding any other provision of this article to the
2 contrary, the transfer of all or a portion of the remainder of
3 funds to be disbursed into the new fund as provided subsection
4 (b), section six of this article, in such amount as may be
5 determined by the Governor, may be conditioned upon the
6 repayment thereof and subject to the terms of a surplus note or
7 other loan arrangement. The Governor shall specify the amount
8 that is to be transferred to the new fund conditioned upon the
9 repayment thereof and subject to loan arrangement in the
10 proclamation issued pursuant to section eleven of this article.
11 The terms of any such surplus note or other loan arrangement
12 must be approved by the Insurance Commissioner before
13 execution of the said proclamation.

14 (b) Payments received by the Treasurer from the company
15 in repayment of any outstanding surplus note or other loan
16 arrangement made pursuant to this subsection shall be deposited
17 in the treasury of the state to the credit of the old fund.

18 (c) The Insurance Commissioner may enter into such
19 agreements, including loan arrangements, with the company
20 that are necessary to accomplish the transfers addressed in this
21 article.

ARTICLE 2D. WORKERS' COMPENSATION DEBT REDUCTION BONDS.

**§23-2D-4. Workers' Compensation debt reduction revenue
bonds; amount; when may issue.**

1 (a) Revenue bonds of the State of West Virginia are hereby
2 authorized to be issued and sold by the West Virginia Economic
3 Development Authority created and provided in article fifteen,
4 chapter thirty-one of this code, solely for the paying down and
5 elimination of the current unfunded liability of the Workers'
6 Compensation Fund, as provided by the Constitution and the
7 provisions of this article. The principal of, and the interest and
8 redemption premium, if any, on the bonds shall be payable
9 solely from the special fund provided in section six of this
10 article for repayment.

11 (b) The West Virginia Economic Development Authority
12 either in the resolution authorizing the issuance of the bonds or
13 by the execution and delivery by the West Virginia Economic
14 Development Authority of a trust indenture or agreement, shall
15 stipulate the form of the bonds, whether the bonds are to be
16 issued in one or more series, the date or dates of issue, the time
17 or times of maturity, the rate or rates of interest payable on the
18 bonds, which may be at fixed rates or variable rates and which
19 interest may be current interest or may accrue, the denomina-
20 tion or denominations in which the bonds are issued, the
21 conversion or registration privileges applicable to some or all
22 of the bonds, the sources and medium of payment and place or
23 places of payment, the terms of redemption, any privileges of
24 exchangeability or interchangeability applicable to the bonds,
25 and the entitlement of holders of the bonds and the providers of
26 any agreements provided in subsection (e) of this section to
27 priorities of payment or security in the amounts deposited in the
28 West Virginia Workers' Compensation Debt Reduction
29 Revenue Bond Debt Service Fund: *Provided*, That in no event
30 may the amount of bonds issued pursuant to this article exceed
31 one billion five hundred million dollars: *Provided, however*,
32 That the terms of the bonds shall not exceed thirty years from
33 their respective issuance dates.

34 (c) Revenue bonds issued under this article shall state on
35 their face that the bonds do not constitute a debt of the State of
36 West Virginia; that payment of the bonds, interest and charges
37 thereon cannot become an obligation of the State of West
38 Virginia; and that the bondholders' remedies are limited in all
39 respects to the "special revenue fund" established in this article
40 for the liquidation of the bonds.

41 (d) Net proceeds from sale of these bonds shall be depos-
42 ited in the Old Fund.

43 (e) In addition and not in limitation to the other provisions
44 of this section, in connection with any bonds issued or expected
45 to be issued pursuant to this article, the West Virginia Eco-
46 nomic Development Authority may enter into: (i) Commitments
47 to purchase or sell bonds and bond purchase or sale agreements;
48 (ii) agreements providing for credit enhancement or liquidity,
49 including revolving credit agreements, agreements establishing
50 lines of credit or letters of credit, insurance contracts, surety
51 bonds and reimbursement agreements; (iii) agreements to
52 manage interest rate exposure and tax risk and the return on
53 investments, including interest rate exchange agreements,
54 interest rate cap, collar, corridor, ceiling and floor agreements,
55 option, rate spread or similar exposure agreements, float
56 agreements and forward agreements; (iv) stock exchange listing
57 agreements; and (v) any other commitments, contracts or
58 agreements approved by the West Virginia Economic Develop-
59 ment Authority: *Provided*, That the provider or providers of any
60 of the agreements set forth above may be granted the same
61 security and lien privileges as the bondholders and upon
62 execution of such agreements will constitute a contract between
63 the West Virginia Economic Development Authority and the
64 provider or providers.

LEGISLATURE OF WEST VIRGINIA

ACTS

FIFTH EXTRAORDINARY SESSION, 2005

CHAPTER 1

**(H. B. 501 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed November 14, 2005; in effect from passage.]

[Approved by the Governor on November 25, 2005.]

AN ACT to amend and reenact §23-2C-1, §23-2C-2, §23-2C-4, §23-2C-7, §23-2C-8, §23-2C-15, §23-2C-16 and §23-2C-20 of the Code of West Virginia, 1931, as amended; to further amend said code by adding thereto a new section, designated §23-2C-3a; and to amend and reenact §23-4B-1, §23-4B-2, §23-4B-3, §23-4B-4, §23-4B-5, §23-4B-7 and §23-4B-9 of said code, all relating to the transition of the Workers' Compensation Commission to the West Virginia Employers' Mutual Insurance Company generally.

Be it enacted by the Legislature of West Virginia:

That §23-2C-1, §23-2C-2, §23-2C-4, §23-2C-7, §23-2C-8, §23-2C-15, §23-2C-16 and §23-2C-20 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 §23-2C-3a; and that §23-4B-1, §23-4B-2, §23-4B-3, §23-4B-4, §23-4B-5, §23-4B-7 and §23-4B-9 of said code be amended and reenacted, all to read as follows:

ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.

§23-2C-1. Findings and purpose.

§23-2C-2. Definitions.

§23-2C-3a. Employers' mutual insurance company - additional provisions enacted in November 2005.

§23-2C-4. Governance and organization.

§23-2C-7. Custody, investment and disbursement of funds.

§23-2C-8. West Virginia Uninsured Employer Fund.

§23-2C-15. Mandatory coverage; changing of coverage.

§23-2C-16. Administration of Old Fund, Uninsured Employer Fund, Self-Insured Employer Guaranty Risk Pool, Self-Insured Employer Security Risk Pool and Private Carrier Guaranty Fund.

§23-2C-20. Claims administration issues.

§23-2C-1. Findings and purpose.

1 (a) The Legislature finds that:

2 (1) There is a long-term actuarial funding crisis in the state-
3 run monopolistic workers' compensation system;

4 (2) Similar short-term and long-term crises have been
5 ongoing during the past two decades;

6 (3) During the current crisis, employers in West Virginia
7 find it increasingly difficult to afford the rates charged by the
8 Workers' Compensation Commission for workers' compensa-
9 tion coverage and that paying said rates adversely impacts
10 employers' ability to compete in a global economic environ-
11 ment;

12 (4) The cost of obtaining workers' compensation coverage
13 from the state system may result in many employers leaving the
14 state;

15 (5) Employers' access to competitive workers' compensa-
16 tion rates and the resulting economic development benefit is of
17 utmost importance to the citizens of West Virginia;

18 (6) A mechanism is needed to provide an enduring solution
19 to this recurring workers' compensation crisis;

20 (7) An employers' mutual insurance company or a similar
21 entity has proven to be a successful mechanism in other states
22 for helping employers secure insurance and for stabilizing the
23 insurance market;

24 (8) There is a substantial public interest in creating a
25 method to provide a stable workers' compensation insurance
26 market in this state;

27 (9) The state-run workers' compensation program is a
28 substantial actual and potential liability to the state;

29 (10) There is substantial public benefit in transferring
30 certain actual and potential future liability of the state to the
31 private sector and creating a stable self-sufficient entity which
32 will be a potential source of workers' compensation coverage
33 for employers in this state;

34 (11) A stable, financially viable insurer in the private sector
35 will aid in providing a continuing source of insurance funds to
36 compensate injured workers; and

37 (12) Because the public will greatly benefit from the
38 formation of an employers' mutual insurance company, state
39 efforts to encourage and support the formation of such an
40 entity, including providing funding for the entity's initial
41 capital, is in the clear public interest.

42 (b) The purpose of this article is to create a mechanism for
43 the formation of an employers' mutual insurance company that
44 will provide:

45 (1) A means for employers to obtain workers' compensa-
46 tion insurance that is reasonably available and affordable; and

47 (2) Compensation to employees of mutual policyholders
48 who suffer work place injuries as defined in this chapter.

49 (c) The further purpose of this article is to transfer New
50 Fund assets relating to the workers' compensation insurance
51 business to the company, including a reasonable level of
52 policyholder surplus, and for the company to assume the New
53 Fund liabilities related to the transferred assets. It is the intent
54 of this article to provide for the initial capitalization of the
55 company to comply with and to meet the requirements of
56 section 351 and related sections of the Internal Revenue Code.

§23-2C-2. Definitions.

1 (a) "Executive director" means the Executive Director of
2 the West Virginia Workers' Compensation Commission as
3 provided in section one-b, article one of this chapter.

4 (b) "Commission" means the West Virginia Workers'
5 Compensation Commission as provided by section one, article
6 one of this chapter.

7 (c) "Insurance Commissioner" means the Insurance
8 Commissioner of West Virginia as provided in section one,
9 article two, chapter thirty-three of this code.

10 (d) "Company" or "successor to the commission" means the
11 employers' mutual insurance company created pursuant to the
12 terms of this article.

13 (e) "Policy default" shall mean a policyholder that has
14 failed to comply with the terms of its workers' compensation
15 insurance policy and is consequently without workers' compen-
16 sation insurance coverage.

17 (f) "Industrial insurance" means insurance which provides
18 all compensation and benefits required by this chapter.

19 (g) "Insurer" includes:

20 (1) A self-insured employer; and

21 (2) A private carrier.

22 (h) "Industrial Council" means the advisory group estab-
23 lished in section five of this article.

24 (i) "Mutualization Transition Fund" shall be a fund over
25 which the State Treasurer is custodian. Moneys transferred or
26 otherwise payable to the Mutualization Transition Fund shall be
27 deposited in the State Treasury to the credit of the
28 Mutualization Transition Fund. Disbursements shall be made
29 from the Mutualization Transition Fund upon requisitions
30 signed by the executive director, and, upon termination of the
31 commission, the Insurance Commissioner, and shall be reason-
32 ably related to the legal, operational, consultative and human
33 resource-related expenses associated with the establishment of
34 the company and the transferring of personnel from the
35 commission to the company.

36 (j) "New Fund" shall mean a fund owned and operated by
37 the commission and, upon termination of the commission, the
38 successor organization of the West Virginia Workers' Compem-
39 sation Commission and shall consist of those funds transferred
40 to it from the Workers' Compensation Fund and any other
41 applicable funds. New Fund shall include all moneys due and
42 payable to the Workers' Compensation Fund for the quarters

43 ending the thirtieth day of September, two thousand five, and
44 the thirty-first day of December, two thousand five, which have
45 not been collected by the Workers' Compensation Fund as of
46 the thirty-first day of December, two thousand five.

47 (k) "New Fund liabilities" shall mean all claims payment
48 obligations (indemnity and medical expenses) for all claims,
49 actual and incurred but not reported, for any claim with a date
50 of injury or last exposure on or after the first day of July, two
51 thousand five: *Provided*, That New Fund liabilities shall begin
52 with claims payments becoming due and owing on said claims
53 on or after the first day of January, two thousand six.

54 (l) "Old Fund" shall mean a fund held by the State Trea-
55 surer's office consisting of those funds transferred to it from the
56 Workers' Compensation Fund or other sources and those funds
57 due and owing the Workers' Compensation Fund as of the
58 thirtieth day of June, two thousand five, that are thereafter
59 collected. The Old Fund and assets therein shall remain
60 property of the state and shall not novate or otherwise transfer
61 to the company.

62 (m) "Old Fund liabilities" mean all claims payment
63 obligations (indemnity and medical expenses), related liabilities
64 and appropriate administrative expenses necessary for the
65 administration of all claims, actual and incurred but not
66 reported, for any claim with a date of injury or last exposure on
67 or before the thirtieth day of June, two thousand five: *Provided*,
68 That Old Fund liabilities shall include all claims payments for
69 any claim, regardless of date of injury or last exposure, through
70 the thirty-first day of December, two thousand five: *Provided*,
71 *however*, That Old Fund liabilities shall include all claims with
72 dates of injuries or last exposure prior to the first day of July,
73 two thousand four, for bankrupt self-insured employers that had
74 defaulted on their claims obligations which have been recog-
75 nized by the commission in its actuarially determined liability
76 number as of the thirtieth day of June, two thousand five.

77 (n) "Private carrier" means any insurer or the legal repre-
78 sentative of an insurer authorized by the Insurance Commis-
79 sioner to provide workers' compensation insurance pursuant to
80 this chapter and which maintains an office in the state. The term
81 does not include a self-insured employer or private employers
82 but shall include any successor to the commission.

83 (o) "Uninsured Employer Fund" means a fund held by the
84 State Treasurer's office consisting of those funds transferred to
85 it from the Workers' Compensation Fund and any other source.
86 Disbursements from the Uninsured Employer Fund shall be
87 upon requisitions signed by the Insurance Commissioner, and
88 as otherwise set forth in an exempt legislative rule promulgated
89 by the workers' compensation board of managers.

90 (p) "Self-Insured Employer Guaranty Risk Pool" shall be
91 a fund held by the State Treasurer's office consisting of those
92 funds transferred to it from the guaranty pool created pursuant
93 to 85 CSR §19 (2004) and any future funds collected through
94 continued administration of that exempt legislative rule as
95 administered by the Insurance Commissioner. Disbursements
96 shall be made from the Self-Insured Employer Guaranty Risk
97 Pool upon requisitions signed by the Insurance Commissioner.
98 The obligations of the fund shall be as provided in 85 CSR §19
99 (2004).

100 (q) "Self-Insured Employer Security Risk Pool" shall be a
101 fund held by the state's Treasurer consisting of those funds paid
102 into it through the Insurance Commissioner's administration of
103 85 CSR §19 (2004). Disbursement from said fund shall be made
104 from the Self-Insured Employer Security Risk Pool upon
105 requisitions signed by the Insurance Commissioner. The
106 obligations of the fund shall be as provided in 85 CSR §19:
107 *Provided*, That said liabilities shall be limited to those self-
108 insured employers who default on their claims obligations after
109 the termination of the commission.

110 (r) "Private Carrier Guaranty Fund" shall be a fund held by
111 the State Treasurer's office consisting of funds deposited
112 pursuant to this article. Disbursements shall be made from the
113 Private Carrier Guaranty Fund upon requisitions signed by the
114 Insurance Commissioner. The obligations of the fund shall be
115 as provided in this article.

116 (s) "Assigned Risk Fund" shall be a fund held by the State
117 Treasurer's office consisting of funds deposited pursuant to this
118 article. Disbursements shall be made from the Assigned Risk
119 Fund upon requisitions signed by the Insurance Commissioner.
120 The obligations of the fund shall be as provided in this article.

121 (t) "Comprehensive financial plan" shall mean the plan
122 compiled by the director for acceptance by the Insurance
123 Commissioner identifying and forecasting cash flows, funding
124 sources, debt terms and structures and scheduled amortization
125 and permanent resolution of all Old Fund liabilities. The
126 comprehensive financial plan shall provide for the retirement of
127 the revenue bonds authorized by article two-d of this chapter
128 and all realized and potential claims against the Old Fund shall
129 be fully reserved. The comprehensive financial plan may
130 include any other information the Insurance Commissioner may
131 require as a basis for managing the post-transition fiscal
132 soundness of the Old Fund.

§23-2C-3a. Employers' mutual insurance company - additional provisions enacted in November 2005.

1 (a) Notwithstanding any other provisions of this article to
2 the contrary, the employers' mutual insurance company:

3 (1) May not be dissolved.

4 (2) May not transact such other kinds of property and
5 casualty insurance for which the company is otherwise qualified
6 under the provisions of this code prior to the first day of
7 January, two thousand nine.

8 (b) As soon as practical following the effective date of this
9 section, the company established pursuant to the provisions of
10 this article shall, through a vote of a majority of its provisional
11 board, file its amended articles of incorporation and amended
12 bylaws with the Insurance Commissioner and apply for a
13 license with the Insurance Commissioner to transact insurance
14 in this state. Notwithstanding any other provision of this code,
15 the Insurance Commissioner shall act on the documents within
16 fifteen days of the filing by the company.

17 (c) Notwithstanding any provision of subsection (g), section
18 three of this article to the contrary, in the event the Governor
19 certifies to the Legislature that revenue bonds issued pursuant
20 to article two-d of this chapter have been retired and that the
21 unfunded liability of the Old Fund has been paid or has been
22 provided for in its entirety, whichever occurs last, then:

23 (1) The premiums surcharge imposed by subdivision (2),
24 subsection (f), section three of this article shall not sunset and
25 shall continue to be remitted in accordance with the provisions
26 of said subsection; and

27 (2) The premiums surcharge imposed by subdivision (3),
28 subsection (f), section three of this article shall sunset and not
29 be collectible with respect to workers' compensation insurance
30 premiums paid when the policy is renewed on or after the first
31 day of the month following the month in which the Governor
32 makes the certification.

33 (d) Except as may otherwise be provided in this subsection,
34 all provisions of section three of this article shall remain in full
35 force and effect.

§23-2C-4. Governance and organization.

1 (a) (1) The commission shall implement the initial forma-
2 tion and organization of the company as provided by this
3 article.

4 (2) From the inception of the company, until the first day of
5 January, two thousand six, the company shall be governed by
6 a provisional board of directors consisting of the three persons
7 on the executive committee of the workers' compensation board
8 of managers and four members of the Legislature. Two mem-
9 bers of the West Virginia Senate and two members of the West
10 Virginia House of Delegates shall serve as advisory nonvoting
11 members of the board. The Governor shall appoint the legisla-
12 tive members to the board. No more than three of the legislative
13 members shall be of the same political party. The provisional
14 board shall have the authority to function as necessary to
15 establish the company and cause it to become operational,
16 including the right to contract on behalf of the company. Each
17 voting board member shall receive compensation of not more
18 than three hundred fifty dollars per day and actual and neces-
19 sary expenses for each day during which he or she is required
20 to and does attend a meeting of the board.

21 (3) Except as limited by this section and applicable insur-
22 ance rules and statutes, the company may: (1) On its own; (2)
23 through the formation or acquisition of subsidiaries; or (3)
24 through a joint enterprise, offer:

25 (A) Workers' compensation insurance in a state other than
26 West Virginia to the extent it also provides workers' compensa-
27 tion or occupational disease insurance coverage to the employer
28 pursuant to this chapter;

29 (B) Other workers' compensation products and services and
30 related products and services in West Virginia or other states;
31 and

32 (C) Other property and casualty insurance in West Virginia
33 and other states on or after the first day of January, two
34 thousand nine.

35 (b) Any election process for the board of directors devel-
36 oped, implemented and overseen by the company's provisional

37 board prior to the effective date of the amendments to this
38 section enacted during the fifth extraordinary session of the
39 Legislature in two thousand five is nullified and the designation
40 of the company's initial board of directors shall be governed by
41 the following: Effective the first day of January, two thousand
42 six, the company shall be governed by a board of directors
43 consisting of seven directors, as follows:

44 (1) Three owners or officers of an entity that has purchased
45 or will immediately upon termination of the commission
46 purchase and maintain an active workers' compensation
47 insurance policy from the company. At least one shall be a
48 certified public accountant with financial management or
49 pension or insurance audit expertise and at least one shall be an
50 attorney with financial management experience. These three
51 directors shall be appointed by the Governor.

52 (2) Two directors who have substantial experience as an
53 officer or employee of a company in the insurance industry, one
54 of whom is from a company with less than fifty employees.
55 These two directors shall be appointed by the Governor.

56 (3) One director with general knowledge and experience in
57 business management who is an officer and employee of the
58 company and is responsible for the daily management of the
59 company.

60 (4) The chief executive officer of the company.

61 (c) The initial board of directors appointed by the Governor
62 shall serve from the termination of the commission through the
63 thirty-first day of December, two thousand eight, and may be
64 not removed from that position except for cause.

65 (d) Any board vacancy that occurs from the termination of
66 the commission through the thirty-first day of December, two
67 thousand eight, shall be filled through appointment by the
68 Governor for the unexpired term.

69 (e) Upon expiration of the initial terms or upon a vacancy
70 of the board following the thirty-first day of December, two
71 thousand eight, the directors of the company are to be chosen in
72 accordance with the articles of incorporation and bylaws of the
73 company, as amended, which shall provide for the policyhold-
74 ers to nominate and elect future directors. Furthermore, owners,
75 directors or employees of employers otherwise licensed to write
76 workers' compensation insurance in this state or licensed or
77 otherwise authorized to act as a third-party administrator shall
78 not be eligible to be nominated, appointed, elected or serve on
79 the company's board of directors.

80 (f) The Executive Director shall prepare and file amended
81 articles of incorporation and bylaws in accordance with the
82 provisions of this article and the provisions of chapters thirty-
83 one and thirty-three of this code.

84 (g) It is the intent of this legislation to create an entity
85 exempt from federal taxation, as provided for in Section
86 501(c)(27)(B) of the Internal Revenue Code, for as long as the
87 company meets the federal qualification requirements of
88 Section 501(c)(27)(B) of the Internal Revenue Code.

§23-2C-7. Custody, investment and disbursement of funds.

1 (a) The State Treasurer shall be the custodian of the
2 workers' compensation Old Fund, workers' compensation
3 Uninsured Employer Fund, the Self-Insured Employer Guaranty
4 Risk Pool, the Self-Insured Employer Security Risk Pool, the
5 Private Carrier Guaranty Fund and the Assigned Risk Fund and
6 moneys payable to each of these funds shall be deposited in the
7 State Treasury to the credit of the funds. Each fund shall be a
8 separate and distinct fund upon the books and records of the
9 Auditor and Treasurer. Disbursements from these funds shall be
10 made upon requisitions signed by the executive director and,
11 effective upon termination of the commission, the Insurance

12 Commissioner. The workers' compensation Old Fund, the
13 workers' compensation Uninsured Employer Fund, the Self-
14 Insured Employer Guaranty Risk Pool, Self-Insured Employer
15 Security Risk Pool, the Private Carrier Guaranty Fund and the
16 Assigned Risk Fund are participant plans as defined in section
17 two, article six, chapter twelve of this code and are subject to
18 the provisions of section nine-a of said article. The funds may
19 be invested by the Investment Management Board in accor-
20 dance with said article.

21 (b) If the Governor issues the proclamation set forth in this
22 article, then, effective upon termination of the commission, all
23 remaining assets and funds contained in the Workers' Compen-
24 sation Fund which are payable to the New Fund shall be so
25 disbursed and paid to the company by communication of the
26 executive director to the State Treasurer or other appropriate
27 state official prior to the termination of the commission.

§23-2C-8. West Virginia Uninsured Employer Fund.

1 (a) The West Virginia Uninsured Employer Fund shall be
2 governed by the following:

3 (1) All money and securities in the fund must be held by the
4 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 fund
7 only upon written requisition of the Insurance Commissioner.

8 (3) The Insurance Commissioner shall assess each private
9 carrier and all self-insured employers an amount to be deposited
10 in the fund. The assessment may be collected by each private
11 carrier from its policy holders in the form of a policy surcharge.
12 To establish the amount of the assessment, the Insurance
13 Commissioner shall determine the amount of money necessary
14 to maintain an appropriate balance in the fund for each fiscal

15 year and shall allocate a portion of that amount to be payable by
16 private carriers, a portion to be payable by self-insured employ-
17 ers and a portion to be paid by any other appropriate group.
18 After allocating the amounts payable, the Insurance Commis-
19 sioner shall apply an assessment rate to:

20 (A) Private carriers that reflects the relative hazard of the
21 employments covered by the private carriers, results in an
22 equitable distribution of costs among the private carriers and is
23 based upon expected annual premiums to be received;

24 (B) Self-insured employers that results in an equitable
25 distribution of costs among the self-insured employers and is
26 based upon expected annual expenditures for claims; and

27 (C) Any other categories of payees that results in an
28 equitable distribution of costs among them and is based upon
29 expected annual expenditures for claims or premium to be
30 received.

31 (4) The workers' compensation board of managers may
32 adopt rules for the establishment and administration of the
33 assessment methodologies, rates, payments and any penalties
34 that the workers' compensation board of managers determines
35 are necessary to carry out the provisions of this section.

36 (b) Payments from the fund shall be governed by the
37 following:

38 (1) Except as otherwise provided in this subsection, an
39 injured worker of any employer required to be covered under
40 this chapter who has failed to obtain coverage may receive
41 compensation from the uninsured employers' fund if:

42 (A) He or she meets all jurisdictional and entitlement
43 provisions of this chapter;

44 (B) He or she files a claim with the Insurance Commis-
45 sioner; and

46 (C) He or she makes an irrevocable assignment to the
47 Insurance Commissioner a right to be subrogated to the rights
48 of the injured employee.

49 (2) If the Insurance Commissioner receives a claim, it shall
50 immediately notify the employer of the claim. For the purposes
51 of this section, the employer has the burden of proving that it
52 provided mandatory workers' compensation insurance coverage
53 for the employee or that it was not required to maintain
54 workers' compensation insurance for the employee. If the
55 employer meets this burden, benefits shall not be paid from the
56 fund.

57 (3) Any employer who has failed to provide mandatory
58 coverage required by the provisions of this chapter is liable for
59 all payments made on its behalf, including any benefits,
60 administrative costs and attorney's fees paid from the fund or
61 incurred by the Insurance Commissioner.

62 (4) The Insurance Commissioner:

63 (A) May recover from the employer the payments made by
64 it, any accrued interest and attorney fees and costs by bringing
65 a civil action in a court of competent jurisdiction.

66 (B) May enter into a contract with any person, including the
67 third-party administrator of the Uninsured Employer Fund, to
68 assist in the collection of any liability of an uninsured em-
69 ployer.

70 (C) In lieu of a civil action, may enter into an agreement or
71 settlement regarding the collection of any liability of an
72 uninsured employer.

73 (5) The Insurance Commissioner shall:

74 (A) Determine whether the employer was insured within
75 five days after receiving notice of the claim from the employee.

76 (B) Assign the claim to the third-party administrator of the
77 fund for administration and, if appropriate, payment of compen-
78 sation.

79 (6) Upon determining whether the claim is accepted or
80 denied, the third-party administrator shall notify the injured
81 employee and the named employer of its determination.

82 (7) Any party aggrieved by a determination made by the
83 Insurance Commissioner or the third-party administrator
84 regarding the claims decisions made pursuant to this section
85 may appeal that determination by filing a protest with the office
86 of judges as set forth in article five of this chapter.

87 (8) An uninsured employer is liable for the interest on any
88 amount paid on his or her claims from the fund. The interest
89 must be calculated at a rate set in accordance with the provi-
90 sions of section thirteen, article two of this chapter, com-
91 pounded monthly, from the date the claim is paid from the
92 account until payment is received by the Insurance Commis-
93 sioner or third-party administrator from the employer.

94 (9) Attorney's fees recoverable by the Insurance Commis-
95 sioner or third-party administrator pursuant to this section must
96 be paid at the usual and customary rate for that attorney.

97 (10) In addition to any other liabilities provided in this
98 section, the Insurance Commissioner or the third-party adminis-
99 trator may impose an administrative fine of not more than ten
100 thousand dollars against an employer if the employer fails to
101 provide mandatory coverage required by this chapter. All fines
102 and other moneys collected pursuant to this section shall be
103 deposited into the Uninsured Employer Fund.

104 (c) Employees of self-insured employers who are injured
105 while employed by a self-insured employer are ineligible for
106 benefits from the West Virginia 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 otherwise shall purchase workers'
4 compensation insurance from the company unless permitted to
5 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 com-
9 pany shall also have its advanced deposit credited to its account
10 with the company. Employers purchasing workers' compensa-
11 tion insurance from the company shall have the right to
12 designate a representative or agent to act on its behalf in any
13 and all matters relevant to coverage and claims as administered
14 by the company.

15 (b) Effective the first day of July, two thousand eight, an
16 employer may elect to: (1) Continue to purchase workers'
17 compensation insurance from the company; (2) purchase
18 workers' compensation insurance from another private carrier
19 licensed and otherwise authorized to transact workers' compen-
20 sation insurance in this state; or (3) self-insure its obligations if
21 it satisfies all requirements of this code to so self-insure and is
22 permitted to do so: *Provided*, That all state and local govern-
23 mental bodies, including, but not limited to, all counties and
24 municipalities and their subdivisions and including all boards,
25 colleges, universities and schools, shall continue to purchase
26 workers' compensation insurance from the company through
27 the thirtieth day of June, two thousand twelve. The company
28 and other private carriers shall be permitted to sell workers'
29 compensation insurance through licensed agents in the state. To
30 the extent that a private carrier markets workers' compensation

31 insurance through a licensed agent, it shall be subject to all
32 applicable provisions of chapter thirty-three of this code. All
33 employers' must immediately notify the Insurance Commis-
34 sioner of its private carrier and any change thereto.

35 (c) An employer may elect to change its private insurer
36 carrier on or after the first day of July, two thousand eight, if
37 the employer has:

38 (1) Given at least thirty days' notice to the Insurance
39 Commissioner of the change of insurer; and

40 (2) Furnished evidence satisfactory to the Insurance
41 Commissioner that the payment of compensation has otherwise
42 been secured.

43 (d) Each private carrier and employer shall notify the
44 Insurance Commissioner if an employer has changed his or her
45 insurer or has allowed his or her insurance to lapse within
46 twenty- four hours or by the end of the next working day,
47 whichever is later, after the insurer has notice of the change or
48 lapse. Every employer shall post a notice upon its premises in
49 a conspicuous place identifying its industrial insurer. The notice
50 must include the insurer's name, business address and tele-
51 phone number and the name, business address and telephone
52 number of its nearest adjuster in this state. The employer shall
53 at all times maintain the notice provided for the information of
54 his or her employees. Release of employer policy information
55 and status by the industrial council and the Insurance Commis-
56 sioner shall be governed by section four, article one of this
57 chapter. The Insurance Commissioner shall collect and maintain
58 information related to officers, directors and ten percent or
59 more owners of each carrier's policy holders. The private
60 carrier shall provide said information to the Insurance Commis-
61 sioner.

62 (e) Any rule promulgated by the workers' compensation
63 board of managers empowering agencies of this state to revoke

64 or refuse to grant, issue or renew any contract, license, permit,
 65 certificate or other authority to conduct a trade, profession or
 66 business to or with any employer whose account is in default
 67 with the commission shall be fully enforceable by the Insurance
 68 Commissioner against the employer in policy default with a
 69 private carrier.

70 (f) Effective the first day of January, two thousand nine, the
 71 company may decline to offer coverage to any applicant.
 72 Effective the first day of January, two thousand nine, the
 73 company and private carriers may cancel a policy or decline to
 74 renew a policy upon the issuance of sixty days' written advance
 75 notice to the policyholder: *Provided*, That cancellation of the
 76 policy by the carrier for failure of consideration to be paid by
 77 the policyholder is effective after fifteen days advance written
 78 notice of cancellation to the policyholder.

**§23-2C-16. Administration of Old Fund, Uninsured Employer
 Fund, Self-Insured Employer Guaranty Risk Pool,
 Self-Insured Employer Security Risk Pool and
 Private Carrier Guaranty Fund.**

1 (a) Notwithstanding any provision of this code to the
 2 contrary, the company shall be the initial third-party administra-
 3 tor of the Old Fund, Uninsured Employer Fund, Self-Insured
 4 Employer Guaranty Risk Pool, Self-Insured Employer Security
 5 Risk Pool and Private Carrier Guaranty Fund from the termina-
 6 tion of the commission and thereafter for a term of at least six
 7 months but not more than three years pursuant to an agreement
 8 to be entered into between the Insurance Commissioner and the
 9 company prior to the termination of the commission. The
 10 company shall be paid a reasonable fee for services provided.
 11 The company's administrative duties may include, but not be
 12 limited to, receipt of all claims, processing said claims, provid-
 13 ing for the payment of said claims through the State Treasurer's
 14 office or other applicable state agency and ensuring, through the
 15 selection and assignment of counsel, that claims decisions are

16 properly defended. The administration of said funds thereafter
17 shall be subject to the procedures set forth in article three,
18 chapter five-a of this code.

19 (b) The Insurance Commissioner shall review claims
20 determined to be payable from said funds and may contest the
21 determination pursuant to the provisions of article five of this
22 chapter.

23 (c) The Insurance Commissioner may conduct or cause to
24 be conducted an annual audit to be performed on said funds.

25 (d) The Insurance Commissioner may contract or employ
26 counsel to perform legal services related solely to the collection
27 of moneys due the Old Fund, including the collection of
28 moneys due the Old Fund and enforcement of repayment
29 agreements entered into for the collection of moneys due on or
30 before the thirtieth day of June, two thousand five, in any
31 administrative proceeding and in any state or federal court.

§23-2C-20. Claims administration issues.

1 (a) A self-insured employer shall continue to comply with
2 rules promulgated by the board of managers governing the self-
3 administration of its claims and the successor to the commis-
4 sion shall also comply with the rules promulgated by the board
5 of managers governing the self-administration of claims.

6 (b) The successor to the commission, any other private
7 carrier and any employer that self-insures its risk and self-
8 administers its claims shall exercise all authority and responsi-
9 bility granted to the commission in this chapter and provide
10 notices of action taken to effect the purposes of this chapter to
11 provide benefits to persons who have suffered injuries or
12 diseases covered by this chapter. The successor to the commis-
13 sion, private carriers and self-insured employers shall at all
14 times be bound and shall comply fully with all of the provisions

15 of this chapter. Furthermore, all of the provisions contained in
16 article four of this chapter pertaining to disability and death
17 benefits are binding on and shall be strictly adhered to by the
18 successor to the commission, private carriers and the self-
19 insured employer in their administration of claims presented by
20 employees of the self-insured employer.

21 (c) Upon termination of the commission, the Occupational
22 Pneumoconiosis Board shall be transferred to the Insurance
23 Commissioner and shall be administered by the Insurance
24 Commissioner. The company and other private carriers shall
25 have all authority and responsibility granted to the self-insured
26 employers in the administration and processing of occupational
27 pneumoconiosis claims.

28 (d) Upon termination of the commission, all claims
29 allocation responsibilities shall transfer from the commission to
30 the Insurance Commissioner.

31 (e) Upon termination of the commission, the third-party
32 administrator of the Old Fund shall have all administrative and
33 adjudicatory authority vested in the commission in administer-
34 ing old law liabilities and otherwise processing and deciding
35 old law claims.

ARTICLE 4B. COAL-WORKERS' PNEUMOCONIOSIS FUND.

§23-4B-1. Purpose.

§23-4B-2. Coal-Workers' Pneumoconiosis Fund established.

§23-4B-3. To whom benefits paid.

§23-4B-4. Who may subscribe.

§23-4B-5. Payment of benefits.

§23-4B-7. Administration.

§23-4B-9. Closure of Coal-Workers' Pneumoconiosis Fund and coverage provided
by the successor of the commission.

§23-4B-1. Purpose.

1 The purpose of this article is to establish a fund to provide
2 benefits to coal miners who are totally disabled by pneumoconi-

3 osis and to eligible dependents of coal miners whose deaths
4 were due to pneumoconiosis or who were totally disabled from
5 pneumoconiosis at time of their deaths. The further purpose of
6 this article is to provide a readily available insurer of liability
7 created by Title IV of the federal Coal Mine Health and Safety
8 Act of 1969, as amended, for claims incurred under said Act,
9 including all claims where the date of last exposure is on or
10 before the thirty-first day of December, two thousand five,
11 without regard to the date the claim is filed.

§23-4B-2. Coal-Workers' Pneumoconiosis Fund established.

1 For the relief of persons who are entitled to receive benefits
2 by virtue of Title IV of the federal Coal Mine Health and Safety
3 Act of 1969, as amended, for claims incurred under said Act,
4 including all claims where the date of last exposure is on or
5 before the thirty-first day of December, two thousand five,
6 without regard to the date the claim is filed, there is continued
7 a fund to be known as the Coal-Workers' Pneumoconiosis
8 Fund, which fund shall be separate from the Workers' Compensa-
9 tion Fund. The Coal-Workers' Pneumoconiosis Fund shall
10 consist of premiums and other funds paid to the fund by
11 employers, subject to the provisions of Title IV of the federal
12 Coal Mine Health and Safety Act of 1969, as amended, who
13 shall elect to subscribe to the fund to ensure the payment of
14 benefits required by the Act for claims incurred under said Act,
15 including all claims where the date of last exposure is on or
16 before the thirty-first day of December, two thousand five,
17 without regard to the date the claim is filed.

18 The State Treasurer shall be the custodian of the Coal-
19 Workers' Pneumoconiosis Fund and all premiums, deposits or
20 other moneys paid to the fund shall be deposited in the State
21 Treasury to the credit of the Coal-Workers' Pneumoconiosis
22 Fund. Disbursements from the fund shall be made upon
23 requisition signed by the Executive Director of the Workers'
24 Compensation Commission to those persons entitled to partici-

25 pate in the fund: *Provided*, That effective upon the termination
26 of the Workers' Compensation Commission, disbursement from
27 the Coal-Workers' Pneumoconiosis Fund shall be made upon
28 requisitions signed by the Insurance Commissioner. The
29 Insurance Commissioner shall collect any unpaid premium and
30 deposit the same in said fund. The West Virginia Investment
31 Management Board may invest any surplus, reserve or other
32 moneys belonging to the Coal-Workers' Pneumoconiosis Fund
33 in accordance with article six, chapter twelve of this code.

§23-4B-3. To whom benefits paid.

1 Only those classes of persons who are entitled to benefits
2 under Title IV of the federal Coal Mine Health and Safety Act
3 of 1969, as amended, for claims incurred under said Act,
4 including all claims where the date of last exposure is on or
5 before the thirty-first day of December, two thousand five,
6 without regard to the date the claim is filed, are eligible to
7 participate in the Coal-Workers' Pneumoconiosis Fund.

§23-4B-4. Who may subscribe.

1 Only those employers who are subject to the provisions of
2 Title IV of the federal Coal Mine Health and Safety Act of
3 1969, as amended, may elect to subscribe to the Coal-Workers'
4 Pneumoconiosis Fund to insure the liability imposed upon such
5 employers under the provisions of Title IV of the Act. Coverage
6 by the Coal-Workers' Pneumoconiosis Fund will be provided
7 only for claims incurred under the Act, including all claims
8 where the date of last exposure is on or before the thirty-first
9 day of December, two thousand five, without regard to the date
10 the claim is filed.

§23-4B-5. Payment of benefits.

1 Upon receipt of an order of compensation issued pursuant
2 to a claim for benefits filed under the provisions of Title IV of

3 the federal Coal Mine Health and Safety Act of 1969, as
4 amended, for claims incurred under said Act, including all
5 claims where the date of last exposure is on or before the thirty-
6 first day of December, two thousand five, without regard to the
7 date the claim is filed, the executive director shall disburse the
8 Coal-Workers' Pneumoconiosis Fund in the amounts and to the
9 persons as directed by the order: *Provided*, That effective upon
10 the termination of the Workers' Compensation Commission,
11 disbursement from the Coal-workers' Pneumoconiosis Fund
12 shall be made upon requisitions signed by the Insurance
13 Commissioner.

§23-4B-7. Administration.

1 (a) The Coal-Workers' Pneumoconiosis Fund shall be
2 administered by the Executive Director of the Workers'
3 Compensation Commission, who shall employ any employees
4 necessary to discharge his or her duties and responsibilities
5 under this article. All payments of salaries and expenses of the
6 employees and all expenses peculiar to the administration of
7 this article shall be made by the State Treasurer from the Coal-
8 Workers' Pneumoconiosis Fund upon requisitions signed by the
9 executive director.

10 (b) Notwithstanding any provision of this code to the
11 contrary, effective from the termination of the Workers'
12 Compensation Commission, the Coal-Workers' Pneumoconio-
13 sis Fund shall be administered by the Insurance Commissioner,
14 who shall employ any employees and contract with any parties
15 necessary to discharge his or her duties and responsibilities
16 under this article. All payments of salaries and expenses of the
17 employees and all expenses peculiar to the administration of
18 this article shall be made by the State Treasurer from the Coal-
19 Workers' Pneumoconiosis Fund upon requisitions signed by the
20 Insurance Commissioner: *Provided*, That the employers'
21 mutual insurance company established pursuant to article two-c

22 of this chapter shall be the administrator of the Coal-Workers'
23 Pneumoconiosis Fund for a term not to exceed three years
24 following the termination of the Workers' Compensation
25 Commission pursuant to an agreement to be entered into
26 between the Insurance Commissioner and the Company prior to
27 the termination of the Workers' Compensation Commission.
28 The Company's administrative duties may include, but not be
29 limited to, receipt of all claims, processing said claims, provid-
30 ing for the payment of said claims through the State Treasurer's
31 office and ensuring, through the selection and assignment of
32 counsel, that claims decisions are properly defended. Any
33 contract entered into by the Insurance Commissioner for the
34 administration of the Coal-Workers' Pneumoconiosis Fund
35 thereafter shall be subject to the procedures set forth in article
36 three, chapter five-a of this code.

**§23-4B-9. Closure of Coal-Workers' Pneumoconiosis Fund and
coverage provided by the successor of the commis-
sion.**

1 Upon the termination of the commission, the Coal-Work-
2 ers' Pneumoconiosis Fund shall close and the company shall
3 offer insurance to provide for the benefits required by this
4 article until at least the thirty-first day of December, two
5 thousand eight. All claims payment obligations, including
6 indemnity benefits, medical benefits, administrative and all
7 other expenses necessary for the administration and defense of
8 claims, where the date of last exposure is on or before the
9 thirty-first day of December, two thousand five, without regard
10 to the date the claim is filed, shall be an obligation of the Coal-
11 Workers' Pneumonoconiosis Fund created in this article and not
12 of the company.

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, 2006

HOUSE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
2016	49	4069	210	4383	103
2118	62	4075	47	4386	166
2136	55	4100	44	4391	215
2146	50	4108	182	4392	211
2235	48	4112	259	4406	80
2328	98	4116	244	4431	46
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4606	185	4690	85	4854	63
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6	125	41	791	76	635
7	793	42	4018	77	631
8	794	43	484	78	32
9	795	44	4100	79	4049
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11	4856	46	4431	81	4626
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13	4858	48	2235	83	4625
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15	509	50	2146	85	4690
16	270	51	480	86	4240
17	4063	52	11	87	18
18	242	53	3201	88	4603
19	244	54	636	89	788
20	269	55	2136	90	4489
21	271	56	566	91	4481
22	243	57	4588	92	4721
23	4792	58	3213	93	632
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236.....	786	246.....	4458	255.....	505
237.....	609	247.....	742	256.....	4751
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First Extraordinary Session, 2006

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Senate Bills = 4 Digits

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405	20	413	17	422	4
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SENATE BILLS

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Fourth Extraordinary Session, 2005

House Bills = 3 Digits

Senate Bills = 4 Digits

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2	417	9	402	16	403
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