

**ACTS**  
**OF THE**  
**LEGISLATURE**  
**OF**  
**WEST VIRGINIA**



**Regular Session, 2007**  
**First Extraordinary Session, 2007**  
**Second Extraordinary Session, 2006**

**Volume I**  
**Chapters 1- 145**

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

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## FOREWORD

These volumes contain the Acts of the First Regular Session and the First Extraordinary Session of the 78th Legislature, 2007, and the Second Extraordinary Session of the 77th Legislature, 2006.

### First Regular Session, 2007

The First Regular Session of the 78th Legislature convened on January 10, 2007. The constitutional sixty-day limit on the duration of the session was midnight, March 10, 2007. The Governor issued Proclamations on March 7 and March 16, extending the session for the purpose of considering the Budget bill, and the Legislature adjourned *sine die* on March 18, 2007.

Bills totaling 2,037 were introduced in the two houses during the session (1,276 House and 761 Senate). The Legislature passed 273 bills, 113 House and 160 Senate.

The Governor vetoed six House bills (**Com. Sub. for H. B. 2027**, Allowing awards under the crime victims compensation program to be made to victims of identity theft; **Com. Sub. for H. B. 2498**, Relating to sexual offenses involving children; **Com. Sub. for H. B. 2558**, Relating to donation and transfer of surplus personal computers and other information systems, technology and equipment for educational purposes; **Com. Sub. for H. B. 2709**, Requiring the installation of fire hydrants at intervals of not more than every two thousand feet on all new installation of water mains; **Com. Sub. for H. B. 2748**, Relating to the receipt and transfer of scrap metal; and **Com. Sub. for H. B. 2787**, Creation of the Address Confidentiality Program) and ten Senate bills (**Com. Sub. for S. B. 70**, Providing penalties for employing unauthorized workers; **Com. Sub. for S. B. 148**, Providing breast feeding not considered public indecency; **S. B. 183**, Providing Board of Banking and Financial Institutions authority to approve acquisitions of out-of-state banks; **Com. Sub. for S. B. 400**, Appointing additional circuit court judges; **S. B. 413**, Relating to hearings before Magistrates involving seizing abandoned, neglected or cruelly treated animals; **Com. Sub. for S. B. 414**,

## FOREWARD

Establishing flat fee for certain services by circuit clerks; **S. B. 438**, Relating to Investment Management Board; **Com. Sub. for S. B. 641**, Defining term "PSC motor carrier inspectors and enforcement officers" for criminal provisions purposes; **Com. Sub. for S. B. 738**, Requiring legislative approval of proposed new or revised existing toll by Parkways Authority; and **S. B. 748**, Creating Electronic Telecommunication Open Infrastructure Act). The Legislature amended and again passed five bills (**Com. Sub. for H. B. 2498**, Relating to sexual offenses involving children; **Com. Sub. for H. B. 2709**, Requiring the installation of fire hydrants at intervals of not more than every two thousand feet on all new installation of water mains; **Com. Sub. for S. B. 70**, Providing penalties for employing unauthorized workers; **Com. Sub. for S. B. 414**, Establishing flat fee for certain services by circuit clerks; and **S. B. 438**, Relating to Investment Management Board), leaving a net total of 262 bills, 109 House and 153 Senate, which became law.

There were 183 Concurrent Resolutions introduced during the session, 97 House and 86 Senate, of which 26 House and 26 Senate were adopted. There were 28 House Joint Resolutions and 11 Senate Joint Resolutions introduced, proposing amendments to the State Constitution, none of which were adopted. The House introduced 36 House Resolutions, and the Senate introduced 52 Senate Resolutions, of which 31 House and 52 Senate were adopted.

The Senate failed to pass 43 House bills passed by the House, and 62 Senate bills failed passage by the House.

\* \* \* \* \*

### **First Extraordinary Session, 2007**

The Proclamation calling the Legislature into Extraordinary Session on March 18, 2007, contained five items for consideration.

The Legislature passed 5 bills, 3 House bills and 2 Senate bills. The Senate adopted 4 Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* at 6:07 P.M. that same day.

\* \* \* \* \*

### **Second Extraordinary Session, 2006**

The Proclamation calling the Legislature into Extraordinary Session at 6:00 P.M., November 9, 2006, contained thirteen items for consideration.

The Legislature passed 12 bills, 1 House bill and 11 Senate bills. The Senate introduced and adopted 4 Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* November 14, 2006.

These volumes will be distributed as provided by sections thirteen and nineteen, article one, chapter four of the Code of West Virginia.

These Acts may be purchased from the Office of the Clerk of the House, 212 Main Unit, State Capitol, Charleston, West Virginia 25305.

GREGORY M. GRAY  
*Clerk of the House and  
Keeper of the Rolls.*

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## REGULAR SESSION, 2007

### OFFICERS

*Speaker*-- Richard Thompson, Wayne

*Clerk*--Gregory M. Gray, Charleston

*Sergeant at Arms*--Oce Smith, Fairmont

*Doorkeeper*--John Roberts, Hedgesville

District	Name	Address	Legislative Service
First	Joe DeLong (D)	Weirton	75 <sup>th</sup> - 78 <sup>th</sup>
	Randy Swartzmiller (D)	New Cumberland	75 <sup>th</sup> - 78 <sup>th</sup>
Second	Timothy R. Ennis (D)	Wellsburg	72 <sup>nd</sup> - 78 <sup>th</sup>
	Jack Yost (D)	Wellsburg	76 <sup>th</sup> - 78 <sup>th</sup>
Third	Tal Hutchins (D)	Wheeling	72 <sup>nd</sup> - 74 <sup>th</sup> , 78 <sup>th</sup>
	Orphy Klempa (D)	Wheeling	78 <sup>th</sup>
Fourth	Kenneth D. Tucker (D)	Moundsville	73 <sup>rd</sup> - 78 <sup>th</sup>
	Scott G. Varner (D)	Moundsville	71 <sup>st</sup> - 78 <sup>th</sup>
Fifth	Dave Pethtel (D)	Hundred	69 <sup>th</sup> , 71 <sup>st</sup> , 74 <sup>th</sup> - 78 <sup>th</sup>
Sixth	William Roger Romine (R)	Sistersville	75 <sup>th</sup> - 78 <sup>th</sup>
Seventh	Lynwood "Woody" Ireland (R)	Pullman	78 <sup>th</sup>
Eighth	Everette W. Anderson, Jr.(R)	Williamstown	71 <sup>st</sup> - 78 <sup>th</sup>
Ninth	Larry W. Border (R)	Davisville	70 <sup>th</sup> - 78 <sup>th</sup>
	Tom Azinger (R)	Vienna	72 <sup>nd</sup> - 78 <sup>th</sup>
Tenth	John Ellem (R)	Parkersburg	75 <sup>th</sup> - 78 <sup>th</sup>
	Daniel Poling (D)	Parkersburg	78 <sup>th</sup>
Eleventh	Bob Ashley (R)	Spencer	67 <sup>th</sup> - 73 <sup>rd</sup> , 75 <sup>th</sup> - 78 <sup>th</sup>
Twelfth	Mitch Carmichael (R)	Ripley	75 <sup>th</sup> - 78 <sup>th</sup>
Thirteenth	Dale Martin (D)	Poca	75 <sup>th</sup> - 78 <sup>th</sup>
	Brady Paxton (D)	Liberty	71 <sup>st</sup> , Appt. 4/22/99, 74 <sup>th</sup> - 78 <sup>th</sup>
Fourteenth	Troy Andes (R)	Hurricane	78 <sup>th</sup>
	Patti Eagloski Schoen (R)	Scott Depot	76 <sup>th</sup> - 78 <sup>th</sup>
Fifteenth	Kevin J. Craig (D)	Huntington	75 <sup>th</sup> - 78 <sup>th</sup>
	Jim Morgan (D)	Huntington	69 <sup>th</sup> - 70 <sup>th</sup> , 75 <sup>th</sup> - 78 <sup>th</sup>
Sixteenth	Carol Miller (R)	Huntington	78 <sup>th</sup>
	Kelli Sobonya (R)	Huntington	76 <sup>th</sup> - 78 <sup>th</sup>
Seventeenth	Dale Stephens (D)	Huntington	75 <sup>th</sup> , 77 <sup>th</sup> - 78 <sup>th</sup>
	Doug Reynolds (D)	Huntington	78 <sup>th</sup>
Eighteenth	Richard Thompson (D)	Lavelette	65 <sup>th</sup> , Resigned 6/81; 76 <sup>th</sup> - 78 <sup>th</sup>
	Don C. Perdue (D)	Prichard	74 <sup>th</sup> - 78 <sup>th</sup>
Nineteenth	Larry W. Barker (D)	Madison	77 <sup>th</sup> - 78 <sup>th</sup>
Twentieth	Ted Ellis (D)	Logan	78 <sup>th</sup>
	Jeff Eldridge (D)	Harts	77 <sup>th</sup> - 78 <sup>th</sup>
Twenty-first	Ralph Rodighiero (D)	Logan	78 <sup>th</sup>
	Lidella Wilson Hrutkay (D)	Logan	75 <sup>th</sup> - 78 <sup>th</sup>
Twenty-second	K. Steven Kominar (D)	Kermit	72 <sup>nd</sup> - 78 <sup>th</sup>
	Harry Keith White (D)	Gilbert	Appt. 9/11/92, 70 <sup>th</sup> , 71 <sup>st</sup> - 78 <sup>th</sup>
Twenty-third	Richard Browning (D)	Oceana	69 <sup>th</sup> - 72 <sup>nd</sup> , 76 <sup>th</sup> - 78 <sup>th</sup>
	Mike Burdiss (D)	Mullens	78 <sup>th</sup>
Twenty-fourth	Clif Moore (D)	Thorpe	77 <sup>th</sup> - 78 <sup>th</sup>
	Eustace Frederick (D)	Bluefield	Appt. 10/17/93, 71 <sup>st</sup> , 72 <sup>nd</sup> - 78 <sup>th</sup>
Twenty-fifth	Marshall Long (D)	Princeton	75 <sup>th</sup> - 78 <sup>th</sup>
	Thomas Mike Porter (R)	Princeton	77 <sup>th</sup> - 78 <sup>th</sup>
Twenty-sixth	Gerald Crosier (D)	Union	76 <sup>th</sup> - 78 <sup>th</sup>
Twenty-seventh	Melvin Kessler (D)	Beckley	78 <sup>th</sup>
	Virginia Mahan (D)	Green Sulphur Springs	73 <sup>rd</sup> - 78 <sup>th</sup>
Twenty-eighth	Linda Sumner (R)	Beckley	76 <sup>th</sup> - 78 <sup>th</sup>
	Ricky Moye (D)	Crab Orchard	78 <sup>th</sup>
Twenty-ninth	Ron Thompson (D)	Beckley	72 <sup>nd</sup> - 78 <sup>th</sup>

## MEMBERS OF THE HOUSE OF DELEGATES, Continued

District	Name	Address	Legislative Service	
Twenty-eighth	Thomas W. Campbell (D)	Lewisburg	73 <sup>rd</sup> - 78 <sup>th</sup>	
	Ray Canterbury (R)	Ronceverte	75 <sup>th</sup> - 78 <sup>th</sup>	
Twenty-ninth	Margaret Anne Staggers (D)	Fayetteville	78 <sup>th</sup>	
	David G. Perry (D)	Oak Hill	75 <sup>th</sup> - 78 <sup>th</sup>	
	John Pino (D)	Oak Hill	67 <sup>th</sup> - 68 <sup>th</sup> ; 71 <sup>st</sup> - 78 <sup>th</sup>	
Thirtieth	Jon Amores (D)	Charleston	72 <sup>nd</sup> - 78 <sup>th</sup>	
	Bonnie Brown (D)	South Charleston	66 <sup>th</sup> - 68 <sup>th</sup> ; 70 <sup>th</sup> ; 75 <sup>th</sup> - 78 <sup>th</sup>	
	Barbara Burruss Hatfield (D)	South Charleston	67 <sup>th</sup> - 69 <sup>th</sup> ; 74 <sup>th</sup> - 78 <sup>th</sup>	
	Nancy Peoples Guthrie (D)	Charleston	78 <sup>th</sup>	
	Corey Palumbo (D)	Charleston	76 <sup>th</sup> - 78 <sup>th</sup>	
	Sharon Spencer (D)	Charleston	66 <sup>th</sup> ; 68 <sup>th</sup> - 71 <sup>st</sup> ; 73 <sup>rd</sup> - 78 <sup>th</sup>	
	Danny Wells (D)	Charleston	77 <sup>th</sup> - 78 <sup>th</sup>	
	Carrie Webster (D)	Charleston	75 <sup>th</sup> - 78 <sup>th</sup>	
	Thirty-first	Tim Armstead (R)	Elkview	Appt. 9/5/98, 73 <sup>rd</sup> ; 74 <sup>th</sup> - 78 <sup>th</sup>
	Thirty-second	Patrick Lane (R)	Cross Lanes	77 <sup>th</sup> - 78 <sup>th</sup>
Ron Walters (R)		Charleston	71 <sup>st</sup> - 73 <sup>rd</sup> ; 75 <sup>th</sup> - 78 <sup>th</sup>	
William F. Stemple (D)		Arnoldsburg	73 <sup>rd</sup> - 78 <sup>th</sup>	
Thirty-third	Brent Boggs (D)	Gassaway	73 <sup>rd</sup> - 78 <sup>th</sup>	
Thirty-fourth	Sam J. Argento (D)	Mt. Nebo	77 <sup>th</sup> - 78 <sup>th</sup>	
Thirty-fifth	Joe Talbot (D)	Webster Springs	71 <sup>st</sup> - 72 <sup>nd</sup> ; 76 <sup>th</sup> - 78 <sup>th</sup>	
Thirty-sixth	William G. Harman (D)	Elkins	76 <sup>th</sup> - 78 <sup>th</sup>	
	Bill Proudfoot (D)	Elkins	70 <sup>th</sup> - 78 <sup>th</sup>	
	Doug Stalnaker (D)	Weston	72 <sup>nd</sup> - 78 <sup>th</sup>	
Thirty-ninth	Bill Hamilton (R)	Buckhannon	76 <sup>th</sup> - 78 <sup>th</sup>	
Fortieth	Mary M. Poling (D)	Moatsville	75 <sup>th</sup> - 78 <sup>th</sup>	
Forty-first	Richard J. Iaquina (D)	Clarksburg	76 <sup>th</sup> - 78 <sup>th</sup>	
	Samuel J. Cann (D)	Clarksburg	72 <sup>nd</sup> - 78 <sup>th</sup>	
	Ron Fragale (D)	Clarksburg	70 <sup>th</sup> ; 73 <sup>rd</sup> ; 75 <sup>th</sup> - 78 <sup>th</sup>	
	Tim Miley (D)	Bridgeport	77 <sup>th</sup> - 78 <sup>th</sup>	
	Jeffery L. Tansill (R)	Grafton	77 <sup>th</sup> - 78 <sup>th</sup>	
	Michael Caputo (D)	Fairmont	73 <sup>rd</sup> - 78 <sup>th</sup>	
Forty-third	Tim Manchin (D)	Fairmont	76 <sup>th</sup> - 78 <sup>th</sup>	
	Linda Longstreth (D)	Fairmont	77 <sup>th</sup> - 78 <sup>th</sup>	
	Robert D. Beach (D)	Morgantown	Appt. 5/98; 73 <sup>rd</sup> - 78 <sup>th</sup>	
	Barbara Evans Fleischauer (D)	Morgantown	72 <sup>nd</sup> - 78 <sup>th</sup>	
Forty-fourth	Alex J. Shook (D)	Morgantown	78 <sup>th</sup>	
	Charlene Marshall (D)	Morgantown	74 <sup>th</sup> - 78 <sup>th</sup>	
	Larry A. Williams (D)	Tunnelton	Appt. 10/8/93, 71 <sup>st</sup> ; 72 <sup>nd</sup> - 78 <sup>th</sup>	
Forty-fifth	Stan Shaver (D)	Tunnelton	74 <sup>th</sup> - 78 <sup>th</sup>	
Forty-sixth	Harold K. Michael (D)	Moorefield	69 <sup>th</sup> - 78 <sup>th</sup>	
Forty-eighth	Allen V. Evans (R)	Dorcas	70 <sup>th</sup> - 78 <sup>th</sup>	
Forty-ninth	Robert A. Schadler (R)	Keyser	69 <sup>th</sup> - 70 <sup>th</sup> ; 74 <sup>th</sup> - 78 <sup>th</sup>	
Fiftieth	Ruth Rowan (R)	Points	77 <sup>th</sup> - 78 <sup>th</sup>	
Fifty-first	Daryl E. Cowles (R)	Berkeley Springs	78 <sup>th</sup>	
Fifty-second	Craig P. Blair (R)	Martinsburg	76 <sup>th</sup> - 78 <sup>th</sup>	
Fifty-third	Jonathan Miller (R)	Bunker Hill	78 <sup>th</sup>	
Fifty-fourth	Walter E. Duke (R)	Martinsburg	76 <sup>th</sup> - 78 <sup>th</sup>	
Fifty-fifth	John Overington (R)	Martinsburg	67 <sup>th</sup> - 78 <sup>th</sup>	
Fifty-sixth	Robert C. Tabb (D)	Keameysville	76 <sup>th</sup> - 78 <sup>th</sup>	
Fifty-seventh	John Doyle (D)	Shepherdstown	66 <sup>th</sup> ; 71 <sup>st</sup> - 78 <sup>th</sup>	
Fifty-eighth	Locke Wysong (D)	Charles Town	77 <sup>th</sup> - 78 <sup>th</sup>	
(D) Democrats			72	
(R) Republicans			28	
TOTAL			100	

# MEMBERS OF THE SENATE

## REGULAR SESSION, 2007

### OFFICERS

*President*— Earl Ray Tomblin, Chapmanville  
*Clerk*—Darrell E. Holmes, Charleston  
*Sergeant at Arms*—Howard Wellman, Bluefield  
*Doorkeeper*— Andrew J. Trail, Charleston

District	Name	Address	Legislative Service
First	Edwin J. Bowman (D)	Weirton	72 <sup>nd</sup> - 78 <sup>th</sup>
	Andy McKenzie (R)	Wheeling	73 <sup>rd</sup> - 78 <sup>th</sup>
Second	Larry J. Edgell (D)	New Martinsburg	74 <sup>th</sup> - 78 <sup>th</sup>
	Jeffrey V. Kessler (D)	Glen Dale	Appt. 11/97,73rd; 74 <sup>th</sup> - 78 <sup>th</sup>
Third	Donna J. Boley (R)	St. Marys	Appt. 5/14/85, 67 <sup>th</sup> ; 68 <sup>th</sup> - 78 <sup>th</sup>
	J. Frank Deem (R)	Vienna	(House 52 <sup>nd</sup> -56 <sup>th</sup> ); 57 <sup>th</sup> -64 <sup>th</sup> - 65 <sup>th</sup> ; (House 69 <sup>th</sup> ); 72 <sup>nd</sup> - 78 <sup>th</sup> (House 71 <sup>st</sup> - 74 <sup>th</sup> ); 75 <sup>th</sup> - 78 <sup>th</sup>
Fourth	Karen L. Facemyer (R)	Ripley	(House 72 <sup>nd</sup> - 74 <sup>th</sup> ); 78 <sup>th</sup>
	Mike Hall (R)	Hurricane	(House 72 <sup>nd</sup> - 74 <sup>th</sup> ); 78 <sup>th</sup>
Fifth	Robert H. Plymale (D)	Ceredo	71 <sup>st</sup> - 78 <sup>th</sup>
	Evan H. Jenkins (D)	Huntington	76 <sup>th</sup> - 78 <sup>th</sup>
Sixth	H. Truman Chafin (D)	Williamson	66 <sup>th</sup> - 78 <sup>th</sup>
	John Pat Fanning (D)	Jaeger	58 <sup>th</sup> - 64 <sup>th</sup> ; 67 <sup>th</sup> -68 <sup>th</sup> ; 73 <sup>rd</sup> - 78 <sup>th</sup>
Seventh	Earl Ray Tomblin (D)	Chapmanville	(House 62 <sup>nd</sup> -64 <sup>th</sup> ); 65 <sup>th</sup> - 78 <sup>th</sup>
	Ron Stollings (D)	Madison	78 <sup>th</sup>
Eighth	Vic Sprouse (R)	South Charleston	(House 72 <sup>nd</sup> ); 73 <sup>rd</sup> - 78 <sup>th</sup>
	Erik P. Wells (D)	Charleston	78 <sup>th</sup>
Ninth	Billy Wayne Bailey, Jr. (D)	Pineville	Appt. 1-91,70th; 71st - 78th
	Mike Green (D)	Daniels	78 <sup>th</sup>
Tenth	Donald T. Caruth (R)	Mercer	(House 76 <sup>th</sup> ) 77 <sup>th</sup> - 78 <sup>th</sup>
	Jesse O. Guillis (R)	Lewisburg	76 <sup>th</sup> - 78 <sup>th</sup>
Eleventh	Shirley Love (D)	Oak Hill	72 <sup>nd</sup> -77 <sup>th</sup>
	C. Randy White (D)	Webster Springs	(House 73 <sup>rd</sup> - 75 <sup>th</sup> ); 76 <sup>th</sup> - 78 <sup>th</sup>
Twelfth	Joseph M. Minard (D)	Clarksburg	(House Appt. 1/83, 66 <sup>th</sup> ; 67 <sup>th</sup> -69 <sup>th</sup> ); 70 <sup>th</sup> ; 74 <sup>th</sup> - 78 <sup>th</sup>
	William R. Sharpe, Jr. (D)	Weston	55 <sup>th</sup> - 64 <sup>th</sup> ; 67 <sup>th</sup> - 78 <sup>th</sup>
Thirteenth	Michael A. Oliverio, II (D)	Morgantown	(House 71 <sup>st</sup> ); 72 <sup>nd</sup> - 78 <sup>th</sup>
	Roman W. Prezioso, Jr. (D)	Fairmont	(House 69 <sup>th</sup> - 72 <sup>nd</sup> ); 73 <sup>rd</sup> -78th
Fourteenth	Jon Blair Hunter (D)	Clarksburg	73 <sup>rd</sup> - 78 <sup>th</sup>
	Dave Sypolt (R)	Kingwood	78 <sup>th</sup>
Fifteenth	Walt Helmick (D)	Marlinton	(House 1 yr.,69th); Appt.9/89, 69 <sup>th</sup> ; 70 <sup>th</sup> - 78 <sup>th</sup>
	Clark Barnes (R)	Randolph	77 <sup>th</sup> - 78 <sup>th</sup>
Sixteenth	John Yoder (R)	Harpers Ferry	71 <sup>st</sup> - 72 <sup>nd</sup> , 77 <sup>th</sup> - 78 <sup>th</sup>
	John R. Unger II (D)	Martinsburg	74 <sup>th</sup> - 78 <sup>th</sup>
Seventeenth	Brooks F. McCabe, Jr. (D)	Charleston	74 <sup>th</sup> - 78 <sup>th</sup>
	Dan Foster (D)	Charleston	(House 76 <sup>th</sup> ) 77 <sup>th</sup> - 78 <sup>th</sup>
	(D)	Democrats	23
	(R)	Republicans	11
		TOTAL	34

**COMMITTEES OF THE HOUSE OF DELEGATES**  
**Regular Session, 2007**

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**STANDING**

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**AGRICULTURE AND NATURAL RESOURCES**

Stemple (*Agriculture Chair*), Tabb (*Agriculture Vice Chair*), Talbott (*Natural Resources Chair*), Argento (*Natural Resources Vice Chair*), Barker, Caputo, Crosier, Eldridge, Ellis, Fragale, Martin, Moore, Moye, Paxton, Rodigherio, Shaver, Varner, Wells, Hamilton, Anderson, Canterbury, Evans, Ireland, C. Miller and Romine.

**BANKING AND INSURANCE**

Moore (*Banking Chair*), Perry (*Banking Vice Chair*), Kominar (*Insurance Chair*), Barker (*Insurance Vice Chair*), Amores, Beach, Ellis, Guthrie, Hartman, Hutchins, Iaquina, Kessler, Mahan, Michael, Miley, Reynolds, Talbott, Williams, Andes, Ashley, Azinger, Border, Carmichael, Schoen and Walters.

**CONSTITUTIONAL REVISION**

Fleischauer (*Chair*), Hutchins (*Vice Chair*), Amores, Brown, Campbell, Caputo, Doyle, Guthrie, Hatfield, Kominar, Long, Marshall, Morgan, Palumbo, Pino, Staggers, Wells, Webster, Anderson, Blair, Ellem, Lane, J. Miller, Overington and Sobonya.

**EDUCATION**

M. Poling (*Chair*), Paxton (*Vice Chair*), Browning, Craig, Crosier, Ellis, Ennis, Frederick, Fragale, Moye, Perry, Pethtel, Rodigherio, Shaver, Stephens, Ron Thompson, Wells, Wysong, Duke, Ireland, J. Miller, Romine, Rowan, Sumner and Tansill.

**FINANCE**

White (*Chair*), Boggs (*Vice Chair*), Amores, Barker, Campbell, Doyle, Iaquina, Klempa, Kominar, Manchin, Marshall, Perdue, M. Poling, Reynolds, Spencer, Stalnaker, Tucker, Yost, Anderson, Ashley, Blair, Border, Carmichael, Evans and Walters.

## HOUSE OF DELEGATES COMMITTEES

### **GOVERNMENT ORGANIZATION**

Morgan (*Chair*), Martin (*Vice Chair*), Argento, Beach, Caputo, Cann, DeLong, Eldridge, Hartman, Hatfield, Hutchins, Michael, Palumbo, D. Poling, Staggers, Swartzmiller, Talbott, Williams, Andes, Canterbury, Cowles, C. Miller, Porter, Rowan and Schoen.

### **HEALTH AND HUMAN RESOURCES**

Perdue (*Chair*), Hatfield (*Vice Chair*), Boggs, Campbell, Cann, Eldridge, Fleischauer, Long, Longstreth, Marshall, Moore, Moye, Pino, Rodigherio, Staggers, Stalnaker, Spencer, Wysong, Ashley, Border, Canterbury, Lane, J. Miller, Rowan and Sumner.

### **INDUSTRY AND LABOR, ECONOMIC DEVELOPMENT AND SMALL BUSINESS**

Marshall (*Economic Development and Small Business Chair*), Browning (*Economic Development and Small Business Vice Chair*), Tucker (*Industry and Labor Chair*) Pethel (*Industry and Labor Vice Chair*), Campbell, Craig, Frederick, Guthrie, Hartman, Kessler, Klempa, Long, Mahan, Martin, Palumbo, Stephens, Spencer, Yost, Andes, Blair, Carmichael, Cowles, Hamilton, C. Miller and Sobonya.

### **JUDICIARY**

Webster (*Chair*), Proudfoot (*Vice Chair*), Brown, Burdiss, Fleischauer, Guthrie, Hrutkay, Kessler, Long, Longstreth, Mahan, Miley, Moore, Pino, Shook, Stemple, Tabb, Varner, Azinger, Ellem, Hamilton, Lane, Overington, Schadler and Sobonya.

### **PENSIONS AND RETIREMENT**

Spencer (*Chair*), Craig (*Vice Chair*), Browning, Stemple, Stephens, Canterbury and Duke.

### **POLITICAL SUBDIVISION**

Manchin (*Chair*), Yost (*Vice Chair*), Beach, Browning, Craig, Doyle, Kominar, Miley, Palumbo, Perry, D. Poling, Proudfoot, Reynolds, Swartzmiller, Tabb, Ron Thompson, Varner, Wysong, Cowles, Duke, Rowan, Schadler, Schoen, Sumner and Tansill.

## HOUSE OF DELEGATES COMMITTEES

### **ROADS AND TRANSPORTATION**

Hrutkay (*Chair*), Stephens (*Vice Chair*), Argento, Boggs, Burdiss, Crosier, Ennis, Klempa, Manchin, Martin, Michael, Pethtel, Pino, Proudfoot, Shook, Stalnaker, Wells, Wysong, Duke, Ellem, Evans, Porter, Romine, Schadler and Tansill.

### **RULES**

Richard Thompson (*Chair*), Caputo, DeLong, Fragale, Hatfield, Hrutkay, Morgan, M. Poling, Proudfoot, Talbott, Varner, Webster, White, Anderson, Armstead, Border, Carmichael and Overington.

### **VETERANS AFFAIRS AND HOMELAND SECURITY**

Iaquinta (*Veterans Affairs Chair*), Longstreth (*Veterans Affairs Vice Chair*), Swartzmiller (*Homeland Security Chair*), Ennis (*Homeland Security Vice Chair*), Burdiss, Cann, Hatfield, Hrutkay, Hutchins, Paxton, Pethtel, Shaver, Shook, Staggers, Stephens, Tucker, Williams, Yost, Armstead, Azinger, Ireland, Porter, Sumner, Tansill and Walters.

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## **JOINT COMMITTEES**

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### **ENROLLED BILLS**

Doyle (*Chair*), Beach (*Vice Chair*) and Fragale.

### **GOVERNMENT AND FINANCE**

Richard Thompson (*Co-Chair*), Caputo, DeLong, Webster, White and Armstead.

### **LEGISLATIVE RULE-MAKING REVIEW**

Brown (*Chair*), Miley (*Vice Chair*), Burdiss, Talbott, Overington and Sobonya.

HOUSE OF DELEGATES COMMITTEES

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STATUTORY LEGISLATIVE COMMISSIONS

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**INTERSTATE COOPERATION**

Pino (*Chair*), Frederick (*Vice Chair*), Blair and Walters.

**COMMISSION ON SPECIAL INVESTIGATIONS**

Richard Thompson (*Co-Chair*), DeLong, White, Armstead  
and Ellem.



**COMMITTEES OF THE SENATE**  
**Regular Session, 2007**

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**STANDING**

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**AGRICULTURE AND NATURAL RESOURCES**

Edgell (*Chair*), Love (*Vice Chair*), Bailey, Helmick, Hunter, Sharpe, Unger, Barnes, Facemyer, Guills and Sypolt.

**BANKING AND INSURANCE**

Minard (*Chair*), Jenkins (*Vice Chair*), Chafin, Fanning, Foster, Helmick, Kessler, Prezioso, Sharpe, Deem, Facemyer, Guills and Yoder.

**CONFIRMATIONS**

Love (*Chair*), Chafin (*Vice Chair*), Bailey, Bowman, Minard, Plymale, Hall, McKenzie and Yoder.

**ECONOMIC DEVELOPMENT**

McCabe (*Chair*), Oliverio (*Vice Chair*), Bowman, Fanning, Helmick, Kessler, Minard, Plymale, Prezioso, Unger, Caruth, Facemyer, McKenzie and Sprouse.

**EDUCATION**

Plymale (*Chair*), Edgell (*Vice Chair*), Bailey, Green, Hunter, Oliverio, Stollings, Unger, Wells, White, Boley, Guills, Hall and Sprouse.

**ENERGY, INDUSTRY AND MINING**

Sharpe (*Chair*), Hunter (*Vice Chair*), Fanning, Green, Helmick, Jenkins, Kessler, Stollings, Wells, Deem, Guills, Sprouse and Sypolt.

**FINANCE**

Helmick (*Chair*), Sharpe (*Vice Chair*), Bailey, Bowman, Chafin, Edgell, Fanning, Love, McCabe, Plymale, Prezioso, Unger, Boley, Facemyer, Guills, Sprouse and Sypolt.

## SENATE COMMITTEES

### **GOVERNMENT ORGANIZATION**

Bowman (*Chair*), Bailey (*Vice Chair*), Foster, Jenkins, Kessler, McCabe, Minard, Plymale, Stollings, White, Barnes, Boley, Sypolt and Yoder.

### **HEALTH AND HUMAN RESOURCES**

Prezioso (*Chair*), Stollings (*Vice Chair*), Bailey, Foster, Green, Hunter, Jenkins, McCabe, Sharpe, Boley, Guills, Hall and Sprouse.

### **INTERSTATE COOPERATION**

Jenkins (*Chair*), Foster (*Vice Chair*), Minard, Stollings, Wells, Caruth and Sypolt.

### **JUDICIARY**

Kessler (*Chair*), Oliverio (*Vice Chair*), Chafin, Foster, Green, Hunter, Jenkins, Minard, Stollings, Wells, White, Barnes, Caruth, Deem, Hall, McKenzie and Yoder.

### **LABOR**

Oliverio (*Chair*), Green (*Vice Chair*), Edgell, Foster, Love, Prezioso, Wells, White, Barnes, Deem and Yoder.

### **MILITARY**

Hunter (*Chair*), Wells (*Vice Chair*), Bailey, Edgell, Minard, Oliverio, Boley, Hall and Sypolt.

### **NATURAL RESOURCES**

Fanning (*Chair*), White (*Vice Chair*), Bowman, Green, Helmick, Love, McCabe, Prezioso, Unger, Barnes, Deem, Facemyer and McKenzie.

### **PENSIONS**

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

SENATE COMMITTEES

**RULES**

Tomblin (*Chair*), Bowman, Chafin, Helmick, Kessler, Prezioso, Sharpe, McKenzie, Boley and Caruth.

**TRANSPORTATION AND INFRASTRUCTURE**

Unger (*Chair*), Jenkins (*Vice Chair*), Fanning, Love, Stollings, White, Barnes, Facemyer and McKenzie.

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**JOINT COMMITTEES**

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**ENROLLED BILLS**

White (Co-Chair), Green, Love, Sprouse and Yoder.



# LEGISLATURE OF WEST VIRGINIA

# ACTS

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FIRST REGULAR SESSION, 2007

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## CHAPTER 1

**(H.B. 2956 - By Delegates Webster, DeLong, Ellem,  
Fleischauer, Hamilton, Hrutkay, M. Poling, Proudfoot,  
Morgan, Varner and White)**

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[Passed March 9, 2007; in effect ninety days from passage.]  
[Approved by the Governor on April 4, 2007.]

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AN ACT to amend and reenact §56-1-1 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new section, designated §56-1-1a, relating to civil actions filed in the courts of the state; repealing unconstitutional venue provision; and the codification of the doctrine of forum non conveniens.

*Be it enacted by the Legislature of West Virginia:*

That §56-1-1 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 §56-1-1a, all to read as follows:

**ARTICLE 1. VENUE.**

§ 56-1-1. Venue generally.

§ 56-1-1a. Forum non conveniens.

**§ 56-1-1. Venue generally.**

1 (a) Any civil action or other proceeding, except where  
2 it is otherwise specially provided, may hereafter be brought  
3 in the circuit court of any county:

4 (1) Wherein any of the defendants may reside or the  
5 cause of action arose, except that an action of ejectment or  
6 unlawful detainer must be brought in the county wherein the  
7 land sought to be recovered, or some part thereof, is;

8 (2) If a corporation be a defendant, wherein its principal  
9 office is or wherein its mayor, president or other chief  
10 officer resides; or if its principal office be not in this state,  
11 and its mayor, president or other chief officer do not reside  
12 therein, wherein it does business; or if it be a corporation  
13 organized under the laws of this state which has its principal  
14 office located outside of this state and which has no office  
15 or place of business within the state, the circuit court of the  
16 county in which the plaintiff resides or the circuit court of  
17 the county in which the seat of state government is located  
18 shall have jurisdiction of all actions at law or suits in equity  
19 against the corporation, where the cause of action arose in  
20 this state or grew out of the rights of stockholders with  
21 respect to corporate management;

22 (3) If it be to recover land or subject it to a debt, where  
23 the land or any part may be;

24 (4) If it be against one or more nonresidents of the state,  
25 where any one of them may be found and served with  
26 process or may have estate or debts due him or them;

27 (5) If it be to recover a loss under any policy of  
28 insurance upon either property, life or health or against  
29 injury to a person, where the property insured was situated  
30 either at the date of the policy or at the time when the right  
31 of action accrued or the person insured had a legal  
32 residence at the date of his or her death or at the time when  
33 the right of action accrued;

34 (6) If it be on behalf of the state in the name of the  
35 attorney general or otherwise, where the seat of government  
36 is; or

37 (7) If a judge of a circuit be interested in a case which,  
38 but for such interest, would be proper for the jurisdiction of  
39 his or her court, the action or suit may be brought in any  
40 county in an adjoining circuit.

41 (b) Whenever a civil action or proceeding is brought in  
42 the county where the cause of action arose under the  
43 provisions of subsection (a) of this section, if no defendant  
44 resides in the county, a defendant to the action or  
45 proceeding may move the court before which the action is  
46 pending for a change of venue to a county where one or  
47 more of the defendants resides and upon a showing by the  
48 moving defendant that the county to which the proposed  
49 change of venue would be made would better afford  
50 convenience to the parties litigant and the witnesses likely  
51 to be called, and if the ends of justice would be better served  
52 by the change of venue, the court may grant the motion.

**§56-1-1a. Forum non conveniens.**

1 (a) In any civil action if a court of this state, upon a  
2 timely written motion of a party, finds that in the interest of  
3 justice and for the convenience of the parties a claim or  
4 action would be more properly heard in a forum outside this  
5 state, the court shall decline to exercise jurisdiction under  
6 the doctrine of forum non conveniens and shall stay or  
7 dismiss the claim or action, or dismiss any plaintiff:  
8 *Provided*, That the plaintiff's choice of a forum is entitled to  
9 great deference, but this preference may be diminished  
10 when the plaintiff is a nonresident and the cause of action  
11 did not arise in this state. In determining whether to grant a  
12 motion to stay or dismiss an action, or dismiss any plaintiff  
13 under the doctrine of forum non conveniens, the court shall  
14 consider:

15 (1) Whether an alternate forum exists in which the claim  
16 or action may be tried;

17 (2) Whether maintenance of the claim or action in the  
18 courts of this state would work a substantial injustice to the  
19 moving party;

20 (3) Whether the alternate forum, as a result of the  
21 submission of the parties or otherwise, can exercise  
22 jurisdiction over all the defendants properly joined to the  
23 plaintiff's claim;

24 (4) The state in which the plaintiff(s) reside;

25 (5) The state in which the cause of action accrued;

26 (6) Whether the balance of the private interests of the  
27 parties and the public interest of the state predominate in  
28 favor of the claim or action being brought in an alternate  
29 forum, which shall include consideration of the extent to  
30 which an injury or death resulted from acts or omissions



31 that occurred in this state. Factors relevant to the private  
32 interests of the parties include, but are not limited to, the  
33 relative ease of access to sources of proof; availability of  
34 compulsory process for attendance of unwilling witnesses;  
35 the cost of obtaining attendance of willing witnesses;  
36 possibility of a view of the premises, if a view would be  
37 appropriate to the action; and all other practical problems  
38 that make trial of a case easy, expeditious and inexpensive.  
39 Factors relevant to the public interest of the state include,  
40 but are not limited to, the administrative difficulties flowing  
41 from court congestion; the interest in having localized  
42 controversies decided within the state; the avoidance of  
43 unnecessary problems in conflict of laws, or in the  
44 application of foreign law; and the unfairness of burdening  
45 citizens in an unrelated forum with jury duty;

46 (7) Whether not granting the stay or dismissal would  
47 result in unreasonable duplication or proliferation of  
48 litigation; and

49 (8) Whether the alternate forum provides a remedy.

50 (b) A motion pursuant to subsection (a) of this section is  
51 timely if it is filed either concurrently or prior to the filing  
52 of either a motion pursuant to Rule twelve of the West  
53 Virginia Rules of Civil Procedure or a responsive pleading  
54 to the first complaint that gives rise to the grounds for such  
55 a motion: *Provided*, That a court may, for good cause  
56 shown, extend the period for the filing of such a motion.

57 (c) If the statute of limitations in the alternative forum  
58 expires while the claim is pending in a court of this state,  
59 the court shall grant a dismissal under this section only if  
60 each defendant waives the right to assert a statute of  
61 limitation defense in the alternative forum. The court may  
62 further condition a dismissal under this section to allow for

63 the reinstatement of the same cause of action in the same  
64 forum in the event a suit on the same cause of action or on  
65 any cause of action arising out of the same transaction or  
66 occurrence is commenced in an appropriate alternative  
67 forum within sixty days after the dismissal under this  
68 section and such alternative forum declines jurisdiction.

69 (d) Except as provided in subsection (b), section one of  
70 this article, if an action involves both legal resident and non-  
71 resident plaintiffs, the court may not stay or dismiss the  
72 action under subsection (a) if the plaintiffs who are legal  
73 residents of this state are properly joined in the action and  
74 the action arose out of a single occurrence. The court shall  
75 dismiss a claim under subsection (a) if the court finds by a  
76 preponderance of the evidence that a party was joined solely  
77 for the purpose of obtaining or maintaining jurisdiction in  
78 this state and the party's claim would be more properly  
79 heard in a forum outside this state.

80 (e) In actions filed pursuant to Rule twenty-three of the  
81 West Virginia Rules of Civil Procedure the provisions of  
82 this section shall apply only to the class representative(s).

83 (f) A court that grants a motion to stay or dismiss an  
84 action pursuant to this section shall set forth specific  
85 findings of fact and conclusions of law.

86 (g) For the purposes of this section "legal resident"  
87 means an individual who is a resident of West Virginia at  
88 the time the cause of action arose or at the time the action is  
89 filed, without regard to the individual's country of  
90 citizenship or national origin. The term does not include an  
91 individual who adopts a residence in this State in bad faith  
92 for purposes of avoiding the application of this section.



## CHAPTER 2

**(S.B. 335 - By Senators Tomblin, Mr. President, Fanning, Chafin, Kessler, McCabe, White and Jenkins)**

[Passed March 7, 2007; in effect ninety days from passage.]  
[Approved by the Governor on April 4, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-15-4c; and to amend and reenact §11-22-2 of said code, all relating to the West Virginia Affordable Housing Trust Fund generally; imposing a fee of twenty dollars on the transfer of real property in addition to the excise tax imposed on property transfers; imposing a fee of twenty dollars in addition to the consumers sales and service tax on the sale of factory-built homes by licensed dealers; dedicating the revenue from the additional fees to the West Virginia Affordable Housing Trust Fund; and authorizing expenditures for administrative and operating expenses.

*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 §11-15-4c; and that §11-22-2 of said code be amended and reenacted, all to read as follows:

**Article**

**15. Consumers Sales and Service Tax.**

**22. Excise Tax on Privilege of Transferring Real Property.**

**ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**

**§11-15-4c. Collection of fee in addition to the consumers sales tax for sales of mobile factory-built homes; deposit of additional fee in West Virginia Affordable Housing Trust Fund.**

1 (a) There is imposed, in addition to the sales tax  
2 imposed by the provisions of this article and article fifteen-a  
3 of this chapter, a fee of twenty dollars on all sales by  
4 licensed dealers of factory-built homes as that term is  
5 defined in section two, article fifteen, chapter thirty-seven  
6 of this code to be collected as provided in article fifteen-b of  
7 this chapter and remitted to the Tax Commissioner to be  
8 deposited by the commissioner in the West Virginia  
9 Affordable Housing Trust Fund, as provided in article  
10 eighteen-d, chapter thirty-one of this code.

11 (b) The moneys collected from this additional fee shall  
12 be segregated from other funds in the West Virginia  
13 Affordable Housing Trust Fund and shall be accounted for  
14 separately. Not more than ten percent of these additional  
15 moneys may be expended by the West Virginia Affordable  
16 Housing Trust Fund to defray administrative and operating  
17 costs and expenses actually incurred by the West Virginia  
18 Affordable Housing Trust Fund.

**ARTICLE 22. EXCISE TAX ON PRIVILEGE OF TRANSFERRING REAL PROPERTY.**

**§11-22-2. Rate of tax; when and by whom payable; additional county tax.**

1 (a) Every person who delivers, accepts or presents for  
2 recording any document, or in whose behalf any document  
3 is delivered, accepted or presented for recording, is subject  
4 to pay for, and in respect to the transaction or any part  
5 thereof, a state excise tax upon the privilege of transferring

6 title to real estate at the rate of one dollar and ten cents for  
7 each five hundred dollars' value or fraction thereof as  
8 represented by the document as defined in section one of  
9 this article. The state tax is payable at the time of delivery,  
10 acceptance or presenting for recording of the document. In  
11 addition to the state excise tax described in this subsection,  
12 there is assessed a fee of twenty dollars upon the privilege  
13 of transferring real estate for consideration. The clerk of the  
14 county commission shall collect the additional twenty-dollar  
15 fee before recording a transfer of title to real estate and shall  
16 deposit the moneys from the additional fees into the West  
17 Virginia Affordable Housing Trust Fund as provided in  
18 article eighteen-d, chapter thirty-one of this code. The  
19 moneys collected from this additional fee shall be  
20 segregated from other funds in the West Virginia  
21 Affordable Housing Trust Fund and shall be accounted for  
22 separately. Not more than ten percent of these additional  
23 moneys may be expended by the West Virginia Affordable  
24 Housing Trust Fund to defray administrative and operating  
25 costs and expenses actually incurred by the West Virginia  
26 Affordable Housing Trust Fund. The Housing  
27 Development Fund, as fiscal agent of the West Virginia  
28 Affordable Housing Trust Fund, shall publish monthly on  
29 the internet site an accounting of all revenue deposited into  
30 the fund during the month and a full disclosure of all  
31 expenditures from the fund including the group receiving  
32 funds, their location and any contractor awarded the  
33 construction contract. Additionally, the West Virginia  
34 Affordable Housing Trust Fund is to provide an annual  
35 report to the Joint Committee on Government and Finance  
36 before the first day of December, two thousand seven, and  
37 each year thereafter.

38 (b) Effective the first day of January, one thousand nine  
39 hundred sixty-eight, and thereafter, there is imposed an  
40 additional county excise tax for the privilege of transferring

41 title to real estate at the rate of fifty-five cents for each five  
42 hundred dollars' value or fraction thereof as represented by  
43 such document as defined in section one of this article,  
44 which county tax shall be payable at the time of delivery,  
45 acceptance or presenting for recording of such document:  
46 *Provided*, That after the first day of July, one thousand nine  
47 hundred eighty-nine, the county may increase said excise  
48 tax to an amount equal to the state excise tax. The  
49 additional tax hereby imposed is declared to be a county tax  
50 and to be used for county purposes: *Provided, however*,  
51 That only one such state tax and one such county tax shall  
52 be paid on any one document and shall be collected in the  
53 county where the document is first admitted to record and  
54 the tax shall be paid by the grantor therein unless the  
55 grantee accepts the document without such tax having been  
56 paid, in which event such tax shall be paid by the grantee:  
57 *Provided further*, That on any transfer of real property from  
58 a trustee or a county clerk transferring real estate sold for  
59 taxes, such tax shall be paid by the grantee. The county  
60 excise tax imposed under this section may not be increased  
61 in any county unless the increase is approved by a majority  
62 vote of the members of the county commission of such  
63 county. Any county commission intending to increase the  
64 excise tax imposed in its county shall publish a notice of its  
65 intention to increase such tax not less than thirty days nor  
66 more than sixty days prior to the meeting at which such  
67 increase will be considered, such notice to be published as a  
68 Class I legal advertisement in compliance with the  
69 provisions of article three, chapter fifty-nine of this code  
70 and the publication area shall be the county in which such  
71 county commission is located.

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CHAPTER 3

**(H.B.3090 - By Delegates Morgan, Kominar  
and Eldridge)**

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[Passed March 2, 2007; in effect ninety days from passage.]  
[Approved by the Governor on March 13, 2007.]

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AN ACT to amend and reenact §19-12A-1a of the Code of West Virginia, 1931, as amended, relating to the Weston State Hospital Institutional Farm property; transferring the Weston State Hospital Institutional Farm to the Department of Health and Human Resources; permitting the Department of Agriculture to retain all oil, gas and mineral rights; permitting the Department of Health and Human Resources to sell the property; and providing the Lewis County Commission retain ownership of the communication tower located on the property.

*Be it enacted by the Legislature of West Virginia:*

That §19-12A-1a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 12A. LAND DIVISION.**

**§19-12A-1a. Farm management commission abolished; property transferred; powers and duties of commissioner of agriculture.**

- 1 (a) The farm management commission previously
- 2 established by this article is hereby abolished. The real and

3 personal property held by the commission, including all  
4 institutional farms and all easements, mineral rights,  
5 appurtenances, farm equipment, agricultural products,  
6 inventories and farm facilities, operating revenue funds for  
7 those operations, and all employees of the farm  
8 management commission, are hereby transferred to the  
9 Department of Agriculture. The Commissioner of the  
10 Department of Agriculture shall have all those powers,  
11 duties and responsibilities previously vested in the farm  
12 management commission and the farm management director  
13 pursuant to this article.

14 (b) Not later than the first day of January, one thousand  
15 nine hundred ninety-five, the Commissioner of the  
16 Department of Agriculture shall report to the Legislature on  
17 the optimum use or disposition of each institutional farm  
18 transferred pursuant to this section. The commissioner shall  
19 set forth the objectives of the agency with respect to the  
20 land, the criteria by which the agency has determined the  
21 optimum use or disposition of the property, and  
22 determinations as to whether the land shall be used in the  
23 production of food products, the production or development  
24 of natural resources, held for recreational or other specified  
25 uses, or sold, or leased in whole or in part. With respect to  
26 each institutional farm, the commissioner shall report on  
27 which properties are subject to reversionary clauses or other  
28 restrictions in deeds of conveyance which may affect  
29 permitted uses, or proposed sales or leases. With respect to  
30 each institutional farm, the commissioner shall report on  
31 projected revenues and expenses from operations. Planned  
32 activities and uses with respect to the land shall be detailed  
33 for at least five years specifically and at least ten years  
34 generally and shall include a cost benefit analysis of options  
35 or alternatives for action. In the case of land managed for  
36 production of timber, the commissioner shall report on  
37 projections for timber harvesting on a sustained-yield basis,



38 income estimates, and the years in which income will be  
39 generated. The report shall detail planned actions to protect  
40 the land from erosion, fire, plant and animal pests, noxious  
41 insects, noxious weeds and plant and animal diseases. In  
42 the case of land subject to rights granted by existing  
43 contracts, leases, licenses or easements, the report shall  
44 include a determination as to whether the interest granted  
45 should be continued or withdrawn. In the case of land  
46 managed under land management plans adopted prior to the  
47 effective date of this section, land management plans shall  
48 be reviewed and amended as may be necessary. When  
49 appropriate, the commissioner shall consult with the  
50 secretaries of the various departments of state government  
51 and shall request from the secretaries suggestions for land  
52 use and resource development on the land. In the case of  
53 land recommended for sale, lease, or transfer, the report  
54 shall include the review and approval of the director of the  
55 West Virginia Development Office of the proposed use and  
56 alternate suggestions for use of any institutional farm which  
57 may be in the public interest. Notwithstanding any other  
58 provision of this subsection to the contrary, title to the  
59 Weston State Hospital Institutional Farm, located at  
60 Weston, Lewis County, is hereby transferred from the  
61 Department of Agriculture to the Department of Health and  
62 Human Resources, including all buildings thereon:  
63 *Provided*, That the Department of Agriculture shall retain  
64 all oil, gas and mineral rights, interests and title underlying  
65 the surface of the real property being transferred to the  
66 Department of Health and Human Resources under this  
67 subsection.

68 The Secretary of the Department of Health and Human  
69 Resources is authorized to sell, lease, donate or otherwise  
70 transfer the Weston State Hospital Institutional Farm, as  
71 well as the grounds of the former Weston State Hospital  
72 including the improvements and appurtenances belonging

73 thereto: *Provided*, That notice of the sale of the real estate  
74 at auction shall include the right of the state to reject any  
75 and all bids: *Provided, however*, That the deed conveying  
76 title to the real estate shall contain a reservation in it  
77 providing that the communications tower, located on the  
78 real estate and owned and maintained by the county  
79 commission of Lewis County, shall remain the property of  
80 the Lewis County Commission and shall remain on the real  
81 estate free of any cost or rent and the county commission of  
82 Lewis County shall have an easement for ingress and egress  
83 and for the maintenance of the tower in perpetuity unless  
84 agreed otherwise in writing by the county commission of  
85 Lewis County.

86 (c) Nothing in this section shall be construed to limit the  
87 duties imposed on the Department of Health and Human  
88 Resources and the Division of Corrections to purchase food  
89 products pursuant to section five of this article and to make  
90 interdepartmental transfers pursuant to section six of this  
91 article: *Provided*, That purchases shall be made from and  
92 transfers made to the Department of Agriculture.

93 (d) Nothing in this section shall be construed to  
94 invalidate any action or contractual obligation of the farm  
95 management commission prior to the effective date of this  
96 section.

97 (e) Notwithstanding the provisions of subsection (b) of  
98 this section, in any case where the farm management  
99 commission has determined by motion adopted prior to the  
100 effective date of this article that an institutional farm or part  
101 thereof should be transferred or disposed of, or authorized  
102 any formal agreement for this purpose, whether or not any  
103 documents related to the agreement have been reduced to  
104 writing or executed, the commissioner shall execute all

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AGRICULTURE

105 documents and take all necessary actions to implement the  
106 transfer or disposition of the property.

107 (f) For any land transferred to the public land  
108 corporation for sale, exchange or transfer pursuant to  
109 section five of this article, the farm property shall be offered  
110 for sale in both small parcels of land and as whole farms  
111 and shall be sold in the form which brings the highest price  
112 for the total property. For purposes of this subsection,  
113 "small parcels" means parcels of no more than five acres.



## CHAPTER 4

**(S.B. 431 - By Senators Edgell and Love)**

\_\_\_\_\_  
[Passed March 5, 2007; in effect from passage.]  
[Approved by the Governor on March 28, 2007.]  
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AN ACT to amend and reenact §19-15A-1, §19-15A-2, §19-15A-3, §19-15A-4, §19-15A-5, §19-15A-6, §19-15A-7, §19-15A-8, §19-15A-9 and §19-15A-10 of the Code of West Virginia, 1931, as amended, all relating to the regulation of agricultural liming materials; and updating definitions.

*Be it enacted by the Legislature of West Virginia:*

That §19-15A-1, §19-15A-2, §19-15A-3, §19-15A-4, §19-15A-5, §19-15A-6, §19-15A-7, §19-15A-8, §19-15A-9 and §19-15A-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 15A. WEST VIRGINIA AGRICULTURAL  
LIMING MATERIALS LAW.**

- §19-15A-1. Definitions of words and terms.
- §19-15A-2. Registration of brands; registration fees.
- §19-15A-3. Required labeling; toxic materials prohibited.
- §19-15A-4. Inspection fee; report of tonnage; annual report.
- §19-15A-5. Inspection; sampling; analysis.
- §19-15A-6. Embargo; suspension or cancellation of registration; seizure of materials.
- §19-15A-7. Deficiency assessment, tollerances and payment.
- §19-15A-8. Rule-making authority.
- §19-15A-9. Disposition of fees.
- §19-15A10. Penalties.

**§19-15A-1. Definitions of words and terms.**

1 As used in this article:

2 (a) "Agricultural liming material" means a product that  
3 contains calcium and magnesium carbonate, hydroxide or  
4 oxide which are capable of neutralizing soil acidity.

5 (b) "Brand" means the term, designation, trademark,  
6 product name or other specific designation under which  
7 individual agricultural liming materials are offered for sale.

8 (c) "Bulk" means materials in nonpackaged form.

9 (d) "Burnt lime" means a calcined material comprised  
10 chiefly of calcium oxide in natural association with lesser  
11 amounts of magnesium, and which is capable of slaking  
12 with water.

13 (e) "Calcium carbonate equivalent" (CCE) is an  
14 expression of the acid-neutralizing capacity of an  
15 agricultural liming material relative to that of a pure calcium  
16 carbonate, expressed as a percentage.

17 (f) "Commissioner" means the Commissioner of  
18 Agriculture of the State of West Virginia or his or her duly  
19 authorized agent.

20 (g) "Distributor" means any person who sells or offers  
21 for sale agricultural liming products that are registered  
22 pursuant to this article, but does not include persons who  
23 retail registered products in nonbulk form to the ultimate  
24 consumer.

25 (h) "Dolomite" means an agricultural liming material  
26 composed chiefly of carbonates of magnesium and calcium  
27 in substantially equimolar (1-1.19) proportions.

28 (i) "Embargo" means an order prohibiting the sale,  
29 processing, mixing, transporting and use of any product.

30 (j) "Fineness" means the percentage by weight of the  
31 material which will pass U. S. standard sieves of specific  
32 sizes.

33 (k) "Ground shells" means a material obtained by  
34 grinding the shells of mollusks.

35 (l) "High calcic liming material" means an agricultural  
36 liming material containing at least twenty-five percent  
37 calcium and at least ninety-one percent of the total calcium  
38 and magnesium is calcium.

39 (m) "High magnesian liming material" means an  
40 agricultural liming material containing at least six percent  
41 magnesium.

42 (n) "Hydrated lime" means a material made from burnt  
43 lime.

44 (o) "Industrial coproduct" means any industrial waste or  
45 by-product containing calcium or calcium and magnesium  
46 in forms that will neutralize soil acidity which may be  
47 designated by prefixing the name of the industry or process  
48 by which it is produced, including, but not limited to: Gas-  
49 house lime, tanners' lime, acetylene lime-waste, lime-kin  
50 ashes and calcium silicate.

51 (p) "Label" means any written or printed matter on or  
52 attached to the package or on the delivery ticket which  
53 accompanies bulk shipments.

54 (q) "Limestone" means a material consisting essentially  
55 of calcium carbonate or a combination of calcium carbonate  
56 with magnesium carbonate capable of neutralizing soil  
57 acidity.

58 (r) "Marl" means a granular or loosely consolidated  
59 earthy material composed largely of shell fragments and  
60 calcium carbonate precipitated in ponds.

61 (s) "Percent or percentage" means a part of a whole  
62 expressed in hundredths by weight.

63 (t) "Person" means any individual, partnership,  
64 association, fiduciary, firm, corporation or any organized  
65 group of persons whether incorporated or not.

66 (u) "Registrant" is a person who registers agricultural  
67 liming materials by product and is responsible for the  
68 guarantee of the product.

69 (v) "Type" means the designation given to the product  
70 from its source material.

71 (w) "Ton" means a weight of two thousand pounds  
72 avoirdupois.

73 (x) "Weight" means the weight of undried liming  
74 material as offered for sale.

**§19-15A-2. Registration of brands; registration fees.**

1 (a) Agricultural liming material may not be used, sold or  
2 offered for sale in the state unless it has been registered with  
3 the commissioner.

4 (b) Application for registration shall be made to the  
5 commissioner on forms approved or supplied by the  
6 commissioner. Each separately identified agricultural  
7 liming material shall be registered before being distributed  
8 or used in the state.

9 (c) The commissioner shall collect a registration fee for  
10 each brand of the agricultural liming material registered and  
11 a registration fee from all distributors of agricultural liming  
12 materials. The commissioner shall set the registration fees  
13 by legislative rule.

14 (d) All registrations shall expire at the end of the  
15 calendar year of issue unless sooner revoked by the  
16 commissioner as provided in section six of this article.

17 (e) Valid registrants of agricultural liming materials are  
18 exempt from obtaining a distributors permit, unless  
19 distributing another registrants product.

**§19-15A-3. Required labeling; toxic materials prohibited.**

1 (a) A person may not sell, offer to sell or expose for sale  
2 in the state any agricultural liming materials which do not

3 have affixed to the outside of each package in a conspicuous  
4 manner a plainly printed, stamped or otherwise marked  
5 label, tag or statement or, in the case of bulk sales, a  
6 delivery invoice including at least the following:

7 (1) The name and principal business address of the  
8 manufacturer or distributor.

9 (2) The brand name of the agricultural liming material.

10 (3) The identification of the product as to the type of  
11 liming material.

12 (4) The net weight of the agricultural liming material.

13 (5) The minimum percentage of calcium oxide and  
14 magnesium oxide or calcium carbonate and magnesium  
15 carbonate.

16 (6) The calcium carbonate equivalent as determined by  
17 methods prescribed by the Association of Official  
18 Analytical Chemists International (AOAC).

19 (7) The minimum percent by weight passing through  
20 United States standard sieves.

21 (8) The fineness classification of the material.

22 (b) A copy of the statement provided for in subsection  
23 (a) of this section shall be posted for each brand sold in bulk  
24 at each site where purchase orders are accepted or from  
25 which deliveries for such liming materials are made.

26 (c) No information or statement may appear on any  
27 package, label, delivery invoice or advertisement which  
28 gives a false or misleading impression to the purchaser as to



29 the quality, analysis, type or composition of the liming  
30 material.

31 (d) When agricultural liming material has been  
32 adulterated subsequent to packaging, labeling or loading  
33 thereof and before delivery has been made to the consumer,  
34 conspicuous, plainly worded notice to that effect shall be  
35 affixed by the vendor to the package or delivery invoice to  
36 identify the kind and degree of adulteration therein:  
37 *Provided*, That agricultural liming material may not be sold  
38 or offered for sale in the state which contains toxic materials  
39 in quantities injurious to plants or animals when applied  
40 according to directions.

**§19-15A-4. Inspection fee; report of tonnage; annual report.**

1 (a) Each sales invoice prepared in normal course of  
2 business by either a registrant or distributor shall reflect the  
3 amount of the inspection fee and the name of the payor.

4 (b) Within thirty days following the thirtieth day of June  
5 and the thirty-first day of December of each year, each  
6 registrant and distributor shall submit on a form furnished  
7 by the commissioner a summary of tons of each agricultural  
8 liming material sold or distributed by each registrant and  
9 distributor in the state during the previous six months'  
10 period. The report of tonnage shall be accompanied by  
11 payment of an inspection fee as established by legislative  
12 rule. If the tonnage, or portion thereof, has been paid by  
13 another person, documentation by invoice must accompany  
14 such report. The semiannual payment and late fee shall be  
15 established by legislative rule.

16 (c) The commissioner shall publish annually on the  
17 Department of Agriculture's website a composite report  
18 showing the net tons of agricultural liming material sold in

19 this state during the preceding period. This report may not  
20 divulge information that can be related to the business of  
21 any individual registrant.

**§19-15A-5. Inspection; sampling; analysis.**

1 (a) The commissioner shall audit, inspect, sample,  
2 analyze and test agricultural liming materials used, sold or  
3 offered for sale within the state as he or she considers  
4 necessary to determine whether the agricultural liming  
5 materials are in compliance with the provisions of this  
6 article. For this purpose the commissioner may enter upon  
7 any public or private premises or carriers during reasonable  
8 times to inspect and sample liming materials and to inspect  
9 records related to their distribution.

10 (b) The methods of analysis and sampling shall be those  
11 approved by the commissioner and guided by the AOAC  
12 procedures.

13 (c) The results of official analyses of agricultural liming  
14 materials and portions of official samples shall be  
15 distributed by the commissioner as he or she considers  
16 necessary to carry out the enforcement of this article.

17 (d) The commissioner shall, on request, provide the  
18 registrant with a portion of the official sample: *Provided*,  
19 That the request is made within thirty days of the  
20 assessment of a violation.

21 (e) In determining whether any agricultural liming  
22 material is deficient in guarantee, the commissioner shall be  
23 guided solely by the official sample.

**§19-15A-6. Embargo; suspension or cancellation of registration;  
seizure of materials.**

1 (a) The commissioner may suspend or cancel the  
2 registration of any brand of agricultural liming material and  
3 may refuse the application for registration of any brand of  
4 agricultural liming material upon being presented  
5 satisfactory evidence that the registrant has used false,  
6 fraudulent or deceptive practices in the evasion or attempted  
7 evasion of the provisions of this article or any related rule:  
8 *Provided*, That no registration shall be suspended, revoked  
9 or refused until the registrant has been given an opportunity  
10 to appear for a hearing before the commissioner.

11 (b) The commissioner may issue an embargo order to the  
12 owner or custodian of any lot of agricultural liming material  
13 when he or she finds said agricultural liming material is  
14 being offered or exposed for sale in violation of any of the  
15 provisions of this article or related rule. The order shall  
16 remain in effect until it has been rescinded in writing by the  
17 commissioner: *Provided*, That the commissioner may not  
18 rescind any embargo order until the requirements of this  
19 article have been complied with and all related costs and  
20 expenses have been paid.

21 (c) Any agricultural liming material found to be in  
22 violation of the provisions of this article is subject to seizure  
23 on complaint of the commissioner to a court of competent  
24 jurisdiction in the county in which such agricultural liming  
25 material is located. If the court orders the condemnation of  
26 such material it shall be disposed of in a manner consistent  
27 with the quality of the agricultural liming material and the  
28 laws of the state. The court may not order the disposition of  
29 agricultural liming material without first giving the owner  
30 or custodian an opportunity to apply to the court for release  
31 of the agricultural liming material or for permission to  
32 process or relabel the agricultural liming material to bring it  
33 in compliance with this article.

**§19-15A-7. Deficiency assessment, tolerances and payment.**

1 (a) A registrant shall pay a deficiency assessment in  
2 accordance with the provisions of this section for each lot of  
3 agricultural liming material found to be deficient in its  
4 guaranteed analysis. Deficiencies existing in more than one  
5 component shall be considered additional violations.

6 (b) A registrant shall pay the deficiency assessment to  
7 the ultimate consumer of the product and deliver receipts for  
8 the payment to the commissioner. If the ultimate consumer  
9 is not known, the penalty assessed shall be paid to the  
10 commissioner and deposited as set forth in section nine of  
11 this article.

12 (c) If a deficiency assessment has not been paid within  
13 sixty days of the notice of the assessment, then a late  
14 payment penalty, as established by legislative rule, will be  
15 added for each one hundred eighty days that the assessment  
16 remains unpaid.

**§19-15A-8. Rule-making authority.**

1 The commissioner shall propose rules for legislative  
2 approval in accordance with article three, chapter twenty-  
3 nine-a of this code to establish, implement and enforce the  
4 provisions of this article, which rules shall include, but not  
5 be limited to:

6 (1) The minimum acceptable fineness classifications;

7 (2) The minimum acceptable calcium carbonate  
8 equivalents for agricultural liming materials; and

9 (3) The establishment of fees required by this article.

**§19-15A-9. Disposition of fees.**

1 Any fees and penalties collected under the provisions of  
2 this article shall be deposited with the State Treasurer in a  
3 special revenue account known as the Agricultural Fee Fund  
4 as established in article one, chapter nineteen of this code.

**§19-15A-10. Penalties.**

1 Any person violating any of the provisions of this article  
2 or related rule shall be guilty of a misdemeanor and, upon  
3 conviction, shall be fined not less than two hundred dollars  
4 nor more than three hundred dollars for the first offense and  
5 not less than three hundred dollars nor more than one  
6 thousand dollars for each subsequent offense.

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**CHAPTER 5**

**(Com. Sub for S.B. 528 - By Senator Kessler)**

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[Passed March 10, 2007; in effect July 1, 2007.]  
[Approved by the Governor on March 28, 2007.]

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AN ACT to amend and reenact §19-16A-7 and §19-16A-23 of the Code of West Virginia, 1931, as amended, all relating to depositing the pesticide dealer, commercial and private applicator and business applicator license fees into the Pesticide Control Fund.

*Be it enacted by the Legislature of West Virginia:*

That §19-16A-7 and §19-16A-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 16A. WEST VIRGINIA PESTICIDE CONTROL ACT.**

§19-16A-7. Annual pesticide business license.

§19-16A-23. Continuation of Pesticide Control Fund in State Treasury; disposition of certain fees to General Revenue Fund.

**§19-16A-7. Annual pesticide business license.**

1 (a) No person may engage in the application of  
 2 pesticides for hire at any time without a pesticide  
 3 application business license issued by the commissioner.  
 4 The commissioner shall require an annual fee for each  
 5 pesticide application business license issued as prescribed  
 6 by rules promulgated under this article.

7 (b) Application for a pesticide application business  
 8 license shall be made in writing to the commissioner on  
 9 forms approved or supplied by the commissioner. Each  
 10 application for a license shall contain information regarding  
 11 the applicant's qualifications and proposed operations,  
 12 license classification or classifications the applicant is  
 13 applying for and shall include the following:

14 (1) The full name of the person applying for the license;

15 (2) If different from subdivision (1) of this subsection,  
 16 the full name of the individual qualifying under subsection  
 17 (c) of this section;

18 (3) If the applicant is a person other than an individual,  
 19 the full name of each member of the firm or partnership or

20 the names of the officers of the association, corporation or  
21 group;

22 (4) The principal business address of the applicant in the  
23 state and elsewhere;

24 (5) The address of each branch office or suboffice from  
25 which the business of applying pesticides is carried on.  
26 Each suboffice shall be licensed;

27 (6) The name and address of each certified commercial  
28 applicator applying pesticides or supervising the application  
29 of pesticides for the pesticide application business;

30 (7) State tax number; and

31 (8) Any other necessary information prescribed by the  
32 commissioner.

33 (c) The commissioner may not issue a pesticide  
34 application business license until the owner, manager,  
35 partner or corporate officer is qualified by passing an  
36 examination to demonstrate to the commissioner his or her  
37 knowledge of the state and federal pesticide laws, safe use  
38 and storage of pesticides. The pesticide application business  
39 shall be limited to the classification or classifications for  
40 which the business maintains certified commercial  
41 applicators in their employ.

42 (d) If the commissioner finds the applicant qualified to  
43 apply pesticides in the classifications the applicant has  
44 applied for, and if the applicant files the financial security  
45 required by this article, and if the applicant applying for a  
46 license to engage in aerial application of pesticides has met  
47 all the requirements of the federal aviation agency, the  
48 aeronautics commission of this state, and any other  
49 applicable federal or state laws or regulations to operate the

50 equipment described in the application, the commissioner  
51 shall issue a pesticide application business license. The  
52 license expires at the end of the calendar year of issue,  
53 unless it has been revoked or suspended prior to expiration  
54 by the commissioner for cause. When the financial security  
55 required under this article is dated to expire at an earlier  
56 date, the license shall be dated to expire upon expiration  
57 date of the financial security. The commissioner may limit  
58 the license of the applicant to certain classifications of pest  
59 control work, or to certain areas or to certain types of  
60 equipment or to certain specific pesticides if the applicant is  
61 only so qualified. If a license is not issued as applied for, the  
62 commissioner shall inform the applicant in writing of the  
63 reasons for the denial.

64 (e) All persons applying pesticides as a pesticide  
65 business, whether or not they are applying restricted-use  
66 pesticides, shall be a certified applicator in the appropriate  
67 category or subcategory or shall be a registered technician  
68 under the direct supervision of a certified commercial  
69 applicator.

70 (f) All funds collected pursuant to this section shall be  
71 deposited in the Pesticide Control Fund of the state pursuant  
72 to section twenty-three of this article.

**§19-16A-23. Continuation of Pesticide Control Fund in State  
Treasury; disposition of certain fees to General  
Revenue Fund.**

1 There is continued a special fund in the State Treasury  
2 to be known as Pesticide Control Fund and may be  
3 expended on order of the commissioner. All product  
4 registration fees, dealer, commercial and private applicator  
5 license fees, pesticide application business license fees,  
6 nondedicated fees and civil penalties collected under this  
7 article shall be placed in the Pesticide Control Fund. The  
8 proceeds of the Pesticide Control Fund may be used in  
9 carrying out the purpose of this article.



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CHAPTER 6

**(Com. Sub. for S.B. 337 - By Senators McCabe, Hunter,  
Unger, Foster and Kessler)**

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[Passed March 10, 2007; in effect ninety days from passage.]  
[Approved by the Governor on April 4, 2007.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §22-5-19, relating to the establishment of a program to inventory emissions, reductions and carbon sequestrations of greenhouse gases; creating a voluntary registry for the reporting of voluntary reductions of greenhouse gas emissions if the reductions are made before they are required by law; clarifying that certain industries are exempt from reporting; providing public recognition of voluntary reduction or avoidance of greenhouse gases; providing definitions; and providing consideration of the reductions under future federal greenhouse gas emission reduction programs.

*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 §22-5-19, to read as follows:

**ARTICLE 5. AIR POLLUTION CONTROL.**

**§22-5-19. Net greenhouse gas inventory.**

1 (a) The secretary is authorized to propose legislative  
2 rules for promulgation in accordance with article three,

3 chapter twenty-nine-a of this code, establishing a net  
4 greenhouse gas inventory to determine whether West  
5 Virginia is a net sink or emitter of greenhouse gas and  
6 whether greenhouse gas can be developed as an asset for  
7 economic development by establishing an inventory using  
8 reasonable estimates of current and future greenhouse gas  
9 emissions. The inventory shall include all significant  
10 emissions, reductions, capture and sequestration of  
11 greenhouse gases from stationary, area and mobile sources,  
12 such as power plants, waste combustors, natural gas/oil  
13 systems, landfills, and waste water treatment facilities,  
14 highway and nonroad sources, agricultural sources and shall  
15 consider direct (geologic) and indirect (terrestrial) carbon  
16 sequestration. Stationary sources are not required to but may  
17 submit to the secretary estimates of carbon sequestration  
18 activities.

19 (b) To inventory greenhouse gas emissions, the  
20 secretary shall establish a program for the reporting and,  
21 where information already exists or is reported to the  
22 department or other state or federal agency, the collection of  
23 greenhouse gas emissions information from all sources that  
24 emit greater than a *de minimis* amount of greenhouse gases  
25 on an annual basis. *De minimis* shall mean emissions from  
26 an individual facility that are equal to or less than ten  
27 thousand tons per year for carbon dioxide, four hundred  
28 seventy-six tons per year for methane, thirty-two and six  
29 tenths tons per year for nitrous oxide, eight hundred fifty-  
30 five thousandths tons per year for hydrofluorocarbons, one  
31 and nine hundredths tons per year for perfluorocarbons and  
32 forty-two hundredths tons per year for sulfur hexafluoride.  
33 Stationary sources shall only be required to report the  
34 annual quantities of nonmobile source, anthropogenic  
35 emissions of greenhouse gases, and shall not be required to  
36 report naturally occurring emissions of greenhouse gases.  
37 Only those stationary sources who are otherwise required to

38 report emissions of regulated air pollutants under rules  
39 promulgated by the secretary pursuant to section four of this  
40 article, shall be required to report their greenhouse gas  
41 emissions under this section. Stationary sources which are  
42 not required to report air emissions under this section and  
43 are regulated by the secretary under the provisions of article  
44 three, chapter twenty-two of this code are not required to,  
45 but may voluntarily, report such emissions. The reporting  
46 entities will be permitted to provide existing and ongoing  
47 documented inventories, such as those provided to the  
48 Environmental Protection Agency's Climate Leaders  
49 Program, Chicago Climate Exchange Registry, the  
50 International Organization for Standardization, the SF6  
51 Emissions Reduction Partnership for Electric Power  
52 Systems or other widely recognized and verified greenhouse  
53 gas inventory programs to completely fulfill their West  
54 Virginia program reporting requirements.

55 (c) The secretary shall establish a voluntary program  
56 under which the department registers voluntary reductions  
57 in emissions of greenhouse gases for reductions made  
58 before mandated by law. The voluntary program shall  
59 include, but not be limited to, developing criteria for  
60 establishing baseline emissions, quantifying emission  
61 reductions and providing public recognition. The  
62 department shall consider the information recorded in the  
63 voluntary emission reduction registry when determining  
64 baselines and reduction requirements under future emission  
65 reduction programs implemented under federal law.

66 (d) To inventory greenhouse gas reductions, the  
67 secretary shall consult and coordinate with other state  
68 agencies and higher education institutions, the citizenry and  
69 other entities such as industry trade groups that have  
70 knowledge or information relating to greenhouse gas  
71 emissions, measurement protocols, greenhouse gas

72 reductions and sequestration including, but not limited to,  
73 the Department of Agriculture, the Division of Forestry,  
74 Marshall University, West Virginia University and the  
75 Department of Transportation. These governmental entities  
76 shall enter into interagency agreements with the secretary  
77 and shall cooperate by: (i) Providing information relating to  
78 greenhouse gas emissions, reductions and sequestration; and  
79 (ii) providing any necessary assistance to the secretary in  
80 effectuating the purposes of this article. The secretary shall  
81 determine the form and format of the information submitted  
82 by these entities.

83 (e) In establishing the net greenhouse gas inventory  
84 program, the department shall make the program as  
85 consistent as possible with other state and federal programs  
86 designed to monitor, quantify and register reductions in  
87 emissions of greenhouse gases as referenced in subsection  
88 (b) of this section.

89 (f) As used in this section, “greenhouse gas” means  
90 carbon dioxide, methane, nitrous oxide, hydrofluorocarbons,  
91 perfluorocarbons and sulfur hexafluoride.



## CHAPTER 7

**(Com. Sub. for S.B. 712 - By Senators Kessler and McKenzie)**

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[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2007.]

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AN ACT to amend and reenact §11-10-5s of the Code of West Virginia, 1931, as amended; to amend and reenact §17-22-7 of said code; to amend and reenact §60-1-5a of said code; to amend and reenact §60-3A-18 of said code; to amend and reenact §60-4-2, §60-4-3, §60-4-3a, §60-4-15 and §60-4-22 of said code; to amend said code by adding thereto a new section, designated §60-4-3b; to amend and reenact §60-6-1 and §60-6-2 of said code; to amend and reenact §60-8-1, §60-8-2, §60-8-3, §60-8-4, §60-8-5, §60-8-6, §60-8-7, §60-8-16, §60-8-18, §60-8-19, §60-8-20, §60-8-23, §60-8-24, §60-8-25, §60-8-26, §60-8-28, §60-8-29, §60-8-30, §60-8-31, §60-8-32 and §60-8-34 of said code; and to amend said code by adding thereto a new section, designated §60-8-6a, all relating to alcohol beverage regulation generally; the regulation of wine; requiring farm wineries to pay taxes and license fees, equalizing wineries with distilleries and farm wineries with mini-distilleries as to signage, licensing, license fees, sales and the use of suppliers and distributors; providing licensing procedure for wineries, farm wineries, suppliers or retailers to sell and direct ship wine for personal consumption by an adult over twenty-one years of age; providing licensing requirements and registration procedures for wine suppliers, subject to a review of all wine labels; amending the definition of “wine”; adding a private wine bed and breakfast license and a private wine spa license; permitting adult patrons at

private wine bed and breakfasts, private wine restaurants, private wine spas and private clubs to recork or reseal, with a tamper resistant cork or seal, for off-premises consumption up to two bottles of unconsumed wine when the sale of wine is accompanied by food or a meal; extending hours retail licensees may sell liquor; permitting a private wine restaurant or a private club to sell from its inventory, for off-premises consumption, one bottle of wine per adult; equalizing certain license fees; adding protections for wineries, farm wineries, suppliers and distributors by requiring written agreements between the parties, a notice of termination and ninety days for a party to either deplete wine inventories or reach some other agreement; and permitting sharing of tax, licensing and enforcement information between the Tax Commissioner and the Alcohol Beverage Control Commissioner.

*Be it enacted by the Legislature of West Virginia:*

That §11-10-5s of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §17-22-7 of said code be amended and reenacted; that §60-1-5a of said code be amended and reenacted; that §60-3A-18 of said code be amended and reenacted; that §60-4-2, §60-4-3, §60-4-3a, §60-4-15 and §60-4-22 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §60-4-3b; that §60-6-1 and §60-6-2 of said code be amended and reenacted; that §60-8-1, §60-8-2, §60-8-3, §60-8-4, §60-8-5, §60-8-6, §60-8-7, §60-8-16, §60-8-18, §60-8-19, §60-8-20, §60-8-23, §60-8-24, §60-8-25, §60-8-26, §60-8-28, §60-8-29, §60-8-30, §60-8-31, §60-8-32 and §60-8-34 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §60-8-6a, all to read as follows:

**Chapter**

**11. Taxation.**

**17. Roads and Highways.**

**60. State Control of Alcoholic Liquors.**

**CHAPTER 11. TAXATION.**

**ARTICLE 10. PROCEDURE AND ADMINISTRATION.**

**§11-10-5s. Disclosure of certain taxpayer information.**

1       (a) *Purpose.* -- The Legislature hereby recognizes the  
2 importance of confidentiality of taxpayer information as a  
3 protection of taxpayers' privacy rights and to enhance  
4 voluntary compliance with the tax law. The Legislature  
5 also recognizes the citizens' right to accountable and  
6 efficient state government. To accomplish these ends, the  
7 Legislature hereby creates certain exceptions to the general  
8 principle of confidentiality of taxpayer information.

9       (b) *Exceptions to confidentiality.* --

10       (1) Notwithstanding any provision in this code to the  
11 contrary, the Tax Commissioner shall publish in the State  
12 Register the name and address of every taxpayer and the  
13 amount, by category, of any credit asserted on a tax return  
14 under articles thirteen-c, thirteen-d, thirteen-e, thirteen-f,  
15 thirteen-g, thirteen-q, thirteen-r and thirteen-s of this chapter  
16 and article one, chapter five-e of this code. The categories  
17 by dollar amount of credit received shall be as follows:

18       (A) More than one dollar, but not more than fifty  
19 thousand dollars;

20       (B) More than fifty thousand dollars, but not more than  
21 one hundred thousand dollars;

22       (C) More than one hundred thousand dollars, but not  
23 more than two hundred fifty thousand dollars;

24 (D) More than two hundred fifty thousand dollars, but  
25 not more than five hundred thousand dollars;

26 (E) More than five hundred thousand dollars, but not  
27 more than one million dollars; and

28 (F) More than one million dollars.

29 (2) Notwithstanding any provision in this code to the  
30 contrary, the Tax Commissioner shall publish in the State  
31 Register the following information regarding any  
32 compromise of a pending civil tax case that occurs on or  
33 after the effective date of this section in which the Tax  
34 Commissioner is required to seek the written  
35 recommendation of the Attorney General and the Attorney  
36 General has not recommended acceptance of the  
37 compromise or when the Tax Commissioner compromises  
38 any civil tax case for an amount that is more than two  
39 hundred fifty thousand dollars less than the assessment of  
40 tax owed made by the Tax Commissioner:

41 (A) The names and addresses of taxpayers that are  
42 parties to the compromise;

43 (B) A summary of the compromise;

44 (C) Any written advice or recommendation rendered by  
45 the Attorney General regarding the compromise; and

46 (D) Any written advice or recommendation rendered by  
47 the Tax Commissioner's staff.

48 Under no circumstances may the tax return of the  
49 taxpayer or any other information which would otherwise  
50 be confidential under any other provisions of law be  
51 disclosed pursuant to the provisions of this subsection.



52 (3) Notwithstanding any provision in this code to the  
53 contrary, the Tax Commissioner may disclose any relevant  
54 return information to the prosecuting attorney for the county  
55 in which venue lies for a criminal tax offense when there is  
56 reasonable cause, based upon and substantiated by the  
57 return information, to believe that a criminal tax law has  
58 been or is being violated.

59 (4) Notwithstanding any provision in this code to the  
60 contrary, the Tax Commissioner may enter into written  
61 exchange of information agreements with the  
62 commissioners of Labor, Employment Security, Alcohol  
63 Beverage Control and Workers' Compensation to disclose  
64 and receive timely return information: *Provided*, That the  
65 Tax Commissioner may promulgate rules pursuant to  
66 chapter twenty-nine-a of this code regarding further  
67 agencies with which written exchange of information  
68 agreements may be sought: *Provided, however*, That the  
69 Tax Commissioner may not promulgate emergency rules  
70 regarding further agencies with which written exchange of  
71 information agreements may be sought. The agreements  
72 shall be published in the State Register and shall only be for  
73 the purpose of facilitating premium collection, tax  
74 collection and facilitating licensure requirements directly  
75 enforced, administered or collected by the respective  
76 agencies. The provisions of this subsection shall not be  
77 construed to preclude or limit disclosure of tax information  
78 authorized by other provisions of this code. Any  
79 confidential return information so disclosed shall remain  
80 confidential in the hands of the other division to the extent  
81 provided by section five-d of this article and by other  
82 applicable federal or state laws.

83 (5) Notwithstanding any provision of this code to the  
84 contrary, the Tax Commissioner may enter into a written

85 agreement with the State Treasurer to disclose to the State  
86 Treasurer the following business registration information:

87 (A) The names, addresses and federal employer  
88 identification numbers of businesses which have registered  
89 to do business in West Virginia; and

90 (B) The type of business activity and organization of  
91 those businesses. Disclosure of this information shall begin  
92 as soon as practicable after the effective date of this  
93 subsection and may be used only for the purpose of  
94 recovery and disposition of unclaimed property in  
95 accordance with the provisions of article eight, chapter  
96 thirty-six of this code. The provisions of this subsection  
97 shall not be construed to preclude or limit disclosure of tax  
98 information authorized by other provisions of this code.  
99 Any confidential return information disclosed hereunder or  
100 thereunder shall otherwise remain confidential to the extent  
101 provided by section five-d of this article and by other  
102 applicable federal or state laws.

103 (c) *Tax expenditure reports.* -- Beginning on the  
104 fifteenth day of January, one thousand nine hundred ninety-  
105 two, and every fifteenth day of January thereafter, the  
106 Governor shall submit to the President of the Senate and the  
107 Speaker of the House of Delegates a tax expenditure report.  
108 This report shall expressly identify all tax expenditures.  
109 Within three-year cycles, the reports shall be considered  
110 together to analyze all tax expenditures by describing the  
111 annual revenue loss and benefits of the tax expenditure  
112 based upon information available to the Tax Commissioner.  
113 For purposes of this section, the term "tax expenditure"  
114 shall mean a provision in the tax laws administered under  
115 this article, including, but not limited to, exclusions,  
116 deductions, tax preferences, credits and deferrals designed  
117 to encourage certain kinds of activities or to aid taxpayers in

118 special circumstances: *Provided*, That the Tax  
119 Commissioner shall promulgate rules setting forth the  
120 procedure by which he or she will compile the reports and  
121 setting forth a priority for the order in which the reports will  
122 be compiled according to type of tax expenditure.

123 (d) *Federal and state return information confidential.* --  
124 Notwithstanding any other provisions of this section or of  
125 this code, no return information made available to the Tax  
126 Commissioner by the Internal Revenue Service or  
127 department or agency of any other state may be disclosed to  
128 another person in any manner inconsistent with the  
129 provisions of Section 6103 of the Internal Revenue Code of  
130 1986, as amended, or of the other states' confidentiality  
131 laws.

## CHAPTER 17. ROAD AND HIGHWAYS.

### ARTICLE 22. OUTDOOR ADVERTISING.

#### §17-22-7. Exceptions to prohibited signs; standards for excepted signs.

1 The provisions of section three of this article shall not  
2 apply to the following: (a) Directional and other official  
3 signs and notices required or authorized by law, including,  
4 but not limited to, signs and notices pertaining to natural  
5 wonders, farm wineries, mini-distilleries, scenic and  
6 historical attractions, which such signs and notices shall  
7 conform to standards respecting lighting, size, number,  
8 spacing and such other appropriate requirements as may be  
9 designated and specified by the Secretary of Transportation  
10 of the United States: *Provided*, That the Commissioner of  
11 the Department of Highways shall not establish any  
12 standards respecting lighting, size, number, spacing and  
13 other appropriate requirements which are stricter than such

14 standards designated and specified by the Secretary of  
 15 Transportation of the United States; (b) signs, displays and  
 16 devices advertising the sale or lease of property upon which  
 17 they are located; and (c) signs, displays and devices  
 18 advertising activities conducted on the property on which  
 19 they are located, including markers of underground utility  
 20 facilities.

## **CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.**

### **Article**

1. **General Provisions.**
- 3A. **Sales By Retail Liquor Licenses.**
4. **Licenses.**
6. **Miscellaneous Provisions.**
8. **Sale of Wines.**

### **ARTICLE 1. GENERAL PROVISIONS.**

#### **§60-1-5a. Farm wineries defined.**

1 (a) For the purpose of this chapter: "Farm winery"  
 2 means an establishment where in any year fifty thousand  
 3 gallons or less of wine and nonfortified dessert wine are  
 4 manufactured exclusively by natural fermentation from  
 5 grapes, other fruits or honey or other agricultural products  
 6 containing sugar and where port, sherry and Madeira wine  
 7 may also be manufactured, with twenty-five percent of such  
 8 raw products being produced by the owner of such farm  
 9 winery on the premises of that establishment and no more  
 10 than twenty-five percent of such produce originating from  
 11 any source outside this state. Any port, sherry or Madeira  
 12 wine manufactured by a winery or a farm winery must not  
 13 exceed an alcoholic content of twenty-two percent alcohol  
 14 by volume and shall be matured in wooden barrels or casks.

15 (b) Notwithstanding the provisions of subsection (a) of  
16 this section, a farm winery may include one off-farm  
17 location. The owner of a farm winery may provide to the  
18 commissioner evidence, accompanied by written findings  
19 by the West Virginia Agriculture Commissioner in support  
20 thereof, that the owner has planted on the premises of the  
21 farm winery young nonbearing fruit plants. The  
22 commissioner may grant permission for one off-farm  
23 location in an amount equal to that reasonably expected to  
24 be produced when the nonbearing fruit plants planted on the  
25 farm winery come into full production. The length of time  
26 of the permission to use an off-farm location shall be  
27 determined by the commissioner after consultation with the  
28 Agriculture Commissioner.

### **ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.**

#### **§60-3A-18. Days and hours retail licensees may sell liquor.**

1 Retail licensees may not sell liquor on Sundays,  
2 Christmas or election day, or between the hours of twelve  
3 midnight and eight o'clock a. m., except that wine and  
4 fortified wines may be sold on such days and at such times  
5 as authorized in section thirty-four, article eight of this  
6 chapter.

### **ARTICLE 4. LICENSES.**

§60-4-2. Licenses for manufacture.

§60-4-3. To whom licensed manufacturer may sell.

§60-4-3a. Distillery and mini-distillery license to manufacture and sell.

§60-4-3b. Winery and farm winery license to manufacture and sell.

§60-4-15. Amount of license fees.

§60-4-22. Wholesale representatives' licenses.

#### **§60-4-2. Licenses for manufacture.**

1 The commission may grant licenses for the manufacture  
2 of alcoholic liquors. Separate licenses shall be issued to the  
3 following classes of manufacturing establishments:

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

6 (2) Wineries in which only wines are manufactured;

7 (3) Breweries in which beer is manufactured;

8 (4) Bottling plants in which beer only is bottled;

9 (5) Industrial plants in which alcohol is distilled,  
10 manufactured or otherwise produced for scientific,  
11 chemical, mechanical or industrial purposes;

12 (6) Farm wineries in which only wines are manufactured;  
13 and

14 (7) Mini-distilleries in which only alcoholic liquors other  
15 than wine, beer or nonintoxicating beer are manufactured.

**§60-4-3. To whom licensed manufacturer may sell.**

1 A person who is licensed to manufacture alcoholic  
2 liquors in this state may sell liquors in this state only to the  
3 West Virginia Alcohol Beverage Control Commissioner and  
4 to wholesalers and retailers licensed as provided in this  
5 chapter: *Provided*, That a holder of a winery or a farm  
6 winery license may sell wines and a holder of a distillery or  
7 a mini-distillery license may sell alcoholic liquors  
8 manufactured by it in this state in accordance with the  
9 provisions of section two, article six of this chapter. Hours  
10 of retail sale by a winery or a farm winery or distillery or a  
11 mini-distillery are subject to regulation by the

12 commissioner. A winery, distillery, farm winery or mini-  
13 distillery may sell and ship alcoholic liquors outside of the  
14 state subject to provisions of this chapter.

**§60-4-3a. Distillery and mini-distillery license to manufacture  
and sell.**

1 (a) *Sales of liquor.* -- An operator of a distillery or a  
2 mini-distillery may offer liquor for retail sale to customers  
3 from the distillery or the mini-distillery for consumption off  
4 premises only. Except for free complimentary samples  
5 offered pursuant to section one, article six of this chapter,  
6 customers are prohibited from consuming any liquor on the  
7 premises of the distillery or the mini-distillery.

8 (b) *Retail sales.* -- Every licensed distillery or  
9 mini-distillery shall comply with the provisions of sections  
10 nine, eleven, thirteen, sixteen, seventeen, eighteen, nineteen,  
11 twenty-two, twenty-three, twenty-four, twenty-five and  
12 twenty-six, article three-a of this chapter and the provisions  
13 of articles three and four of this chapter applicable to liquor  
14 retailers and distillers.

15 (c) *Payment of taxes and fees.* -- The distillery or  
16 mini-distillery shall pay all taxes and fees required of  
17 licensed retailers and meet applicable licensing provisions  
18 as required by this chapter and by rule of the commissioner.

19 (d) *Payments to market zone retailers.* -- Each distillery  
20 or mini-distillery shall submit to the commissioner ten  
21 percent of the gross sales price or each retail liquor sale for  
22 the value of all sales at the distillery or the mini-distillery  
23 each month. This collection shall be distributed by the  
24 commissioner, at least quarterly, to each market zone  
25 retailer located in the distillery or mini-distillery's market

26 zone, proportionate to each market zone retailer's annual  
27 gross prior years pretax value sales.

28 (e) *Limitations on licensees.* -- No distillery or  
29 mini-distillery may sell more than three thousand gallons of  
30 product at the distillery or mini-distillery location the initial  
31 two years of licensure. The distillery or mini-distillery may  
32 increase sales at the distillery or mini-distillery location by  
33 two thousand gallons following the initial 24-month period  
34 of licensure and may increase sales at the distillery or  
35 mini-distillery location each subsequent 24-month period by  
36 two thousand gallons, not to exceed ten thousand gallons a  
37 year of total sales at the distillery or mini-distillery location.  
38 No licensed mini-distillery may produce more than twenty  
39 thousand gallons per calendar year at the mini-distillery  
40 location. No more than one distillery or mini-distillery  
41 license may be issued to a single person or entity and no  
42 person may hold both a distillery and a mini-distillery  
43 license.

**§60-4-3b. Winery and farm winery license to manufacture  
and sell.**

1 (a) *Sales of wine.* -- An operator of a winery or farm  
2 winery may offer wine produced by the winery or farm  
3 winery for retail sale to customers from the winery or farm  
4 winery for consumption off the premises only. Except for  
5 free complimentary samples offered pursuant to section one,  
6 article six of this chapter, customers are prohibited from  
7 consuming any wine on the premises of the winery or farm  
8 winery, unless such winery or farm winery has obtained a  
9 multicapacity winery or farm winery license.

10 (b) *Retail sales.* -- Every licensed winery or farm winery  
11 shall comply with the provisions of articles three, four and



12 eight of this chapter as applicable to wine retailers, wineries  
13 and suppliers when properly licensed in such capacities.

14 (c) *Payment of taxes and fees.* -- The winery or farm  
15 winery shall pay all taxes and fees required of licensed wine  
16 retailers and meet applicable licensing provisions as  
17 required by this chapter and by rule of the commissioner.  
18 Each winery or farm winery acting as its own supplier shall  
19 submit to the Tax Commissioner the liter tax for all sales at  
20 the winery or farm winery each month, as provided in  
21 article eight of this chapter.

22 (d) *Advertising.* -- A winery or farm winery may  
23 advertise a particular brand or brands of wine produced by  
24 it, and the price of the wine subject to federal requirements  
25 or restrictions.

26 (e) *Limitations on licensees.* -- A winery or farm winery  
27 must maintain separate winery or farm winery supplier,  
28 retailer and direct shipper licenses when acting in one or  
29 more of those capacities, and must pay all associated license  
30 fees, unless such winery or farm winery holds a license  
31 issued pursuant to the provisions of subdivision (12),  
32 subsection (b), section three, article eight of this chapter. A  
33 winery or farm winery, if holding the appropriate licenses or  
34 a multicapacity winery or farm winery license, may act as  
35 its own supplier; retailer for off-premises consumption of its  
36 wine as specified in section two, article six of this chapter;  
37 private wine restaurant; and direct shipper for wine  
38 produced by the winery or farm winery. All wineries must  
39 use a distributor to distribute and sell their wine in the state,  
40 except for farm wineries. No more than one winery or farm  
41 winery license may be issued to a single person or entity,  
42 and no person may hold both a winery and a farm winery  
43 license.

**§60-4-15. Amount of license fees.**

1 A person to whom a license is issued under the  
2 provisions of this chapter shall pay annually to the  
3 commissioner a license fee as follows, for:

- 4 (1) Distilleries, one thousand five hundred dollars;
- 5 (2) Wineries, one thousand five hundred dollars;
- 6 (3) Breweries, one thousand five hundred dollars;
- 7 (4) Bottling plants, one hundred dollars;
- 8 (5) Wholesale druggists, fifty dollars;
- 9 (6) Institutions, ten dollars;
- 10 (7) Industrial use, fifty dollars;
- 11 (8) Industrial plants producing alcohol, two hundred fifty  
12 dollars;
- 13 (9) Retail druggists, ten dollars;
- 14 (10) Farm wineries, fifty dollars;
- 15 (11) Mini-distilleries, fifty dollars.

**§60-4-22. Wholesale representatives' licenses.**

1 A person, firm or corporation may not be or act or serve  
2 as an agent, broker or salesman selling or offering to sell or  
3 soliciting or negotiating the sale of alcoholic liquor to the  
4 commission or to any distributor licensed pursuant to article  
5 eight of this chapter without first obtaining a license so to  
6 do in accordance with the provisions of this section. Only  
7 salaried employees of distilleries, manufacturers, producers  
8 or processors of alcoholic liquor may be licensed hereunder  
9 and no person may be licensed hereunder who sells or offers  
10 to sell alcoholic liquor to the commission or any distributor  
11 on a fee or commission basis. The commission shall be the  
12 licensing authority and may grant to persons of good moral  
13 character the license herein provided and may refuse to  
14 grant such license to any person convicted of a felony  
15 within ten years prior to his or her application for such

16 license; refuse to grant, suspend or revoke licenses.  
17 Licenses shall be on an annual basis for the period from the  
18 first day of July until the thirtieth day of June next  
19 following. New and renewal licenses shall be granted only  
20 upon verified application to the commission presented on  
21 forms provided by the commission. Any person  
22 representing more than one producer, manufacturer or  
23 distributor of alcoholic liquors shall file a separate  
24 application and shall obtain a separate license for each such  
25 representation. The annual license fee shall be one hundred  
26 dollars. The fee for any license granted for the remainder of  
27 any license year between the first day of January and the  
28 thirtieth day of June of the same calendar year shall be fifty  
29 dollars.

30 No person who is the father, mother, son, daughter,  
31 brother, sister, uncle, aunt, nephew or niece of a member of  
32 the commission or of any elected or appointed state official,  
33 county official or municipal official, or who is the spouse of  
34 any such person so related to a member of the commission  
35 or to any elected or appointive state official, county official  
36 or municipal official, may be granted a license. No member  
37 of the Legislature or the spouse of any such member may be  
38 granted a license. Nor may any member or officer of any  
39 political party executive committee of this state or the  
40 spouse of any such member or officer be granted a license.

41 In addition to all other information which the  
42 commission may require to be supplied on the license  
43 application forms, each applicant shall be required to state  
44 his or her name and his or her residence address and the  
45 name and business address of the producer, manufacturer or  
46 distributor he represents; the name and address of each  
47 additional producer, manufacturer or distributor of alcoholic  
48 liquors he or she represents; the monetary total of all  
49 alcoholic liquor sales, if any, made by him or her to the

50 commission or to any distributor licensed pursuant to article  
51 eight of this chapter during the fiscal year preceding the  
52 license year for which he or she is seeking a license; the  
53 monetary total of the gross income received by him or her  
54 on such sales, if any, during such fiscal year; whether he or  
55 she has, during such fiscal year, made or given, voluntarily  
56 or on request, any gift, contribution of money or property to  
57 any member or employee of the commission or of any  
58 distributor licensed pursuant to article eight of this chapter  
59 or to or for the benefit of any political party committee or  
60 campaign fund; and his or her relationship, if any, by blood  
61 or marriage, to any member of the commission or to any  
62 elected or appointive state official, county official or  
63 municipal official. All such applications shall be verified  
64 by oath of the applicant and shall be prepared and filed in  
65 duplicate. All such applications and a current list of all  
66 licensees hereunder shall be matters of public record and  
67 shall be available to public inspection at the commission's  
68 offices at the state capitol. Every licensee who ceases to be  
69 an agent, broker or salesman, as herein contemplated, shall  
70 so advise the commission in writing and such person's name  
71 shall be immediately removed from the license list and his  
72 or her license shall be canceled and terminated.

73 All persons licensed under this section shall be  
74 authorized representatives of the wineries, farm wineries,  
75 distilleries, mini-distilleries, manufacturers, producers or  
76 processors of alcoholic liquor they represent. A licensed  
77 person may not share, divide or split his or her salary with  
78 any person other than his wife or some legal dependent, nor  
79 may he or she make any contribution to any political party  
80 campaign fund in this state.

81 All licensees shall be subject to all other provisions of  
82 this chapter and to the lawful rules promulgated by the  
83 commission. Licenses may be refused, suspended or

84 revoked by the commission for cause, including any of the  
85 applicable grounds of revocation specified in section  
86 nineteen of this article. Provisions of this article relating to  
87 notice, hearing and appeals shall, to the extent applicable,  
88 govern procedures on suspension and revocation of licenses  
89 hereunder.

90 Any person, firm or corporation violating any provision  
91 of this section, including knowingly making of any false  
92 statement in a verified application for a license shall be  
93 guilty of a misdemeanor offense and shall, upon conviction  
94 thereof, be fined not exceeding one thousand dollars or  
95 imprisoned in jail not exceeding twelve months, or be  
96 subject to both such fine and imprisonment in the discretion  
97 of the court.

**ARTICLE 6. MISCELLANEOUS PROVISIONS.**

§60-6-1. When lawful to possess, use or serve alcoholic liquors.

§60-6-2. When lawful to manufacturer and sell wine and cider.

**§60-6-1. When lawful to possess, use or serve alcoholic liquors.**

1 The provisions of this chapter may not prevent:

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

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

11 (3) The holder of a winery or a farm winery license from  
12 serving complimentary samples of its wine in moderate  
13 quantities for tasting on the winery or the farm winery  
14 premises; and

15 (4) The holder of a distillery or a mini-distillery license  
16 from serving complimentary samples of its alcoholic liquor  
17 in moderate quantities for tasting on the distillery or the  
18 mini-distillery premises.

**§60-6-2. When lawful to manufacture and sell wine and cider.**

1 The provisions of this chapter may not prevent:

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

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

7 (3) A person from manufacturing and selling cider made  
8 from apples produced by him or her within this state to  
9 persons holding distillery licenses, if the manufacture and  
10 sale is under the supervision and regulation of the  
11 commissioner;

12 (4) A person from manufacturing and selling wine made  
13 from fruit produced by him or her within this state to  
14 persons holding winery licenses, if the manufacture and sale  
15 is under the supervision and regulation of the commissioner;

16 (5) The holder of a winery or a farm winery license  
17 from selling wine for off-premises consumption sold at  
18 retail at the winery or the farm winery, as provided in  
19 section four, article three-b of this chapter, or for any other

20 person who is licensed under this chapter to sell wine as a  
21 wine supplier or distributor; and

22 (6) The holder of a distillery or a mini-distillery license  
23 from selling alcoholic liquor for off-premises consumption  
24 sold at retail at the distillery or the mini-distillery, as  
25 provided in section four, article three-a of this chapter.

## **ARTICLE 8. SALE OF WINES.**

- §60-8-1. Construction and application of article.
- §60-8-2. Definitions.
- §60-8-3. Licenses; fees; general restrictions.
- §60-8-4. Liter tax.
- §60-8-5. Refund or credit of taxes.
- §60-8-6. Licensed or registration required for sale or shipment of wine;  
shipment of limited quantities of wine to adult residents permitted.
- §60-8-6a. Direct shipper's license.
- §60-8-7. Records; inspection.
- §60-8-16. Application for license.
- §60-8-18. Revocation, suspension and other sanctions which may be imposed  
by the commissioner upon the licensee; procedure upon refusal,  
revocation, suspension or other sanction.
- §60-8-19. To whom licensed manufacturer may sell.
- §60-8-20. Unlawful acts generally.
- §60-8-23. Duties and powers of commissioner; rules.
- §60-8-24. Disposition of revenue.
- §60-8-25. Criminal penalties; public nuisances.
- §60-8-26. Forfeiture of bond.
- §60-8-28. Wine brand licensing and registration and review of wine labels.
- §60-8-29. Bond required of distributors and suppliers.
- §60-8-30. Exclusive franchise agreements prohibited.
- §60-8-31. Other unlawful acts.
- §60-8-32. Where wine may be sold at retail.
- §60-8-34. When retail sales prohibited.

### **PART I. CONSTRUCTION AND APPLICATION OF ARTICLE.**

#### **§60-8-1. Construction and application of article.**

1 (a) Every supplier must use a distributor to distribute wine  
2 for retail sale in this state, except for such sales that occur by

3 wineries, farm wineries or suppliers holding a direct shipper's  
4 license or farm wineries holding a multicapacity farm winery  
5 license. The provisions of Part II of this article shall have  
6 general application to the distribution and retail sale of wine in  
7 this state. The provisions of Part III of this article shall relate  
8 solely to the distribution and the regulation of suppliers and  
9 distributors of such wines as may be permitted to be sold at  
10 retail pursuant to the provisions of this article. The provisions  
11 of Part IV of this article shall relate solely to the retail sale of  
12 wine in grocery stores as the term "grocery store" is defined in  
13 this article and the retail sale of wine in wine specialty shops  
14 as defined in this article. In the event of any inconsistency of  
15 any provisions of Part II and the provisions of either Part III or  
16 Part IV of this article, the provisions of either Part III or Part  
17 IV shall prevail to the extent of such inconsistency.

18 (b) In the event of any inconsistency between any of the  
19 provisions of this article and provisions of any other article of  
20 this chapter or of this code, the provisions of this article shall  
21 prevail to the extent of any such inconsistency.

22 (c) To the extent the provisions of this chapter exclusive of  
23 this article may be given application without creating an  
24 inconsistency with the provisions of this article, the provisions  
25 of this chapter, exclusive of this article, shall apply to the same  
26 extent as if this article did not exist.

## PART II. SALE OF WINE GENERALLY.

### **§60-8-2. Definitions.**

1 Unless the context in which used clearly requires a different  
2 meaning, as used in this article:

3 "Commissioner" or "commission" means the West Virginia  
4 Alcohol Beverage Control Commissioner.



5 "Distributor" means any person whose principal place of  
6 business is within the State of West Virginia who makes  
7 purchases from a supplier to sell or distribute wine to retailers,  
8 grocery stores, private wine bed and breakfasts, private wine  
9 restaurants, private wine spas, private clubs or wine specialty  
10 shops and that sells or distributes nonfortified dessert wine,  
11 port, sherry and Madeira wines to wine specialty shops, private  
12 wine restaurants, private clubs or retailers under authority of  
13 this article and maintains a warehouse in this state for the  
14 distribution of wine.

15 "Fortified wine" shall mean any wine to which brandy or  
16 other alcohol has been added and shall include dessert wines  
17 which are not fortified having an alcohol content by volume of  
18 at least fourteen and one-tenths percent and not exceeding  
19 sixteen percent.

20 "Grocery store" means any retail establishment, commonly  
21 known as a grocery store, supermarket, delicatessen, caterer or  
22 party supply store, where food, food products and supplies for  
23 the table are sold for consumption off the premises with  
24 average monthly sales (exclusive of sales of wine) of not less  
25 than five hundred dollars and an average monthly inventory  
26 (exclusive of inventory of wine) of not less than three thousand  
27 dollars. The term "grocery store" shall also include and mean  
28 a separate and segregated portion of any other retail store  
29 which is dedicated solely to the sale of food, food products and  
30 supplies for the table for consumption off the premises with  
31 average monthly sales with respect to such separate or  
32 segregated portion (exclusive of sales of wine) of not less than  
33 three thousand dollars and an average monthly inventory  
34 (exclusive of inventory of wine) of not less than three thousand  
35 dollars.

36 "Licensee" means the holder of a license granted under the  
37 provisions of this article.

38 "Private wine bed and breakfast" means any business with  
39 the sole purpose of providing, in a residential or country  
40 setting, a hotel, motel, inn or other such establishment properly  
41 zoned as to its municipality or local ordinances, lodging and  
42 meals to its customers in the course of their stay at the  
43 establishment, which business also: (1) Is a partnership,  
44 limited partnership, corporation, unincorporated association or  
45 other business entity which as part of its general business  
46 purpose provides meals on its premises to its members and  
47 their guests; (2) is licensed under the provisions of this article  
48 as to all of its premises or as to a separate segregated portion of  
49 its premises to serve wine to its members and their guests  
50 when such sale accompanies the serving of food or meals; and  
51 (3) admits only duly elected and approved dues-paying  
52 members and their guests while in the company of a member  
53 and does not admit the general public.

54 "Private wine restaurant" means a restaurant which: (1) Is a  
55 partnership, limited partnership, corporation, unincorporated  
56 association or other business entity which has as its principal  
57 purpose the business of serving meals on its premises to its  
58 members and their guests; (2) is licensed under the provisions  
59 of this article as to all of its premises or as to a separate  
60 segregated portion of its premises to serve wine to its members  
61 and their guests when such sale accompanies the serving of  
62 food or meals; (3) admits only duly elected and approved dues-  
63 paying members and their guests while in the company of a  
64 member and does not admit the general public. Such private  
65 clubs that meet the private wine restaurant requirements  
66 numbered (1), (2) and (3) in this definition shall be considered  
67 private wine restaurants.

68 "Private wine spa" means any business with the sole  
69 purpose of providing commercial facilities devoted especially  
70 to health, fitness, weight loss, beauty, therapeutic services and  
71 relaxation, and may be also a licensed massage parlor or a  
72 salon with licensed beauticians or stylists, which business also:

73 (1) Is a partnership, limited partnership, corporation,  
74 unincorporated association or other business entity which as  
75 part of its general business purpose provides meals on its  
76 premises to its members and their guests; (2) is licensed under  
77 the provisions of this article as to all of its premises or as to a  
78 separate segregated portion of its premises to serve up to two  
79 glasses of wine to its members and their guests when such sale  
80 accompanies the serving of food or meals; and (3) admits only  
81 duly elected and approved dues-paying members and their  
82 guests while in the company of a member, and does not admit  
83 the general public.

84 "Retailer" means any person licensed to sell wine at retail to  
85 the public at his or her established place of business for  
86 off-premises consumption and who is licensed to do so under  
87 authority of this article.

88 "Supplier" means any manufacturer, producer, processor,  
89 winery, farm winery, national distributor or other supplier of  
90 wine who sells or offers to sell or solicits or negotiates the sale  
91 of wine to any licensed West Virginia distributor.

92 "Tax" includes within its meaning interest, additions to tax  
93 and penalties.

94 "Taxpayer" means any person liable for any tax, interest,  
95 additions to tax or penalty under the provisions of this article  
96 and any person claiming a refund of tax.

97 "Varietal wine" means any wine labeled according to the  
98 grape variety from which such wine is made.

99 "Vintage wine" or "vintage-dated wine" means wines from  
100 which the grapes used to produce such wine are harvested  
101 during a particular year or wines produced from the grapes of a  
102 particular harvest in a particular region of production.

103 "Wine" means any alcoholic beverage obtained by the  
104 natural fermentation of the natural content of grapes, other  
105 fruits or honey or other agricultural products containing sugar  
106 and to which no alcohol has been added and shall include table  
107 wine, and shall exclude fortified wine and shall also exclude  
108 any product defined as or embraced within the definition of  
109 nonintoxicating beer under the provisions of article sixteen,  
110 chapter eleven of this code.

111 "Wine specialty shop" means a retailer who shall deal  
112 principally in the sale of table wine, nonfortified dessert wines,  
113 wine accessories and food or foodstuffs normally associated  
114 with wine and: (1) Who shall maintain a representative number  
115 of such wines for sale in his or her inventory which are  
116 designated by label as varietal wine, vintage, generic and/or  
117 according to region of production and the inventory shall  
118 contain not less than fifteen percent vintage or vintage-dated  
119 wine by actual bottle count; and (2) who, any other provisions  
120 of this code to the contrary notwithstanding, may maintain an  
121 inventory of port, sherry and Madeira wines having an  
122 alcoholic content of not more than twenty-two percent alcohol  
123 by volume and which have been matured in wooden barrels or  
124 casks.

**§60-8-3. Licenses; fees; general restrictions.**

1 (a) No person may engage in business in the capacity of a  
2 winery, farm winery, supplier, distributor, retailer, private  
3 wine bed and breakfast, private wine restaurant, private wine  
4 spa or wine specialty shop without first obtaining a license  
5 from the commissioner, nor shall a person continue to engage  
6 in any such activity after his or her license has expired, been  
7 suspended or revoked. No person may be licensed  
8 simultaneously as a distributor and a retailer. No person,  
9 except for a winery or farm winery, may be licensed  
10 simultaneously as a supplier and a retailer. No person may be  
11 licensed simultaneously as a supplier and a private wine bed

12 and breakfast, private wine restaurant or a private wine spa.  
13 No person may be licensed simultaneously as a distributor and  
14 a private wine bed and breakfast, a private wine restaurant or a  
15 private wine spa. No person may be licensed simultaneously  
16 as a retailer and a private wine bed and breakfast, a private  
17 wine restaurant or a private wine spa.

18 (b) The commissioner shall collect an annual fee for  
19 licenses issued under this article, as follows:

20 (1) One hundred fifty dollars per year for a supplier's  
21 license;

22 (2) Twenty-five hundred dollars per year for a distributor's  
23 license and each separate warehouse or other facility from  
24 which a distributor sells, transfers or delivers wine shall be  
25 separately licensed and there shall be collected with respect to  
26 each such location the annual license fee of twenty-five  
27 hundred dollars as herein provided;

28 (3) One hundred fifty dollars per year for a retailer's  
29 license;

30 (4) Two hundred fifty dollars per year for a wine specialty  
31 shop license, in addition to any other licensing fees paid by a  
32 winery or retailer holding such a license, except for the amount  
33 of the license fee and the restriction to sales of winery or farm  
34 winery wines, a winery or farm winery acting as a wine  
35 specialty shop retailer is subject to all other provisions of this  
36 article which are applicable to a wine specialty shop retailer as  
37 defined in section two of this article;

38 (5) One hundred fifty dollars per year for a wine tasting  
39 license;

40 (6) One hundred fifty dollars per year for a private wine bed  
41 and breakfast license, and each separate bed and breakfast

42 from which a licensee sells wine shall be separately licensed  
43 and there shall be collected with respect to each such location  
44 the annual license fee of one hundred fifty dollars as herein  
45 provided;

46 (7) Two hundred fifty dollars per year for a private wine  
47 restaurant license, and each separate restaurant from which a  
48 licensee sells wine shall be separately licensed and there shall  
49 be collected with respect to each such location the annual  
50 license fee of two hundred fifty dollars as herein provided;

51 (8) One hundred fifty dollars per year for a private wine spa  
52 license and each separate private wine spa from which a  
53 licensee sells wine shall be separately licensed and there shall  
54 be collected with respect to each such location the annual  
55 license fee of one hundred fifty dollars as herein provided;

56 (9) One hundred fifty dollars per year for a wine sampling  
57 license issued for a wine specialty shop under subsection (n) of  
58 this section;

59 (10) No fee shall be charged for a special one-day license  
60 under subsection (o) of this section or for a heritage fair and  
61 festival license under subsection (p) of this section; and

62 (11) One hundred fifty dollars per year for a direct shipper's  
63 license for a licensee who sells and ships only wine and two  
64 hundred fifty dollars per for a direct shipper's license who  
65 ships and sells wine, nonfortified dessert wine, port, sherry or  
66 Madeira wines.

67 (12) Three hundred dollars per year for a multicapacity  
68 winery or farm winery license which shall enable the holder to  
69 operate as a retailer, wine specialty shop, supplier and direct  
70 shipper without obtaining an individual license for each  
71 capacity.

72 (c) The license period shall begin on the first day of July of  
73 each year and end on the thirtieth day of June of the following  
74 year and if granted for a less period, the same shall be  
75 computed semiannually in proportion to the remainder of the  
76 fiscal year.

77 (d) No retailer may be licensed as a private club as provided  
78 by article seven of this chapter, except as provided by  
79 subsection (k) of this section.

80 (e) No retailer may be licensed as a Class A retail dealer in  
81 nonintoxicating beer as provided by article sixteen, chapter  
82 eleven of this code: *Provided*, That a delicatessen, a caterer or  
83 party supply store which is a grocery store as defined in  
84 section two of this article and which is licensed as a Class A  
85 retail dealer in nonintoxicating beer may be a retailer under  
86 this article: *Provided, however*, That any delicatessen, caterer  
87 or party supply store licensed in both such capacities must  
88 maintain average monthly sales exclusive of sales of wine and  
89 nonintoxicating beer which exceed the average monthly sales  
90 of nonintoxicating beer.

91 (f) A wine specialty shop under this article may also hold a  
92 wine tasting license authorizing such retailer to serve  
93 complimentary samples of wine in moderate quantities for  
94 tasting. Such wine specialty shop shall organize a wine  
95 taster's club, which has at least fifty duly elected or approved  
96 dues-paying members in good standing. Such club shall meet  
97 on the wine specialty shop's premises not more than one time  
98 per week and shall either meet at a time when the premises are  
99 closed to the general public, or shall meet in a separate  
100 segregated facility on the premises to which the general public  
101 is not admitted. Attendance at tastings shall be limited to duly  
102 elected or approved dues-paying members and their guests.

103 (g) A retailer who has more than one place of retail business  
104 shall obtain a license for each separate retail establishment. A

105 retailer's license may be issued only to the proprietor or owner  
106 of a bona fide grocery store or wine specialty shop.

107 (h) The commissioner may issue a special license for the  
108 retail sale of wine at any festival or fair which is endorsed or  
109 sponsored by the governing body of a municipality or a county  
110 commission. Such special license shall be issued for a term of  
111 no longer than ten consecutive days and the fee therefor shall  
112 be two hundred fifty dollars regardless of the term of the  
113 license unless the applicant is the manufacturer of said wine on  
114 a winery or a farm winery as defined in section five-a, article  
115 one of this chapter, in which event the fee shall be fifty dollars  
116 if the event is held on the premises of the winery or farm  
117 winery. The application for such license shall contain such  
118 information as the commissioner may reasonably require and  
119 shall be submitted to the commissioner at least thirty days  
120 prior to the first day when wine is to be sold at such festival or  
121 fair. A winery or a farm winery licensed under this subsection  
122 may exhibit, conduct tastings, not to exceed a reasonable  
123 serving, and may sell wine only for consumption off the  
124 premises of such festival or fair. A special license issued other  
125 than to a winery or a farm winery may be issued to a "wine  
126 club" as defined herein below. The festival or fair committee  
127 or the governing body shall designate a person to organize a  
128 club under a name which includes the name of the festival or  
129 fair and the words "wine club". The license shall be issued in  
130 the name of the wine club. A licensee may not commence the  
131 sale of wine as provided in this subsection until the wine club  
132 has at least fifty dues-paying members who have been enrolled  
133 and to whom membership cards have been issued. Thereafter,  
134 new members may be enrolled and issued membership cards at  
135 any time during the period for which the license is issued. A  
136 wine club licensed under the provisions of this subsection may  
137 sell wine only to its members, and in portions not to exceed  
138 eight ounces per serving. Such sales shall take place on  
139 premises or in an area cordoned or segregated so as to be  
140 closed to the general public, and the general public shall not be



141 admitted to such premises or area. A wine club licensee under  
142 the provisions of this subsection shall be authorized to serve  
143 complimentary samples of wine in moderate quantities for  
144 tasting.

145 A license issued under the provisions of this subsection and  
146 the licensee holding such license shall be subject to all other  
147 provisions of this article and the rules and orders of the  
148 commissioner relating to such special license: *Provided*, That  
149 the commissioner may by rule, regulation or order provide for  
150 certain waivers or exceptions with respect to such provisions,  
151 rules, regulations or orders as the circumstances of each such  
152 festival or fair may require, including, without limitation, the  
153 right to revoke or suspend any license issued pursuant to this  
154 section prior to any notice or hearing notwithstanding the  
155 provisions of section twelve of this article: *Provided, however*,  
156 That under no circumstances shall the provisions of subsection  
157 (c) or (d), section twenty of this article be waived nor shall any  
158 exception be granted with respect thereto.

159 A license issued under the provisions of this subsection and  
160 the licensee holding such license shall not be subject to the  
161 provisions of subsection (g) of this section.

162 (i) A license to sell wine granted to a private wine bed and  
163 breakfast, private wine restaurant, private wine spa or a private  
164 club under the provisions of this article entitles the operator to  
165 sell and serve wine, for consumption on the premises of the  
166 licensee, when such sale accompanies the serving of food or a  
167 meal to its members and their guests in accordance with the  
168 provisions of this article: *Provided*, That a licensed private  
169 wine bed and breakfast, private wine restaurant, private wine  
170 spa or a private club may permit a person over twenty-one  
171 years of age to purchase wine, consume wine and recork or  
172 reseal, using a tamper resistant cork or seal, up to two separate  
173 bottles of unconsumed wine in conjunction with serving of  
174 food or a meal to its members and their guests in accordance

175 with the provisions of this article and in accordance with  
176 regulations promulgated by the commissioner for the purpose  
177 of consumption of said wine off premises: *Provided, however,*  
178 That for this article, food or a meal provided by the private  
179 licensee means that the total food purchase, excluding  
180 beverage purchases, taxes, gratuity or other fees is at least  
181 fifteen dollars: *Provided further,* That a licensed private wine  
182 restaurant or a private club may offer for sale for consumption  
183 off the premises, sealed bottles of wine to its customers  
184 provided that no more than one bottle is sold per each person  
185 over twenty-one years of age, as verified by the private wine  
186 restaurant or private club, for consumption off the premises.  
187 Such licensees are authorized to keep and maintain on their  
188 premises a supply of wine in such quantities as may be  
189 appropriate for the conduct of operations thereof. Any sale of  
190 wine so made shall be subject to all restrictions set forth in  
191 section twenty of this article. A private wine restaurant may  
192 also be licensed as a Class A retail dealer in nonintoxicating  
193 beer as provided by article sixteen, chapter eleven of this code.

194 (j) With respect to subsections (h), (i), (n) and (o) of this  
195 section, the commissioner shall promulgate legislative rules in  
196 accordance with the provisions of chapter twenty-nine-a of this  
197 code with regard to the form of the applications, the suitability  
198 of both the applicant and location of the licensed premises and  
199 such other legislative rules deemed necessary to carry the  
200 provisions of such subsections into effect.

201 (k) The commissioner shall promulgate legislative rules in  
202 accordance with the provisions of chapter twenty-nine-a of this  
203 code to allow restaurants to serve wine with meals, and to sell  
204 wine by the bottle for off-premises consumption as provided in  
205 subsection (i) of this section. Each restaurant so licensed shall  
206 be charged an additional one hundred dollar per year fee.

207 (l) The commissioner shall establish guidelines to permit  
208 wines to be sold in all stores licensed for retail sales.

209 (m) Wineries and farm wineries may advertise off premises  
210 as provided in section seven, article twenty-two, chapter  
211 seventeen of this code.

212 (n) A wine specialty shop under this article may also hold a  
213 wine sampling license authorizing the wine specialty shop to  
214 conduct special wine sampling events at a licensed wine  
215 specialty shop location during regular hours of business. The  
216 wine specialty shop may serve up to three complimentary  
217 samples of wine, consisting of no more than one ounce each,  
218 to any one consumer in one day. Persons serving the  
219 complimentary samples must be twenty-one years of age and  
220 an authorized representative of the licensed wine specialty  
221 shop, winery, farm winery or a representative of a distributor  
222 or registered supplier. Distributor and supplier representatives  
223 attending wine sampling events must be registered with the  
224 commissioner. No licensee, employee or representative may  
225 furnish, give or serve complimentary samples of wine to any  
226 person less than twenty-one years of age or to a person who is  
227 physically incapacitated due to the consumption of alcoholic  
228 liquor or the use of drugs. The wine specialty shop shall notify  
229 and secure permission from the commissioner for all wine  
230 sampling events one month prior to the event. Wine sampling  
231 events may not exceed six hours per calendar day. Licensees  
232 must purchase all wines used during these events from a  
233 licensed farm winery or a licensed distributor.

234 (o) The commissioner may issue special one-day licenses to  
235 duly organized, nonprofit corporations and associations  
236 allowing the sale and serving of wine when raising money for  
237 athletic, charitable, educational or religious purposes. The  
238 license application shall contain information as the  
239 commissioner may reasonably require and shall be submitted  
240 to the commissioner at least thirty days prior to the event.  
241 Wines used during these events may be donated by or  
242 purchased from a licensed retailer, a distributor or a farm  
243 winery. Under no circumstances may the provision of

244 subsection (c), section twenty of this article be waived nor may  
245 any exception be granted with respect thereto.

246 (p) The commissioner may issue special licenses to heritage  
247 fairs and festivals allowing the sale, serving and sampling of  
248 wine from a licensed farm winery. The license application  
249 shall contain information required by the commissioner and  
250 shall be submitted to the commissioner at least thirty days  
251 prior to the event. Wines used during these events may be  
252 donated by or purchased from a licensed farm winery. Under  
253 no circumstances may the provision of subsection (c), section  
254 twenty of this article be waived nor may any exception be  
255 granted with respect thereto. The commissioner shall propose  
256 rules for legislative approval in accordance with article three,  
257 chapter twenty-nine-a of this code to implement the provisions  
258 of this subsection.

#### **§60-8-4. Liter tax.**

1 There is hereby levied and imposed on all wine sold after  
2 the first day of July, two thousand seven, by suppliers to  
3 distributors, and including all wine sold and sent to West  
4 Virginia adult residents from direct shippers, except wine sold  
5 to the commissioner, a tax of twenty-six and four hundred six-  
6 thousandths cents per liter.

7 Before the sixteenth day of each month thereafter, every  
8 supplier, distributor and direct shipper shall make a written  
9 report under oath to the Tax Commissioner and the  
10 commissioner showing the identity of the purchaser, the  
11 quantity, label and alcoholic content of wine sold by the  
12 supplier to West Virginia distributors or the direct shipper to  
13 West Virginia adult residents during the preceding month and  
14 at the same time shall pay the tax imposed by this article on  
15 the wine sold to the distributor or the West Virginia adult  
16 residents during the preceding month to the Tax  
17 Commissioner.

18 The reports shall contain other information and be in the  
 19 form the Tax Commissioner may require. For purposes of this  
 20 article, the reports required by this section shall be considered  
 21 tax returns covered by the provisions of article ten, chapter  
 22 eleven of this code. Failure to timely file the tax returns within  
 23 five calendar days of the sixteenth day of each month will also  
 24 subject a supplier, distributor and direct shipper to penalties  
 25 under section eighteen of this article.

26 No wine imported, sold or distributed in this state or sold  
 27 and shipped to this state by a direct shipper shall be subject to  
 28 more than one liter tax.

**§60-8-5. Refund or credit of taxes.**

1 The Tax Commissioner shall refund, or credit on a  
 2 subsequent return, any tax which has been erroneously or  
 3 illegally collected. In the event that a licensee, while the  
 4 owner of wine on which the tax imposed by this article has  
 5 been paid, loses such wine through fire or casualty, other than  
 6 breakage occurring on the premises of the licensee because  
 7 such wine has been declared by the commissioner to be unfit  
 8 for sale and the amount of tax paid exceeds fifty dollars, the  
 9 Tax Commissioner shall refund the tax paid. The  
 10 commissioner shall promulgate regulations establishing the  
 11 procedure and nature of proof required in case of any claim for  
 12 refund or credit.

**§60-8-6. License or registration required for sale or shipment of wine; shipment of limited quantities of wine to adult residents permitted.**

1 (a) Except as to the commissioner and except as provided  
 2 in subsection (b) of this section, no person may offer for sale  
 3 or sell wine in this state, or offer wine for shipment into this  
 4 state, except to a distributor who is duly licensed under this  
 5 article. Every person, whether resident or nonresident in this

6 state, who is engaged in or desires to engage in the sale or  
7 shipment of wine to a distributor for resale under this article  
8 shall, prior to engaging in such activities, register with the  
9 commissioner. If any such person violates the provisions of  
10 this article, he shall not be permitted to sell, ship or deliver any  
11 wine to a distributor or to the commissioner, or otherwise  
12 engage in the wine business in this state for a period of one  
13 year from the date a notice is mailed to such person by the  
14 commissioner of the fact that such person has violated the  
15 provisions of this article. During such one-year period, it shall  
16 be unlawful for any distributor within this state to buy or  
17 receive wine from such person or to have any dealings with  
18 such person with respect thereto. Hearings and appeals on  
19 such notices may be had in the same manner as in the case of  
20 revocations of licenses under this article.

21 (b) Notwithstanding the provisions of this chapter or any  
22 other law to the contrary, any person or winery that is currently  
23 licensed and in good standing in its domicile state as a winery,  
24 farm winery, supplier or retailer of wine and who obtains a  
25 direct shipper's license from the commissioner, as provided in  
26 this chapter, may ship up to a maximum of two cases of wine  
27 per month directly to adult West Virginia residents who are  
28 twenty-one years of age or over, for such adult resident's  
29 personal use and consumption and not for resale. Licensed  
30 direct shippers must maintain accurate records of all shipments  
31 sent to West Virginia residents. All shipments of wine into  
32 West Virginia by licensed direct shippers shall be made by a  
33 licensed and bonded shipping carrier. Direct shippers and their  
34 carriers shall not ship wine to areas of West Virginia where  
35 wine may not be lawfully sold by county, local or municipal  
36 law. Any holder of a direct shipper's license must collect all  
37 taxes, sales taxes, municipal taxes and the liter tax due to West  
38 Virginia, remit all sales, municipal taxes and the liter tax to the  
39 tax commissioner at the close of each month and file a  
40 monthly return reflecting the taxes paid for all sales and  
41 shipments to residents in West Virginia. The commissioner

42 shall prescribe the forms to be used to file the monthly returns.  
43 The shipping container of any wine sent into or out of this state  
44 under this subsection shall be clearly and conspicuously  
45 labeled to indicate that the package cannot be delivered to: (1)  
46 Any person under the age of twenty-one; (2) to an intoxicated  
47 person; or (3) to a person physically incapacitated due to the  
48 consumption of nonintoxicating beer, wine or alcoholic liquors  
49 or the use of drugs; and (4) the carriers are required to obtain a  
50 written or electronic signature upon delivery of an adult  
51 resident who the carrier verifies is at least twenty-one years of  
52 age or older and if the carrier is not able to obtain a signature  
53 of a verified adult resident at least twenty-one years of age or  
54 older, then the carrier may not complete the delivery of the  
55 wine shipment. Failure of any holder of a direct shipper's  
56 license or such licensee's carrier to abide by the provisions of  
57 this chapter and the commissioner's rules may subject the  
58 direct shipper to the penalties available to the commissioner  
59 under section eighteen of this article.

**§60-8-6a. Direct shipper's license.**

1 (a) Before sending any shipment of wine to a resident of  
2 West Virginia, the direct shipper must first:

3 (1) File a license application with the commissioner with  
4 the appropriate background check information, using forms  
5 required by the commissioner. Criminal background checks  
6 will not be required of applicants licensed in their state of  
7 domicile who can provide a certificate of good standing from  
8 their state of domicile;

9 (2) Pay to the commissioner either the one hundred fifty  
10 dollar license fee to ship and sell only wine, the two hundred  
11 fifty dollar license fee to ship and sell wine and nonfortified  
12 dessert wine, port, sherry or Madeira wines, or the three  
13 hundred dollar multicapacity winery or farm winery license  
14 fee;

15 (3) Obtain a business registration number from the Tax  
16 Commissioner;

17 (4) Register with the office of the Secretary of State, if a  
18 corporation;

19 (5) Provide the commissioner a true copy of its current  
20 alcoholic beverage license issued in the state of domicile,  
21 proving that the direct shipper is licensed in its state of  
22 domicile as a winery, farm winery, supplier or retailer of wine;

23 (6) Obtain from the commissioner a direct shipper's license;

24 (7) Submit to the commissioner a list of all brands of wine  
25 to be shipped to West Virginia residents; and

26 (8) Meet all other licensing requirements of this chapter and  
27 provide any other information that the commissioner may  
28 reasonably require.

29 (b) All direct shipper licensees shall:

30 (1) Not ship more than two cases of wine per month to any  
31 person. A case is defined as any combination of packages  
32 containing not more than nine liters of wine;

33 (2) Not ship to any address in an area identified by the  
34 commissioner as a "dry" or local option area where it is  
35 unlawful to sell wine or alcoholic liquors;

36 (3) Not ship to any licensed suppliers, distributors, retailers,  
37 private wine bed and breakfasts, private wine restaurants,  
38 private wine spas or wine specialty shops;

39 (4) Not ship wine from overseas or internationally unless it  
40 is first shipped to a licensed supplier or distributor;



41 (5) Ensure that all containers of wine shipped directly to a  
42 resident in this state are clearly and conspicuously labeled with  
43 the words "CONTAINS ALCOHOL: SIGNATURE OF  
44 PERSON 21 OR OLDER REQUIRED FOR DELIVERY";

45 (6) File monthly returns to the commissioner and the Tax  
46 Commissioner showing the total of wines, by type, sold and  
47 shipped into West Virginia for the preceding month;

48 (7) Pay to the Tax Commissioner all sales taxes, municipal  
49 taxes and the liter tax due on sales and shipments to residents  
50 of West Virginia in the preceding month, the amount of such  
51 taxes to be calculated as the sales were made in West Virginia  
52 at the location where delivery is made;

53 (8) Permit the Tax Commissioner or commissioner or their  
54 designees to perform an audit of the direct shipper's records  
55 upon request;

56 (9) Be deemed to have consented to the jurisdiction of the  
57 commissioner or any other state agency, the Kanawha County  
58 circuit court located in Charleston, West Virginia, concerning  
59 enforcement of this article and any other related laws, rules;  
60 and

61 (10) Provide proof or records to the commissioner, upon  
62 request, that all direct shipments of wine were purchased and  
63 delivered to an adult resident of West Virginia over the age of  
64 twenty-one years of age.

65 (c) The direct shipper may annually renew its license with  
66 the commissioner by application, paying the direct shipper  
67 license fee and providing the commissioner with a true copy of  
68 a current alcoholic beverage license from the direct shipper's  
69 domicile state.

70 (d) The commissioner may promulgate rules to effectuate  
71 the purposes of this law.

72 (e) The commissioner may enforce the requirements of this  
73 section by administrative proceedings to suspend or revoke a  
74 direct shipper's license, and the commissioner may accept  
75 payment of a penalty or an offer in compromise in lieu of  
76 suspension, at the commissioner's discretion.

77 (f) Shipments of wine direct to consumers in West Virginia  
78 from persons who do not possess a current direct shipper's  
79 license or other permit or license from the commissioner are  
80 prohibited. Any person who knowingly makes, participates in,  
81 transports, imports or receives such an unlicensed and  
82 unauthorized direct shipment is guilty of a felony and shall,  
83 upon conviction thereof, be fined in an amount not to exceed  
84 ten thousand dollars per violation or shall be imprisoned in jail  
85 for a period not to exceed seventy-two hours. Without  
86 limitation on any punishment or remedy, criminal or civil, any  
87 person who knowingly makes, participates in, transports,  
88 imports or receives such a direct shipment constitutes an act  
89 that is an unfair trade practice.

#### **§60-8-7. Records; inspection.**

1 Every person who sells or ships wine as a direct shipper to  
2 West Virginia adult residents or who sells or ships wine to a  
3 distributor, and every distributor shall maintain records of all  
4 sales, shipments and deliveries, including invoices, records,  
5 receipts, bills of lading and other pertinent papers required by  
6 the commissioner. All such records shall be preserved for at  
7 least two years. The Tax Commissioner or the commissioner,  
8 or both, may inspect the books, accounts and records of any  
9 licensee and examine, under oath, any officer, agent or  
10 employee of any licensee or any person engaged in the  
11 business of selling, shipping or delivering wine to a distributor.  
12 The Tax Commissioner or the commissioner, or both, may

13 require the production, within this state at the time and place  
14 the Tax Commissioner or the commissioner, or both, may  
15 designate, of any books, accounts, papers or records kept  
16 within or without the state, or verified copies in lieu thereof, in  
17 order that an examination thereof may be made by the Tax  
18 Commissioner, the commissioner or their duly designated  
19 agents.

**§60-8-16. Application for license.**

1 Any person desiring a license under this article shall file a  
2 written application for a license with the commissioner and in  
3 the application shall state under oath:

4 (1) The name of the applicant, including his or her trade  
5 name if any, his or her address and the length of his or her  
6 residence within this state;

7 (2) The address of the place of business for which the  
8 license is desired, or other description that definitely locates it;  
9 and that the place of business conforms to all health and fire  
10 laws and regulations applicable thereto;

11 (3) The name of the owner of the premises upon which the  
12 business is to be conducted and, if the owner is not the  
13 applicant, that such applicant is the bona fide lessee of the  
14 business;

15 (4) If the application is for a retailer's license, that the  
16 applicant is the proprietor or owner of a bona fide grocery  
17 store, private wine bed and breakfast, private wine restaurant,  
18 private wine spa or wine specialty shop;

19 (5) That the applicant intends to carry on the business  
20 authorized by the license for himself or herself or under his or  
21 her immediate supervision or direction;

- 22       (6) That the applicant is a citizen of the United States;
- 23       (7) That the applicant is an actual bona fide resident of the  
24 State of West Virginia, except for those applicants applying for  
25 a supplier's license or a direct shipper's license;
- 26       (8) That the applicant is not less than eighteen years of age;
- 27       (9) That the applicant has not been convicted of a felony or  
28 other crime involving moral turpitude within the three years  
29 next preceding the filing of the application; and that he or she  
30 has not, within the two years next preceding the filing of the  
31 application, been convicted of violating the liquor laws of any  
32 state or of the United States;
- 33       (10) That the applicant has not during the five years next  
34 preceding the date of said application had any license revoked  
35 under this chapter or under the liquor laws of any other state;
- 36       (11) If the applicant is a firm, association or partnership, the  
37 application shall state the matters required in subdivisions (6),  
38 (7), (8), (9) and (10), with respect to each of the members  
39 thereof, and each of said members must meet all the  
40 requirements in said subdivisions;
- 41       (12) If the applicant is a corporation, organized or  
42 authorized to do business in this state, the application shall  
43 state the matters required in subdivisions (6), (7), (8), (9) and  
44 (10), with respect to each of the officers and directors thereof,  
45 and any stockholder owning twenty percent or more of the  
46 stock of such corporation and the persons who conduct and  
47 manage the licensed premises for the corporation. Each of said  
48 individuals must meet all the requirements provided in those  
49 subdivisions except that the requirements as to citizenship and  
50 residence shall not apply to the officers, directors and  
51 stockholders of a corporation applying for a retailer's license;  
52 and

53 (13) Any other information that the commissioner may  
54 reasonably require.

55 The foregoing statements required in an application shall  
56 constitute mandatory prerequisites for the issuance of a license.

57 The application must be verified by the owner, or each  
58 member of the firm, each partner, if a partnership, each  
59 member of the governing board, if an association, or each  
60 officer and director, if a corporation: *Provided*, That the  
61 application of a corporation applying for a retailer's license  
62 need be verified only by its president or vice president.

**§60-8-18. Revocation, suspension and other sanctions which may  
be imposed by the commissioner upon the  
licensee; procedure upon refusal, revocation,  
suspension or other sanction.**

1 (a) The commissioner may on his or her own motion, or  
2 shall on the sworn complaint of any person, conduct an  
3 investigation to determine if any provisions of this article or  
4 any rule promulgated or any order issued by the commissioner  
5 has been violated by any licensee. After investigation, the  
6 commissioner may impose penalties and sanctions as set forth  
7 below.

8 (1) If the commissioner finds that the licensee has violated  
9 any provision of this article or any rule promulgated or order  
10 issued by the commissioner, or if the commissioner finds the  
11 existence of any ground on which a license could have been  
12 refused, if the licensee were then applying for a license, the  
13 commissioner may:

14 (A) Revoke the licensee's license;

15 (B) Suspend the licensee's license for a period determined  
16 by the commissioner not to exceed twelve months; or

17 (C) Place the licensee on probation for a period not to  
18 exceed twelve months; and

19 (D) Impose a monetary penalty not to exceed one thousand  
20 dollars for each violation where revocation is not imposed.

21 (2) If the commissioner finds that a licensee has willfully  
22 violated any provision of this article or any rule promulgated  
23 or any order issued by the commissioner, the commissioner  
24 shall revoke the licensee's license.

25 (b) If a supplier or distributor fails or refuses to keep in  
26 effect the bond required by section twenty-nine of this article,  
27 the commissioner shall automatically suspend the supplier or  
28 distributor's license until the bond required by section twenty  
29 of this article is furnished to the commissioner, at which time  
30 the commissioner shall vacate the suspension.

31 (c) Whenever the commissioner refuses to issue a license,  
32 or suspends or revokes a license, places a licensee on probation  
33 or imposes a monetary penalty, he or she shall enter an order  
34 to that effect and cause a copy of the order to be served in  
35 person or by certified mail, return receipt requested, on the  
36 licensee or applicant.

37 (d) Any applicant or licensee, as the case may be, adversely  
38 affected by the order has a right to a hearing before the  
39 commissioner if a written demand for hearing is served upon  
40 the commissioner within ten days following the receipt of the  
41 commissioner's order by the applicant or licensee. Timely  
42 service of a demand for a hearing upon the commissioner  
43 operates to suspend the execution of the order with respect to  
44 which a hearing has been demanded, except an order  
45 suspending a license under the provisions of subsection (b) of  
46 this section. The person demanding a hearing shall give  
47 security for the cost of the hearing in a form and amount as the  
48 commissioner may reasonably require. If the person

49 demanding the hearing does not substantially prevail in such  
50 hearing or upon judicial review thereof as provided in  
51 subsections (g) and (h) of this section, then the costs of the  
52 hearing shall be assessed against him or her by the  
53 commissioner and may be collected by an action at law or  
54 other proper remedy.

55 (e) Upon receipt of a timely served written demand for a  
56 hearing, the commissioner shall immediately set a date for the  
57 hearing and notify the person demanding the hearing of the  
58 date, time and place of the hearing, which shall be held within  
59 thirty days after receipt of the demand. At the hearing the  
60 commissioner shall hear evidence and thereafter enter an order  
61 supporting by findings of facts, affirming, modifying or  
62 vacating the order. Any such order is final unless vacated or  
63 modified upon judicial review thereof.

64 (f) The hearing and the administrative procedure prior to,  
65 during and following the hearing shall be governed by and in  
66 accordance with the provisions of article five, chapter  
67 twenty-nine-a of this code.

68 (g) Any applicant or licensee adversely affected by an order  
69 entered following a hearing has the right of judicial review of  
70 the order in accordance with the provisions of section four,  
71 article five, chapter twenty-nine-a of this code in the circuit  
72 court of Kanawha County, West Virginia.

73 (h) The judgment of the Kanawha County circuit court  
74 reviewing the order of the commissioner is final unless  
75 reversed, vacated or modified on appeal to the Supreme Court  
76 of Appeals in accordance with the provisions of section one,  
77 article six, chapter twenty-nine-a of this code.

78 (i) Legal counsel and services for the commissioner in all  
79 proceedings in any circuit court and the Supreme Court of  
80 Appeals shall be provided by the Attorney General or his or

81 her assistants and in any proceedings in any circuit court by  
82 the prosecuting attorney of that county as well, all without  
83 additional compensation.

**§60-8-19. To whom licensed manufacturer may sell.**

1 A licensed manufacturer who is licensed as a supplier of  
2 wine, as defined in this article, may sell such wines in this state  
3 only to the commissioner and to distributors as defined in this  
4 article. Such manufacturers may sell such wine outside of this  
5 state for use or resale outside this state. The provisions of this  
6 section shall not apply to farm wineries as defined by section  
7 five-a, article one of this chapter.

**§60-8-20. Unlawful acts generally.**

1 It shall be unlawful:

2 (a) For a supplier or distributor to sell or deliver wine  
3 purchased or acquired from any source other than a person  
4 registered under the provisions of section six of this article or  
5 for a retailer to sell or deliver wine purchased or acquired from  
6 any source other than a licensed distributor or a farm winery as  
7 defined in section five-a, article one of this chapter;

8 (b) Unless otherwise specifically provided by the provisions  
9 of this article, for a licensee under this article to acquire,  
10 transport, possess for sale or sell wine other than in the original  
11 package;

12 (c) For a licensee, his or her servants, agents or employees  
13 to sell, furnish or give wine to any person less than twenty-one  
14 years of age, or to a mental incompetent or person who is  
15 physically incapacitated due to the consumption of alcoholic  
16 liquor or the use of drugs: *Provided*, That the provisions of  
17 section twenty-five-a, article three-a of this chapter shall apply  
18 to sales of wine;



19 (d) For a licensee to permit a person who is less than  
20 eighteen years of age to sell, furnish or give wine to any  
21 person;

22 (e) For a supplier or a distributor to sell or deliver any brand  
23 of wine purchased or acquired from any source other than the  
24 primary source of supply of the wine which granted the  
25 distributor the right to sell the brand at wholesale. For the  
26 purposes of this article, "primary source of supply" means the  
27 vintner of the wine, the importer of a foreign wine who  
28 imports the wine into the United States, the owner of a wine at  
29 the time it becomes a marketable product, the bottler of a wine  
30 or an agent specifically authorized by any of the above-  
31 enumerated persons to make a sale of the wine to a West  
32 Virginia distributor: *Provided*, That no retailer shall sell or  
33 deliver wine purchased or acquired from any source other than  
34 a distributor or farm winery licensed in this state: *Provided*,  
35 *however*, That nothing herein is considered to prohibit sales of  
36 convenience between distributors licensed in this state wherein  
37 one distributor sells, transfers or delivers to another distributor  
38 a particular brand or brands for sale at wholesale, of which  
39 brand or brands the other distributor has been authorized by a  
40 licensed supplier to distribute. The commissioner shall  
41 promulgate rules necessary to carry out the provision of this  
42 subsection;

43 (f) For a person to violate any reasonable rule promulgated  
44 by the commissioner under this article;

45 (g) Nothing in this article, nor any rule or regulation of the  
46 commissioner, shall prevent or be considered to prohibit any  
47 licensee from employing any person who is at least eighteen  
48 years of age to serve in any licensee's lawful employment,  
49 including the sale or delivery of wine under the provisions of  
50 this article. With the prior approval of the commissioner, a  
51 licensee whose principal business is the sale of food or  
52 consumer goods or the providing of recreational activities,

53 including, but not limited to, nationally franchised fast food  
54 outlets, family-oriented restaurants, bowling alleys, drug  
55 stores, discount stores, grocery stores and convenience stores,  
56 may employ persons who are less than eighteen years of age  
57 but at least sixteen years of age: *Provided*, That the person's  
58 duties may not include the sale or delivery of nonintoxicating  
59 beer or alcoholic liquors: *Provided, however*, That the  
60 authorization to employ persons under the age of eighteen  
61 years shall be clearly indicated on the licensee's license.

**§60-8-23. Duties and powers of commissioner; rules.**

1 (a) The commissioner is authorized:

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

3 (2) To enter the premises of any licensee at reasonable  
4 times for the purpose of inspecting the premises and  
5 determining the compliance of the licensee with the provisions  
6 of this article and any rules promulgated by the commissioner.

7 (3) In addition to rules relating to the tax imposed by  
8 section four of this article or otherwise authorized by this  
9 article, to promulgate reasonable rules as he deems necessary  
10 for the execution and enforcement of the provisions of this  
11 article, which may include, but shall not be limited to:

12 (A) The transport, use, handling, service and sale of wine;

13 (B) Establishing standards of identity, quality and purity to  
14 protect the public against wine containing deleterious, harmful  
15 or impure substances or elements and against spurious or  
16 imitation wines and wines unfit for human consumption; and

17 (C) Restricting the content of wine advertising so as to  
18 prohibit false or misleading claims, or depictions or  
19 descriptions of wine being consumed irresponsibly or

20 immoderately, or advertising presentations designed to appeal  
21 to persons below the legal drinking age: *Provided*, That the  
22 commissioner shall not promulgate any rule which prohibits  
23 the advertising of a particular brand or brands of wine and the  
24 price thereof: *Provided, however*, That price shall not be  
25 advertised in a medium of electronic communication subject to  
26 the jurisdiction of the Federal Communications Commission.

27 (4) To issue subpoenas and subpoenas duces tecum for the  
28 purpose of conducting hearings under the provisions of section  
29 twelve of this article, which subpoenas and subpoenas duces  
30 tecum shall be issued in the time, for the fees, and shall be  
31 enforced in the manner specified in section one, article five,  
32 chapter twenty-nine-a of this code with like effect as if said  
33 section was set forth in extenso in this subdivision.

34 (b) The authority granted in this subsection and subsections  
35 (a) and (d) of this section may also be exercised by the duly  
36 authorized or designated agents of the commissioner.

37 (c) Except as may be in this article to the contrary, the  
38 commissioner shall not have authority by rule or otherwise to  
39 regulate markups, prices, discounts, allowances or other terms  
40 of sale at which wine may be purchased or sold by wine  
41 distributors or licensees authorized to sell wine at retail but  
42 nothing herein shall be deemed to authorize or permit any  
43 discriminatory practice prohibited by subsection (a), section  
44 thirty-one of this article or any other discriminatory practice.

45 (d) All rules promulgated by the commissioner pursuant to  
46 this article shall be so promulgated in accordance with the  
47 provisions of chapter twenty-nine-a of this code. The rules  
48 promulgated pursuant to the prior enactment of this article and  
49 not disapproved by the Legislature shall remain in full force  
50 and effect to the extent that such rules are not abrogated and  
51 made null and void by the reenactment of the sections of this  
52 article during the regular session of the Legislature for the year

53 one thousand nine hundred eighty-six. Any rule which is  
54 inconsistent or contrary in any way to any provision of this  
55 article now or hereafter enacted are null and void.

**§60-8-24. Disposition of revenue.**

1 (a) The first two hundred thousand dollars of fees collected  
2 under the provisions of this article during each fiscal year shall  
3 be deposited into a special revolving fund designated the Tax  
4 Commissioner's Wine Tax Administration Fund, which fund is  
5 hereby created in the State Treasury. The Tax Commissioner's  
6 Wine Tax Administration Fund shall be used by the Tax  
7 Commissioner to administer and support direct and indirect  
8 costs of the Tax Division for administration, collection,  
9 including compliance enforcement, auditing and distribution of  
10 taxes on wine imposed by this code and for which the Tax  
11 Commissioner has administration, collection, compliance  
12 enforcement, auditing or distribution functions or  
13 responsibilities.

14 (b) After collection and deposit of the first two hundred  
15 thousand dollars, as specified in subsection (a) of this section,  
16 all fees collected by the Alcohol Beverage Control  
17 Commissioner under the provisions of this article shall next be  
18 deposited in the State Treasury and credited to a special fund  
19 to be known as the Wine License Special Fund. All moneys in  
20 the Wine License Special Fund may be expended only by the  
21 Alcohol Beverage Control Commissioner for the  
22 administration of the provisions of this article or, to the extent  
23 of any excess, for the administration of this chapter or as may  
24 be appropriate by law.

25 (c) The liter tax imposed and collected by the Tax  
26 Commissioner under the provisions of this article shall be paid  
27 into the State Treasury and deposited in the General Revenue  
28 Fund of the state.

29 (d) All moneys collected by the Alcohol Beverage Control  
30 Commissioner and the Tax Commissioner under the provisions  
31 of this article shall be remitted to the State Treasury monthly  
32 within fifteen days after the end of each month.

**§60-8-25. Criminal penalties; public nuisances.**

1 (a) Any person who violates any provision of this article or  
2 who makes any false statement concerning any material fact in  
3 submitting application for license or for a renewal of a license  
4 or in any hearing concerning the suspension or revocation  
5 thereof, or who commits any of the acts herein declared to be  
6 unlawful, is guilty of a misdemeanor and, upon conviction  
7 thereof, shall for each offense be fined not less than one  
8 hundred dollars nor more than one thousand dollars, or  
9 imprisoned in the county jail not less than thirty days nor more  
10 than six months, or both fined and imprisoned. Magistrate  
11 courts shall have concurrent jurisdiction with the circuit court  
12 for the trial of all misdemeanors arising under this article.

13 (b) The provisions of sections sixteen and seventeen, article  
14 six of this chapter shall apply to persons violating the  
15 provisions of this article to the same extent as if such  
16 provisions were set forth in extenso herein.

**§60-8-26. Forfeiture of bond.**

1 On conviction of a violation of any provision of this article,  
2 upon the revocation of a license in accordance with section  
3 eighteen of this article or upon finding of failure of a taxpayer  
4 to pay all taxes prescribed by section four of this article, which  
5 conviction, revocation or finding has become final, the  
6 licensee, former licensee or company registered and licensed  
7 as a supplier or distributor, as the case may be, shall forfeit any  
8 bond required by section twenty-nine of this article. The penal  
9 sum of any bond forfeited shall forthwith be paid to the State  
10 Treasurer and credited to the General Revenue Fund of this

11 state. Such sum may be collected by an action at law or other  
12 appropriate remedy.

### PART III. WINE DISTRIBUTION.

#### **§60-8-28. Wine brand licensing and registration and review of wine labels.**

1 Every supplier offering wine for sale under this article shall  
2 register with the commissioner each wine brand offered for  
3 sale in the state and shall pay a fee of one hundred dollars for  
4 the registration of such wine brand for three years, such fee  
5 shall be returned to the supplier if the wine is not registered for  
6 sale. No wine brand may be sold under this article unless all  
7 of such wine brand's labels intended for sale in the state have  
8 been registered and reviewed by the commissioner. Every  
9 supplier offering various wine labels of a registered and  
10 reviewed wine brand for sale in the state shall submit all of the  
11 wine brand's labels intended for sale in the state for  
12 registration prior to the sale of such wine labels in the state for  
13 no additional fees. After the expiration of three years, the  
14 supplier may renew the registered wine brand by paying a one  
15 hundred dollar renewal fee for three more years and every  
16 three years thereafter. Prior to registration of any wine labels,  
17 the commissioner shall review the wine labels. This review  
18 shall include, but not be limited to, a review of the alcohol  
19 content, corporate or product information, marketing and  
20 advertising so that the wine label is not intended to be  
21 marketed to persons less than twenty-one years of age. The  
22 commissioner shall remove all nonrenewed wine labels and  
23 any licensee who sells wine with nonrenewed wine labels shall  
24 be subject to the penalties under section eighteen of this article.  
25 Failure to register, obtain certification and pay the annual fee  
26 for a wine brand and failure to register the wine brand's labels  
27 will subject the supplier to penalties under said section.

#### **§60-8-29. Bond required of distributors and suppliers.**

1 Each applicant for a distributor's license or a supplier's  
2 license shall furnish at the time of application a bond with a  
3 corporate surety authorized to transact business in this state,  
4 payable to the state, and conditioned on the payment of all  
5 taxes and fees herein prescribed and on the faithful  
6 performance of and compliance with the provisions of this  
7 article.

8 The penal sum of the bond for distributors shall be ten  
9 thousand dollars and the penal sum of the bond for suppliers  
10 shall be ten thousand dollars. Each distributor shall be  
11 required to furnish separate bond for each location or separate  
12 place of business from which wine is distributed, sold or  
13 delivered. Revocation or forfeiture of the bond furnished for  
14 any such location may, in the discretion of the commissioner,  
15 cause the revocation or forfeiture of all such bonds furnished  
16 by the distributor suffering such revocation or forfeiture.

**§60-8-30. Exclusive franchise agreements prohibited.**

1 It shall be illegal for any manufacturer, winery, farm winery  
2 or supplier to enter into any exclusive franchise agreement  
3 with any distributor whereby any such distributor is given the  
4 exclusive right within this state or in any given territory within  
5 this state to distribute the product or products of such  
6 manufacturer which are to be sold or distributed pursuant to  
7 the provisions of this article. Further, all agreements between  
8 a manufacturer, winery, farm winery or supplier and a  
9 distributor must be in writing and on file with the  
10 commissioner and all such agreements must provide for  
11 termination of either party provided that notice of termination  
12 is provided in writing and by certified mail to the  
13 commissioner and all parties to the agreement ninety days  
14 prior to the termination date. Once the notice has been  
15 received by either party, the distributor shall: (1) Use the  
16 ninety-day period to deplete such distributor's affected wine  
17 inventory; or (2) reach some agreement with the manufacturer,

18 winery, farm winery or supplier to return unused salable wine  
19 inventory or receive payment for unused salable wine  
20 inventory. No new distributor shall be appointed until the  
21 conclusion of the ninety days or as the parties have otherwise  
22 agreed to complete the termination. For the purposes of this  
23 article, "salable" shall mean inventory fit for human  
24 consumption or as otherwise determined by the commissioner.

**§60-8-31. Other unlawful acts.**

1 It is unlawful:

2 (a) For a distributor to discriminate in price, sales  
3 agreements, terms or services offered to retailers, licensees or  
4 to any licensee under article seven of this chapter and further it  
5 is unlawful for a supplier to discriminate against a distributor  
6 in price, sales agreements, terms or services. "Discriminate",  
7 as used in this section, means the granting of more favorable  
8 prices, agreements, terms or services to one person than to  
9 another.

10 (b) For a distributor, his or her agents, servants or  
11 employees to transport or deliver wine to any retail licensee or  
12 to any licensee under article seven of this chapter on Sunday or  
13 any general election day.

14 (c) For a distributor to sell wines authorized by this article  
15 to licensees under article seven of this chapter at a price which  
16 is greater than the price at which such wines are sold and  
17 distributed to retailers under this article.

PART IV. WINE RETAILERS.

**§60-8-32. Where wine may be sold at retail.**

1 Except as to sales permitted to be made by wineries or farm  
2 wineries that obtain a retailer's license, private wine bed and



3 breakfasts, private wine restaurants and private wine spas,  
4 wine sold pursuant to this article may be sold at retail only by  
5 the commissioner and in and by retailers and wine specialty  
6 shops as defined by section two of this article.

**§60-8-34. When retail sales prohibited.**

1 It shall be unlawful for a retailer, farm winery, wine  
2 specialty shop retailer, private wine bed and breakfast, private  
3 wine restaurant or private wine spa licensee, his or her  
4 servants, agents or employees to sell or deliver wine between  
5 the hours of two o'clock a.m. and one o'clock p. m. on  
6 Sundays, or between the hours of two o'clock a. m. and seven  
7 o'clock a. m. on weekdays and Saturdays.

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**CHAPTER 8**

**(H.B. 2745 - By Delegates Wysong, Tabb, Stemple,  
Pino, Staggers, Shaver, Ellis, Stephens, Rodighiero  
and Paxton)**

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[Passed March 10, 2007; in effect ninety days from passage.]  
Approved by the Governor on March 28, 2007.]

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AN ACT to amend and reenact §60-3A-24 of the Code of West Virginia, 1931, as amended, relating to increasing the fine for furnishing alcohol to persons under 21 years of age.

*Be it enacted by the Legislature of West Virginia:*

That §60-3A-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.****§60-3A-24. Unlawful acts by persons.**

1 (a) (1) Any person who is eighteen or over but under the  
2 age of twenty-one years who purchases, consumes, sells,  
3 serves or possesses alcoholic liquor is guilty of a  
4 misdemeanor and, upon conviction thereof, shall be fined an  
5 amount not to exceed five hundred dollars or shall be  
6 incarcerated in jail for a period not to exceed seventy-two  
7 hours, or both fined and imprisoned or, in lieu of such fine  
8 and incarceration, may, for the first offense, be placed on  
9 probation for a period not to exceed one year. Any person  
10 who is under eighteen years who purchases, consumes,  
11 sells, serves or possesses alcoholic liquor is guilty of a  
12 status offense, as that term is defined in section four, article  
13 one, chapter forty-nine of this code and, upon adjudication  
14 therefor, shall be referred to the Department of Health and  
15 Human Resources for services, as provided in section  
16 eleven, article five of said chapter.

17 (2) Nothing in this article, nor any rule or regulation of  
18 the commissioner, shall prevent or be deemed to prohibit  
19 any person who is at least eighteen years of age from  
20 serving in the lawful employment of a licensee which  
21 includes the sale and serving of alcoholic liquor.

22 (3) Nothing in this subsection shall prohibit a person who  
23 is at least eighteen years of age from purchasing or  
24 possessing alcoholic liquor when he or she is acting upon  
25 the request of or under the direction and control of any  
26 member of a state, federal or local law-enforcement agency  
27 or the West Virginia Alcohol Beverage Administration  
28 while the agency is conducting an investigation or other  
29 activity relating to the enforcement of the alcohol beverage  
30 control statutes and the rules and regulations of the  
31 commissioner.

32 (b) Any person under the age of twenty-one years who,  
33 for the purpose of purchasing liquor from a retail licensee,  
34 misrepresents his or her age or who for such purpose  
35 presents or offers any written evidence of age which is false,  
36 fraudulent or not actually his or her own or who illegally  
37 attempts to purchase liquor from a retail licensee is guilty of  
38 a misdemeanor and, upon conviction thereof, shall be fined  
39 an amount not to exceed fifty dollars or imprisoned in jail  
40 for a period not to exceed seventy-two hours, or both fined  
41 and imprisoned or, in lieu of such fine and imprisonment,  
42 may, for the first offense, be placed on probation for a  
43 period not exceeding one year.

44 (c) Any person who knowingly buys for, gives to or  
45 furnishes to anyone under the age of twenty-one to whom  
46 he or she is not related by blood or marriage any liquor from  
47 whatever source is guilty of a misdemeanor and, upon  
48 conviction thereof, shall be fined an amount not to exceed  
49 two hundred fifty dollars or imprisoned in jail for a period  
50 not to exceed ten days, or both fined and imprisoned.

51 (d) No person while on the premises of a retail outlet  
52 may consume liquor or break the seal on any package or  
53 bottle of liquor. Any person who violates the provisions of  
54 this subsection is guilty of a misdemeanor and, upon  
55 conviction thereof, shall be fined an amount not to exceed  
56 one hundred dollars or imprisoned in jail for a period not to  
57 exceed ten days, or both fined and imprisoned.

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**CHAPTER 9****(H.B. 2825 - By Delegates Spencer, Moore and Marshall)**

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[Passed March 9, 2007; in effect ninety days from passage.]  
[Approved by the Governor on March 20, 2007.]

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AN ACT to amend and reenact §60-7-4 of the Code of West Virginia, 1931, as amended, relating to private clubs; and deleting provision that allowed private clubs segregated on the basis of race or color to obtain license to sell alcoholic liquors.

*Be it enacted by the Legislature of West Virginia:*

That §60-7-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 7. LICENSES TO PRIVATE CLUBS.**

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

1 (a) Application for a license to operate a private club  
2 shall be made on such form as may be prescribed by the  
3 commissioner and shall include:

4 (1) The name of the applicant;

5       (2) If the applicant is an unincorporated association, the  
6 names and addresses of the members of its governing board;

7       (3) If the applicant is a corporation, the names and  
8 addresses of its officers and directors;

9       (4) The place at which the applicant will conduct its  
10 operations and whether the same is owned or leased by the  
11 applicant;

12       (5) The number of members of the applicant;

13       (6) The name or names of any national organizations  
14 with which applicant is affiliated and the nature of such  
15 affiliation;

16       (7) The size and nature of the dining and kitchen  
17 facilities operated by applicant; and

18       (8) Such other information as the commissioner may  
19 reasonably require which shall include, but not be limited  
20 to, the criminal records, if any, of each member of the  
21 applicant's governing board and/or its officers and directors  
22 who have been convicted of a felony or a crime involving  
23 moral turpitude.

24       (b) The application shall be verified by each member of  
25 the governing board of the applicant if an unincorporated  
26 association or, if the applicant is a corporation, by each of  
27 its officers and all members of its board of directors. The  
28 application shall be accompanied by the license fee  
29 hereinafter prescribed and by a bond of the applicant in the  
30 penal sum of five thousand dollars with a corporate surety  
31 authorized to transact business in the State of West Virginia,  
32 payable to the State of West Virginia, which bond shall be  
33 conditioned on the payment of all fees herein prescribed and

34 on the faithful performance of and compliance with the  
35 provisions of this article.

36 (c) Under no circumstance may any college fraternity or  
37 sorority be issued a license to operate a private club.

38 (d) No license to operate a private club will be issued to  
39 applicants who discriminate against any person or group of  
40 persons because of race or color of such person or group of  
41 persons.



## CHAPTER 10

**(Com. Sub. for H.B. 2181 - By Delegates Boggs and Hamilton)**

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[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2007.]

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AN ACT to amend and reenact §4-1-23 of the Code of West Virginia, 1931, as amended; to amend and reenact §5-1-20 of said code; and to amend said code by adding thereto a new section, designated §30-1-17, all relating to authorizing state offices, agencies, boards and commissions to submit annual reports electronically; and requiring electronic copies to be submitted to the Legislative Manager in certain circumstances.

*Be it enacted by the Legislature of West Virginia:*

That §4-1-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §5-1-20 of said code be

amended and reenacted; and that said code be amended by adding thereto a new section, designated §30-1-17, all to read as follows:

**Chapter**

- 4. **The Legislature.**
- 5. **General Powers of Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.**
- 30. **Professions and Occupations.**

**CHAPTER 4. THE LEGISLATURE.**

**ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF CAPITOL BUILDING; PREFILING OF BILLS AND RESOLUTIONS; STANDING COMMITTEES; INTERIM MEETINGS; NEXT MEETING OF THE SENATE.**

**§4-1-23. Annual reports to be sent to the legislative librarian.**

1 (a) Any office, agency, commission or board required by  
2 any section of this code to provide an annual report to the  
3 Legislature, Legislative Manager, Legislative Auditor, the  
4 President of the Senate and the Speaker of the House of  
5 Delegates or the Joint Committee on Government and  
6 Finance shall submit the report to the Legislative Librarian  
7 and may submit it on electronic media to be filed in the  
8 same manner as a printed annual report, or transmitted  
9 electronically via the internet. Any report filed in an  
10 electronic format shall be considered as having satisfied the  
11 filing requirements.

12 (b) If an office, agency, commission or board submits its  
13 annual report electronically, it shall transmit an electronic  
14 copy to the legislative manager.

15 (c) All audit reports shall be submitted to the Legislative  
16 Manager and may be submitted on electronic media or  
17 transmitted electronically via the internet.

**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 1. THE GOVERNOR.**

**§5-1-20. Reports to the Governor; form and contents;  
transmission to the Legislature; special reports.**

1 (a) The secretaries of the executive department and the  
2 officers of all public institutions of the state shall make an  
3 annual report to the Governor as soon as possible after the  
4 close of each fiscal year, notwithstanding any other  
5 provision of law to the contrary.

6 (b) All state officers, boards, commissions, departments  
7 and institutions required by law to make reports to the  
8 Governor, the Legislature or any administrative board or  
9 state official shall cover fiscal year periods.

10 (c) Annual reports shall be submitted in typewritten  
11 form, any legible form produced by mechanical means, on  
12 electronic media, to be filed in the same manner as a printed  
13 annual report, or transmitted electronically via the internet.  
14 Any annual report filed in an electronic format shall be  
15 considered as having satisfied the filing requirements.

16 (d) The Governor shall by executive order prescribe the  
17 general contents of the reports to be submitted to him or her.  
18 The form and format of the reports shall be as prescribed in  
19 this code.



20 (e) The Governor shall transmit, and may do so  
21 electronically, copies of the report to the Legislature and  
22 provide a copy of all such reports with the Division of  
23 Archives and History where the reports shall be kept as  
24 permanent records.

25 (f) All annual reports to the Legislature shall be  
26 submitted, and may do so electronically, to the Legislative  
27 Librarian.

28 (g) The Governor may at any time require information in  
29 writing, under oath, from any officer, board, department or  
30 commission of the executive department or the principal  
31 officer or manager of any state institution, upon any subject  
32 relating to the condition, management and expense of their  
33 respective offices or institutions.

**CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

**ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO  
ALL STATE BOARDS OF EXAMINATION  
OR REGISTRATION REFERRED TO IN  
CHAPTER.**

**§30-1-17. Annual reports.**

1 (a) A licensing board, organized under the provisions of  
2 this chapter, may submit its annual report on electronic  
3 media to be filed in the same manner as a printed annual  
4 report, or transmitted electronically via the internet. Any  
5 report filed in an electronic format shall be considered as  
6 having satisfied the filing requirements.

7 (b) If a board chooses to submit its annual report  
8 electronically, it shall transmit an electronic copy to the  
9 legislative manager.

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## CHAPTER 11

**(Com. Sub. for S.B. 194 - By Senators Kessler and Plymale)**

[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2007.]

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AN ACT to amend and reenact §58-5-14 of the Code of West Virginia, 1931, as amended, relating to appeal bonds; limiting bond amounts; consolidating multiple judgments for bonding purposes; providing exceptions to bonding limitations; and providing for the adjustment of the appeal bonding limitations to reflect changes in the consumer price index.

*Be it enacted by the Legislature of West Virginia:*

That §58-5-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 5. APPELLATE RELIEF IN SUPREME COURT OF APPEALS.**

#### **§58-5-14. Appeal bond generally; limitation on amount.**

- 1     (a) When required by the court, an appeal shall not take
- 2 effect until bond is given by the appellants or petitioners, or one
- 3 of them, or some other person, in a penalty to be fixed by the
- 4 court or judge by or in which the appeal is allowed or entered
- 5 with condition: If a supersedeas be awarded, to abide by and
- 6 perform the judgment and to pay to the opposite party, and to
- 7 any person injured, all such costs and damages as they, or either

8 of them, may incur or sustain by reason of said appeal, in case  
9 such judgment, or such part, be affirmed, or the appeal be  
10 dismissed, and also, to pay all damages, costs and fees, which  
11 may be awarded against or incurred by the appellant or  
12 petitioners; and if it is an appeal from a judgment dissolving an  
13 injunction, or dismissing a bill of injunction, with a further  
14 condition, to indemnify and save harmless the surety in the  
15 injunction bond against loss or damage in consequence of his or  
16 her suretyship; and with condition when no supersedeas is  
17 awarded to pay such specific damages and such costs and fees  
18 as may be awarded or incurred: *Provided*, That whenever an  
19 appeal is awarded in any action or suit wherein a judgment for  
20 the payment of money has been entered against an insured in an  
21 action which is defended by an insurance corporation, or other  
22 insurer, on behalf of the insured under a policy of insurance, the  
23 limit of liability of which is less than the amount of said  
24 judgment, execution on the judgment to the extent of the policy  
25 coverage shall be stayed until final determination of such appeal  
26 and no execution shall be issued, or action brought, maintained  
27 or continued against such insured, insurance corporation or  
28 other insurer, for the amount of such judgment so stayed, by  
29 either the injured party, the insured or the legal representative,  
30 heir or assigns of any of them, during the pendency of such  
31 proceeding, provided such insurance corporation, or other  
32 insurer, shall:

33 (1) File with the clerk of the court in which the judgment was  
34 entered a sworn statement of one of its officers describing the  
35 nature of the policy and the amount of coverage thereof;

36 (2) Give or cause to be given by the judgment debtor or some  
37 other person for him or her a bond in a penalty to be fixed by  
38 the court or judge by or in which the appeal is allowed or  
39 entered, not to exceed the amount of such insurance coverage  
40 set out in the sworn statement above required, with condition to  
41 pay the amount of such coverage upon said judgment if the  
42 judgment or such part is affirmed or the appeal is dismissed,  
43 plus interest on said sum and cost;

44 (3) Serve a copy of such sworn statement and bond upon the  
45 judgment creditor or his or her attorney;

46 (4) Deliver or mail to the insured at the latest address of the  
47 insured appealing upon the records of such insurance  
48 corporation, or other insurer, written notice that execution on  
49 such judgment to the extent that it is not covered by such  
50 insurance is not stayed in respect to the insured: *Provided*, That  
51 the filing of a bond by the insured or someone for him or her,  
52 conditioned upon the payment of the balance of the judgment  
53 and interest not stayed by the insured as aforesaid if the  
54 judgment is affirmed or the appeal is dismissed, shall stay  
55 execution on the balance of said judgment not covered by such  
56 insurance: *Provided, however*, That the filing of such statement  
57 and bond hereunder by an insurance corporation or other insurer  
58 shall not thereby make such insurance corporation or other  
59 insurer a party to such action, either in the trial court or in the  
60 appellate court.

61 (b) Except for bonds required under section four, article  
62 eleven-a, chapter four of this code, an appeal bond required by  
63 a court in accordance with this section may not exceed the  
64 amount of the total judgment, which includes the actual  
65 judgment, plus costs, interest and fees: *Provided*, That for all  
66 verdicts returned or judgments rendered on or after the first day  
67 of July, two thousand seven, in which the judgment exceeds  
68 fifty million dollars, the court shall require an appeal bond of no  
69 more than fifty million dollars. For purposes of this subsection,  
70 multiple judgments resulting from cases that have been  
71 consolidated or aggregated for purpose of trial proceedings shall  
72 be treated as a single judgment.

73 (c) If the appellee proves by a preponderance of the evidence  
74 that the appellant is dissipating or diverting assets outside the  
75 ordinary course of business, thereby impairing the appellant's  
76 ability to pay the ultimate judgment, the court is not bound by  
77 the limitations stated in subsection (b) of this section and may

78 set the appeal bond at any amount not to exceed the total  
79 judgment.

80 (d) The maximum amount allowed for a bond under  
81 subsection (b) of this section shall be adjusted on the first day of  
82 July, two thousand twelve, by an amount to reflect the annual  
83 aggregate percentage change in the Federal Consumer Price  
84 Index for All Urban Consumers, as published by the United  
85 States Department of Labor for the immediately preceding five  
86 years, and shall thereafter be adjusted on the first day of July  
87 every five years after that initial adjustment by an amount  
88 determined by the aggregate change in the Federal Consumer  
89 Price Index for All Urban Consumers since the previous  
90 adjustment.

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## CHAPTER 12

**(Com. Sub. for H.B. 2007 - By Mr. Speaker, Mr. Thompson,  
and Delegate Armstead)  
[By Request of the Executive]**

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[Passed March 18, 2007; in effect from passage.]  
[Approved by the Governor on March 23, 2007.]

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AN ACT making appropriations of public money out of the  
Treasury in accordance with section fifty-one, article VI of the  
Constitution.

*Be it enacted by the Legislature of West Virginia:*

**Title**

- I. General Provisions.**
- II. Appropriations.**

**III. Administration.****TITLE I—GENERAL PROVISIONS.****TITLE I--GENERAL PROVISIONS.**

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

1       **Section 1. General policy.**—The purpose of this bill is  
 2 to appropriate money necessary for the economical and  
 3 efficient discharge of the duties and responsibilities of the  
 4 state and its agencies during the fiscal year two thousand  
 5 eight.

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

2       "Governor" shall mean the governor of the state of West  
 3 Virginia.

4       "Code" shall mean the code of West Virginia, one  
 5 thousand nine hundred thirty-one, as amended.

6       "Spending unit" shall mean the department, bureau,  
 7 division, office, board, commission, agency or institution to  
 8 which an appropriation is made.

9       The "fiscal year two thousand eight" shall mean the  
 10 period from the first day of July, two thousand seven, through  
 11 the thirtieth day of June, two thousand eight.

12       "General revenue fund" shall mean the general operating  
 13 fund of the state and includes all moneys received or  
 14 collected by the state except as provided in section two,  
 15 article two, chapter twelve of the code or as otherwise  
 16 provided.

17 "Special revenue funds" shall mean specific revenue  
18 sources which by legislative enactments are not required to  
19 be accounted for as general revenue, including federal funds.

20 "From collections" shall mean that part of the total  
21 appropriation which must be collected by the spending unit  
22 to be available for expenditure. If the authorized amount of  
23 collections is not collected, the total appropriation for the  
24 spending unit shall be reduced automatically by the amount  
25 of the deficiency in the collections. If the amount collected  
26 exceeds the amount designated "from collections," the excess  
27 shall be set aside in a special surplus fund and may be  
28 expended for the purpose of the spending unit as provided by  
29 article two, chapter eleven-b of the code.

1 **Sec. 3. Classification of appropriations.**—An  
2 appropriation for:

3 "Personal services" shall mean salaries, wages and other  
4 compensation paid to full-time, part-time and temporary  
5 employees of the spending unit but shall not include fees or  
6 contractual payments paid to consultants or to independent  
7 contractors engaged by the spending unit.

8 Unless otherwise specified, appropriations for "personal  
9 services" shall include salaries of heads of spending units.

10 "Annual increment" shall mean funds appropriated for  
11 "eligible employees" and shall be disbursed only in  
12 accordance with article five, chapter five of the code.

13 Funds appropriated for "annual increment" shall be  
14 transferred to "personal services" or other designated items  
15 only as required.

16 "Employee benefits" shall mean social security matching,  
17 workers' compensation, unemployment compensation,  
18 pension and retirement contributions, public employees  
19 insurance matching, personnel fees or any other benefit  
20 normally paid by the employer as a direct cost of  
21 employment. Should the appropriation be insufficient to  
22 cover such costs, the remainder of such cost shall be  
23 transferred by each spending unit from its "personal services"  
24 line item or its "unclassified" line item or other appropriate  
25 line item to its "employee benefits" line item. If there is no  
26 appropriation for "employee benefits," such costs shall be  
27 paid by each spending unit from its "personal services" line  
28 item, its "unclassified" line item or other appropriate line  
29 item. Each spending unit is hereby authorized and required  
30 to make such payments in accordance with the provisions of  
31 article two, chapter eleven-b of the code.

32 "BRIM Premiums" shall mean the amount charged as  
33 consideration for insurance protection and includes the  
34 present value of projected losses and administrative expenses.  
35 Premiums are assessed for coverages, as defined in the  
36 applicable policies, for claims arising from, inter alia, general  
37 liability, wrongful acts, property, professional liability and  
38 automobile exposures.

39 Should the appropriation for "BRIM Premiums" be  
40 insufficient to cover such cost, the remainder of such costs  
41 shall be transferred by each spending unit from its "personal  
42 services" line item, its "employee benefit" line item, its  
43 "unclassified" line item or any other appropriate line item to  
44 "BRIM Premiums" for payment to the Board of Risk and  
45 Insurance Management. Each spending unit is hereby  
46 authorized and required to make such payments.



47 Each spending unit shall be responsible for all  
48 contributions, payments or other costs related to coverage  
49 and claims of its employees for unemployment  
50 compensation. Such expenditures shall be considered an  
51 employee benefit.

52 "Current expenses" shall mean operating costs other than  
53 personal services and shall not include equipment, repairs  
54 and alterations, buildings or lands.

55 Each spending unit shall be responsible for and charged  
56 monthly for all postage meter service and shall reimburse the  
57 appropriate revolving fund monthly for all such amounts.  
58 Such expenditures shall be considered a current expense.

59 "Equipment" shall mean equipment items which have an  
60 appreciable and calculable period of usefulness in excess of  
61 one year.

62 "Repairs and alterations" shall mean routine maintenance  
63 and repairs to structures and minor improvements to property  
64 which do not increase the capital assets.

65 "Buildings" shall include new construction and major  
66 alteration of existing structures and the improvement of lands  
67 and shall include shelter, support, storage, protection or the  
68 improvement of a natural condition.

69 "Lands" shall mean the purchase of real property or  
70 interest in real property.

71 "Capital outlay" shall mean and include buildings, lands  
72 or buildings and lands, with such category or item of  
73 appropriation to remain in effect as provided by section  
74 twelve, article three, chapter twelve of the code.

75 From appropriations made to the spending units of state  
76 government, upon approval of the governor there may be  
77 transferred to a special account an amount sufficient to match  
78 federal funds under any federal act.

79 Appropriations classified in any of the above categories  
80 shall be expended only for the purposes as defined above and  
81 only for the spending units herein designated: *Provided*, That  
82 the secretary of each department shall have the authority to  
83 transfer within the department those general revenue funds  
84 appropriated to the various agencies of the department:  
85 *Provided, however*, That no more than five percent of the  
86 general revenue funds appropriated to any one agency or  
87 board may be transferred to other agencies or boards within  
88 the department: *Provided further*, That the secretary of each  
89 department and the director, commissioner, executive  
90 secretary, superintendent, chairman or any other agency head  
91 not governed by a departmental secretary as established by  
92 chapter five-f of the code shall have the authority to transfer  
93 funds appropriated to "personal services" and "employee  
94 benefits" to other lines within the same account and no funds  
95 from other lines shall be transferred to the "personal services"  
96 line: *And provided further*, That the secretary of each  
97 department and the director, commissioner, executive  
98 secretary, superintendent, chairman or any other agency head  
99 not governed by a departmental secretary as established by  
100 chapter five-f of the code shall have the authority to transfer  
101 general revenue funds appropriated to "annual increment" to  
102 other general revenue accounts within the same department,  
103 bureau or commission for the purpose of providing an annual  
104 increment in accordance with article five, chapter five of the  
105 code: *And provided further*, That no authority exists  
106 hereunder to transfer funds into line-items to which no funds  
107 are legislatively appropriated: *And provided further*, That if  
108 the Legislature by subsequent enactment consolidates

109 agencies, boards or functions, the secretary or other  
 110 appropriate agency head may transfer the funds formerly  
 111 appropriated to such agency, board or function in order to  
 112 implement such consolidation. No funds may be transferred  
 113 from a special revenue account, dedicated account, capital  
 114 expenditure account or any other account or fund specifically  
 115 exempted by the Legislature from transfer, except that the use  
 116 of the appropriations from the state road fund for the office  
 117 of the secretary of the department of transportation is not a  
 118 use other than the purpose for which such funds were  
 119 dedicated and is permitted.

120 Appropriations otherwise classified shall be expended  
 121 only where the distribution of expenditures for different  
 122 purposes cannot well be determined in advance or it is  
 123 necessary or desirable to permit the spending unit the  
 124 freedom to spend an appropriation for more than one of the  
 125 above classifications.

1 **Sec. 4. Method of expenditure.**—Money appropriated  
 2 by this bill, unless otherwise specifically directed, shall be  
 3 appropriated and expended according to the provisions of  
 4 article three, chapter twelve of the code or according to any  
 5 law detailing a procedure specifically limiting that article.

1 **Sec. 5. Maximum expenditures.**—No authority or  
 2 requirement of law shall be interpreted as requiring or  
 3 permitting an expenditure in excess of the appropriations set  
 4 out in this bill.

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- §16. Appropriations for local governments.
- §17. Total appropriations.
- §18. General school fund.

1       **Section 1. Appropriations from general**  
 2 **revenue.**—From the state fund, general revenue, there are  
 3 hereby appropriated conditionally upon the fulfillment of the  
 4 provisions set forth in article two, chapter eleven-b of the  
 5 code the following amounts, as itemized, for expenditure  
 6 during the fiscal year two thousand eight.

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**LEGISLATIVE**

*1—Senate*

Fund 0165 FY 2008 Org 2100

		<b>Act- ivity</b>	<b>General Revenue Fund</b>
1 Compensation of Members (R) . . . . .	003	\$ 1,010,000	
2 Compensation and Per Diem of			
3 Officers and Employees (R) . . . . .	005	3,003,210	
4 Employee Benefits (R) . . . . .	010	597,712	
5 Current Expenses and			
6 Contingent Fund (R) . . . . .	021	700,000	
7 Repairs and Alterations (R) . . . . .	064	450,000	
8 Computer Supplies (R) . . . . .	101	40,000	
9 Computer Systems (R) . . . . .	102	250,000	
10 Printing Blue Book (R) . . . . .	103	150,000	
11 Expenses of Members (R) . . . . .	399	700,000	
12 BRIM Premium (R) . . . . .	913	<u>29,482</u>	
13 Total . . . . .		\$ 6,930,404	

14 The appropriations for the senate for the fiscal year 2007  
 15 are to remain in full force and effect and are hereby  
 16 reappropriated to June 30, 2008. Any balances so  
 17 reappropriated may be transferred and credited to the fiscal  
 18 year 2008 accounts.

19 Upon the written request of the clerk of the senate, the  
 20 auditor shall transfer amounts between items of the total



21 appropriation in order to protect or increase the efficiency of  
22 the service.

23 The clerk of the senate, with the approval of the  
24 president, is authorized to draw his or her requisitions upon  
25 the auditor, payable out of the Current Expenses and  
26 Contingent Fund of the senate, for any bills for supplies and  
27 services that may have been incurred by the senate and not  
28 included in the appropriation bill, for supplies and services  
29 incurred in preparation for the opening, the conduct of the  
30 business and after adjournment of any regular or  
31 extraordinary session, and for the necessary operation of the  
32 senate offices, the requisitions for which are to be  
33 accompanied by bills to be filed with the auditor.

34 The clerk of the senate, with the written approval of the  
35 president, or the president of the senate shall have authority  
36 to employ such staff personnel during any session of the  
37 Legislature as shall be needed in addition to staff personnel  
38 authorized by the senate resolution adopted during any such  
39 session. The clerk of the senate, with the written approval of  
40 the president, or the president of the senate shall have  
41 authority to employ such staff personnel between sessions of  
42 the Legislature as shall be needed, the compensation of all  
43 staff personnel during and between sessions of the  
44 Legislature, notwithstanding any such senate resolution, to be  
45 fixed by the president of the senate. The clerk is hereby  
46 authorized to draw his or her requisitions upon the auditor for  
47 the payment of all such staff personnel for such services,  
48 payable out of the appropriation for Compensation and Per  
49 Diem of Officers and Employees or Current Expenses and  
50 Contingent Fund of the senate.

APPROPRIATIONS

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51 For duties imposed by law and by the senate, the clerk of  
 52 the senate shall be paid a monthly salary as provided by the  
 53 senate resolution, unless increased between sessions under  
 54 the authority of the president, payable out of the  
 55 appropriation for Compensation and Per Diem of Officers  
 56 and Employees or Current Expenses and Contingent Fund of  
 57 the senate.

58 The distribution of the blue book shall be by the office of  
 59 the clerk of the senate and shall include seventy-five copies  
 60 for each member of the Legislature and two copies for each  
 61 classified and approved high school and junior high or  
 62 middle school and one copy for each elementary school  
 63 within the state.

*2—House of Delegates*  
 Fund 0170 FY 2008 Org 2200

1	Compensation of Members (R) . . .	003	\$	2,270,000
2	Compensation and Per Diem of Officers			
3	and Employees (R) . . . . .	005		700,000
4	Current Expenses and Contingent			
5	Fund (R) . . . . .	021		4,221,162
6	Expenses of Members (R) . . . . .	399		1,190,000
7	BRIM Premium (R) . . . . .	913		<u>28,20</u>
8	Total . . . . .		\$	8,409,282

9 The appropriations for the house of delegates for the  
 10 fiscal year 2007 are to remain in full force and effect and are  
 11 hereby reappropriated to June 30, 2008. Any balances so  
 12 reappropriated may be transferred and credited to the fiscal  
 13 year 2008 accounts.

14 Upon the written request of the clerk of the house of  
 15 delegates, the auditor shall transfer amounts between items of

16 the total appropriation in order to protect or increase the  
17 efficiency of the service.

18 The clerk of the house of delegates, with the approval of  
19 the speaker, is authorized to draw his or her requisitions upon  
20 the auditor, payable out of the Current Expenses and  
21 Contingent Fund of the house of delegates, for any bills for  
22 supplies and services that may have been incurred by the  
23 house of delegates and not included in the appropriation bill,  
24 for bills for services and supplies incurred in preparation for  
25 the opening of the session and after adjournment, and for the  
26 necessary operation of the house of delegates' offices, the  
27 requisitions for which are to be accompanied by bills to be  
28 filed with the auditor.

29 The speaker of the house of delegates, upon approval of  
30 the house committee on rules, shall have authority to employ  
31 such staff personnel during and between sessions of the  
32 Legislature as shall be needed, in addition to personnel  
33 designated in the house resolution, and the compensation of  
34 all personnel shall be as fixed in such house resolution for the  
35 session, or fixed by the speaker, with the approval of the  
36 house committee on rules, during and between sessions of the  
37 Legislature, notwithstanding such house resolution. The  
38 clerk of the house is hereby authorized to draw requisitions  
39 upon the auditor for such services, payable out of the  
40 appropriation for the Compensation and Per Diem of Officers  
41 and Employees or Current Expenses and Contingent Fund of  
42 the house of delegates.

43 For duties imposed by law and by the house of delegates,  
44 including salary allowed by law as keeper of the rolls, the  
45 clerk of the house of delegates shall be paid a monthly salary  
46 as provided in the house resolution, unless increased between  
47 sessions under the authority of the speaker, with the approval

APPROPRIATIONS

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48 of the house committee on rules, and payable out of the  
 49 appropriation for Compensation and Per Diem of Officers  
 50 and Employees or Current Expenses and Contingent Fund of  
 51 the house of delegates.

*3—Joint Expenses*  
 (WV Code Chapter 4)  
 Fund 0175 FY 2008 Org 2300

1	Joint Committee on		
2	Government and Finance (R) . .	104	\$ 6,971,393
3	Legislative Printing (R) . . . . .	105	800,000
4	Legislative Rule-Making		
5	Review Committee (R) . . . . .	106	155,000
6	Legislative Computer System (R) .	107	950,000
7	Joint Standing Committee		
8	on Education (R) . . . . .	108	88,000
9	Tax Reduction and Federal Funding		
10	Increased Compliance(TRAFFIC)(R)	642	15,000,000
11	BRIM Premium (R) . . . . .	913	<u>22,000</u>
12	Total . . . . .		\$ 23,986,393

13 The appropriations for the joint expenses for the fiscal  
 14 year 2007 are to remain in full force and effect and are  
 15 hereby reappropriated to June 30, 2008. Any balances so  
 16 reappropriated may be transferred and credited to the fiscal  
 17 year 2008 accounts.

18 Upon the written request of the clerk of the senate, with  
 19 the approval of the president of the senate, and the clerk of  
 20 the house of delegates, with the approval of the speaker of the  
 21 house of delegates, and a copy to the legislative auditor, the  
 22 auditor shall transfer amounts between items of the total  
 23 appropriation in order to protect or increase the efficiency of  
 24 the service.

25 The appropriation for the Tax Reduction and Federal  
 26 Funding Increased Compliance (TRAFFIC) (fund 0175,  
 27 activity 642) is intended for possible general state tax  
 28 reductions or the offsetting of any reductions in federal  
 29 funding for state programs.

**JUDICIAL**

*4—Supreme Court—*

*General Judicial*

Fund 0180 FY 2008 Org 2400

1	Personal Services (R) . . . . .	001	\$ 61,193,356
2	Annual Increment (R) . . . . .	004	700,000
3	Employee Benefits (R) . . . . .	010	19,415,706
4	Unclassified (R) . . . . .	099	17,976,405
5	Judges' Retirement System (R) . . .	110	2,533,000
6	Retirement Systems-Unfunded Liability	775	3,501,000
7	BRIM Premium (R) . . . . .	913	<u>374,015</u>
8	Total . . . . .		\$ 105,693,482

9 The appropriations to the supreme court of appeals for  
 10 the fiscal years 2006 and 2007 are to remain in full force and  
 11 effect and are hereby reappropriated to June 30, 2008. Any  
 12 balances so reappropriated may be transferred and credited to  
 13 the fiscal year 2008 accounts.

14 This appropriation shall be administered by the  
 15 administrative director of the supreme court of appeals, who  
 16 shall draw requisitions for warrants in payment in the form of  
 17 payrolls, making deductions therefrom as required by law for  
 18 taxes and other items.

19 The appropriations for the Judges' Retirement System  
 20 (activity 110) and Retirement Systems-Unfunded Liability  
 21 (activity 775) are to be transferred to the consolidated public

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22 retirement board, in accordance with the law relating thereto,  
 23 upon requisition of the administrative director of the supreme  
 24 court of appeals.

**EXECUTIVE**

*5—Governor's Office*

(WV Code Chapter 5)

Fund 0101 FY 2008 Org 0100

1	Personal Services . . . . .	001	\$	2,473,586
2	Salary of Governor . . . . .	002		95,000
3	Annual Increment . . . . .	004		22,350
4	Employee Benefits . . . . .	010		736,016
5	Unclassified (R) . . . . .	099		1,446,075
6	National Governors' Association . .	123		70,200
7	Southern States Energy Board . . . .	124		28,732
8	Southern Governors' Association .	314		25,000
9	Marlington Flood Wall . . . . .	757		0
10	Pharmaceutical Cost			
11	Management Council (R) . . . . .	796		503,138
12	BRIM Premium . . . . .	913		266,262
13	P20 Jobs Cabinet . . . . .	954		<u>30,000</u>
14	Total . . . . .		\$	5,696,359

15 Any unexpended balances remaining in the  
 16 appropriations for Unclassified (fund 0101, activity 099),  
 17 Publication of Papers and Transition Expenses—Surplus  
 18 (fund 0101, activity 359), Capital Outlay, Repairs and  
 19 Equipment (fund 0101, activity 589), JOBS Fund (fund 0101,  
 20 activity 665), and Pharmaceutical Cost Management Council  
 21 (fund 0101, activity 796) at the close of the fiscal year 2007  
 22 are hereby reappropriated for expenditure during the fiscal  
 23 year 2008.

APPROPRIATIONS

6—*Governor's Office—  
Custodial Fund*

(WV Code Chapter 5)

Fund 0102 FY 2008 Org 0100

1 Unclassified—Total (R) . . . . . 096 \$ 588,733

2 Any unexpended balance remaining in the appropriation  
3 for Unclassified-Total (fund 0102, activity 096) at the close  
4 of the fiscal year 2007 is hereby reappropriated for  
5 expenditure during the fiscal year 2008.

6 Funds are to be used for current general expenses,  
7 including compensation of employees, household  
8 maintenance, cost of official functions and additional  
9 household expenses occasioned by such official functions.

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

(WV Code Chapter 5)

Fund 0105 FY 2008 Org 0100

1 Civil Contingent Fund-Total (R) . . . . . 114 \$ 4,000,000

2 Any unexpended balances remaining in the appropriation  
3 for Stream Restoration—Surplus (fund 0105, activity 078),  
4 Business and Economic Development Stimulus—Surplus  
5 (fund 0105, activity 084), Civil Contingent Fund—Total  
6 (fund 0105, activity 114), Civil Contingent  
7 Fund—Total—Surplus (fund 0105, activity 238), Civil  
8 Contingent Fund— Surplus (fund 0105, activity 263),  
9 Business and Economic Development Stimulus (fund 0105,  
10 activity 586), and Civil Contingent Fund (fund 0105, activity  
11 614) at the close of the fiscal year 2007 are hereby  
12 reappropriated for expenditure during the fiscal year 2008.

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13 From this appropriation there may be expended, at the  
 14 discretion of the governor, an amount not to exceed one  
 15 thousand dollars as West Virginia's contribution to the  
 16 interstate oil compact commission.

17 The above appropriation is intended to provide  
 18 contingency funding for accidental, unanticipated, emergency  
 19 or unplanned events which may occur during the fiscal year  
 20 and is not to be expended for the normal day-to-day  
 21 operations of the governor's office.

*8—Auditor's Office—*  
*General Administration*  
 (WV Code Chapter 12)  
 Fund 0116 FY 2008 Org 1200

1	Personal Services . . . . .	001	\$ 2,198,881
2	Salary of Auditor . . . . .	002	75,000
3	Annual Increment . . . . .	004	38,365
4	Employee Benefits . . . . .	010	780,869
5	Unclassified . . . . .	099	622,226
6	BRIM Premium . . . . .	913	<u>15,428</u>
7	Total . . . . .		\$ 3,730,769

*9—Treasurer's Office*  
 (WV Code Chapter 12)  
 Fund 0126 FY 2008 Org 1300

1	Personal Services . . . . .	001	\$ 1,933,992
2	Salary of Treasurer . . . . .	002	75,000
3	Annual Increment . . . . .	004	25,000
4	Employee Benefits . . . . .	010	629,979
5	Unclassified (R) . . . . .	099	849,757
6	Abandoned Property Program . . . .	118	296,304



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7	Tuition Trust Fund (R) . . . . .	692	153,039
8	BRIM Premium . . . . .	913	<u>33,419</u>
9	Total . . . . .		\$ 3,996,490

10 Any unexpended balances remaining in the  
11 appropriations for Unclassified (fund 0126, activity 099) and  
12 Tuition Trust Fund (fund 0126, activity 692) at the close of  
13 the fiscal year 2007 are hereby reappropriated for expenditure  
14 during the fiscal year 2008.

*10—Department of Agriculture*  
(WV Code Chapter 19)  
Fund 0131 FY 2008 Org 1400

1	Personal Services . . . . .	001	\$ 3,903,100
2	Salary of Commissioner . . . . .	002	75,000
3	Annual Increment . . . . .	004	88,130
4	Employee Benefits . . . . .	010	1,551,706
5	Animal Identification Program . . .	039	203,549
6	State Farm Museum . . . . .	055	110,000
7	Unclassified (R) . . . . .	099	1,532,709
8	Gypsy Moth Program (R) . . . . .	119	1,192,018
9	Huntington Farmers Market . . . . .	128	50,000
10	Black Fly Control (R) . . . . .	137	804,882
11	Donated Foods Program . . . . .	363	50,000
12	Predator Control . . . . .	470	260,000
13	Logan Farmers Market . . . . .	501	42,000
14	Bee Research . . . . .	691	73,421
15	Microbiology Program (R) . . . . .	785	158,463
16	Moorefield Agriculture Center (R) . .	786	1,136,161
17	BRIM Premium . . . . .	913	145,962
18	WV Food Banks . . . . .	969	100,000
19	Seniors's Farmers' Market Nutrition		
20	Coupon Program . . . . .	970	65,000
21	Threat Preparedness . . . . .	942	75,000

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22	4-H Camp Improvements . . . . .	941	<u>650,000</u>
23	Total . . . . .		\$ 12,267,101

24 Any unexpended balances remaining in the  
 25 appropriations for Unclassified-Surplus (fund 0131, activity  
 26 097), Unclassified (fund 0131, activity 099), Gypsy Moth  
 27 Program (fund 0131, activity 119), Black Fly Control (fund  
 28 0131, activity 137), Microbiology Program (fund 0131,  
 29 activity 785), and Moorefield Agriculture Center (fund 0131,  
 30 activity 786) at the close of the fiscal year 2007 are hereby  
 31 reappropriated for expenditure during the fiscal year 2008.

32 A portion of the Unclassified appropriation may be  
 33 transferred to a special revenue fund for the purpose of  
 34 matching federal funds for marketing and development  
 35 activities.

36 From the above appropriation for WV Food Banks  
 37 (activity 969), the full appropriation shall be allocated to the  
 38 Huntington Food Bank and the Mountaineer Food Bank in  
 39 Braxton County.

*11—West Virginia Conservation Agency*  
 (WV Code Chapter 19)  
 Fund 0132 FY 2008 Org 1400

1	Personal Services . . . . .	001	\$ 491,254
2	Annual Increment . . . . .	004	10,050
3	Employee Benefits . . . . .	010	195,819
4	Unclassified (R) . . . . .	099	445,219
5	Soil Conservation Projects (R) . . . .	120	8,917,544
6	Marlinton Flood Wall . . . . .	757	1,500,000
7	BRIM Premium . . . . .	913	<u>12,969</u>
8	Total . . . . .		\$ 11,572,855

APPROPRIATIONS

9 Any unexpended balances remaining in the  
 10 appropriations for Unclassified (fund 0132, activity 099),  
 11 Soil Conservation Projects (fund 0132, activity 120), and  
 12 Maintenance of Flood Control Projects (fund 0132, activity  
 13 522) at the close of the fiscal year 2007 are hereby  
 14 reappropriated for expenditure during the fiscal year 2008.

*12—Department of Agriculture—  
 Meat Inspection  
 (WV Code Chapter 19)  
 Fund 0135 FY 2008 Org 1400*

1 Unclassified-Total . . . . . 096 \$ 659,917

2 Any part or all of this appropriation may be transferred to  
 3 a special revenue fund for the purpose of matching federal  
 4 funds for the above-named program.

*13—Department of Agriculture—  
 Agricultural Awards  
 (WV Code Chapter 19)  
 Fund 0136 FY 2008 Org 1400*

1	Programs & Awards for		
2	4-H Clubs and FFA/FHA . . . . .	577	\$ 15,000
3	Commissioner’s Awards and Programs	737	<u>43,650</u>
4	Total . . . . .		\$ 58,650

*14—Department of Agriculture—  
 West Virginia Agricultural Land Protection Authority  
 (WV Code Chapter 8A)  
 Fund 0607 FY 2008 Org 1400*

1 Unclassified-Total . . . . . 096 \$ 110,000

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*15—Attorney General*  
 (WV Code Chapters 5, 14, 46A and 47)  
 Fund 0150 FY 2008 Org 1500

1	Personal Services (R) . . . . .	001	\$ 2,357,915
2	Salary of Attorney General . . . . .	002	80,000
3	Annual Increment . . . . .	004	46,284
4	Employee Benefits (R) . . . . .	010	851,032
5	Unclassified (R) . . . . .	099	791,716
6	Better Government Bureau . . . . .	740	305,470
7	BRIM Premium . . . . .	913	<u>118,590</u>
8	Total . . . . .		\$ 4,551,007

9 Any unexpended balances remaining in the above  
 10 appropriations for Personal Services (fund 0150, activity  
 11 001), Employee Benefits (fund 0150, activity 010), and  
 12 Unclassified (fund 0150, activity 099) at the close of the  
 13 fiscal year 2007 are hereby reappropriated for expenditure  
 14 during the fiscal year 2008.

15 When legal counsel or secretarial help is appointed by the  
 16 attorney general for any state spending unit, this account shall  
 17 be reimbursed from such spending units specifically  
 18 appropriated account or from accounts appropriated by  
 19 general language contained within this bill: *Provided*, That  
 20 the spending unit shall reimburse at a rate and upon terms  
 21 agreed to by the state spending unit and the attorney general:  
 22 *Provided, however*, That if the spending unit and the attorney  
 23 general are unable to agree on the amount and terms of the  
 24 reimbursement, the spending unit and the attorney general  
 25 shall submit their proposed reimbursement rates and terms to  
 26 the Governor for final determination.

*16—Secretary of State*  
 (WV Code Chapters 3, 5 and 59)

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Fund 0155 FY 2008 Org 1600

1	Personal Services .....	001	\$	665,357
2	Salary of Secretary of State .....	002		70,000
3	Annual Increment .....	004		11,950
4	Employee Benefits .....	010		258,408
5	Unclassified (R) .....	099		87,325
6	BRIM Premium .....	913		<u>41,356</u>
7	Total .....		\$	1,134,396

8 Any unexpended balance remaining in the appropriation  
 9 for Unclassified (fund 0155, activity 099) at the close of the  
 10 fiscal year 2007 is hereby reappropriated for expenditure  
 11 during the fiscal year 2008.

*17—State Election Commission*

(WV Code Chapter 3)

Fund 0160 FY 2008 Org 1601

1	Unclassified—Total .....	096	\$	10,275
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**DEPARTMENT OF ADMINISTRATION**

*18—Department of Administration—*

*Office of the Secretary*

(WV Code Chapter 5F)

Fund 0186 FY 2008 Org 0201

1	Personal Services .....	001	\$	491,442
2	Annual Increment .....	004		2,000
3	Employee Benefits .....	010		131,451
4	Unclassified .....	099		117,660
5	Lease Rental Payments .....	516		16,000,000
6	Design-Build Board .....	540		19,068
7	Efficiency Savings .....	799		0
8	BRIM Premium .....	913		<u>13,171</u>
9	Total .....		\$	16,774,792

10 Any unexpended balance remaining in the appropriation  
11 for Financial Advisor (fund 0186, activity 304) at the close of  
12 the fiscal year 2007 is hereby reappropriated for expenditure  
13 during the fiscal year 2008.

14 The appropriation for Lease Rental Payments shall be  
15 disbursed as provided by chapter thirty-one, article fifteen,  
16 section six-b of the code.

*19—Consolidated Public Retirement Board*  
(WV Code Chapter 5)  
Fund 0195 FY 2008 Org 0205

1 Any unexpended balances remaining in the  
2 appropriations for Unclassified-Total-Transfer (fund 0195,  
3 activity 402) and Pension Merger Administrative Costs (fund  
4 0195, activity 429) at the close of the fiscal year 2007 are  
5 hereby reappropriated for expenditure during the fiscal year  
6 2008.

7 The above reappropriation for Unclassified-Total-  
8 Transfer (fund 0195, fiscal year 2007, activity 402) shall be  
9 transferred to the Consolidated Public Retirement Board-  
10 West Virginia Teachers' Retirement System Employers  
11 Accumulation Fund (fund 2601).

12 The division of highways, division of motor vehicles,  
13 bureau of employment programs, public service commission  
14 and other departments, bureaus, divisions, or commissions  
15 operating from special revenue funds and/or federal funds  
16 shall pay their proportionate share of the retirement costs for  
17 their respective divisions. When specific appropriations are  
18 not made, such payments may be made from the balances in  
19 the various special revenue funds in excess of specific  
20 appropriations.

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20—*Division of Finance*  
(WV Code Chapter 5A)  
Fund 0203 FY 2008 Org 0209

1	Personal Services .....	001	\$	81,199
2	Annual Increment .....	004		838
3	Employee Benefits .....	010		29,189
4	Unclassified .....	099		140,713
5	GAAP Project (R) .....	125		903,030
6	BRIM Premium .....	913		<u>20,696</u>
7	Total .....		\$	1,175,665

8 Any unexpended balance remaining in the appropriation  
9 for GAAP Project (fund 0203, activity 125) at the close of the  
10 fiscal year 2007 is hereby reappropriated for expenditure  
11 during the fiscal year 2008.

21—*Division of General Services*  
(WV Code Chapter 5A)  
Fund 0230 FY 2008 Org 0211

1	Personal Services .....	001	\$	1,459,544
2	Annual Increment .....	004		22,334
3	Employee Benefits .....	010		590,531
4	Unclassified .....	099		736,079
5	Fire Service Fee .....	126		14,000
6	Veterans Memorial Fund .....	690		0
7	BRIM Premium .....	913		<u>112,481</u>
8	Total .....		\$	2,934,969

22—*Division of Purchasing*  
(WV Code Chapter 5A)  
Fund 0210 FY 2008 Org 0213

1	Personal Services .....	001	\$	921,297
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2	Annual Increment .....	004	12,228
3	Employee Benefits .....	010	296,940
4	Unclassified .....	099	279,712
5	BRIM Premium .....	913	<u>6,167</u>
6	Total .....		\$ 1,516,344

7 The division of highways shall reimburse the  
 8 Unclassified appropriation (fund 2031, activity 099) within  
 9 the division of purchasing for all actual expenses incurred  
 10 pursuant to the provisions of section thirteen, article two-a,  
 11 chapter seventeen of the code.

*23-Commission on Uniform State Laws*  
 (WV Code Chapter 29)  
 Fund 0214 FY 2008 Org 0217

1	Unclassified-Total .....	096	\$ 40,000
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2 To pay expenses for members of the commission on  
 3 uniform state laws.

*-Education and State Employees Grievance Board*  
 (WV Code Chapter 18)  
 Fund 0220 FY 2008 Org 0219

1	Personal Services .....	001	\$ 0
2	Annual Increment .....	004	0
3	Employee Benefits .....	010	0
4	Unclassified .....	099	0
5	BRIM Premium .....	913	<u>0</u>
6	Total .....		\$ 0

*24-West Virginia Public Employees Grievance Board*  
 (WV Code Chapter 6C)  
 Fund FY 2008 Org 0219

1	Personal Services .....	001	\$ 633,131
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2	Annual Increment .....	004	8,100
3	Employee Benefits .....	010	175,230
4	Unclassified .....	099	154,567
5	BRIM Premium .....	913	<u>4,133</u>
6	Total .....		\$ 975,161

*25-Ethics Commission*

(WV Code Chapter 6B)

Fund 0223 FY 2008 Org 0220

1	Unclassified .....	099	\$ 702,098
2	BRIM Premium .....	913	<u>3,404</u>
3	Total .....		\$ 705,502

*26-Public Defender Services*

(WV Code Chapter 29)

Fund 0226 FY 2008 Org 0221

1	Personal Services .....	001	\$ 549,462
2	Annual Increment .....	004	6,850
3	Employee Benefits .....	010	191,333
4	Unclassified .....	099	308,712
5	Appointed Counsel Fees and		
6	Public Defender Corporations .	127	30,513,353
7	BRIM Premium .....	913	<u>23,262</u>
8	Total .....		\$ 31,592,972

9 Any unexpended balances remaining in the above  
 10 appropriations for Public Defender Corporations (fund 0226,  
 11 fiscal year 2007, activity 352), Appointed Counsel-Public  
 12 Defender Conflicts (fund 0226, activity 568), and Appointed  
 13 Counsel Fees (fund 0226, fiscal year 2007, activity 788) at  
 14 the close of the fiscal year 2007 are hereby reappropriated for  
 15 expenditure during the fiscal year 2008.

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*27-Committee for the Purchase of  
Commodities and Services from the Handicapped  
(WV Code Chapter 5A)  
Fund 0233 FY 2008 Org 0224*

1 Unclassified-Total ..... 096 \$ 5,046

*28-Public Employees Insurance Agency  
(WV Code Chapter 5)  
Fund 0200 FY 2008 Org 0225*

1 Any unexpended balance remaining in the above  
2 appropriation for Employees Subsidy (fund 0200, activity  
3 922) at the close of the fiscal year 2007 is hereby  
4 reappropriated for expenditure during the fiscal year 2008.

5 The division of highways, division of motor vehicles,  
6 bureau of employment programs, public service commission  
7 and other departments, bureaus, divisions, or commissions  
8 operating from special revenue funds and/or federal funds  
9 shall pay their proportionate share of the public employees  
10 health insurance cost for their respective divisions.

*29-West Virginia Prosecuting Attorneys Institute  
(WV Code Chapter 7)  
Fund 0557 FY 2008 Org 0228*

1	Forensic Medical Examinations (R) ..	683	\$	143,027
2	Federal Funds/Grant Match (R) ...	749		<u>83,665</u>
3	Total .....		\$	226,692

4 Any unexpended balances remaining in the  
5 appropriations for Forensic Medical Examinations (fund  
6 0557, activity 683) and Federal Funds/Grant Match (fund  
7 0557, activity 749) at the close of the fiscal year 2007 are  
8 hereby reappropriated for expenditure during the fiscal year  
9 2008.

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*30-Children's Health Insurance Agency*  
(WV Code Chapter 5)  
Fund 0588 FY 2008 Org 0230

1 Unclassified-Total ..... 096 \$ 10,968,995

*31-West Virginia Retiree Health Benefit Trust Fund*  
(WV Code Chapter 5)  
Fund 0611 FY 2008 Org 0232

1 Unclassified-Total-Transfer ..... 402 \$ 39,674,000

2 The above appropriation for Unclassified-Total-Transfer  
3 (fund 0611, activity 402) shall be transferred to the OPEB  
4 Benefit Contribution Accumulation Fund (fund 2541, org  
5 0232).

*32-Real Estate Division*  
(WV Code Chapter 5A)  
Fund 0610 FY 2008 Org 0233

1 Unclassified-Total ..... 096 \$ 400,000

**DEPARTMENT OF COMMERCE**

*33-Division of Tourism*  
(WV Code Chapter 5B)  
Fund 0246 FY 2008 Org 0304

1 Hatfield McCoy Recreational Trail-Total 937 \$ 500,000

2 Any unexpended balances remaining in the  
3 appropriations for Tourism Special Projects-Surplus (fund  
4 0246, activity 293) and Tourism-Special Projects (fund 0246,  
5 activity 859) at the close of the fiscal year 2007 are hereby  
6 reappropriated for expenditure during the fiscal year 2008.

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7 From the above appropriation in Fund 0246, \$50,000 is  
 8 to be used for the relocation of the Hatfield McCoy  
 9 Recreational Trail access.

*34-Division of Forestry*  
 (WV Code Chapter 19)  
 Fund 0250 FY 2008 Org 0305

1	Personal Services .....	001	\$	2,734,265
2	Annual Increment .....	004		94,250
3	Employee Benefits .....	010		1,232,144
4	Unclassified .....	099		366,528
5	BRIM Premium .....	913		<u>155,511</u>
6	Total .....		\$	4,582,698

7 Out of the above appropriation a sum may be used to  
 8 match federal funds for cooperative studies or other funds for  
 9 similar purposes.

*35-Geological and Economic Survey*  
 (WV Code Chapter 29)  
 Fund 0253 FY 2008 Org 0306

1	Personal Services .....	001	\$	1,285,279
2	Annual Increment .....	004		33,122
3	Employee Benefits .....	010		447,898
4	Unclassified .....	099		203,313
5	Mineral Mapping System (R) .....	207		1,582,300
6	Geoscience Education Program ...	541		25,000
7	BRIM Premium .....	913		<u>33,752</u>
8	Total .....		\$	3,610,664

9 Any unexpended balance remaining in the appropriation  
 10 for Mineral Mapping System (fund 0253, activity 207) at the  
 11 close of the fiscal year 2007 is hereby reappropriated for  
 12 expenditure during the fiscal year 2008.

13 The above Unclassified appropriation includes funding to  
 14 secure federal and other contracts and may be transferred to  
 15 a special revolving fund (fund 3105, activity 099) for the  
 16 purpose of providing advance funding for such contracts.

*36-West Virginia Development Office*

(WV Code Chapter 5B)

Fund 0256 FY 2008 Org 0307

1	Personal Services . . . . .	001	\$	4,049,616
2	Annual Increment . . . . .	004		67,718
3	Employee Benefits . . . . .	010		1,207,840
4	ARC-WV Home of Your			
5	Own Alliance . . . . .	048		40,000
6	Southern WV Career Center . . . . .	071		191,750
7	Unclassified . . . . .	099		1,576,681
8	Partnership Grants (R) . . . . .	131		1,950,000
9	National Youth Science Camp . . . . .	132		200,000
10	Local Economic Development			
11	Partnerships (R) . . . . .	133		1,870,000
12	ARC Assessment . . . . .	136		167,308
13	Institute for Software Research . . . . .	217		0
14	Mid-Atlantic Aerospace Complex (R) . . . . .	231		176,783
15	Guaranteed Work Force Grant (R) . . . . .	242		2,247,000
16	Mingo County Surface Mine Project . . . . .	296		125,000
17	Robert C. Byrd Institute for Advanced/ 18 Flexible Manufacturing-Technology 19 Outreach and Programs for 20 Environmental and 21 Advanced Technologies . . . . .	367		519,800
22	Advantage Valley . . . . .	389		74,300
23	Chemical Alliance Zone . . . . .	390		38,300
24	WV High Tech Consortium . . . . .	391		235,783
25	Charleston Farmers Market . . . . .	476		100,000
26	Industrial Park Assistance (R) . . . . .	480		650,000
27	International Offices (R) . . . . .	593		690,644

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28	Small Business Development . . . . .	703	423,187
29	WV Manufacturing Extension		
30	Partnership . . . . .	731	144,000
31	Polymer Alliance . . . . .	754	115,000
32	Regional Councils . . . . .	784	440,000
33	Mainstreet Program . . . . .	794	200,000
34	National Institute of Chemical Studies	805	70,500
35	Local Economic Development		
36	Assistance (R) . . . . .	819	6,600,000
37	I-79 Development Council . . . . .	824	50,000
38	BRIM Premium . . . . .	913	26,096
39	Hardwood Alliance Zone . . . . .	992	<u>42,600</u>
40	Total . . . . .		\$ 24,289,906

41 Any unexpended balances remaining in the  
 42 appropriations for Tourism—Unclassified—Surplus (fund  
 43 0256, activity 075), Partnership Grants (fund 0256, activity  
 44 131), Local Economic Development Partnerships (fund 0256,  
 45 activity 133), Mid-Atlantic Aerospace Complex (fund 0256,  
 46 activity 231), Guaranteed Work Force Grant (fund 0256,  
 47 activity 242), Local Economic Development  
 48 Assistance—Surplus (fund 0256, activity 266), Small  
 49 Business Financial Assistance (fund 0256, activity 360),  
 50 Industrial Park Assistance (fund 0256, activity 480),  
 51 Leverage Technology and Small Business Development  
 52 Program (fund 0256, activity 525), International Offices  
 53 (fund 0256, activity 593), Local Economic Development  
 54 Assistance (fund 0256, activity 819), and Economic  
 55 Development Assistance (fund 0256, activity 900) at the  
 56 close of the fiscal year 2007 are hereby reappropriated for  
 57 expenditure during the fiscal year 2008.

58 The above appropriation to Local Economic  
 59 Development Partnerships (activity 133) shall be used by the  
 60 West Virginia development office for the award of funding

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61 assistance to county and regional economic development  
 62 corporations or authorities participating in the certified  
 63 development community program developed under the  
 64 provisions of section fourteen, article two, chapter five-b of  
 65 the code. The West Virginia development office shall award  
 66 the funding assistance through a matching grant program,  
 67 based upon a formula whereby funding assistance may not  
 68 exceed thirty-four thousand dollars per county served by an  
 69 economic development corporation or authority.

*37-Division of Labor*  
 (WV Code Chapters 21 and 47)  
 Fund 0260 FY 2008 Org 0308

1	Personal Services .....	001	\$	1,793,454
2	Annual Increment .....	004		28,971
3	Employee Benefits .....	010		819,524
4	Unclassified .....	099		653,145
5	BRIM Premium .....	913		<u>47,521</u>
6	Total .....		\$	<u>3,342,615</u>

*38-Division of Natural Resources*  
 (WV Code Chapter 20)  
 Fund 0265 FY 2008 Org 0310

1	Personal Services .....	001	\$	7,769,327
2	Annual Increment .....	004		229,840
3	Employee Benefits .....	010		3,343,547
4	Gypsy Moth Suppression Program –			
5	Wildlife Management Areas ..	014		42,997
6	Unclassified .....	099		9,173
7	Litter Control Conservation Officers	564		157,051
8	Upper Mud River Flood Control ..	654		181,892
9	Law Enforcement .....	806		953,315

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10	BRIM Premium .....	913	<u>308,815</u>
11	Total .....		\$ 12,995,957

12 Any unexpended balance remaining in the above  
 13 appropriation for Fish Hatchery Improvements (fund 0265,  
 14 activity 825) at the close of the fiscal year 2007 is hereby  
 15 reappropriated for expenditure during the fiscal year 2008.

16 Any revenue derived from mineral extraction at any state  
 17 park shall be deposited in a special revenue account of the  
 18 division of natural resources, first for bond debt payment  
 19 purposes and with any remainder to be for park operation and  
 20 improvement purposes.

*39-Division of Miners' Health, Safety and Training*  
 (WV Code Chapter 22)  
 Fund 0277 FY 2008 Org 0314

1	Personal Services .....	001	\$ 5,740,650
2	Annual Increment .....	004	67,450
3	Employee Benefits .....	010	2,140,882
4	Unclassified (R) .....	099	2,193,837
5	WV Diesel Equipment Commission ..	712	38,034
6	BRIM Premium .....	913	<u>76,848</u>
7	Total .....		\$ 10,257,701

8 Any unexpended balance remaining in the above  
 9 appropriation for Unclassified (fund 0277, fiscal year 2006,  
 10 activity 099) at the end of the fiscal year 2007 is hereby  
 11 reappropriated for expenditure during the fiscal year 2008.

12 The appropriation above for Unclassified (fund 0277,  
 13 fiscal year 2006, activity 099) shall be used in developing,  
 14 procuring and/or deploying, technologies to assist in locating  
 15 and communicating with trapped miners, supporting life,  
 16 transporting rescue personnel and rescued individuals



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17 through underground mines and otherwise assist with mine  
 18 rescue operations.

*40-Board of Coal Mine Health and Safety*  
 (WV Code Chapter 22)  
 Fund 0280 FY 2008 Org 0319

1	Personal Services .....	001	\$	118,479
2	Annual Increment .....	004		800
3	Employee Benefits .....	010		32,160
4	Unclassified .....	099		<u>27,217</u>
5	Total .....		\$	178,656

*41-Coal Mine Safety and Technical Review Committee*  
 (WV Code Chapter 22)  
 Fund 0285 FY 2008 Org 0320

1	Unclassified .....	099	\$	63,352
2	Coal Forum .....	664		<u>25,000</u>
3	Total .....		\$	88,352

*42-Department of Commerce-*  
*Office of the Secretary*  
 (WV Code Chapter 19)  
 Fund 0606 FY 2008 Org 0327

1	Unclassified .....	099	\$	409,680
2	Unclassified-Transfer .....	482		250,000
3	Efficiency Savings .....	799		<u>0</u>
4	Total .....		\$	659,680

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5 The above appropriation for Unclassified-Transfer  
 6 (activity 482) shall be transferred to the fund for marketing  
 7 and communications within the department of commerce.

*43-Division of Energy*  
 (WV Code Chapter 5H)  
 Fund FY 2008 Org 0320

1 Unclassified-Total ..... 096 \$ 306,000

**DEPARTMENT OF EDUCATION**

*44-State Department of Education-  
 School Lunch Program*  
 (WV Code Chapters 18 and 18A)  
 Fund 0303 FY 2008 Org 0402

1	Personal Services .....	001	\$	234,514
2	Annual Increment .....	004		3,825
3	Employee Benefits .....	010		86,225
4	Unclassified .....	099		<u>2,082,473</u>
5	Total .....		\$	2,407,037

*45-State FFA-FHA Camp and Conference Center*  
 (WV Code Chapters 18 and 18A)  
 Fund 0306 FY 2008 Org 0402

1	Personal Services .....	001	\$	604,914
2	Annual Increment .....	004		15,818
3	Employee Benefits .....	010		250,729
4	Unclassified .....	099		142,825
5	BRIM Premium .....	913		<u>38,987</u>
6	Total .....		\$	1,053,273

*46-State Department of Education*  
 (WV Code Chapters 18 and 18A)  
 Fund 0313 FY 2008 Org 0402

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1	Personal Services .....	001	\$ 3,353,574
2	Annual Increment .....	004	35,826
3	Employee Benefits .....	010	1,068,624
4	Unclassified (R) .....	099	3,400,000
5	34/1000 Waiver .....	139	400,000
6	Increased Enrollment .....	140	10,700,000
7	Safe Schools .....	143	2,000,000
8	Teacher Mentor (R) .....	158	600,000
9	National Teacher Certification (R) ...	161	1,000,000
10	Allowance for County Transfers ..	264	480,337
11	Technology Repair and Modernization	298	1,000,000
12	HVAC Technicians .....	355	477,481
13	Early Retirement Notification		
14	Incentive .....	366	300,000
15	Teacher Reimbursement .....	573	300,000
16	Hospitality Training .....	600	415,101
17	Low Student Enrollment Allowance ..	615	1,000,000
18	HI-Y Youth in Government .....	616	100,000
19	Foreign Student Education (R) ....	636	87,348
20	State Teacher of the Year .....	640	41,359
21	Principals Mentorship .....	649	80,000
22	Pilot Program of Structured in-school		
23	Alternatives .....	826	100,000
24	21 <sup>st</sup> Century Learners (R) .....	886	3,120,081
25	BRIM Premium .....	913	372,457
26	High Acuity Health Care		
27	Needs Program .....	920	1,000,000
28	School Nurse Funding .....	921	1,500,000
29	21 <sup>st</sup> Century Assessment and		
30	Professional Development ....	931	4,500,000
31	Regional Education Service Agencies .	972	4,200,000
32	Sparse Population Allocation .....	973	525,000

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33	School Access Safety . . . . .	978	10,000,000
34	Educational Program Allowance . .	996	250,000
35	WV Commission on Holocaust		
36	Education . . . . .	935	15,000
37	Allowance for Extraordinary		
38	Sustained Growth . . . . .	943	<u>771,626</u>
39	Total . . . . .		\$ 53,193,814

40       The above appropriation includes the state board of  
41 education and their executive office.

42       Any unexpended balances remaining in the  
43 appropriations for Collaborative Resource Allocation (fund  
44 0313, activity 041), Educational Achievement Incentive  
45 (fund 0313, activity 042), Unclassified (fund 0313, activity  
46 099), Teacher Mentor (fund 0313, activity 158), National  
47 Teacher Certification (fund 0313, activity 161), Foreign  
48 Student Education (fund 0313, activity 636), 21<sup>st</sup> Century  
49 Learners (fund 0313, activity 886), and Educational  
50 Enhancements-Surplus (fund 0313, activity 927) at the close  
51 of the fiscal year 2007 are hereby reappropriated for  
52 expenditure during the fiscal year 2008.

53       From the above appropriation for Sparse Population  
54 Allocation (activity 973), funding shall be provided in the  
55 same manner as in Fiscal Year 2006. It shall be available to  
56 those counties whose population falls at or below 2.5 students  
57 per square mile and which have more than 650 square miles  
58 for transportation purposes.

59       From the above appropriation for Educational Program  
60 Allowance (activity 996), \$100,000 shall be expended for  
61 Webster County Board of Education for Hacker Valley and  
62 \$150,000 for the Randolph County Board of Education for  
63 Pickens School.

64 From the above appropriation for Low Student  
65 Enrollment Allowance (activity 615), funds shall be allocated  
66 to county boards of education in accordance with the  
67 provisions of §18-9A-22 of the Code of West Virginia.

68 The above appropriation for Hospitality Training (activity  
69 600), shall be allocated only to entities that have a plan  
70 approved for funding by the Department of Education, at the  
71 funding level determined by the State Superintendent of  
72 Schools. Plans shall be submitted to the State Superintendent  
73 of Schools to be considered for funding.

74 The above appropriation for School Access Safety  
75 (activity 978) shall be transferred to the School Access Safety  
76 Fund (fund 3516).

*47-State Department of Education-  
Aid for Exceptional Children  
(WV Code Chapters 18 and 18A)  
Fund 0314 FY 2008 Org 0402*

1	Special Education-Counties . . . . .	159	\$	7,271,757
2	Special Education-Institutions . . . .	160		3,540,258
3	Education of Juveniles Held in			
4	Predispositional Juvenile			
5	Detention Centers . . . . .	302		566,306
6	Education of Institutionalized			
7	Juveniles and Adults (R) . . . . .	472		<u>14,022,737</u>
8	Total . . . . .		\$	<u>25,401,058</u>

9 Any unexpended balance remaining in the appropriation  
10 for Education of Institutionalized Juveniles and Adults (fund  
11 0314, activity 472) at the close of the fiscal year 2007 is  
12 hereby reappropriated for expenditure during the fiscal year  
13 2008.

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14 From the above appropriation for Education of  
 15 Institutionalized Juveniles and Adults (activity 472), funding  
 16 shall be provided to Beckley and Burlington Centers at an  
 17 amount no less than the allocations disbursed during Fiscal  
 18 Year 2004.

19 From the above appropriation for Education of  
 20 Institutionalized Juveniles and Adults (activity 472), an  
 21 additional \$250,000 shall be provided for the Burlington  
 22 Center-Mineral County.

23 From the above appropriations, the superintendent shall  
 24 have authority to expend funds for the costs of special  
 25 education for those children residing in out-of-state  
 26 placements.

*48-State Department of Education-*  
*State Aid to Schools*  
 (WV Code Chapters 18 and 18A)  
 Fund 0317 FY 2008 Org 0402

1	Other Current Expenses . . . . .	022	\$140,964,341
2	Professional Educators . . . . .	151	832,307,759
3	Service Personnel . . . . .	152	269,157,414
4	Fixed Charges . . . . .	153	101,334,796
5	Transportation . . . . .	154	63,126,522
6	Administration . . . . .	155	3,096,005
7	21st Century Strategic Technology		
8	Learning Growth . . . . .	936	1,137,057
9	Improve Instructional Programs . . .	156	<u>34,137,057</u>
10	Basic Foundation Allowances . . . .		1,445,260,951
11	Less Local Share . . . . .		<u>(353,129,003)</u>
12	Total Basic State Aid . . . . .		\$1,092,131,948
13	Public Employees' Insurance		
14	Matching . . . . .	012	191,812,331

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15	Teachers' Retirement System . . . .	019	67,262,050
16	School Building Authority . . . . .	453	23,361,520
17	Retirement Systems-Unfunded		
18	Liability . . . . .	775	<u>300,000,000</u>
19	Total . . . . .		\$ 1,674,567,849

20 From the above appropriation to Retirement Systems-  
 21 Unfunded Liability (activity 775), \$286,227,557 is to fund  
 22 the FY2008 amortization of unfunded liabilities. The  
 23 remaining amount of \$13,772,443 is to first be applied  
 24 toward the repayment of any investment accruals which may  
 25 have been erroneously deposited in the general revenue of the  
 26 State in prior fiscal years and any subsequent investment  
 27 accruals which might have compounded therefrom. Any  
 28 amount in excess of that which may be required to  
 29 compensate for the aforementioned errors is to be applied  
 30 against the general unfunded liability of the Teachers'  
 31 Retirement System.

*49-State Board of Education-*  
*Vocational Division*  
 (WV Code Chapters 18 and 18A)  
 Fund 0390 FY 2008 Org 0402

1	Personal Services . . . . .	001	\$ 986,595
2	Annual Increment . . . . .	004	16,873
3	Employee Benefits . . . . .	010	361,690
4	Unclassified . . . . .	099	1,210,000
5	Wood Products-Forestry Vocational		
6	Program . . . . .	146	56,220
7	Albert Yanni Vocational Program . . .	147	124,263
8	Vocational Aid . . . . .	148	16,468,592
9	Adult Basic Education . . . . .	149	3,693,116
10	Program Modernization . . . . .	305	850,000
11	Technical and Secondary Program		
12	Improvement Staff . . . . .	330	279,219

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13	GED Testing . . . . .	339 312,011
14	Aquaculture Support . . . . .	769 83,834
15	FFA Grant Awards . . . . .	839 13,000
16	Pre-Engineering Academy Program . .	840 <u>300,000</u>
17	Total . . . . .	\$ 24,755,413

*50-State Board of Education-  
Division of Educational Performance Audits  
(WV Code Chapters 18 and 18A)  
Fund 0573 FY 2008 Org 0402*

1	Personal Services . . . . .	001 \$ 410,105
2	Annual Increment . . . . .	004 3,600
3	Employee Benefits . . . . .	010 112,139
4	Unclassified . . . . .	099 <u>176,640</u>
5	Total . . . . .	\$ 702,484

*51-West Virginia Schools for the Deaf and the Blind  
(WV Code Chapters 18 and 18A)  
Fund 0320 FY 2008 Org 0403*

1	Personal Services . . . . .	001 \$ 7,831,748
2	Annual Increment . . . . .	004 6,350
3	Employee Benefits . . . . .	010 3,110,567
4	Unclassified . . . . .	099 1,609,932
5	BRIM Premium . . . . .	913 <u>81,347</u>
6	Total . . . . .	\$ 12,639,944

**DEPARTMENT OF EDUCATION AND THE ARTS**

*52-Department of Education and the Arts-  
Office of the Secretary  
(WV Code Chapter 5F)  
Fund 0294 FY 2008 Org 0431*

1	Unclassified (R) . . . . .	099 \$ 840,094
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2	Center for Professional		
3	Development (R) . . . . .	115	3,153,794
4	Governor’s Honor Academy (R) . .	478	500,450
5	Professional Development		
6	Collaborative . . . . .	629	950,000
7	Efficiency Savings . . . . .	799	0
8	Energy Express . . . . .	861	470,000
9	BRIM Premium . . . . .	913	<u>4,509</u>
10	Total . . . . .		\$ 5,918,847

11 Any unexpended balances remaining in the  
 12 appropriations for Unclassified (fund 0294, activity 099),  
 13 Center for Professional Development (fund 0294 activity  
 14 115), Center for Professional Development-Principals’  
 15 Academy (fund 0294, activity 415), Governor’s Honor  
 16 Academy (fund 0294, activity 478), and CPD-Math Initiative  
 17 (fund 0294, activity 517) at the close of the fiscal year 2007  
 18 are hereby reappropriated for expenditure during the fiscal  
 19 year 2008.

*53-Division of Culture and History*  
 (WV Code Chapter 29)  
 Fund 0293 FY 2008 Org 0432

1	Personal Services . . . . .	001	\$ 2,480,773
2	Annual Increment . . . . .	004	49,030
3	Employee Benefits . . . . .	010	1,025,011
4	Unclassified . . . . .	099	626,664
5	Capital Outlay Repairs and		
6	Equipment (R) . . . . .	589	2,599,000
7	Culture and History Programmng . . .	732	292,945
8	Capital Outlay and Maintenance (R) . .	755	200,000
9	Independence Hall . . . . .	812	1,247,000
10	Historical Highway Marker		
11	Program (R) . . . . .	844	75,000

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12	BRIM Premium .....	913	<u>56,542</u>
13	Total .....		\$ 8,651,965

14 Any unexpended balances remaining in the  
 15 appropriations for Capital Outlay, Repairs and Equipment  
 16 (fund 0293, activity 589), Capital Outlay, Repairs and  
 17 Equipment—Surplus (fund 0293, activity 677), Capital  
 18 Outlay and Maintenance (fund 0293, activity 755), and  
 19 Historical Highway Marker Program (fund 0293, activity  
 20 844) at the close of the fiscal year 2007 are hereby  
 21 reappropriated for expenditure during the fiscal year 2008.

22 The Unclassified appropriation includes funding for the  
 23 arts funds, department programming funds, grants, fairs and  
 24 festivals and Camp Washington Carver and shall be  
 25 expended only upon authorization of the division of culture  
 26 and history and in accordance with the provisions of chapter  
 27 five-a, article three, and chapter twelve of the code.

28 All federal moneys received as reimbursement to the  
 29 division of culture and history for moneys expended from the  
 30 general revenue fund for the arts fund and historical  
 31 preservation are hereby reappropriated for the purposes as  
 32 originally made, including personal services, current  
 33 expenses and equipment.

*54-Library Commission*  
 (WV Code Chapter 10)  
 Fund 0296 FY 2008 Org 0433

1	Personal Services .....	001	\$ 975,419
2	Annual Increment .....	004	29,700
3	Employee Benefits .....	010	372,876
4	Unclassified .....	099	228,087
5	Services to Blind and Handicapped ..	181	182,645
6	BRIM Premium .....	913	<u>29,772</u>
7	Total .....		\$ 1,818,499

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*55-Educational Broadcasting Authority*

(WV Code Chapter 10)

Fund 0300 FY 2008 Org 0439

1	Personal Services . . . . .	001	\$	3,102,870
2	Annual Increment . . . . .	004		56,000
3	Employee Benefits . . . . .	010		1,089,056
4	Unclassified (R) . . . . .	099		1,042,966
5	Mountain Stage . . . . .	249		300,000
6	Capital Outlay and Maintenance (R) . .	755		100,000
7	BRIM Premium . . . . .	913		<u>71,856</u>
8	Total . . . . .		\$	5,762,748

9 Any unexpended balances remaining in the  
 10 appropriations for Unclassified (fund 0300, activity 099) and  
 11 Capital Outlay and Maintenance (fund 0300, activity 755) at  
 12 the close of the fiscal year 2007 are hereby reappropriated for  
 13 expenditure during the fiscal year 2008.

14 The Educational Broadcasting Authority is to continue  
 15 assistance to the Allegheny Mountain Radio/WVNR.

*56-State Board of Rehabilitation-**Division of Rehabilitation Services*

(WV Code Chapter 18)

Fund 0310 FY 2008 Org 0932

1	Personal Services . . . . .	001	\$	7,495,120
2	Annual Increment . . . . .	004		134,049
3	Independent Living Services . . . . .	009		24,000
4	Employee Benefits . . . . .	010		2,870,492
5	Workshop Development . . . . .	163		1,816,149
6	Supported Employment			
7	Extended Services . . . . .	206		119,032
8	Ron Yost Personal Assistance			
9	Fund (R) . . . . .	407		340,000

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10	Employment Attendant Care Program	598	179,000
11	Capital Outlay and Maintenance (R) . .	755	200,000
12	BRIM Premium . . . . .	913	<u>67,033</u>
13	Total . . . . .		\$ 13,244,875

14 Any unexpended balances remaining in the  
 15 appropriations for Ron Yost Personal Assistance Fund (fund  
 16 0310, activity 407), Capital Outlay, Repairs and Equipment-  
 17 Surplus (fund 0310, activity 677), and Capital Outlay and  
 18 Maintenance (fund 0310, activity 755) at the close of the  
 19 fiscal year 2007 are hereby reappropriated for expenditure  
 20 during the fiscal year 2008.

21 Any unexpended balance remaining in the appropriation  
 22 for Technology-Related Assistance Revolving Loan Fund for  
 23 Individuals with Disabilities (fund 0310, activity 766) is  
 24 hereby reappropriated for expenditure during the fiscal year  
 25 2008 and may be transferred to a special account for the  
 26 purpose of disbursement or loan.

27 From the above appropriation for Workshop  
 28 Development (activity 163), funds shall be used exclusively  
 29 with the private non-profit community rehabilitation program  
 30 organizations known as work centers or sheltered workshops.  
 31 The appropriation shall also be used to continue the support  
 32 of the program, services, and individuals with disabilities  
 33 currently in place at those 31 organizations.

**DEPARTMENT OF ENVIRONMENTAL  
 PROTECTION**

*57-Environmental Quality Board*

(WV Code Chapter 20)

Fund 0270 FY 2008 Org 0311

1	Personal Services . . . . .	001	\$	72,834
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2	Annual Increment .....	004	1,200
3	Employee Benefits .....	010	19,700
4	Unclassified .....	099	45,838
5	BRIM Premium .....	913	<u>684</u>
6	Total .....		\$ 140,256

*58-Division of Environmental Protection*

(WV Code Chapter 22)

Fund 0273 FY 2008 Org 0313

1	Personal Services .....	001	\$ 3,574,292
2	Annual Increment .....	004	57,846
3	Employee Benefits .....	010	1,222,702
4	Unclassified .....	099	844,613
5	Dam Safety .....	607	207,105
6	West Virginia Stream Partners		
7	Program .....	637	77,396
8	WV Contribution to River		
9	Commissions .....	776	148,485
10	Efficiency Savings .....	799	0
11	Office of Water Resources		
12	Non-Enforcement Activity ...	855	1,141,267
13	BRIM Premium .....	913	56,802
14	Welch DEP Office Continuing		
15	Operation .....	993	<u>79,115</u>
16	Total .....		\$ 7,409,623

*59-Air Quality Board*

(WV Code Chapter 16)

Fund 0550 FY 2008 Org 0325

1	Unclassified .....	099	\$ 95,295
2	BRIM Premium .....	913	<u>2,916</u>
3	Total .....		\$ 98,211

**DEPARTMENT OF HEALTH AND HUMAN  
RESOURCES**

*60-Department of Health and Human Resources-  
Office of the Secretary  
(WV Code Chapter 5F)  
Fund 0400 FY 2008 Org 0501*

1	Unclassified .....	099	\$	400,185
2	Women’s Commission (R) .....	191		139,457
3	Commission for the Deaf			
4	and Hard of Hearing .....	704		274,074
5	Efficiency Savings .....	799		<u>0</u>
6	Total .....		\$	813,716

7       Any unexpended balance remaining in the appropriation  
8 for the Women’s Commission (fund 0400, activity 191) at the  
9 close of the fiscal year 2007 is hereby reappropriated for  
10 expenditure during the fiscal year 2008.

11       From the above appropriation for unclassified, is for the  
12 West Virginia University Center for Excellence in Women’s  
13 Health.

*61-Division of Health-  
Central Office  
(WV Code Chapter 16)  
Fund 0407 FY 2008 Org 0506*

1	Personal Services .....	001	\$	7,570,163
2	Annual Increment .....	004		164,981
3	Employee Benefits .....	010		3,090,748
4	Level 1, 2 and 3 Trauma Centers ..	013		0
5	Chief Medical Examiner .....	045		3,464,708
6	Unclassified .....	099		4,902,046
7	Safe Drinking Water Program ....	187		517,798

8	Women, Infants and Children . . . .	210	65,000
9	Basic Public Health Services Support .	212	3,348,475
10	Early Intervention . . . . .	223	3,307,043
11	Cancer Registry . . . . .	225	284,587
12	ABCA Tobacco Retailer Education		
13	Program-Transfer . . . . .	239	200,000
14	CARDIAC Project . . . . .	375	470,000
15	State EMS Technical Assistance . .	379	1,424,858
16	EMS Program for Children . . . . .	381	50,686
17	Statewide EMS Program Support (R)	383	940,286
18	Primary Care Centers-Mortgage		
19	Finance . . . . .	413	796,718
20	Black Lung Clinics . . . . .	467	198,646
21	Center for End of Life . . . . .	545	250,000
22	Women's Right to Know . . . . .	546	40,000
23	Pediatric Dental Services . . . . .	550	150,000
24	Vaccine for Children . . . . .	551	438,437
25	Adult Influenza Vaccine . . . . .	552	65,000
26	Tuberculosis Control . . . . .	553	255,640
27	Maternal and Child Health Clinics,		
28	Clinicians and Medical Contracts		
29	and Fees (R) . . . . .	575	6,505,371
30	Epidemiology Support . . . . .	626	1,143,401
31	Primary Care Support . . . . .	628	7,708,557
32	State Aid to Local Health Departments	702	11,700,718
33	Health Right Free Clinics . . . . .	727	2,749,336
34	Healthy Lifestyles . . . . .	778	68,000
35	Emergency Response Entities		
36	Special Projects . . . . .	822	800,000
37	Assistance to Primary Health Care		
38	Centers Community Health		
39	Foundation (R) . . . . .	845	1,400,000
40	Osteoporosis and Arthritis Prevention .	849	284,027
41	Tobacco Education Program . . . . .	906	5,663,018
42	BRIM Premium . . . . .	913	211,214

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43	State Trauma and Emergency		
44	Care System . . . . .	918	789,429
45	Antiviral Vaccine Purchases . . . . .	955	<u>1,420,000</u>
46	Total . . . . .		\$ 72,438,891

47 Any unexpended balances remaining in the  
 48 appropriations for Statewide EMS Program Support (fund  
 49 0407, activity 383), Maternal and Child Health Clinics,  
 50 Clinicians and Medical Contracts and Fees (fund 0407,  
 51 activity 575), and Assistance to Primary Health Care Centers  
 52 Community Health Foundation (fund 0407, activity 845) at  
 53 the close of the fiscal year 2007 are hereby reappropriated for  
 54 expenditure during the fiscal year 2008.

55 Included in above appropriation for State Trauma and  
 56 Emergency Care Systems (activity 918), is \$100,000 to  
 57 initiate the consolidation of medical command centers.

58 From the Unclassified line item (activity 099), \$50,000  
 59 shall be expended for the West Virginia Aids Coalition. Also  
 60 included in the above appropriation for Unclassified, is an  
 61 additional \$100,000 for Human Papillomavirus (HPV)  
 62 Education.

63 From the Maternal and Child Health Clinics, Clinicians,  
 64 and Medical Contracts and Fees line item, \$400,000 shall be  
 65 transferred to the Breast and Cervical Cancer Diagnostic  
 66 Treatment Fund.

67 From the above appropriation for ABCA Tobacco  
 68 Retailer Education Program-Transfer (activity 239),  
 69 \$200,000 shall be transferred to the Alcohol Beverage  
 70 Control Administration (fund 7352, org 0708) for  
 71 expenditure.



72 Included in the above appropriation for Primary Care  
73 Centers-Mortgage Finance is \$50,000 for the mortgage  
74 payment for the Lincoln Primary Care Center, Inc.; \$53,140  
75 for the mortgage payment for the Monroe Health Center;  
76 \$42,564 for the mortgage payment for Roane County Family  
77 Health Care, Inc.; \$30,000 for the mortgage payment for the  
78 Tug River Health Association, Inc.; \$48,000 for the mortgage  
79 payment for the Primary Care Systems (Clay); \$20,000 for  
80 the mortgage payment for the Belington Clinic; \$30,000 for  
81 the mortgage payment for the Tri-County Health Clinic;  
82 \$15,000 for the mortgage payment for Valley Health Care  
83 (Randolph); \$58,560 for the mortgage payment for Valley  
84 Health Systems, Inc. (Woman's Place and Harts Health  
85 Clinic); \$46,958 for the mortgage payment for Ritchie  
86 County Primary Care Association, Inc.; \$8,000 for the  
87 mortgage payment for Northern Greenbrier Health Clinic;  
88 \$12,696 for the mortgage payment for the Women's Care,  
89 Inc. (Putnam); \$25,000 for the mortgage payment for the  
90 Preston-Taylor Community Health Centers, Inc.; \$20,000 for  
91 the mortgage payment for the North Fork Clinic (Pendleton);  
92 \$40,000 for the mortgage payment for the Pendleton  
93 Community Care; \$27,000 for the mortgage payment for  
94 South Branch Health Facility (Upper Tract); \$38,400 for the  
95 mortgage payment for Clay-Battelle Community Health  
96 Center; \$33,600 for the mortgage payment for Mountaineer  
97 Health Clinic in Paw Paw; \$13,000 for the mortgage payment  
98 for the St. George Medical Clinic; \$28,000 for the mortgage  
99 payment for the Bluestone Health Center; \$45,000 for the  
100 mortgage payment for Wheeling Health Right; \$48,000 for  
101 the mortgage payment for the Minnie Hamilton Health Care  
102 Center, Inc.; and \$54,000 for the mortgage payment for the  
103 Shenandoah Valley Medical Systems, Inc.

104 From the above appropriation for State Aid to Local  
105 Health Departments (activity 702) \$20,000 shall be used,

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106 along with any grants that may be obtained, for the purpose  
 107 of contracting with an independent consultant to conduct a  
 108 comprehensive study, administered by Local Health Inc., of  
 109 the revenues of the state’s local health departments to  
 110 develop a method for the distribution of state funds to local  
 111 health departments that will best serve the citizens of the  
 112 state.

113 Also included in the above appropriation for State Aid to  
 114 Local Health Departments is additional funding for salary  
 115 increases in amounts consistent with those provided to state  
 116 employees under appropriations made for that purpose in this  
 117 act.

118 From the above appropriation for Unclassified (activity  
 119 099), \$50,000 is for Hospital Hospitality House of  
 120 Huntington.

*62-Consolidated Medical Service Fund*  
 (WV Code Chapter 16)  
 Fund 0525 FY 2008 Org 0506

1	Personal Services . . . . .	001	\$	649,306
2	Annual Increment . . . . .	004		11,991
3	Employee Benefits . . . . .	010		263,561
4	Special Olympics . . . . .	208		26,074
5	Behavioral Health Program-			
6	Unclassified (R) . . . . .	219		52,779,562
7	Family Support Act . . . . .	221		1,093,923
8	Institutional Facilities Operations (R)	335		75,150,320
9	Capital Outlay (R) . . . . .	511		3,000,000
10	Capital Outlay and Maintenance (R)	755		2,000,000
11	Colin Anderson Community			
12	Placement (R) . . . . .	803		1,164,000
13	Renaissance Program . . . . .	804		194,000

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14	BRIM Premium .....	913	<u>1,088,070</u>
15	Total .....		\$137,420,807

16 Any unexpended balances remaining in the  
17 appropriations for Behavioral Health Program-Unclassified  
18 (fund 0525, activity 219), Institutional Facilities Operations  
19 (fund 0525, activity 335), Capital Outlay (fund 0525, activity  
20 511), Capital Outlay and Maintenance (fund 0525, activity  
21 755), and Colin Anderson Community Placement (fund 0525,  
22 activity 803) at the close of the fiscal year 2007 are hereby  
23 reappropriated for expenditure during the fiscal year 2008.

24 The secretary shall, within fifteen days after the close of  
25 the six-month period of said fiscal year, file with the  
26 legislative auditor and the department of revenue an itemized  
27 report of expenditures made during the preceding six-month  
28 period.

29 Included in the above appropriation for Behavioral  
30 Health Program - Unclassified (fund 0525, activity 219) is  
31 \$100,000 for the Four Angels Substance Abuse Treatment  
32 Project development.

33 From the above appropriation to Institutional Facilities  
34 Operations, together with available funds from the division  
35 of health-hospital services revenue account (fund 5156,  
36 activity 335), on July 1, 2007, the sum of one hundred sixty  
37 thousand dollars shall be transferred to the department of  
38 agriculture-land division as advance payment for the  
39 purchase of food products; actual payments for such  
40 purchases shall not be required until such credits have been  
41 completely expended.

42 Additional funds have been appropriated in fund 5156,  
43 fiscal year 2008, organization 0506, for the operation of the

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44 institutional facilities. The secretary of the department of  
 45 health and human resources is authorized to utilize up to ten  
 46 percent of the funds from the Institutional Facilities  
 47 Operations line item to facilitate cost effective and cost  
 48 saving services at the community level.

*63-Division of Health-*  
*West Virginia Drinking Water Treatment*  
 (WV Code Chapter 16)  
 Fund 0561 FY 2008 Org 0506

1 West Virginia Drinking Water Treatment  
 2 Revolving Fund-Transfer . . . . . 689 \$ 700,000

3 The above appropriation for Drinking Water Treatment  
 4 Revolving Fund-Transfer shall be transferred to the West  
 5 Virginia Drinking Water Treatment Revolving Fund or  
 6 appropriate bank depository and the Drinking Water  
 7 Treatment Revolving-Administrative Expense Fund as  
 8 provided by chapter sixteen of the code.

*64-Human Rights Commission*  
 (WV Code Chapter 5)  
 Fund 0416 FY 2008 Org 0510

1	Personal Services . . . . .	001	\$	717,375
2	Annual Increment . . . . .	004		16,000
3	Employee Benefits . . . . .	010		228,277
4	Unclassified . . . . .	099		261,293
5	BRIM Premium . . . . .	913		<u>19,326</u>
6	Total . . . . .		\$	1,242,271

*65-Division of Human Services*  
 (WV Code Chapters 9, 48 and 49)  
 Fund 0403 FY 2008 Org 0511

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1	Personal Services . . . . .	001	\$ 26,760,616
2	Annual Increment . . . . .	004	620,313
3	Employee Benefits . . . . .	010	10,548,398
4	Unclassified . . . . .	099	16,283,546
5	Child Care Development . . . . .	144	1,263,713
6	Medical Services Contracts and Office		
7	of Managed Care . . . . .	183	2,335,469
8	Medical Services (R) . . . . .	189	393,705,687
9	Medical Services Administrative Costs	789	18,475,825
10	Social Services . . . . .	195	77,112,737
11	Family Preservation Program . . . . .	196	1,565,000
12	Family Resource Networks (R) . . .	274	2,410,367
13	Domestic Violence Legal		
14	Services Fund . . . . .	384	150,000
15	James "Tiger" Morton Catastrophic		
16	Illness Fund . . . . .	455	940,000
17	Child Protective Services Case		
18	Workers . . . . .	468	16,253,617
19	Medical Services Trust Fund Transfer	512	5,000,000
20	OSCAR and RAPIDS . . . . .	515	3,494,859
21	WV Teaching Hospitals		
22	Tertiary/Safety Net . . . . .	547	4,856,000
23	Child Welfare System . . . . .	603	2,635,958
24	Child Support Enforcement . . . . .	705	6,320,428
25	Medicaid Auditing . . . . .	706	602,589
26	Temporary Assistance for Needy		
27	Families/Maintenance of Effort	707	22,969,096
28	Child Care Maintenance of		
29	Effort Match . . . . .	708	5,693,743
30	Child and Family Services . . . . .	736	2,850,000
31	Grants for Licensed Domestic Violence		
32	Programs and Statewide		
33	Prevention . . . . .	750	1,500,000
34	Indigent Burials (R) . . . . .	851	1,700,000
35	BRIM Premium . . . . .	913	834,187

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36	Rural Hospitals Under 150 Beds . .	940	2,596,000
37	Children’s Trust Fund-Transfer . .	951	<u>300,000</u>
38	Total . . . . .		\$629,778,148

39 Any unexpended balances remaining in the  
 40 appropriations for Medical Services (fund 0403, activity  
 41 189), Family Resource Networks (fund 0403, activity 274),  
 42 and Indigent Burials (fund 0403, activity 851) at the close of  
 43 the fiscal year 2007 are hereby reappropriated for expenditure  
 44 during the fiscal year 2008.

45 In addition to the \$390,705,687 that the governor  
 46 requested for the 2008 budget for Medical Services (fund  
 47 0403, activity 189), an additional three million dollars has  
 48 been provided to be dispersed in the following manner: one  
 49 million dollars shall be used to draw down additional funding  
 50 to increase reimbursement to behavioral health providers and  
 51 two million dollars shall be used to draw down additional  
 52 funding to create slots for the mr/dd waiver program in order  
 53 to serve persons currently on the waiting list.

54 The above appropriation for James “Tiger” Morton  
 55 Catastrophic Illness Fund (activity 455) shall be transferred  
 56 to the James “Tiger” Morton Catastrophic Illness Fund (fund  
 57 5454) as provided by chapter sixteen, article five-q, of the  
 58 code.

59 The above appropriation for Domestic Violence Legal  
 60 Services Fund (activity 384) shall be transferred to the  
 61 Domestic Violence Legal Services Fund (fund 5455).

62 Notwithstanding the provisions of Title I, section three of  
 63 this bill, the secretary of the department of health and human  
 64 resources shall have the authority to transfer funds within the  
 65 above account: *Provided*, That no more than five percent of

66 the funds appropriated to one line item may be transferred to  
67 other line items: *Provided, however,* That no funds from  
68 other line items shall be transferred to the personal services  
69 line item.

70 From the above appropriation for the Grants for Licensed  
71 Domestic Violence Programs and Statewide Prevention  
72 (activity 750), \$500,000 shall be divided equally and  
73 distributed among the thirteen (13) licensed programs and the  
74 West Virginia Coalition Against Domestic Violence  
75 (WVCADV).

76 Any unexpended balance remaining in the appropriation  
77 for Grants for Licensed Domestic Violence Programs and  
78 Statewide Prevention (activity 750), shall be distributed  
79 according to the formula established by the Family Protection  
80 Services Board.

81 The secretary shall have authority to expend funds for the  
82 educational costs of those children residing in out-of-state  
83 placements, excluding the costs of special education  
84 programs.

85 The above appropriation for Family Resource Networks  
86 (activity 274) is to be subject to the control and oversight of  
87 the Governor's Cabinet on Children and Families and may  
88 only be administered and disbursed by the Division of  
89 Human Services upon the delegation of this authority to the  
90 Division of Human Services by the Governor's Cabinet on  
91 Children and Families as provided by West Virginia Code  
92 §5-26-4(4) for the benefit of family resource networks, early  
93 parent education services and starting points centers.

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94 The above appropriation for Children’s Trust Fund-  
 95 Transfer (activity 951) shall be transferred to the Children’s  
 96 Fund (fund 1011, org 0100).

**DEPARTMENT OF MILITARY AFFAIRS  
 AND PUBLIC SAFETY**

*66-Department of Military Affairs and Public Safety-  
 Office of the Secretary  
 (WV Code Chapter 5F)  
 Fund 0430 FY 2008 Org 0601*

1	Unclassified (R) . . . . .	099	\$	525,129
2	Efficiency Savings . . . . .	799		0
3	BRIM Premium . . . . .	913		11,416
4	Homeland State Security Administrative			
5	Agency . . . . .	953		568,672
6	WV Fire and EMS Survivor Benefit .	939		<u>150,000</u>
7	Total . . . . .		\$	1,255,217

8 Any unexpended balances remaining in the  
 9 appropriations for Unclassified (fund 0430, activity 099) and  
 10 Capital Outlay (fund 0430, activity 511) at the close of the  
 11 fiscal year 2007 are hereby reappropriated for expenditure  
 12 during the fiscal year 2008.

*67-Adjutant General-  
 State Militia*

*(WV Code Chapter 15)  
 Fund 0433 FY 2008 Org 0603*

1	Personal Services . . . . .	001	\$	1,565,822
2	Annual Increment . . . . .	004		30,750
3	Employee Benefits . . . . .	010		551,095
4	Unclassified (R) . . . . .	099		16,759,718
5	Mountaineer ChalleNGe Academy .	709		1,200,000



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6	BRIM Premium .....	913	<u>50,161</u>
7	Total .....		\$ 20,157,546

8 Any unexpended balances remaining in the  
 9 appropriations for Unclassified (fund 0433, activity 099),  
 10 College Education Fund (fund 0433, activity 232), and  
 11 Armory Capital Improvements—Surplus (fund 0433, activity  
 12 325) at the close of the fiscal year 2007 are hereby  
 13 reappropriated for expenditure during the fiscal year 2008.

14 From the above appropriation an amount approved by the  
 15 adjutant general and the secretary of military affairs and  
 16 public safety may be transferred to the State Armory Board  
 17 for operation and maintenance of National Guard Armories.

*68-Adjutant General-  
 Military Fund*  
 (WV Code Chapter 15)  
 Fund 0605 FY 2008 Org 0603

1	Unclassified—Total .....	096	\$ 200,000
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*69-West Virginia Parole Board*  
 (WV Code Chapter 62)  
 Fund 0440 FY 2008 Org 0605

1	Personal Services .....	001	\$ 165,669
2	Annual Increment .....	004	1,744
3	Employee Benefits .....	010	215,226
4	Unclassified .....	099	188,806
5	Salaries of Members of West Virginia		
6	Parole Board .....	227	455,000
7	BRIM Premium .....	913	<u>16,310</u>
8	Total .....		\$ 1,042,755

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*70-Division of Homeland Security and  
Emergency Management  
(WV Code Chapter 15)  
Fund 0443 FY 2008 Org 0606*

1	Personal Services . . . . .	001	\$	420,453
2	Annual Increment . . . . .	004		6,500
3	Employee Benefits . . . . .	010		165,880
4	Unclassified . . . . .	099		300,000
5	Radiological Emergency Preparedness	554		30,000
6	Federal Funds/Grant Match (R) . . .	749		742,344
7	Mine and Industrial Accident Rapid			
8	Response Call Center . . . . .	781		741,739
9	Early Warning Flood System (R) . .	877		516,264
10	BRIM Premium . . . . .	913		35,158
11	Disaster Mitigation . . . . .	952		100,000
12	WVU Charleston Poison Control			
13	Hotline . . . . .	944		<u>596,100</u>
14	Total . . . . .		\$	3,654,438

15 Any unexpended balances remaining in the  
16 appropriations for Flood Reparations (fund 0443, activity  
17 400), Homeland Security Over Obligation-Surplus (fund  
18 0443, activity 693), Federal Funds/Grant Match (fund 0443,  
19 activity 749), Early Warning Flood System (fund 0443,  
20 activity 877), and Homeland Security Grant Match—Surplus  
21 (fund 0443, activity 957) at the close of the fiscal year 2007  
22 are hereby reappropriated for expenditure during the fiscal  
23 year 2008.

*71-Division of Corrections-  
Central Office  
(WV Code Chapters 25, 28, 49 and 62)  
Fund 0446 FY 2008 Org 0608*

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1	Personal Services .....	001	\$	389,381
2	Annual Increment .....	004		5,775
3	Employee Benefits .....	010		125,071
4	Unclassified .....	099		<u>97,594</u>
5	Total .....		\$	617,821

6 Any unexpended balance remaining in the appropriation  
7 for Management Information System (fund 0446, activity  
8 398) at the close of the fiscal year 2007 is hereby  
9 reappropriated for expenditure during the fiscal year 2008.

*72-Division of Corrections-*  
*Correctional Units*  
(WV Code Chapters 25, 28, 49 and 62)  
Fund 0450 FY 2008 Org 0608

1	Employee Benefits .....	010	\$	356,824
2	Childrens Protection Act (R) .....	090		927,500
3	Unclassified .....	099		1,622,204
4	Charleston Work Release .....	456		1,304,857
5	Beckley Correctional Center .....	490		925,129
6	Huntington Work Release .....	495		850,188
7	Anthony Center .....	504		4,446,264
8	Huttonsville Correctional Center .	514		19,625,356
9	Northern Correctional Facility ...	534		6,475,203
10	Inmate Medical Expenses (R) ....	535		22,364,267
11	Pruntytown Correctional Center ..	543		6,349,786
12	Payments to Federal, County and/or			
13	Regional Jails .....	555		17,168,500
14	Corrections Academy .....	569		1,380,222
15	Martinsburg Correctional Center ..	663		3,118,916
16	Parole Services .....	686		2,159,630
17	Special Services .....	687		2,216,904
18	Capital Outlay and Maintenance (R) ..	755		2,000,000
19	Stephens Correctional Facility ...	791		5,724,500

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20	St. Mary’s Correctional Facility . .	881	12,411,656
21	Denmar Correctional Facility . . . .	882	4,025,739
22	Ohio County Correctional Facility . . .	883	1,417,771
23	Mt. Olive Correctional Facility . . .	888	18,849,472
24	Lakin Correctional Facility . . . . .	896	7,950,905
25	BRIM Premium . . . . .	913	<u>1,135,659</u>
26	Total . . . . .		\$ 144,807,452

27 Any unexpended balances remaining in the  
 28 appropriations for Children’s Protection Act (fund 0450,  
 29 activity 090), Unclassified Surplus (fund 0450, activity 097),  
 30 Inmate Management Information System (fund 0450, activity  
 31 398), Capital Outlay (fund 0450, activity 511), Inmate  
 32 Medical Expenses (fund 0450, activity 535), Capital Outlay  
 33 and Maintenance (fund 0450, activity 755), and Inmate  
 34 Medical Expenses—Surplus (fund 0450, activity 846) at the  
 35 close of the fiscal year 2007 are hereby reappropriated for  
 36 expenditure during the fiscal year 2008.

37 The commissioner of corrections shall, within fifteen  
 38 days after the close of each six-month period of said fiscal  
 39 year, file with the legislative auditor and the department of  
 40 revenue an itemized report of expenditures made during the  
 41 preceding six-month period. Such report shall include the  
 42 total of expenditures made for personal services, annual  
 43 increment, current expenses (inmate medical expenses and  
 44 other), repairs and alterations and equipment.

45 The commissioner of corrections shall also have the  
 46 authority to transfer between line items appropriated to the  
 47 individual correctional units above and may transfer funds  
 48 from the individual units to Payments to Federal, County  
 49 and/or Regional Jails (fund 0450, activity 555) or Inmate  
 50 Medical Expenses (fund 0450, activity 535).

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51 From the above appropriation to Unclassified, on July 1,  
 52 2007, the sum of three hundred thousand dollars shall be  
 53 transferred to the department of agriculture-land division as  
 54 advance payment for the purchase of food products; actual  
 55 payments for such purchases shall not be required until such  
 56 credits have been completely expended.

*73-West Virginia State Police*  
 (WV Code Chapter 15)  
 Fund 0453 FY 2008 Org 0612

1	Personal Services . . . . .	001	\$ 40,122,800
2	Annual Increment . . . . .	004	197,050
3	Employee Benefits . . . . .	010	8,716,466
4	Childrens Protection Act . . . . .	090	910,759
5	Unclassified . . . . .	099	8,587,778
6	Vehicle Purchase . . . . .	451	2,000,000
7	Barracks Lease Payments . . . . .	556	440,088
8	Communications and		
9	Other Equipment (R) . . . . .	558	1,013,285
10	Trooper Retirement Fund . . . . .	605	3,826,778
11	Retirement Systems-Unfunded		
12	Liability . . . . .	775	2,850,000
13	Handgun Administration Expense . .	747	76,612
14	Capital Outlay and Maintenance (R) . .	755	500,000
15	Automated Fingerprint		
16	Identification System . . . . .	898	3,635,334
17	BRIM Premium . . . . .	913	<u>6,043,110</u>
18	Total . . . . .	\$	78,920,060

19 Any unexpended balances remaining in the  
 20 appropriations for Barracks Maintenance and Construction  
 21 (fund 0453, activity 494), Communications and Other  
 22 Equipment (fund 0453, activity 558), Barracks Maintenance  
 23 and Construction-Surplus (fund 0453, activity 669), Capital

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24 Outlay and Maintenance (fund 0453, activity 755), and Law  
 25 Enforcement-Special Projects (fund 0453, activity 787) at the  
 26 close of the fiscal year 2007 are hereby reappropriated for  
 27 expenditure during the fiscal year 2008.

28 From the above appropriation for Capital Outlay and  
 29 Maintenance, the sum of \$250,000 shall be utilized for the  
 30 construction of a new detachment in Calhoun County,  
 31 provided that the Calhoun County Board of Education is  
 32 willing to donate the land for the site to the State Police, and  
 33 provided further that any site preparation needed on the site  
 34 shall be completed as part of the donation.

35 From the above appropriation for Personal Services, an  
 36 amount not less than \$25,000 shall be expended to offset the  
 37 costs associated with providing police services for the West  
 38 Virginia State Fair.

*74-Division of Veterans' Affairs*  
 (WV Code Chapter 9A)  
 Fund 0456 FY 2008 Org 0613

1	Personal Services . . . . .	001	\$	1,045,779
2	Annual Increment . . . . .	004		35,250
3	Employee Benefits . . . . .	010		422,063
4	Unclassified . . . . .	099		164,847
5	Veterans' Field Offices . . . . .	228		175,985
6	Veterans' Nursing Home (R) . . . . .	286		5,459,518
7	Veterans' Toll Free Assistance Line . . . . .	328		5,000
8	Veterans' Reeducation Assistance (R) . . . . .	329		211,604
9	Veterans' Grant Program (R) . . . . .	342		150,000
10	Memorial Day Patriotic Exercise . . . . .	697		20,000
11	Educational Opportunities for			
12	Children of Deceased Veterans (R) . . . . .	854		100,000
13	BRIM Premium . . . . .	913		<u>23,860</u>
14	Total . . . . .		\$	<u>7,813,906</u>

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15 Any unexpended balances remaining in the  
 16 appropriations for Veterans' Nursing Home (fund 0456,  
 17 activity 286), Veterans' Reeducation Assistance (fund 0456,  
 18 activity 329), Veterans' Grant Program (fund 0456, activity  
 19 342), Women's Veterans' Monument (fund 0456, activity  
 20 385), Veterans' Bonus (fund 0456, activity 483), and  
 21 Educational Opportunities for Children of Deceased Veterans  
 22 (fund 0456, activity 854) at the close of the fiscal year 2007  
 23 are hereby reappropriated for expenditure during the fiscal  
 24 year 2008.

25 The above appropriation for Veterans' Nursing Home  
 26 (fund 0456, activity 286) may be transferred to the Veterans  
 27 Facilities Support Fund (fund 6703, org 0613) at the  
 28 discretion of the director of the Division of Veterans' Affairs.

*75-Division of Veterans' Affairs-  
 Veterans' Home  
 (WV Code Chapter 9A)  
 Fund 0460 FY 2008 Org 0618*

1	Personal Services .....	001	\$	719,842
2	Annual Increment .....	004		18,650
3	Employee Benefits .....	010		335,076
4	Unclassified .....	099		<u>31,369</u>
5	Total .....		\$	1,104,937

*76-Fire Commission  
 (WV Code Chapter 29)  
 Fund 0436 FY 2008 Org 0619*

1	Unclassified Total .....	096	\$	86,029
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*77-Division of Criminal Justice Services  
 (WV Code Chapter 15)  
 Fund 0546 FY 2008 Org 0620*

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1	Personal Services .....	001	\$	249,391
2	Annual Increment .....	004		3,645
3	Employee Benefits .....	010		83,353
4	Unclassified .....	099		129,583
5	Community Corrections (R) .....	561		1,000,000
6	Statistical Analysis Program .....	597		50,142
7	Grants Program .....	694		500,000
8	BRIM Premium .....	913		<u>1,660</u>
9	Total .....		\$	2,017,774

10 Any unexpended balances remaining in the  
 11 appropriations for Community Corrections—Surplus(fund  
 12 0546, activity 060) and Community Corrections (fund 0546,  
 13 activity 561) at the close of the fiscal year 2007 are hereby  
 14 reappropriated for expenditure during the fiscal year 2008.

*78-Division of Juvenile Services*

(WV Code Chapter 49)

Fund 0570 FY 2008 Org 0621

1	Robert L. Shell Juvenile Center (R) ..	267	\$	1,958,077
2	Central Office (R) .....	701		2,115,945
3	Capital Outlay and Maintenance (R) ..	755		500,000
4	Southern WV Youth Diagnostic			
5	Center (R) .....	792		123,463
6	Gene Spadaro Juvenile Center (R) ...	793		1,959,073
7	BRIM Premium .....	913		113,016
8	WV Industrial Home for Youth (R) ..	979		10,645,253
9	Davis Center (R) .....	980		2,795,636
10	Eastern Juvenile Center (R) .....	981		2,040,760
11	Northern Juvenile Center (R) ....	982		1,110,465
12	North Central Juvenile Center (R) ...	983		1,731,867
13	Southern Juvenile Center (R) ....	984		1,793,896
14	Tiger Morton Juvenile Center (R) ...	985		1,941,126
15	Donald Kuhn Juvenile Center (R) ...	986		3,721,772



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16	J.M. "Chick" Buckbee		
17	Juvenile Center (R) . . . . .	987	1,875,417
18	Salem Canine (R) . . . . .	988	2,400
19	Davis Canine (R) . . . . .	989	7,200
20	The Academy (R) . . . . .	990	<u>95,422</u>
21	Total . . . . .	\$	34,530,788

22 Any unexpended balances remaining in the  
 23 appropriations for Robert L. Shell Juvenile Center (fund  
 24 0570, activity 267), Central Office (fund 0570, activity 701),  
 25 Capital Outlay and Maintenance (fund 0570, activity 755),  
 26 Southern WV Youth Diagnostic Center (fund 0570, activity  
 27 792), Gene Spadaro Juvenile Center (fund 0570, activity  
 28 793), WV Industrial Home for Youth (fund 0570, activity  
 29 979), Davis Center (fund 0570, activity 980), Eastern  
 30 Regional Juvenile Center (fund 0570, activity 981), Northern  
 31 Regional Juvenile Center (fund 0570, activity 982), North  
 32 Central Regional Juvenile Center (fund 0570, activity 983),  
 33 Southern Regional Juvenile Center (fund 0570, activity 984),  
 34 Tiger Morton Center (fund 0570, activity 985), Donald R.  
 35 Kuhn Juvenile Center (fund 0570, activity 986), J.M. "Chick"  
 36 Buckbee Juvenile Center (fund 0570, activity 987), Salem  
 37 Canine (fund 0570, activity 988), Davis Canine (fund 0570,  
 38 activity 989), and The Academy (fund 0570, activity 990) at  
 39 the close of the fiscal year 2007 are hereby reappropriated for  
 40 expenditure during the fiscal year 2008, with the exception of  
 41 fund 0570, fiscal year 2002, activity 099 (\$1,519.36); fund  
 42 0570, fiscal year 2005, activity 267 (\$570,628.14); fund  
 43 0570, fiscal year 2006, activity 267 (\$100,000); Fund 0570  
 44 fiscal year 2005, activity 283 (\$151,408.02); fund 0570,  
 45 fiscal year 2004, activity 701 (\$13,675.39); fund 0570, fiscal  
 46 year 2005, activity 701 (\$239.04); fund 0570, fiscal year  
 47 2006, activity 701 (\$53,875.33); fund 0570, fiscal year 2006,  
 48 activity 793 (\$75,000); fund 0570, fiscal year 2004, activity  
 49 979 (\$11,672.66); fund 0570, fiscal year 2005, activity 979

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50 (\$705.42); fund 0570, fiscal year 2006, activity 979  
 51 (\$200,000); fund 0570, fiscal year 2004, activity 980  
 52 (\$773.63); fund 0570, fiscal year 2006, activity 980  
 53 (\$145.55); fund 0570, fiscal year 2004, activity 981  
 54 (\$7,775.13); fund 0570, fiscal year 2005, activity 981  
 55 (\$290,643.60); fund 0570, fiscal year 2006, activity 981  
 56 (\$150,000); fund 0570, fiscal year 2005, activity 982  
 57 (\$177,833.88); fund 0570, fiscal year 2006, activity 982  
 58 (\$75,000); fund 0570, fiscal year 2004, activity 983  
 59 (\$6,194.54); fund 0570, fiscal year 2005, activity 983  
 60 (\$87,950.46); fund 0570, fiscal year 2005, activity 984  
 61 (\$118,352.03); fund 0570, fiscal year 2006, activity 984  
 62 (\$50,000); fund 0570, fiscal year 2004, activity 985 (\$49.40);  
 63 fund 0570, fiscal year 2004, activity 987 (\$1,629.91); fund  
 64 0570, fiscal year 2005, activity 987 (\$45,783.53); fund 0570,  
 65 fiscal year 2006, activity 987 (\$100,000); fund 0570, fiscal  
 66 year 2004, activity 988 (\$56,965.37); fund 0570, fiscal year  
 67 2005, activity 988 (\$23,907.03); fund 0570, fiscal year 2006,  
 68 activity 988 (\$27,704.65); fund 0570, fiscal year 2005,  
 69 activity 989 (\$186.35); fund 0570, fiscal year 2006, activity  
 70 989 (\$10,544.86); fund 0570, fiscal year 2004, activity 990  
 71 (\$22,735.86); fund 0570, fiscal year 2005, activity 990  
 72 (\$11,391.77); fund 0570, fiscal year 2006, activity 990  
 73 (\$42,508.92); fund 0570 fiscal year 2004, activity 991  
 74 (\$9,514.49); and fund 0570, fiscal year 2005, activity 991  
 75 (\$503,685.68) which shall expire on June 30, 2007.

76 The director shall, within fifteen days after the close of  
 77 each six-month period of said fiscal year, file with the  
 78 legislative auditor and the department of revenue an itemized  
 79 report of expenditures made during the preceding six-month  
 80 period. Such report shall include the total expenditures made  
 81 for personal services, annual increment, current expenses,  
 82 repairs and alterations, and equipment.

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83 From the above appropriations, on July 1, 2007, the sum  
84 of fifty thousand dollars shall be transferred to the  
85 department of agriculture-land division as advance payment  
86 for the purchase of food products; actual payments for such  
87 purchases shall not be required until such credits have been  
88 completely expended.

89 The director of juvenile services shall also have the  
90 authority to transfer between line items appropriated to the  
91 individual juvenile centers above.

*79-Division of Protective Services*  
(WV Code Chapter 5F)  
Fund 0585 FY 2008 Org 0622

1	Personal Services . . . . .	001	\$	1,057,511
2	Annual Increment . . . . .	004		19,650
3	Employee Benefits . . . . .	010		411,965
4	Unclassified (R) . . . . .	099		423,951
5	BRIM Premium . . . . .	913		<u>7,707</u>
6	Total . . . . .		\$	1,920,784

7 Any unexpended balances remaining in the  
8 appropriations for Equipment (fund 0585, activity 070) and  
9 Unclassified (fund 0585, activity 099) at the close of the  
10 fiscal year 2007 are hereby reappropriated for expenditure  
11 during the fiscal year 2008.

**DEPARTMENT OF REVENUE**  
*80-Office of the Secretary*  
(WV Code Chapter 11)  
Fund 0465 FY 2008 Org 0701

1	Unclassified (R) . . . . .	099	\$	852,292
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2	Revenue Shortfall Reserve		
3	Fund-Transfer .....	590	0
4	Efficiency Savings .....	799	<u>0</u>
5	Total .....		\$ 852,292

6 Any unexpended balances remaining in the  
7 appropriations for Unclassified—Total (fund 0465, activity  
8 096) and Unclassified (fund 0465, activity 099) at the close  
9 of the fiscal year 2007 are hereby reappropriated for  
10 expenditure during the fiscal year 2008.

*81-Tax Division*  
(WV Code Chapter 11)  
Fund 0470 FY 2008 Org 0702

1	Personal Services (R) .....	001	\$ 13,149,281
2	Annual Increment .....	004	259,060
3	Employee Benefits (R) .....	010	4,682,680
4	Unclassified (R) .....	099	7,510,469
5	GIS Development Project (R) ....	562	150,000
6	Remittance Processor (R) .....	570	381,015
7	Multi State Tax Commission .....	653	77,958
8	BRIM Premium .....	913	<u>14,420</u>
9	Total .....		\$ 26,224,883

10 Any unexpended balances remaining in the  
11 appropriations for Personal Services (fund 0470, activity  
12 001), Employee Benefits (fund 0470, activity 010), Tax  
13 Technology Upgrade (fund 0470, activity 094), Unclassified-  
14 Surplus (fund 0470, activity 097), Unclassified (fund 0470,  
15 activity 099), Integrated Tax Accounting System (fund 0702,  
16 activity 292), GIS Development Project (fund 0470, activity  
17 562), and Remittance Processor (fund 0470, activity 570) at

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18 the close of the fiscal year 2007 are hereby reappropriated for  
19 expenditure during the fiscal year 2008.

*82-State Budget Office*  
(WV Code Chapter 11B)  
Fund 0595 FY 2008 Org 0703

1	Unclassified (R) .....	099	\$	1,117,787
2	Pay Equity Reserve .....	364		250,000
3	BRIM Premium .....	913		6,000
4	Public Employee Pay Raise .....			<u>0</u>
5	Total .....		\$	1,373,787

6 Any unexpended balance remaining in the appropriation  
7 for Unclassified (fund 0595, activity 099) at the close of the  
8 fiscal year 2007 is hereby reappropriated for expenditure  
9 during the fiscal year 2008.

*83-West Virginia Office of Tax Appeals*  
(WV Code Chapter 11)  
Fund 0593 FY 2008 Org 0709

1	Unclassified-Total (R) .....	096	\$	669,738
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2 Any unexpended balance remaining in the appropriation  
3 for Unclassified—Total (fund 0593, activity 096) at the close  
4 of the fiscal year 2007 is hereby reappropriated for  
5 expenditure during the fiscal year 2008.

*84-Division of Professional and Occupational Licenses-*  
*State Athletic Commission*  
(WV Code Chapter 29)  
Fund 0523 FY 2008 Org 0933

1	Unclassified-Total .....	096	\$	89,500
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**DEPARTMENT OF TRANSPORTATION**

*85-State Rail Authority*

(WV Code Chapter 29)

Fund 0506 FY 2008 Org 0804

1	Unclassified .....	099	\$	2,611,121
2	BRIM Premium .....	913		<u>253,309</u>
3	Total .....		\$	2,864,430

4 From the above appropriation for Unclassified (activity  
5 099), \$30,000 shall be expended for improvements at the  
6 Duffield Station.

*86-Division of Public Transit*

(WV Code Chapter 17)

Fund 0510 FY 2008 Org 0805

1	Unclassified (R) .....	099	\$	1,258,342
2	Federal Funds/Grant Match (R) ..	749		<u>1,765,000</u>
3	Total .....		\$	3,023,342

4 Any unexpended balances remaining in the  
5 appropriations for Unclassified (fund 0510, activity 099),  
6 Grant Match (fund 0510, activity 388), and Federal  
7 Funds/Grant Match (fund 0510, activity 749) at the close of  
8 the fiscal year 2007 are hereby reappropriated for expenditure  
9 during the fiscal year 2008.

*87-Public Port Authority*

(WV Code Chapter 17)

Fund 0581 FY 2008 Org 0806

1	Unclassified (R) .....	099	\$	431,551
2	BRIM Premium .....	913		<u>6,654</u>
3	Total .....		\$	438,205

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4 Any unexpended balances remaining in the  
 5 appropriations for Unclassified-Total (fund 0581, activity  
 6 096) and Unclassified (fund 0581, activity 099) at the close  
 7 of the fiscal year 2007 are hereby reappropriated for  
 8 expenditure during the fiscal year 2008.

*88-Aeronautics Commission*  
 (WV Code Chapter 29)  
 Fund 0582 FY 2008 Org 0807

1	Unclassified (R) .....	099	\$	1,312,068
2	Civil Air Patrol .....	234		<u>163,258</u>
3	Total .....		\$	1,475,326

4 Any unexpended balances remaining in the  
 5 appropriations for Unclassified-Surplus (fund 0582, activity  
 6 097) and Unclassified (fund 0582, activity 099) at the close  
 7 of the fiscal year 2007 are hereby reappropriated for  
 8 expenditure during the fiscal year 2008.

9 From the above appropriation for Unclassified, the sum  
 10 of \$120,000 shall be distributed equally to each of the twelve  
 11 local Civil Air Patrol Squadrons.

**HIGHER EDUCATION**  
*89-West Virginia Council for*  
*Community and Technical College Education-*  
*Control Account*  
 (WV Code Chapter 18B)  
 Fund 0596 FY 2008 Org 0420

1	Unclassified .....	099	\$	1,700,000
2	New River Community and			
3	Technical College .....	358		4,801,282
4	West Virginia Council for Community			
5	and Technical Education (R) ..	392		713,360

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6	Eastern West Virginia Community		
7	and Technical College . . . . .	412	2,021,567
8	West Virginia State Community and		
9	Technical College . . . . .	445	3,418,827
10	Southern West Virginia Community		
11	and Technical College . . . . .	446	8,386,234
12	West Virginia Northern Community		
13	and Technical College . . . . .	447	7,009,680
14	West Virginia University-		
15	Parkersburg . . . . .	471	8,953,448
16	West Virginia University Institute		
17	for Technology Community and		
18	Technical College . . . . .	486	3,404,908
19	Marshall Community and		
20	Technical College . . . . .	487	5,711,590
21	Community College		
22	Workforce Development (R) . . . .	878	1,000,000
23	Blue Ridge Community and		
24	Technical College . . . . .	885	2,871,929
25	College Transition Program (R) . . . .	887	333,500
26	West Virginia Advance Workforce		
27	Development (R) . . . . .	893	3,000,000
28	Technical Program Development (R) . .	894	2,000,000
29	Pierpont Community and Technical		
30	College . . . . .	930	<u>8,114,815</u>
31	Total . . . . .		\$ 63,441,140

32 Any unexpended balances remaining in the  
33 appropriations for the West Virginia Council for Community  
34 and Technical Education (fund 0596, activity 392),  
35 Community College Workforce Development (fund 0420,  
36 activity 878), College Transition Program (fund 0420,  
37 activity 887), West Virginia Advance Workforce  
38 Development (fund 0420, activity 893), and Technical  
39 Program Development (fund 0420, activity 894) at the close



40 of the fiscal year 2007 are hereby reappropriated for  
41 expenditure during the fiscal year 2008.

42 From the above appropriation for the Community College  
43 Workforce Development (activity 878), \$200,000 shall be  
44 expended on the Mine Training Program in Southern West  
45 Virginia.

46 The institutions operating with special revenue funds  
47 and/or federal funds shall pay their proportionate share of the  
48 Board of Risk and Insurance Management total insurance  
49 premium cost for their respective institutions.

*90-Higher Education Policy Commission-*  
*Administration-*  
*Control Account*  
(WV Code Chapter 18B)  
Fund 0589 FY 2008 Org 0441

1	Unclassified . . . . .	099	\$	2,043,565
2	Higher Education Grant Program . .	164		28,366,209
3	WVNET . . . . .	169		1,915,008
4	Research Challenge . . . . .	502		10,000,000
5	VISTA E-Learning (R) . . . . .	519		300,000
6	PROMISE Scholarship—Transfer . .	800		13,800,000
7	BRIM Premium . . . . .	913		<u>57,419</u>
8	Total . . . . .		\$	56,482,201

9 Any unexpended balances remaining in the  
10 appropriations for Higher Education-Special Projects (fund  
11 0589, activity 488), VISTA E-Learning (fund 0589, activity  
12 519), and Vice Chancellor for Health Sciences-Rural Health  
13 Initiative Program and Site Support (fund 0589, activity 595)  
14 at the close of the fiscal year 2007 are hereby reappropriated  
15 for expenditure during the fiscal year 2008.

16 The above appropriation for Higher Education Grant  
17 Program (activity 164) shall be transferred to the Higher  
18 Education Grant Fund (fund 4933, org 0441) established by  
19 chapter eighteen-c, article five, section three.

20 The above appropriation for PROMISE Scholarship-  
21 Transfer (activity 800) shall be transferred to the PROMISE  
22 Scholarship Fund (fund 4296, org 0441) established by  
23 chapter eighteen-c, article seven, section seven.

24 The above appropriation for Research Challenge (activity  
25 502), FY 2008, shall be allocated to the state's research and  
26 doctoral degree-granting public institutions of higher  
27 education as defined in 18B-2A-6 and in a manner consistent  
28 with the research challenge program as defined in 18B-1B-  
29 12. Each institution shall receive no more than one-half of  
30 this appropriation. Prior to the first day of June, 2007 and  
31 prior to the expenditure of any funds from this account, each  
32 institution shall submit a plan detailing the proposed  
33 expenditure of these funds and the relevance of this plan to  
34 the state's research and economic development goals to the  
35 state director of the experimental program to stimulate  
36 competitive research. The state director shall conduct a merit  
37 review of these plans and recommend funding allocations no  
38 later than the first day of July, 2007. The state director and  
39 representatives of the institutions shall report to the  
40 Legislative Oversight Commission on Educational  
41 Accountability no later than the first day of August, 2008, on  
42 how the funds were expended and the results and benefits  
43 obtained from the expenditures.

*91-Higher Education Policy Commission-  
System-  
Control Account  
(WV Code Chapter 18B)*

## APPROPRIATIONS

Fund 0586 FY 2008 Org 0442

1	Unclassified . . . . .	099	\$	0
2	WVU School of Health Science-			
3	Eastern Division . . . . .	056		2,560,785
4	School of Osteopathic Medicine . .	172		7,234,347
5	Marshall Medical School . . . . .	173		9,500,216
6	WVU—School of Health Sciences .	174		14,264,652
7	WVU School of Health Sciences-			
8	Charleston Division . . . . .	175		2,514,117
9	Primary Health Education Medical			
10	School Program Support (R) . .	177		2,171,528
11	School of Osteopathic School			
12	BRIM Subsidy . . . . .	403		174,475
13	Bluefield State College . . . . .	408		5,323,156
14	Concord University . . . . .	410		9,720,063
15	Fairmont State University . . . . .	414		12,166,895
16	Glennville State College . . . . .	428		6,095,707
17	Shepherd University . . . . .	432		10,708,896
18	West Liberty State College . . . . .	439		8,886,241
19	West Virginia State University . . .	441		9,699,020
20	Marshall University . . . . .	448		46,603,887
21	Marshall University Medical School			
22	BRIM Subsidy . . . . .	449		1,015,462
23	West Virginia University . . . . .	459		110,103,306
24	West Virginia University School of			
25	Medicine BRIM Subsidy . . . . .	460		1,400,038
26	West Virginia University Institute			
27	for Technology . . . . .	479		8,272,205
28	WVUIT-ABET Accreditation . . . . .	454		1,800,000
29	State Priorities-Brownfield Professional			
30	Development (R) . . . . .	531		801,440
31	Rural Health Initiative-Medical			
32	Schools Support . . . . .	581		463,862

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33	West Virginia State University Land		
34	Grant Match . . . . .	956	1,908,000
35	West Virginia University—		
36	Potomac State . . . . .	994	<u>4,346,826</u>
37	Total . . . . .		\$277,735,124

38 Any unexpended balances remaining in the  
 39 appropriations for Primary Health Education Medical School  
 40 Program Support (fund 0586, activity 177), Jackson’s Mill  
 41 (fund 0586, activity 461), State Priorities-Brownfield  
 42 Professional Development (fund 0586, activity 531), and  
 43 Jackson’s Mill-Surplus (fund 0586, activity 842) at the close  
 44 of fiscal year 2007 are hereby reappropriated for expenditure  
 45 during the fiscal year 2008.

46 Included in the appropriation for WVU—School of  
 47 Health Sciences and Marshall Medical School are \$943,080  
 48 and \$295,477, respectively, for Graduate Medical Education  
 49 which may be transferred to the Department of Health and  
 50 Human Resources’ Medical Service Fund (fund 5084) for the  
 51 purpose of matching federal or other funds to be used in  
 52 support of graduate medical education, subject to approval of  
 53 the Vice-Chancellor for Health Sciences and the Secretary of  
 54 the Department of Health and Human Resources. If approval  
 55 is denied, the funds may be utilized by the respective  
 56 institutions for expenditure on graduate medical education.

57 Included in the above appropriation for WVU—School  
 58 of Health Sciences is \$800,000 for the Blanchette Rockefeller  
 59 Project.

60 Included in the above appropriation for West Virginia  
 61 University is \$34,500 for the Marshall and WVU Faculty and  
 62 Course Development International Study Project, \$246,429  
 63 for the WVU Law School—Skills Program, \$147,857 for the

64 WVU Coal and Energy Research Bureau, \$19,714 for the  
65 WVU College of Engineering and Mineral  
66 Resources—Diesel Training—Transfer, \$165,000 for the  
67 WVU-Sheep Study/Potomac Equine Program, \$500,000 for  
68 the Mining Engineering Program, \$500,000 for the Center for  
69 Multiple Sclerosis Program, \$550,000 for the Davis College  
70 of Forestry Agriculture and Consumer Sciences various  
71 improvements, \$200,000 for Reedsville Arena, Meat Labs,  
72 and outreach activities, \$80,000 for a Landscape Architect at  
73 Davis College of Forestry Agriculture and Consumer  
74 Sciences, \$100,000 for the WVU-Soil Testing Program,  
75 \$100,000 for a veterinarian, 50,000 for the WVU Cancer  
76 Study, 220,000 for the WVU Petroleum Engineering  
77 Program and \$100,000 for the rifle team.

78 Included in the above appropriation for Marshall Medical  
79 School is \$417,351 for the Marshall University Forensic Lab  
80 and \$175,061 for the Marshall University Center for Rural  
81 Health.

82 Included in the above appropriation for Marshall  
83 University is \$181,280 for the Marshall University-Southern  
84 WV CTC 2+2 Program.

85 Included in the above appropriation for Concord  
86 University is \$100,000 for the Geographic Alliance.

87 Included in the above appropriation for Shepherd  
88 University is \$100,000 for the Gateway Program.

89 Included in the appropriation for WVU-Potomac State is  
90 \$50,000 for maintenance, repairs and equipment and \$75,000  
91 for Potomac State Farms for maintenance, repairs and  
92 equipment.

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93 The institutions operating from special revenue funds  
94 and/or federal funds shall pay their proportionate share of the  
95 Board of Risk and Insurance Management total insurance  
96 premium cost for their respective institutions.

97 From the above appropriations to the respective medical  
98 schools, the line items for BRIM subsidies funding shall be  
99 paid to the Board of Risk and Insurance Management as a  
100 general revenue subsidy against the “Total Premium Billed”  
101 to each institution as part of the full cost of their malpractice  
102 insurance coverage.

*92-Higher Education Policy Commission—  
Legislative-  
Funding Priorities  
Control Account  
(WV Code Chapter 18B)  
Fund 0591 FY 2008 Org 0441*

1 Any unexpended balances remaining in the  
2 appropriations for Higher Education—Special Projects (fund  
3 0591, activity 488), Independently Accredited Community  
4 and Technical College Development (fund 0591, activity  
5 491), and Research Challenge (fund 0591, activity 502) at the  
6 close of the fiscal year 2007 are hereby reappropriated for  
7 expenditure during the fiscal year 2008.

8 The above appropriation shall be allocated only to the  
9 State’s post-secondary institutions with compacts approved  
10 by the Higher Education Policy Commission or West  
11 Virginia Council for Community and Technical College  
12 Education, as stated in §18B-1A-5.

13 Total TITLE II, Section 1-  
14 General Revenue \$3,775,934,728

1       **Sec. 2. Appropriations from state road fund.**-From the  
 2 state road fund there are hereby appropriated conditionally  
 3 upon the fulfillment of the provisions set forth in article two,  
 4 chapter eleven-b of the code the following amounts, as  
 5 itemized, for expenditure during the fiscal year two thousand  
 6 eight.

**DEPARTMENT OF TRANSPORTATION**

*93-Division of Motor Vehicles*

(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)

Fund 9007 FY 2008 Org 0802

	<b>Act- ivity</b>	<b>State Road Fund</b>
1 Personal Services . . . . .	001	\$ 14,879,095
2 Annual Increment . . . . .	004	272,285
3 Employee Benefits . . . . .	010	6,587,717
4 Unclassified . . . . .	099	<u>12,742,935</u>
5 Total . . . . .		\$ 34,482,032

*94-Division of Highways*

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2008 Org 0803

1 Debt Service . . . . .	040	\$ 50,000,000
2 Maintenance . . . . .	237	260,288,000
3 Maintenance, Contract Paving and		
4     Secondary Road Maintenance .	272	50,000,000
5 Bridge Repair and Replacement . .	273	30,000,000
6 Inventory Revolving . . . . .	275	2,000,000
7 Equipment Revolving . . . . .	276	15,000,000
8 General Operations . . . . .	277	47,797,584
9 Interstate Construction . . . . .	278	100,000,000

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10	Other Federal Aid Programs . . . . .	279	350,700,000
11	Appalachian Programs . . . . .	280	150,000,000
12	Nonfederal Aid Construction . . . . .	281	20,000,000
13	Highway Litter Control . . . . .	282	<u>1,681,000</u>
14	Total . . . . .		\$ 1,077,466,584

15       The above appropriations are to be expended in  
 16 accordance with the provisions of chapters seventeen and  
 17 seventeen-c of the code.

18       The commissioner of highways shall have the authority  
 19 to operate revolving funds within the state road fund for the  
 20 operation and purchase of various types of equipment used  
 21 directly and indirectly in the construction and maintenance of  
 22 roads and for the purchase of inventories and materials and  
 23 supplies.

24       There is hereby appropriated within the above items  
 25 sufficient money for the payment of claims, accrued or  
 26 arising during this budgetary period, to be paid in accordance  
 27 with sections seventeen and eighteen, article two, chapter  
 28 fourteen of the code.

29       It is the intent of the Legislature to capture and match all  
 30 federal funds available for expenditure on the Appalachian  
 31 highway system at the earliest possible time. Therefore,  
 32 should amounts in excess of those appropriated be required  
 33 for the purposes of Appalachian programs, funds in excess of  
 34 the amount appropriated may be made available upon  
 35 recommendation of the commissioner and approval of the  
 36 governor. Further, for the purpose of Appalachian programs,  
 37 funds appropriated to line items may be transferred to other  
 38 line items upon recommendation of the commissioner and  
 39 approval of the governor.



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40 From the above appropriation, \$125,000 is for King Coal  
 41 Highway Authority; \$125,000 is for Coal Field Expressway  
 42 Authority; \$100,000 is Coal Heritage Highway Authority;  
 43 \$100,000 is for Coal Heritage Area Authority; \$50,000 is for  
 44 Little Kanawha River Parkway; \$90,000 is for Midland Trail  
 45 Scenic Highway Association; \$57,000 is for Shawnee  
 46 Parkway Authority; \$100,000 is for Corridor G Highway  
 47 Authority; \$75,000 is for Corridor H Authority; and  
 48 \$100,000 is for the enhancement of the median area along  
 49 U.S. Rt. 22.

50 Additionally, the department shall assist with the removal  
 51 of utility poles and lines along Rt. 2 in the city of Weirton.

52

53 Total TITLE II, Section 2-

54 State Road Fund \$ 1,112,582,940

1 **Sec. 3. Appropriations from other funds.**-From the  
 2 funds designated there are hereby appropriated conditionally  
 3 upon the fulfillment of the provisions set forth in article two,  
 4 eleven-b of the code the following amounts, as itemized, for  
 5 expenditure during the fiscal year two thousand eight.

**LEGISLATIVE**

*95-Crime Victims Compensation Fund*

(WV Code Chapter 14)

Fund 1731 FY 2008 Org 2300

	<b>Act- ivity</b>		<b>Other Funds</b>
1 Personal Services . . . . .	001	\$	286,000
2 Annual Increment . . . . .	004		5,000
3 Employee Benefits . . . . .	010		109,200
4 Unclassified . . . . .	099		135,603
5 Economic Loss Claim Payment			

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6	Fund (R) .....	334		<u>3,597,775</u>
7	Total .....		\$	4,133,578
8	Any unexpended balance remaining in the appropriation			
9	for Economic Loss Claim Payment Fund (fund 1731, activity			
10	334) at the close of the fiscal year 2007 is hereby			
11	reappropriated for expenditure during the fiscal year 2008.			

**EXECUTIVE**

*96-Auditor's Office-*

*Land Operating Fund*

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2008 Org 1200

1	Personal Services .....	001	\$	263,775
2	Annual Increment .....	004		7,500
3	Employee Benefits .....	010		128,655
4	Unclassified .....	099		<u>676,054</u>
5	Total .....		\$	1,075,984

6 There is hereby appropriated from this fund, in addition  
 7 to the above appropriation, the necessary amount for the  
 8 expenditure of funds other than personal services or  
 9 employee benefits to enable the division to pay the direct  
 10 expenses relating to land sales as provided in chapter eleven-  
 11 a of the West Virginia Code.

12 The total amount of this appropriation shall be paid from  
 13 the special revenue fund out of fees and collections as  
 14 provided by law.

*97-Auditor's Office-*

*Securities Regulation Fund*

(WV Code Chapter 32)

Fund 1225 FY 2008 Org 1200

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1	Personal Services .....	001	\$	1,109,959
2	Annual Increment .....	004		14,700
3	Employee Benefits .....	010		455,755
4	Unclassified .....	099		<u>1,391,122</u>
5	Total .....		\$	2,971,536

*98-Auditor's Office-*  
*Technology Support and Acquisition Fund*  
(WV Code Chapter 12)  
Fund 1233 FY 2008 Org 1200

1	Unclassified-Total .....	096	\$	400,000
2	Fifty percent of the deposits made into this fund shall be			
3	transferred to the Treasurer's Office-Technology Support and			
4	Acquisition Fund (fund 1329, org 1300) for expenditure for			
5	the purposes described in West Virginia Code § 12-3-10c.			

*99-Auditor's Office-*  
*Purchasing Card Administration Fund*  
(WV Code Chapter 12)  
Fund 1234 FY 2008 Org 1200

1	Unclassified-Total .....	096	\$	3,122,874
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*100-Auditor's Office-*  
*Office of the Chief Inspector*  
(WV Code Chapter 6)  
Fund 1235 FY 2008 Org 1200

1	Personal Services .....	001	\$	1,979,425
2	Annual Increment .....	004		31,500
3	Employee Benefits .....	010		694,872
4	Unclassified .....	099		<u>622,315</u>
5	Total .....		\$	3,328,112

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*101-Treasurer's Office-  
College Prepaid Tuition and Savings Program  
Administrative Account  
(WV Code Chapter 18)  
Fund 1301 FY 2008 Org 1300*

1 Unclassified-Total ..... 096 \$ 1,401,952

*102-Treasurer's Office-  
Technology Support and Acquisition Fund  
(WV Code Chapter 12)  
Fund 1329 FY 2008 Org 1300*

1 Unclassified-Total ..... 096 \$ 475,000

*103-Department of Agriculture-  
Agriculture Fees Fund  
(WV Code Chapter 19)  
Fund 1401 FY 2008 Org 1400*

1	Personal Services .....	001	\$	1,182,637
2	Annual Increment .....	004		16,000
3	Employee Benefits .....	010		454,580
4	Unclassified .....	099		<u>992,586</u>
5	Total .....		\$	2,645,803

*104-Department of Agriculture-  
West Virginia Rural Rehabilitation Program  
(WV Code Chapter 19)  
Fund 1408 FY 2008 Org 1400*

1	Personal Services .....	001	\$	52,524
2	Annual Increment .....	004		850
3	Employee Benefits .....	010		15,510
4	Unclassified .....	099		<u>975,996</u>
5	Total .....		\$	1,044,880

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*105-Department of Agriculture-  
General John McCausland Memorial Farm  
(WV Code Chapter 19)  
Fund 1409 FY 2008 Org 1400*

1 Unclassified-Total ..... 096 \$ 100,000

2 The above appropriation shall be expended in accordance  
3 with article twenty-six, chapter nineteen of the code.

*106-Department of Agriculture-  
Farm Operating Fund  
(WV Code Chapter 19)  
Fund 1412 FY 2008 Org 1400*

1 Unclassified-Total ..... 096 \$ 1,503,330

*107-Department of Agriculture-  
Donated Food Fund  
(WV Code Chapter 19)  
Fund 1446 FY 2008 Org 1400*

1 Unclassified-Total ..... 096 \$ 4,520,480

*108-Department of Agriculture-  
Integrated Predation Management Fund  
(WV Code Chapter 7)  
Fund 1465 FY 2008 Org 1400*

1 Unclassified-Total ..... 096 \$ 25,000

*109-Attorney General-  
Antitrust Enforcement  
(WV Code Chapter 47)  
Fund 1507 FY 2008 Org 1500*

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1	Personal Services .....	001	\$	256,253
2	Annual Increment .....	004		1,965
3	Employee Benefits .....	010		77,837
4	Unclassified .....	099		<u>138,055</u>
5	Total .....		\$	<u>474,110</u>

*110-Attorney General-  
Preneed Burial Contract Regulation Fund  
(WV Code Chapter 47)  
Fund 1513 FY 2008 Org 1500*

1	Unclassified-Total .....	096	\$	234,887
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*111-Attorney General-  
Preneed Guarantee Fund  
(WV Code Chapter 47)  
Fund 1514 FY 2008 Org 1500*

1	Unclassified-Total .....	096	\$	775,000
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*112-Secretary of State-  
Service Fees and Collection Account  
(WV Code Chapters 3, 5, and 59)  
Fund 1612 FY 2008 Org 1600*

1	Personal Services .....	001	\$	1,167,897
2	Annual Increment .....	004		10,300
3	Employee Benefits .....	010		338,804
4	Unclassified .....	099		<u>1,055,406</u>
5	Total .....		\$	<u>2,572,407</u>

*113-Secretary of State-  
State Election Fund  
(WV Code Chapter 3)  
Fund 1614 FY 2008 Org 1600*

1 Any unexpended balance remaining in the appropriation  
2 for Unclassified-Total (fund 1614, activity 096) at the close  
3 of the fiscal year 2007 is hereby reappropriated for  
4 expenditure during the fiscal year 2008.

**DEPARTMENT OF ADMINISTRATION**

*114-Division of Information Services and Communications*

(WV Code Chapter 5A)

Fund 2220 FY 2008 Org 0210

1	Personal Services .....	001	\$ 19,409,013
2	Annual Increment .....	004	274,530
3	Employee Benefits .....	010	6,341,853
4	Unclassified .....	099	<u>11,394,644</u>
5	Total .....		\$ 37,420,040

6 The total amount of this appropriation shall be paid from  
7 a special revenue fund out of collections made by the division  
8 of information services and communications as provided by  
9 law.

10 Each spending unit operating from the general revenue  
11 fund, from special revenue funds or receiving reimbursement  
12 for postage from the federal government shall be charged  
13 monthly for all postage meter service and shall reimburse the  
14 revolving fund monthly for all such amounts.

*115-Division of Personnel*

(WV Code Chapter 29)

Fund 2440 FY 2008 Org 0222

1	Personal Services .....	001	\$ 2,706,966
2	Annual Increment .....	004	58,190
3	Employee Benefits .....	010	956,624
4	Unclassified .....	099	<u>1,374,811</u>
5	Total .....		\$ 5,096,591

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6 The total amount of this appropriation shall be paid from  
 7 a special revenue fund out of fees collected by the division of  
 8 personnel.

*116-WV Prosecuting Attorneys Institute*  
 (WV Code Chapter 7)  
 Fund 2521 FY 2008 Org 0228

1 Unclassified-Total (R) . . . . . 096 \$ 548,625

2 Any unexpended balance remaining in the appropriation  
 3 for Unclassified-Total (fund 2521, activity 096) at the close  
 4 of the fiscal year 2007 is hereby reappropriated for  
 5 expenditure during the fiscal year 2008.

*117-Office of Technology-  
 Chief Technology Officer Administration Fund*  
 (WV Code Chapter 5A)  
 Fund 2531 FY 2008 Org 0231

1 Unclassified-Total . . . . . 096 \$ 2,041,988

2 From the above fund, the provisions of West Virginia  
 3 Code §11B-2-18 shall not operate to permit expenditures in  
 4 excess of the funds authorized for expenditure herein.

**DEPARTMENT OF COMMERCE**

*118-Division of Forestry*  
 (WV Code Chapter 19)  
 Fund 3081 FY 2008 Org 0305

1	Personal Services . . . . .	001	\$	194,793
2	Annual Increment . . . . .	004		5,350
3	Employee Benefits . . . . .	010		86,772
4	Unclassified . . . . .	099		<u>541,459</u>
5	Total . . . . .		\$	<u>828,374</u>



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*119-Division of Forestry-  
Timbering Operations Enforcement Fund*  
(WV Code Chapter 19)  
Fund 3082 FY 2008 Org 0305

1 Unclassified-Total . . . . . 096 \$ 141,750

*120-Division of Forestry-  
Severance Tax Operations*  
(WV Code Chapter 11)  
Fund 3084 FY 2008 Org 0305

1 Unclassified-Total . . . . . 096 \$ 2,071,622

*121-Geological and Economic Survey*  
(WV Code Chapter 29)  
Fund 3100 FY 2008 Org 0306

1	Personal Services . . . . .	001	\$	44,233
2	Annual Increment . . . . .	004		584
3	Employee Benefits . . . . .	010		15,378
4	Unclassified . . . . .	099		<u>157,099</u>
5	Total . . . . .		\$	<u>217,294</u>

6 The above appropriation shall be used in accordance with  
7 section four, article two, chapter twenty-nine of the code.

*122-West Virginia Development Office-  
Energy Assistance*  
(WV Code Chapter 5B)  
Fund 3144 FY 2008 Org 0307

1 Energy Assistance—Total (R) . . . . . 647 \$ 300,000

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2 Any unexpended balance remaining in the appropriation  
 3 for Energy Assistance-Total (fund 3144, activity 647) at the  
 4 close of the fiscal year 2007 is hereby reappropriated for  
 5 expenditure during the fiscal year 2008.

*123-West Virginia Development Office-  
 Office of Coal Field Community Development  
 (WV Code Chapter 5B)  
 Fund 3162 FY 2008 Org 0307*

1 Unclassified-Total (R) . . . . . 096 \$ 698,240

2 Any unexpended balance remaining in the above  
 3 appropriation for Unclassified-Total (fund 3162, activity 096)  
 4 at the close of the fiscal year 2007 is hereby reappropriated  
 5 for expenditure during the fiscal year 2008.

*124-Division of Labor-  
 Contractor Licensing Board Fund  
 (WV Code Chapter 21)  
 Fund 3187 FY 2008 Org 0308*

1	Personal Services . . . . .	001	\$	1,097,826
2	Annual Increment . . . . .	004		14,280
3	Employee Benefits . . . . .	010		505,204
4	Unclassified . . . . .	099		<u>471,987</u>
5	Total . . . . .		\$	2,089,297

*125-Division of Labor-  
 Elevator Safety Act  
 (WV Code Chapter 21)  
 Fund 3188 FY 2008 Org 0308*

1	Personal Services . . . . .	001	\$	78,371
2	Annual Increment . . . . .	004		723

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3	Employee Benefits .....	010		32,335
4	Unclassified .....	099		<u>69,868</u>
5	Total .....		\$	181,297

*126-Division of Labor-  
Crane Operator Certification Fund  
(WV Code Chapter 21)  
Fund 3191 FY 2008 Org 0308*

1	Unclassified-Total .....	096	\$	113,837
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*127-Division of Labor-  
Amusement Rides and Amusement Attraction Safety Fund  
(WV Code Chapter 21)  
Fund 3192 FY 2008 Org 0308*

1	Unclassified-Total .....	096	\$	104,598
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*128-Division of Labor-  
State Manufactured Housing Administration Fund  
(WV Code Chapter 21)  
Fund 3195 FY 2008 Org 0308*

1	Personal Services .....	001	\$	99,897
2	Annual Increment .....	004		1,646
3	Employee Benefits .....	010		46,280
4	Unclassified .....	099		27,349
5	BRIM Premium .....	913		<u>3,404</u>
6	Total .....		\$	178,576

*129-Division of Labor-  
Weights and Measures Fund  
(WV Code Chapter 47)  
Fund 3196 FY 2008 Org 0308*

1	Unclassified-Total .....	096	\$	50,000
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*130-Division of Natural Resources*  
 (WV Code Chapter 20)  
 Fund 3200 FY 2008 Org 0310

1	Wildlife Resources . . . . .	023	\$	7,366,881
2	Administration . . . . .	155		1,971,572
3	Capital Improvements and			
4	Land Purchase (R) . . . . .	248		1,603,157
5	Law Enforcement . . . . .	806		<u>7,381,592</u>
6	Total . . . . .		\$	<u>18,323,202</u>

7       The total amount of this appropriation shall be paid from  
 8 a special revenue fund out of fees collected by the division of  
 9 natural resources.

10       Any unexpended balances remaining in the  
 11 appropriations for Point of Sales Licensing System (fund  
 12 3200, activity 043), Capital Improvements and Land  
 13 Purchase (fund 3200, activity 248), and DEP-Compliance  
 14 Mandate-Fish Hatchery (fund 3200, activity 668) at the close  
 15 of the fiscal year 2007 are hereby reappropriated for  
 16 expenditure during the fiscal year 2008 with the exception of  
 17 fund 3200, fiscal year 2003, activity 248 (\$1,000,000) which  
 18 shall expire on June 30, 2007.

*131-Division of Natural Resources-*  
*Game, Fish and Aquatic Life Fund*  
 (WV Code Chapter 20)  
 Fund 3202 FY 2008 Org 0310

1	Unclassified-Total . . . . .	096	\$	75,000
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*132-Division of Natural Resources-*  
*Nongame Fund*  
 (WV Code Chapter 20)

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Fund 3203 FY 2008 Org 0310

1	Personal Services .....	001	\$	651,363
2	Annual Increment .....	004		9,250
3	Employee Benefits .....	010		246,882
4	Unclassified .....	099		<u>446,250</u>
5	Total .....		\$	<u>1,353,745</u>

*133-Division of Natural Resources-  
Planning and Development Division  
(WV Code Chapter 20)*

Fund 3205 FY 2008 Org 0310

1	Personal Services .....	001	\$	243,315
2	Annual Increment .....	004		6,400
3	Employee Benefits .....	010		92,234
4	Unclassified .....	099		<u>167,052</u>
5	Total .....		\$	<u>509,001</u>

*134-Division of Natural Resources-  
Whitewater Study and Improvement Fund  
(WV Code Chapter 20)*

Fund 3253 FY 2008 Org 0310

1	Unclassified-Total .....	096	\$	209,720
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*135-Division of Natural Resources-  
Whitewater Advertising and Promotion Fund  
(WV Code Chapter 20)*

Fund 3256 FY 2008 Org 0310

1	Unclassified-Total .....	096	\$	20,000
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*136-Miners' Health, Safety and Training Fund  
(WV Code Chapter 22A)*

Fund 3355 FY 2008 Org 0314

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1	Personal Services .....	001	\$ 90,000
2	Employee Benefits .....	010	27,000
3	WV Mining Extension Service ...	026	150,000
4	Unclassified .....	099	<u>548,000</u>
5	Total .....		\$ 815,000

**DEPARTMENT OF EDUCATION**  
*137-State Board of Education-*  
*Strategic Staff Development*  
(WV Code Chapter 18)  
Fund 3937 FY 2008 Org 0402

1 Unclassified-Total (R) ..... 096 \$ 504,680

2 Any unexpended balance remaining in the appropriation  
3 for Unclassified-Total (fund 3937, activity 096) at the close  
4 of the fiscal year 2007 is hereby reappropriated for  
5 expenditure during the fiscal year 2008.

*138-State Department of Education-*  
*School Building Authority*  
(WV Code Chapter 18)  
Fund 3959 FY 2008 Org 0402

1	Personal Services .....	001	\$ 684,719
2	Annual Increment .....	004	6,550
3	Employee Benefits .....	010	240,154
4	Unclassified .....	099	<u>266,715</u>
5	Total .....		\$ 1,198,138

6 The above appropriation for the administrative expenses  
7 of the school building authority shall be paid from the interest  
8 earnings on debt service reserve accounts maintained on  
9 behalf of said authority.

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*139-State Department of Education-  
FFA-FHA Camp and Conference Center  
(WV Code Chapter 18)  
Fund 3960 FY 2008 Org 0402*

1	Personal Services .....	001	\$	857,689
2	Annual Increment .....	004		9,950
3	Employee Benefits .....	010		297,998
4	Unclassified .....	099		<u>705,590</u>
5	Total .....		\$	1,871,227

**DEPARTMENT OF EDUCATION AND THE ARTS**

*140-Office of the Secretary-  
Lottery Education Fund Interest Earnings-  
Control Account  
(WV Code Chapter 29)  
Fund 3508 FY 2008 Org 0431*

1	EPSCoR .....	571	\$	355,539
2	Educational Enhancements .....	695		<u>600,000</u>
3	Total .....		\$	955,539

4 Any unexpended balance remaining in the appropriation  
5 for Unclassified-Total (fund 3508, activity 096) and  
6 EPSCoR—Total (fund 3508, activity 651) at the close of the  
7 fiscal year 2007 are hereby reappropriated for expenditure  
8 during the fiscal year 2008.

*141-Division of Culture and History—  
Public Records and Preservation Revenue Account  
(WV Code Chapter 5A)  
Fund 3542 FY 2008 Org 0432*

1	Unclassified—Total .....	096	\$	936,570
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*142-State Board of Rehabilitation-  
Division of Rehabilitation Services-  
West Virginia Rehabilitation Center-  
Special Account  
(WV Code Chapter 18)  
Fund 8664 FY 2008 Org 0932*

1	Unclassified-Total .....	096	\$	905,360
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**DEPARTMENT OF ENVIRONMENTAL  
PROTECTION**

*143-Solid Waste Management Board  
(WV Code Chapter 22C)  
Fund 3288 FY 2008 Org 0312*

1	Personal Services .....	001	\$	608,227
2	Annual Increment .....	004		4,000
3	Employee Benefits .....	010		190,868
4	Unclassified .....	099		<u>1,755,180</u>
5	Total .....		\$	2,558,275

*144-Division of Environmental Protection-  
Environmental Management Fund  
(WV Code Chapter 22)  
Fund 3001 FY 2008 Org 0313*

1	Personal Services .....	001	\$	0
2	Annual Increment .....	004		0
3	Employee Benefits .....	010		0
4	Unclassified .....	099		<u>0</u>
5	Total .....		\$	0

*145-Division of Environmental Protection-  
Hazardous Waste Management Fund*



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(WV Code Chapter 22)  
Fund 3023 FY 2008 Org 0313

1	Personal Services .....	001	\$	309,222
2	Annual Increment .....	004		1,850
3	Employee Benefits .....	010		117,538
4	Unclassified .....	099		<u>160,202</u>
5	Total .....		\$	588,812

*146-Division of Environmental Protection-  
Air Pollution Education and Environment Fund*

(WV Code Chapter 22)  
Fund 3024 FY 2008 Org 0313

1	Personal Services .....	001	\$	409,432
2	Annual Increment .....	004		2,750
3	Employee Benefits .....	010		117,209
4	Unclassified .....	099		<u>469,110</u>
5	Total .....		\$	998,501

*147-Division of Environmental Protection-  
Special Reclamation Fund*

(WV Code Chapter 22)  
Fund 3321 FY 2008 Org 0313

1	Personal Services .....	001	\$	1,213,652
2	Annual Increment .....	004		11,400
3	Employee Benefits .....	010		423,308
4	Unclassified .....	099		<u>16,292,832</u>
5	Total .....		\$	17,941,192

*148-Division of Environmental Protection-  
Oil and Gas Reclamation Fund*

(WV Code Chapter 22)  
Fund 3322 FY 2008 Org 0313

1	Unclassified-Total .....	096	\$	442,325
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*149-Division of Environmental Protection-  
Oil and Gas Operating Permit and Processing Fund*

(WV Code Chapter 22)

Fund 3323 FY 2008 Org 0313

1	Personal Services .....	001	\$	594,835
2	Annual Increment .....	004		14,540
3	Employee Benefits .....	010		211,272
4	Unclassified .....	099		<u>650,951</u>
5	Total .....		\$	1,471,598

*150-Division of Environmental Protection-  
Mining and Reclamation Operations Fund*

(WV Code Chapter 22)

Fund 3324 FY 2008 Org 0313

1	Personal Services .....	001	\$	4,471,972
2	Annual Increment .....	004		57,288
3	Employee Benefits .....	010		1,976,858
4	Unclassified .....	099		<u>2,481,437</u>
5	Total .....		\$	8,987,555

*151-Division of Environmental Protection-  
Underground Storage Tank*

*Administrative Fund*

(WV Code Chapter 22)

Fund 3325 FY 2008 Org 0313

1	Personal Services .....	001	\$	256,253
2	Annual Increment .....	004		6,925
3	Employee Benefits .....	010		92,991
4	Unclassified .....	099		<u>196,796</u>
5	Total .....		\$	552,965

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*152-Division of Environmental Protection-  
Hazardous Waste Emergency Response Fund  
(WV Code Chapter 22)  
Fund 3331 FY 2008 Org 0313*

1	Personal Services .....	001	\$	489,302
2	Annual Increment .....	004		8,000
3	Employee Benefits .....	010		189,715
4	Unclassified .....	099		<u>834,243</u>
5	Total .....		\$	1,521,260

*153-Division of Environmental Protection-  
Solid Waste Reclamation and  
Environmental Response Fund  
(WV Code Chapter 22)  
Fund 3332 FY 2008 Org 0313*

1	Personal Services .....	001	\$	746,648
2	Annual Increment .....	004		11,900
3	Employee Benefits .....	010		226,988
4	Unclassified .....	099		<u>3,775,631</u>
5	Total .....		\$	4,761,167

*154-Division of Environmental Protection-  
Solid Waste Enforcement Fund  
(WV Code Chapter 22)  
Fund 3333 FY 2008 Org 0313*

1	Personal Services .....	001	\$	1,991,834
2	Annual Increment .....	004		38,968
3	Employee Benefits .....	010		766,661
4	Unclassified .....	099		<u>1,038,183</u>
5	Total .....		\$	3,835,646

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*155-Division of Environmental Protection-  
Air Pollution Control Fund*  
(WV Code Chapter 22)  
Fund 3336 FY 2008 Org 0313

1	Personal Services .....	001	\$	4,100,781
2	Annual Increment .....	004		44,162
3	Employee Benefits .....	010		1,348,392
4	Unclassified .....	099		<u>2,013,604</u>
5	Total .....		\$	7,506,939

*156-Division of Environmental Protection-  
Environmental Laboratory  
Certification Fund*  
(WV Code Chapter 22)  
Fund 3340 FY 2008 Org 0313

1	Personal Services .....	001	\$	155,837
2	Annual Increment .....	004		2,450
3	Employee Benefits .....	010		56,805
4	Unclassified .....	099		<u>145,075</u>
5	Total .....		\$	360,167

*157-Division of Environmental Protection-  
Stream Restoration Fund*  
(WV Code Chapter 22)  
Fund 3349 FY 2008 Org 0313

1	Unclassified-Total .....	096	\$	945,000
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*158-Division of Environmental Protection-  
Litter Control Fund*  
(WV Code Chapter 22)  
Fund 3486 FY 2008 Org 0313

1	Unclassified-Total .....	096	\$	40,000
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*159-Division of Environmental Protection-  
Recycling Assistance Fund*

(WV Code Chapter 22)

Fund 3487 FY 2008 Org 0313

1	Personal Services .....	001	\$	399,493
2	Annual Increment .....	004		3,500
3	Employee Benefits .....	010		138,771
4	Unclassified (R) .....	099		<u>2,218,337</u>
5	Total .....		\$	2,760,101

6 Any unexpended balance remaining in Unclassified (fund  
7 3487, activity 099) at the close of the fiscal year 2007 is  
8 hereby reappropriated for expenditure during the fiscal year  
9 2008.

*160-Division of Environmental Protection-  
Mountaintop Removal Fund*

(WV Code Chapter 22)

Fund 3490 FY 2008 Org 0313

1	Personal Services .....	001	\$	756,507
2	Annual Increment .....	004		9,075
3	Employee Benefits .....	010		289,089
4	Unclassified .....	099		<u>476,495</u>
5	Total .....		\$	1,531,166

*161-Oil and Gas Conservation Commission—  
Special Oil and Gas Conservation Fund*

(WV Code Chapter 22C)

Fund 3371 FY 2008 Org 0315

1	Personal Services .....	001	\$	154,769
2	Annual Increment .....	004		2,300
3	Employee Benefits .....	010		37,033

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4	Unclassified .....	099		<u>33,206</u>
5	Total .....		\$	227,308

**DEPARTMENT OF HEALTH AND HUMAN  
RESOURCES**

*162-Board of Barbers and Cosmetologists*

(WV Code Chapters 16 and 30)

Fund 5425 FY 2008 Org 0505

1	Personal Services .....	001	\$	251,340
2	Annual Increment .....	004		6,211
3	Employee Benefits .....	010		108,747
4	Unclassified .....	099		<u>101,366</u>
5	Total .....		\$	467,664

6 The total amount of this appropriation shall be paid from  
7 a special revenue fund out of collections made by the board  
8 of barbers and cosmetologists as provided by law.

*163-WV Board of Medicine*

(WV Code Chapter 30)

Fund 5106 FY 2008 Org 0506

1	Unclassified-Total .....	096	\$	1,207,477
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*164-Division of Health-*

*Tobacco Settlement Expenditure Fund*

(WV Code Chapter 4)

Fund 5124 FY 2008 Org 0506

1 Any unexpended balances remaining in the above  
2 appropriations for Institutional Facilities Operations (fund  
3 5124, activity 335) and Tobacco Education Program (fund  
4 5124, activity 906) at the close of the fiscal year 2007 are  
5 hereby reappropriated for expenditure during the fiscal year  
6 2008.

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*165-Division of Health-  
Vital Statistics*  
(WV Code Chapter 16)  
Fund 5144 FY 2008 Org 0506

1	Personal Services . . . . .	001	\$	385,064
2	Annual Increment . . . . .	004		9,003
3	Employee Benefits . . . . .	010		163,386
4	Unclassified. . . . .	099		<u>570,788</u>
5	Total . . . . .		\$	1,128,241

*166-Division of Health-  
Hospital Services Revenue Account*  
(Special Fund)  
(Capital Improvement, Renovation and Operations)  
(WV Code Chapter 16)  
Fund 5156 FY 2008 Org 0506

1	Debt Service (R) . . . . .	040	\$	2,420,000
2	Institutional Facilities			
3	Operations (R) . . . . .	335		38,674,129
4	Medical Services Trust Fund-			
5	Transfer (R) . . . . .	512		<u>25,300,000</u>
6	Total . . . . .		\$	66,394,129

7       Any unexpended balance remaining in the appropriation  
8 for hospital services revenue account at the close of the fiscal  
9 year 2007 is hereby reappropriated for expenditure during the  
10 fiscal year 2008, except for fund 5156, activity 040 (fiscal  
11 year 2006) which shall expire on June 30, 2007.

12       The total amount of this appropriation shall be paid from  
13 the hospital services revenue account special fund created by  
14 section thirteen, article one, chapter sixteen of the code, and

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15 shall be used for operating expenses and for improvements in  
16 connection with existing facilities and bond payments.

17 The secretary of the department of health and human  
18 resources is authorized to utilize up to ten percent of the  
19 funds from the appropriation for Institutional Facilities  
20 Operations line to facilitate cost effective and cost saving  
21 services at the community level.

22 Necessary funds from the above appropriation may be  
23 used for medical facilities operations, either in connection  
24 with this account or in connection with the line item  
25 designated Institutional Facilities Operations in the  
26 consolidated medical service fund (fund 0525, fiscal year  
27 2008, organization 0506).

28 From the above appropriation to Institutional Facilities  
29 Operations, together with available funds from the  
30 consolidated medical services fund (fund 0525, activity 335)  
31 on July 1, 2007, the sum of one hundred sixty thousand  
32 dollars shall be transferred to the department of agriculture-  
33 land division as advance payment for the purchase of food  
34 products; actual payments for such purchases shall not be  
35 required until such credits have been completely expended.

*167-Division of Health-  
Laboratory Services  
(WV Code Chapter 16)  
Fund 5163 FY 2008 Org 0506*

1	Personal Services .....	001	\$	528,772
2	Annual Increment .....	004		11,060
3	Employee Benefits .....	010		211,345
4	Unclassified .....	099		<u>116,530</u>
5	Total .....		\$	867,707



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APPROPRIATIONS

*168-Division of Health-  
Health Facility Licensing  
(WV Code Chapter 16)  
Fund 5172 FY 2008 Org 0506*

1	Personal Services .....	001	\$	209,232
2	Annual Increment .....	004		3,200
3	Employee Benefits .....	010		76,803
4	Unclassified .....	099		<u>93,313</u>
5	Total .....		\$	382,548

*169-Division of Health-  
Hepatitis B Vaccine  
(WV Code Chapter 16)  
Fund 5183 FY 2008 Org 0506*

1	Personal Services .....	001	\$	59,539
2	Annual Increment .....	004		1,530
3	Employee Benefits .....	010		22,390
4	Unclassified .....	099		<u>2,996,007</u>
5	Total .....		\$	3,079,466

*170-Division of Health-  
Lead Abatement Fund  
(WV Code Chapter 16)  
Fund 5204 FY 2008 Org 0506*

1	Unclassified-Total .....	096	\$	20,090
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*171-Division of Health-  
West Virginia Birth to Three Fund  
(WV Code Chapter 16)  
Fund 5214 FY 2008 Org 0506*

1	Personal Services .....	001	\$	525,743
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2	Annual Increment . . . . .	004	4,750
3	Employee Benefits . . . . .	010	204,910
4	Unclassified . . . . .	099	<u>24,141,165</u>
5	Total . . . . .		\$ 24,876,568

*172-Division of Health-  
Tobacco Control Special Fund  
(WV Code Chapter 16)  
Fund 5218 FY 2008 Org 0506*

1	Unclassified—Total . . . . .	096	\$ 15,000
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*173-West Virginia Health Care Authority—  
Health Care Cost Review Fund  
(WV Code Chapter 16)  
Fund 5375 FY 2008 Org 0507*

1	Personal Services . . . . .	001	\$ 2,257,028
2	Annual Increment . . . . .	004	25,000
3	Employee Benefits . . . . .	010	695,875
4	Hospital Assistance . . . . .	025	600,000
5	Unclassified . . . . .	099	<u>3,089,545</u>
6	Total . . . . .		\$ 6,667,448

7 The above appropriation is to be expended in accordance  
8 with and pursuant to the provisions of article twenty-nine-b,  
9 chapter sixteen of the code and from the special revolving  
10 fund designated health care cost review fund.

11 The Health Care Authority is authorized to transfer up to  
12 \$1,400,000 from this fund to the West Virginia Health  
13 Information Network Account (fund 5380) as authorized per  
14 §16-29G-4.

APPROPRIATIONS

15 The Health Care Authority is authorized to transfer up to  
 16 \$6,000,000 from this fund to the West Virginia Health Care  
 17 Authority Revolving Loan Fund as established per §16-29I-4.

*174-West Virginia Health Care Authority-  
 West Virginia Health Information Network Account  
 (WV Code Chapter 16)  
 Fund 5380 FY 2008 Org 0507*

1 Unclassified-Total . . . . . 096 \$ 1,400,000

*175-Division of Human Services-  
 Health Care Provider Tax  
 (WV Code Chapter 11)  
 Fund 5090 FY 2008 Org 0511*

1	Medical Services . . . . .	189	\$173,816,000
2	Medical Services Administrative Costs	789	<u>404,722</u>
3	Total . . . . .		\$174,220,722

4 From the above appropriation, an amount not to exceed  
 5 two hundred thousand dollars shall be transferred to a special  
 6 revenue account in the treasury for use by the department of  
 7 health and human resources for administrative purposes. The  
 8 remainder of all moneys deposited in the fund shall be  
 9 transferred to the West Virginia medical services fund (fund  
 10 5084).

*176-Division of Human Services-  
 Child Support Enforcement  
 (WV Code Chapter 48A)  
 Fund 5094 FY 2008 Org 0511*

1 Unclassified-Total (R) . . . . . 096 \$ 35,216,458

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2 Any unexpended balance remaining in the appropriation  
 3 for Unclassified-Total (fund 5094, activity 096) at the close  
 4 of the fiscal year 2007 is hereby reappropriated for  
 5 expenditure during the fiscal year 2008, except for fund  
 6 5094, activity 096, fiscal year 2005 which shall expire on  
 7 June 30, 2007.

*177-Division of Human Services-*  
*Medical Services Trust Fund*  
 (WV Code Chapter 9)  
 Fund 5185 FY 2008 Org 0511

1	Medical Services .....	189	\$ 30,556,594
2	Medical Services Administrative		
3	Costs .....	789	<u>514,950</u>
4	Total .....		\$ 31,071,544

5 The above appropriation to Medical Services shall be  
 6 used to provide state match of Medicaid expenditures as  
 7 defined and authorized in subsection (c) of Chapter 9-4A-2a.  
 8 Expenditures from the fund are limited to the following:  
 9 payment of backlogged billings, funding for services to  
 10 future federally mandated population groups and payment of  
 11 the required state match for medicaid disproportionate share  
 12 payments. The remainder of all moneys deposited in the fund  
 13 shall be transferred to the division of human services  
 14 accounts.

*178-Division of Human Services-*  
*James "Tiger" Morton Catastrophic Illness Fund*  
 (WV Code Chapter 16)  
 Fund 5454 FY 2008 Org 0511

1	Unclassified-Total .....	096	\$ 1,609,004
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*179-Family Protection Services Board-  
Domestic Violence Legal Services Fund  
(WV Code Chapter 48)  
Fund 5455 FY 2008 Org 0511*

1 Unclassified-Total ..... 096 \$ 588,022

**DEPARTMENT OF MILITARY AFFAIRS AND  
PUBLIC SAFETY**

*180-Department of Military Affairs and Public Safety-  
Office of the Secretary-  
Law-Enforcement, Safety and  
Emergency Worker Funeral  
Expense Payment Fund  
(WV Code Chapter 15)  
Fund 6003 FY 2008 Org 0601*

1 Unclassified-Total ..... 096 \$ 20,000

*181-State Armory Board-  
General Armory Fund  
(WV Code Chapter 15)  
Fund 6057 FY 2008 Org 0603*

1 Unclassified-Total ..... 096 \$ 1,459,901

*182-Division of Homeland Security and  
Emergency Management-  
West Virginia Interoperable Radio Project  
(WV Code Chapter 24)  
Fund 6295 FY 2008 Org 0606*

1 Unclassified-Total ..... 096 \$ 1,500,000

2 Any unexpended balance remaining in the appropriation  
3 for Unclassified-Total (fund 6295, activity 096) at the close

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4 of fiscal year 2007 is hereby reappropriated for expenditure  
 5 during the fiscal year 2008.

*183-West Virginia Division of Corrections-  
 Parolee Supervision Fees  
 (WV Code Chapter 62)  
 Fund 6362 FY 2008 Org 0608*

1	Personal Services .....	001	\$	267,098
2	Annual Increment .....	004		1,651
3	Employee Benefits .....	010		92,558
4	Unclassified .....	099		<u>371,204</u>
5	Total .....		\$	732,511

*184-West Virginia State Police-  
 Motor Vehicle Inspection Fund  
 (WV Code Chapter 17C)  
 Fund 6501 FY 2008 Org 0612*

1	Personal Services .....	001	\$	736,494
2	Annual Increment .....	004		24,500
3	Employee Benefits .....	010		305,568
4	Unclassified .....	099		357,770
5	BRIM Premium .....	913		<u>302,432</u>
6	Total .....		\$	1,726,764

7 The total amount of this appropriation shall be paid from  
 8 the special revenue fund out of fees collected for inspection  
 9 stickers as provided by law.

*185-West Virginia State Police-  
 Drunk Driving Prevention Fund  
 (WV Code Chapter 15)  
 Fund 6513 FY 2008 Org 0612*

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1	Unclassified .....	099	\$	1,327,000
2	BRIM Premium .....	913		<u>154,452</u>
3	Total .....		\$	1,481,452

4 The total amount of this appropriation shall be paid from  
5 the special revenue fund out of receipts collected pursuant to  
6 sections nine-a and sixteen, article fifteen, chapter eleven of  
7 the code and paid into a revolving fund account in the state  
8 treasury.

*186-West Virginia State Police-  
Surplus Real Property Proceeds Fund  
(WV Code Chapter 15)  
Fund 6516 FY 2008 Org 0612*

1	Unclassified .....	099	\$	444,980
2	BRIM Premium .....	913		<u>77,222</u>
3	Total .....		\$	522,202

*187-West Virginia State Police-  
Surplus Transfer Account  
(WV Code Chapter 15)  
Fund 6519 FY 2008 Org 0612*

1	Unclassified (R) .....	099	\$	312,002
2	BRIM Premium .....	913		<u>54,063</u>
3	Total .....		\$	366,065

4 Any unexpended balances remaining in the  
5 appropriations for Helicopter Purchase (fund 6519, activity  
6 063) and Unclassified (fund 6519, activity 099) at the close  
7 of the fiscal year 2007 are hereby reappropriated for  
8 expenditure during the fiscal year 2008.

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*188-West Virginia State Police-  
Central Abuse Registry Fund  
(WV Code Chapter 15)  
Fund 6527 FY 2008 Org 0612*

1	Unclassified .....	099	\$	236,365
2	BRIM Premium .....	913		<u>18,524</u>
3	Total .....		\$	254,889

*189-West Virginia State Police-  
Bail Bond Enforcer Fund  
(WV Code Chapter 15)  
Fund 6532 FY 2008 Org 0612*

1	Unclassified-Total .....	096	\$	3,308
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*190-Division of Veterans' Affairs-  
Veterans' Facilities Support Fund  
(WV Code Chapter 9A)  
Fund 6703 FY 2008 Org 0613*

1	Unclassified-Total .....	096	\$	900,000
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*191-Regional Jail and Correctional Facility Authority  
(WV Code Chapter 31)  
Fund 6675 FY 2008 Org 0615*

1	Personal Services .....	001	\$	1,300,648
2	Annual Increment .....	004		17,600
3	Employee Benefits .....	010		423,478
4	Debt Service .....	040		9,000,000
5	Unclassified .....	099		<u>545,235</u>
6	Total .....		\$	11,286,961



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APPROPRIATIONS

*192-Division of Veterans' Affairs-  
Veterans' Home  
(WV Code Chapter 9A)  
Fund 6754 FY 2008 Org 0618*

1 Unclassified-Total ..... 096 \$ 466,000

*193-Fire Commission-  
Fire Marshal Fees  
(WV Code Chapter 29)  
Fund 6152 FY 2008 Org 0619*

1	Personal Services .....	001	\$	1,967,058
2	Annual Increment .....	004		25,000
3	Employee Benefits .....	010		685,421
4	Unclassified .....	099		460,062
5	BRIM Premium .....	913		<u>58,013</u>
6	Total .....		\$	3,195,554

7 Any unexpended cash balance remaining in fund 6152 at  
8 the close of the fiscal year 2007 is hereby available for  
9 expenditure as part of the fiscal year 2008 appropriation.

*194-Division of Criminal Justice Services-  
WV Community Corrections Fund  
(WV Code Chapter 62)  
Fund 6386 FY 2008 Org 0620*

1 Unclassified-Total ..... 096 \$ 2,006,439

*195-Criminal Justice Services-  
Court Security Fund  
(WV Code Chapter 51)  
Fund 6804 FY 2008 Org 0620*

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1 Unclassified-Total ..... 096 \$ 1,550,572

**DEPARTMENT OF REVENUE**

*196-Division of Banking*

(WV Code Chapter 31A)

Fund 3041 FY 2008 Org 0303

1	Personal Services .....	001	\$	1,789,846
2	Annual Increment .....	004		16,500
3	Employee Benefits .....	010		538,555
4	Unclassified .....	099		<u>558,940</u>
5	Total .....		\$	2,903,841

*197-Tax Division-*

*Cemetery Company Account*

(WV Code Chapter 35)

Fund 7071 FY 2008 Org 0702

1	Personal Services .....	001	\$	17,274
2	Annual Increment .....	004		225
3	Employee Benefits .....	010		5,845
4	Unclassified .....	099		<u>7,772</u>
5	Total .....		\$	31,116

*198-Tax Division-*

*Special Audit and Investigative Unit*

(WV Code Chapter 11)

Fund 7073 FY 2008 Org 0702

1	Personal Services .....	001	\$	876,400
2	Annual Increment .....	004		18,600
3	Employee Benefits .....	010		327,512
4	Unclassified .....	099		<u>229,847</u>
5	Total .....		\$	1,452,359

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*199-Tax Division-  
Special District Excise Tax Administration Fund  
(WV Code Chapter 11)  
Fund 7086 FY 2008 Org 0702*

1 Unclassified-Total ..... 096 \$ 50,000

*200-State Budget Office-  
Public Employees Insurance Reserve Fund  
(WV Code Chapter 11B)  
Fund 7400 FY 2008 Org 0703*

1 Public Employees Insurance Reserve  
2 Fund—Transfer ..... 903 \$ 6,500,000

3 The above appropriation for Public Employees Insurance  
4 Reserve Fund—Transfer shall be transferred to the Medical  
5 Services Trust Fund (fund 5185, org 0511) for expenditure.

*201-Insurance Commissioner-  
Examination Revolving Fund  
(WV Code Chapter 33)  
Fund 7150 FY 2008 Org 0704*

1	Personal Services .....	001	\$	572,230
2	Annual Increment .....	004		3,900
3	Employee Benefits .....	010		159,635
4	Unclassified .....	099		<u>486,389</u>
5	Total .....		\$	1,222,154

*202-Insurance Commissioner-  
Consumer Advocate  
(WV Code Chapter 33)  
Fund 7151 FY 2008 Org 0704*

1 Personal Services ..... 001 \$ 466,479

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2	Annual Increment . . . . .	004	3,850
3	Employee Benefits . . . . .	010	147,288
4	Unclassified . . . . .	099	<u>157,792</u>
5	Total . . . . .		\$ <u>775,409</u>

*203-Insurance Commissioner*

(WV Code Chapter 33)

Fund 7152 FY 2008 Org 0704

1	Personal Services (R) . . . . .	001	\$ 17,950,138
2	Annual Increment (R) . . . . .	004	246,582
3	Employee Benefits (R) . . . . .	010	6,878,158
4	Unclassified (R) . . . . .	099	<u>11,665,259</u>
5	Total . . . . .		\$ 36,740,137

6 Any unexpended balances remaining in the  
 7 appropriations at the close of the fiscal year 2007 are hereby  
 8 reappropriated for expenditure during the fiscal year 2008.

9 The total amount of this appropriation shall be paid from  
 10 a special revenue fund out of collections of fees and charges  
 11 as provided by law.

*204-Insurance Commissioner-*

*Workers' Compensation Old Fund*

(WV Code Chapter 23)

Fund 7162 FY 2008 Org 0704

1	Unclassified-Total . . . . .	096	\$550,000,000
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*205-Insurance Commissioner-*

*Workers' Compensation Uninsured Employers' Fund*

(WV Code Chapter 23)

Fund 7163 FY 2008 Org 0704

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1 Unclassified-Total ..... 096 \$ 27,000,000

*206-Insurance Commissioner–  
Self-Insured Employer Guaranty Risk Pool  
(WV Code Chapter 23)  
Fund 7164 FY 2008 Org 0704*

1 Unclassified-Total ..... 096 \$ 5,000,000

*207-Insurance Commissioner–  
Self-Insured Employer Security Risk Pool  
(WV Code Chapter 23)  
Fund 7165 FY 2008 Org 0704*

1 Unclassified-Total ..... 096 \$ 10,000,000

*208-Insurance Commissioner–  
Private Carrier Guaranty Fund  
(WV Code Chapter 23)  
Fund 7166 FY 2008 Org 0704*

1 Unclassified-Total ..... 096 \$ 1,000,000

*209-Insurance Commissioner–  
Assigned Risk Fund  
(WV Code Chapter 23)  
Fund 7167 FY 2008 Org 0704*

1 Unclassified-Total ..... 096 \$ 1,000,000

*210-Lottery Commission-  
Revenue Center Construction Fund  
(WV Code Chapter 29)  
Fund 7209 FY 2008 Org 0705*

1 Unclassified-Total ..... 096 \$ 20,000,000

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*211-Municipal Bond Commission*  
 (WV Code Chapter 13)  
 Fund 7253 FY 2008 Org 0706

1	Personal Services .....	001	\$	169,062
2	Annual Increment .....	004		4,300
3	Employee Benefits .....	010		65,996
4	Unclassified .....	099		<u>76,101</u>
5	Total .....		\$	<u>315,459</u>

*212-Racing Commission-  
 Relief Fund*  
 (WV Code Chapter 19)  
 Fund 7300 FY 2008 Org 0707

1	Medical Expenses-Total .....	245	\$	57,000
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2       The total amount of this appropriation shall be paid from  
 3 the special revenue fund out of collections of license fees and  
 4 fines as provided by law.

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

*213-Racing Commission-  
 Administration and Promotion*  
 (WV Code Chapter 19)  
 Fund 7304 FY 2008 Org 0707

1	Personal Services .....	001	\$	120,457
2	Annual Increment .....	004		1,000
3	Employee Benefits .....	010		32,477
4	Unclassified .....	099		<u>82,161</u>
5	Total .....		\$	<u>236,095</u>

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*214-Racing Commission-  
General Administration  
(WV Code Chapter 19)  
Fund 7305 FY 2008 Org 0707*

1	Personal Services .....	001	\$	2,079,947
2	Annual Increment .....	004		20,250
3	Employee Benefits .....	010		500,457
4	Unclassified .....	099		<u>380,728</u>
5	Total .....		\$	2,981,382

*215-Racing Commission-  
Administration, Promotion and Education Fund  
(WV Code Chapter 19)  
Fund 7307 FY 2008 Org 0707*

1	Unclassified-Total .....	096	\$	250,000
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*216-Alcohol Beverage Control Administration-  
Wine License Special Fund  
(WV Code Chapter 60)  
Fund 7351 FY 2008 Org 0708*

1	Personal Services .....	001	\$	238,144
2	Annual Increment .....	004		4,300
3	Employee Benefits .....	010		97,811
4	Unclassified .....	099		<u>113,069</u>
5	Total .....		\$	453,324

6 To the extent permitted by law, four classified exempt  
7 positions shall be provided from Personal Services line item  
8 for field auditors.

*217-Alcohol Beverage Control Administration  
(WV Code Chapter 60)  
Fund 7352 FY 2008 Org 0708*

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1	Personal Services .....	001	\$	3,877,374
2	Annual Increment .....	004		79,000
3	Employee Benefits .....	010		1,672,956
4	Unclassified (R) .....	099		<u>2,307,048</u>
5	Total .....		\$	7,936,378

6 Any unexpended balance remaining in the appropriation  
7 for Unclassified (fund 7352, activity 099) at the close of the  
8 fiscal year 2007 is hereby reappropriated for expenditure  
9 during the fiscal year 2008.

10 From the above appropriation an amount shall be used for  
11 the Tobacco/Alcohol Education Program.

12 The total amount of this appropriation shall be paid from  
13 a special revenue fund out of liquor revenues.

14 The above appropriation includes the salary of the  
15 commissioner and the salaries, expenses and equipment of  
16 administrative offices, warehouses and inspectors.

17 There is hereby appropriated from liquor revenues, in  
18 addition to the above appropriation, the necessary amount for  
19 the purchase of liquor as provided by law.

**DEPARTMENT OF TRANSPORTATION**

*218-Division of Motor Vehicles-  
Motor Vehicle Fees Fund  
(WV Code Chapter 17B)  
Fund 8223 FY 2008 Org 0802*

1	Unclassified-Total .....	096	\$	3,884,259
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*219-Division of Motor Vehicles-  
Dealer Recovery Fund  
(WV Code Chapter 17)*



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Fund 8220 FY 2008 Org 0802

1 Unclassified-Total ..... 096 \$ 189,000

*220-Division of Highways-  
A. James Manchin Fund  
(WV Code Chapter 17)*

Fund 8319 FY 2008 Org 0803

1 Unclassified-Total ..... 096 \$ 3,320,000

*221-Public Port Authority-  
Special Railroad and Intermodal Enhancement Fund  
(WV Code Chapter 17)*

Fund     FY 2008 Org 0806

1 Unclassified-Total ..... 096 \$ 2,150,000

**HIGHER EDUCATION**

*222-Higher Education Policy Commission-System-  
Registration Fee Capital Improvement Fund  
(Capital Improvement and Bond Retirement Fund)  
Control Account*

(WV Code Chapters 18 and 18B)

Fund 4902 FY 2008 Org 0442

1	Debt Service (R) .....	040	\$	4,822,241
2	General Capital Expenditures (R) .	306		<u>500,000</u>
3	Total .....		\$	5,322,241

4 Any unexpended balances remaining in the  
5 appropriations at the close of fiscal year 2007 are hereby  
6 reappropriated for expenditure during the fiscal year 2008,  
7 except for fund 4902, activity 306 (fiscal year 2004) which  
8 shall expire on June 30, 2007.

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9 The total amount of this appropriation shall be paid from  
10 the special capital improvements fund created in section  
11 eight, article ten, chapter eighteen-b of the code. Projects are  
12 to be paid on a cash basis and made available on July 1.

13 The above appropriations, except for debt service, may be  
14 transferred to special revenue funds for capital improvement  
15 projects at the institutions.

*223-Higher Education Policy Commission-System-  
Tuition Fee Capital Improvement Fund  
(Capital Improvement and Bond Retirement Fund)*

*Control Account*

(WV Code Chapters 18 and 18B)

Fund 4903 FY 2008 Org 0442

1	Debt Service (R) . . . . .	040	\$ 23,600,143
2	General Capital Expenditures (R) .	306	3,000,000
3	Facilities Planning		
4	and Administration (R) . . . . .	386	<u>401,275</u>
5	Total . . . . .		\$ <u>27,001,418</u>

6 Any unexpended balances remaining in the  
7 appropriations at the close of fiscal year 2007 are hereby  
8 reappropriated for expenditure during the fiscal year 2008,  
9 except for fund 4903, activity 040 (fiscal year 2006), and  
10 fund 4903, activity 537 (fiscal year 2000) which shall expire  
11 on June 30, 2007.

12 The total amount of this appropriation shall be paid from  
13 the special capital improvement fund created in section eight,  
14 article ten, chapter eighteen-b of the code. Projects are to be  
15 paid on a cash basis and made available on July 1.

16 The above appropriations, except for debt service, may be  
17 transferred to special revenue funds for capital improvement  
18 projects at the institutions.

*224-Higher Education Policy Commission-  
1977 State System Registration Fee Refund Revenue  
Construction Fund  
(WV Code Chapters 18 and 18B)  
Fund 4905 FY 2008 Org 0442*

1 Any unexpended balance remaining in the appropriation  
2 at the close of the fiscal year 2007 is hereby reappropriated  
3 for expenditure during the fiscal year 2008.

4 The appropriation shall be paid from available  
5 unexpended cash balances and interest earnings accruing to  
6 the fund. The appropriation shall be expended at the  
7 discretion of the Higher Education Policy Commission and  
8 the funds may be allocated to any institution within the  
9 system.

10 The total amount of this appropriation shall be paid from  
11 the unexpended proceeds of revenue bonds previously issued  
12 pursuant to section eight, article ten, chapter eighteen-b of the  
13 code, which have since been refunded.

*225-Higher Education Policy Commission-  
Tuition Fee Revenue Bond Construction Fund  
(WV Code Chapters 18 and 18B)  
Fund 4906 FY 2008 Org 0442*

1 Any unexpended balance remaining in the appropriation  
2 at the close of the fiscal year 2007 is hereby reappropriated  
3 for expenditure during the fiscal year 2008.

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4 The appropriation shall be paid from available  
5 unexpended cash balances and interest earnings accruing to  
6 the fund. The appropriation shall be expended at the  
7 discretion of the Higher Education Policy Commission and  
8 the funds may be allocated to any institution within the  
9 system.

10 The total amount of this appropriation shall be paid from  
11 the unexpended proceeds of revenue bonds previously issued  
12 pursuant to section eight, article twelve-b, chapter eighteen  
13 of the code, which have since been refunded.

*226-Health Sciences-  
West Virginia University Health Sciences Center  
(WV Code Chapters 18 and 18B)  
Fund 4179 FY 2008 Org 0463*

1 Unclassified-Total (R) . . . . . 096 \$ 15,611,300

2 Any unexpended balance remaining in the appropriation  
3 at the close of fiscal year 2007 is hereby reappropriated for  
4 expenditure during the fiscal year 2008.

**MISCELLANEOUS BOARDS AND COMMISSIONS**

*227-Hospital Finance Authority  
(WV Code Chapter 16)  
Fund 5475 FY 2008 Org 0509*

1	Personal Services . . . . .	001	\$	47,224
2	Annual Increment . . . . .	004		850
3	Employee Benefits . . . . .	010		18,308
4	Unclassified. . . . .	099		<u>30,622</u>
5	Total . . . . .		\$	<u>97,004</u>

6 The total amount of this appropriation shall be paid from  
7 the special revenue fund out of fees and collections as  
8 provided by article twenty-nine-a, chapter sixteen of the  
9 code.

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*228-WV State Board of Examiners for Licensed Practical Nurses*

(WV Code Chapter 30)

Fund 8517 FY 2008 Org 0906

1 Unclassified-Total ..... 096 \$ 373,072

*229-WV Board of Examiners for Registered Professional Nurses*

(WV Code Chapter 30)

Fund 8520 FY 2008 Org 0907

1 Unclassified-Total ..... 096 \$ 907,847

*230-Public Service Commission*

(WV Code Chapter 24)

Fund 8623 FY 2008 Org 0926

1	Personal Services .....	001	\$	8,245,210
2	Annual Increment .....	004		130,000
3	Employee Benefits .....	010		2,749,181
4	Unclassified .....	099		2,810,395
5	PSC Weight Enforcement .....	345		4,280,967
6	Debt Payment/Capital Outlay ....	520		350,000
7	BRIM Premium .....	913		<u>128,000</u>
8	Total .....		\$	18,693,753

9 The total amount of this appropriation shall be paid from  
10 a special revenue fund out of collection for special license  
11 fees from public service corporations as provided by law.

12 The Public Service Commission is authorized to spend up  
13 to \$500,000, from surplus funds in this account, to meet the  
14 expected deficiencies in the Motor Carrier Division (fund

APPROPRIATIONS

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15 8625, org 0926) due to the amendment and reenactment of  
 16 §24A-3-1 by Enrolled House Bill Number 2715, Regular  
 17 Session, 1997.

*231-Public Service Commission-*  
*Gas Pipeline Division—*  
*Public Service Commission Pipeline Safety Fund*  
 (WV Code Chapter 24B)  
 Fund 8624 FY 2008 Org 0926

1	Personal Services .....	001	\$	159,293
2	Annual Increment .....	004		5,556
3	Employee Benefits .....	010		54,000
4	Unclassified .....	099		<u>85,946</u>
5	Total .....		\$	<u>304,795</u>

6 The total amount of this appropriation shall be paid from  
 7 a special revenue fund out of receipts collected for or by the  
 8 public service commission pursuant to and in the exercise of  
 9 regulatory authority over pipeline companies as provided by  
 10 law.

*232-Public Service Commission-*  
*Motor Carrier Division*  
 (WV Code Chapter 24A)  
 Fund 8625 FY 2008 Org 0926

1	Personal Services .....	001	\$	1,649,373
2	Annual Increment .....	004		40,000
3	Employee Benefits .....	010		555,687
4	Unclassified .....	099		<u>579,790</u>
5	Total .....		\$	<u>2,824,850</u>

6 The total amount of this appropriation shall be paid from  
 7 a special revenue fund out of receipts collected for or by the

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8 public service commission pursuant to and in the exercise of  
 9 regulatory authority over motor carriers as provided by law.

*233-Public Service Commission-  
 Consumer Advocate  
 (WV Code Chapter 24)  
 Fund 8627 FY 2008 Org 0926*

1	Personal Services .....	001	\$	521,477
2	Annual Increment .....	004		6,700
3	Employee Benefits .....	010		162,990
4	Unclassified .....	099		264,911
5	BRIM Premium .....	913		<u>3,978</u>
6	Total .....		\$	960,056

7 The total amount of this appropriation shall be paid from  
 8 a special revenue fund out of collections made by the public  
 9 service commission.

*234-Real Estate Commission  
 (WV Code Chapter 30)  
 Fund 8635 FY 2008 Org 0927*

1	Personal Services .....	001	\$	410,504
2	Annual Increment .....	004		7,100
3	Employee Benefits .....	010		132,535
4	Unclassified .....	099		<u>236,486</u>
5	Total .....		\$	786,625

6 The total amount of this appropriation shall be paid out  
 7 of collections of license fees as provided by law.

*235-WV Board of Examiners for Speech-Language  
 Pathology and Audiology  
 (WV Code Chapter 30)  
 Fund 8646 FY 2008 Org 0930*

1	Unclassified-Total .....	096	\$	93,233
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*236-WV Board of Respiratory Care*  
(WV Code Chapter 30)  
Fund 8676 FY 2008 Org 0935

1 Unclassified-Total ..... 096 \$ 108,513

*237-WV Board of Licensed Dietitians*  
(WV Code Chapter 30)  
Fund 8680 FY 2008 Org 0936

1 Unclassified-Total ..... 096 \$ 18,900

*238-Massage Therapy Licensure Board*  
(WV Code Chapter 30)  
Fund 8671 FY 2008 Org 0938

1 Unclassified-Total ..... 096 \$ 93,573

*239-Board of Treasury Investments*  
(WV Code Chapter 12)  
Fund 9152 FY 2008 Org 0950

1 Unclassified-Total ..... 096 \$ 1,153,855

2       There is hereby appropriated from this fund, in addition  
3 to the above appropriation, the amount of funds necessary for  
4 the Board of Treasury Investments to pay the fees and  
5 expenses of custodians, fund advisors and fund managers for  
6 the Consolidated fund of the State as provided in Chapter 12,  
7 Article 6C of the West Virginia Code.



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8 The total amount of the appropriation shall be paid from  
 9 the special revenue fund out of fees and collections as  
 10 provided by law.

11 Total TITLE II, Section 3-  
 Other Funds . . . . . \$ 1,304,123,345

1 **Sec. 4. Appropriations from lottery net profits.**-Net  
 2 profits of the lottery are to be deposited by the director of the  
 3 lottery to the following accounts in the amounts indicated.  
 4 The director of the lottery shall prorate each deposit of net  
 5 profits in the proportion the appropriation for each account  
 6 bears to the total of the appropriations for all accounts.

7 After first satisfying the requirements for Fund 2252 and  
 8 Fund 3963 pursuant to section eighteen, article twenty-two,  
 9 chapter twenty-nine of the code, the director of the lottery  
 10 shall make available from the remaining net profits of the  
 11 lottery any amounts needed to pay debt service for which an  
 12 appropriation is made for Fund 3167 and Fund 4297, and is  
 13 authorized to transfer any such amounts to Fund 3167 and  
 14 Fund 4297 for that purpose. Upon receipt of reimbursement  
 15 of amounts so transferred, the director of the lottery shall  
 16 deposit the reimbursement amounts to the following accounts  
 17 as required by this section.

*240-Education, Arts, Sciences and Tourism-*  
*Debt Service Fund*  
 (WV Code Chapter 5)  
 Fund 2252 FY 2008 Org 0211

	<b>Activity</b>	<b>Lottery Funds</b>
1 Debt Service-Total . . . . .	310	\$ 10,000,000

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*241-West Virginia Development Office-  
Division of Tourism  
(WV Code Chapter 5B)  
Fund 3067 FY 2008 Org 0304*

1	Tourism-Telemarketing Center . . .	463	\$	90,000
2	WV Film Office . . . . .	498		356,295
3	Tourism-Advertising (R) . . . . .	618		3,156,803
4	Tourism-Unclassified (R) . . . . .	662		<u>4,339,585</u>
5	Total . . . . .		\$	<u>7,942,683</u>

6 Any unexpended balances remaining in the  
7 appropriations for Capitol Complex-Capital Outlay (fund  
8 3067, activity 417), Tourism-Advertising (fund 3067, activity  
9 618), Tourism-Unclassified (fund 3067, activity 662),  
10 Tourism-Unclassified-Lottery Surplus (fund 3067, activity  
11 773), and Tourism-Special Projects (fund 3067, activity 859)  
12 at the close of the fiscal year 2007 are hereby reappropriated  
13 for expenditure during the fiscal year 2008.

*242-Division of Natural Resources  
(WV Code Chapter 20)  
Fund 3267 FY 2008 Org 0310*

1	Gypsy Moth Suppression			
2	Program for State Parks (R) . . .	017	\$	42,997
3	Unclassified (R) . . . . .	099		2,252,896
4	Pricketts Fort State Park . . . . .	324		120,000
5	Non-Game Wildlife (R) . . . . .	527		431,169
6	State Parks and			
7	Recreation Advertising (R) . . .	619		<u>589,402</u>
8	Total . . . . .		\$	<u>3,436,464</u>

9 Any unexpended balances remaining in the  
10 appropriations for Gypsy Moth Suppression Program for  
11 State Parks (fund 3267, activity 017), Unclassified (fund

12 3267, activity 099), Capital Outlay-Parks (fund 3267, activity  
 13 288), Non-Game Wildlife (fund 3267, activity 527), State  
 14 Parks and Recreation Advertising (fund 3267, activity 619),  
 15 West Virginia Stream Partners Program (fund 3267, activity  
 16 637), and State Parks-Special Projects (fund 3267, activity  
 17 860) at the close of the fiscal year 2007 are hereby  
 18 reappropriated for expenditure during the fiscal year 2008.

*243-State Department of Education*  
 (WV Code Chapters 18 and 18A)  
 Fund 3951 FY 2008 Org 0402

1	Unclassified . . . . .	099		4,200,000
2	Technology Infrastructure			
3	Network (R) . . . . .	351	\$	0
4	READS Program . . . . .	365		300,000
5	MATH Program . . . . .	368		400,000
6	FBI Checks . . . . .	372		107,049
7	Vocational Education			
8	Equipment Replacement . . . . .	393		819,750
9	Assessment Program (R) . . . . .	396		6,454,777
10	21st Century Technology Infrastructure			
11	Network Tools and Support . . . . .	933		<u>22,969,663</u>
12	Total . . . . .		\$	35,251,239

13 Any unexpended balances remaining in the  
 14 appropriations for Unclassified (fund 3951, activity 099),  
 15 Technology Infrastructure Network (fund 3951, activity 351),  
 16 Assessment Program (fund 3951, activity 396), Technology  
 17 Demonstration Project (fund 3951, activity 639), and  
 18 Computer Study (fund 3951, activity 998) at the close of the  
 19 fiscal year 2007 are hereby reappropriated for expenditure  
 20 during the fiscal year 2008.

21 The above appropriation for Technology Infrastructure  
 22 Network shall be expended on the following programs and

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23 technology: Computer Basic Skills, S.U.C.C.E.S.S., WVEIS,  
 24 Technology Repair and Modernization, Technology and  
 25 Telecommunications Initiative and other programs in the  
 26 field that will benefit the Counties.

*244-State Department of Education-  
 School Building Authority-  
 Debt Service Fund  
 (WV Code Chapter 18)  
 Fund 3963 FY 2008 Org 0402*

1 Debt Service-Total . . . . . 310 \$ 18,000,000

*245-Department of Education and the Arts-  
 Office of the Secretary-  
 Control Account-  
 Lottery Education Fund  
 (WV Code Chapter 5F)  
 Fund 3508 FY 2008 Org 0431*

1	Unclassified (R) . . . . .	099	\$	120,000
2	WV Humanities Council . . . . .	168		400,000
3	Commission for National and			
4	Community Service . . . . .	193		410,050
5	Arts Programs (R) . . . . .	500		80,000
6	College Readiness (R) . . . . .	579		201,748
7	Challenger Learning Center . . . . .	862		60,000
8	Statewide STEM 21 <sup>st</sup> Century			
9	Academy . . . . .	897		80,000
10	Literacy Project (R) . . . . .	899		50,000
11	Special Olympic Games . . . . .	966		<u>25,000</u>
12	Total . . . . .		\$	<u>1,426,798</u>

13 Any unexpended balances remaining in the  
 14 appropriations for Unclassified (fund 3508, activity 099),  
 15 Arts Programs (fund 3508, activity 500), College Readiness  
 16 (fund 3508, activity 579), and Literacy Project (fund 3508,

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17 activity 899) at the close of fiscal year 2007 are hereby  
 18 reappropriated for expenditure during the fiscal year 2008.

*246-Division of Culture and History-*  
*Lottery Education Fund*  
 (WV Code Chapter 29)  
 Fund 3534 FY 2008 Org 0432

1	Huntington Symphony . . . . .	027	\$	100,000
2	Martin Luther King, Jr.			
3	Holiday Celebration . . . . .	031		10,800
4	Fairs and Festivals . . . . .	122		2,686,000
5	Archeological Curation/Capital			
6	Improvements (R) . . . . .	246		51,545
7	Historic Preservation Grants (R) . .	311		452,340
8	West Virginia Public Theater . . . . .	312		200,000
9	Tri-County Fair Association . . . . .	343		125,000
10	George Tyler Moore Center for the			
11	Study of the Civil War . . . . .	397		60,000
12	Theater Arts of West Virginia . . . .	464		400,000
13	Marshall Artists Series . . . . .	518		60,000
14	Grants for Competitive Arts			
15	Program (R) . . . . .	624		810,000
16	West Virginia State Fair . . . . .	657		50,000
17	Contemporary American Theater			
18	Festival . . . . .	811		100,000
19	Independence Hall . . . . .	812		50,000
20	Mountain State Forest Festival . . . .	864		70,000
21	WV Symphony . . . . .	907		100,000
22	Wheeling Symphony . . . . .	908		100,000
23	Appalachian Children’s Chorus . . .	916		<u>100,000</u>
24	Total . . . . .		\$	<u>5,525,685</u>

25 Any unexpended balances remaining in the  
 26 appropriations for Archeological Curation/Capital

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27 Improvements (fund 3534, activity 246), Historic  
 28 Preservation Grants (fund 3534, activity 311), Capital Outlay,  
 29 Repairs and Equipment (fund 3534, activity 589), Grants for  
 30 Competitive Arts Program (fund 3534, activity 624), and  
 31 Project ACCESS (fund 3534, activity 865) at the close of the  
 32 fiscal year 2007 are hereby reappropriated for expenditure  
 33 during the fiscal year 2008.

34 Included in the above appropriation for Fairs and  
 35 Festivals (fund 3534, activity 122) funding shall be provided  
 36 to the African-American Cultural Heritage Festival 5,000,  
 37 African-American Heritage Family Tree Museum 4,500,  
 38 African-American Jubilee (Ohio) 5,500, Alderson 4th of  
 39 July Celebration (Greenbrier) 3,000, Allegheny Echo  
 40 (Pocahontas) 7,500, Alpine Festival/Leaf Peepers Festival  
 41 (Tucker) 11,250, American Legion Post 8, Veterans Day  
 42 Parade 2,000, Angus Beef and Cattle Show (Lewis) 1,500,  
 43 Annual Labor Day Observance (Randolph) 2,000, Antique  
 44 Market Fair (Lewis) \$2,000, Apollo Theater-Summer  
 45 Program (Berkeley) 2,000, Appalachian Autumn Festival  
 46 (Braxton) 3,500, Appalachian Mountain Bike Race (Calhoun)  
 47 1,500, Apple Butter Festival (Morgan) 6,000, Aracoma Story  
 48 (Logan) 50,000, Arkansas Homemaker's Heritage Weekend  
 49 (Hardy) 3,500, Armed Forces Day-South Charleston 3,000,  
 50 Arthurdale Heritage New Deal Festival (Preston) 5,000, Arts  
 51 Monongahela (Monongalia) 20,000, Athens Town Fair  
 52 (Mercer) 2,000, Augusta Fair (Randolph) 5,000, Barbour  
 53 County Arts & Humanities Council 1,500, Barbour County  
 54 Fair 25,000, Barboursville Octoberfest (Cabell) 5,000, Bass  
 55 Festival (Pleasants) 1,850, Battelle District Fair (Monongalia)  
 56 5,000, Battle of Dry Creek (Greenbrier) 1,500, Battle of Point  
 57 Pleasant Memorial Committee 5,000, Beckley Main Street  
 58 (Raleigh) 5,000, Belington VFD Community Fair (Barbour)  
 59 1,750, Belle Boyd House (Berkeley) 2,000, Belle Town Fair  
 60 (Kanawha) 4,500, Bergoo Down Home Days (Webster)

61 2,500, Berkeley County Youth Fair 3,500, Birch River Days  
62 Festival (Nicholas) 2,000, Black Bear 40K Mountain Bike  
63 Race 1,000, Black Heritage Festival (Harrison) 6,000, Black  
64 Walnut Festival (Roane) 10,000, Blue-Gray Reunion  
65 (Barbour) 3,500, Boone County Fair 6,500, Boone County  
66 Labor Day Celebration 4,000, Bradshaw Fall Festival  
67 (McDowell) 2,000, Bramwell Street Fair (Mercer) 1,500,  
68 Braxton County Arts and Crafts Fair 500, Braxton County  
69 Fairs and Festivals Association 11,500, Brooke County Fair  
70 2,500, Bruceton Mills Good Neighbor Days (Preston) 2,000,  
71 Buckwheat Festival (Preston) 8,500, Buffalo 4th of July  
72 Celebration (Putnam) 500, Buffalo Creek Memorial (Logan)  
73 5,000, Burlington Apple Harvest Festival (Mineral) 30,000,  
74 Cabell County Fair 10,000, Cabwaylingo Forest Foundation  
75 (Wayne) 1,500, Calhoun County Wood Festival 2,000, Cape  
76 Coalwood Festival Association (McDowell) 2,500, Capon  
77 Bridge Annual VFD Celebration (Hampshire) 1,000, Capon  
78 Springs Ruritan 4th of July (Hampshire) 1,000, Carnegie  
79 Hall, Inc. (Greenbrier) 70,000, Cass Homecoming  
80 (Pocahontas) 2,000, Cedarville Town Festival (Gilmer) 500,  
81 Celebration in the Park (Wood) 4,000, Celebration of  
82 America (Monongalia) 6,000, Ceredo Historical Society  
83 (Wayne) 2,000, Ceredo Landmark Commission (Wayne)  
84 1,500, Ceredo-Kenova Railroad Museum (Wayne) 2,000,  
85 Chapmanville Apple Butter Festival (Logan) 1,000,  
86 Chapmanville Fire Department 4th of July 3,000, Charles  
87 Town Christmas Festival 5,000, Charles Town Heritage  
88 Festival 5,000, Charles Town Summer Sampler (Jefferson)  
89 1,000, Charleston Area Alliance River Lights Project  
90 (Kanawha) 10,000, Charleston Sternwheel Regatta 20,000,  
91 Cherry River Festival (Nicholas) 6,500, Chester Fireworks  
92 (Hancock) 1,500, Chief Logan State Park-Civil War  
93 Celebration 8,000, Christmas in Shepherdstown (Jefferson)  
94 4,000, Christmas in the Park (Logan) 25,000, City of of  
95 Chester 100th Anniversary Celebration 5,000, City of Dunbar

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- 96 Critter Dinner 10,000, City of Pleasant Valley Celebration
- 97 (Marion) 2,500, Civil War Horse Cavalry Race (Barbour)
- 98 1,000, Clay Co. Agriculture Youth Fair 1,500, Clay County
- 99 Golden Delicious Festival 5,000, Coal Field Jamboree
- 100 (Logan) 35,000, Coalton Days Fair (Randolph) 7,000, Collis
- 101 P. Huntington Railroad Historical Society 10,000, Country
- 102 Roads Festival (Fayette) 2,000, Cowen Railroad Festival
- 103 (Webster) 3,500, Craigsville Fall Festival 3,500, Cross Lanes
- 104 Annual Festival (Kanwaha) 8,000, Delbarton Homecoming
- 105 (Mingo) 2,000, Doddridge County Fair 5,200, Dunlow Fall
- 106 Festival 2,000, Durbin Days (Pocahontas) 5,000,
- 107 Elbert/Filbert Reunion Festival (McDowell) 1,500,
- 108 Elizabethtown Festival (Marshall) 4,000, Ellenboro Glass
- 109 Festival (Ritchie) 3,000, Fairview 4th of July Celebration
- 110 (Marion) 1,000, Farm Safety Day (Preston) 2,000, Fayette
- 111 American Legion 4th of July 1,000, Fellowsville Firemen's
- 112 Festival (Preston) 1,000, FestivALL Charleston 20,000, First
- 113 Stage Children's Theater Company (Cabell) 2,000, Flanagan
- 114 Murrell House (Summers) 10,000, Flatwood Days (Braxton)
- 115 1,000, Flemington Day Fair and Festival (Taylor) 3,500,
- 116 Follansbee Community Days (Brooke) 7,250, Fort Ashby
- 117 Fort (Mineral) 1,500, Fort Gay Mountain Heritage Days
- 118 (Wayne) 5,000, Fort New Salem (Harrison) 3,700, Fort
- 119 Randolph (Mason) 5,000, Frankford Autumnfest (Greenbrier)
- 120 3,000, Franklin Fishing Derby (Greenbrier) 7,500, Freedom
- 121 Festival (Logan) \$5,000, Friends Auxiliary of W.R. Sharpe
- 122 Hospital 5,000, FrontierFest/Canaan Valley (Taylor County)
- 123 5,000, Fund for the Arts-Wine & All that Jazz Festival 2,500,
- 124 Gassaway Days Celebration (Braxton) 5,000, General Adam
- 125 Stephen Memorial Foundation 18,525, Gilbert Kiwanis
- 126 Harvest Festival 3,000, Gilbert Spring Fling (Mingo) 5,000,
- 127 Gilmer County Farm Show 3,500, Grafton Mother's Day
- 128 Shrine Committee (Taylor) 8,500, Grant County Arts Council
- 129 2,000, Grape Stomping Wine Festival (Nicholas) 2,000,
- 130 Greater Quinwood Days (Greenbrier) 2,000, Green Spring



131 Days (Hampshire) 1,000, Greenbrier Valley Theater 50,000,  
132 Guyandotte Civil War Days (Cabell) 10,000, Hamlin 4th of  
133 July Celebration (Lincoln) 5,000, Hampshire Civil War  
134 Celebration Days 1,000, Hampshire County Fair 6,000,  
135 Hampshire County French & Indian War Celebration 1,000,  
136 Hampshire Herbs & Arts Festival 1,000, Hampshire Heritage  
137 Days 3,000, Hancock County Oldtime Fair \$5,000, Hardy  
138 County Commission - 4th of July 10,000, Hardy County Tour  
139 and Crafts Association 20,000, Harts Community Celebration  
140 (Lincoln) 1,000, Hatfield McCoy Trail National ATV and  
141 Dirt Bike Weekend (Wyoming) 5,000, Heritage Craft Center  
142 of the Eastern Panhandle 7,000, Heritage Craft Festival  
143 (Monroe) 1,000, Heritage Days Festival (Roane) 1,500,  
144 Heritage Farm Museum & Village (Cabell) \$50,000, Hicks  
145 Festival (Tucker) 2,000, Hilltop Festival (Huntington) 1,000,  
146 Hinton Railroad Days (Summers) 5,500, Historic Fayette  
147 Theater (Fayette) 5,500, Historic Middleway Conservancy  
148 (Jefferson) 1,000, Holly River Festival (Webster) 1,500,  
149 Hundred 4th of July (Wetzel) 7,250, Hundred American  
150 Legion Earl Kiger Post Bluegrass Festival (Wetzel) 2,000,  
151 Huntington Outdoor Theater (Cabell) 2,000, Huntington  
152 Youth and Music Project 5,000, Jaeger Lions Club Annual  
153 Golf Show (McDowell) 1,500, Jaeger Town Fair (McDowell)  
154 1,500, Indian Mound Cemetery (Hampshire) 2,000,  
155 International Ramp Cook-Off (Randolph) 2,000, Irish  
156 Heritage Festival of WV (Raleigh) 5,000, Irish Spring  
157 Festival (Lewis) 1,000, Italian Heritage Festival-Clarksburg  
158 25,000, Jackson County Fair \$5,000, Jacksonburg  
159 Homecoming (Wetzel) 1,000, Jane Lew Arts and Crafts Fair  
160 (Lewis) 1,000, Jefferson Co. Black History Preservation  
161 Society 5,000, Jefferson Co. Historical Landmark  
162 Commission 8,000, Jefferson County African American  
163 Heritage Festival 5,000, Jefferson County Fair Association  
164 25,000, Jersey Mountain Ruritan Pioneer Days (Hampshire)  
165 1,000, John Henry Days Festival (Monroe) 5,000, Johnnie

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166 Johnson Blues and Jazz Festival (Marion) \$5,000, Johnstown  
 167 Community Fair (Harrison) 2,500, Junior Heifer Preview  
 168 Show (Lewis) 2,000, Kanawha Coal Riverfest-St. Albans  
 169 July 5,000, Kay Ford Reunion (Kanawha) 2,500, Kenova Fall  
 170 Festival (Wayne) 5,000, Kermit Fall Festival (Mingo) 3,000,  
 171 Keyser Old Fashioned 4th of July Celebration 1,000, King  
 172 Coal Festival (Mingo) 4,000, Kingwood Downtown Street  
 173 Fair and Heritage Days 2,000, Lady of Agriculture (Preston)  
 174 1,000, Lamb and Steer Show 9,000, Larry Joe Harless Center  
 175 Octoberfest Hatfield McCoy Trail (Mingo) 5,000, Last Blast  
 176 of Summer (McDowell) 5,000, Laurel Mt. Re-enactment  
 177 Committee (Barbour) 3,250, Levels VFD Lawn Association  
 178 (Hampshire) 1,000, Lewis County Fair Association 3,500,  
 179 Lewisburg Shanghai (Greenbrier) 2,000, Lincoln County Fall  
 180 Festival 8,000, Lincoln County Winterfest 5,000, Lincoln  
 181 District Fair (Marion) 2,500, Lindside 4th of July (Monroe)  
 182 500, Little Birch Days Celebration (Braxton) 500, Little  
 183 Levels Heritage Festival 2,000, Logan County Arts and  
 184 Crafts Fair 4,000, Lost Creek Community Festival 6,000,  
 185 Maddie Carroll House (Cabell) 7,500, Mannington District  
 186 Fair (Marion) 6,000, Maple Syrup Festival (Randolph) 1,000,  
 187 Marion County FFA Farm Fest 2,500, Marmet Annual Labor  
 188 Day Celebration (Kanawha) 2,000, Marshall County Antique  
 189 Power Show 2,500, Marshall County Fair 7,500, Marshall  
 190 County Historical Society 8,500, Marshall County Riverfront  
 191 Festival 2,500, Mason County Fair 5,000, Mason Dixon  
 192 Festival (Monongalia) 7,000, Matewan Massacre  
 193 Reenactment (Mingo) \$5,000, Matewan-Magnolia Fair  
 194 (Mingo) 20,000, McARTS-McDowell County 20,000,  
 195 McCoy Theater (Hardy) 20,000, McDowell County Fair  
 196 2,500, McGrew House History Day 2,000, McNeill's  
 197 Rangers (Mineral) 8,000, Meadow Bridge Hometown  
 198 Festival (Fayette) 1,250, Meadow River Days Festival 3,000,  
 199 Mercer Bluestone Valley Fair 2,000, Mercer County Fair  
 200 2,000, Mid Ohio Valley Antique Engine Festival (Wood)

201 \$3,000, Milton Christmas in the Park (Cabell) \$2,500, Milton  
202 Fourth of July Celebration (Cabell) \$2,500, Mineral County  
203 Fair 1,750, Mineral County Veterans Day Parade 1,500,  
204 Molasses Festival (Calhoun) 2,000, Moncove Lake Festival  
205 (Monroe) 2,000, Monroe County Farmer's Day - Union  
206 2,000, Monroe County Harvest Festival 2,000, Morgantown  
207 Theater Company 20,000, Mothers' Day Festival (Randolph)  
208 2,500, Moundsville Bass Festival 4,000, Moundsville July  
209 4th Celebration (Marshall) 5,000, Mount Liberty Fall Festival  
210 (Barbour) 2,500, Mountain Fest \$20,000, Mountain Festival  
211 (Mercer) 4,625, Mountain Heritage Arts and Crafts Festival  
212 (Jefferson) 5,000, Mountain Music Festival 2,500, Mountain  
213 State Apple Harvest Festival (Berkeley) 7,500, Mountain  
214 State Arts Crafts Fair Cedar Lakes (Jackson) 5,000,  
215 Mountaineer Boys' State (Lewis) 10,000, Mountaineer Hot  
216 Air Balloon Festival 4,000, Mud River Festival (Lincoln)  
217 8,000, Mullens Dogwood Festival (Wyoming) 6,000, Multi-  
218 Cultural Festival of West Virginia 20,000, Museum in the  
219 Community (Putnam) 45,000, Music Hall of Fame (Marion)  
220 5,000, New Cumberland Fourth of July Fireworks (Hancock)  
221 \$5,000, New River Bridge Day Festival (Fayette) 35,000,  
222 Newburg Volunteer Fireman's Field Day (Preston) 1,000,  
223 Newell Annual Clay Festival (Hancock) 3,000, Nicholas  
224 County Potato Festival 3,500, Nicholas Old Main Foundation  
225 (Nicholas) 2,000, Norman Dillon Farm Museum (Berkeley)  
226 10,000, North Preston Farmers Club - Civil War Times  
227 1,000, North River Valley Festival (Hampshire) 1,000,  
228 Northern Preston Mule Pull and Farmers Days 4,000, Oak  
229 Leaf Festival (Fayette) 4,000, Oceana Heritage Festival  
230 (Wyoming) 6,000, Oglebay City Park - Festival of Lights  
231 (Ohio) 75,000, Oglebay Festival (Ohio) 5,000, Ohio County  
232 Fair 8,500, Ohio Valley Beef Association (Wood) 2,500, Old  
233 Central City Fair (Huntington) 5,000, Old Opera House  
234 Theater Company (Jefferson) 15,000, Old Tyme Christmas  
235 (Jefferson) 2,400, Paden City Labor Day Festival (Wetzel)

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236 6,500, Panther Fall Festival (McDowell) 4,000, Parkersburg  
 237 Arts Center 20,000, Parkersburg Homecoming (Wood)  
 238 12,000, Patty Fest 2,000, Paw Paw District Fair (Marion)  
 239 3,500, Pax Reunion Committee (Fayette) 5,000, Pendleton  
 240 County 4-H Weekend 2,000, Pendleton County Committee  
 241 for Arts 15,000, Pendleton County Fair 25,000, Pennsboro  
 242 Country Road Festival 2,000, Petersburg Fourth of July  
 243 Celebration 20,000, Petersburg HS Celebration 10,000,  
 244 Peterstown 4th of July Horse Show (Grant) 1,000, Piedmont-  
 245 Annual Back Street Festival 4,000, Pinch Reunion  
 246 (Kanawha) 1,500, Pine Bluff Fall Festival 4,000, Pine Grove  
 247 4th of July Festival (Wetzel) 5,000, Pineville Festival  
 248 (Wyoming) 6,000, Pleasants County Agriculture Youth Fair  
 249 5,000, Poca Heritage Days (Putnam) 3,000, Pocahontas  
 250 County Pioneer Days 7,000, Pocahontas Historic Opera  
 251 House 6,000, Point Pleasant Artist Series 5,000, Point  
 252 Pleasant Stern wheel Regatta River 5,000, Potomac  
 253 Highlands Maple Festival (Grant) 6,000, Princeton Street Fair  
 254 (Mercer) 5,000, Putnam County Fair 5,000, Quartets on  
 255 Parade(Wardensville) 4,000, Rainelle Fall Festival 3,000,  
 256 Raleigh County All Wars Museum 10,000, Randolph County  
 257 Community Arts Council 3,000, Randolph County Fair  
 258 \$7,000, Ranson Christmas Festival 5,000, Ranson Festival  
 259 5,000, Ravenswood Octoberfest 5,000, Ravenswood Ohio  
 260 River Festival \$3,000, Reedsville VFD Fair (Preston) 2,000,  
 261 Renick Liberty Festival 1,000, Rhododendron Girls' State  
 262 (Ohio) 10,000, Riders of the Flood 3,000, Ripley 4th of July  
 263 (Jackson) 15,000, Ritchie County Fair and Exposition 2,000,  
 264 Ritchie County Pioneer Days 1,000, Ritter Park Days  
 265 (Cabell) 3,000, River Heritage Days - Speed Boat Race  
 266 (Wetzel) 5,000, River Heritage Days Festival (Wetzel) 6,000,  
 267 Riverfest (Marion) 2,000, Roane Co. 4-H and FFA Youth  
 268 Livestock Program 5,000, Roane County Agriculture Field  
 269 Day 3,000, Ronceverte River Festival (Greenbrier) 3,000,  
 270 Rowlesburg Labor Day Festival (Preston) 1,000, Rupert

271 Country Fling (Greenbrier) 3,000, Salem Apple Butter  
272 Festival (Harrison) 4,000, Scottish Heritage  
273 Society/N.Central WV Central 5,000, Sistersville 4th of July  
274 Fireworks(Wetzel) 5,500, Smoke on the Water (Kanawha)  
275 2,000, Smoke on the Water (Wetzel) 3,000, Soldiers'  
276 Memorial Theater (Raleigh) 10,000, Southern WV Veterans'  
277 Museum (Summers) 4,500, Spirit of Grafton Celebration  
278 (Taylor) \$7,000, Spring Fest (Pendleton) 2,500, Spring  
279 Mountain Festival (Grant) 4,000, Springfield Peach Festival  
280 (Hampshire) 1,200, St. Albans City of Lights - December  
281 5,000, Stoco Reunion (Raleigh) 2,500, Stonewall Jackson  
282 Heritage Arts and Crafts 11,000, Storytelling Festival (Lewis)  
283 500, Strawberry Festival (Upshur) 20,000, Summer Fest of  
284 Panther (McDowell) 1,500, Summers County Historic  
285 Landmark Commission 5,000, Sumner-Ramer Heritage, Inc  
286 (Berkeley) 3,000, Sylvester July 4th Celebration (Boone)  
287 2,500, Taylor County Fair 5,500, Terra Alta VFD 4th of July  
288 Celebration (Preston) 1,000, Those Who Served War  
289 Museum (Mercer) 4,000, Three Rivers Avian Center  
290 (Summers) 15,000, Three Rivers Coal Festival (Marion)  
291 7,750, Thunder on the Tygart - Mothers' Day Celebration  
292 5,000, Town of Delbarton 4th of July Celebration 3,000,  
293 Town of Matoka-annual Hog Roast (Mercer) 1,000, Treasure  
294 Mountain Festival (Pendleton) 25,000, Tri-County Fair  
295 (Grant) 15,000, Tucker County Arts Festival and Celebration  
296 18,000, Tucker County Fair 4,750, Tucker County Health  
297 Fair 2,000, Tug Valley Arts Council (Mingo) 5,000, Tug  
298 Valley Chamber of Commerce Coal House (Mingo) 2,000,  
299 Tunnelton Depot Days (Preston) 1,000, Tunnelton Fire  
300 Department Carnival (Preston) 750, Tunnelton Historical  
301 Society (Preston) 2,000, Turkey Festival (Hardy) 3,000,  
302 Tyler County Fair 5,200, Tyler County Fourth of July 500,  
303 Uniquely West Virginia Festival (Morgan) 2,000, Upper  
304 Ohio Valley Italian Festival (Ohio) 7,000, Upper West Fork  
305 Blue Grass Festival (Calhoun) 500, Upshur County Fair

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306 7,000, Valley District Fair- Reedsville (Preston) 3,500,  
 307 Volcano Days at Mountwood Park (Wood) 5,000, War  
 308 Homecoming Fall Festival 1,500, Wardensville Fall Festival  
 309 5,000, Wayne County Fair 5,000, Wayne County Fall  
 310 Festival 5,000, Webb Chapel Cemetery Association Event  
 311 (Preston) 2,000, Webster County Woodchopping Festival  
 312 4,500, Webster Wild Water Weekend 2,000, Weirton July 4th  
 313 Celebration (Hancock) 3,000, Wellsburg 4th of July  
 314 Celebration (Brooke) 6,500, Wellsburg Apple Festival of  
 315 Brooke County 5,000, West Virginia Autumn Festival  
 316 (Burnsville) 2,500, West Virginia Blackberry Festival 5,000,  
 317 West Virginia Coal Festival (Boone) 7,000, West Virginia  
 318 Dairy Cattle Show 10,000, West Virginia Days - Hinton  
 319 (Summers) 2,000, West Virginia Fair and Exposition (Wood)  
 320 8,100, West Virginia Fireman's Rodeo (Fayette) 2,500, West  
 321 Virginia Highland Games & Celtic Festival 3,000, West  
 322 Virginia Honey Festival (Wood) 2,000, West Virginia  
 323 Museum of Glass (Lewis) 5,000, West Virginia Oil and Gas  
 324 Festival (Tyler) 11,000, West Virginia Polled Hereford  
 325 Assoc. 1,500, West Virginia Poultry Festival (Hardy) 5,000,  
 326 West Virginia Pumpkin Festival (Cabell) 7,500, West  
 327 Virginia Roundhouse Rail Days (Berkeley) 25,000, West  
 328 Virginia State Folk Festival 4,500, West Virginia Water  
 329 Festival - City of Hinton 16,000, West Virginia Wine & Jazz  
 330 Festival (Monongalia) 9,000, West Virginia Wine and Arts  
 331 Festival (Berkeley) 5,000, Weston Carp Festival & Fishing  
 332 Tournament 4,000, Weston VFD 4th of July Firemen Festival  
 333 (Lewis) 2,000, Wetzel County Autumnfest 5,500, Wetzel  
 334 County Town and Country Days 17,000, Wheeling Celtic  
 335 Festival (Ohio) 2,000, Wheeling City of Lights 8,000,  
 336 Wheeling Sterwheel Regatta 10,000, Wheeling Vintage  
 337 Raceboat Regatta (Ohio) 20,000, Whipple Community  
 338 Action (Fayette) 2,500, Whitesville - Big Coal River Festival  
 339 (Boone) 4,000, Widen Days Festival (Calhoun) 2,000,  
 340 Wileyville Homecoming (Wetzel) 4,000, Wine Festival and

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341 Mountain Music Event (Harrison) 5,000, Winter Festival of  
 342 the Waters (Berkeley) 5,000, Wirt County Fair 2,500, Wirt  
 343 County Pioneer Days 2,000, World Galic Games one time  
 344 (Harrison) \$25,000, WV Music Hall Fame (Kanawha) 3,000,  
 345 WV State Monarch Butterfly Festival (Brooke) \$5,000, WV  
 346 Strawberry Festival (horse pull) 2,500, YMCA Camp  
 347 Horseshoe 100,000, Youth Museum of Southern WV  
 348 (Raleigh) 12,000, Youth Stockman Beef Expo. (Lewis)  
 349 2,000, and the Z.D. Ramsdell House (Wayne) 4,500.

350 Any Fairs & Festival awards shall be funded in addition  
 351 to, and not in lieu of, individual grant allocations derived  
 352 from the Arts Council and the Cultural Grant Program  
 353 allocations.

*247-Library Commission-  
 Lottery Education Fund  
 (WV Code Chapter 10)  
 Fund 3559 FY 2008 Org 0433*

1	Books and Films . . . . .	179	\$	500,000
2	Services to Libraries . . . . .	180		500,000
3	Grants to Public Libraries . . . . .	182		7,348,884
4	Digital Resources . . . . .	309		219,992
5	Libraries-Special Projects . . . . .	625		800,000
6	Infomine Network . . . . .	884		<u>1,169,301</u>
7	Total . . . . .		\$	10,538,177

*248-Bureau of Senior Services-  
 Lottery Senior Citizens Fund  
 (WV Code Chapter 29)  
 Fund 5405 FY 2008 Org 0508*

1	Personal Services . . . . .	001	\$	135,156
2	Annual Increment . . . . .	004		2,600
3	Employee Benefits . . . . .	010		59,198

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4	Unclassified . . . . .	099	348,881
5	Local Programs Service		
6	Delivery Costs . . . . .	200	2,475,250
7	Silver Haired Legislature . . . . .	202	15,000
8	Area Agencies Administration . . .	203	78,685
9	Senior Citizen Centers and		
10	Programs (R) . . . . .	462	2,600,000
11	Transfer to Division of Human Services		
12	for Health Care and Title XIX Waiver		
13	for Senior Citizens . . . . .	539	23,822,578
14	Roger Tompkins Alzheimers		
15	Respite Care . . . . .	643	1,795,000
16	Regional Aged and Disabled		
17	Resource Center . . . . .	767	1,000,000
18	Senior Services Medicaid Transfer . .	871	10,300,000
19	Legislative Initiatives for the Elderly	904	10,000,000
20	Long Term Care Ombudsman . . . .	905	321,325
21	BRIM Premium . . . . .	913	7,243
22	West Virginia Elder Watch . . . . .	934	150,000
23	In-Home Services and Nutrition		
24	for Senior Citizens . . . . .	917	<u>5,700,000</u>
25	Total . . . . .		\$ 58,810,916

26 Any unexpended balance remaining in the appropriation  
 27 for Senior Citizen Centers and Programs (fund 5405, activity  
 28 462) at the close of the fiscal year 2007 is hereby  
 29 reappropriated for expenditure during the fiscal year 2008.

30 The above appropriation for Transfer to Division of  
 31 Human Services for Health Care and Title XIX Waiver for  
 32 Senior Citizens along with the federal moneys generated  
 33 thereby shall be used for reimbursement for services provided  
 34 under the program. Further, the program shall be preserved  
 35 within the aggregate of these funds.

*249-Higher Education Policy Commission-  
 Lottery Education-*



*Higher Education Policy Commission-  
Control Account*

(WV Code Chapters 18B and 18C)

Fund 4925 FY 2008 Org 0441

1	Marshall Medical School-			
2	RHI Program and Site Support (R) ..	033	\$	450,949
3	WVU Health Sciences			
4	RHI Program and Site Support (R) ..	035		1,215,640
5	RHI Program and Site Support-			
6	District Consortia (R) .....	036		2,410,172
7	RHI Program and Site Support-			
8	RHEP Program			
9	Administration (R) .....	037		183,058
10	RHI Program and Site Support-			
11	Grad Med Ed and Fiscal			
12	Oversight (R) .....	038		102,087
13	Higher Education Grant Program (R) ...	164		4,633,791
14	Tuition Contract Program (R) .....	165		1,020,548
15	Minority Doctoral Fellowship (R) ...	166		150,000
16	Underwood—Smith Scholarship			
17	Program-Student Awards (R) ...	167		141,142
18	School of Osteopathic Medicine (R) ..	172		0
19	Health Sciences Scholarship (R) ....	176		149,908
20	School of Osteopathic Medicine BRIM			
21	Subsidy (R) .....	403		0
22	Rural Health Initiative—Medical Schools			
23	Support (R) .....	581		0
24	Vice Chancellor for Health Sciences—			
25	Rural Health Residency			
26	Program (R) .....	601		266,842
27	MA Public Health Program and			
28	Health Science Technology (R) ..	623		60,010
29	Marshall University Graduate			
30	College Writing Project (R) .....	807		25,000
31	HEAPS Grant Program (R) .....	867		5,002,319

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32	WV Engineering, Science, and		
33	Technology Scholarship		
34	Program (R) . . . . .	868	470,473
35	Health Sciences Career		
36	Opportunities Program (R) . . . . .	869	369,207
37	HSTA Program (R) . . . . .	870	1,500,000
38	Center for Excellence in Disabilities (R) .	967	150,000
39	WV Autism Training Center . . . . .	932	<u>1,050,000</u>
40	Total . . . . .		\$ 19,351,146

41 Any unexpended balances remaining in the  
 42 appropriations at the close of fiscal year 2007 are hereby  
 43 reappropriated for expenditure during the fiscal year 2008.

44 The above appropriation for Higher Education Grant  
 45 Program (activity 164) shall be transferred to the Higher  
 46 Education Grant Fund (fund 4933, org 0441) established by  
 47 chapter eighteen-c, article five, section three.

48 The above appropriation for Underwood-Smith  
 49 Scholarship Program-Student Awards (activity 167) shall be  
 50 transferred to the Underwood-Smith Teacher Scholarship  
 51 Fund (fund 4922, org 0441) established by chapter eighteen-  
 52 c, article four, section one.

53 The above appropriation for WV Engineering, Science,  
 54 and Technology Scholarship Program (activity 868) shall be  
 55 transferred to the West Virginia Engineering, Science and  
 56 Technology Scholarship Fund (fund 4928, org 0441)  
 57 established by chapter eighteen-c, article six, section one.

58 Total TITLE II, Section 4-  
 59 Lottery Revenue \$ 170,283,108

1 **Sec. 5. Appropriations from state excess lottery**  
 2 **revenue fund.**- In accordance with section eighteen-a, article  
 3 twenty-two, chapter twenty nine of the code, the following  
 4 appropriations shall be deposited and disbursed by the  
 5 director of the lottery to the following accounts in this section  
 6 in the amounts indicated.

*250-Lottery Commission-  
 Refundable Credit*  
 Fund 7207 FY 2008 Org 0705

	<b>Activity</b>	<b>Lottery Funds</b>
1 Unclassified-Total-Transfer . . . . .	402	\$ 8,600,000

2 The above appropriation for Unclassified-Total-Transfer  
 3 (activity 402) shall be transferred to the General Revenue  
 4 Fund to provide reimbursement for the refundable credit  
 5 allowable under chapter eleven, article twenty-one, section  
 6 twenty-one of the code. The amount of the required transfer  
 7 shall be determined solely by the state tax commissioner and  
 8 shall be completed by the director of the lottery upon the  
 9 commissioner’s request.

*251-Lottery Commission-  
 General Purpose Account*  
 Fund 7206 FY 2008 Org 0705

1 Unclassified-Total-Transfer . . . . .	402	\$ 65,000,000
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2 The above appropriation for Unclassified-Total-Transfer  
 3 (activity 402) shall be transferred to the General Revenue  
 4 Fund as determined by the director of the lottery.

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*252-Education Improvement Fund*  
Fund 4295 FY 2008 Org 0441

1 Unclassified-Total-Transfer . . . . . 402 \$ 27,000,000

2 The above appropriation for Unclassified-Total-Transfer  
3 (activity 402) shall be transferred to the PROMISE  
4 Scholarship Fund (fund 4296, org 0441) established by  
5 chapter eighteen-c, article seven, section seven.

6 The Legislature has explicitly set a finite amount of  
7 available appropriations and directed the administrators of  
8 the Program to provide for the award of scholarships within  
9 the limits of available appropriations.

*253-Economic Development Authority-  
Economic Development Project Fund*  
Fund 9065 FY 2008 Org 0944

1 Debt Service-Total . . . . . 310 \$ 19,000,000

2 Pursuant to subsection (f), section eighteen-a, article  
3 twenty-two, chapter twenty-nine of the code, excess lottery  
4 revenues are authorized to be transferred to the lottery fund  
5 as reimbursement of amounts transferred to the economic  
6 development project fund pursuant to section four of this title  
7 and subsection (f), section eighteen, article twenty-two,  
8 chapter twenty-nine of the code.

*254-School Building Authority*  
Fund 3514 FY 2008 Org 0402

1 Unclassified-Total-Transfer . . . . . 402 \$ 19,000,000

*255-West Virginia Infrastructure Council*  
Fund 3390 FY 2008 Org 0316

APPROPRIATIONS

1 Unclassified-Total-Transfer . . . . . 402 \$ 40,000,000

2 The above appropriation for Unclassified-Total-Transfer  
 3 (activity 402) shall be transferred to the West Virginia  
 4 Infrastructure Fund (fund 3384, org 0316) created by chapter  
 5 thirty-one, article fifteen-a, section nine of the code.

*256-Higher Education Improvement Fund*  
 Fund 4297 FY 2008 Org 0441

1 Unclassified-Total . . . . . 096 \$ 10,000,000

*257-State Park Improvement Fund*  
 Fund 3277 FY 2008 Org 0310

1 Unclassified-Total (R) . . . . . 096 \$ 5,000,000

2 Any unexpended balance remaining in the appropriation  
 3 at the close of the fiscal year 2007 is hereby reappropriated  
 4 for expenditure during the fiscal year 2008.

*258-Lottery Commission-  
 Excess Lottery Revenue Fund Surplus*  
 Fund 7208 FY 2008 Org 0705

1	Capitol Complex-Capital Outlay ..	417	\$ 20,000,000
2	Unclassified-Transfer . . . . .	482	<u>12,900,000</u>
3	Total . . . . .		\$ 32,900,000

4 The above appropriation for Unclassified-Transfer  
 5 (activity 482) shall be transferred to the General Revenue  
 6 Fund only after all funding required by chapter twenty-nine,  
 7 article twenty-two, section eighteen-a of the code has been  
 8 satisfied as determined by the director of the lottery.

9 The above appropriation for Capitol Complex-Capital  
 10 Outlay (fund 7208, activity 417) shall be transferred to the  
 11 Capitol Dome and Capital Improvements Fund (fund 2257)

APPROPRIATIONS

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12 only after all funding required by chapter twenty-nine, article  
13 twenty-two, section eighteen-a of the code and the transfer to  
14 the General Revenue Fund (fund 7208, org 0705, activity  
15 482) has been satisfied as determined by the director of the  
16 lottery.

17 Should the actual revenues accruing to the total Excess  
18 Lottery Fund be insufficient to fully fund all appropriations,  
19 the appropriation to the Capitol Complex-Capital Outlay  
20 (activity 417) shall be reduced to the extent funds are  
21 available and the appropriation made in the reduced amount  
22 and thereafter transferred to the Capitol Dome and Capital  
23 Improvement Fund (fund 2257).

*259—Joint Expenses*  
(WV Code Chapter 4)  
Fund 1736 FY 2008 Org 2300

1 Any unexpended balance remaining in the appropriation  
2 for Tax Reduction and Federal Funding Increased  
3 Compliance (TRAFFIC)-Lottery Surplus (fund 1736, activity  
4 929) at the close of the fiscal year 2007 is hereby  
5 reappropriated for expenditure during the fiscal year 2008.

*260—Governor's Office*  
(WV Code Chapter 5)  
Fund 1046 FY 2008 Org 0100

1 Any unexpended balance remaining in the appropriation  
2 for Publication of Papers and Transition Expenses—Lottery  
3 Surplus (fund 1046, activity 066) at the close of the fiscal  
4 year 2007 is hereby reappropriated for expenditure during the  
5 fiscal year 2008.

*261—Office of Technology*  
(WV Code Chapter 5A)  
Fund 2532 FY 2008 Org 0231

1 Any unexpended balances remaining in the  
2 appropriations for Network Monitoring-Lottery Surplus (fund  
3 2532, activity 919) and Unclassified-Lottery Surplus (fund  
4 2532, activity 928) at the close of the fiscal year 2007 are  
5 hereby reappropriated for expenditure during the fiscal year  
6 2008.

*262—West Virginia Development Office*  
(WV Code Chapter 5B)  
Fund 3170 FY 2008 Org 0307

1 Any unexpended balance remaining in the appropriation  
2 for Connectivity Research and Development-Lottery Surplus  
3 (fund 3170, activity 923) at the close of the fiscal year 2007  
4 is hereby reappropriated for expenditure during the fiscal  
5 year 2008.

6 The above appropriation to Connectivity Research and  
7 Development-Lottery Surplus shall be used by the West  
8 Virginia Development Office for the coordinated  
9 development of technical infrastructure in areas where  
10 expanded resources and technical infrastructure may be  
11 expected or required pursuant to the provisions of 5A-6-4 of  
12 the code.

*263-Division of Health—*  
*Central Office*  
(WV Code Chapter 16)  
Fund 5219 FY 2008 Org 0506

1 Any unexpended balance remaining in the appropriation  
2 for Chief Medical Examiner -Capital Improvements-Lottery  
3 Surplus (fund 5219, activity 051) at the close of the fiscal  
4 year 2007 is hereby reappropriated for expenditure during the  
5 fiscal year 2008.

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*264-West Virginia State Police*  
(WV Code Chapter 15)  
Fund 6394 FY 2008 Org 0612

1 Any unexpended balance remaining in the appropriation  
2 for Helicopter Purchase (fund 6394, activity 063) at the close  
3 of fiscal year 2007 is hereby reappropriated for expenditure  
4 during the fiscal year 2008.

*265—Tax Division*  
(WV Code Chapter 11)  
Fund 7082 FY 2008 Org 0702

1 Any unexpended balance remaining in the appropriation  
2 for Remittance Processor—Lottery Surplus (fund 7082,  
3 activity 054) at the close of the fiscal year 2007 is hereby  
4 reappropriated for expenditure during the fiscal year 2008.

5 Total TITLE II, Section 5-  
6 Excess Lottery Funds \$ 226,500,000

1 **Sec. 6. Appropriations of federal funds.**-In accordance  
2 with article eleven, chapter four of the code, from federal  
3 funds there are hereby appropriated conditionally upon the  
4 fulfillment of the provisions set forth in article two, eleven-b  
5 of the code the following amounts, as itemized, for  
6 expenditure during the fiscal year two thousand eight.

**LEGISLATIVE**

*266-Crime Victims Compensation Fund*  
(WV Code Chapter 14)  
Fund 8738 FY 2008 Org 2300



APPROPRIATIONS

	<b>Activity</b>		<b>Federal Funds</b>
1	Unclassified-Total .....	096	\$ 1,314,969

**JUDICIAL**

*267-Supreme Court*

Fund 8867 FY 2008 Org 2400

1	Unclassified-Total .....	096	\$ 1,000,000
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**EXECUTIVE**

*268-Governor's Office-*

*Office of Economic Opportunity*  
(WV Code Chapter 5)

Fund 8797 FY 2008 Org 0100

1	Unclassified-Total .....	096	\$ 32,261,134
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*269-Governor's Office-*

*Commission for National and Community Service*  
(WV Code Chapter 5)

Fund 8800 FY 2008 Org 0100

1	Unclassified-Total .....	096	\$ 5,670,146
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*270-Auditor's Office-*

*National White Collar Crime Center*  
(WV Code Chapter 12)

Fund 8807 FY 2008 Org 1200

1	Unclassified-Total .....	096	\$ 14,004,369
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*271-Department of Agriculture*

(WV Code Chapter 19)

Fund 8736 FY 2008 Org 1400

1	Unclassified-Total .....	096	\$ 4,284,470
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272-Department of Agriculture-  
Meat Inspection  
(WV Code Chapter 19)  
Fund 8737 FY 2008 Org 1400

1 Unclassified-Total ..... 096 \$ 852,868

273-Department of Agriculture-  
State Conservation Committee  
(WV Code Chapter 19)  
Fund 8783 FY 2008 Org 1400

1 Unclassified-Total ..... 096 \$ 1,814,314

274-Secretary of State-  
State Election Fund  
(WV Code Chapter 3)  
Fund 8854 FY 2008 Org 1600

1 Unclassified-Total ..... 096 \$ 832,378

**DEPARTMENT OF ADMINISTRATION**

275-West Virginia Prosecuting Attorney's Institute  
(WV Code Chapter 7)  
Fund 8834 FY 2008 Org 0228

1 Unclassified-Total ..... 096 \$ 79,140

276-Children's Health Insurance Agency  
(WV Code Chapter 5)  
Fund 8838 FY 2008 Org 0230

1 Unclassified-Total ..... 096 \$ 37,937,367

**DEPARTMENT OF COMMERCE**

277-Division of Forestry  
(WV Code Chapter 19)  
Fund 8703 FY 2008 Org 0305

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APPROPRIATIONS

1 Unclassified-Total ..... 096 \$ 4,153,528

*278-Geological and Economic Survey*

(WV Code Chapter 29)

Fund 8704 FY 2008 Org 0306

1 Unclassified-Total ..... 096 \$ 486,072

*279-West Virginia Development Office*

(WV Code Chapter 5B)

Fund 8705 FY 2008 Org 0307

1 Unclassified-Total ..... 096 \$ 10,665,868

*280-Division of Labor*

(WV Code Chapters 21 and 47)

Fund 8706 FY 2008 Org 0308

1 Unclassified-Total ..... 096 \$ 557,951

*281-Division of Natural Resources*

(WV Code Chapter 20)

Fund 8707 FY 2008 Org 0310

1 Unclassified-Total ..... 096 \$ 8,625,587

*282-Division of Miners' Health,*

*Safety and Training*

(WV Code Chapter 22)

Fund 8709 FY 2008 Org 0314

1 Unclassified-Total ..... 096 \$ 755,552

APPROPRIATIONS

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*283-Bureau of Employment Programs*  
(WV Code Chapter 23)  
Fund 8835 FY 2008 Org 0323

1	Unclassified .....	099	\$	512,657
2	Reed Act 2002—Unemployment			
3	Compensation .....	622		2,850,000
4	Reed Act 2002—Employment			
5	Services .....	630		<u>1,650,000</u>
6	Total .....		\$	5,012,657

7 Pursuant to the requirements of 42 U.S.C. 1103, Section  
8 903 of the Social Security Act, as amended, and the  
9 provisions of section nine, article nine, chapter twenty-one-a  
10 of the code of West Virginia, one thousand nine hundred  
11 thirty-one, as amended, the above appropriation to  
12 Unclassified shall be used by the bureau of employment  
13 programs for the specific purpose of administration of the  
14 state’s unemployment insurance program or job service  
15 activities, subject to each and every restriction, limitation or  
16 obligation imposed on the use of the funds by those federal  
17 and state statutes.

**DEPARTMENT OF EDUCATION**

*284-State Department of Education*  
(WV Code Chapters 18 and 18A)  
Fund 8712 FY 2008 Org 0402

1	Unclassified-Total .....	096	\$	255,078,637
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*285-State Department of Education-*  
*School Lunch Program*  
(WV Code Chapters 18 and 18A)  
Fund 8713 FY 2008 Org 0402

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APPROPRIATIONS

1 Unclassified-Total ..... 096 \$ 106,017,566

*286-State Board of Education-  
Vocational Division*  
(WV Code Chapters 18 and 18A)  
Fund 8714 FY 2008 Org 0402

1 Unclassified-Total ..... 096 \$ 16,525,179

*287-State Department of Education-  
Aid for Exceptional Children*  
(WV Code Chapters 18 and 18A)  
Fund 8715 FY 2008 Org 0402

1 Unclassified-Total ..... 096 \$107,045,241

**DEPARTMENT OF EDUCATION AND THE ARTS**

*288-Department of Education and the Arts-  
Office of the Secretary*  
(WV Code Chapter 5F)  
Fund 8841 FY 2008 Org 0431

1 Unclassified-Total ..... 096 \$ 325,000

*289-Division of Culture and History*  
(WV Code Chapter 29)  
Fund 8718 FY 2008 Org 0432

1 Unclassified-Total ..... 096 \$ 1,398,144

*290-Library Commission*  
(WV Code Chapter 10)  
Fund 8720 FY 2008 Org 0433

1 Unclassified-Total ..... 096 \$ 1,944,778

APPROPRIATIONS

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*291-Educational Broadcasting Authority*  
(WV Code Chapter 10)  
Fund 8721 FY 2008 Org 0439

1 Unclassified-Total ..... 096 \$ 1,500,000

*292-State Board of Rehabilitation-  
Division of Rehabilitation Services*  
(WV Code Chapter 18)  
Fund 8734 FY 2008 Org 0932

1 Unclassified-Total ..... 096 \$ 26,818,444

*293-State Board of Rehabilitation-  
Division of Rehabilitation Services-  
Disability Determination Services*  
(WV Code Chapter 18)  
Fund 8890 FY 2008 Org 0932

1 Unclassified-Total ..... 096 \$ 21,500,000

**DEPARTMENT OF ENVIRONMENTAL  
PROTECTION**

*294-Division of Environmental Protection*  
(WV Code Chapter 22)  
Fund 8708 FY 2008 Org 0313

1 Unclassified-Total ..... 096 \$ 138,554,420

**DEPARTMENT OF HEALTH AND HUMAN  
RESOURCES**

*295-Consolidated Medical Service Fund*  
(WV Code Chapter 16)  
Fund 8723 FY 2008 Org 0506

1 Unclassified-Total ..... 096 \$ 7,319,512

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APPROPRIATIONS

*296-Division of Health-  
Central Office*

(WV Code Chapter 16)

Fund 8802 FY 2008 Org 0506

1 Unclassified-Total ..... 096 \$ 86,317,720

*297-Division of Health-  
West Virginia Safe Drinking Water Treatment*

(WV Code Chapter 16)

Fund 8824 FY 2008 Org 0506

1 Unclassified-Total ..... 096 \$ 16,000,000

*298-West Virginia Health Care Authority  
(WV Code Chapter 16)*

Fund 8851 FY 2008 Org 0507

1 Unclassified-Total ..... 096 \$ 50,000

*299-Human Rights Commission  
(WV Code Chapter 5)*

Fund 8725 FY 2008 Org 0510

1 Unclassified-Total ..... 096 \$ 527,846

*300-Division of Human Services  
(WV Code Chapters 9, 48 and 49)*

Fund 8722 FY 2008 Org 0511

1	Unclassified .....	099	\$ 138,674,030
2	Medical Services .....	189	1,826,784,280
3	Medical Services Administrative Costs	789	<u>48,216,452</u>
4	Total .....		\$ 2,013,674,762

**DEPARTMENT OF MILITARY AFFAIRS AND  
PUBLIC SAFETY**

APPROPRIATIONS

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*301-Office of the Secretary*  
(WV Code Chapter 5F)  
Fund 8876 FY 2008 Org 0601

1 Unclassified-Total ..... 096 \$ 20,000,000

*302-Adjutant General-State Militia*  
(WV Code Chapter 15)  
Fund 8726 FY 2008 Org 0603

1 Unclassified-Total ..... 096 \$ 96,240,750

*303-Division of Homeland Security and  
Emergency Management*  
(WV Code Chapter 15)  
Fund 8727 FY 2008 Org 0606

1 Unclassified-Total ..... 096 \$ 32,057,274

*304-Division of Corrections*  
(WV Code Chapters 25, 28, 49 and 62)  
Fund 8836 FY 2008 Org 0608

1 Unclassified-Total ..... 096 \$ 650,000

*305-West Virginia State Police*  
(WV Code Chapter 15)  
Fund 8741 FY 2008 Org 0612

1 Unclassified-Total ..... 096 \$ 974,766

*306-Division of Veterans' Affairs*  
(WV Code Chapter 9A)  
Fund 8858 FY 2008 Org 0613

1 Unclassified-Total ..... 096 \$ 2,750,000

*307-Division of Veterans' Affairs-*



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APPROPRIATIONS

*Veterans' Home*  
(WV Code Chapter 9A)  
Fund 8728 FY 2008 Org 0618

1 Unclassified-Total ..... 096 \$ 1,776,355

*308-Division of Criminal Justice Services*  
(WV Code Chapter 15)  
Fund 8803 FY 2008 Org 0620

1 Unclassified-Total ..... 096 \$ 14,102,303

*309-Division of Juvenile Services*  
(WV Code Chapter 49)  
Fund 8855 FY 2008 Org 0621

1 Unclassified-Total ..... 096 \$ 615,248

**DEPARTMENT OF REVENUE**

*310-Insurance Commissioner*  
(WV Code Chapter 33)  
Fund 8883 FY 2008 Org 0704

1 Unclassified-Total ..... 096 \$ 650,000

**DEPARTMENT OF TRANSPORTATION**

*311-Division of Motor Vehicles*  
(WV Code Chapter 17B)  
Fund 8787 FY 2008 Org 0802

1 Unclassified-Total ..... 096 \$ 12,160,606

*312-Division of Public Transit*  
(WV Code Chapter 17)  
Fund 8745 FY 2008 Org 0805

1 Unclassified-Total ..... 096 \$ 16,365,341

*313-Public Port Authority*

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(WV Code Chapter 17)  
Fund 8830 FY 2008 Org 0806

1 Unclassified-Total ..... 096 \$ 100,000

**BUREAU OF SENIOR SERVICES**

*314-Bureau of Senior Services*  
(WV Code Chapter 29)  
Fund 8724 FY 2008 Org 0508

1 Unclassified-Total ..... 096 \$ 14,000,000

**MISCELLANEOUS BOARDS AND COMMISSIONS**

*315-Public Service Commission-  
Motor Carrier Division*  
(WV Code Chapter 24A)  
Fund 8743 FY 2008 Org 0926

1 Unclassified-Total ..... 096 \$ 1,538,245

*316-Public Service Commission-  
Gas Pipeline Division*  
(WV Code Chapter 24B)  
Fund 8744 FY 2008 Org 0926

1 Unclassified-Total ..... 096 \$ 275,704

*317-WV Statewide Addressing and Mapping Board*  
(WV Code Chapter 24E)  
Fund 8868 FY 2008 Org 0940

1 Unclassified-Total ..... 096 \$ 100,000

*318-National Coal Heritage Area Authority*  
(WV Code Chapter 29)  
Fund 8869 FY 2008 Org 0941

1 Unclassified-Total ..... 096 \$ 600,000

APPROPRIATIONS

*319-Coal Heritage Highway Authority*  
(WV Code Chapter 29)  
Fund 8861 FY 2008 Org 0942

1	Unclassified-Total .....	096	\$ <u>50,000</u>
2	Total TITLE II, Section 6-Federal Funds		<u>\$ 3,145,912,211</u>

1     **Sec. 7. Appropriations from federal block grants.-**The  
2 following items are hereby appropriated from federal block  
3 grants to be available for expenditure during the fiscal year  
4 2008.

*320-Governor's Office-*  
*Office of Economic Opportunity*  
*Community Services*  
Fund 8799 FY 2008 Org 0100

1	Unclassified-Total .....	096	\$ 9,507,444
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*321-West Virginia Development Office-*  
*Community Development*  
Fund 8746 FY 2008 Org 0307

1	Unclassified-Total .....	096	\$28,340,316
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*322-Governor's Workforce Investment Office*  
Fund 8888 FY 2008 Org 0331

1	Unclassified-Total .....	096	\$39,733,496
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*323-Division of Health-*  
*Maternal and Child Health*  
Fund 8750 FY 2008 Org 0506

1	Unclassified-Total .....	096	\$10,944,362
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*324-Division of Health-*  
*Preventive Health*  
Fund 8753 FY 2008 Org 0506

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1 Unclassified-Total ..... 096 \$ 2,244,387

*325-Division of Health-  
Substance Abuse Prevention and Treatment  
Fund 8793 FY 2008 Org 0506*

1 Unclassified-Total ..... 096 \$ 11,575,501

*326-Division of Health-  
Community Mental Health Services  
Fund 8794 FY 2008 Org 0506*

1 Unclassified-Total ..... 096 \$ 3,332,225

*327-Division of Health-  
Abstinence Education Program  
Fund 8825 FY 2008 Org 0506*

1 Unclassified-Total ..... 096 \$ 978,261

*328-Division of Human Services-  
Energy Assistance  
Fund 8755 FY 2008 Org 0511*

1 Unclassified-Total ..... 096 \$ 25,000,000

*329-Division of Human Services-  
Social Services  
Fund 8757 FY 2008 Org 0511*

1 Unclassified-Total ..... 096 \$ 15,340,326

*330-Division of Human Services-  
Temporary Assistance Needy Families  
Fund 8816 FY 2008 Org 0511*

1 Unclassified-Total ..... 096 \$ 130,000,000

APPROPRIATIONS

*331-Division of Human Services-  
Child Care and Development  
Fund 8817 FY 2008 Org 0511*

1 Unclassified-Total ..... 096 \$40,023,926

*332-Division of Criminal Justice Services-  
Juvenile Accountability Incentive  
Fund 8829 FY 2008 Org 0620*

1 Unclassified-Total ..... 096 \$ 500,000

2 Total TITLE II, Section 7-  
3 Federal Block Grants \$ 317,520,244

4 **Sec. 8. Awards for claims against the state.**—There are  
5 hereby appropriated for fiscal year 2008, from the fund as  
6 designated, in the amounts as specified, general revenue  
7 funds in the amount of \$1,777,044, special revenue funds in  
8 the amount of \$45,470, and state road funds in the amount of  
9 \$634,324 for payment of claims against the state.

1 **Sec. 9. Appropriations from general revenue surplus**  
2 **accrued.**—The following items are hereby appropriated from  
3 the state fund, general revenue, and are to be available for  
4 expenditure during the fiscal year 2008 out of surplus funds  
5 only, accrued from the fiscal year ending the thirtieth day of  
6 June, two thousand seven, subject to the terms and conditions  
7 set forth in this section.

8 It is the intent and mandate of the Legislature that the  
9 following appropriations be payable only from surplus  
10 accrued as of the thirty-first day of July, two thousand seven  
11 from the fiscal year ending the thirtieth day of June two  
12 thousand seven.

APPROPRIATIONS

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13 In the event that surplus revenues available on the thirty-  
 14 first day of July, two thousand seven, are not sufficient to  
 15 meet all the appropriations made pursuant to this section,  
 16 then the appropriations shall be made to the extent that  
 17 surplus funds are available as of the date mandated and shall  
 18 be allocated first to provide the necessary funds to meet the  
 19 first appropriation of this section; next, to provide the funds  
 20 necessary for the second appropriation of this section and  
 21 subsequently to provide the funds necessary for each  
 22 appropriation in succession before any funds are provided for  
 23 the next subsequent appropriation.

**EXECUTIVE**

*333—Governor's Office*

(WV Code Chapter 5)

Fund 0101 FY 2008 Org 0100

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*334—Governor's Office—*

*Custodial Fund*

(WV Code Chapter 5)

Fund 0102 FY 2008 Org 0100

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*335—Auditor's Office—*

*General Administration*

(WV Code Chapter 12)

Fund 0116 FY 2008 Org 1200

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*336—Treasurer's Office*

(WV Code Chapter 12)

Fund 0126 FY 2008 Org 1300

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APPROPRIATIONS

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*337—Department of Agriculture  
(WV Code Chapter 19)  
Fund 0131 FY 2008 Org 1400*

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*338—West Virginia Conservation Agency  
(WV Code Chapter 19)  
Fund 0132 FY 2008 Org 1400*

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*339—Department of Agriculture—  
Meat Inspection  
(WV Code Chapter 19)  
Fund 0135 FY 2008 Org 1400*

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*340—Attorney General  
(WV Code Chapters 5, 14, 46A and 47)  
Fund 0150 FY 2008 Org 1500*

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*341—Secretary of State  
(WV Code Chapters 3, 5 and 59)  
Fund 0155 FY 2008 Org 1600*

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

**DEPARTMENT OF ADMINISTRATION**

*342—Department of Administration—  
Office of the Secretary  
(WV Code Chapter 5F)*

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Fund 0186 FY 2008 Org 0201

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*343—Division of Finance*  
(WV Code Chapter 5A)

Fund 0203 FY 2008 Org 0209

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*344—Division of General Services*  
(WV Code Chapter 5A)

Fund 0230 FY 2008 Org 0211

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*345-Division of Purchasing*  
(WV Code Chapter 5A)

Fund 0210 FY 2008 Org 0213

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*346-Education and State Employees' Grievance Board*  
(WV Code Chapter 18)

Fund 0220 FY 2008 Org 0219

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*347-Ethics Commission*  
(WV Code Chapter 6B)

Fund 0223 FY 2008 Org 0220

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*348-Public Defender Services*  
(WV Code Chapter 29)

Fund 0226 FY 2008 Org 0221



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APPROPRIATIONS

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*349-West Virginia Prosecuting Attorneys Institute*  
(WV Code Chapter 7)  
Fund 0557 FY 2008 Org 0228

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*350-Children's Health Insurance Agency*  
(WV Code Chapter 5)  
Fund 0588 FY 2008 Org 0230

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

**DEPARTMENT OF COMMERCE**

*351-Division of Tourism*  
(WV Code Chapter 5B)  
Fund 0246 FY 2008 Org 0304

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*352-Division of Forestry*  
(WV Code Chapter 19)  
Fund 0250 FY 2008 Org 0305

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*353-Geological and Economic Survey*  
(WV Code Chapter 29)  
Fund 0253 FY 2008 Org 0306

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*354-West Virginia Development Office*  
(WV Code Chapter 5B)  
Fund 0256 FY 2008 Org 0307

APPROPRIATIONS

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1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*355-Division of Labor*  
 (WV Code Chapters 21 and 47)  
 Fund 0260 FY 2008 Org 0308

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*356-Division of Natural Resources*  
 (WV Code Chapter 20)  
 Fund 0265 FY 2008 Org 0310

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*357-Division of Miners' Health, Safety and Training*  
 (WV Code Chapter 22)  
 Fund 0277 FY 2008 Org 0314

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*358-Board of Coal Mine Health and Safety*  
 (WV Code Chapter 22)  
 Fund 0280 FY 2008 Org 0319

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*359-Department of Commerce-  
 Office of the Secretary*  
 (WV Code Chapter 19)  
 Fund 0606 FY 2008 Org 0327

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

**DEPARTMENT OF EDUCATION**

*360-State Department of Education-  
 School Lunch Program*  
 (WV Code Chapters 18 and 18A)  
 Fund 0303 FY 2008 Org 0402

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APPROPRIATIONS

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*361-State FFA-FHA Camp and Conference Center*  
(WV Code Chapters 18 and 18A)  
Fund 0306 FY 2008 Org 0402

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*362-State Department of Education*  
(WV Code Chapters 18 and 18A)  
Fund 0313 FY 2008 Org 0402

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*363-State Department of Education-  
Aid for Exceptional Children*  
(WV Code Chapters 18 and 18A)  
Fund 0314 FY 2008 Org 0402

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*364-State Department of Education-  
State Aid to Schools*  
(WV Code Chapters 18 and 18A)  
Fund 0317 FY 2008 Org 0402

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*365-State Board of Education-  
Vocational Division*  
(WV Code Chapters 18 and 18A)  
Fund 0390 FY 2008 Org 0402

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*366-State Board of Education-  
Division of Educational Performance Audits*

APPROPRIATIONS

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(WV Code Chapters 18 and 18A)  
Fund 0573 FY 2008 Org 0402

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*367-West Virginia Schools for the Deaf and the Blind*  
(WV Code Chapters 18 and 18A)  
Fund 0320 FY 2008 Org 0403

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

**DEPARTMENT OF EDUCATION AND THE ARTS**

*368-Department of Education and the Arts-*  
*Office of the Secretary*  
(WV Code Chapter 5F)  
Fund 0294 FY 2008 Org 0431

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*369-Division of Culture and History*  
(WV Code Chapter 29)  
Fund 0293 FY 2008 Org 0432

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*370-Library Commission*  
(WV Code Chapter 10)  
Fund 0296 FY 2008 Org 0433

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*371-Educational Broadcasting Authority*  
(WV Code Chapter 10)  
Fund 0300 FY 2008 Org 0439

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

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APPROPRIATIONS

*372-State Board of Rehabilitation-  
Division of Rehabilitation Services  
(WV Code Chapter 18)  
Fund 0310 FY 2008 Org 0932*

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

**DEPARTMENT OF ENVIRONMENTAL  
PROTECTION**

*373-Environmental Quality Board  
(WV Code Chapter 20)  
Fund 0270 FY 2008 Org 0311*

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*374-Division of Environmental Protection  
(WV Code Chapter 22)  
Fund 0273 FY 2008 Org 0313*

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*375-Air Quality Board  
(WV Code Chapter 16)  
Fund 0550 FY 2008 Org 0325*

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

**DEPARTMENT OF HEALTH AND HUMAN  
RESOURCES**

*376-Department of Health and Human Resources-  
Office of the Secretary  
(WV Code Chapter 5F)  
Fund 0400 FY 2008 Org 0501*

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*377-Division of Health-*

APPROPRIATIONS

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*Central Office*  
 (WV Code Chapter 16)  
 Fund 0407 FY 2008 Org 0506

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*378-Consolidated Medical Service Fund*  
 (WV Code Chapter 16)  
 Fund 0525 FY 2008 Org 0506

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*379-Human Rights Commission*  
 (WV Code Chapter 5)  
 Fund 0416 FY 2008 Org 0510

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*380-Division of Human Services*  
 (WV Code Chapters 9, 48 and 49)  
 Fund 0403 FY 2008 Org 0511

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

**DEPARTMENT OF MILITARY AFFAIRS  
 AND PUBLIC SAFETY**

*381-Department of Military Affairs and Public Safety-  
 Office of the Secretary*  
 (WV Code Chapter 5F)  
 Fund 0430 FY 2008 Org 0601

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*382-Adjutant General-  
 State Militia*  
 (WV Code Chapter 15)  
 Fund 0433 FY 2008 Org 0603

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*383-West Virginia Parole Board*  
 (WV Code Chapter 62)  
 Fund 0440 FY 2008 Org 0605

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*384-Division of Homeland Security and  
 Emergency Management*  
 (WV Code Chapter 15)  
 Fund 0443 FY 2008 Org 0606

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*385-Division of Corrections-  
 Central Office*  
 (WV Code Chapters 25, 28, 49 and 62)  
 Fund 0446 FY 2008 Org 0608

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*386-Division of Corrections-  
 Correctional Units*  
 (WV Code Chapters 25, 28, 49 and 62)  
 Fund 0450 FY 2008 Org 0608

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*387-West Virginia State Police*  
 (WV Code Chapter 15)  
 Fund 0453 FY 2008 Org 0612

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*388-Division of Veterans' Affairs*  
 (WV Code Chapter 9A)  
 Fund 0456 FY 2008 Org 0613

APPROPRIATIONS

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1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*389-Division of Veterans' Affairs-  
Veterans' Home  
(WV Code Chapter 9A)  
Fund 0460 FY 2008 Org 0618*

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*390-Fire Commission  
(WV Code Chapter 29)  
Fund 0436 FY 2008 Org 0619*

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*391-Division of Criminal Justice Services  
(WV Code Chapter 15)  
Fund 0546 FY 2008 Org 0620*

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*392-Division of Juvenile Services  
(WV Code Chapter 49)  
Fund 0570 FY 2008 Org 0621*

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*393-Division of Protective Services  
(WV Code Chapter 5F)  
Fund 0585 FY 2008 Org 0622*

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

**DEPARTMENT OF REVENUE**  
*394-Office of the Secretary  
(WV Code Chapter 11)*



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APPROPRIATIONS

Fund 0465 FY 2008 Org 0701

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*395-Tax Division*  
(WV Code Chapter 11)  
Fund 0470 FY 2008 Org 0702

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*396-State Budget Office*  
(WV Code Chapter 11B)  
Fund 0595 FY 2008 Org 0703

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*397-West Virginia Office of Tax Appeals*  
(WV Code Chapter 11)  
Fund 0593 FY 2008 Org 0709

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

**DEPARTMENT OF TRANSPORTATION**

*398-State Rail Authority*  
(WV Code Chapter 29)  
Fund 0506 FY 2008 Org 0804

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*399-Public Port Authority*  
(WV Code Chapter 17)  
Fund 0581 FY 2008 Org 0806

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*400-Aeronautics Commission*  
(WV Code Chapter 29)  
Fund 0582 FY 2008 Org 0807

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

**HIGHER EDUCATION**

*401-West Virginia Council for Community and Technical  
College Education-Control Account  
(WV Code Chapter 18B)  
Fund 0596 FY 2008 Org 0420*

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*402-Higher Education Policy Commission-  
Administration-Control Account  
(WV Code Chapter 18B)  
Fund 0589 FY 2008 Org 0441*

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*403-Higher Education Policy Commission-  
System-Control Account  
(WV Code Chapter 18B)  
Fund 0586 FY 2008 Org 0442*

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

*404-Bureau of Senior Services  
(WV Code Chapter 16)  
Fund 0420 FY 2008 Org 0558*

1 Monetary Incentive-Surplus . . . . . 950 \$ 0

1 **Sec. 10. Appropriations from state excess lottery**  
 2 **revenue fund surplus accrued.**-The following items are  
 3 hereby appropriated from the state excess lottery revenue  
 4 fund, and are to be available for expenditure during the fiscal  
 5 year 2008 out of surplus funds only, as determined by the  
 6 director of the lottery, accrued from the fiscal year ending the

7 thirtieth day of June, two thousand seven, subject to the terms  
8 and conditions set forth in this section.

9 It is the intent and mandate of the Legislature that the  
10 following appropriations be payable only from surplus  
11 accrued from the fiscal year ending the thirtieth day of June  
12 two thousand seven.

13 In the event that surplus revenues available from the  
14 fiscal year ending the thirtieth day of June, two thousand  
15 seven are not sufficient to meet all the appropriations made  
16 pursuant to this section, then the appropriations shall be made  
17 to the extent that surplus funds are available and shall be  
18 allocated first to provide the necessary funds to meet the first  
19 appropriation of this section; next, to provide the funds  
20 necessary for the second appropriation of this section and  
21 subsequently to provide the funds necessary for each  
22 appropriation in succession before any funds are provided for  
23 the next subsequent appropriation.

*405-Office of Technology-*  
*(WV Code Chapter 5A)*  
Fund 2532 FY 2008 Org 0231

1 Unclassified-Lottery Surplus . . . . . 928 \$ 2,000,000

1 **Sec. 11. Special revenue appropriations.**-There are  
2 hereby appropriated for expenditure during the fiscal year  
3 two thousand eight appropriations made by general law from  
4 special revenues which are not paid into the state fund as  
5 general revenue under the provisions of section two, article  
6 two, chapter twelve of the code: *Provided*, That none of the  
7 money so appropriated by this section shall be available for  
8 expenditure except in compliance with and in conformity to  
9 the provisions of articles two and three, chapter twelve and  
10 article two, chapter eleven-b of the code, unless the spending

11 unit has filed with the director of the budget and the  
 12 legislative auditor prior to the beginning of each fiscal year:

13 (a) An estimate of the amount and sources of all revenues  
 14 accruing to such fund;

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

1 **Sec. 12. State improvement fund appropriations.-**

2 Requests or donations of nonpublic funds, received by the  
 3 governor on behalf of the state during the fiscal year two  
 4 thousand eight, for the purpose of making studies and  
 5 recommendations relative to improvements of the  
 6 administration and management of spending units in the  
 7 executive branch of state government, shall be deposited in  
 8 the state treasury in a separate account therein designated  
 9 state improvement fund.

10 There are hereby appropriated all moneys so deposited  
 11 during the fiscal year two thousand eight to be expended as  
 12 authorized by the governor, for such studies and  
 13 recommendations which may encompass any problems of  
 14 organization, procedures, systems, functions, powers or  
 15 duties of a state spending unit in the executive branch, or the  
 16 betterment of the economic, social, educational, health and  
 17 general welfare of the state or its citizens.

1 **Sec. 13. Specific funds and collection accounts.-**A fund

2 or collection account which by law is dedicated to a specific  
 3 use is hereby appropriated in sufficient amount to meet all  
 4 lawful demands upon the fund or collection account and shall  
 5 be expended according to the provisions of article three,  
 6 chapter twelve of the code.

1       **Sec. 14. Appropriations for refunding erroneous**  
2 **payment.**-Money that has been erroneously paid into the  
3 state treasury is hereby appropriated out of the fund into  
4 which it was paid, for refund to the proper person.

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

1       **Sec. 15. Sinking fund deficiencies.**-There is hereby  
2 appropriated to the governor a sufficient amount to meet any  
3 deficiencies that may arise in the mortgage finance bond  
4 insurance fund of the West Virginia housing development  
5 fund which is under the supervision and control of the  
6 municipal bond commission as provided by section twenty-b,  
7 article eighteen, chapter thirty-one of the code, or in the funds  
8 of the municipal bond commission because of the failure of  
9 any state agency for either general obligation or revenue  
10 bonds or any local taxing district for general obligation bonds  
11 to remit funds necessary for the payment of interest and  
12 sinking fund requirements. The governor is authorized to  
13 transfer from time to time such amounts to the municipal  
14 bond commission as may be necessary for these purposes.

15       The municipal bond commission shall reimburse the state  
16 of West Virginia through the governor from the first  
17 remittance collected from the West Virginia housing  
18 development fund or from any state agency or local taxing  
19 district for which the governor advanced funds, with interest  
20 at the rate carried by the bonds for security or payment of  
21 which the advance was made.

1       **Sec. 16. Appropriations for local governments.**-There  
 2 are hereby appropriated for payment to counties, districts and  
 3 municipal corporations such amounts as will be necessary to  
 4 pay taxes due counties, districts and municipal corporations  
 5 and which have been paid into the treasury:

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

1       **Sec. 17. Total appropriations.**-Where only a total sum  
 2 is appropriated to a spending unit, the total sum shall include  
 3 personal services, annual increment, employee benefits,  
 4 current expenses, repairs and alterations, equipment and  
 5 capital outlay, where not otherwise specifically provided and  
 6 except as otherwise provided in TITLE I-GENERAL  
 7 PROVISIONS, Sec. 3.

1       **Sec. 18. General school fund.**-The balance of the  
 2 proceeds of the general school fund remaining after the  
 3 payment of the appropriations made by this act is  
 4 appropriated for expenditure in accordance with section  
 5 sixteen, article nine-a, chapter eighteen of the code.

### TITLE III-ADMINISTRATION.

#### TITLE III--ADMINISTRATION.

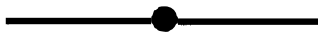
§1. Appropriations conditional.

§2. Constitutionality.

1       **Section 1. Appropriations conditional.**-The  
 2 expenditure of the appropriations made by this act, except  
 3 those appropriations made to the legislative and judicial  
 4 branches of the state government, are conditioned upon the  
 5 compliance by the spending unit with the requirements of  
 6 article two, chapter eleven-b of the code.

7       Where spending units or parts of spending units have  
8 been absorbed by or combined with other spending units, it  
9 is the intent of this act that appropriations and  
10 reappropriations shall be to the succeeding or later spending  
11 unit created, unless otherwise indicated.

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



## CHAPTER 13

**(S.B. 218 - By Senators Helmick, Plymale, Chafin, Prezioso,  
Edgell, Love, Bowman, Sypolt, Fanning, Facemyer, Boley,  
Sprouse and Gulls)**

---

[Passed February 5, 2007; in effect from passage.]  
[Approved by the Governor on February 9, 2007.]

---

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 Supreme Court of Appeals, fund 8867, fiscal year 2007, organization 2400, to the Secretary of State - State Election Fund, fund 8854, fiscal year 2007, organization 1600, and to the Department of Transportation - Division of Motor Vehicles, fund 8787, fiscal year 2007, organization 0802, by supplementing and amending the

appropriation for the fiscal year ending the thirtieth day of June, two thousand seven.

WHEREAS, The Governor has established the availability of federal funds for new and 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:*

1 That the total appropriation for the fiscal year ending the  
2 thirtieth day of June, two thousand seven, to fund 8867, fiscal  
3 year 2007, organization 2400, be supplemented and amended  
4 by increasing the total appropriation as follows:

5 TITLE II--APPROPRIATIONS.

6 **Sec. 6. Appropriations of Federal Funds.**

7 **JUDICIAL**

8 *262-Supreme Court-*

9 *Consolidated Federal Funds*

10 Fund 8867 FY 2007 Org 2400

11		<b>Act-</b>	<b>Federal</b>
12		<b>ivity</b>	<b>Funds</b>

13	1	Unclassified - Total . . . . .	096	\$ 400,000
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14 And that the total appropriation for the fiscal year ending  
15 the thirtieth day of June, two thousand seven, to fund 8854,



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16 fiscal year 2007, organization 1600, be supplemented and  
17 amended by increasing the total appropriation as follows:

18 TITLE II--APPROPRIATIONS.

19 **Sec. 6. Appropriations of Federal Funds.**

20 **EXECUTIVE**

21 *269-Secretary of State-*

22 *State Election Fund*

23 (WV Code Chapter 3)

24 Fund 8854 FY 2007 Org 1600

25		<b>Act-</b>	<b>Federal</b>
26		<b>ivity</b>	<b>Funds</b>
27	1	Unclassified - Total . . . . .	096 \$ 2,500,000

28 And that the total appropriation for the fiscal year ending  
29 the thirtieth day of June, two thousand seven, to fund 8787,  
30 fiscal year 2007, organization 0802, be supplemented and  
31 amended by increasing the total appropriation as follows:

32 TITLE II--APPROPRIATIONS.

33 **Sec. 6. Appropriations of Federal Funds.**

34 **DEPARTMENT OF TRANSPORTATION**

35 *306-Division of Motor Vehicles*

36 (WV Code Chapter 17B)

APPROPRIATIONS

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37 Fund 8787 FY 2007 Org 0802

38		<b>Act-</b>	<b>Federal</b>
39		<b>ivity</b>	<b>Funds</b>

40 1 Unclassified - Total ..... 096 \$ 2,334,857

41 The purpose of this bill is to supplement and increase  
42 existing items of appropriation in the aforesaid accounts for  
43 the designated spending units for expenditure during the  
44 fiscal year two thousand seven.



CHAPTER 14

**(S.B. 591 - By Senators Helmick, Plymale, Prezioso,  
Edgell, Bowman, McCabe, Unger, Sypolt, Fanning,  
Boley and Guills)**

[Passed February 26, 2007; in effect from passage.]  
[Approved by the Governor on March 16, 2007.]

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 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 the executive budget document, dated the tenth day of January, two thousand seven, which included the statement of the State Road Fund setting forth therein the cash balances and investments as of the first

day of July, two thousand six, and further included the estimate of revenues for the fiscal year two thousand seven, less net

appropriation balances forwarded and regular appropriations for the fiscal year two thousand seven; and

WHEREAS, It thus appears from the Governor’s executive budget document 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:*

1 That the items of the total appropriation from the State Road  
2 Fund, fund 9017, fiscal year 2007, organization 0803, be  
3 amended and reduced in the line items as follows:

4 TITLE II--APPROPRIATIONS.

5 **Sec. 2. Appropriations from State Road Fund.**

6 **DEPARTMENT OF TRANSPORTATION**

7 *92-Division of Highways*

8 (WV Code Chapters 17 and 17C)

9 Fund 9017 FY 2007 Org 0803

		<b>Act- ivity</b>	<b>State Road Fund</b>
13	6	Bridge Repair and	
14		Replacement . . . . . 273	\$ 8,000,000
15	10	Interstate Construction . . . . . 278	4,000,000

APPROPRIATIONS

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16 And that the items of the total appropriation from the State  
17 Road Fund, fund 9017, fiscal year 2007, organization 0803, be  
18 amended and increased in the line items as follows:

19 TITLE II--APPROPRIATIONS.

20 **Sec. 2. Appropriations from State Road Fund.**

21 **DEPARTMENT OF TRANSPORTATION**

22 *92-Division of Highways*

23 (WV Code Chapters 17 and 17C)

24 Fund 9017 FY 2007 Org 0803

			<b>Act-</b>	<b>State</b>
			<b>ivity</b>	<b>Road</b>
				<b>Fund</b>
28	3	Maintenance, Contract Paving		
29	4	and Secondary Road		
30	5	Maintenance . . . . .	272	\$ 13,000,000
31	11	Other Federal Aid Programs . . . . .	279	50,000,000
32	13	Nonfederal Aid Construction . . . . .	281	8,000,000

33 The purpose of this supplementary appropriation bill is to  
34 supplement, amend, reduce and increase existing items in the  
35 aforesaid account for the designated spending unit for  
36 expenditure during the fiscal year ending the thirtieth day of  
37 June, two thousand seven.

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CHAPTER 15

**(S.B. 592 - By Senators Helmick, Plymale, Prezioso, Edgell,  
Bowman, McCabe, Unger, Sypolt, Fanning, Boley and Guills)**

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[Passed March 9, 2007; in effect from passage.]  
[Approved by the Governor on March 23, 2007.]

---

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 Military Affairs and Public Safety - Division of Homeland Security and Emergency Management - West Virginia Interoperable Radio Project, fund 6295, fiscal year 2007, organization 0606, 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 Military Affairs and Public Safety - Division of Homeland Security and Emergency Management - West Virginia Interoperable Radio Project, fund 6295, fiscal year 2007, organization 0606, 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:*

1 That chapter six, Acts of the Legislature, regular session,  
2 two thousand six, known as the Budget Bill, be supplemented  
3 and amended by adding to Title II, section three thereof, the  
4 following:

5 TITLE II--APPROPRIATIONS.

6 **Sec. 3. Appropriations from other funds.**

7 **DEPARTMENT OF MILITARY**  
8 **AFFAIRS AND PUBLIC SAFETY**

9 *177a-Division of Homeland Security and*

10 *Emergency Management-*

11 *West Virginia Interoperable Radio Project*

12 (WV Code Chapter 24)

13 Fund 6295 FY 2007 Org 0606

14		<b>Act-</b>	<b>Other</b>
15		<b>ivity</b>	<b>Funds</b>

16	1	Unclassified - Total . . . . .	096	\$1,500,000
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17 The purpose of this supplementary appropriation bill is to  
18 supplement this account in the budget act for the fiscal year  
19 ending the thirtieth day of June, two thousand seven, by  
20 providing for a new item of appropriation to be established  
21 therein to appropriate funds for the designated spending unit  
22 for expenditure during the fiscal year two thousand seven.

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CHAPTER 16

**(S.B 593 - By Senators Helmick, Plymale, Prezioso, Edgell,  
Bowman, McCabe, Unger, Sypolt, Fanning, Boley and Guills)**

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[Passed March 9, 2007; in effect from passage.]  
[Approved by the Governor on March 23, 2007.]

---

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 Miscellaneous Boards and Commissions - Board of Pharmacy, fund 8857, fiscal year 2007, organization 0913, 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 Miscellaneous Boards and Commissions - Board of Pharmacy, fund 8857, fiscal year 2007, organization 0913, 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:*

1       That chapter six, Acts of the Legislature, regular session,  
2 two thousand six, known as the Budget Bill, be supplemented  
3 and amended by adding to Title II, section six thereof, the  
4 following:

5                                   TITLE II--APPROPRIATIONS.

6                   **Sec. 6. Appropriations of federal funds.**

7 MISCELLANEOUS BOARDS AND COMMISSIONS

8 309a-Board of Pharmacy-

9 (WV Code Chapter 30)

10 Fund 8857 FY 2007 Org 0913

11	12	Act-	Other
13	1	ivity	Funds
13	1	Unclassified - Total . . . . .	096 \$146,620

14 The purpose of this supplementary appropriation bill is to  
 15 supplement the accounts in the budget act for the fiscal year  
 16 ending the thirtieth day of June, two thousand seven, by  
 17 providing for a new item of appropriation to be established  
 18 therein to appropriate funds for the designated spending unit  
 19 for expenditure during the fiscal year two thousand seven.



## CHAPTER 17

**(S.B. 594 - By Senators Helmick, Plymale, Prezioso, Edgell,  
 Bowman, McCabe, Unger, Sypolt, Fanning, Boley and Guills)**

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[Passed March 2, 2007; in effect from passage.]  
 [Approved by the Governor on March 14, 2007.]

---

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 Auditor's Office - Purchasing Card Administration Fund, fund 1234, fiscal year 2007, organization 1200, to the Department of Commerce - Division of Labor - Contractor Licensing Board Fund, fund 3187, fiscal year 2007, organization 0308, and to



the Miscellaneous Boards and Commissions - Public Service Commission, fund 8623, fiscal year 2007, organization 0926, by supplementing and amending the appropriations 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 Auditor's Office - Purchasing Card Administration Fund, fund 1234, fiscal year 2007, organization 1200, in the Department of Commerce - Division of Labor - Contractor Licensing Board Fund, fund 3187, fiscal year 2007, organization 0308, and in the Miscellaneous Boards and Commissions - Public Service Commission, fund 8623, fiscal year 2007, organization 0926, 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:*

- 1 That the total appropriation for the fiscal year ending the
- 2 thirtieth day of June, two thousand seven, to fund 1234, fiscal
- 3 year 2007, organization 1200, be supplemented and amended
- 4 by increasing an existing item of appropriation as follows:

5 TITLE II--APPROPRIATIONS.

6 **Sec. 3. Appropriations from other funds.**

7 **EXECUTIVE**

8 *97-Auditor's Office-*

9 *Purchasing Card Administration Fund*

10 (WV Code Chapter 12)

11 Fund 1234 FY 2007 Org 1200

12	13	14	15	16
			<b>Act-</b>	<b>Other</b>
			<b>ivity</b>	<b>Funds</b>
1	Unclassified - Total	.....	096	\$ 850,000

15 And that the total appropriation for the fiscal year ending  
16 the thirtieth day of June, two thousand seven, to fund 3187,  
17 fiscal year 2007, organization 0308, be supplemented and  
18 amended by increasing existing items of appropriation as  
19 follows:

20 TITLE II--APPROPRIATIONS.

21 **Sec. 3. Appropriations from other funds.**

22 **DEPARTMENT OF COMMERCE**

23 *123-Division of Labor-*

24 *Contractor Licensing Board Fund*

25 (WV Code Chapter 21)

26 Fund 3187 FY 2007 Org 0308

27 28	Act- ivity	Other Funds
29 1 Personal Services .....	001	\$ 78,000
30 3 Employee Benefits .....	010	\$ 45,127

31 And that the total appropriation for the fiscal year ending  
32 the thirtieth day of June, two thousand seven, to fund 8623,  
33 fiscal year 2007, organization 0926, be supplemented and  
34 amended to hereafter read as follows:

35 TITLE II--APPROPRIATIONS.

36 **Sec. 3. Appropriations from other funds.**

37 **MISCELLANEOUS BOARDS AND**  
38 **COMMISSIONS**

39 *227-Public Service Commission*

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APPROPRIATIONS

40

(WV Code Chapter 24)

41

Fund 8623 FY 2007 Org 0926

42

**Act-  
ivity**

**Other  
Funds**

43

44	1	Personal Services . . . . .	001	\$ 8,063,255
45	2	Annual Increment . . . . .	004	130,000
46	3	Employee Benefits . . . . .	010	2,722,622
47	4	Unclassified . . . . .	099	2,813,563
48	5	Weight Enforcement Program . . . .	345	4,667,295
49	6	Debt Payment/Capital Outlay . . . .	520	350,000
50	7	BRIM Premium . . . . .	913	<u>115,000</u>
51	8	Total . . . . .		\$ 18,861,735

52 The total amount of this appropriation, except for the PSC  
53 Weight Enforcement appropriation (activity 345), shall be  
54 paid from a special revenue fund out of collection for special  
55 license fees from public service corporations as provided by  
56 law. The amount appropriated to the PSC Weight  
57 Enforcement (activity 345) shall be paid from the State Road  
58 Fund as provided by law.

59 The Public Service Commission is authorized to spend up  
60 to \$500,000, from surplus funds in this account, to meet the  
61 expected deficiencies in the Motor Carrier Division account  
62 due to passage of Enrolled House Bill No. 2715, regular  
63 session, one thousand nine hundred ninety-eight.

64 The Public Service Commission is authorized to transfer  
65 up to \$1,500,000, from surplus funds in this account, to meet  
66 the expected deficiencies in the Motor Carrier Division  
67 account due to the loss of revenue related to the federal single  
68 state registration system that expired the first day of January,  
69 two thousand seven, that provided for the collection of fees  
70 from interstate for-hire carriers to help fund motor carrier  
71 safety operations.

72 The purpose of this supplementary appropriation bill is to  
73 supplement, amend and increase items of appropriation in the  
74 aforesaid accounts for the designated spending units for  
75 expenditure during the fiscal year two thousand seven.

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## CHAPTER 18

**(S.B. 758 - By Senators Helmick, Plymale, Chafin, Prezioso,  
Edgell, Love, Bailey, Bowman, McCabe, Unger, Sypolt, Fanning,  
Facemyer, Boley, Sprouse and Guills)**

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[Passed March 10, 2007; in effect from passage.]  
[Approved by the Governor on March 23, 2007.]

---

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from federal funds to the Department of Health and Human Resources - Division of Human Services, fund 8722, fiscal year 2007, organization 0511, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand seven.

*Be it enacted by the Legislature of West Virginia:*

1 That the items of the total appropriation from the  
2 Department of Health and Human Resources - Division of  
3 Human Services, fund 8722, fiscal year 2007, organization  
4 0511, be amended and decreased in the existing line item as  
5 follows:

6 TITLE II--APPROPRIATIONS.

7 **Sec. 6. Appropriations of federal funds.**

8 **DEPARTMENT OF HEALTH AND HUMAN**  
9 **RESOURCES**

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APPROPRIATIONS

10 *294-Division of Human Services*

11 (WV Code Chapters 9, 48 and 49)

12 Fund 8722 FY 2007 Org 0511

13	14	<b>Act-</b>	<b>Federal</b>
15	1	<b>ivity</b>	<b>Funds</b>
15	1	Unclassified . . . . . 099	\$7,000,000

16 And that the items of the total appropriation to  
17 Department of Health and Human Resources - Division of  
18 Human Services, fund 8722, fiscal year 2007, organization  
19 0511, be amended and increased in the existing line item as  
20 follows:

21 TITLE II--APPROPRIATIONS.

22 **Sec. 6. Appropriations of federal funds.**

23 **DEPARTMENT OF HEALTH AND HUMAN**  
24 **RESOURCES**

25 *294-Division of Human Services*

26 (WV Code Chapters 9, 48 and 49)

27 Fund 8722 FY 2007 Org 0511

28	29	<b>Act-</b>	<b>Federal</b>
30	3	<b>ivity</b>	<b>Funds</b>
30	3	Medical Services	
31	4	Administrative Costs . . . . . 789	\$ 7,000,000

32 The purpose of this supplementary appropriation bill is to  
33 supplement, amend, decrease and increase items of existing

34 appropriations in the aforesaid account for the designated  
35 spending unit. The funds are for expenditure during the  
36 fiscal year two thousand seven with no new money being  
37 appropriated.

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## CHAPTER 19

**(S.B. 759 - By Senators Helmick, Plymale, Chafin, Prezioso,  
Egell, Love, Bailey, Bowman, McCabe, Unger, Sypolt, Fanning,  
Facemyer, Boley, Sprouse and Guills)**

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[Passed March 10, 2007, in effect from passage.]

[Approved by the Governor on March 23, 2007.]

---

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 Health and Human Resources - Division of Health – Hospital Services Revenue Account, fund 5156, fiscal year 2007, organization 0506, to the Department of Health and Human Resources - Division of Health – West Virginia Birth-to-Three Fund, fund 5214, fiscal year 2007, organization 0506, and to Miscellaneous Boards and Commissions - West Virginia Board of Examiners for Registered Professional Nurses, fund 8520, fiscal year 2007, organization 0907, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand seven.

WHEREAS, The Governor has established there remains an unappropriated balance in the Department of Health and Human Resources - Division of Health – Hospital Services Revenue Account, fund 5156, fiscal year 2007, organization 0506, in the Department of Health and Human Resources - Division of Health – West Virginia Birth-to-Three Fund, fund 5214, fiscal year 2007, organization 0506, and in the Miscellaneous Boards and Commissions - West Virginia Board of Examiners for Registered

Professional Nurses, fund 8520, fiscal year 2007, organization 0907, 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:*

1 That the total appropriation for the fiscal year ending the  
2 thirtieth day of June, two thousand seven, to fund 5156, fiscal  
3 year 2007, organization 0506, be supplemented and amended  
4 by increasing an existing line item of appropriation as  
5 follows:

6 TITLE II--APPROPRIATIONS.

7 **Sec. 3. Appropriations from other funds.**

8 **DEPARTMENT OF HEALTH AND HUMAN**  
9 **RESOURCES**

10 *163-Division of Health-*

11 *Hospital Services Revenue Account*

12 *(Special Fund)*

13 *(Capital Improvement, Renovation and Operations)*

14 *(WV Code Chapter 16)*

15 Fund 5156 FY 2007 Org 0506

16		<b>Act-</b>	<b>Other</b>
17		<b>ivity</b>	<b>Funds</b>

18 4 Medical Services Trust Fund--

19	5	Transfer (R) . . . . .	512	\$ 2,000,000
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20 And that the total appropriation for the fiscal year ending  
21 the thirtieth day of June, two thousand seven, to fund 5214,

22 fiscal year 2007, organization 0506, be supplemented and  
23 amended by increasing an existing line item of appropriation  
24 as follows:

25 TITLE II--APPROPRIATIONS.

26 **Sec. 3. Appropriations from other funds.**

27 **DEPARTMENT OF HEALTH AND HUMAN**  
28 **RESOURCES**

29 *168-Division of Health-*

30 *West Virginia Birth-to-Three Fund*

31 (WV Code Chapter 16)

32 Fund 5214 FY 2007 Org 0506

33		<b>Act-</b>	<b>Other</b>
34		<b>ivity</b>	<b>Funds</b>
35	4 Unclassified .....	099	\$ 5,000,000

36 And that the total appropriation for the fiscal year ending  
37 the thirtieth day of June, two thousand seven, to fund 8520,  
38 fiscal year 2007, organization 0907, be supplemented and  
39 amended by increasing an existing line item of appropriation  
40 as follows:

41 TITLE II--APPROPRIATIONS.

42 **Section 3. Appropriations from Other Funds.**

43 **MISCELLANEOUS BOARDS AND COMMISSIONS**

44 *226-WV Board of Examiners for*

45 *Registered Professional Nurses*

46 (WV Code Chapter 30)

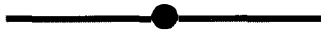


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ARMED FORCES

47	Fund <u>8520</u> FY <u>2007</u> Org <u>0907</u>		
48		<b>Act-</b>	<b>Other</b>
49		<b>ivity</b>	<b>Funds</b>
50	1 Unclassified--Total . . . . .	096	\$ 29,250

51 The purpose of this supplementary appropriation bill is to  
 52 supplement, amend and increase items of appropriation in the  
 53 aforesaid accounts for the designated spending units for  
 54 expenditure during the fiscal year ending the thirtieth day of  
 55 June, two thousand seven.



## CHAPTER 20

**(Com. Sub. for H.B. 2931 - By Delegates Wysong, Tabb,  
 Longstreth, laquinta, M. Poling, Shaver and Perry)**

[Passed March 9, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 20, 2007.]

AN ACT to amend and reenact §15-1B-21 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-19-1, §18-19-2 and §18-19-3, all relating to educational opportunities for the armed services and spouses of deceased armed services personnel; providing for the payment of tuition and fees for members of the West Virginia Army National Guard and West Virginia Air National Guard enrolled in a Master's degree program; and providing that, in addition to children, spouses of deceased armed service personnel are eligible for state-funded student financial aid resources.

*Be it enacted by the Legislature of West Virginia:*

That §15-1B-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §18-19-1, §18-19-2 and §18-19-3 be amended and reenacted, all to read as follows:

**Chapter****15. Public Safety.****18. Education.****CHAPTER 15. PUBLIC SAFETY.****ARTICLE 1B. NATIONAL GUARD.****\* §15-1B-21. Tuition and fees for guard members at institutions of higher education.**

1 (a) Any member of the Army National Guard or Air  
2 National Guard who is enrolled in a course of undergraduate  
3 study or a Master's degree program and is attending any  
4 accredited college, university, business or trade school  
5 located in West Virginia or is attending any aviation school  
6 located in West Virginia for the purpose of taking college-  
7 credit courses, may be entitled to payment of tuitions and fees  
8 at that college, university, business or trade school or aviation  
9 school during the period of his or her service in the National  
10 Guard. The Adjutant General may prescribe criteria of  
11 eligibility for payment of tuition and fees at the college,  
12 university, business or trade school or aviation school. The  
13 payment is contingent upon appropriations being made by the  
14 Legislature for this express purpose. A member may receive  
15 payment for only one Master's degree pursuant to this  
16 section.

17 (b) The amount of the payment for members attending a  
18 state-supported school shall be determined by the Adjutant  
19 General and may not exceed the actual amount of tuition and  
20 fees at the school. The amount of the payment for members  
21 attending a private school shall be determined by the  
22 Adjutant General, but in any event may not exceed the  
23 highest amounts payable at any state-supported school.

24 (c) Any member of the Army National Guard or Air  
25 National Guard who is enrolled in a course of undergraduate  
26 study or a Master's degree program and is attending any

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\***Clerk's Note:** This section was also amended by S.B. 667 (Chapter 189), which passed subsequent to this act.

27 accredited college or university located in West Virginia, and  
28 is receiving payments under a federally funded continuing  
29 education system, may be entitled to payment of tuition and  
30 fees at that college or university during his or her period of  
31 service in the Army National Guard or Air National Guard:  
32 *Provided*, That the sum of payments received under this  
33 subsection and a federally funded continuing education  
34 system may not exceed the actual amount of tuition and fees  
35 at the school and in no event may exceed the highest amounts  
36 payable at any state-supported school. The payments are  
37 contingent upon appropriations being made by the  
38 Legislature for this express purpose.

39 (d) The Adjutant General may, in lieu of the tuition  
40 payment authorized by this section, pay an amount equal to  
41 the amount of tuition which otherwise would have been paid,  
42 directly to members of the West Virginia Army National  
43 Guard or West Virginia Air National Guard who are  
44 participating in the PROMISE Scholarship program provided  
45 in article seven, chapter eighteen-c of this code.

46 (e) A member of the West Virginia Army National Guard  
47 or West Virginia Air National Guard who is receiving  
48 payments for tuition and fees under this section, and is  
49 discharged from the military service due to wounds or  
50 injuries received in the line of duty, may continue to receive  
51 payments for tuition and fees under this section as if he or she  
52 were still a member.

53 (f) The Adjutant General shall administer the tuition and  
54 fee payments authorized under this section and shall propose  
55 policies to implement the provisions of this section.

## **CHAPTER 18. EDUCATION.**

### **ARTICLE 19. EDUCATIONAL OPPORTUNITIES FOR CHILDREN AND SPOUSES OF DECEASED SOLDIERS, SAILORS, MARINES AND AIRMEN.**

§18-19-1. Appropriation to provide educational opportunities.

§18-19-2. Eligibility of applicant for benefits; application forms; preference.

§18-19-3. No tuition fees to be charged; how funds to be expended; cessation of allowances.

**§18-19-1. Appropriation to provide educational opportunities.**

1 (a) The purpose of this article is to provide educational  
2 opportunities for the children and spouses of those:

3 (1) Who served in:

4 (A) The Army, Navy or Marine Corps of the United States  
5 during the world war from the sixth day of April, one  
6 thousand nine hundred seventeen, to the second day of July,  
7 one thousand nine hundred twenty-one, all dates inclusive;

8 (B) The Armed Forces of the United States of America at  
9 any time between the first day of December, one thousand  
10 nine hundred forty-one, and the declaration of peace by the  
11 Congress of the United States, all dates inclusive;

12 (C) The Armed Forces of the United States of America at  
13 any time between the twenty-seventh day of June, one  
14 thousand nine hundred fifty, and the thirty-first day of  
15 January, one thousand nine hundred fifty-five, all dates  
16 inclusive;

17 (D) The Armed Forces of the United States of America at  
18 any time between the fifth day of August, one thousand nine  
19 hundred sixty-four, and the seventh day of May, one  
20 thousand nine hundred seventy-five, all dates inclusive; or

21 (E) The Armed Forces of the United States of America at  
22 any time during which the forces or members of the reserve  
23 components are called to active duty by the President of the  
24 United States under Title 10 of the United States Code for the  
25 purpose of entering into armed combat; and

26 (2) Who were killed in action or have died or may  
27 hereafter die from disease or disability resulting from their  
28 war service.

29 (b) For the purpose of this article, there is appropriated  
30 from the State General Revenue Fund the sum of at least five  
31 thousand dollars for each fiscal year commencing the first  
32 day of July and ending on the thirtieth day of June of each  
33 year of the next biennium to be used for the benefit of these  
34 children and spouses while attending post-secondary  
35 education or training institutions.

36 (c) This benefit also shall be given to children and spouses  
37 of a service member killed during hostile actions as defined  
38 by the agency administering this section.

39 (d) The term “children” as used in this article includes any  
40 child of a veteran who has been legitimized by operation of  
41 law prior to the veteran's demise.

42 (e) The term “spouse” as used in this article includes any  
43 spouse who remained married to the veteran prior to the  
44 veteran’s demise and who was neither the plaintiff nor  
45 defendant in any active divorce or annulment proceedings  
46 against the veteran at the time of the veteran’s demise.

**§18-19-2. Eligibility of applicant for benefits; application forms; preference.**

1 (a) To be eligible for the benefits of this article, a child or  
2 spouse set forth in section one of this article shall be:

3 (1) At least sixteen and not more than twenty-five years of  
4 age:

5 (2) Enrolled in a post-secondary education or training  
6 institution in this state; and

7 (3) The child or spouse of an enlistee who designated  
8 West Virginia as his or her state of record.

9 (b) The application shall be made to, and upon forms  
10 provided by, the West Virginia Division of Veterans’ Affairs.  
11 The division shall determine the eligibility of those who  
12 apply and the yearly amount to be allotted each applicant.  
13 The amount, in the discretion of the division, may vary from

14 year to year, but may not exceed the sum of one thousand  
15 dollars in any one semester or a total of two thousand dollars  
16 in any one year. In selecting those to receive the benefits of  
17 this article, preference shall be given those who are otherwise  
18 financially unable to secure the educational opportunities.

**§18-19-3. No tuition fees to be charged; how funds to be  
expended; cessation of allowances.**

1 (a) A state post-secondary education or training institution  
2 may not charge tuition and fees to an eligible applicant  
3 attending that institution pursuant to this article. The funds  
4 appropriated in this article shall be expended by the West  
5 Virginia Division of Veterans' Affairs only for matriculation  
6 fees, board, room rent, books, supplies and other necessary  
7 living expenses of those children.

8 (b) In the event that a child or spouse eligible for a tuition  
9 waiver pursuant to this section attends a private post-  
10 secondary education or training institution where the tuition  
11 waiver is not applicable, that child or spouse remains eligible  
12 for up to two thousand dollars per year in education benefits  
13 pursuant to section two of this article.

14 (c) In addition to the tuition waiver available pursuant to  
15 this section, a child or spouse attending a state post-  
16 secondary education or training institution is eligible for up  
17 to two thousand dollars per year in education benefits as  
18 provided in section two of this article.

19 (d) The division is charged with the duty of disbursing the  
20 funds provided in this article and shall draw its requisitions  
21 upon the State Auditor for that purpose. In its discretion, the  
22 division, if satisfied as to the accuracy and amounts of the  
23 expenditures, shall make the requisitions payable to the post-  
24 secondary education or training institutions or to those  
25 furnishing to the children or spouses board, room rent, books,  
26 supplies and other necessary living expenses.

27 (e) A member or employee of the division may not receive  
28 any additional compensation for the services required in this  
29 article.

30 (f) Acceptance of benefits or tuition waivers pursuant to  
31 this article does not limit the acceptance of any other  
32 scholarship or grant for which a student may be eligible.

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CHAPTER 21

**(Com. Sub. for S.B. 121 - By Senators Tomblin, Mr. President,  
Minard, Barnes and Stollings)**

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[Passed March 10, 2007; in effect ninety days from passage.]  
[Approved by the Governor on March 26, 2007.]

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AN ACT to amend the Code of West Virginia, 1931, as amended,  
by adding thereto a new section, designated §15-1F-1b, relating  
to tolling any state licensure or registration requirement for  
persons on active duty in the National Guard or other reserve  
component of the armed services of the United States.

*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 §15-1F-1b, to read as  
follows:

**ARTICLE 1F. PRIVILEGES AND PROHIBITIONS.**

**§15-1F-1b. Tolling of the running of any licensure or  
registration requirement.**

1 The running of any licensure or registration requirement,  
2 including, but not limited to, the payment of any license or  
3 registration fees of a licensing board or commission of the  
4 state shall be tolled during the period of absence for active

5 duty for any member of the National Guard or other reserve  
 6 component of the armed services of the United States until  
 7 sixty days after the return of the member from active duty:  
 8 *Provided*, That the service member shall be granted a period  
 9 of time equal to the period of active duty to fulfill any  
 10 continuing education requirements needed for licensure or  
 11 registration.

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## CHAPTER 22

**(S.B. 405 - By Senators Bowman and Plymale)**

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[Passed March 10, 2007; in effect ninety days from passage.]  
 [Approved by the Governor on April 4, 2007.]

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AN ACT to amend and reenact §12-3-5 of the Code of West Virginia, 1931, as amended, relating to electronic requisition format approved by the Auditor; and providing that the Auditor may set standards for archiving electronic and paper documents related to requisitions.

*Be it enacted by the Legislature of West Virginia:*

That §12-3-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.**

**§12-3-5. When requisition to Auditor sufficient authority for issuing warrant.**

- 1 (a) When an appropriation has been made by law, subject
- 2 to the order or payable on the requisition of a particular
- 3 officer, board or person, the order or written or electronic



4 requisition is sufficient authority to the Auditor to issue a  
5 warrant for the same or any party thereof.

6 (b) The Auditor:

7 (1) Shall accept an electronic requisition from Marshall  
8 University and West Virginia University in an unaltered  
9 format approved by the Auditor;

10 (2) May accept or require an electronic requisition from  
11 any entity other than Marshall University or West Virginia  
12 University at his or her discretion in an unaltered format  
13 approved by the Auditor; and

14 (3) May not issue a warrant for an amount that exceeds the  
15 appropriation or for an expired appropriation.



## CHAPTER 23

**(H.B. 3073 - By Delegates Moore, White, Kominar  
and Amores)**

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[Passed March 7, 2007; in effect ninety days from passage.]  
[Approved by the Governor on March 20, 2007.]

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AN ACT to amend and reenact §31A-1-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §31A-4-13 of said code, all relating to prohibiting financial institutions, state banks and out-of-state banks from establishing or maintaining a branch in West Virginia on, or within one and one-half miles of, the premises or property of an affiliate, if that affiliate engages in commercial activity; and defining the terms “affiliate” and “commercial activities”.

*Be it enacted by the Legislature of West Virginia:*

That §31A-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §31A-4-13 of said code be amended and reenacted, all to read as follows:

**Article**

1. **General Provisions and Definitions.**
4. **Banking and Institutions and Services Generally.**

**ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

**§31A-1-2. Definitions.**

1 As used in this chapter, unless the context in which used  
2 plainly requires a different meaning:

3 (a) The word “action”, in the sense of a judicial  
4 proceeding, means any proceeding in a court of competent  
5 jurisdiction in which rights are adjudicated and determined  
6 and shall embrace and include recoupment, counterclaim,  
7 setoff and other related, similar and summary proceedings;

8 (b) The word “affiliate” means any company that  
9 controls, is controlled by, or is under common control with  
10 another company. For purposes of this definition, the word  
11 “control” shall be construed consistently with the Bank  
12 Holding Company Act, 12 U.S.C. § 1841;

13 (c) The words “bank” and “banking institution” mean a  
14 corporation, limited liability company or association  
15 heretofore or hereafter chartered to conduct a banking  
16 business under the laws of the United States or any state,  
17 territory, district or possession thereof, which is authorized in  
18 West Virginia to accept deposits that the depositor has a legal  
19 right to withdraw on demand and is authorized to engage in  
20 the business of commercial lending, and meets the criteria set  
21 forth in Section 2(c) of the Bank Holding Company Act, as  
22 amended, 12 U.S.C. §1841(c), and shall embrace and include  
23 a savings bank, savings and loan association, trust company  
24 or an institution combining banking and trust company

25 facilities, functions and services so chartered or authorized to  
26 conduct such business in this state;

27 (d) The words “bankers’ bank” mean a banking  
28 institution, insured by the federal deposit insurance  
29 corporation, the stock of which is owned exclusively by  
30 banks and other depository institutions, and such banking  
31 institution and all subsidiaries thereof are engaged  
32 exclusively in providing services for banks and other  
33 depository institutions and their officers, directors and  
34 employees;

35 (e) The term “banking business” means the functions,  
36 services and activities contained, detailed and embraced in  
37 sections thirteen and fourteen, article four of this chapter and  
38 as elsewhere defined by law;

39 (f) The word “Board” means the West Virginia Board of  
40 Banking and Financial Institutions;

41 (g) The words “branch bank” mean an office or other  
42 place at which a bank performs any or all banking business.  
43 For purposes of this chapter, a branch bank does not include:

44 (1) A bank’s principal place of business;

45 (2) Any customer bank communication terminals  
46 installed and operated pursuant to section twelve-b, article  
47 eight of this chapter; and

48 (3) Any loan origination office authorized by section  
49 twelve-c, article eight of this chapter;

50 (h) The words “commercial activities” mean activities in  
51 which a bank holding company, a financial holding company,  
52 a national bank, or a national bank financial subsidiary may  
53 not engage under federal law.

54 (i) The words “Commissioner” or “Commissioner of  
55 Banking” mean the Commissioner of Banking of West  
56 Virginia;

57 (j) The word “community” means a city, town or other  
58 incorporated area or, where not so incorporated, a trading  
59 area;

60 (k) The word “department” or “division” means the  
61 Division of Banking of West Virginia;

62 (l) The words “Deputy Commissioner” or “Deputy  
63 Commissioner of Banking” mean the Deputy Commissioner  
64 of Banking of West Virginia;

65 (m) The word “fiduciary” means any trustee, agent,  
66 executor, administrator, curator, committee, guardian or  
67 conservator, special commissioner, receiver, trustee in  
68 bankruptcy, assignee for creditors or any holder of a similar  
69 position of trust or responsibility;

70 (n) The words “financial institutions” mean banks,  
71 building and loan associations, industrial banks, industrial  
72 loan companies, supervised lenders, credit unions and all  
73 other similar institutions, whether persons, firms or  
74 corporations, which are by law under the jurisdiction and  
75 supervision of the Commissioner of Banking;

76 (o) The word “officer”, when referring to any financial  
77 institution, means any person designated as such in the  
78 bylaws and includes, whether or not so designated, any  
79 executive officer, the chairman of the board of directors, the  
80 chairman of the executive committee and any trust officer,  
81 assistant vice president, assistant treasurer, assistant  
82 secretary, assistant trust officer, assistant cashier, assistant  
83 comptroller or any other person who performs the duties  
84 appropriate to those offices and the term “executive officer”  
85 as herein used, when referring to banking institutions, means  
86 an officer of a bank whose duties involve regular, active and  
87 substantial participation in the daily operations of such  
88 institution and who, by virtue of his or her position, has both  
89 a voice in the formulation of the policy of the bank and

90 responsibility for implementation of the policy, such  
91 responsibility of and functions performed by the individual,  
92 and not his or her title or office, being determinative of  
93 whether he or she is an “executive officer”;

94 (p) The words “out-of-state bank” or “out-of-state  
95 banking institution” mean a bank chartered under the laws of  
96 a state or United States territory, possession or district, other  
97 than West Virginia, or organized under federal law and  
98 having its main office located in a state, United States  
99 territory, possession or district, other than West Virginia;

100 (q) The words “person” or “persons” mean any  
101 individual, partnership, society, association, firm, institution,  
102 company, public or private corporation, state, governmental  
103 agency, bureau, department, division or instrumentality,  
104 political subdivision, county commission, municipality, trust,  
105 syndicate, estate or any other legal entity whatsoever, formed,  
106 created or existing under the laws of this state or any other  
107 jurisdiction;

108 (r) The words “safe-deposit box” mean a safe-deposit  
109 box, vault or other safe-deposit receptacle maintained by a  
110 lessor bank and the rules relating thereto apply to property or  
111 documents kept therein in the bank’s vault under the joint  
112 control of lessor and lessee;

113 (s) The words “state bank” or “state banking institution”  
114 mean, unless the context requires otherwise, a bank chartered  
115 under the laws of West Virginia, as distinguished from either  
116 an out-of-state bank or a national banking association and is  
117 also referred to as a “West Virginia State Bank” or “West  
118 Virginia State Banking Institution”; and

119 (t) The words “trust business” mean the functions,  
120 services and activities contained, detailed and embraced in  
121 section fourteen, article four of this chapter and as elsewhere  
122 defined by law and as may be included within the meaning of  
123 the term “banking business”.

**ARTICLE 4. BANKING INSTITUTIONS AND SERVICES.  
GENERALLY.****§31A-4-13. Powers of state banking institutions generally.**

1 (a) Any state-chartered banking institution has and may  
2 exercise all of the powers necessary for, or incidental to, the  
3 business of banking and, without limiting or restricting such  
4 general powers, it shall have the right to buy or discount  
5 promissory notes and bonds; negotiate drafts, bills of  
6 exchange and other evidences of indebtedness; borrow  
7 money; receive deposits on such terms and conditions as its  
8 officers may prescribe; buy, sell or exchange bank notes,  
9 bullion or coin; loan money on personal or other security;  
10 rent safe-deposit boxes and receive on deposit for  
11 safekeeping jewelry, plate, stocks, bonds and personal  
12 property of whatsoever description; and provide customer  
13 services incidental to the business of banking, including, but  
14 not limited to, the issuance and servicing of and lending  
15 money by means of credit cards as letters of credit or  
16 otherwise. Any state-chartered banking institution may  
17 accept, for payment at a future date not to exceed one year,  
18 drafts drawn upon it by its customers. Any state-chartered  
19 banking institution may issue letters of credit, with a  
20 specified expiration date or for a definite term, authorizing  
21 the holders thereof to draw drafts upon it or its  
22 correspondents, at sight or on time. Any such banking  
23 institution may organize, acquire, own, operate, dispose of  
24 and otherwise manage wholly owned subsidiary corporations  
25 or entities that are jointly owned with other insured  
26 depository institutions for purposes incident to the banking  
27 powers and services authorized by this chapter provided any  
28 wholly owned or jointly owned entities are subject to federal  
29 and state examination and supervision as if the activities are  
30 conducted by the bank.

31 (b) Any state-chartered banking institution may acquire,  
32 own, hold, use and dispose of real estate which may not be  
33 carried on its books at a value greater than the actual cost:  
34 *Provided*, That the property must be necessary for the  
35 convenient transaction of its business, including any

36 buildings, office space or other facilities to rent as a source of  
37 income: *Provided, however,* That the investment hereafter  
38 made may not exceed sixty-five percent of the amount of its  
39 capital stock and surplus, unless the consent in writing of the  
40 Commissioner of Banking is first secured.

41 (c) Any state-chartered banking institution may acquire,  
42 own, hold, use and dispose of real estate which shall be  
43 carried on its books at the lower of fair value or cost as  
44 defined in rules promulgated by the Commissioner of  
45 Banking, subject to the following limitations:

46 (1) Such as may be mortgaged to it in good faith as  
47 security for debts in its favor;

48 (2) Such as may be conveyed to it in satisfaction of debts  
49 previously contracted in the course of its business dealings;  
50 and

51 (3) Such as it may purchase at sales under judgments,  
52 decrees, trust deeds or mortgages in its favor, or may  
53 purchase at private sale, to secure and effectuate the payment  
54 of debts due to it.

55 (d) The value at which any real estate is held may not be  
56 increased by the addition thereto of taxes, insurance, interest,  
57 ordinary repairs or other charges which do not materially  
58 enhance the value of the property.

59 (e) Any real estate acquired by any such banking  
60 institution under subdivisions (2) and (3), subsection (c) of  
61 this section shall be disposed of by the banking institution at  
62 the earliest practicable date, but the officers thereof shall  
63 have a reasonable discretion in the matter of the time to  
64 dispose of such property in order to save the banking  
65 institution from unnecessary losses: *Provided,* That in every  
66 case such property shall be disposed of within ten years from  
67 the time it is acquired by the banking institution, unless an

68 extension of time is given in writing by the Commissioner of  
69 Banking.

70 (f) The sale of insurance by state-chartered banking  
71 institutions is subject to the following:

72 Any state-chartered banking institution having its main or  
73 a branch office in any place the population of which does not  
74 exceed five thousand inhabitants, as shown by the last  
75 preceding decennial census, through its employees or agents,  
76 may, from that place or office, directly or through a  
77 controlled subsidiary, act as agent for any fire, life, casualty,  
78 liability or other insurance company authorized by the  
79 authorities of the state to do business in this state, by  
80 soliciting and selling insurance and collecting premiums on  
81 policies issued by such company; and may receive for  
82 services so rendered all permissible fees or commissions as  
83 may be agreed upon between the bank and the insurance  
84 company for which it may act as agent: *Provided*, That no  
85 bank may in any case assume or guarantee the payment on  
86 insurance policies issued through its agency by its principal:  
87 *Provided, however*, That the bank may not guarantee the truth  
88 of any statement made by an insured in filing his, her or its  
89 application for insurance. For purposes of this section, a  
90 “controlled subsidiary” is one in which the state-chartered  
91 banking institution owns at least eighty percent of all classes  
92 of stock. This provision is intended to give state-chartered  
93 banking institutions parity with national banks operating in  
94 this state with regard to the marketing and sale of insurance,  
95 notwithstanding the prohibitions and limitations contained in  
96 article eight-c or elsewhere in this chapter and shall be  
97 construed consistently with interpretations of 12 U. S. C. §  
98 92, the regulations promulgated thereunder and any successor  
99 legislation or regulations.

100 (g) Any state-chartered banking institution may, through  
101 its employees or agents, market and sell, as agent, annuities  
102 either at its main office or at any of its branches. The  
103 marketing and sale of annuities may be made by the bank,  
104 through its employees or agents, directly, or through a



105 controlled subsidiary as defined in subsection (f) of this  
106 section. This provision is intended to give state-chartered  
107 banks parity with national banks operating in this state with  
108 regard to the sale of annuities, notwithstanding the  
109 prohibitions and limitations contained in article eight-c or  
110 elsewhere in this chapter.

111 (h) Unless waived in writing by the commissioner, a  
112 state-chartered bank may not invest or otherwise expend  
113 more of its capital and surplus calculated at the end of the  
114 previous calendar year on the activities permitted by  
115 subsections (f) and (g) of this section on an aggregate basis  
116 together with any of its approved financially related products  
117 and services than would be allowed for a national bank  
118 providing the same services. For purposes of this section,  
119 "approved financially related products and services" means  
120 those products and services offered by a state-chartered bank  
121 pursuant to an approved application submitted under article  
122 eight-c of this chapter.

123 (i) The commissioner shall promulgate rules in  
124 accordance with chapter twenty-nine-a of this code relating  
125 to the sale of insurance or annuities, including, but not  
126 limited to, rules requiring notice of the intention to engage in  
127 such activities and relating to the policies and procedures  
128 state-chartered banking institutions should adopt in  
129 connection with these activities.

130 (j) Any state-chartered banking institution and its  
131 employees or agents engaged in the sale of insurance or  
132 annuities permitted hereby must also comply with all  
133 applicable requirements for the sale of such products imposed  
134 by the West Virginia Commissioner of Insurance and by any  
135 state or federal securities regulator.

136 (k) No state-chartered banking institution may hereafter  
137 invest more than twenty percent of the amount of its capital  
138 and surplus in furniture and fixtures, whether the same be  
139 installed in a building owned by the banking institution, or in

140 quarters leased by it, unless the consent in writing of the  
141 Commissioner of Banking is first secured.

142 (l) No financial institution, banking institution, state bank  
143 or out-of-state bank may establish or maintain a branch in  
144 this state on, or within one and one-half miles of, the  
145 premises or property of an affiliate at which the affiliate  
146 engages in commercial activities.



## CHAPTER 24

(Com. Sub. S.B. 182 - By Senators Minard, Yoder,  
Barnes and Kessler)



[Passed March 5, 2007; in effect from passage.]  
[Approved by the Governor on March 26, 2007.]



AN ACT to amend and reenact §31A-2-6 of the Code of West Virginia, 1931, as amended, relating to providing that the Division of Banking shall employ the same frequency of examination schedules of depository financial institutions as the primary federal regulators of those institutions.

*Be it enacted by the Legislature of West Virginia:*

That §31A-2-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### ARTICLE 2. DIVISION OF BANKING.

**§31A-2-6. Commissioner's examinations of financial institution; reports; records; communications from commissioner to institution; examination by federal or out-of-state agency in lieu of commissioner's examination.**

1 (a) The commissioner shall make a thorough examination  
2 of all the books, accounts, records and papers of every  
3 depository financial institution using the same frequency of  
4 examination schedule as the financial institution's primary  
5 federal regulator. He or she shall carefully examine all of the  
6 assets of each institution, including its notes, drafts, checks,  
7 mortgages, securities deposited to assure the payment of  
8 debts unto it and all papers, documents and records showing,  
9 or in any manner relating to, its business affairs and shall  
10 ascertain the full amount and the nature in detail of all of its  
11 assets and liabilities. The commissioner may also, at his or  
12 her discretion, make or cause to be made an annual or  
13 periodic examination of the books, accounts, records and  
14 papers of other financial institutions under his or her  
15 supervision for the purposes of determining compliance with  
16 applicable consumer and credit lending laws and verifying  
17 information provided in any license application or annual  
18 report submitted to the commissioner. The commissioner  
19 may also make an examination of any subsidiaries or  
20 affiliates of a financial institution as he or she may consider  
21 necessary to ascertain the financial condition of the financial  
22 institution, the relations between the financial institution and  
23 its subsidiaries and affiliates and the effect of the relations  
24 upon the affairs of the financial institution. A full report of  
25 every examination shall be made and filed and preserved in  
26 the office of the commissioner and a copy of it immediately  
27 mailed to the institution examined. Every institution shall  
28 retain all of its records of final entry for the period of time as  
29 required in section thirty-five, article four of this chapter for  
30 banking institutions. Unless otherwise covered by  
31 assessments or a specific provision of this code, the cost of  
32 examinations made pursuant to this section shall be borne by  
33 the financial institution at a rate of fifty dollars per each  
34 examiner hour expended.

35 (b) Every official communication from the commissioner  
36 to any institution, or to any officer thereof, relating to an  
37 examination or an investigation of the affairs of the  
38 institution conducted by the commissioner or containing  
39 suggestions or recommendations as to the manner of

40 conducting the business of the institution, shall be read by the  
41 board of directors at the next meeting after its receipt and the  
42 president, or other executive officer, of the institution shall  
43 immediately notify the commissioner in writing of the  
44 presentation and reading of the communication and of any  
45 action taken on it by the institution.

46 (c) The Commissioner of Banking, in his or her  
47 discretion, may: (i) Accept a copy of a reasonably current  
48 examination of any banking institution made by the Federal  
49 Deposit Insurance Corporation or the Federal Reserve System  
50 in lieu of an examination of the banking institution required  
51 or authorized to be made by the laws of this state and the  
52 commissioner may furnish to the Federal Deposit Insurance  
53 Corporation or the Federal Reserve System or to any official  
54 or examiner thereof any copy or copies of the commissioner's  
55 examinations of and reports on the banking institutions; (ii)  
56 accept a copy of a reasonably current examination of any out-  
57 of-state bank or any West Virginia state bank's out-of-state  
58 activities made by another state's banking regulatory  
59 authority in lieu of an examination of the banking institution  
60 required or authorized to be made by the laws of this state  
61 and the commissioner may furnish to the other state's banking  
62 regulatory authority or to any official or examiner thereof any  
63 copy or copies of the commissioner's examinations of and  
64 reports on the banking institutions; but nothing in this  
65 subsection shall be construed to limit the duty and  
66 responsibility of banking institutions to comply with all  
67 provisions of law relating to examinations and reports, nor to  
68 limit the powers and authority of the commissioner of  
69 banking with reference to examinations and reports under  
70 existing laws. The provision or exchange of examination  
71 reports and other records of financial condition and  
72 individuals pursuant to cooperative, coordinating or  
73 information-sharing agreements with other bank supervisory  
74 agencies and persons as permitted by this chapter under an  
75 agreement of confidentiality shall not constitute a violation of  
76 section four of this article.

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CHAPTER 25

(Com. Sub. for S.B. 181 - By Senators Minard,  
Yoder and Kessler)

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[Passed March 6, 2007; in effect July 1, 2007.]  
[Approved by the Governor on March 27, 2007.]

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AN ACT to amend and reenact §31A-3-1 of the Code of West Virginia, 1931, as amended, relating to providing that the per diem compensation for members of the Board of Banking and Financial Institutions shall be the same as the amount set by law for legislators attending to interim duties.

*Be it enacted by the Legislature of West Virginia:*

That §31A-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.**

**§31A-3-1. Board continued; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members disqualified from participation; compensation; records; office space; personnel; continuation.**

1 (a) There is continued the West Virginia Board of  
2 Banking and Financial Institutions which shall consist of six  
3 members and the commissioner, who shall be chairman. The  
4 six members shall be appointed by the Governor by and with  
5 the advice and consent of the Senate. Three of the members  
6 shall be executive officers of state banking institutions.  
7 When a vacancy occurs among the executive officers of state  
8 banking institutions the commissioner shall list all state  
9 banking institutions according to each bank's asset size and  
10 then divide the list into three groups so that there is an equal  
11 number of banking institutions in each group. The vacancy

12 shall then be filled from the appropriate group to ensure that  
13 each group has a representative on the board. One member  
14 shall be an executive officer of a financial institution other  
15 than a banking institution. Two members shall represent the  
16 public, neither of whom shall be an employee, officer,  
17 trustee, director or owner of five percent or more of the  
18 outstanding shares of any financial institution. No member  
19 shall hold any other office, employment or position with the  
20 United States, any state, county, municipality or other  
21 governmental entity, any instrumentality or agency of any of  
22 the foregoing or with any political party.

23 (b) The members of the board shall be appointed for  
24 overlapping terms of six years and in every instance shall  
25 serve until their respective successors have been appointed  
26 and qualified. Any member appointed for a full six-year term  
27 may not be reappointed until two years after the expiration of  
28 that term. Any member appointed for less than a full six-year  
29 term is eligible for reappointment for a full term. Before  
30 entering upon the performance of his or her duties, each  
31 member shall take and subscribe to the oath required by  
32 section five, article IV of the constitution of this state. The  
33 Governor shall, within sixty days following the occurrence of  
34 a vacancy on the board, fill the vacancy by appointing a  
35 person for the unexpired term of, and meeting the same  
36 requirements for membership as, the person vacating the  
37 office. Any member may be removed by the Governor in  
38 case of incompetency, neglect of duty, gross immorality or  
39 malfeasance in office.

40 (c) A majority of the members of the board constitutes a  
41 quorum. The board shall meet at least once in each calendar  
42 quarter on a date fixed by the board. The commissioner may,  
43 upon his or her own motion, or shall upon the written request  
44 of three members of the board, call additional meetings of the  
45 board upon at least twenty-four hours' notice. No member  
46 shall participate in a proceeding before the board to which a  
47 corporation, partnership or unincorporated association is a  
48 party and of which he or she is, or was at any time in the  
49 preceding twelve months, a director, officer, owner, partner,  
50 employee, member or stockholder. A member may

51 disqualify himself or herself from participation in a  
52 proceeding for any other cause determined by him or her to  
53 be sufficient. Each member shall receive compensation in an  
54 amount equal to that authorized by section five, article two-a,  
55 chapter four of this code for members of the Legislature for  
56 interim duties for each day or portion thereof spent in  
57 attending meetings of the board and shall be reimbursed for  
58 all reasonable and necessary actual expenses incurred  
59 incident to his or her duties as a member of the board not to  
60 exceed the amount authorized for expenses by section five,  
61 article two-a, chapter four of this code for the members of the  
62 Legislature for interim duties.

63 (d) The board shall keep an accurate record of all its  
64 proceedings and make certificates thereupon as may be  
65 required by law. The commissioner shall make available  
66 necessary office space and secretarial and other assistance as  
67 the board may reasonably require.



## CHAPTER 26

**(H.B. 2712 - By Delegates Moore, Kominar, Perry,  
Barker, Carmichael and Ashley)**

\_\_\_\_\_  
[Passed March 7, 2007; in effect ninety days from passage.]  
[Approved by the Governor on March 19, 2007.]  
\_\_\_\_\_

AN ACT to amend and reenact §31A-8-12 and §31A-8-12d of the Code of West Virginia, 1931, as amended, all relating to providing that the board of banking and financial institutions and the Commissioner of Banking shall determine whether a bank presents a significant supervisory concern or raises a significant legal or policy issue when evaluating an application to establish a bank branch.

*Be it enacted by the Legislature of West Virginia:*

That §31A-8-12 and §31A-8-12d of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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

§31A-8-12. Procedure for authorization of branch banks; temporary offices at colleges and universities; limitations and restrictions; examinations and hearings; standards of review; penalties for violation of section.

§31A-8-12d. Expedited procedure for authorization of de novo branch banks.

**§31A-8-12. Procedure for authorization of branch banks; temporary offices at colleges and universities; limitations and restrictions; examinations and hearings; standards of review; penalties for violation of section.**

1 (a) A banking institution may not engage in business in  
2 this state at any place other than at its principal office in this  
3 state, at a branch bank in this state, at a customer bank  
4 communication terminal permitted by section twelve-b of this  
5 article or at any loan origination office permitted by section  
6 twelve-c of this article:

7 (1) Acceptance of a deposit or allowing a withdrawal at  
8 the banking offices of any subsidiary affiliate, as defined in  
9 section one, article eight-a of this chapter, for credit or debit  
10 to the customer's account at any other subsidiary of the same  
11 bank holding company is permissible and does not constitute  
12 branch banking. In addition, the conduct of activity at branch  
13 offices as an agent for any bank subsidiary of the same bank  
14 holding company shall be permitted to the same extent  
15 allowed by federal law for national banks pursuant to 12  
16 U.S.C. §1828, and does not constitute branch banking; nor  
17 does this activity constitute a violation of section forty-two,  
18 article four of this chapter: *Provided*, That a banking  
19 institution may not utilize that agency relationship to evade  
20 state consumer protection laws, including usury laws, or any  
21 other applicable laws of this state, or to conduct any activity  
22 that is not financially-related, as that term is defined by  
23 section two, article eight-c of this chapter;



24 (2) A banking institution located in a county where there  
25 is also a higher educational institution as defined in section  
26 two, article one, chapter eighteen-b of this code, may  
27 establish a temporary business office on the campus of any  
28 educational institution located in the county for the limited  
29 purposes of opening accounts and accepting deposits for a  
30 period not in excess of four business days per semester,  
31 trimester or quarter: *Provided*, That prior to opening any  
32 temporary office, a banking institution must first obtain  
33 written permission from the institution of higher education.  
34 The term "business days", for the purpose of this subsection,  
35 means days exclusive of Saturdays, Sundays and legal  
36 holidays as defined in section one, article two, chapter two of  
37 this code;

38 (3) Any banking institution which on the first day of  
39 January, one thousand nine hundred eighty-four, was  
40 authorized to operate an off-premises walk-in or drive-in  
41 facility, pursuant to the law then in effect, may, as of the  
42 seventh day of June, one thousand nine hundred eighty-four,  
43 operate such facility as a branch bank and it is not necessary,  
44 for the continued operation of the branch bank, to obtain  
45 additional approvals, notwithstanding the provisions of  
46 subsection (d) of this section and subdivision (6), subsection  
47 (b), section two, article three of this chapter.

48 (b) Except for a bank holding company, it is unlawful for  
49 any individual, partnership, society, association, firm,  
50 institution, trust, syndicate, public or private corporation, or  
51 any other legal entity, or combination of entities acting in  
52 concert, to directly or indirectly own, control or hold with  
53 power to vote, twenty-five percent or more of the voting  
54 shares of each of two or more banks, or to control in any  
55 manner the election of a majority of the directors of two or  
56 more banks.

57 (c) A banking institution may establish branch banks  
58 either by:

59 (1) The construction, lease or acquisition of branch bank  
60 facilities within any county of this state; or

61 (2) The purchase of the business and assets and  
62 assumption of the liabilities of, or merger or consolidation  
63 with, another banking institution.

64 (d) Subject to and in furtherance of the board's authority  
65 under the provisions of subdivision (6), subsection (b),  
66 section two, article three of this chapter, and subsection (g) of  
67 this section, the board, by order, may approve or disapprove  
68 the application of any state banking institution to establish a  
69 branch bank.

70 (e) The main office or a branch of a West Virginia state  
71 banking institution may not be relocated without the approval  
72 by order of the commissioner.

73 (f) Any banking institution which is authorized to  
74 establish branch banks pursuant to this section may provide  
75 the same banking services and exercise the same powers at  
76 each such branch bank as may be provided and exercised at  
77 its principal banking house.

78 (g) The board shall, upon receipt of any application to  
79 establish a branch bank under the provisions of this section,  
80 provide notice of the application to all banking institutions.  
81 A banking institution may, within ten days after receipt of the  
82 notice, file a petition to intervene and shall, if it files a  
83 petition, thereupon become a party to any hearing relating  
84 thereto before the board.

85 (h) The commissioner shall prescribe the form of the  
86 application for a branch bank under the provisions of this  
87 section and shall collect an examination and investigation fee  
88 of five hundred dollars for each filed application for a branch  
89 bank that is to be established by the construction, lease or  
90 acquisition of a branch bank facility, and five hundred dollars  
91 for a branch bank that is to be established by the purchase of  
92 the business and assets and assumption of the liabilities of, or

93 merger or consolidation with another banking institution.  
94 Notwithstanding the above, if the merger or consolidation is  
95 between an existing banking institution and a bank newly  
96 incorporated solely for the purpose of facilitating the  
97 acquisition of the existing banking institution, the  
98 commissioner shall collect an examination and investigation  
99 fee of one hundred dollars. The commissioner may require  
100 an examination of a financial institution or an office of a  
101 financial institution that is being merged into a state-  
102 chartered bank. If an examination is required, the applicant  
103 is responsible for paying the examination costs at a rate of  
104 fifty dollars per examiner hour. The board shall complete the  
105 examination and investigation within ninety days from the  
106 date on which the application and fee are received, unless the  
107 board requests in writing additional information and  
108 disclosures concerning the proposed branch bank from the  
109 applicant banking institution. If the board makes that request,  
110 the ninety-day period shall be extended for an additional  
111 period of thirty days plus the number of days between the  
112 date of the request and the date the additional information  
113 and disclosures are received.

114 (i) Upon completion of the examination and investigation  
115 with respect to the application, the board shall, if a hearing be  
116 required pursuant to subsection (j) of this section, forthwith  
117 give notice and hold a hearing pursuant to the following  
118 provisions:

119 (1) Notice of hearing must be given to the banking  
120 institution with respect to which the hearing is to be  
121 conducted in accordance with the provisions of section two,  
122 article seven, chapter twenty-nine-a of this code, and the  
123 hearing and the administrative procedures in connection  
124 therewith are governed by all of the provisions of article five,  
125 chapter twenty-nine-a of this code, and must be held at a time  
126 and place set by the board but may not be less than ten nor  
127 more than thirty days after the notice is given;

128 (2) At the hearing a party may represent himself or  
129 herself or be represented by an attorney at law admitted to  
130 practice before any circuit court of this state;

131 (3) After the hearing and consideration of all the  
132 testimony and evidence, the board shall make and enter an  
133 order approving or disapproving the application, which order  
134 shall be accompanied by findings of fact and conclusions of  
135 law as specified in section three, article five, chapter twenty-  
136 nine-a of this code, and a copy of the order and  
137 accompanying findings and conclusions shall be served upon  
138 all parties to the hearing, and their attorneys of record, if any.

139 (j) A state banking institution may not establish a branch  
140 bank until the board, following an examination, investigation,  
141 notice and hearing, enters an order approving an application  
142 for that branch bank: *Provided*, That a hearing is not  
143 required with respect to any application to establish a branch  
144 bank which is approved by the board unless a banking  
145 institution has timely filed a petition to intervene pursuant to  
146 subsection (g) of this section. The order shall be  
147 accompanied by findings of fact that:

148 (1) The applicant state-chartered banking institution  
149 satisfies such reasonable and appropriate requirements as to  
150 sound financial condition as the commissioner or board may  
151 from time to time establish;

152 (2) The establishment of the proposed branch bank would  
153 not result in a monopoly, nor be in furtherance of any  
154 combination or conspiracy to monopolize the business of  
155 banking in any section of this state;

156 (3) The establishment of the proposed branch bank would  
157 not have the effect in any section of the state of substantially  
158 lessening competition, nor tend to create a monopoly or in  
159 any other manner be in restraint of trade, unless the  
160 anticompetitive effects of the establishment of that proposed  
161 branch bank are clearly outweighed in the public interest by  
162 the probable effect of the establishment of the proposed

163 branch bank in meeting the convenience and needs of the  
164 community to be served by that proposed branch bank;

165 (4) The applicant state-chartered banking institution  
166 meets a satisfactory standard of compliance with federal and  
167 state community reinvestment act requirements as evidenced  
168 by its most recent state or federal examination;

169 (5) The applicant state-chartered banking institution  
170 meets a satisfactory standard of compliance with federal and  
171 state consumer compliance law and regulations as evidenced  
172 by its most recent state or federal regulatory examination;

173 (6) The applicant state-chartered banking institution  
174 meets acceptable standards for investment in premises and  
175 fixed assets as permitted by section thirteen, article four of  
176 this chapter; and

177 (7) The applicant state-chartered banking institution does  
178 not present a significant supervisory concern or raise a  
179 significant legal or policy issue by filing the application.

180 (k) Any party who is adversely affected by the order of  
181 the board is entitled to judicial review thereof in the manner  
182 provided in section four, article five, chapter twenty-nine-a  
183 of this code. Any such party adversely affected by a final  
184 judgment of a circuit court following judicial review as  
185 provided in the foregoing sentence may seek review thereof  
186 by appeal to the Supreme Court of Appeals in the manner  
187 provided in article six, chapter twenty-nine-a of this code.

188 (l) Pursuant to the resolution of its board of directors and  
189 with the prior written approval of the commissioner, a state  
190 banking institution may discontinue the operation of a branch  
191 bank upon at least thirty days prior public notice given in  
192 such form and manner as the commissioner prescribes.

193 (m) Any violation of any provision of this section is a  
194 misdemeanor offense punishable by applicable penalties as  
195 provided in section fifteen of this article.

**§31A-8-12d. Expedited procedure for authorization of de novo branch banks.**

1 (a) As an alternative to using the procedures established  
2 in subdivisions (g) through (j) of section twelve of this  
3 article, a banking institution desiring to establish a branch  
4 bank by de novo construction or lease may file a notice,  
5 containing information as prescribed by the commissioner, of  
6 its intent which must be received by the commissioner at  
7 least thirty-five days prior to the date on which the proposed  
8 branch will be established accompanied by a fee of two  
9 hundred fifty dollars. The commissioner must provide  
10 written notice of his or her acceptance or rejection of the  
11 branch notice prior to the expiration of the thirty-five day  
12 period. However, if the commissioner requests additional  
13 information from the branching institution, the period for the  
14 commissioner's consideration of the notice shall be extended  
15 an additional fifteen days from the time the information  
16 requested is received by the commissioner.

17 (b) A state banking institution may not establish a branch  
18 bank under this section until the commissioner provides  
19 written approval of the notice for that branch bank. The  
20 commissioner's approval or rejection of the notice must be  
21 accompanied by findings of fact on whether the applicant  
22 bank:

23 (1) Satisfies such reasonable and appropriate  
24 requirements as to sound financial condition as the  
25 commissioner or board, from time to time, may establish;

26 (2) Meets a satisfactory standard of compliance with  
27 federal and state community reinvestment act requirements  
28 as evidenced by its most recent state or federal examination;

29 (3) Meets a satisfactory standard of compliance with  
30 federal and state consumer compliance law and regulations as  
31 evidenced by its most recent state or federal regulatory  
32 examination;

33 (4) Meets the acceptable standards for investment in  
34 premises and fixed assets as permitted by section thirteen,  
35 article four of this chapter; and

36 (5) Does not present a significant supervisory concern or  
37 raise a significant legal or policy issue by filing the  
38 application.

39 (c) Any party who is adversely affected by an action of  
40 the commissioner taken pursuant to the criteria established by  
41 subsection (b) of this section may appeal within ten business  
42 days of the commissioner's decision to the board of banking  
43 and financial institutions which must, after holding a hearing  
44 pursuant to the provisions of subdivision (12), subsection (b),  
45 section two, article three of this chapter, affirm, reverse or  
46 modify the order of the commissioner. Any party who is  
47 adversely affected by an order of the board of banking and  
48 financial institutions issued pursuant to the provisions of this  
49 subsection is entitled to judicial review in the same manner  
50 as provided by the provisions of subsection (k), section  
51 twelve of this article.

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## CHAPTER 27

**(S.B. 454 - By Senators Bowman and Kessler)**

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[Passed March 10, 2007; in effect from passage.]  
[Approved by the Governor on April 4, 2007.]

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AN ACT to amend and reenact §5B-1-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §5B-2B-6 and §5B-2B-9 of said code; to amend and reenact §5F-2-1 of said code; and to amend and reenact §21A-1-4 of said code, all relating to the Bureau of Employment Programs; changing the agency name from the Bureau of Employment Programs to Workforce West Virginia; revising the divisional structure within the agency; and providing

that Workforce West Virginia shall provide administrative and other services to the West Virginia Workforce Investment Council.

*Be it enacted by the Legislature of West Virginia:*

That §5B-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §5B-2B-6 and §5B-2B-9 of said code be amended and reenacted; that §5F-2-1 of said code be amended and reenacted; and that §21A-1-4 of said code be amended and reenacted, all to read as follows:

**Chapter**

- 5B. Economic Development Act of 1985.**
- 5F. Reorganization of the Executive Branch of State Government.**
- 21A. Unemployment Compensation.**

**CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.**

**Article**

- 1. Department of Commerce.**
- 2B. West Virginia Workforce Investment Act.**

**ARTICLE 1. DEPARTMENT OF COMMERCE.**

**\*§5B-1-2. Agencies, boards, commissions, divisions and offices comprising the Department of Commerce.**

1 The Department of Commerce consists of the following  
 2 agencies, boards, commissions, divisions and offices,  
 3 including all of the allied, advisory, affiliated or related  
 4 entities, which are incorporated in and administered as part of  
 5 the Department of Commerce:

6 (1) Division of Labor provided in article one, chapter  
 7 twenty-one of this code, which includes:

8 (A) Occupational Safety and Health Review Commission  
 9 provided in article three-a, chapter twenty-one of this code;  
 10 and

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\*CLERKS NOTE: This section was also amended by S.B. 177 (Chapter 111), which passed prior to this act.



11 (B) Board of Manufactured Housing Construction and  
12 Safety provided in article nine, chapter twenty-one of this  
13 code;

14 (2) Office of Miners' Health, Safety and Training  
15 provided in article one, chapter twenty-two-a of this code. The  
16 following boards are transferred to the Office of Miners'  
17 Health, Safety and Training for purposes of administrative  
18 support and liaison with the Office of the Governor:

19 (A) Board of Coal Mine Health and Safety and Coal  
20 Mine Safety and Technical Review Committee provided in  
21 article six, chapter twenty-two-a of this code;

22 (B) Board of Miner Training, Education and  
23 Certification provided in article seven, chapter twenty-two-  
24 a of this code; and

25 (C) Mine Inspectors' Examining Board provided in article  
26 nine, chapter twenty-two-a of this code;

27 (3) The West Virginia Development Office, which  
28 includes the Division of Tourism and the Tourism  
29 Commission, provided in article two, chapter five-b of this  
30 code;

31 (4) Division of Natural Resources and Natural Resources  
32 Commission provided in article one, chapter twenty of this  
33 code;

34 (5) Division of Forestry provided in article one-a, chapter  
35 nineteen of this code;

36 (6) Geological and Economic Survey provided in article  
37 two, chapter twenty-nine of this code;

38 (7) Workforce West Virginia provided in chapter twenty-  
39 one-a of this code, which includes:

40 (A) Division of Unemployment Compensation;

41 (B) Division of Employment Service;

42 (C) Division of Workforce Development; and

- 43 (D) Division of Research, Information and Analysis; and  
 44 (8) Division of Energy provided in article one, chapter  
 45 five-h of this code.

## **ARTICLE 2B. WEST VIRGINIA WORKFORCE INVESTMENT ACT.**

§5B-2B-6. Administration of council.

§5B-2B-9. Coordination between agencies providing workforce investment programs, local workforce investment boards and the Executive Director of Workforce West Virginia.

### **\*§5B-2B-6. Administration of council.**

- 1 (a) Workforce West Virginia shall provide administrative  
 2 and other services to the council as the council requires.
- 3 (b) Workforce West Virginia shall facilitate the  
 4 coordination of council activities and local workforce  
 5 investment activities, including holding meetings with the  
 6 executive directors of each local workforce investment board  
 7 at least monthly. Any executive director of a local workforce  
 8 investment board who participates in a meeting held pursuant  
 9 to this subsection shall report to his or her board and the  
 10 county commission of each county represented by the board  
 11 regarding the meeting.

### **§5B-2B-9. Coordination between agencies providing workforce investment programs, local workforce investment boards and the Executive Director of Workforce West Virginia.**

- 1 (a) To provide ongoing attention to addressing issues that  
 2 will build and continually improve the overall workforce  
 3 investment system, the Workforce Investment Interagency  
 4 Collaborative Team is hereby created. The team shall be the  
 5 single state interagency source for addressing issues or  
 6 concerns related to building and maintaining the most  
 7 effective and efficient implementation of the federal  
 8 Workforce Investment Act and the overall workforce  
 9 development system in West Virginia. The team shall focus

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\*CLERKS NOTE: This section was also amended by S.B. 489 (Chapter 258), which passed prior to this act.

10 on how best to collaborate between and among the state  
11 agencies directly involved in workforce investment activities  
12 and shall develop a strategic plan to that end. The team shall  
13 serve as a forum for the council to seek information or  
14 recommendations in furtherance of its responsibilities under  
15 this article. Workforce West Virginia is the entity which  
16 shall convene the team at least monthly and shall provide  
17 administrative and other services to the team as the team  
18 requires.

19 (b) The team shall consist of members from each agency  
20 subject to the reporting provisions of section five of this  
21 article. Each agency shall appoint two representatives to the  
22 team consisting of the chief official of the department or  
23 division and the official within that department or division  
24 who is directly responsible for overseeing the workforce  
25 investment program or activities at the state level. A  
26 designee may be selected to represent a member appointed to  
27 the team: *Provided*, That the designee has policy-making  
28 decision authority regarding workforce investment activities  
29 including program and fiscal issues. The team members have  
30 authority to make decisions on behalf of the agency at the  
31 level required for the team to address issues and advance  
32 system improvements.

33 (c) The team shall coordinate the development of a  
34 self-sufficiency standard study for the State of West Virginia.  
35 The self-sufficiency standard is to measure how much  
36 income is needed for a household of a given composition in  
37 a given place to adequately meet its basic needs without  
38 public or private assistance. Beginning on the first day of  
39 November, two thousand four, and every two years  
40 thereafter, this study is to be reported to the Speaker of the  
41 House of Delegates, the President of the Senate, the  
42 Workforce Investment Council and the Legislative Oversight  
43 Commission on Workforce Investment for Economic  
44 Development.

45 (d) Beginning the first day of January, two thousand three,  
46 in order to lawfully continue any workforce investment  
47 activities, any agency subject to the reporting provisions of  
48 section five of this article shall enter into a memorandum of  
49 understanding with the Executive Director of Workforce  
50 West Virginia and any local workforce investment board  
51 representing an area of this state in which the agency is

52 engaged in workforce investment activities. To the extent  
53 permitted by federal law, the agreements are to maximize  
54 coordination of workforce investment activities and eliminate  
55 duplication of services on both state and local levels.

56 (e) No memorandum of understanding may be effective  
57 for more than one year without annual reaffirmation by the  
58 parties.

59 (f) Any state agency entering a memorandum of  
60 understanding shall deliver a copy thereof to both the West  
61 Virginia Workforce Investment Council and the legislative  
62 oversight commission.

## **CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.**

### **ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.**

#### **\*§5F-2-1. Transfer and incorporation of agencies and boards; funds.**

1 (a) The following agencies and boards, including all of the  
2 allied, advisory, affiliated or related entities and funds  
3 associated with any agency or board, are incorporated in and  
4 administered as a part of the Department of Administration:

5 (1) Building Commission provided in article six, chapter  
6 five of this code;

7 (2) Public Employees Insurance Agency and Public  
8 Employees Insurance Agency Advisory Board provided in  
9 article sixteen, chapter five of this code;

10 (3) Governor's Mansion Advisory Committee provided for  
11 in article five, chapter five-a of this code;

12 (4) Commission on Uniform State Laws provided in  
13 article one-a, chapter twenty-nine of this code;

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\*CLERKS NOTE: This section was also amended by S.B. 442 (Chapter 207), S.B. 582 (Chapter 214) and S.B. 177 (Chapter 111) which passed prior to this act.

14 (5) West Virginia Public Employees Grievance Board  
15 provided for in article three, chapter six-c of this code;

16 (6) Board of Risk and Insurance Management provided for  
17 in article twelve, chapter twenty-nine of this code;

18 (7) Boundary Commission provided in article twenty-  
19 three, chapter twenty-nine of this code;

20 (8) Public Defender Services provided in article twenty-  
21 one, chapter twenty-nine of this code;

22 (9) Division of Personnel provided in article six, chapter  
23 twenty-nine of this code;

24 (10) The West Virginia Ethics Commission provided in  
25 article two, chapter six-b of this code;

26 (11) Consolidated Public Retirement Board provided in  
27 article ten-d, chapter five of this code; and

28 (12) Real Estate Division provided in article ten, chapter  
29 five-a of this code.

30 (b) The following agencies and boards, including all of the  
31 allied, advisory, affiliated or related entities and funds  
32 associated with any agency or board, are incorporated in and  
33 administered as a part of the Department of Commerce:

34 (1) Division of Labor provided in article one, chapter  
35 twenty-one of this code, which includes:

36 (A) Occupational Safety and Health Review Commission  
37 provided in article three-a, chapter twenty-one of this code;  
38 and

39 (B) Board of Manufactured Housing Construction and  
40 Safety provided in article nine, chapter twenty-one of this  
41 code;

42 (2) Office of Miners' Health, Safety and Training provided  
43 in article one, chapter twenty-two-a of this code. The  
44 following boards are transferred to the Office of Miners'  
45 Health, Safety and Training for purposes of administrative  
46 support and liaison with the office of the Governor:

47 (A) Board of Coal Mine Health and Safety and Coal Mine  
48 Safety and Technical Review Committee provided in article  
49 six, chapter twenty-two-a of this code;

50 (B) Board of Miner Training, Education and Certification  
51 provided in article seven, chapter twenty-two-a of this code;  
52 and

53 (C) Mine Inspectors' Examining Board provided in article  
54 nine, chapter twenty-two-a of this code;

55 (3) The West Virginia Development Office, which  
56 includes the Division of Tourism and the Tourism  
57 Commission provided in article two, chapter five-b of this  
58 code;

59 (4) Division of Natural Resources and Natural Resources  
60 Commission provided in article one, chapter twenty of this  
61 code;

62 (5) Division of Forestry provided in article one-a, chapter  
63 nineteen of this code;

64 (6) Geological and Economic Survey provided in article  
65 two, chapter twenty-nine of this code; and

66 (7) Workforce West Virginia provided in chapter twenty-  
67 one-a of this code, which includes:

68 (A) Division of Unemployment Compensation;

69 (B) Division of Employment Service;

70 (C) Division of Workforce Development; and

- 71 (D) Division of Research, Information and Analysis; and
- 72 (8) Division of Energy provided in article two-f, chapter  
73 five-b of this code.
- 74 (c) The Economic Development Authority provided in  
75 article fifteen, chapter thirty-one of this code is continued as  
76 an independent agency within the executive branch.
- 77 (d) The Water Development Authority and Board  
78 provided in article one, chapter twenty-two-c of this code is  
79 continued as an independent agency within the executive  
80 branch.
- 81 (e) The following agencies and boards, including all of the  
82 allied, advisory and affiliated entities, are transferred to the  
83 Department of Environmental Protection for purposes of  
84 administrative support and liaison with the office of the  
85 Governor:
- 86 (1) Air Quality Board provided in article two, chapter  
87 twenty-two-b of this code;
- 88 (2) Solid Waste Management Board provided in article  
89 three, chapter twenty-two-c of this code;
- 90 (3) Environmental Quality Board, or its successor board,  
91 provided in article three, chapter twenty-two-b of this code;
- 92 (4) Surface Mine Board provided in article four, chapter  
93 twenty-two-b of this code;
- 94 (5) Oil and Gas Inspectors' Examining Board provided in  
95 article seven, chapter twenty-two-c of this code;
- 96 (6) Shallow Gas Well Review Board provided in article  
97 eight, chapter twenty-two-c of this code; and
- 98 (7) Oil and Gas Conservation Commission provided in  
99 article nine, chapter twenty-two-c of this code.

100 (f) The following agencies and boards, including all of the  
101 allied, advisory, affiliated or related entities and funds  
102 associated with any agency or board, are incorporated in and  
103 administered as a part of the Department of Education and  
104 the Arts:

105 (1) Library Commission provided in article one, chapter  
106 ten of this code;

107 (2) Educational Broadcasting Authority provided in article  
108 five, chapter ten of this code;

109 (3) Division of Culture and History provided in article  
110 one, chapter twenty-nine of this code;

111 (4) Division of Rehabilitation Services provided in section  
112 two, article ten-a, chapter eighteen of this code.

113 (g) The following agencies and boards, including all of the  
114 allied, advisory, affiliated or related entities and funds  
115 associated with any agency or board, are incorporated in and  
116 administered as a part of the Department of Health and  
117 Human Resources:

118 (1) Human Rights Commission provided in article eleven,  
119 chapter five of this code;

120 (2) Division of Human Services provided in article two,  
121 chapter nine of this code;

122 (3) Bureau for Public Health provided in article one,  
123 chapter sixteen of this code;

124 (4) Office of Emergency Medical Services and Advisory  
125 Council provided in article four-c, chapter sixteen of this  
126 code;

127 (5) Health Care Authority provided in article twenty-nine-  
128 b, chapter sixteen of this code;



129 (6) Commission on Mental Retardation provided in article  
130 fifteen, chapter twenty-nine of this code;

131 (7) Women's Commission provided in article twenty,  
132 chapter twenty-nine of this code; and

133 (8) The Child Support Enforcement Division provided in  
134 chapter forty-eight of this code.

135 (h) The following agencies and boards, including all of the  
136 allied, advisory, affiliated or related entities and funds  
137 associated with any agency or board, are incorporated in and  
138 administered as a part of the Department of Military Affairs  
139 and Public Safety:

140 (1) Adjutant General's Department provided in article one-  
141 a, chapter fifteen of this code;

142 (2) Armory Board provided in article six, chapter fifteen  
143 of this code;

144 (3) Military Awards Board provided in article one-g,  
145 chapter fifteen of this code;

146 (4) West Virginia State Police provided in article two,  
147 chapter fifteen of this code;

148 (5) Division of Homeland Security and Emergency  
149 Management and Disaster Recovery Board provided in article  
150 five, chapter fifteen of this code and Emergency Response  
151 Commission provided in article five-a of said chapter;

152 (6) Sheriffs' Bureau provided in article eight, chapter  
153 fifteen of this code;

154 (7) Division of Corrections provided in chapter twenty-  
155 five of this code;

156 (8) Fire Commission provided in article three, chapter  
157 twenty-nine of this code;

- 158 (9) Regional Jail and Correctional Facility Authority  
159 provided in article twenty, chapter thirty-one of this code;
- 160 (10) Board of Probation and Parole provided in article  
161 twelve, chapter sixty-two of this code; and
- 162 (11) Division of Veterans' Affairs and Veterans' Council  
163 provided in article one, chapter nine-a of this code.
- 164 (i) The following agencies and boards, including all of the  
165 allied, advisory, affiliated or related entities and funds  
166 associated with any agency or board, are incorporated in and  
167 administered as a part of the Department of Revenue:
- 168 (1) Tax Division provided in article one, chapter eleven of  
169 this code;
- 170 (2) Racing Commission provided in article twenty-three,  
171 chapter nineteen of this code;
- 172 (3) Lottery Commission and position of Lottery Director  
173 provided in article twenty-two, chapter twenty-nine of this  
174 code;
- 175 (4) Agency of Insurance Commissioner provided in article  
176 two, chapter thirty-three of this code;
- 177 (5) Office of Alcohol Beverage Control Commissioner  
178 provided in article sixteen, chapter eleven of this code and  
179 article two, chapter sixty of this code;
- 180 (6) Board of Banking and Financial Institutions provided  
181 in article three, chapter thirty-one-a of this code;
- 182 (7) Lending and Credit Rate Board provided in chapter  
183 forty-seven-a of this code;
- 184 (8) Division of Banking provided in article two, chapter  
185 thirty-one-a of this code;

186 (9) The State Budget Office provided in article two of this  
187 chapter;

188 (10) The Municipal Bond Commission provided in article  
189 three, chapter thirteen of this code;

190 (11) The Office of Tax Appeals provided in article ten-a,  
191 chapter eleven of this code; and

192 (12) The State Athletic Commission provided in article  
193 five-a, chapter twenty-nine of this code.

194 (j) The following agencies and boards, including all of the  
195 allied, advisory, affiliated or related entities and funds  
196 associated with any agency or board, are incorporated in and  
197 administered as a part of the Department of Transportation:

198 (1) Division of Highways provided in article two-a,  
199 chapter seventeen of this code;

200 (2) Parkways, Economic Development and Tourism  
201 Authority provided in article sixteen-a, chapter seventeen of  
202 this code;

203 (3) Division of Motor Vehicles provided in article two,  
204 chapter seventeen-a of this code;

205 (4) Driver's Licensing Advisory Board provided in article  
206 two, chapter seventeen-b of this code;

207 (5) Aeronautics Commission provided in article two-a,  
208 chapter twenty-nine of this code;

209 (6) State Rail Authority provided in article eighteen,  
210 chapter twenty-nine of this code; and

211 (7) Port Authority provided in article sixteen-b, chapter  
212 seventeen of this code.

213 (k) Except for powers, authority and duties that have been  
214 delegated to the secretaries of the departments by the

215 provisions of section two of this article, the position of  
216 administrator and the powers, authority and duties of each  
217 administrator and agency are not affected by the enactment  
218 of this chapter.

219 (l) Except for powers, authority and duties that have been  
220 delegated to the secretaries of the departments by the  
221 provisions of section two of this article, the existence,  
222 powers, authority and duties of boards and the membership,  
223 terms and qualifications of members of the boards are not  
224 affected by the enactment of this chapter. All boards that are  
225 appellate bodies or are independent decisionmakers shall not  
226 have their appellate or independent decision-making status  
227 affected by the enactment of this chapter.

228 (m) Any department previously transferred to and  
229 incorporated in a department by prior enactment of this  
230 section means a division of the appropriate department.  
231 Wherever reference is made to any department transferred to  
232 and incorporated in a department created in section two,  
233 article one of this chapter, the reference means a division of  
234 the appropriate department and any reference to a division of  
235 a department so transferred and incorporated means a section  
236 of the appropriate division of the department.

237 (n) When an agency, board or commission is transferred  
238 under a bureau or agency other than a department headed by  
239 a secretary pursuant to this section, that transfer is solely for  
240 purposes of administrative support and liaison with the Office  
241 of the Governor, a department secretary or a bureau. Nothing  
242 in this section extends the powers of department secretaries  
243 under section two of this article to any person other than a  
244 department secretary and nothing limits or abridges the  
245 statutory powers and duties of statutory commissioners or  
246 officers pursuant to this code.

## **CHAPTER 21A. UNEMPLOYMENT COMPENSATION.**

### **ARTICLE 1. UNEMPLOYMENT COMPENSATION.**

**§21A-1-4. Workforce West Virginia created; divisions within Workforce West Virginia created; certain terms defined.**

1 (a) There is continued an agency designated Workforce  
2 West Virginia, composed of:

3 (1) Division of Unemployment Compensation;

4 (2) Division of Employment Service;

5 (3) Division of Workforce Development;

6 (4) Division of Research, Information and Analysis; and

7 (5) Any other divisions or units that the executive director  
8 determines are necessary.

9 (b) Wherever within this chapter the term "department",  
10 "bureau" or "fund" is used, it shall be taken to mean  
11 Workforce West Virginia unless otherwise indicated. Any  
12 reference in this code to the Bureau of Employment Programs  
13 means Workforce West Virginia. Any reference in this code  
14 to the Commissioner of the Bureau of Employment Programs  
15 or Employment Security means the Executive Director of  
16 Workforce West Virginia.

17 (c) Workforce West Virginia shall be administered  
18 pursuant to subsection (b), section one, article two, chapter  
19 five-f of this code.

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## CHAPTER 28

**(Com. Sub. for H.B. 2525 - By Delegates Swartzmiller,  
Beach, Hrutkay, Klempa, Pethel, Ennis, Iaquina, Hutchins,  
Perry, Shook and DeLong)**

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[Passed March 10, 2007; in effect from passage.]  
[Approved by the Governor on March 28, 2007.]

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AN ACT to amend and reenact §24E-1-3 and §24E-1-11 of the Code of West Virginia, 1931, as amended, all relating to the statewide addressing and mapping board; clarifying board composition; extending board members' terms; establishing powers and duties; providing for legal counsel; providing the division with rule-making and emergency rule-making authority; requiring the board to share information; extending the termination of the board; providing for the transfer of the powers and duties of the board to the division of homeland security and emergency management.

*Be it enacted by the Legislature of West Virginia:*

That §24E-1-3 and §24E-1-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

### **ARTICLE 1. WEST VIRGINIA STATEWIDE ADDRESSING AND MAPPING BOARD.**

§24E-1-3. West Virginia statewide addressing and mapping board; term of office; compensation and expenses of board members; transfer of data; legal counsel.

§24E-1-11. Termination of board; transfer of duties and title; legislative and emergency rules; advisory board.

**§24E-1-3. West Virginia statewide addressing and mapping board; term of office; compensation and expenses of board members; transfer of data; legal counsel.**

1 (a) The West Virginia statewide addressing and mapping  
2 board is hereby continued.

3 (b) Commencing on the first day of July, two thousand  
4 seven, the board is to be composed of eleven members  
5 appointed by the Governor as follows:

6 (1) The Secretary of the Department of Military Affairs  
7 and Public Safety or his or her designee, shall serve as  
8 chairperson of the board;

9 (2) A Commissioner of the Public Service Commission or  
10 his or her designee;

11 (3) An official or employee of the State Geological and  
12 Economic Survey, qualified in the field of geographic  
13 information systems;

14 (4) An official or employee of the Division of Highways;

15 (5) A county commissioner;

16 (6) A county assessor;

17 (7) A mayor of a municipality or a municipal official;

18 (8) A director of an enhanced emergency telephone system  
19 from a county with a population of thirty thousand or less as  
20 shown by the last federal census;

21 (9) A director of an enhanced emergency telephone system  
22 from a county with a population of greater than thirty  
23 thousand as shown by the last federal census;

24 (10) A representative of a local exchange telephone  
25 company; and

26 (11) A member of the public at-large that may be affiliated  
27 with any of the above entities.

28 (c) In making appointments to the board, the Governor  
29 shall, to the extent possible, ensure representation on the  
30 board, by one or more members, of any entity providing  
31 twenty-five percent or more of funding to the statewide  
32 addressing and mapping fund created and continued under  
33 the provisions of this article.

34 (d) Any member serving on the board on the first day of  
35 January, two thousand seven, shall continue to serve until the  
36 first day of July, two thousand ten, or until replaced by the  
37 Governor.

38 (e) Members of the board are entitled to the same expense  
39 reimbursement paid to members of the Legislature for their  
40 interim duties as recommended by the citizens legislative  
41 compensation commission and authorized by law for each  
42 day or substantial portion thereof engaged in the performance  
43 of official duties. Their expense reimbursement is to be paid  
44 from the West Virginia statewide addressing and mapping  
45 fund.

46 (f) On or before the first day of July, two thousand seven,  
47 the board, or a subcommittee of the board, will commence  
48 meetings to develop a plan to transfer a backup copy of the  
49 aerial map database, and to periodically transfer updated  
50 entries to the database to the Rahall Appalachian  
51 Transportation Institute, it shall make all nonsensitive data  
52 available to state agencies on request.

53 (g) On or before the first day of December, two thousand  
54 seven, and each year thereafter until its final termination and  
55 transfer to the Division of Homeland Security and  
56 Emergency Management, the board shall report to the  
57 Division of Homeland Security and Emergency Management  
58 as to its transfer of data to the Rahall Appalachian  
59 Transportation Institute.

60 (h) Commencing on the first day of July, two thousand  
61 seven, the board will utilize legal counsel approved by the  
62 Secretary of the Department of Military Affairs and Public  
63 Safety and the board shall pay any costs associated with legal  
64 counsel.



**§24E-1-11. Termination of board; transfer of duties and title; legislative and emergency rules; advisory board.**

1 (a) The board shall terminate on the first day of July, two  
2 thousand nine, after which it shall have one year to wind up  
3 its affairs pursuant to the provisions of article ten, chapter  
4 four of this code. Upon final termination, the board shall  
5 transfer all its right, title and interest to any maps,  
6 compilations or other works that it created as a result of the  
7 statewide addressing and mapping to the respective county  
8 commissions.

9 (b) Upon final termination of the board, county  
10 commissions shall maintain and update the addressing and  
11 mapping systems within their respective jurisdictions under  
12 the standards established by the board, as updated thereafter  
13 by the Division of Homeland Security and Emergency  
14 Management of the Department of Military Affairs and  
15 Public Safety under this section, and shall supply the updated  
16 information to the division in the format it establishes  
17 through its rule-making authority.

18 (c) Except as provided in subsection (b) of this section,  
19 upon final termination of the board, the powers and duties of  
20 the board shall be transferred to the Division of Homeland  
21 Security and Emergency Management.

22 (d) Prior to the final termination of the board, the division  
23 may propose rules for legislative approval in accordance with  
24 the provisions of article three, chapter twenty-nine-a of this  
25 code which shall become effective only upon the final  
26 termination of the board. The rules shall:

27 (1) Maintain and update the standards for statewide  
28 addressing and mapping;

29 (2) Establish standard reasonable fees, based on cost, to be  
30 charged by county commissions for copies or use of any  
31 maps, compilations or other works created as a result of the  
32 statewide addressing and mapping, subject to the exemptions  
33 provided under section nine of this article;

34 (3) Govern centralization and interoperability of the  
35 county systems within the integrated statewide addressing  
36 and mapping system; and

37 (4) Ensure the public safety in any manner the division  
38 considers advisable.

39 (e) Upon final termination of the board, the division may  
40 propose rules for legislative approval in accordance with the  
41 provisions of article three, chapter twenty-nine-a of this code  
42 for the purposes set forth in this article.

43 (f) Upon final termination of the board, the division may  
44 promulgate emergency rules pursuant to the provisions of  
45 section fifteen, article three, chapter twenty-nine-a of this  
46 code.

47 (g) Rules in effect as of the reenactment of this article  
48 during the two thousand seven regular session will remain in  
49 effect until amended, modified, repealed or replaced pursuant  
50 to this article.

51 (h) Effective the first day of July, two thousand ten, the  
52 statewide addressing and mapping board shall become an  
53 advisory board within the Division of Homeland Security and  
54 Emergency Management and will continue to be composed  
55 as set forth in this article and the members will serve at the  
56 will and pleasure of the Governor.

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## CHAPTER 29

**(S.B. 708 - By Senator Kessler)**

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[Passed March 7, 2007; in effect ninety days from passage.]  
[Approved by the Governor on March 28, 2007.]

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AN ACT to amend and reenact §29-19-5 and §29-19-6 of the Code  
of West Virginia, 1931, as amended, all relating to the

registration of certain charities; and exemptions from registration.

*Be it enacted by the Legislature of West Virginia:*

That §29-19-5 and §29-19-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

## **ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.**

§29-19-5. Registration of charitable organizations; fee.

§29-19-6. Certain persons and organizations exempt from registration.

### **§29-19-5. Registration of charitable organizations; fee.**

1 (a) Every charitable organization, except as provided in  
2 section six of this article, which intends to solicit  
3 contributions, donations or grants within this state or to have  
4 funds solicited or received on its behalf shall, prior to any  
5 solicitation, file a registration statement with the Secretary of  
6 State upon forms prescribed by him or her which shall be  
7 good for one full year and which shall be refiled in the next  
8 and each following year in which the charitable organization  
9 is engaged in solicitation activities. If an organization  
10 discontinues solicitation at any time after its last registration  
11 filing, then it shall file a registration statement reflecting its  
12 activities during its last fiscal year in which solicitation in  
13 West Virginia took place. It is the duty of the president,  
14 chairman or principal officer of the charitable organization to  
15 file the statements required under this article. The statements  
16 shall be sworn to and shall contain the following information:

17 (1) The name of the organization and the purpose for  
18 which it was organized;

19 (2) The principal address of the organization and the  
20 address of any offices in this state. If the organization does  
21 not maintain an office, the name and address of the person  
22 having custody of its financial records;

- 23 (3) The names and addresses of any chapters, branches or  
24 affiliates in this state;
- 25 (4) The place where and the date when the organization  
26 was legally established and the form of its organization;
- 27 (5) The names and addresses of the officers, directors,  
28 trustees and the principal salaried executive staff officer;
- 29 (6) A copy of a balance sheet and a statement or report of  
30 income and expenses for the organization's immediately  
31 preceding fiscal year or a financial statement reporting  
32 information showing the kind and amount of funds raised  
33 during the preceding fiscal year, the costs and expenses  
34 incidental to the fundraising and showing how the funds were  
35 disbursed or allocated for the same fiscal year: *Provided*,  
36 That for organizations raising more than one hundred  
37 thousand dollars per year in contributions excluding grants  
38 from governmental agencies or private foundations, the  
39 balance sheet and income and expense statement, or financial  
40 statement provided, shall be audited by an independent public  
41 accountant. Organizations are required to report the amount  
42 of money received in the state and the amount spent in the  
43 state for charitable purposes;
- 44 (7) A copy of any determination of the organization's tax  
45 exempt status under the provisions of 26 U. S. C.  
46 §501(c)(3) and a copy of the last filed Internal Revenue  
47 Service Form 990 and Schedule A for every charitable  
48 organization and any parent organization;
- 49 (8) Whether the organization intends to solicit  
50 contributions, donations or grants from the public directly or  
51 have other solicitation done on its behalf by others;
- 52 (9) Whether the organization is authorized by any other  
53 governmental authority to solicit contributions, donations or  
54 grants and whether it is or has ever been enjoined by any  
55 court from soliciting contributions;
- 56 (10) The general purpose or purposes for which the  
57 contributions to be solicited shall be used;

58 (11) The name or names under which it intends to solicit  
59 contributions;

60 (12) The names of the individuals or officers of the  
61 organization who will have final responsibility for the  
62 custody of the contributions;

63 (13) The names of the individuals or officers of the  
64 organization responsible for the final distribution of the  
65 contributions; and

66 (14) Copies of all contract documentation from  
67 professional fund-raising counsels and professional solicitors  
68 as provided in subsection (d), section seven of this article.

69 (b) Each chapter, branch or affiliate, except an  
70 independent member agency of a federated fund-raising  
71 organization, may separately report the information required  
72 by this section or report the information to its parent  
73 organization which shall then furnish the information  
74 regarding its West Virginia affiliates, chapters and branches  
75 in a consolidated form to the Secretary of State. An  
76 independent member agency of a federated fund-raising  
77 organization, as defined in section two of this article, shall  
78 comply with the provisions of this article independently.  
79 Each organization shall file a separate registration form for  
80 each name under which funds will be solicited.

81 (c) The registration forms and any other documents  
82 prescribed by the Secretary of State shall be signed by an  
83 authorized officer or by an independent public accountant  
84 and by the chief fiscal officer of the charitable organization  
85 and shall be verified under oath.

86 (d) Every charitable organization receiving less than one  
87 million dollars during any year which submits an independent  
88 registration to the Secretary of State shall pay an annual  
89 registration fee of fifteen dollars; every charitable  
90 organization collecting more than one million dollars during  
91 one year which submits an independent registration to the  
92 Secretary of State shall pay an annual registration fee of fifty  
93 dollars; and a parent organization filing on behalf of one or

94 more chapters, branches or affiliates or a single organization  
95 filing under different names shall pay a single annual  
96 registration fee of fifty dollars for itself and the chapters,  
97 branches or affiliates included in the registration statement.  
98 All fees and moneys collected by the Secretary of State  
99 pursuant to the provisions of this article shall be deposited by  
100 the Secretary of State as follows: One-half shall be deposited  
101 in the state General Revenue Fund and one-half shall be  
102 deposited in the services fees and collections account  
103 established by section two, article one, chapter fifty-nine of  
104 this code for the operation of the office of the Secretary of  
105 State. The Secretary of State shall dedicate sufficient  
106 resources from that fund or other funds to provide the  
107 services required in this article.

108 (e) For good cause shown, the Secretary of State may  
109 extend the due date for the annual filing of a registration  
110 statement or report by a charitable organization or a  
111 professional fundraiser for a period not to exceed ninety days.  
112 During that period, the previously filed registration statement  
113 or report of the charitable organization which has been  
114 granted the extension remains in effect.

115 (f) In addition to the registration fee required by this  
116 section, a charitable organization or professional fundraiser,  
117 or both, which fails to file a registration statement or report  
118 by the original or extended due date for filing as required by  
119 this section shall, for each month or part of the month  
120 thereafter in which the registration statement or report is not  
121 filed, pay an additional fee of twenty-five dollars: *Provided,*  
122 That the total amount of the additional fees for a registration  
123 statement or report required to be filed in any one year shall  
124 not exceed five hundred dollars. All fees and moneys  
125 collected by the Secretary of State pursuant to the provisions  
126 of this article shall be deposited by the Secretary of State as  
127 follows: One-half shall be deposited in the State General  
128 Revenue Fund and one-half shall be deposited in the service  
129 fees and collections account established by section two,  
130 article one, chapter fifty-nine of this code for the operation of  
131 the Office of the Secretary of State. The Secretary of State  
132 shall dedicate sufficient resources from that fund or other  
133 funds to provide the services required in this article.

**§29-19-6. Certain persons and organizations exempt from registration.**

1 The following charitable organizations are not required to  
2 file an annual registration statement with the Secretary of  
3 State:

4 (1) Educational institutions, the curriculums of which, in  
5 whole or in part, are registered or approved by the State  
6 Board of Education, either directly or by acceptance of  
7 accreditation by an accrediting body recognized by the State  
8 Board of Education; and any auxiliary associations,  
9 foundations and support groups which are directly  
10 responsible to any such educational institutions;

11 (2) Persons requesting contributions for the relief of any  
12 individual specified by name at the time of the solicitation  
13 when all of the contributions collected without any  
14 deductions whatsoever are turned over to the named  
15 beneficiary for his or her use;

16 (3) Hospitals and licensed nursing homes which are  
17 nonprofit and charitable;

18 (4) Organizations which solicit only within the  
19 membership of the organization by the members thereof:  
20 *Provided*, That the term "membership" does not include those  
21 persons who are granted a membership upon making a  
22 contribution as the result of solicitation. For the purpose of  
23 this section, "member" means a person having membership  
24 in a nonprofit corporation, or other organization, in  
25 accordance with the provisions of its articles of  
26 incorporation, bylaws or other instruments creating its form  
27 and organization; and having bona fide rights and privileges  
28 in the organization, such as the right to vote, to elect officers,  
29 directors and issues, to hold office or otherwise as ordinarily  
30 conferred on members of such organizations;

31 (5) Churches, synagogues, associations or conventions of  
32 churches, religious orders or religious organizations that are  
33 an integral part of a church which qualifies as tax exempt  
34 under the provisions of 26 U. S. C. §501(c)(3) and which

35 qualifies as being exempt from filing an annual return under  
36 the provisions of 26 U. S. C. §6033;

37 (6) Any person, firm, corporation or organization that  
38 sponsors a single fund-raising event for the benefit of a  
39 named charitable organization where all or part of the funds  
40 collected are donated to the named charitable organization:  
41 *Provided*, That the named charitable organization receiving  
42 the funds is registered pursuant to this article, reports each of  
43 these donations individually and certifies that no funds were  
44 withheld by the organization that solicited the funds;

45 (7) Any charitable organization that does not employ a  
46 professional solicitor or fundraiser and does not intend to  
47 solicit and receive and does not actually raise or receive  
48 contributions, donations or grants from the public in excess  
49 of twenty-five thousand dollars during a calendar year.

50 Charitable organizations which do not intend to solicit and  
51 receive contributions, donations or grants in excess of  
52 twenty-five thousand dollars, but do receive in excess of that  
53 amount from the public, shall file the annual registration  
54 statement within thirty days after contributions are in excess  
55 of twenty-five thousand dollars.



## CHAPTER 30

**(S.B. 388 - By Senators Prezioso, Minard, Stollings and Foster)**

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[Passed March 10, 2007; in effect ninety days from passage.]  
[Approved by the Governor on April 4, 2007.]

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AN ACT to amend and reenact §48-12-101, §48-12-102 and §48-12-103 of the Code of West Virginia, 1931, as amended, all relating to medical support provisions in child support orders; defining terms; establishing procedures for allocation of the costs of medical support between the parties to a child support order; and providing guidelines for setting medical support.



*Be it enacted by the Legislature of West Virginia:*

That §48-12-101, §48-12-102 and §48-12-103 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

## **ARTICLE 12. MEDICAL SUPPORT.**

§48-12-101. Definitions applicable to medical support enforcement.

§48-12-102. Court-ordered medical support.

§48-12-103. Cost of medical support considered in applying support guidelines.

### **§48-12-101. Definitions applicable to medical support enforcement.**

1 For the purposes of this article:

2 (1) "Appropriate health insurance coverage" means  
3 insurance coverage that is reasonable in cost, comprehensive  
4 in nature and reasonably accessible to the child to be covered.

5 (2) "Cash medical support" means an amount ordered to be  
6 paid toward the cost of health insurance provided by a public  
7 entity or by another person through employment or  
8 otherwise, or for other medical costs not covered by  
9 insurance.

10 (3) "Custodian for the children" means a parent, legal  
11 guardian, committee or other third party appointed by court  
12 order as custodian of a child or children for whom child  
13 support is ordered.

14 (4) "Obligated parent" means a natural or adoptive parent  
15 who is required by agreement or order to pay for insurance  
16 coverage and medical care, or some portion thereof, for his  
17 or her child.

18 (5) "Insurance coverage" means coverage for medical,  
19 dental, including orthodontic, optical, prescription

20 pharmaceuticals, psychological, psychiatric or other health  
21 care services.

22 (6) "Child" means a child to whom a duty of child support  
23 is owed.

24 (7) "Medical care" means medical, dental, optical,  
25 prescription pharmaceuticals, psychological, psychiatric or  
26 other health care service for children in need of child support.

27 (8) "Insurer" means any company, health maintenance  
28 organization, self-funded group, multiple employer welfare  
29 arrangement, hospital or medical services corporation, trust,  
30 group health plan, as defined in 29 U. S. C. §1167, Section  
31 607(1) of the Employee Retirement Income Security Act of  
32 1974 or other entity which provides insurance coverage or  
33 offers a service benefit plan.

34 (9) "National medical support notice" means the written  
35 notice described in 29 U. S. C. §1169 (a)(5)(C) and 42 U. S.  
36 C. §666(a)(19) and issued as a means of enforcing the health  
37 care coverage provisions in a child support order for children  
38 whose parent or parents are required to provide health-care  
39 coverage through an employment-related group health plan.  
40 This notice is consider under ERISA to be a qualified  
41 medical child support order (QMSO).

42 (10) "Qualified medical child support order" means a  
43 medical child support order which creates or recognizes the  
44 existence of an alternate recipient's right to, or assigns to an  
45 alternate recipient the right to, receive benefits from which a  
46 participant or beneficiary is eligible under a group health  
47 plan. A qualified medical child support order must include  
48 the name and the last known mailing address, if any, of the  
49 participant and the name and mailing address of each  
50 alternate recipient covered by the order, except that, to the  
51 extent provided in the order, the name and mailing address of  
52 an official of the IV-D agency may be substituted for the

53 mailing address of any alternate recipient, a reasonable  
54 description of the type of coverage provided to each alternate  
55 recipient or the manner in which the type of coverage is  
56 determined and the time period for which the order applies.

57 (11) "Reasonably accessible health insurance coverage"  
58 means that the coverage will provide payment for the primary  
59 health care services within a reasonable distance from the  
60 child's primary residence.

61 (12) "Reasonable costs" means the child's portion of the  
62 medical insurance premiums not exceeding five percent of  
63 the gross income of the parent who provides the coverage.

#### **§48-12-102. Court-ordered medical support.**

1 In every action to establish or modify an order which  
2 requires the payment of child support, the court shall  
3 ascertain the ability of each parent to provide medical care  
4 for the children of the parties. In any temporary or final  
5 order establishing an award of child support or any temporary  
6 or final order modifying a prior order establishing an award  
7 of child support, the court shall address the provision of  
8 medical support through one or more of the following  
9 methods:

10 (1) The court shall determine whether appropriate medical  
11 insurance coverage as defined in section one hundred one of  
12 this article is available to either parent. If such insurance  
13 coverage exists, the court shall order the appropriate parent  
14 to enroll the child in that coverage and the cost of providing  
15 appropriate medical insurance shall be entered on line 5b of  
16 worksheet A for the basic shared parenting child support  
17 calculation as provided in section two hundred four, article  
18 thirteen of this code or line 12b of worksheet B for the  
19 extended shared parenting child support calculation as  
20 provided in said section.

21 (2) If the court does not include the cost of the medical  
22 insurance in the child support calculation, the court may  
23 order the other parent to contribute to the cost of the premium  
24 through an award of medical support. If the amount of the  
25 award of child support in the order is determined using the  
26 child support guidelines, the court shall order that  
27 nonrecurring or subsequently occurring uninsured medical  
28 expenses in excess of two hundred fifty dollars per year per  
29 child shall be separately divided between the parties in  
30 proportion to their adjusted gross incomes.

31 (3) If neither parent currently has access to appropriate  
32 medical insurance coverage, the court shall take the following  
33 actions:

34 (a) The court shall order the parties to provide appropriate  
35 medical insurance coverage if it becomes available in the  
36 future; and

37 (b) The court shall order the payment of cash medical  
38 support by either or both parties. The amount of the cash  
39 medical support to be awarded is within the discretion of the  
40 court but the total of the cash medical support and cost of the  
41 insurance premiums shall not exceed five percent of the  
42 payor's gross income.

43 (c) In setting a cash medical support award, the court may  
44 consider the costs of uncovered medical expenses for the  
45 child, the relative percentages of the parties' incomes or the  
46 cost to the government to provide medical coverage for the  
47 child.

48 (d) If the support obligor's adjusted gross income is less  
49 than two hundred percent of the federal poverty level, the  
50 court shall set the cash medical support amount at zero.

51 (e) Cash medical support shall be collected and enforced in  
52 the same manner as child support payments.

53 (4) The order shall require the obligor to continue to  
54 provide the Bureau for Child Support Enforcement with  
55 information as to his or her employer's name and address and  
56 information as to the availability of employer-related  
57 insurance programs providing medical care coverage so long  
58 as the child continues to be eligible to receive support.

**§48-12-103. Cost of medical support considered in applying support guidelines.**

1 The Bureau for Child Support Enforcement or the parties  
2 to the case may bring a petition to modify the medical  
3 support obligations upon notification of any new source of  
4 insurance coverage or any change in circumstances as set  
5 forth in section one hundred six, article fourteen of this  
6 chapter.



## CHAPTER 31

**(S.B. 626 - By Senators Caruth, Prezioso, Foster and Plymale)**

\_\_\_\_\_  
[Passed March 5, 2007; in effect ninety days from passage.]  
[Approved by the Governor on March 19, 2007.]  
\_\_\_\_\_

AN ACT to amend and reenact §49-1-3 and §49-1-4 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-5D-2 and §49-5D-3 of said code, all relating to child advocacy centers; defining terms; providing for role of child advocacy center in multidisciplinary teams; and providing for the role of a child advocacy center in multidisciplinary treatment teams.

*Be it enacted by the Legislature of West Virginia:*

That §49-1-3 and §49-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §49-5D-2 and §49-5D-3 of said code be amended and reenacted, all to read as follows:

**Article**

**1. Purposes and Definitions.**

**5D. Multidisciplinary Teams.**

**ARTICLE 1. PURPOSES AND DEFINITIONS.**

§49-1-3. Definitions relating to abuse and neglect.

§49-1-4. Other definitions.

**§49-1-3. Definitions relating to abuse and neglect.**

1 (a) "Abused child" means a child whose health or welfare  
2 is harmed or threatened by:

3 (1) A parent, guardian or custodian who knowingly or  
4 intentionally inflicts, attempts to inflict or knowingly allows  
5 another person to inflict, physical injury or mental or  
6 emotional injury, upon the child or another child in the home;  
7 or

8 (2) Sexual abuse or sexual exploitation; or

9 (3) The sale or attempted sale of a child by a parent,  
10 guardian or custodian in violation of section sixteen, article  
11 four, chapter forty-eight of this code; or

12 (4) Domestic violence as defined in section two hundred  
13 two, article twenty-seven, chapter forty-eight of this code.

14 In addition to its broader meaning, physical injury may  
15 include an injury to the child as a result of excessive corporal  
16 punishment.

17 (b) "Abusing parent" means a parent, guardian or other  
18 custodian, regardless of his or her age, whose conduct, as  
19 alleged in the petition charging child abuse or neglect, has  
20 been adjudged by the court to constitute child abuse or  
21 neglect.

22 (c) "Battered parent" means a parent, guardian or other  
23 custodian who has been judicially determined not to have  
24 condoned the abuse or neglect and has not been able to stop  
25 the abuse or neglect of the child or children due to being the  
26 victim of domestic violence as defined by section two  
27 hundred two, article twenty-seven, chapter forty-eight of this  
28 code, which domestic violence was perpetrated by the person  
29 or persons determined to have abused or neglected the child  
30 or children.

31 (d) "Child abuse and neglect" or "child abuse or neglect"  
32 means physical injury, mental or emotional injury, sexual  
33 abuse, sexual exploitation, sale or attempted sale or negligent  
34 treatment or maltreatment of a child by a parent, guardian or  
35 custodian who is responsible for the child's welfare, under  
36 circumstances which harm or threaten the health and welfare  
37 of the child.

38 (e) "Child abuse and neglect services" means social  
39 services which are directed toward:

40 (1) Protecting and promoting the welfare of children who  
41 are abused or neglected;

42 (2) Identifying, preventing and remedying conditions  
43 which cause child abuse and neglect;

44 (3) Preventing the unnecessary removal of children from  
45 their families by identifying family problems and assisting  
46 families in resolving problems which could lead to a removal  
47 of children and a breakup of the family;

48 (4) In cases where children have been removed from their  
49 families, providing services to the children and the families  
50 so as to reunify such children with their families or some  
51 portion thereof;

52 (5) Placing children in suitable adoptive homes when  
53 reunifying the children with their families, or some portion  
54 thereof, is not possible or appropriate; and

55 (6) Assuring the adequate care of children who have been  
56 placed in the custody of the department or third parties.

57 (f) “Child advocacy center” means a community-based  
58 organization that is a member in good standing with the West  
59 Virginia Child Abuse Network, Inc., and is working to  
60 implement the following program components:

61 (1) Child-appropriate/child-friendly facility: A child  
62 advocacy center provides a comfortable, private, child-  
63 friendly setting that is both physically and psychologically  
64 safe for clients.

65 (2) Multidisciplinary team (MDT): A multidisciplinary  
66 team for response to child abuse allegations includes  
67 representation from the following: Law enforcement; child  
68 protective services; prosecution; mental health; medical;  
69 victim advocacy; child advocacy center.

70 (3) Organizational capacity: A designated legal entity  
71 responsible for program and fiscal operations has been  
72 established and implements basic sound administrative  
73 practices.

74 (4) Cultural competency and diversity: The CAC  
75 promotes policies, practices and procedures that are culturally  
76 competent. Cultural competency is defined as the capacity to  
77 function in more than one culture, requiring the ability to



78 appreciate, understand and interact with members of diverse  
79 populations within the local community.

80 (5) Forensic interviews: Forensic interviews are  
81 conducted in a manner which is of a neutral, fact finding  
82 nature and coordinated to avoid duplicative interviewing.

83 (6) Medical evaluation: Specialized medical evaluation  
84 and treatment are to be made available to CAC clients as part  
85 of the team response, either at the CAC or through  
86 coordination and referral with other specialized medical  
87 providers.

88 (7) Therapeutic intervention: Specialized mental health  
89 services are to be made available as part of the team  
90 response, either at the CAC or through coordination and  
91 referral with other appropriate treatment providers.

92 (8) Victim support/advocacy: Victim support and  
93 advocacy are to be made available as part of the team  
94 response, either at the CAC or through coordination with  
95 other providers, throughout the investigation and subsequent  
96 legal proceedings.

97 (9) Case review: Team discussion and information  
98 sharing regarding the investigation, case status and services  
99 needed by the child and family are to occur on a routine  
100 basis.

101 (10) Case tracking: CACs must develop and implement a  
102 system for monitoring case progress and tracking case  
103 outcomes for team components: *Provided*, That a child  
104 advocacy center may establish a safe exchange location for  
105 children and families who have a parenting agreement or an  
106 order providing for visitation or custody of the children that  
107 require a safe exchange location.

108 (g) "Imminent danger to the physical well-being of the  
109 child" means an emergency situation in which the welfare or  
110 the life of the child is threatened. Such emergency situation  
111 exists when there is reasonable cause to believe that any child  
112 in the home is or has been sexually abused or sexually  
113 exploited, or reasonable cause to believe that the following  
114 conditions threaten the health or life of any child in the home:

115 (1) Nonaccidental trauma inflicted by a parent, guardian,  
116 custodian, sibling or a babysitter or other caretaker;

117 (2) A combination of physical and other signs indicating  
118 a pattern of abuse which may be medically diagnosed as  
119 battered child syndrome;

120 (3) Nutritional deprivation;

121 (4) Abandonment by the parent, guardian or custodian;

122 (5) Inadequate treatment of serious illness or disease;

123 (6) Substantial emotional injury inflicted by a parent,  
124 guardian or custodian; or

125 (7) Sale or attempted sale of the child by the parent,  
126 guardian or custodian.

127 (h) "Legal guardianship" means the permanent  
128 relationship between a child and caretaker, established by  
129 order of the circuit court having jurisdiction over the child,  
130 pursuant to the provisions of this chapter and chapter forty-  
131 eight of this code.

132 (i) "Multidisciplinary team" means a group of  
133 professionals and paraprofessionals representing a variety of  
134 disciplines who interact and coordinate their efforts to  
135 identify, diagnose and treat specific cases of child abuse and  
136 neglect. Multidisciplinary teams may include, but are not

137 limited to, medical, educational, child care and law-  
138 enforcement personnel, social workers, psychologists and  
139 psychiatrists. Their goal is to pool their respective skills in  
140 order to formulate accurate diagnoses and to provide  
141 comprehensive coordinated treatment with continuity and  
142 follow-up for both parents and children. "Community team"  
143 means a multidisciplinary group which addresses the general  
144 problem of child abuse and neglect in a given community and  
145 may consist of several multidisciplinary teams with different  
146 functions.

147 (j) (1) "Neglected child" means a child:

148 (A) Whose physical or mental health is harmed or  
149 threatened by a present refusal, failure or inability of the  
150 child's parent, guardian or custodian to supply the child with  
151 necessary food, clothing, shelter, supervision, medical care or  
152 education, when such refusal, failure or inability is not due  
153 primarily to a lack of financial means on the part of the  
154 parent, guardian or custodian; or

155 (B) Who is presently without necessary food, clothing,  
156 shelter, medical care, education or supervision because of the  
157 disappearance or absence of the child's parent or custodian;

158 (2) "Neglected child" does not mean a child whose  
159 education is conducted within the provisions of section one,  
160 article eight, chapter eighteen of this code.

161 (k) "Parenting skills" means a parent's competencies in  
162 providing physical care, protection, supervision and  
163 psychological support appropriate to a child's age and state of  
164 development.

165 (l) "Sexual abuse" means:

166 (A) As to a child who is less than sixteen years of age, any  
167 of the following acts which a parent, guardian or custodian  
168 shall engage in, attempt to engage in, or knowingly procure  
169 another person to engage in, with such child, notwithstanding  
170 the fact that the child may have willingly participated in such  
171 conduct or the fact that the child may have suffered no  
172 apparent physical injury or mental or emotional injury as a  
173 result of such conduct:

174 (i) Sexual intercourse;

175 (ii) Sexual intrusion; or

176 (iii) Sexual contact;

177 (B) As to a child who is sixteen years of age or older, any  
178 of the following acts which a parent, guardian or custodian  
179 shall engage in, attempt to engage in, or knowingly procure  
180 another person to engage in, with such child, notwithstanding  
181 the fact that the child may have consented to such conduct or  
182 the fact that the child may have suffered no apparent physical  
183 injury or mental or emotional injury as a result of such  
184 conduct:

185 (i) Sexual intercourse;

186 (ii) Sexual intrusion; or

187 (iii) Sexual contact;

188 (C) Any conduct whereby a parent, guardian or custodian  
189 displays his or her sex organs to a child, or procures another  
190 person to display his or her sex organs to a child, for the  
191 purpose of gratifying the sexual desire of the parent, guardian  
192 or custodian, of the person making such display, or of the  
193 child, or for the purpose of affronting or alarming the child.

194 (m) "Sexual contact" means sexual contact as that term is  
195 defined in section one, article eight-b, chapter sixty-one of  
196 this code.

197 (n) "Sexual exploitation" means an act whereby:

198 (1) A parent, custodian or guardian, whether for financial  
199 gain or not, persuades, induces, entices or coerces a child to  
200 engage in sexually explicit conduct as that term is defined in  
201 section one, article eight-c, chapter sixty-one of this code;

202 (2) A parent, guardian or custodian persuades, induces,  
203 entices or coerces a child to display his or her sex organs for  
204 the sexual gratification of the parent, guardian, custodian or  
205 a third person, or to display his or her sex organs under  
206 circumstances in which the parent, guardian or custodian  
207 knows such display is likely to be observed by others who  
208 would be affronted or alarmed.

209 (o) "Sexual intercourse" means sexual intercourse as that  
210 term is defined in section one, article eight-b, chapter sixty-  
211 one of this code.

212 (p) "Sexual intrusion" means sexual intrusion as that term  
213 is defined in section one, article eight-b, chapter sixty-one of  
214 this code.

215 (q) "Parental rights" means any and all rights and duties  
216 regarding a parent to a minor child, including, but not limited  
217 to, custodial rights and visitational rights and rights to  
218 participate in the decisions affecting a minor child.

219 (r) "Placement" means any temporary or permanent  
220 placement of a child who is in the custody of the state in any  
221 foster home, group home or other facility or residence.

222 (s) "Serious physical abuse" means bodily injury which  
223 creates a substantial risk of death, which causes serious or

224 prolonged disfigurement, prolonged impairment of health or  
225 prolonged loss or impairment of the function of any bodily  
226 organ.

227 (t) "Siblings" means children who have at least one  
228 biological parent in common or who have been legally  
229 adopted by the same parents or parent.

230 (u) "Time-limited reunification services" means  
231 individual, group and family counseling, inpatient, residential  
232 or outpatient substance abuse treatment services, mental  
233 health services, assistance to address domestic violence,  
234 services designed to provide temporary child care and  
235 therapeutic services for families, including crisis nurseries  
236 and transportation to or from any such services, provided  
237 during fifteen of the most recent twenty-two months a child  
238 has been in foster care, as determined by the earlier date of  
239 the first judicial finding that the child is subjected to abuse or  
240 neglect, or the date which is sixty days after the child is  
241 removed from home.

#### **§49-1-4. Other definitions.**

1 As used in this chapter:

2 (1) "Child welfare agency" means any agency or facility  
3 maintained by the state or any county or municipality thereof,  
4 or any agency or facility maintained by an individual, firm,  
5 corporation, association or organization, public or private, to  
6 receive children for care and maintenance or for placement in  
7 residential care facilities or any facility that provides care for  
8 unmarried mothers and their children;

9 (2) "Child advocacy center" means a community-based  
10 organization that is a member in good standing with the West  
11 Virginia Child Abuse Network, Inc., and is working to  
12 implement the following program components:

13 (A) Child-appropriate/child-friendly facility: A child  
14 advocacy center provides a comfortable, private, child-  
15 friendly setting that is both physically and psychologically  
16 safe for clients.

17 (B) Multidisciplinary team (MDT): A multidisciplinary  
18 team for response to child abuse allegations includes  
19 representation from the following: Law enforcement; child  
20 protective services; prosecution; mental health; medical;  
21 victim advocacy; child advocacy center.

22 (C) Organizational capacity: A designated legal entity  
23 responsible for program and fiscal operations has been  
24 established and implements basic sound administrative  
25 practices.

26 (D) Cultural competency and diversity: The child  
27 advocacy center promotes policies, practices and procedures  
28 that are culturally competent. Cultural competency is defined  
29 as the capacity to function in more than one culture, requiring  
30 the ability to appreciate, understand and interact with  
31 members of diverse populations within the local community.

32 (E) Forensic interviews: Forensic interviews are  
33 conducted in a manner which is of a neutral, fact-finding  
34 nature, and coordinated to avoid duplicative interviewing.

35 (F) Medical evaluation: Specialized medical evaluation  
36 and treatment are to be made available to child advocacy  
37 center clients as part of the team response, either at the child  
38 advocacy center or through coordination and referral with  
39 other specialized medical providers.

40 (G) Therapeutic intervention: Specialized mental health  
41 services are to be made available as part of the team  
42 response, either at the child advocacy center or through

43 coordination and referral with other appropriate treatment  
44 providers.

45 (H) Victim support/advocacy: Victim support and  
46 advocacy are to be made available as part of the team  
47 response, either at the child advocacy center or through  
48 coordination with other providers, throughout the  
49 investigation and subsequent legal proceedings.

50 (I) Case review: Team discussion and information  
51 sharing regarding the investigation, case status and services  
52 needed by the child and family are to occur on a routine  
53 basis.

54 (J) Case tracking: Child advocacy centers must develop  
55 and implement a system for monitoring case progress and  
56 tracking case outcomes for team components: *Provided,*  
57 That a child advocacy center may establish a safe exchange  
58 location for children and families who have a parenting  
59 agreement or an order providing for visitation or custody of  
60 the children that require a safe exchange location.

61 (3) "Community based", when referring to a facility,  
62 program, or service, means located near the juvenile's home  
63 or family and involving community participation in planning,  
64 operation and evaluation and which may include, but is not  
65 limited to, medical, educational, vocational, social and  
66 psychological guidance, training, special education,  
67 counseling, alcoholism and any treatment and other  
68 rehabilitation services;

69 (4) "Court" means the circuit court of the county with  
70 jurisdiction of the case or the judge thereof in vacation unless  
71 otherwise specifically provided;

72 (5) "Custodian" means a person who has or shares  
73 actual physical possession or care and custody of a child,



74 regardless of whether such person has been granted custody  
75 of the child by any contract, agreement or legal proceedings;

76 (6) "Department" or "state department" means the state  
77 Department of Health and Human Resources;

78 (7) "Division of Juvenile Services" means the division  
79 within the Department of Military Affairs and Public Safety  
80 pursuant to article five-e of this chapter;

81 (8) "Guardian" means a person who has care and  
82 custody of a child as a result of any contract, agreement or  
83 legal proceeding;

84 (9) "Juvenile delinquent" means a juvenile who has  
85 been adjudicated as one who commits an act which would be  
86 a crime under state law or a municipal ordinance if  
87 committed by an adult;

88 (10) "Nonsecure facility" means any public or private  
89 residential facility not characterized by construction fixtures  
90 designed to physically restrict the movements and activities  
91 of individuals held in lawful custody in such facility and  
92 which provides its residents access to the surrounding  
93 community with supervision;

94 (11) "Referee" means a juvenile referee appointed  
95 pursuant to section one, article five-a of this chapter, except  
96 that in any county which does not have a juvenile referee, the  
97 judge or judges of the circuit court may designate one or  
98 more magistrates of the county to perform the functions and  
99 duties which may be performed by a referee under this  
100 chapter;

101 (12) "Secretary" means the Secretary of Health and  
102 Human Resources;

103 (13) "Secure facility" means any public or private  
104 residential facility which includes construction fixtures  
105 designed to physically restrict the movements and activities  
106 of juveniles or other individuals held in lawful custody in  
107 such facility;

108 (14) "Staff-secure facility" means any public or private  
109 residential facility characterized by staff restrictions of the  
110 movements and activities of individuals held in lawful  
111 custody in such facility and which limits its residents' access  
112 to the surrounding community, but is not characterized by  
113 construction fixtures designed to physically restrict the  
114 movements and activities of residents;

115 (15) "Status offender" means a juvenile who has been  
116 adjudicated as one:

117 (A) Who habitually and continually refuses to respond  
118 to the lawful supervision by his or her parents, guardian or  
119 legal custodian such that the child's behavior substantially  
120 endangers the health, safety or welfare of the juvenile or any  
121 other person;

122 (B) Who has left the care of his or her parents, guardian  
123 or custodian without the consent of such person or without  
124 good cause;

125 (C) Who is habitually absent from school without good  
126 cause; or

127 (D) Who violates any West Virginia municipal, county  
128 or state law regarding use of alcoholic beverages by minors;

129 (16) "Valid court order" means a court order given to a  
130 juvenile who was brought before the court and made subject  
131 to such order and who received, before the issuance of such  
132 order, the full due process rights guaranteed to such juvenile  
133 by the constitutions of the United States and the State of West  
134 Virginia.

**ARTICLE 5D. MULTIDISCIPLINARY TEAMS.**

§49-5D-2. Multidisciplinary investigative teams; establishment; procedures; coordination between agencies.

§49-5D-3. Multidisciplinary treatment planning process.

**§49-5D-2. Multidisciplinary investigative teams; establishment; procedures; coordination between agencies.**

1 (a) The prosecuting attorney shall establish a  
2 multidisciplinary investigative team in each county. The  
3 multidisciplinary team shall be headed and directed by the  
4 prosecuting attorney or his or her designee and shall include  
5 as permanent members the prosecuting attorney or his or her  
6 designee, a local child protective services caseworker from  
7 the Department of Health and Human Resources, a local law-  
8 enforcement officer employed by a law-enforcement agency  
9 in the county, a child advocacy center representative where  
10 available and, where appropriate to the particular case under  
11 consideration and available, a representative from the  
12 licensed domestic violence program serving the county. The  
13 Department of Health and Human Resources and any local  
14 law-enforcement agency or agencies selected by the  
15 prosecuting attorney shall appoint their representatives to the  
16 team by submitting a written designation of the team to the  
17 prosecuting attorney of each county within thirty days of the  
18 prosecutor's request that the appointment be made. Within  
19 fifteen days of the appointment, the prosecuting attorney  
20 shall notify the chief judge of each circuit within which the  
21 county is situated of the names of the representatives so  
22 appointed. Any other person or any other appointee of an

23 agency who may contribute to the team's efforts to assist a  
24 minor child as may be determined by the permanent members  
25 of the team may also be appointed as a member of the team  
26 by the prosecutor with notification to the chief judge.

27 (b) Any permanent member of the multidisciplinary  
28 investigative team shall refer all cases of accidental death of  
29 any child reported to their agency and all cases when a child  
30 dies while in the custody of the state for investigation and  
31 review by the team. The multidisciplinary investigative team  
32 shall meet at regular intervals at least once every calendar  
33 month.

34 (c) The investigative team shall be responsible for  
35 coordinating or cooperating in the initial and ongoing  
36 investigation of all civil and criminal allegations pertinent to  
37 cases involving child sexual assault, child sexual abuse, child  
38 abuse and neglect and shall make a recommendation to the  
39 county prosecuting attorney as to the initiation or  
40 commencement of a civil petition and/or criminal  
41 prosecution.

42 (d) State, county and local agencies shall provide the  
43 multidisciplinary investigative team with any information  
44 requested in writing by the team as allowable by law or upon  
45 receipt of a certified copy of the circuit court's order directing  
46 said agencies to release information in its possession relating  
47 to the child. The team shall assure that all information  
48 received and developed in connection with the provisions of  
49 this article remains confidential. For purposes of this section,  
50 the term "confidential" shall be construed in accordance with  
51 the provisions of section one, article seven of this chapter.

### **§49-5D-3. Multidisciplinary treatment planning process.**

1 (a) (1) A multidisciplinary treatment planning process  
2 shall be established within each county of the state, either  
3 separately or in conjunction with a contiguous county, by the  
4 secretary of the department with advice and assistance from  
5 the prosecutor's advisory council as set forth in section four,  
6 article four, chapter seven of this code. The Division of

7 Juvenile Services shall establish a similar treatment planning  
8 process for delinquency cases in which the juvenile has been  
9 committed to the custody of the director of the division.

10 (2) Treatment teams shall assess, plan and implement a  
11 comprehensive, individualized service plan for children who  
12 are victims of abuse or neglect and their families when a  
13 judicial proceeding has been initiated involving the child or  
14 children for juveniles and their families involved in status  
15 offense or delinquency proceedings when, in a status offense  
16 proceeding, the court refers the juvenile for services pursuant  
17 to sections eleven and eleven-a, article five of this chapter  
18 and when, in a delinquency proceeding, the court is  
19 considering placing the juvenile in the department's custody  
20 or placing the juvenile out of home at the department's  
21 expense pursuant to the provisions of section thirteen of said  
22 article. In any such status offense or delinquency case, the  
23 juvenile probation officer shall notify the local office of the  
24 Department of Health and Human Resources and the  
25 Division of Juvenile Services at least five working days  
26 before the court proceeding in order to allow the  
27 multidisciplinary treatment team to convene and develop a  
28 comprehensive individualized service plan for the child:  
29 *Provided*, That such notice is not required in cases where the  
30 child is already in state custody or there exist exigent  
31 circumstances which justify taking the child immediately into  
32 custody without a judicial proceeding. In developing an  
33 individualized service plan for a child, the team shall utilize  
34 a uniform comprehensive assessment of the child. The  
35 department shall adopt a standard uniform comprehensive  
36 assessment instrument or protocol to be used by treatment  
37 teams.

38 (3) Prior to disposition, in each case in which a treatment  
39 planning team has been convened, the team shall advise the  
40 court as to the types of services the team has determined are  
41 needed and the type of placement, if any, which will best

42 serve the needs of the child. If the team determines that an  
43 out-of-home placement will best serve the needs of the child,  
44 the team shall first consider placement at facilities or  
45 programs located within the state. The team may only  
46 recommend placement in an out-of-state facility if it  
47 concludes, after considering the best interests and overall  
48 needs of the child, that there are no available and suitable in-  
49 state facilities which can satisfactorily meet the specific  
50 needs of the child.

51 (b) Each treatment team shall be convened by the child's  
52 or family's case manager in the Department of Health and  
53 Human Resources or the Division of Juvenile Services if the  
54 juvenile has been ordered into its custody for examination  
55 and diagnosis pursuant to section thirteen, article five of this  
56 chapter. The treatment team shall consist of the child's  
57 custodial parent or parents, guardian or guardians, other  
58 immediate family members, the attorney or attorneys  
59 representing the child, the parent or parents of the child, the  
60 child's attorney, the guardian ad litem, if any, the prosecuting  
61 attorney or his or her designee, a member of a child advocacy  
62 center when the child has been processed through the child  
63 advocacy center program(s) and, where appropriate to the  
64 particular case under consideration and available, a court-  
65 appointed special advocate, a member of a child advocacy  
66 center, an appropriate school official and any other person or  
67 an agency representative who may assist in providing  
68 recommendations for the particular needs of the child and  
69 family. The child may participate in multidisciplinary  
70 treatment team meetings if such is deemed appropriate by the  
71 multidisciplinary treatment team. For purposes of  
72 delinquency proceedings, the juvenile probation officer shall

73 be a member of the treatment team. Any person authorized  
74 by the provisions of this chapter to convene a  
75 multidisciplinary team meeting may seek and receive an  
76 order of the circuit court setting such meeting and directing  
77 attendance. Members of the multidisciplinary team may  
78 participate in team meetings by telephone or video  
79 conferencing: *Provided*, That a member of a child advocacy  
80 center should participate in any case when appropriate to the  
81 particular case under consideration.

82 (c) The treatment team shall coordinate its activities and  
83 membership with local family resource networks and  
84 coordinate with other local and regional child and family  
85 service planning committees to assure the efficient planning  
86 and delivery of child and family services on a local and  
87 regional level.

88 (d) State, county and local agencies shall provide the  
89 multidisciplinary treatment teams with any information  
90 requested in writing by the team as allowable by law or upon  
91 receipt of a certified copy of the circuit court's order directing  
92 said agencies to release information in its possession relating  
93 to the child. The team shall assure that all information  
94 received and developed in connection with the provisions of  
95 this article remain confidential. For purposes of this section,  
96 the term "confidential" shall be construed in accordance with  
97 the provisions of section one, article seven of this chapter.

98 (e) Nothing in this section may be construed to require a  
99 multidisciplinary team meeting to be held prior to  
100 temporarily placing a child out-of-home under exigent  
101 circumstances or upon a court order placing the juvenile in a  
102 juvenile facility operated by the Division of Juvenile  
103 Services.

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## CHAPTER 32

**(Com. Sub. for S.B. 196 - By Senators Love, Hunter, White,  
McKenzie and Sprouse)**

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[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2007.]

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AN ACT to amend and reenact §49-5-8 of the Code of West Virginia, 1931, as amended, relating to the responsibility of placing juveniles into the custody of the Division of Juvenile Services; requiring arresting agency to be responsible for transporting juveniles to Division of Juvenile Services' facilities; and authorizing juvenile facility to refuse admittance to juveniles who are in need of medical attention until written clearance is received from a physician.

*Be it enacted by the Legislature of West Virginia:*

That §49-5-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 5. JUVENILE PROCEEDINGS.**

#### **§49-5-8. Taking a juvenile into custody.**

- 1       (a) In proceedings formally instituted by the filing of a
- 2 juvenile petition, the circuit court, a juvenile referee or a
- 3 magistrate may issue an order directing that a juvenile be
- 4 taken into custody before adjudication only upon a showing
- 5 of probable cause to believe that one of the following
- 6 conditions exists: (1) The petition shows that grounds exist
- 7 for the arrest of an adult in identical circumstances; (2) the



8 health, safety and welfare of the juvenile demand such  
9 custody; (3) the juvenile is a fugitive from a lawful custody  
10 or commitment order of a juvenile court; or (4) the juvenile  
11 is alleged to be a juvenile delinquent with a record of willful  
12 failure to appear at juvenile proceedings and custody is  
13 necessary to assure his or her presence before the court. A  
14 detention hearing pursuant to section eight-a of this article  
15 shall be held by the judge, juvenile referee or magistrate  
16 authorized to conduct such hearings without unnecessary  
17 delay and in no event may any delay exceed the next day.

18 (b) Absent a court order, a juvenile may be taken into  
19 custody by a law-enforcement official only if one of the  
20 following conditions exists: (1) Grounds exist for the arrest  
21 of an adult in identical circumstances; (2) emergency  
22 conditions exist which, in the judgment of the officer, pose  
23 imminent danger to the health, safety and welfare of the  
24 juvenile; (3) the official has reasonable grounds to believe  
25 that the juvenile has left the care of his or her parents,  
26 guardian or custodian without the consent of such person and  
27 the health, safety and welfare of the juvenile is endangered;  
28 (4) the juvenile is a fugitive from a lawful custody or  
29 commitment order of a juvenile court; (5) the official has  
30 reasonable grounds to believe the juvenile to have been  
31 driving a motor vehicle with any amount of alcohol in his or  
32 her blood; or (6) the juvenile is the named respondent in an  
33 emergency protective order issued pursuant to section four  
34 hundred three, article twenty-seven, chapter forty-eight of  
35 this code and the individual filing the petition for the  
36 emergency protective order is the juvenile's parent, guardian  
37 or custodian or other person with whom the juvenile resides.

38 (c) Upon taking a juvenile into custody, with or without  
39 a court order, the official shall:

40 (1) Immediately notify the juvenile's parent, guardian,  
41 custodian or, if the parent, guardian or custodian cannot be  
42 located, a close relative;

43 (2) Release the juvenile into the custody of his or her  
44 parent, guardian or custodian unless:

45 (A) Circumstances present an immediate threat of serious  
46 bodily harm to the juvenile if released;

47 (B) No responsible adult can be found into whose  
48 custody the juvenile can be delivered: *Provided*, That each  
49 day the juvenile is detained, a written record must be made of  
50 all attempts to locate such a responsible adult; or

51 (C) The juvenile has been taken into custody for an  
52 alleged act of delinquency for which secure detention is  
53 permissible.

54 (3) If the juvenile is an alleged status offender or has  
55 been taken into custody pursuant to subdivision (6),  
56 subsection (b) of this section, immediately notify the  
57 Department of Health and Human Resources and, if the  
58 circumstances of either paragraph (A) or (B), subdivision (2)  
59 of this subsection exist and the requirements therein are met,  
60 the official may detain the juvenile, but only in a nonsecure  
61 or staff-secure facility;

62 (4) Take the juvenile without unnecessary delay before a  
63 juvenile referee or judge of the circuit court for a detention  
64 hearing pursuant to section eight-a of this article: *Provided*,  
65 That if no judge or juvenile referee is then available in the  
66 county, the official shall take the juvenile without  
67 unnecessary delay before any magistrate then available in the  
68 county for the sole purpose of conducting such a detention  
69 hearing. In no event may any delay in presenting the juvenile  
70 for a detention hearing exceed the next day after he or she is  
71 taken into custody.

72 (d) In the event that a juvenile is delivered into the  
73 custody of a sheriff or director of a detention facility, the  
74 sheriff or director shall immediately notify the court or

75 juvenile referee. The sheriff or director shall immediately  
76 provide to every juvenile who is delivered into his or her  
77 custody a written statement explaining the juvenile's right to  
78 a prompt detention hearing, his or her right to counsel,  
79 including appointed counsel if he or she cannot afford  
80 counsel, and his or her privilege against self-incrimination. In  
81 all cases when a juvenile is delivered into a sheriff's or  
82 detention center director's custody, that official shall release  
83 the juvenile to his or her parent, guardian or custodian by the  
84 end of the next day unless the juvenile has been placed in  
85 detention after a hearing conducted pursuant to section eight-  
86 a of this article.

87 (e) The law-enforcement agency that takes a juvenile into  
88 custody or places a juvenile under arrest is responsible for the  
89 juvenile's initial transportation to a juvenile detention center  
90 or other Division of Juvenile Services' residential facility.

91 (f) Notwithstanding any other provision of this code, a  
92 juvenile detention center, or other Division of Juvenile  
93 Services' residential facility, is not required to accept a  
94 juvenile if the juvenile appears to be in need of medical  
95 attention of a degree necessitating treatment by a physician.  
96 If a juvenile is refused pursuant to the provisions of this  
97 subsection, the juvenile detention center, or other Division of  
98 Juvenile Services' residential facility, may not subsequently  
99 accept the juvenile for detention until the arresting or  
100 transporting officer provides the juvenile detention center, or  
101 other Division of Juvenile Services' residential facility, with  
102 a written clearance from a licensed physician reflecting that  
103 the juvenile has been examined and, if necessary, treated and  
104 which states that in the physician's medical opinion the  
105 juvenile can be safely confined in the juvenile detention  
106 center or other Division of Juvenile Services' residential  
107 facility.

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**CHAPTER 33**

**(Com. Sub. for S.B. 709 - By Senators Kessler,  
McKenzie and Guills)**

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[Passed March 9, 2007; in effect ninety days from passage.]  
[Approved by the Governor on April 3, 2007.]

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AN ACT to amend and reenact §49-5-9 of the Code of West Virginia, 1931, as amended, relating to authorizing circuit courts to grant both custodial and noncustodial improvement periods to juvenile respondents in delinquency proceedings.

*Be it enacted by the Legislature of West Virginia:*

That §49-5-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. JUVENILE PROCEEDINGS.**

**§49-5-9. Preliminary hearing; counsel; improvement period.**

1       (a) Following the filing of a juvenile petition, unless a  
2 preliminary hearing has previously been held in conjunction  
3 with a detention hearing with respect to the same charge  
4 contained in the petition, the circuit court or referee shall hold  
5 a preliminary hearing. In the event that the juvenile is being  
6 detained, the hearing shall be held within ten days of the time  
7 the juvenile is placed in detention unless good cause is shown  
8 for a continuance. If no preliminary hearing is held within  
9 ten days of the time the juvenile is placed in detention, the  
10 juvenile shall be released on recognizance unless the hearing

11 has been continued for good cause. If the judge is in another  
12 county in the circuit, the hearing may be conducted in that  
13 other county. The preliminary hearing may be waived by the  
14 juvenile, upon advice of counsel. At the hearing, the court or  
15 referee shall:

16 (1) If the juvenile is not represented by counsel, inform  
17 the juvenile and his or her parents, guardian or custodian or  
18 any other person standing in loco parentis to him or her of the  
19 juvenile's right to be represented at all stages of proceedings  
20 under this article and the right to have counsel appointed;

21 (2) Appoint counsel by order entered of record, if counsel  
22 has not already been retained, appointed or knowingly  
23 waived;

24 (3) Determine after hearing if there is probable cause to  
25 believe that the juvenile is a status offender or a juvenile  
26 delinquent. If probable cause is not found, the juvenile, if in  
27 detention, shall be released and the proceedings dismissed.  
28 If probable cause is found, the case shall proceed to  
29 adjudication. At this hearing or as soon thereafter as is  
30 practicable, the date for the adjudicatory hearing shall be set  
31 to give the juvenile and the juvenile's parents and attorney at  
32 least ten days' notice unless notice is waived by all parties;

33 (4) In lieu of placing the juvenile in a detention facility,  
34 the court may place the juvenile in the temporary legal and/or  
35 physical custody of the department. If the juvenile is  
36 detained, the detention may not continue longer than thirty  
37 days without commencement of the adjudicatory hearing  
38 unless good cause for a continuance is shown by either party  
39 or, if a jury trial is demanded, no longer than the next regular  
40 term of the court: *Provided*, That a juvenile who is alleged  
41 to be a status offender may not be placed in a secure  
42 detention facility; and

43 (5) Inform the juvenile of the right to demand a jury trial.

44 (b) The juvenile may move to be allowed an  
45 improvement period for a period not to exceed one year. If  
46 the court is satisfied that the best interest of the juvenile is  
47 likely to be served by an improvement period, the court may  
48 delay the adjudicatory hearing and allow an improvement  
49 period upon terms calculated to serve the rehabilitative needs  
50 of the juvenile. At the conclusion of the improvement period,  
51 the court shall dismiss the proceeding if the terms have been  
52 fulfilled; otherwise, the court shall proceed to the  
53 adjudicatory stage. A motion for an improvement period  
54 may not be construed as an admission or be used as evidence.  
55 Improvement periods authorized by this subsection may be,  
56 in the court's discretion, either custodial or noncustodial.

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## CHAPTER 34

**(Com. Sub. for S.B. 76 - By Senators Kessler, Yoder, Plymale,  
Foster and Unger)**

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[Passed March 10, 2007; in effect July 1, 2007.]  
[Approved by the Governor on April 3, 2007.]

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AN ACT to amend the Code of West Virginia, 1931, as amended,  
by adding thereto a new section, designated §49-5-13c, relating  
to penalties for minors adjudicated delinquent for alcohol,  
alcoholic liquor, or nonintoxicating beer consumption.

*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 §49-5-13c, to read as  
follows:

**ARTICLE 5. JUVENILE PROCEEDINGS.**

**§49-5-13c. Graduated sanctions for juvenile alcohol consumption.**

1 (a) Notwithstanding any provision of this article to the  
2 contrary, in addition to any other penalty available to the  
3 court, any child who is adjudicated to have consumed  
4 alcoholic liquor or nonintoxicating beer as defined in section  
5 five, article one, chapter sixty of this code, shall:

6 (1) Upon a first adjudication, he or she shall be ordered  
7 to perform community service for not more than eight hours  
8 or fined not more than twenty-five dollars, or both.

9 (2) Upon a second adjudication, he or she shall be  
10 ordered to perform community service for not more than  
11 sixteen hours or fined not more than fifty dollars, or both.

12 (3) Upon a third or subsequent adjudication, he or she  
13 shall be ordered to perform not more than twenty-four hours  
14 of community service or fined not more than one hundred  
15 dollars, or both.

16 (b) In addition to the penalties set forth in subsection (a)  
17 of this section and notwithstanding the provisions of  
18 subdivision (4), subsection (c), section thirteen-b of this  
19 article, any child adjudicated a second time for consumption  
20 of alcoholic liquor or nonintoxicating beer shall have his or  
21 her license to operate a motor vehicle suspended for a  
22 definite term of not less than five nor more than ninety days.  
23 Any child adjudicated a third or subsequent time for  
24 consumption of an alcoholic liquor or nonintoxicating beer  
25 shall have his or her license to operate a motor vehicle  
26 suspended until he or she attains the age of eighteen years.

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## CHAPTER 35

**(S.B. 557 - By Senators Prezioso, Bailey, Edgell, Foster,  
Helmick, Hunter, Kessler, Unger, Barnes, Boley, Guills  
and Yoder)**

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[Passed March 9, 2007; in effect from passage.]  
[Approved by the Governor on April 4, 2007.]

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AN ACT to amend and reenact §49-5-21 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-6-5a and §49-6-8 of said code, all relating to judicial review of juvenile proceedings; requiring court to make finding whether department made reasonable efforts to finalize a permanency plan; requiring judicial review at least quarterly; permanency hearings when a court determines reasonable efforts to preserve families are not required; foster care review; and annual reports to the court.

*Be it enacted by the Legislature of West Virginia:*

That §49-5-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §49-6-5a and §49-6-8 of said code be amended and reenacted, all to read as follows:

**Article**

- 5. Juvenile Proceedings**
- 6. Procedure in Cases of Child Neglect or Abuse.**

**ARTICLE 5. JUVENILE PROCEEDINGS.**

§49-6-5a. Permanency hearing when court determines reasonable efforts to preserve families not required.

§49-6-8. Foster care review; annual reports to the court.

**§49-5-21. Quarterly judicial review of juvenile proceedings.**

- 1 For cases under this article in which the provisions of
- 2 section three, article five-d of this chapter apply, the court



3 wherein the juvenile proceeding is pending shall conduct  
4 regular judicial review of the case with the multidisciplinary  
5 treatment team and a juvenile probation officer in attendance.  
6 Such judicial review may be conducted as often as is  
7 considered necessary by the court, but shall be conducted at  
8 least once every three calendar months as long as the child  
9 remains in the legal or physical custody of the state.

10 In conducting the judicial review required by this section,  
11 the court shall address the extent of progress in the case,  
12 treatment and service needs, permanent placement planning  
13 for the juvenile, any uncontested issues and any other matters  
14 that the court considers pertinent. An order reflecting the  
15 matters considered, any uncontested rulings and the  
16 scheduling of an evidentiary hearing on any contested issue  
17 shall be issued by the court within ten judicial days of the  
18 judicial review. At the conclusion of each judicial review  
19 hearing, the court shall enter an order stating whether or not  
20 the department made reasonable efforts to finalize the  
21 permanency plan.

## **ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.**

### **§49-6-5a. Permanency hearing when court determines reasonable efforts to preserve families not required.**

1 (a) If the court finds, pursuant to the provisions of  
2 subdivision (7), subsection (a), section five of this article that  
3 the department is not required to make reasonable efforts to  
4 preserve the family, then, notwithstanding any other  
5 provision, a permanency hearing must be held within thirty  
6 days following the entry of the court order so finding and  
7 must be conducted at least once every three calendar months  
8 thereafter until a permanent placement is achieved.

9 (b) The purpose of the permanency hearing is to determine  
10 the permanency plan for the child that includes: (1) When  
11 the child will be returned to the parent; (2) when the child  
12 will be placed for adoption, in which event the state will file  
13 a petition for termination of parental rights; or (3) when the

14 child will be referred for legal guardianship. In cases where  
15 the department has demonstrated a compelling reason for  
16 determining it would not be in the best interests of the child  
17 to return home, the court shall determine whether the child  
18 should be referred for termination of parental rights, be  
19 placed for adoption, be placed with a fit and willing relative,  
20 be placed with a legal guardian or placed in another planned  
21 permanent living arrangement. At the conclusion of each  
22 permanency hearing, the court must enter an order stating  
23 whether or not the department made reasonable efforts to  
24 finalize the permanency plan.

25 (c) Any foster parent, preadoptive parent or relative  
26 providing care for the child shall be given notice of and the  
27 opportunity to be heard at the permanency hearing provided  
28 in this section.

**§49-6-8. Foster care review; annual reports to the court.**

1 (a) If, twelve months after receipt by the department or its  
2 authorized agent of physical custody of a child either by a  
3 court ordered placement or by a voluntary agreement, the  
4 department has not placed a child in an adoptive home or  
5 placed the child with a natural parent or placed the child in  
6 legal guardianship or permanently placed the child with a fit  
7 and willing relative, the department shall file with the court  
8 a petition for review of the case. The department shall also  
9 file with the court a report detailing the efforts that have been  
10 made to place the child in a permanent home and copies of  
11 the child's case plan, including the permanency plan as  
12 defined in section five, article six of this chapter. Copies of  
13 the report shall be sent to the child's attorney and be made  
14 available to the child's parent(s) or guardian. The court shall  
15 schedule a hearing in chambers, giving notice and the right to  
16 be present to: The child's attorney; the child, if twelve years  
17 of age or older; the child's parents; the child's guardians; the  
18 child's foster parents; any preadoptive parent or any relative  
19 providing care for the child; and such other persons as the  
20 court may, in its discretion, direct. The child's presence may  
21 be waived by the child's attorney at the request of the child

22 or if the child would suffer emotional harm. The purpose of  
23 the hearing is to review the child's case, to determine whether  
24 and under what conditions the child's commitment to the  
25 department shall continue and to determine what efforts are  
26 necessary to provide the child with a permanent home. At  
27 the conclusion of the hearing the court shall, in accordance  
28 with the best interests of the child, enter an appropriate order  
29 of disposition. The court order shall state: (1) Whether or  
30 not the department made reasonable efforts to preserve the  
31 family and to prevent out-of-home placement or that the  
32 specific situation made such effort unreasonable; (2) whether  
33 or not the department made reasonable efforts to finalize the  
34 permanency plan for the child; and (3) identify services  
35 required to meet the child's needs: *Provided*, That the  
36 department is not required to make reasonable efforts to  
37 preserve the family if the court determines any of the  
38 conditions set forth in subdivision (7), subsection (a), section  
39 five of this article exist. The court shall possess continuing  
40 jurisdiction over cases reviewed under this section for so long  
41 as a child remains in temporary foster care or, when a child  
42 is returned to his or her natural parents subject to conditions  
43 imposed by the court, for so long as the conditions are  
44 effective.

45 (b) The state department shall file a supplementary  
46 petition for review with the court within twelve months and  
47 every twelve months thereafter for every child that remains  
48 in the physical or legal custody of the state department until  
49 the child is placed in an adoptive home or returned to his or  
50 her parents or placed in legal guardianship or permanently  
51 placed with a fit and willing relative.

52 (c) The state department shall annually report to the court  
53 the current status of the placements of children in permanent  
54 care and custody of the state department who have not been  
55 adopted.

56 (d) The state department shall file a report with the court  
57 in any case where any child in the temporary or permanent  
58 custody of the state receives more than three placements in  
59 one year no later than thirty days after the third placement.  
60 This report shall be provided to all parties and their counsel.  
61 Upon motion by any party, the court shall review these  
62 placements and determine what efforts are necessary to  
63 provide the child with a stable foster or temporary home:  
64 *Provided,* That no report shall be provided to any parent or  
65 parent's attorney whose parental rights have been terminated  
66 pursuant to this article.

67 (e) The state department shall notify, in writing, the court,  
68 the child, if over the age of twelve, the child's attorney, the  
69 parents and the parents' attorney forty-eight hours prior to the  
70 move if this is a planned move, or within forty-eight hours of  
71 the next business day after the move if this is an emergency  
72 move, except where such notification would endanger the  
73 child or the foster family. This notice shall not be required in  
74 any case where the child is in imminent danger in the child's  
75 current placement. The location of the child need not be  
76 disclosed, but the purpose of the move should be. This  
77 requirement is not waived by placement of the child in a  
78 home or other residence maintained by a private provider.  
79 No notice shall be provided pursuant to this provision to any  
80 parent or parent's attorney whose parental rights have been  
81 terminated pursuant to this article.

82 (f) Nothing in this article precludes any party from  
83 petitioning the court for review of the child's case at any  
84 time. The court shall grant such petition upon a showing that  
85 there is a change in circumstance or needs of the child that  
86 warrants court review.

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CHAPTER 36

**(Com. Sub. for H.B. 2973 - By Stalnaker, Tucker, Amores,  
Manchin, Evans and Anderson)**

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[Passed March 7, 2007; in effect from passage.]  
[Approved by the Governor on March 20, 2007.]

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

*Be it enacted by the Legislature of West Virginia:*

**CLAIMS AGAINST THE STATE.**

**§1. Finding and declaring certain claims against the Department of Administration; Department of Education; Department of Health and Human Resources; Division of Corrections; Division of Forestry; Division of Highways; Division of Motor Vehicles; Division of Natural Resources; Division of Rehabilitation Services; Office of Miners' Health, Safety and Training; Public Service Commission; Regional Jail and Correctional Facility Authority; Supreme Court of Appeals and the West Virginia State Police to be moral obligations of the state and directing payment thereof.**

1 The Legislature has considered the findings of fact and  
2 recommendations reported to it by the Court of Claims  
3 concerning various claims against the state and agencies  
4 thereof and in respect to each of the following claims, the  
5 Legislature adopts those findings of fact as its own and in  
6 respect of certain claims herein, the Legislature has  
7 independently made findings of fact and determinations of  
8 award and hereby declares it to be the moral obligation of the

9 state to pay each such claim in the amount specified below  
 10 and directs the Auditor to issue warrants for the payment  
 11 thereof out of any fund appropriated and available for the  
 12 purpose.

- 13 (a) *Claim against Department of Administration:*  
 14 (TO BE PAID FROM GENERAL REVENUE FUND)  
 15  
 16 (1) AT & T Corporation ..... \$ 481,470.93
  
- 17 (b) *Claims against the Department of Education:*  
 18 (TO BE PAID FROM GENERAL REVENUE FUND)
  
- 19 (1) Citizens Telecommunications Co. Of WV, dba  
 20 Frontier Communications of WV ..... \$136.83
  
- 21 (c) *Claim against the Department of Health and Human Resources:*  
 22 (TO BE PAID FROM SPECIAL REVENUE FUND)
  
- 23 (1) Citizens Telecommunications Co. Of WV, dba  
 24 Frontier Communications of WV ..... \$ 5,011.02
  
- 25 (d) *Claims against the Division of Corrections:*  
 26 (TO BE PAID FROM GENERAL REVENUE FUND)
  
- 27 (1) Citizens Telecommunications Co. Of WV, dba  
 28 Frontier Communications of WV ..... \$ 5,473.36
  
- 29 (2) Public Employees Insurance Agency .... \$ 207,273.95
  
- 30 (e) *Claim against the Division of Forestry:*  
 31 (TO BE PAID FROM GENERAL REVENUE FUND)
  
- 32 (1) Citizens Telecommunications Co. Of WV, dba  
 33 Frontier Communications of WV ..... \$ 299.38
  
- 34 (f) *Claims against the Division of Highways:*  
 35 (TO BE PAID FROM STATE ROAD FUND)
  
- 36 (1) Andrea Acord ..... \$ 109.78  
 37 (2) Carol P. Simmons Alderman ..... \$ 248.49  
 38 (3) Eva Balsar ..... \$57.90  
 39 (4) Beryl Beal ..... \$100.00  
 40 (5) Jeromey Chad Beller ..... \$ 12,500.00  
 41 (6) Diana Bender ..... \$ 800.00  
 42 (7) Linda Bird, as Admin. of the Estates of  
 43 Emzie Sovine and Mildred Sovine ..... \$ 250.00

44	(8) DeWitt Keith Blair	\$ 262.74
45	(9) Cathy R. Brown	\$ 344.74
46	(10) Roger Brown	\$ 327.83
47	(11) Teresa Lynn Brown	\$ 370.00
48	(12) Charles and Connie Browning	\$ 500.00
49	(13) Charles J. and Christina R. Bryant	\$ 1,000.00
50	(14) Lena R. Bryant	\$ 100.00
51	(15) Sharla Kay and Christopher M. Burgy	\$ 500.00
52	(16) Derek J. Clatterbuck	\$ 203.94
53	(17) Benjamin Clevinger	\$ 568.25
54	(18) Jackie L. Sr., and Carol S. Coomer	\$ 500.00
55	(19) Rita L. Cornell	\$ 500.00
56	(20) Tammy Crane	\$ 750.00
57	(21) Philip Dixon	\$ 249.55
58	(22) Diana S. Eggerichs	\$ 101.99
59	(23) Robert Craig and Amanda E. Ferrell	\$ 341.10
60	(24) Trudy L. Forster	\$ 450.23
61	(25) Mary Ann Fox	\$ 100.00
62	(26) Darla Furbee	\$ 1,012.97
63	(27) Gloria June Gallourakis	\$ 500.00
64	(28) Antoine E. Geraud	\$ 165.20
65	(29) Makhoul Ghareeb	\$ 500.00
66	(30) Connie Goins	\$ 437.78
67	(31) Lynn and Alicia Gomez	\$ 272.36
68	(32) Carol A. Green	\$ 574.40
69	(33) Jean Grimes and Alaina Stump	\$ 500.00
70	(34) Tony and Connie Sue Guzman	\$ 296.69
71	(35) Joann and Jerry Hainer	\$ 1,568.23
72	(36) Lucy and Amelia Hiles	\$ 1,949.10
73	(37) Nelson W. Hocking	\$ 500.00
74	(38) Timothy Allen Holstein	\$ 500.00
75	(39) Martha Hoschar	\$ 250.00
76	(40) Lori Hudnall	\$ 500.00
77	(41) Michelle Dawn Hudson	\$ 130.38
78	(42) Jessica L. Hughart Calloway	\$ 334.93
79	(43) Judith L. Jordan and Ora Gay James	\$ 68.90
80	(44) Paul J. Kees	\$ 237.27
81	(45) Teresa J. Kidd	\$ 102.82
82	(46) Janice L. Kingery	\$ 654.11
83	(47) Michael L. Klug	\$ 97.64
84	(48) Doris P. Lane	\$ 209.88
85	(49) Kimberly and Ryan Lantz	\$ 250.00
86	(50) Philip S. Lawrence	\$ 138.21
87	(51) David A. Ledford Jr.	\$ 343.15
88	(52) Kimberly Browning Lester	\$ 569.78
89	(53) Teresa Lien	\$ 496.99
90	(54) Bonnie Lipps	\$ 440.23
91	(55) Lonzo Lovejoy	\$ 500.00

CLAIMS

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92	(56) Warren Lowe Jr. ....	\$ 136.74
93	(57) Dena A. Matthews ....	\$ 500.00
94	(58) Elizabeth McClintock ....	\$ 338.92
95	(59) Wanda L. McGraw ....	\$ 500.00
96	(60) James R. and Roberta J. Meadows ....	\$ 350.00
97	(61) William J. Melton ....	\$ 500.00
98	(62) Dorothy Mercer ....	\$ 29,593.50
99	(63) Eric Merrifield ....	\$ 184.96
100	(64) Marlene Middleton, dba	
101	The Cutting Edge ....	\$ 5,060.88
102	(65) Richard and Melinda Miller ....	\$ 110,000.00
103	(66) Robert L. Napier ....	\$ 422.15
104	(67) Truda Null ....	\$ 13,000.00
105	(68) Jane O'Brien, as Admin. of the Estate	
106	of William Paul O'Brien ....	\$ 50,000.00
107	(69) Panhandle Homes Inc. ....	\$ 325.00
108	(70) John M. Parks ....	\$ 500.00
109	(71) Robert Pearson ....	\$ 135.00
110	(72) Tera Pendleton ....	\$ 200.34
111	(73) Debra J. and Dwight D. Phillips ....	\$ 250.00
112	(74) Charles E. Plybon ....	\$ 65.00
113	(75) Clifford Porter ....	\$ 47.65
114	(76) Donald Ramsey ....	\$ 249.57
115	(77) Michael O. Ray ....	\$ 200.00
116	(78) Roy Rayburn ....	\$ 250.00
117	(79) Mark and Carla Riley ....	\$ 194.65
118	(80) Bobby and Edith Rollins ....	\$ 206.96
119	(81) Terri Roush ....	\$ 250.00
120	(82) James E. Rubenstein ....	\$ 500.00
121	(83) Michael Seabolt ....	\$ 176.72
122	(84) Donnie L. Shaw ....	\$ 2,000.00
123	(85) John Slaughter and Brandon Edwards ....	\$ 105.17
124	(86) Jeremy and Pamela Sloan ....	\$ 144.55
125	(87) Robert C. Small ....	\$ 336.50
126	(88) Daniel and Valerie Smith ....	\$ 500.00
127	(89) Misty Brown Spaulding ....	\$ 373,979.52
128	(90) Marlyn Starcher ....	\$ 285.07
129	(91) Travis W. Tarr ....	\$ 175.11
130	(92) Woodrow W. Vance ....	\$ 441.45
131	(93) Roger Virden ....	\$ 100.00
132	(94) Alex Ward ....	\$ 432.13
133	(95) Kevin A. Wiggins and	
134	Beth Ellen Reaves ....	\$ 500.00
135	(96) Melissa Gail Williams ....	\$ 500.00
136	(97) Kathy L. Williamson ....	\$ 500.00
137	(98) Kathy Wills, Executrix of the	
138	Estate of David Wayne Wills ....	\$ 500.00
139	(99) Rickey A. and Bonnie D. Wright ....	\$ 500.00



140	(g) <i>Claims against the Division of Motor Vehicles:</i>	
141	(TO BE PAID FROM STATE ROAD FUND)	
142	(1) Citizens Telecommunications Co. Of WV, dba	
143	Frontier Communications of WV . . . . .	\$ 3,643.57
144	(2) Rebecca J. Hess . . . . .	\$ 50.00
145	(3) Homer J. Wilson III . . . . .	\$ 155.00
146	(h) <i>Claim against the Division of Natural Resources:</i>	
147	(TO BE PAID FROM SPECIAL REVENUE FUND)	
148	(1) Citizens Telecommunications Co. Of WV, dba	
149	Frontier Communications of WV . . . . .	\$ 1,449.86
150	(i) <i>Claims against the Division of Rehabilitation Services:</i>	
151	(TO BE PAID FROM SPECIAL REVENUE FUND)	
152	(1) Citizens Telecommunications Co. Of WV, dba	
153	Frontier Communications of WV . . . . .	\$ 120.11
154	(2) NDC Health Corporation . . . . .	\$ 10,786.56
155	(j) <i>Claim against the Office of Miners' Health, Safety, and Training:</i>	
156	(TO BE PAID FROM SPECIAL REVENUE FUND)	
157	(1) John W. Cruse . . . . .	\$ 6,045.32
158	(k) <i>Claims against the Public Service Commission:</i>	
159	(TO BE PAID FROM SPECIAL REVENUE FUND)	
160	(1) Audra L. Blackwell . . . . .	\$ 15,412.00
161	(2) Country Inn & Suites . . . . .	\$ 3,325.58
162	(l) <i>Claims against Regional Jail and Correctional Facility Authority:</i>	
163	(TO BE PAID FROM SPECIAL REVENUE FUND)	
164	(1) Delores J. Cain . . . . .	\$ 13.70
165	(2) Phillip Terry Delaney . . . . .	\$ 65.00
166	(3) Fred Maynard . . . . .	\$ 10.00
167	(4) Michelle Pownall . . . . .	\$ 310.00
168	(5) Arretta Jane Walker . . . . .	\$ 2,920.72
169	(m) <i>Claim against the Supreme Court of Appeals:</i>	
170	(TO BE PAID FROM GENERAL REVENUE FUND)	

171 (1) Citizens Telecommunications Co. Of WV, dba  
 172 Frontier Communications of WV ..... \$ 2,553.62

173 (n) *Claim against the WV State Police:*  
 174 (TO BE PAID FROM GENERAL REVENUE FUND)

175 (1) Citizens Telecommunications Co. Of WV, dba  
 176 Frontier Communications of WV ..... \$ 5,695.43

177 The Legislature finds that the above moral  
 178 obligations and the appropriations made in satisfaction  
 179 thereof shall be the full compensation for all claimants and  
 180 that prior to the payments to any claimant provided in this  
 181 bill, the Court of Claims shall receive a release from said  
 182 claimant releasing any and all claims for moral obligations  
 183 arising from the matters considered by the Legislature in the  
 184 finding of the moral obligations and the making of the  
 185 appropriations for said claimant. The Court of Claims shall  
 186 deliver all releases obtained from claimants to the department  
 187 against which the claim was allowed.

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## CHAPTER 37

**(S.B. 484 - By Senators Love, Edgell, Unger and Sypolt)**

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[Passed March 4, 2007; in effect from passage.]  
 [Approved by the Governor on March 19, 2007.]

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AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.

*Be it enacted by the Legislature of West Virginia:*

**CLAIMS AGAINST THE STATE.**

**§1. Finding and declaring certain claims against the Department of Health and Human Resources and Division of Corrections to be moral obligations of the state and directing payments thereof.**

1 The Legislature has heretofore made findings of fact that  
 2 the state has received the benefit of the commodities received  
 3 and/or services rendered by certain claimants herein and has  
 4 considered these claims against the state, and agencies  
 5 thereof, which have arisen due to overexpenditures of the  
 6 departmental appropriations by officers of the state spending  
 7 units, the claims having been previously considered by the  
 8 Court of Claims which also found that the state has received  
 9 the benefit of the commodities received and/or services  
 10 rendered by the claimants, but were denied by the Court of  
 11 Claims on the purely statutory grounds that to allow the  
 12 claims would be condoning illegal acts contrary to the laws  
 13 of the state. The Legislature, pursuant to its findings of fact  
 14 and also by the adoption of the findings of fact by the Court  
 15 of Claims as its own, while not condoning such illegal acts,  
 16 hereby declares it to be the moral obligation of the state to  
 17 pay these claims in the amounts specified below and directs  
 18 the Auditor to issue warrants upon receipt of properly  
 19 executed requisitions supported by itemized invoices,  
 20 statements or other satisfactory documents as required by  
 21 section ten, article three, chapter twelve of the Code of West  
 22 Virginia, one thousand nine hundred thirty-one, as amended,  
 23 for the payments thereof out of any fund appropriated and  
 24 available for the purpose.

25 (a) *Claims against the Department of Health and Human*  
 26 *Resources:*

27 (TO BE PAID FROM GENERAL REVENUE FUND)

- 28 (1) Cunningham-Parker-Johnson  
 29 Funeral Home Inc. . . . . \$ 1,250.00  
 30 (2) Johnson Nichols  
 31 Funeral Home . . . . . \$ 1,250.00

32 (b) *Claims against the Division of Corrections:*

33 (TO BE PAID FROM GENERAL REVENUE FUND)

- 34 (1) AT&T Corporation . . . . . \$ 152.50

35	(2) Beckley Appalachian Regional	
36	Hospital . . . . .	\$ 18,195.50
37	(3) Charleston Area Medical Center Inc. . .	\$ 143,239.95
38	(4) Charleston Cardiology Group PLLC . . . .	\$ 7,591.00
39	(5) Correctional Medical Services . . . . .	\$ 427,130.48
40	(6) Davis Memorial Hospital . . . . .	\$ 36,831.49
41	(7) General Anesthesia Services . . . . .	\$ 1,050.00
42	(8) Monongalia General Hospital . . . . .	\$ 896.00
43	(9) Montgomery General Hospital . . . . .	\$ 44,932.35
44	(10) Select Medical Corporation . . . . .	\$ 165,577.35
45	(11) St. Mary’s Medical Center . . . . .	\$ 6,463.68
46	(12) Tygart Valley Total Care Clinic . . . . .	\$ 1,086.00
47	(13) WVU Medical Corporation . . . . .	\$ 32,660.00
48	(14) WVU Physicians of Charleston . . . . .	\$ 9,962.00
49	(15) West Virginia University	
50	Hospitals . . . . .	\$ 175,872.03



## CHAPTER 38

**(S.B. 511 - By Senator Tomblin, Mr. President, and Plymale)**

[Passed March 10, 2007; in effect ninety days from passage.]  
[Approved by the Governor on March 28, 2007.]

AN ACT to repeal §20-14-10 of the Code of West Virginia, 1931,  
as amended, relating to insurance policies.

*Be it enacted by the Legislature of West Virginia:*

### **ARTICLE 14. HATFIELD-MCCOY REGIONAL RECREATION AUTHORITY.**

#### **§1. Repeal of section relating to insurance policies.**

- 1 Section ten, article fourteen, chapter twenty of the Code of
- 2 West Virginia, 1931, as amended, is hereby repealed.

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CHAPTER 39

**(S.B. 149 - By Senators Prezioso and Kessler)**

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[Passed March 5, 2007; in effect ninety days from passage.]  
[Approved by the Governor on April 2, 2007.]

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AN ACT to repeal §49-7-31 of the Code of West Virginia, 1931, as amended, relating to the establishment of a special account in the Department of Health and Human Resources as the Child Assessment or In-State Placement Fund.

*Be it enacted by the Legislature of West Virginia:*

**§1. Repeal of section relating to establishing a special account in the Department of Health and Human Resources as the Child Assessment or In-State Placement Fund.**

1 Section thirty-one, article seven, chapter forty-nine of the  
2 Code of West Virginia, 1931, as amended, is hereby  
3 repealed.

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CHAPTER 40

**(S.B. 138 - By Senators Kessler, Foster, Green, Jenkins, Minard, Stollings, Wells, White, Barnes, Caruth, Deem, Hall, McKenzie and Yoder)**

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[Passed February 5, 2007; in effect ninety days from passage.]  
[Approved by the Governor on February 20, 2007.]

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AN ACT to repeal §50-3-5 of the Code of West Virginia, 1931, as amended, relating to repealing the requirement that nonresidents secure costs.

*Be it enacted by the Legislature of West Virginia:*

**§1. Repeal of section relating to security bond for costs.**

1 Section five, article three, chapter fifty of the code of  
2 West Virginia, one thousand nine hundred thirty-one, as  
3 amended, is hereby repealed.

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## CHAPTER 41

**(Com. Sub. for H.B. 2575 - By Delegates Hrutkay, Stephens,  
Burdiss, Shook, Pethtel, Ellem, Pino, Proudfoot,  
Schadler and Webster)**

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[Passed March 9, 2007; in effect ninety days from passage.]  
[Approved by the Governor on March 21, 2007.]

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AN ACT to amend and reenact §17E-1-3, §17E-1-6, §17E-1-7, §17E-1-8, §17E-1-13, §17E-1-20 and §17E-1-25 of the Code of West Virginia, 1931, as amended, all relating to commercial driver's licences; updating the definition of hazardous materials; reducing the penalty for driving a commercial motor vehicle without a commercial driver's license in possession; reducing the penalty for driving a commercial motor vehicle without a commercial driver's license or proper endorsement; updating provisions pertaining to commercial driver's licenses to conform with federal law; suspending, revoking or canceling the privilege of operating a motor vehicle for offenses in another state; and providing a civil penalty for persons convicted of violating an out-of-service order.

*Be it enacted by the Legislature of West Virginia:*

That §17E-1-3, §17E-1-6, §17E-1-7, §17E-1-8, §17E-1-13, §17E-1-20 and §17E-1-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.**

§17E-1-3. Definitions.

§17E-1-6. Employer responsibilities.

§17E-1-7. Commercial driver's license required; disqualification for driving without valid license.

§17E-1-8. Exemptions to the commercial driver's license requirements.

§17E-1-13. Disqualification.

§17E-1-20. Reciprocity.

§17E-1-25. Penalties.

**§17E-1-3. Definitions.**

1 Notwithstanding any other provision of this code, the  
2 following definitions apply to this article:

3 (1) "Alcohol" means:

4 (A) Any substance containing any form of alcohol,  
5 including, but not limited to, ethanol, methanol, propanol and  
6 isopropanol;

7 (B) Beer, ale, port or stout and other similar fermented  
8 beverages (including sake or similar products) of any name  
9 or description containing one half of one percent or more of  
10 alcohol by volume, brewed or produced from malt, wholly or  
11 in part, or from any substitute for malt;

12 (C) Distilled spirits or that substance known as ethyl  
13 alcohol, ethanol or spirits of wine in any form (including all  
14 dilutions and mixtures thereof from whatever source or by  
15 whatever process produced); or

16 (D) Wine of not less than one half of one percent of  
17 alcohol by volume.

18 (2) "Alcohol concentration" means:

19 (A) The number of grams of alcohol per one hundred  
20 milliliters of blood;

21 (B) The number of grams of alcohol per two hundred ten  
22 liters of breath; or

23 (C) The number of grams of alcohol per sixty-seven  
24 milliliters of urine.

25 (D) The number of grams of alcohol per eighty-six  
26 milliliters of serum.

27 (3) "At fault traffic accident" means for the purposes of  
28 waiving the road test, a determination, by the official filing  
29 the accident report, of fault as evidenced by an indication of  
30 contributing circumstances in the accident report.

31 (4) "Commercial driver's license" means a license issued  
32 in accordance with the requirements of this article to an  
33 individual which authorizes the individual to drive a class of  
34 commercial motor vehicle.

35 (5) "Commercial driver's license information system" is  
36 the information system established pursuant to the Federal  
37 Commercial Motor Vehicle Safety Act to serve as a  
38 clearinghouse for locating information related to the licensing  
39 and identification of commercial motor vehicle drivers.

40 (6) "Commercial driver instruction permit" means a  
41 permit issued pursuant to subsection (d), section nine of this  
42 article.

43 (7) "Commercial motor vehicle" means a motor vehicle  
44 designed or used to transport passengers or property:

45 (A) If the vehicle has a gross combination vehicle  
46 weight rating of 26,001 pounds or more inclusive of a towed  
47 unit(s) with a gross vehicle weight rating of more than 10,000  
48 pounds;

49

50 (B) If the vehicle has a gross vehicle weight rating of  
51 more than 26,001 pounds or more;

52 (C) If the vehicle is designed to transport sixteen or  
53 more passengers, including the driver; or



54 (D) If the vehicle is of any size transporting hazardous  
55 materials as defined in this section.

56 (8) "Commissioner" means the Commissioner of Motor  
57 Vehicles of this state.

58 (9) "Controlled substance" means any substance  
59 classified under the provisions of chapter sixty-a of this code  
60 (Uniform Controlled Substances Act) and includes all  
61 substances listed on Schedules I through V, inclusive, article  
62 two of said chapter sixty-a, as they are revised. The term  
63 "controlled substance" also has the meaning such term has  
64 under 21 U.S.C. §802.6 and includes all substances listed on  
65 Schedules I through V of 21 C.F.R. §1308 as they may be  
66 amended by the United States Department of Justice.

67 (10) "Conviction" means an unvacated adjudication of  
68 guilt; a determination that a person has violated or failed to  
69 comply with the law in a court of original jurisdiction or by  
70 an authorized administrative tribunal or proceeding; an  
71 unvacated forfeiture of bail or collateral deposited to secure  
72 the persons appearance in court; a plea of guilty or nolo  
73 contendere accepted by the court or the payment of a fine or  
74 court cost, or violation of a condition of release without bail  
75 regardless of whether or not the penalty is rebated,  
76 suspended, or probated.

77 (11) "Division" means the Division of Motor Vehicles.

78 (12) "Disqualification" means any of the following three  
79 actions:

80 (A) The suspension, revocation, or cancellation of a  
81 driver's license by the state or jurisdiction of issuance.

82 (B) Any withdrawal of a person's privilege to drive a  
83 commercial motor vehicle by a state or other jurisdiction as  
84 the result of a violation of state or local law relating to motor  
85 vehicle traffic control other than parking or vehicle weight  
86 except as to violations committed by a special permittee on

87 the coal resource transportation system or vehicle defect  
88 violations.

89 (C) A determination by the Federal Motor Carrier Safety  
90 Administration that a person is not qualified to operate a  
91 commercial motor vehicle under 49 C.F.R. Part §391 (2004).

92 (13) "Drive" means to drive, operate or be in physical  
93 control of a motor vehicle in any place open to the general  
94 public for purposes of vehicular traffic. For the purposes of  
95 sections twelve, thirteen and fourteen of this article, "drive"  
96 includes operation or physical control of a motor vehicle  
97 anywhere in this state.

98 (14) "Driver" means any person who drives, operates or  
99 is in physical control of a commercial motor vehicle, in any  
100 place open to the general public for purposes of vehicular  
101 traffic, or who is required to hold a commercial driver's  
102 license.

103 (15) "Driver's license" means a license issued by a state  
104 to an individual which authorizes the individual to drive a  
105 motor vehicle of a specific class.

106 (16) "Employee" means any operator of a commercial  
107 motor vehicle, including full time, regularly employed  
108 drivers; casual, intermittent, or occasional drivers; leased  
109 drivers and independent, owner-operator contractors (while  
110 in the course of operating a commercial motor vehicle) who  
111 are either directly employed by or under lease to drive a  
112 commercial motor vehicle for an employer.

113 (17) "Employer" means any person, including the United  
114 States, a state or a political subdivision of a state, who owns  
115 or leases a commercial motor vehicle or assigns a person to  
116 drive a commercial motor vehicle.

117 (18) "Endorsement" means an authorization to a person  
118 to operate certain types of commercial motor vehicles.

119 (19) "Farm vehicle" includes a motor vehicle or  
120 combination vehicle registered to the farm owner or entity  
121 operating the farm and used exclusively in the transportation  
122 of agricultural or horticultural products, livestock, poultry  
123 and dairy products from the farm or orchard on which they  
124 are raised or produced to markets, processing plants, packing  
125 houses, canneries, railway shipping points and cold storage  
126 plants and in the transportation of agricultural or horticultural  
127 supplies and machinery to the farms or orchards to be used  
128 on the farms or orchards.

129 (20) "Farmer" includes an owner, tenant, lessee, occupant  
130 or person in control of the premises used substantially for  
131 agricultural or horticultural pursuits who is at least eighteen  
132 years of age with two years' licensed driving experience.

133 (21) "Farmer vehicle driver" means the person employed  
134 and designated by the "farmer" to drive a "farm vehicle" as  
135 long as driving is not his or her sole or principal function on  
136 the farm who is at least eighteen years of age with two years'  
137 licensed driving experience.

138 (22) "Felony" means an offense under state or federal law  
139 that is punishable by death or imprisonment for a term  
140 exceeding one year.

141 (23) "Gross combination weight rating (GCWR)" means  
142 the value specified by the manufacturer as the loaded weight  
143 of a combination (articulated) vehicle. In the absence of a  
144 value specified by the manufacturer, GCWR will be  
145 determined by adding the GVWR of the power unit and the  
146 total weight of the towed unit and any load thereon.

147 (24) "Gross vehicle weight rating (GVWR)" means the  
148 value specified by the manufacturer as the loaded weight of  
149 a single vehicle. In the absence of a value specified by the  
150 manufacturer the GVWR will be determined by the total  
151 weight of the vehicle and any load thereon.

152 (25) "Hazardous materials" means any material that has  
153 been designated as hazardous under 49 U.S.C. §5103 and is

154 required to be placarded under subpart F of 49 C.F.R. Part  
155 §172 or any quantity of a material listed as a select agent or  
156 toxin in 42 C.F.R. Part §73.

157 (26) "Imminent Hazard" means existence of a condition  
158 that presents a substantial likelihood that death, serious  
159 illness, severe personal injury or a substantial endangerment  
160 to health, property or the environment may occur before the  
161 reasonably foreseeable completion date of a formal  
162 proceeding begun to lessen the risk of that death, illness,  
163 injury or endangerment.

164 (27) "Motor vehicle" means every vehicle which is  
165 self-propelled and every vehicle which is propelled by  
166 electric power obtained from overhead trolley wires but not  
167 operated upon rails.

168 (28) "Non-Commercial motor vehicle" means a motor  
169 vehicle or combination of motor vehicles not defined by the  
170 term "commercial motor vehicle".

171 (29) "Out-of-service order" means a temporary  
172 prohibition against driving a commercial motor vehicle as a  
173 result of a determination by a law-enforcement officer, an  
174 authorized enforcement officer of a federal, state, Canadian,  
175 Mexican, county or local jurisdiction including any special  
176 agent of the Federal Motor Carrier Safety Administration  
177 pursuant to 49 C.F.R. §§386.72, 392.5, 395.13, 396.9 or  
178 compatible laws or the North American uniform out-of-  
179 service criteria that an imminent hazard exists.

180 (30) "Violation of an out-of-service order" means:

181 (A) The operation of a commercial motor vehicle during  
182 the period the driver was placed out-of-service; or

183 (B) The operation of a commercial motor vehicle by a  
184 driver after the vehicle was placed out of service and before  
185 the required repairs are made.

186 (31) "School bus" means a commercial motor vehicle  
187 used to transport preprimary, primary, or secondary school  
188 students from home-to-school, from school-to-home, or to  
189 and from school sponsored events. School bus does not  
190 include a bus used as a common carrier.

191 (32) "Serious traffic violation" means conviction for any  
192 of the following offenses when operating a commercial motor  
193 vehicle:

194 (A) Excessive speeding involving any single offense for  
195 any speed of fifteen miles per hour or more above the posted  
196 limits;

197 (B) Reckless driving as defined in section three, article  
198 five, chapter seventeen-c of this code, careless, or negligent  
199 driving, including, but not limited to, the offenses of driving  
200 a commercial motor vehicle in willful or wanton disregard  
201 for the safety of persons or property;

202 (C) Erratic or improper traffic lane changes including,  
203 but not limited to, passing a school bus when prohibited,  
204 improper lane changes and other passing violations;

205 (D) Following the vehicle ahead too closely;

206 (E) Driving a commercial motor vehicle without  
207 obtaining a commercial driver's license;

208 (F) Driving a commercial motor vehicle without a  
209 commercial driver's license in the driver's possession.  
210 However, any person who provides proof to the law-  
211 enforcement agency that issued the citation, by the date the  
212 person must appear in court, or pay any fine for such  
213 violation, that the person held a valid commercial driver's  
214 license on the date the citation was issued, shall not be guilty  
215 of this offense;

216 (G) Driving a commercial motor vehicle without the  
217 proper class of commercial driver's license and/or,

218 endorsements for the specific vehicle group being operated  
219 or for the passengers or type of cargo being transported; or

220 (H) A violation of state or local law relating to motor  
221 vehicle traffic control, other than a parking violation, arising  
222 in connection with a fatal traffic accident.

223 (I) Vehicle defects are excluded as serious traffic  
224 violations, except as to violations committed by a special  
225 permittee on the coal resource transportation road system; or

226 (J) Any other serious violations determined by the United  
227 States Secretary of Transportation.

228 (33) "State" means a state of the United States and the  
229 District of Columbia.

230 (34) "State of Domicile" means the state where a person  
231 has his or her true, fixed and permanent home and principle  
232 residence and to which he or she has the intention of  
233 returning whenever absent in accordance with chapter  
234 seventeen-a, article three, section one-a.

235 (35) "Suspension, revocation or cancellation" of a  
236 driver's license, or a commercial driver's license means the  
237 privilege to operate any type of motor vehicle on the roads  
238 and highways of this state is withdrawn.

239 (36) "Tank vehicle" means any commercial motor vehicle  
240 that is designed to transport any liquid or gaseous materials  
241 within a tank that is either permanently or temporarily  
242 attached to the vehicle or the chassis. These vehicles include,  
243 but are not limited to, cargo tanks and portable tanks, as  
244 defined in 49 C. F. R. Part 171 (1998). However, this  
245 definition does not include portable tanks having a rated  
246 capacity under one thousand gallons.

247 (37) "Transportation Security Administration" means the  
248 United States Department of Homeland Security  
249 Transportation Security Administration.

250 (38) "United States" means the fifty states and the  
251 District of Columbia.

252 (39) "Vehicle Group" means a class or type of vehicle  
253 with certain operating characteristics.

**§17E-1-6. Employer responsibilities.**

1 (a) Each employer must require the applicant to provide  
2 the information specified in section five of this article.

3 (b) No employer may knowingly allow, permit, require  
4 or authorize a driver to drive a commercial motor vehicle  
5 during any period:

6 (1) In which the driver has a driver's license suspended,  
7 revoked or canceled by a state; has lost the privilege to drive  
8 a commercial motor vehicle in a state, or has been  
9 disqualified from driving a commercial motor vehicle; or

10 (2) In which the driver has more than one driver's license  
11 at one time.

12 (3) During any period in which the driver, or the  
13 commercial motor vehicle he or she is driving or the motor  
14 carrier operation, is subject to an out-of-service order; or

15 (4) In violation of federal, state or local law or regulation  
16 pertaining to railroad highway grade crossings; or

17 (5) During any period the driver is in violation of any  
18 provision of 49 C.F.R., Part §382 related to controlled  
19 substances and alcohol use and testing.

20 (c) The division shall impose a civil penalty, in addition  
21 to any penalty required under the provisions of section  
22 twenty-five of this article, on any employer who knowingly  
23 allows, permits, requires or authorizes a driver to drive a  
24 commercial motor vehicle in violation of subdivision (3) or  
25 (4) of subsection (b) of this section.

26 (1) If the conviction is for a violation of subdivision (3)  
27 of subsection (b) of this section, the penalty shall be two  
28 thousand, seven hundred-fifty dollars.

29 (2) If the conviction is for a violation of subdivision (4)  
30 of subsection (b) of this section, the penalty shall be no more  
31 than ten thousand dollars.

**§17E-1-7. Commercial driver's license required; disqualification  
for driving without valid license.**

1 (a) On or after the first day of April, one thousand nine  
2 hundred ninety-two, except when driving under a commercial  
3 driver's instruction permit accompanied by the holder of a  
4 commercial driver's license valid for the vehicle being driven,  
5 no person may drive a commercial motor vehicle unless the  
6 person holds a commercial driver's license and applicable  
7 endorsements valid for the vehicle they are driving.

8 (b) No person may drive a commercial motor vehicle  
9 while their driving privilege is suspended, revoked, canceled,  
10 expired, subject to a disqualification or in violation of an  
11 out-of-service order.

12 (c) Drivers of a commercial motor vehicle shall have a  
13 commercial driver's license in their possession at all times  
14 while driving.

15 (d) The Commissioner shall suspend for a period of sixty  
16 days the driving privileges of any person who is convicted of  
17 operating a commercial motor vehicle:

18 (1) Without holding a valid commercial driver's license  
19 and the applicable endorsements valid for the vehicle he or  
20 she is driving in accordance with subsection (a) of this  
21 section, or

22 (2) For any conviction for operating a commercial motor  
23 vehicle while his or her privilege to operate a motor vehicle  
24 were suspended, revoked, canceled or while disqualified



25 from operating a commercial motor vehicle in accordance  
26 with subsection (b) of this section.

27 (e) Any person not holding a commercial driver's license  
28 who is convicted of an offense that requires disqualification  
29 from operating a commercial motor vehicle shall also be  
30 disqualified from eligibility for a commercial driver's license  
31 for the same time periods as prescribed in federal law or rule  
32 or section thirteen of this article for commercial driver's  
33 license holders.

**§17E-1-8. Exemptions to the commercial driver's license requirements.**

1 (a) Bona fide farmers or farm vehicle drivers, as defined,  
2 operating a vehicle otherwise covered by the commercial  
3 driver's license requirements may be exempted from the  
4 provisions of this article only if the vehicle used is:

5 (1) Driven by a farmer or farm vehicle driver;

6 (2) Used only to transport either agricultural products,  
7 farm machinery, farm supplies, to or from a farm;

8 (3) Not used in the operation of a common or contract  
9 motor carrier; and

10 (4) Used within one hundred fifty miles of the qualifying  
11 farm. Farmers who wish to be exempted from the commercial  
12 driver's license requirements must apply to the Division of  
13 Motor Vehicles for a certificate of exemption.

14  
15 (b) Active duty military personnel operating vehicles  
16 being used for military purposes are exempted from the  
17 provisions of this article in accordance with the provisions of  
18 49 CFR §383.3 (c)(2006).

19 (c) Fire fighting and rescue equipment. Operators of  
20 vehicles authorized to hold an "authorized emergency vehicle  
21 permit" for use of red signal lights only are exempt from the  
22 provisions of this article while the "authorized emergency

23 vehicle permit" is in force. Vehicles in this class include, but  
24 are not limited to, firefighters and rescue equipment:

25 (1) Owned and operated by state, county and municipal  
26 fire departments;

27 (2) Owned and operated by state, county and municipal  
28 civil defense organizations;

29 (3) Owned and operated by a manufacturer engaged in a  
30 type of business that requires firefighter equipment to protect  
31 the safety of their plants and its employees; or

32 (4) Owned and operated by volunteer fire departments.

33 (d) Operators of off-road construction and mining  
34 equipment. Operators of equipment which, by its design,  
35 appearance and function, is not intended for use on a public  
36 road, including, without limitation, motorscrapers, backhoes,  
37 motorgraders, compactors, excavators, tractors, trenches and  
38 bulldozers, are exempt from the provisions of this article:  
39 *Provided*, That the exemption recognized by this subsection  
40 shall not be construed to permit the operation of such  
41 equipment on any public road except such operation as may  
42 be required for a crossing of such road: *Provided, however*,  
43 That no such equipment may be operated on a public road for  
44 a distance exceeding five hundred feet from the place where  
45 such equipment entered upon the public road.

46 (e) The Federal Motor Carrier Safety Improvement Act  
47 of 1999 exempts vehicles used exclusively for personal use  
48 such as recreation vehicles and rental trucks used only to  
49 transport the driver's personal or household property.

#### **§17E-1-13. Disqualification.**

1 (a) A person shall not operate a commercial motor  
2 vehicle if his or her privilege to operate a commercial motor  
3 vehicle is disqualified under the provisions of the Federal  
4 Motor Carrier Safety Improvement Act of 1999 (public law

5 106-159 §1748), 49 C.F.R. Part §383, Subpart D (2004) or in  
6 accordance with the provisions of this section.

7 (1) For the purposes of determining first and subsequent  
8 violations of the offenses listed in this section, each  
9 conviction for any offense listed in this section resulting from  
10 a separate incident shall include convictions for offenses  
11 committed in a commercial motor vehicle or a  
12 noncommercial motor vehicle.

13 (2) Any person disqualified from operating a commercial  
14 motor vehicle for life under the provisions of this chapter for  
15 offenses described in subsection (b), subdivisions (1) through  
16 (8) of this section is eligible for reinstatement of privileges to  
17 operate a commercial motor vehicle after ten years and after  
18 completion of the safety and treatment program or other  
19 appropriate program prescribed by the Division. Any person  
20 whose lifetime disqualification has been amended under the  
21 provisions of this subdivision and who is subsequently  
22 convicted of a disqualifying offense described in subsection  
23 (b), subdivisions (1) through (8) of this section shall not be  
24 eligible for reinstatement.

25 (3) Any disqualification imposed by this section shall be  
26 in addition to any action to suspend, revoke or cancel the  
27 driver's license or driving privileges if suspension, revocation  
28 or cancellation is required under another provision of this  
29 code.

30 (4) The provisions of this section apply to any person  
31 operating a commercial motor vehicle and to any person  
32 holding a commercial driver's license.

33 (b) Any person is disqualified from driving a commercial  
34 motor vehicle for the following offenses and time periods if  
35 convicted of:

36 (1) Driving a motor vehicle under the influence of  
37 alcohol or a controlled substance;

38 (A) For a first conviction or for refusal to submit to any  
39 designated secondary chemical test while operating a  
40 commercial motor vehicle, a driver shall be disqualified from  
41 operating a commercial motor vehicle for a period of one  
42 year.

43 (B) For a first conviction or for refusal to submit to any  
44 designated secondary chemical test while operating a  
45 noncommercial motor vehicle, a commercial driver's license  
46 holder shall be disqualified from operating a commercial  
47 motor vehicle for a period of one year.

48 (C) For a first conviction or for refusal to submit to any  
49 designated secondary chemical test while operating a  
50 commercial motor vehicle transporting hazardous materials  
51 required to be placarded under 49 C.F.R. Part §172, Subpart  
52 F, a driver shall be disqualified from operating a commercial  
53 motor vehicle for a period of three years.

54 (D) For a second conviction or for refusal to submit to  
55 any designated secondary chemical test in a separate incident  
56 of any combination of offenses in this subsection while  
57 operating a commercial motor vehicle, a driver shall be  
58 disqualified from operating a commercial motor vehicle for  
59 life.

60 (E) For a second conviction or refusal to submit to any  
61 designated secondary chemical test in a separate incident of  
62 any combination of offenses in this subsection while  
63 operating a noncommercial motor vehicle, a commercial  
64 motor vehicle license holder shall be disqualified from  
65 operating a commercial motor vehicle for life.

66 (2) Driving a commercial motor vehicle while the  
67 person's alcohol concentration of the person's blood, breath  
68 or urine is four hundredths of one percent or more, by weight;

69 (A) For a first conviction or for refusal to submit to any  
70 designated secondary chemical test while operating a  
71 commercial motor vehicle, a driver shall be disqualified from  
72 operating a commercial motor vehicle for one year.

73 (B) For a first conviction or for refusal to submit to any  
74 designated secondary chemical test while operating a  
75 commercial motor vehicle transporting hazardous materials  
76 required to be placarded under 49 C.F.R. Part §172, Subpart  
77 F, a driver shall be disqualified from operating a commercial  
78 motor vehicle for three years.

79 (C) For a second conviction or refusal to submit to any  
80 designated secondary chemical test in a separate incident of  
81 any combination of offenses in this subsection while  
82 operating a commercial motor vehicle, a driver shall be  
83 disqualified from operating a commercial motor vehicle for  
84 life.

85 (3) Refusing to submit to any designated secondary  
86 chemical test required by the provisions of this code or the  
87 provisions of 49 C.F.R. §383.72 (2004);

88 (A) For the first conviction or refusal to submit to any  
89 designated secondary chemical test while operating a  
90 commercial motor vehicle, a driver shall be disqualified from  
91 operating a commercial motor vehicle for one year.

92 (B) For the first conviction or refusal to submit to any  
93 designated secondary chemical test while operating a  
94 noncommercial motor vehicle, a commercial driver's license  
95 holder shall be disqualified from operating a commercial  
96 motor vehicle for one year.

97 (C) For the first conviction or for refusal to submit to any  
98 designated secondary chemical test while operating a  
99 commercial motor vehicle transporting hazardous materials  
100 required to be placarded under 49 C.F.R. Part §172, Subpart  
101 F (2004), a driver shall be disqualified from operating a  
102 commercial motor vehicle for a period of three years.

103 (D) For a second conviction or refusal to submit to any  
104 designated secondary chemical test in a separate incident of  
105 any combination of offenses in this subsection while  
106 operating a commercial motor vehicle, a driver shall be

107 disqualified from operating a commercial motor vehicle for  
108 life.

109 (E) For a second conviction or refusal to submit to any  
110 designated secondary chemical test in a separate incident of  
111 any combination of offenses in this subsection while  
112 operating a noncommercial motor vehicle, a commercial  
113 driver's license holder shall be disqualified from operating a  
114 commercial motor vehicle for life.

115 (4) Leaving the scene of an accident;

116 (A) For the first conviction while operating a commercial  
117 motor vehicle, a driver shall be disqualified from operating  
118 a commercial motor vehicle for one year.

119 (B) For the first conviction while operating a  
120 noncommercial motor vehicle, a commercial driver's license  
121 holder shall be disqualified for one year.

122 (C) For the first conviction while operating a commercial  
123 motor vehicle transporting hazardous materials required to be  
124 placarded under 49 C.F.R. Part §172, Subpart F (2004), a  
125 driver shall be disqualified from operating a commercial  
126 motor vehicle for a period of three years.

127 (D) For a second conviction in a separate incident of any  
128 combination of offenses in this subsection while operating a  
129 commercial motor vehicle, a driver shall be disqualified from  
130 operating a commercial motor vehicle for life.

131 (E) For a second conviction in a separate incident of any  
132 combination of offenses in this subsection while operating a  
133 noncommercial motor vehicle, a commercial driver's license  
134 holder shall be disqualified from operating a commercial  
135 motor vehicle for life.

136 (5) Using a motor vehicle in the commission of any  
137 felony as defined in section three, article one of this chapter:  
138 *Provided*, That the commission of any felony involving the  
139 manufacture, distribution or dispensing of a controlled

140 substance, or possession with intent to manufacture,  
141 distribute or dispense a controlled substance falls under the  
142 provisions of subdivision (8) of this subsection;

143 (A) For the first conviction while operating a commercial  
144 motor vehicle, a driver shall be disqualified from operating  
145 a commercial motor vehicle for one year.

146 (B) For the first conviction while operating a  
147 noncommercial motor vehicle, a commercial driver's license  
148 holder shall be disqualified from operating a commercial  
149 motor vehicle for one year.

150 (C) For the first conviction while operating a commercial  
151 motor vehicle transporting hazardous materials required to be  
152 placarded under 49 C.F.R. Part §172, Subpart F,(2004), a  
153 driver shall be disqualified from operating a commercial  
154 motor vehicle for a period of three years.

155 (D) For a second conviction in a separate incident of any  
156 combination of offenses in this subsection while operating a  
157 commercial motor vehicle, a driver shall be disqualified from  
158 operating a commercial motor vehicle for life.

159 (E) For a second conviction in a separate incident of any  
160 combination of offenses in this subsection while operating a  
161 noncommercial motor vehicle, a commercial motor vehicle  
162 license holder shall be disqualified from operating a  
163 commercial motor vehicle for life.

164 (6) Operating a commercial motor vehicle when, as a  
165 result of prior violations committed operating a commercial  
166 motor vehicle, the driver's privilege to operate a motor  
167 vehicle has been suspended, revoked or canceled, or the  
168 driver's privilege to operate a commercial motor vehicle has  
169 been disqualified.

170 (A) For the first conviction while operating a commercial  
171 motor vehicle, a driver shall be disqualified from operating  
172 a commercial motor vehicle for one year.

173 (B) For the first conviction while operating a commercial  
174 motor vehicle transporting hazardous materials required to be  
175 placarded under 49 C.F.R. Part §172, Subpart F,(2004), a  
176 driver shall be disqualified from operating a commercial  
177 motor vehicle for a period of three years.

178 (C) For a second conviction in a separate incident of any  
179 combination of offenses in this subsection while operating a  
180 commercial motor vehicle, a driver shall be disqualified from  
181 operating a commercial motor vehicle for life.

182 (7) Causing a fatality through the negligent operation of  
183 a commercial motor vehicle, including, but not limited to, the  
184 crimes of motor vehicle manslaughter, homicide and  
185 negligent homicide as defined in section five, article three,  
186 chapter seventeen-b, and section one, article five, chapter  
187 seventeen-c of this code;

188 (A) For the first conviction while operating a commercial  
189 motor vehicle, a driver shall be disqualified from operating  
190 a commercial motor vehicle for one year.

191 (B) For the first conviction while operating a commercial  
192 motor vehicle transporting hazardous materials required to be  
193 placarded under 49 C.F.R. Part §172, Subpart F,(2004), a  
194 driver shall be disqualified from operating a commercial  
195 motor vehicle for a period of three years.

196 (C) For a second conviction in a separate incident of any  
197 combination of offenses in this subsection while operating a  
198 commercial motor vehicle, a driver shall be disqualified from  
199 operating a commercial motor vehicle for life.

200 (8) Using a motor vehicle in the commission of any  
201 felony involving the manufacture, distribution or dispensing  
202 of a controlled substance, or possession with intent to  
203 manufacture, distribute or dispense a controlled substance, a  
204 driver shall be disqualified from operating a commercial  
205 motor vehicle for life and shall not be eligible for  
206 reinstatement.



207 (c) Any person is disqualified from driving a commercial  
208 motor vehicle if convicted of;

209 (1) Speeding excessively involving any speed of fifteen  
210 miles per hour or more above the posted speed limit;

211 (A) For a second conviction of any combination of  
212 offenses in this subsection in a separate incident within a  
213 three-year period while operating a commercial motor  
214 vehicle, a driver shall be disqualified from operating a  
215 commercial motor vehicle for a period of sixty days.

216 (B) For a second conviction of any combination of  
217 offenses in this section in a separate incident within a three-  
218 year period while operating a noncommercial motor vehicle,  
219 if the conviction results in the suspension, revocation or  
220 cancellation of the commercial driver's license holder's  
221 privilege to operate any motor vehicle, a commercial driver's  
222 license holder shall be disqualified from operating a  
223 commercial motor vehicle for a period of sixty days.

224 (C) For a third or subsequent conviction of any  
225 combination of the offenses in this subsection in a separate  
226 incident in a three-year period while operating a commercial  
227 motor vehicle, a driver shall be disqualified from operating  
228 a commercial motor vehicle for a period of one hundred  
229 twenty days.

230 (D) For a third or subsequent conviction of any  
231 combination of offenses in this subsection in a separate  
232 incident within a three-year period while operating a  
233 noncommercial motor vehicle, if the conviction results in the  
234 suspension, revocation or cancellation of the commercial  
235 driver's license holder's privilege to operate any motor  
236 vehicle, a commercial driver's license holder shall be  
237 disqualified from operating a commercial motor vehicle for  
238 a period of one hundred twenty days.

239 (2) Reckless driving as defined in section three, article  
240 five, chapter seventeen-c of this code, careless, or negligent  
241 driving including, but not limited to, the offenses of driving

242 a motor vehicle in willful or wanton disregard for the safety  
243 of persons or property;

244 (A) For a second conviction of any combination of  
245 offenses in this subsection in a separate incident within a  
246 three-year period while operating a commercial motor  
247 vehicle, a driver shall be disqualified from operating a  
248 commercial motor vehicle for a period of sixty days.

249 (B) For a second conviction of any combination of  
250 offenses in this section in a separate incident within a three-  
251 year period while operating a noncommercial motor vehicle,  
252 if the conviction results in the suspension, revocation, or  
253 cancellation of the commercial driver's license holder's  
254 privilege to operate any motor vehicle, a commercial driver's  
255 license holder shall be disqualified from operating a  
256 commercial motor vehicle for a period of sixty days.

257 (C) For a third or subsequent conviction of any  
258 combination of the offenses in this subsection in a separate  
259 incident in a three-year period while operating a commercial  
260 motor vehicle, a driver shall be disqualified from operating  
261 a commercial motor vehicle for a period of one hundred  
262 twenty days.

263 (D) For a third or subsequent conviction of any  
264 combination of offenses in this subsection in a separate  
265 incident within a three-year period while operating a  
266 noncommercial motor vehicle, if the conviction results in the  
267 suspension, revocation or cancellation of the commercial  
268 driver's license holder's privilege to operate any motor  
269 vehicle, a commercial driver's license holder shall be  
270 disqualified from operating a commercial motor vehicle for  
271 a period of one hundred twenty days.

272 (3) Making improper or erratic traffic lane changes;

273 (A) For a second conviction of any combination of  
274 offenses in this subsection in a separate incident within a  
275 three-year period while operating a commercial motor

276 vehicle, a driver shall be disqualified from operating a  
277 commercial motor vehicle for a period of sixty days.

278 (B) For a second conviction of any combination of  
279 offenses in this section in a separate incident within a three-  
280 year period while operating a noncommercial motor vehicle,  
281 if the conviction results in the suspension, revocation, or  
282 cancellation of the commercial driver's license holder's  
283 privilege to operate any motor vehicle, a commercial driver's  
284 license holder shall be disqualified from operating a  
285 commercial motor vehicle for a period of sixty days.

286 (C) For a third or subsequent conviction of any  
287 combination of the offenses in this subsection in a separate  
288 incident in a three-year period while operating a commercial  
289 motor vehicle, a driver shall be disqualified from operating  
290 a commercial motor vehicle for a period of one hundred  
291 twenty days.

292 (D) For a third or subsequent conviction of any  
293 combination of offenses in this subsection in a separate  
294 incident within a three-year period while operating a  
295 noncommercial motor vehicle, if the conviction results in the  
296 suspension, revocation or cancellation of the commercial  
297 driver's license holder's privilege to operate any motor  
298 vehicle, a commercial driver's license holder shall be  
299 disqualified from operating a commercial motor vehicle for  
300 a period of one hundred twenty days.

301 (4) Following the vehicle ahead too closely;

302 (A) For a second conviction of any combination of  
303 offenses in this subsection in a separate incident within a  
304 three-year period while operating a commercial motor  
305 vehicle, a driver shall be disqualified from operating a  
306 commercial motor vehicle for a period of sixty days.

307 (B) For a second conviction of any combination of  
308 offenses in this section in a separate incident within a three-  
309 year period while operating a noncommercial motor vehicle,  
310 if the conviction results in the suspension, revocation, or

311 cancellation of the commercial driver's license holder's  
312 privilege to operate any motor vehicle, a commercial driver's  
313 license holder shall be disqualified from operating a  
314 commercial motor vehicle for a period of sixty days.

315 (C) For a third or subsequent conviction of any  
316 combination of the offenses in this subsection in a separate  
317 incident in a three-year period while operating a commercial  
318 motor vehicle, a driver shall be disqualified from operating  
319 a commercial motor vehicle for a period of one hundred  
320 twenty days.

321 (D) For a third or subsequent conviction of any  
322 combination of offenses in this subsection in a separate  
323 incident within a three-year period while operating a  
324 noncommercial motor vehicle, if the conviction results in the  
325 suspension, revocation or cancellation of the commercial  
326 driver's license holder's privilege to operate any motor  
327 vehicle, a commercial driver's license holder shall be  
328 disqualified from operating a commercial motor vehicle for  
329 a period of one hundred twenty days.

330 (5) Violating any law relating to traffic control arising in  
331 connection with a fatal accident, other than a parking  
332 violation;

333 (A) For a second conviction of any combination of  
334 offenses in this subsection in a separate incident within a  
335 three-year period while operating a commercial motor  
336 vehicle, a driver shall be disqualified from operating a  
337 commercial motor vehicle for a period of sixty days.

338 (B) For a second conviction of any combination of  
339 offenses in this section in a separate incident within a three-  
340 year period while operating a noncommercial motor vehicle,  
341 if the conviction results in the suspension, revocation, or  
342 cancellation of the commercial driver's license holder's  
343 privilege to operate any motor vehicle, a commercial driver's  
344 license holder shall be disqualified from operating a  
345 commercial motor vehicle for a period of sixty days.

346 (C) For a third or subsequent conviction of any  
347 combination of the offenses in this subsection in a separate  
348 incident in a three-year period while operating a commercial  
349 motor vehicle, a driver shall be disqualified from operating  
350 a commercial motor vehicle for a period of one hundred  
351 twenty days.

352 (D) For a third or subsequent conviction of any  
353 combination of offenses in this subsection in a separate  
354 incident within a three-year period while operating a  
355 noncommercial motor vehicle, if the conviction results in the  
356 suspension, revocation or cancellation of the commercial  
357 driver's license holder's privilege to operate any motor  
358 vehicle, a commercial motor vehicle license holder shall be  
359 disqualified from operating a commercial motor vehicle for  
360 a period of one hundred twenty days.

361 (6) Driving a commercial motor vehicle without  
362 obtaining a commercial driver's license;

363 (A) For a second conviction of any combination of  
364 offenses in this subsection in a separate incident within a  
365 three-year period while operating a commercial motor  
366 vehicle, a driver shall be disqualified from operating a  
367 commercial motor vehicle for a period of sixty days.

368 (B) For a third or subsequent conviction of any  
369 combination of the offenses in this subsection in a separate  
370 incident in a three-year period while operating a commercial  
371 motor vehicle, a driver shall be disqualified from operating  
372 a commercial motor vehicle for a period of one hundred  
373 twenty days.

374 (7) Driving a commercial motor vehicle without a  
375 commercial driver's license in the driver's possession,  
376 provided that any person who provides proof of possession  
377 of a commercial driver's license to the enforcement agency

378 that issued the citation, by the court appearance or fine  
379 payment deadline shall not be guilty of this offense;

380 (A) For a second conviction of any combination of  
381 offenses in this subsection in a separate incident within a  
382 three-year period while operating a commercial motor  
383 vehicle, a commercial driver's license holder shall be  
384 disqualified from operating a commercial motor vehicle for  
385 a period of sixty days.

386 (B) For a third or subsequent conviction of any  
387 combination of the offenses in this subsection in a separate  
388 incident in a three-year period while operating a commercial  
389 motor vehicle, a commercial driver's license holder shall be  
390 disqualified from operating a commercial motor vehicle for  
391 a period of one hundred twenty days.

392 (8) Driving a commercial motor vehicle without the  
393 proper class of commercial driver's license or the proper  
394 endorsements for the specific vehicle group being operated,  
395 or for the passengers or type of cargo being transported;

396 (A) For a second conviction of any combination of  
397 offenses in this subsection in a separate incident within a  
398 three-year period while operating a commercial motor  
399 vehicle, a commercial driver's license holder shall be  
400 disqualified from operating a commercial motor vehicle for  
401 a period of sixty days.

402 (B) For a third or subsequent conviction of any  
403 combination of the offenses in this subsection in a separate  
404 incident in a three-year period while operating a commercial  
405 motor vehicle, a commercial driver's license holder shall be  
406 disqualified from operating a commercial motor vehicle for  
407 a period of one hundred twenty days.

408 (d) Any person convicted of operating a commercial  
409 motor vehicle in violation of any federal, state or local law or  
410 ordinance pertaining to any of the railroad crossing violations  
411 described in subdivisions (1) through (6) of this subsection  
412 shall be disqualified from operating a commercial motor  
413 vehicle for the period of time specified;

414 (1) Failing to slow down and check that the tracks are  
415 clear of an approaching train, if not required to stop in  
416 accordance with the provisions of section three, article  
417 twelve, chapter seventeen-c of this code;

418 (A) For the first conviction, a driver shall be disqualified  
419 from operating a commercial motor vehicle for a period of  
420 sixty days;

421 (B) For a second conviction of any combination of  
422 offenses in this subsection within a three-year period, a driver  
423 shall be disqualified from operating a commercial motor  
424 vehicle for one hundred twenty days; and

425 (C) For a third or subsequent conviction of any  
426 combination of offenses in this subsection within a three-year  
427 period, a driver shall be disqualified from operating a  
428 commercial motor vehicle for one year.

429 (2) Failing to stop before reaching the crossing, if the  
430 tracks are not clear, if not required to stop, in accordance  
431 with the provisions of section one, article twelve, chapter  
432 seventeen-c of this code;

433 (A) For the first conviction, a driver shall be disqualified  
434 from operating a commercial motor vehicle for a period of  
435 sixty days;

436 (B) For a second conviction of any combination of  
437 offenses in this subsection within a three-year period, a driver

438 shall be disqualified from operating a commercial motor  
439 vehicle for one hundred twenty days; and

440 (C) For a third or subsequent conviction of any  
441 combination of offenses in this subsection within a three-year  
442 period, a driver shall be disqualified from operating a  
443 commercial motor vehicle for one year.

444 (3) Failing to stop before driving onto the crossing, if  
445 required to stop in accordance with the provisions of section  
446 three, article twelve, chapter seventeen-c of this code;

447 (A) For the first conviction, a driver shall be disqualified  
448 from operating a commercial motor vehicle for a period of  
449 sixty days;

450 (B) For a second conviction of any combination of  
451 offenses in this subsection within a three-year period, the  
452 driver shall be disqualified from operating a commercial  
453 motor vehicle for one hundred twenty days; and

454 (C) For a third or subsequent conviction of any  
455 combination of offenses in this subsection within a three-year  
456 period, a driver shall be disqualified from operating a  
457 commercial motor vehicle for one year.

458 (4) Failing to have sufficient space to drive completely  
459 through the crossing without stopping in accordance with the  
460 provisions of section three, article twelve, chapter  
461 seventeen-c of this code;

462 (A) For the first conviction, a driver shall be disqualified  
463 from operating a commercial motor vehicle for a period of  
464 sixty days;

465 (B) For a second conviction of any combination of  
466 offenses in this subsection within a three-year period, a driver



467 shall be disqualified from operating a commercial motor  
468 vehicle for one hundred twenty days; and

469 (C) For a third or subsequent conviction of any  
470 combination of offenses in this subsection within a three-year  
471 period, a driver shall be disqualified from operating a  
472 commercial motor vehicle for one year.

473 (5) Failing to obey a traffic control device or the  
474 directions of an enforcement official at the crossing in  
475 accordance with the provisions of section one, article twelve,  
476 chapter seventeen-c of this code; or

477 (A) For the first conviction, a driver shall be disqualified  
478 from operating a commercial motor vehicle for a period of  
479 sixty days;

480 (B) For a second conviction of any combination of  
481 offenses in this subsection within a three-year period, a driver  
482 shall be disqualified from operating a commercial motor  
483 vehicle for one hundred twenty days; and

484 (C) For a third or subsequent conviction of any  
485 combination of offenses in this subsection within a three-year  
486 period, a driver shall be disqualified from operating a  
487 commercial motor vehicle for one year.

488 (6) Failing to negotiate a crossing because of insufficient  
489 undercarriage clearance in accordance with the provisions of  
490 section three, article twelve, chapter seventeen-c of this code.

491 (A) For the first conviction, a driver shall be disqualified  
492 from operating a commercial motor vehicle for a period of  
493 sixty days;

494 (B) For a second conviction of any combination of  
495 offenses in this subsection within a three-year period, a driver

496 shall be disqualified from operating a commercial motor  
497 vehicle for one hundred twenty days; and

498 (C) For a third or subsequent conviction of any  
499 combination of offenses in this subsection within a three-year  
500 period, a driver shall be disqualified from operating a  
501 commercial motor vehicle for one year.

502 (e) Any person who is convicted of violating an out-of-  
503 service order while operating a commercial motor vehicle  
504 shall be disqualified for the following periods of time if:

505 (1) Convicted of violating a driver or vehicle out-of-  
506 service order while transporting nonhazardous materials;

507 (A) For the first conviction of violating an out-of-service  
508 order while operating a commercial motor vehicle, a driver  
509 shall be disqualified from operating a commercial motor  
510 vehicle for ninety days.

511 (B) For a second conviction in a separate incident within  
512 a ten-year period for violating an out of service order while  
513 operating a commercial motor vehicle, a driver shall be  
514 disqualified from operating a commercial motor vehicle for  
515 one year.

516 (C) For a third or subsequent conviction in a separate  
517 incident within a ten-year period for violating an out-of-  
518 service order while operating a commercial motor vehicle, a  
519 driver shall be disqualified from operating a commercial  
520 motor vehicle for three years.

521 (2) Convicted of violating a driver or vehicle out-of-  
522 service order while transporting hazardous materials required  
523 to be placarded under 49 C.F.R. Part §172, Subpart F (2004),  
524 or while operating a vehicle designed to transport sixteen or  
525 more passengers including the driver;

526 (A) For the first conviction of violating an out of service  
527 order while operating a commercial motor vehicle, a driver  
528 shall be disqualified from operating a commercial motor  
529 vehicle for one-hundred eighty days.

530 (B) For a second conviction in a separate incident within  
531 a ten-year period for violating an out-of-service order while  
532 operating a commercial motor vehicle, a driver shall be  
533 disqualified from operating a commercial motor vehicle for  
534 three years.

535 (C) For a third or subsequent conviction in a separate  
536 incident within a ten-year period for violating an out-of-  
537 service order while operating a commercial motor vehicle, a  
538 driver shall be disqualified from operating a commercial  
539 motor vehicle for three years.

540 (f) After disqualifying, suspending, revoking or canceling  
541 a commercial driver's license, the division shall update its  
542 records to reflect that action within ten days.

543 (g) In accordance with the provisions of 49 U.S.C.  
544 §313119(a)(19)(2004), and 49 C.F.R §384.226 (2004), and  
545 notwithstanding the provisions of section twenty-five, article  
546 eleven, chapter sixty-one of this code, no record of  
547 conviction, revocation, suspension or disqualification related  
548 to any type of motor vehicle traffic control offense, other  
549 than a parking violation, of a commercial driver's license  
550 holder or a person operating a commercial motor vehicle may  
551 be masked, expunged, deferred, or be subject to any diversion  
552 program.

553 (h) Notwithstanding any provision in this code to the  
554 contrary, the Division shall not issue any temporary driving  
555 permit, work-only driving permit or hardship license or  
556 permit that authorizes a person to operate a commercial  
557 motor vehicle when his or her privilege to operate any motor

558 vehicle has been revoked, suspended, disqualified or  
559 otherwise canceled for any reason.

560 (i) In accordance with the provisions of 49 C.F.R.  
561 §391.15(b), a driver is disqualified from operating a  
562 commercial motor vehicle for the duration of any suspension,  
563 revocation or cancellation of his or her driver's license or  
564 privilege to operate a motor vehicle by this state or by any  
565 other state or jurisdiction until the driver complies with the  
566 terms and conditions for reinstatement set by this state or by  
567 another state or jurisdiction.

568 (j) In accordance with the provisions of 49 C. F. R.  
569 353.52 (2006), the division shall immediately disqualify a  
570 driver's privilege to operate a commercial motor vehicle  
571 upon a notice from the Assistant Administrator of the Federal  
572 Motor Carrier Safety Administration that the driver poses an  
573 imminent hazard. Any disqualification period imposed under  
574 the provisions of this subsection shall be served concurrently  
575 with any other period of disqualification if applicable.

#### **§ 17E-1-20. Reciprocity.**

1 (a) Notwithstanding any law to the contrary, a person  
2 may drive a commercial motor vehicle if the person has a  
3 commercial driver's license by any state in accordance with  
4 the minimum federal standards for the issuance of  
5 commercial motor vehicle driver licenses; if the license is not  
6 suspended, revoked or canceled; and if the person is not  
7 disqualified from driving a commercial motor vehicle, or  
8 subject to an "out-of-service" order.

9 (b) The Commissioner is authorized to suspend, revoke  
10 or cancel the privilege to operate a motor vehicle or  
11 disqualify the privilege to operate a commercial motor  
12 vehicle of any resident of this State or of a nonresident upon  
13 receiving notice of the conviction of such person in another

14 state of an offense therein which, if committed in this State,  
15 would be grounds for the suspension, revocation or  
16 cancellation of the privilege to operate a motor vehicle or the  
17 disqualification of the privilege to operate a commercial  
18 motor vehicle.

**§ 17E-1-25. Penalties.**

1 (a) It is a misdemeanor for any person to violate any of  
2 the provisions of this chapter unless such violation is by this  
3 chapter or other law of this state, declared to be a felony.

4 (b) Unless another penalty is provided in this chapter or  
5 by the laws of this state, every person convicted of a  
6 misdemeanor for the violation of any provisions of this  
7 chapter shall be fined not less than one hundred dollars nor  
8 more than one thousand dollars, or imprisoned for not more  
9 than six months in the county jail, or both fined and  
10 imprisoned, except that for the second violation of section  
11 seven of this article and, upon conviction thereof, the  
12 offender shall be fined not less than five hundred dollars nor  
13 more than two thousand dollars or imprisoned for not less  
14 than six months nor more than nine months in the county jail,  
15 or both fined and imprisoned. For the third or any subsequent  
16 conviction for violation of section seven of this article, upon  
17 conviction thereof, the offender shall be fined not less than  
18 one thousand dollars nor more than two thousand five  
19 hundred dollars, or imprisoned for not less than nine months  
20 nor more than one year in the county jail, or both fined and  
21 imprisoned.

22 (d) The division shall impose a civil penalty, in addition  
23 to any penalty required under the provisions of this section on  
24 any driver who is convicted of violating subsection (e),  
25 section thirteen of this article. The penalty shall be one  
26 thousand one hundred dollars.

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**CHAPTER 42**

**(Com. Sub. for H.B. 3074 - By Delegates Varner, Proudfoot,  
Stemple, Mahan, Hrutkay, Tabb, Browning, Kominar,  
Stalnaker, Shaver and Moye)**

[Passed March 9, 2007; in effect ninety days from passage.]  
[Approved by the Governor on April 3, 2007.]

AN ACT to amend and reenact §61-7-4 and §61-7-6 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §61-7-6a, all relating to the carrying of concealed weapons; clarifying the scope of a concealed weapons permit; amending reciprocity requirements; authorizing the Attorney General to investigate and execute reciprocity agreements with other states pertaining to the mutual recognition of permits or licenses to carry concealed handguns; setting forth minimum standards which must be met before such reciprocity agreements may be executed; clarifying the scope of valid out-of-state permits that may be recognized in West Virginia; establishing a registry of states with which West Virginia has entered into reciprocal agreements; and requiring the State Police to provide the public with a list of the states which have entered into reciprocity agreements.

*Be it enacted by the Legislature of West Virginia:*

That §61-7-4 and §61-7-6 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 §61-7-6a, all to read as follows:

**ARTICLE 7. DANGEROUS WEAPONS.**

§61-7-4. License to carry deadly weapons; how obtained.

§61-7-6. Exceptions as to prohibitions against carrying concealed deadly weapons.

§61-7-6a. Reciprocity; out-of-state concealed handgun permits.

**§61-7-4. License to carry deadly weapons; how obtained.**

1 (a) Except as provided in subsection (h) of this section,  
2 any person desiring to obtain a state license to carry a  
3 concealed deadly weapon shall apply to the sheriff of his or  
4 her county for such license, and shall pay to the sheriff, at the  
5 time of application, a fee of seventy-five dollars, of which  
6 fifteen dollars of that amount shall be deposited in the  
7 courthouse facilities improvement fund created by section  
8 six, article twenty-six, chapter twenty-nine of this code.  
9 Concealed weapons permits may only be issued for pistols or  
10 revolvers. Each applicant shall file with the sheriff, a  
11 complete application, as prepared by the Superintendent of  
12 the West Virginia State Police, in writing, duly verified,  
13 which sets forth only the following licensing requirements:

14 (1) The applicant's full name, date of birth, social security  
15 number and a description of the applicant's physical features;

16 (2) That, on the date the application is made, the  
17 applicant is a bona fide resident of this state and of the county  
18 in which the application is made and has a valid driver's  
19 license or other state-issued photo identification showing  
20 such residence;

21 (3) That the applicant is twenty-one years of age or older:  
22 *Provided*, That any individual who is less than twenty-one  
23 years of age and possesses a properly issued concealed  
24 weapons license as of the effective date of this article shall be  
25 licensed to maintain his or her concealed weapons license  
26 notwithstanding the provisions of this section requiring new  
27 applicants to be at least twenty-one years of age: *Provided*,  
28 *however*, That upon a showing of any applicant who is  
29 eighteen years of age or older that he or she is required to  
30 carry a concealed weapon as a condition for employment, and  
31 presents satisfactory proof to the sheriff thereof, then he or  
32 she shall be issued a license upon meeting all other  
33 conditions of this section. Upon discontinuance of  
34 employment that requires the concealed weapons license, if  
35 the individual issued the license is not yet twenty-one years  
36 of age, then the individual issued the license is no longer

37 eligible and must return his or her license to the issuing  
38 sheriff;

39 (4) That the applicant is not addicted to alcohol, a  
40 controlled substance or a drug and is not an unlawful user  
41 thereof;

42 (5) That the applicant has not been convicted of a felony  
43 or of an act of violence involving the misuse of a deadly  
44 weapon;

45 (6) That the applicant has not been convicted of a  
46 misdemeanor offense of assault or battery either under the  
47 provisions of section twenty-eight, article two of this chapter  
48 or the provisions of subsection (b) or (c), section nine, article  
49 two of this chapter in which the victim was a current or  
50 former spouse, current or former sexual or intimate partner,  
51 person with whom the defendant has a child in common,  
52 person with whom the defendant cohabits or has cohabited,  
53 a parent or guardian, the defendant's child or ward or a  
54 member of the defendant's household at the time of the  
55 offense; or a misdemeanor offense with similar essential  
56 elements in a jurisdiction other than this state;

57 (7) That the applicant is not under indictment for a felony  
58 offense or is not currently serving a sentence of confinement,  
59 parole, probation or other court-ordered supervision imposed  
60 by a court of any jurisdiction or is the subject of an  
61 emergency or temporary domestic violence protective order  
62 or is the subject of a final domestic violence protective order  
63 entered by a court of any jurisdiction;

64 (8) That the applicant is physically and mentally  
65 competent to carry such weapon;

66 (9) That the applicant has not been adjudicated to be  
67 mentally incompetent;

68 (10) That the applicant has qualified under the minimum  
69 requirements set forth in subsection (d) of this section for  
70 handling and firing such weapon: *Provided*, That this



71 requirement shall be waived in the case of a renewal  
72 applicant who has previously qualified;

73 (11) That the applicant authorizes the sheriff of the  
74 county, or his or her designee, to conduct an investigation  
75 relative to the information contained in the application.

76 (b) The sheriff shall conduct an investigation which shall  
77 verify that the information required in subdivisions (1), (2),  
78 (3), (5), (6), (8) and (9), subsection (a) of this section are true  
79 and correct.

80 (c) Sixty dollars of the application fee and any fees for  
81 replacement of lost or stolen licenses received by the sheriff  
82 shall be deposited by the sheriff into a concealed weapons  
83 license administration fund. Such fund shall be administered  
84 by the sheriff and shall take the form of an interest bearing  
85 account with any interest earned to be compounded to the  
86 fund. Any funds deposited in this concealed weapon license  
87 administration fund are to be expended by the sheriff to pay  
88 for the costs associated with issuing concealed weapons  
89 licenses. Any surplus in the fund on hand at the end of each  
90 fiscal year may be expended for other law-enforcement  
91 purposes or operating needs of the sheriff's office, as the  
92 sheriff may consider appropriate.

93 (d) All persons applying for a license must complete a  
94 training course in handling and firing a handgun. The  
95 successful completion of any of the following courses fulfills  
96 this training requirement:

97 (1) Any official national rifle association handgun safety  
98 or training course;

99 (2) Any handgun safety or training course or class  
100 available to the general public offered by an official law-  
101 enforcement organization, community college, junior college,  
102 college or private or public institution or organization or  
103 handgun training school utilizing instructors duly certified by  
104 such institution;

105 (3) Any handgun training or safety course or class  
 106 conducted by a handgun instructor certified as such by the  
 107 state or by the national rifle association;

108 (4) Any handgun training or safety course or class  
 109 conducted by any branch of the United States military,  
 110 reserve or national guard.

111 A photocopy of a certificate of completion of any of the  
 112 courses or classes or an affidavit from the instructor, school,  
 113 club, organization or group that conducted or taught said  
 114 course or class attesting to the successful completion of the  
 115 course or class by the applicant or a copy of any document  
 116 which shows successful completion of the course or class  
 117 shall constitute evidence of qualification under this section.

118 (e) All concealed weapons license applications must be  
 119 notarized by a notary public duly licensed under article four,  
 120 chapter twenty-nine of this code. Falsification of any portion  
 121 of the application constitutes false swearing and is punishable  
 122 under the provisions of section two, article five, chapter  
 123 sixty-one of this code.

124 (f) If the information in the application is found to be true  
 125 and correct, the sheriff shall issue a license. The sheriff shall  
 126 issue or deny the license within forty-five days after the  
 127 application is filed if all required background checks  
 128 authorized by this section are completed.

129 (g) Before any approved license shall be issued or  
 130 become effective, the applicant shall pay to the sheriff a fee  
 131 in the amount of fifteen dollars which the sheriff shall  
 132 forward to the Superintendent of the West Virginia State  
 133 Police within thirty days of receipt. Any such license shall be  
 134 valid for five years throughout the state, unless sooner  
 135 revoked.

136 (h) All persons holding a current and valid concealed  
 137 weapons license as of the sixteenth day of December, one  
 138 thousand nine hundred ninety-five, shall continue to hold a  
 139 valid concealed weapons license until his or her license

140 expires or is revoked as provided in this article: *Provided,*  
141 That all reapplication fees shall be waived for applications  
142 received by the first day of January, one thousand nine  
143 hundred ninety-seven, for any person holding a current and  
144 valid concealed weapons license as of the sixteenth day of  
145 December, one thousand nine hundred ninety-five, which  
146 contains use restrictions placed upon the license as a  
147 condition of issuance by the issuing circuit court. Any  
148 licenses reissued pursuant to this subsection will be issued for  
149 the time period of the original license.

150 (i) Each license shall contain the full name, social  
151 security number and address of the licensee and a space upon  
152 which the signature of the licensee shall be signed with pen  
153 and ink. The issuing sheriff shall sign and attach his or her  
154 seal to all license cards. The sheriff shall provide to each  
155 new licensee a duplicate license card, in size similar to other  
156 state identification cards and licenses, suitable for carrying in  
157 a wallet, and such license card is deemed a license for the  
158 purposes of this section.

159 (j) The Superintendent of the West Virginia State Police  
160 shall prepare uniform applications for licenses and license  
161 cards showing that such license has been granted and shall do  
162 any other act required to be done to protect the state and see  
163 to the enforcement of this section.

164 (k) In the event an application is denied, the specific  
165 reasons for the denial shall be stated by the sheriff denying  
166 the application. Any person denied a license may file, in the  
167 circuit court of the county in which the application was made,  
168 a petition seeking review of the denial. Such petition shall be  
169 filed within thirty days of the denial. The court shall then  
170 determine whether the applicant is entitled to the issuance of  
171 a license under the criteria set forth in this section. The  
172 applicant may be represented by counsel, but in no case shall  
173 the court be required to appoint counsel for an applicant. The  
174 final order of the court shall include the court's findings of  
175 fact and conclusions of law. If the final order upholds the  
176 denial, the applicant may file an appeal in accordance with

177 the rules of appellate procedure of the supreme court of  
 178 appeals.

179 (l) In the event a license is lost or destroyed, the person  
 180 to whom the license was issued may obtain a duplicate or  
 181 substitute license for a fee of five dollars by filing a notarized  
 182 statement with the sheriff indicating that the license has been  
 183 lost or destroyed.

184 (m) The sheriff shall, immediately after the license is  
 185 granted as aforesaid, furnish the Superintendent of the West  
 186 Virginia State Police a certified copy of the approved  
 187 application. It shall be the duty of the sheriff to furnish to the  
 188 Superintendent of the West Virginia State Police at any time  
 189 so requested a certified list of all such licenses issued in the  
 190 county. The Superintendent of the West Virginia State Police  
 191 shall maintain a registry of all persons who have been issued  
 192 concealed weapons licenses.

193 (n) All licensees must carry with them a state-issued  
 194 photo identification card with the concealed weapons license  
 195 whenever the licensee is carrying a concealed weapon. Any  
 196 licensee who fails to have in his or her possession a state-  
 197 issued photo identification card and a current concealed  
 198 weapons license while carrying a concealed weapon shall be  
 199 guilty of a misdemeanor and, upon conviction thereof, shall  
 200 be fined not less than fifty or more than two hundred dollars  
 201 for each offense.

202 (o) The sheriff shall deny any application or revoke any  
 203 existing license upon determination that any of the licensing  
 204 application requirements established in this section have been  
 205 violated by the licensee.

206 (p) No person who is engaged in the receipt, review or in  
 207 the issuance or revocation of a concealed weapon license  
 208 shall incur any civil liability as the result of the lawful  
 209 performance of his or her duties under this article.

210 (q) Notwithstanding the provisions of subsection (a) of  
 211 this section, with respect to application by a former law-

212 enforcement officer honorably retired from agencies  
213 governed by article fourteen, chapter seven of this code;  
214 article fourteen, chapter eight of this code; article two,  
215 chapter fifteen of this code; and article seven, chapter twenty  
216 of this code, an honorably retired officer is exempt from  
217 payment of fees and costs as otherwise required by this  
218 section, and the application of the honorably retired officer  
219 shall be granted without proof or inquiry by the sheriff as to  
220 those requirements set forth in subdivision (9), subsection (a)  
221 of this section, if the officer meets the remainder of the  
222 requirements of this section and has the approval of the  
223 appropriate chief law-enforcement officer.

224 (r) Except as restricted or prohibited by the provisions of  
225 this article or as otherwise prohibited by law, the issuance of  
226 a concealed weapon permit issued in accordance with the  
227 provisions of this section shall authorize the holder of the  
228 permit to carry a concealed pistol or revolver on the lands or  
229 waters of this state.

**§61-7-6. Exceptions as to prohibitions against carrying  
concealed deadly weapons.**

1 The licensure provisions set forth in this article do not  
2 apply to:

3 (1) Any person carrying a deadly weapon upon his or her  
4 own premises; nor shall anything herein prevent a person  
5 from carrying any firearm, unloaded, from the place of  
6 purchase to his or her home, residence or place of business or  
7 to a place of repair and back to his or her home, residence or  
8 place of business, nor shall anything herein prohibit a person  
9 from possessing a firearm while hunting in a lawful manner  
10 or while traveling from his or her home, residence or place of  
11 business to a hunting site and returning to his or her home,  
12 residence or place of business;

13 (2) Any person who is a member of a properly organized  
14 target-shooting club authorized by law to obtain firearms by  
15 purchase or requisition from this state or from the United  
16 States for the purpose of target practice from carrying any

17 pistol, as defined in this article, unloaded, from his or her  
 18 home, residence or place of business to a place of target  
 19 practice and from any place of target practice back to his or  
 20 her home, residence or place of business, for using any such  
 21 weapon at a place of target practice in training and improving  
 22 his or her skill in the use of the weapons;

23 (3) Any law-enforcement officer or law-enforcement  
 24 official as defined in section one, article twenty-nine, chapter  
 25 thirty of this code;

26 (4) Any employee of the West Virginia Division of  
 27 Corrections duly appointed pursuant to the provisions of  
 28 section five, article five, chapter twenty-eight of this code  
 29 while the employee is on duty;

30 (5) Any member of the Armed Forces of the United  
 31 States or the militia of this state while the member is on duty;

32 (6) Any circuit judge, including any retired circuit judge  
 33 designated senior status by the Supreme Court of Appeals of  
 34 West Virginia, Prosecuting Attorney, Assistant Prosecuting  
 35 Attorney or a duly appointed investigator employed by a  
 36 Prosecuting Attorney;

37 (7) Any resident of another state who holds a valid  
 38 license to carry a concealed weapon by a state or a political  
 39 subdivision which has entered into a reciprocity agreement  
 40 with this state, subject to the provisions and limitations set  
 41 forth in section six-a of this article;

42 (8) Any federal law-enforcement officer or federal police  
 43 officer authorized to carry a weapon in the performance of  
 44 the officer's duty; and

45 (9) Any Hatfield-McCoy regional recreation authority  
 46 ranger while the ranger is on duty.

**§61-7-6a. Reciprocity; out-of-state concealed handgun permits.**

1 (a) A holder of a valid out-of-state permit or license to  
 2 carry a concealed handgun, as issued by another state with

3 which the State of West Virginia has executed a reciprocity  
4 agreement, shall be recognized as valid in this state, if the  
5 following conditions are met:

6 (1) The permit or license holder is a resident of the  
7 issuing state;

8 (2) The permit or license holder is 21 years or older;

9 (3) The permit or license is in his or her immediate  
10 possession;

11 (4) The permit or license holder is not a resident of the  
12 state of West Virginia; and,

13 (5) The State of West Virginia has executed a valid and  
14 effective reciprocity agreement with the issuing state  
15 pertaining to the carrying and verification of concealed  
16 handgun licenses and permits issued in the respective states.

17 (b) A holder of a valid permit or license from another  
18 state who is authorized to carry a concealed handgun in this  
19 state pursuant to provisions of this section is subject to the  
20 same laws and restrictions with respect to carrying a  
21 concealed handgun as a resident of West Virginia who is so  
22 permitted, and must carry the concealed handgun in  
23 compliance with the laws of this state.

24 (c) No license or permit from another state is valid in this  
25 state if the holder is or becomes prohibited by law from  
26 possessing a firearm.

27 (d) The West Virginia Attorney General shall seek to  
28 enter into and may execute reciprocity agreements on behalf  
29 of the State of West Virginia with states which meet the  
30 following standards and requirements:

31 (1) The standards applied by the other state before issuing  
32 a concealed handgun license or permit must be equal to or  
33 greater than the standards imposed by this article;

34 (2) This state's law-enforcement officers have continuous  
35 access to data bases on the criminal information network,  
36 twenty-four hours per day, seven days per week, to verify the  
37 continued validity of any license or permit to carry a  
38 concealed handgun that has been granted by the issuing state;

39 (3) The other state agrees to grant the right to carry a  
40 concealed handgun to residents of West Virginia who have  
41 valid concealed handgun permits issued pursuant to this  
42 article in their possession while carrying concealed weapons  
43 in that state; and

44 (4) The states agree to apprise one another of changes in  
45 permitting standards and requirements, to provide for a  
46 prompt reexamination of whether any adopted change in  
47 licensing or permitting standards negates the states' ability to  
48 continue with the reciprocity agreement.

49 (e) The West Virginia State Police shall maintain a  
50 registry of states with which the State of West Virginia has  
51 entered into reciprocity agreements on the criminal  
52 information network and make the registry available to law-  
53 enforcement officers for investigative purposes.

54 (f) Every twelve months after the effective date of this  
55 section, the West Virginia Attorney General shall make  
56 written inquiry of the concealed handgun permitting  
57 authorities in each other state as to: (i) Whether a West  
58 Virginia resident may carry a concealed handgun in their  
59 state based upon having a valid West Virginia concealed  
60 handgun permit; and (ii) whether a West Virginia resident  
61 may carry a concealed handgun in that state based upon  
62 having a valid West Virginia concealed handgun permit,  
63 pursuant to the laws of that state or by the execution of a  
64 valid reciprocity agreement between the states.

65 (g) The West Virginia State Police shall make available  
66 to the public a list of states which have entered into  
67 reciprocity agreements with the State of West Virginia.



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CHAPTER 43

**(S.B. 180 - By Senators Foster, Unger, Kessler and Sypolt)**

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[Passed March 6, 2007; in effect ninety days from passage.]  
[Approved by the Governor on March 28, 2007.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-10D-6a, relating to voluntary election by eligible public safety officers for distributions from retirement plans for payment of qualified health insurance premiums.

*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-6a, to read as follows:

**ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.**

**§5-10D-6a. Voluntary election by eligible retired public safety officers to have amounts from eligible retirement plan distributed to pay for qualified health insurance premiums.**

1 (a) Effective on or after the first day of January, two  
2 thousand seven, any eligible retired public safety officer who  
3 is a participant or member under any eligible retirement plan  
4 administered by the board may voluntarily elect to have  
5 amounts from an eligible retirement plan distributed in order  
6 to pay for qualified health insurance premiums. Such election  
7 shall be made in writing, in a form and manner authorized by  
8 the board, and shall be consistent with the provisions of  
9 Section 402(1)(6) of the Internal Revenue Code as it may be  
10 amended from time to time.

CONSOLIDATED PUBLIC RETIREMENT BOARD [Ch. 43

11 (b) The definitions of the following terms contained in  
12 Section 402(1)(4) of the Internal Revenue Code, as it may be  
13 amended from time to time, shall apply for purposes of this  
14 section:

15 (1) “Eligible retirement plan”;

16 (2) “Eligible retired public safety officer”;

17 (3) “Public safety officer”; and

18 (4) “Qualified health insurance premiums”.

19 (c) The amount which a participant or member may elect  
20 to have distributed pursuant to subsection (a) of this section  
21 shall not exceed three thousand dollars per taxable year of the  
22 participant or member (or such other limitation amount as is  
23 specified in Section 402(1)(2) of the Internal Revenue Code,  
24 as it may be amended or as the limitation may be adjusted  
25 from time to time) and any amounts so elected to be  
26 distributed shall be paid by the board directly to the provider  
27 in payment of the qualified health insurance premiums.  
28 “Qualified health insurance premiums” includes premiums  
29 for certain accident or health insurance plans and certain  
30 long-term care insurance contracts.

31 (d) For purposes of this section, all eligible retirement  
32 plans administered by the board shall be treated as a single  
33 plan.

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CHAPTER 44

**(S.B. 104 - By Senators Foster, Hall, Oliverio, Edgell,  
McCabe, Deem, Plymale, Minard and McKenzie)**

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[Passed March 4, 2007; in effect ninety days from passage.]  
[Approved by the Governor on March 19, 2007.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-10D-9, relating to when the Consolidated Public Retirement Board shall pay annuities.

*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-9, to read as follows:

**ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.**

**§5-10D-9. When annuities to be paid.**

1 For all of the public retirement plans administered by the  
2 board, the board shall make monthly annuity payments on the  
3 twenty-fifth day of each month, except the month of  
4 December, when the board shall make the payments on the  
5 eighteenth day of December. If the date of payment falls on  
6 a holiday, Saturday or Sunday, then the payment shall be  
7 made on the preceding workday. All annuities shall be paid  
8 in twelve monthly payments.

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**CHAPTER 45**

**(Com. Sub. for S.B. 428 - By Senators Kessler, White,  
Stollings, Yoder, Love, Unger, Hunter and Jenkins)**

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[Passed March 10, 2007; in effect ninety days from passage.]  
[Approved by the Governor on April 3, 2007.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §46A-6L-101, §46A-6L-102, §46A-6L-103, §46A-6L-104 and §46A-6L-105, all relating to consumer protection generally; defining certain terms; providing a procedure for consumers to implement a security freeze to prohibit a consumer-reporting agency from releasing all or any part of the consumer's credit report or any information derived from it to entities with whom the consumer has no existing credit relationship without the express authorization of the consumer in certain circumstances; exemptions; personal identification number or password; procedures for removal or temporary lifting of security freeze; exceptions; fees; providing for a written notice of a consumer's rights; providing civil penalties for violations; and making a violation an unfair or deceptive act or practice.

*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 §46A-6L-101, §46A-6L-102, §46A-6L-103, §46A-6L-104 and §46A-6L-105, all to read as follows:

**ARTICLE 6L. THEFT OF CONSUMER IDENTITY PROTECTIONS.**

§46A-6L-101. Definitions.

§46A-6L-102. Security freeze; timing; effect; covered entities; cost.

§46A-6L-103. Notice of rights.

§46A-6L-104. Violations; penalties.

§46A-6L-105. Unfair or deceptive acts or practices.

**§46A-6L-101. Definitions.**

1 For the purposes of this article, the following terms have  
2 the following meanings:

3 (1) "Person" means any individual, partnership,  
4 corporation, trust, estate, cooperative, association,  
5 government or governmental subdivision or agency or other  
6 entity.

7 (2) "Consumer" means an individual.

8 (3) "Consumer-reporting agency" means any entity  
9 which, for monetary fees, dues or on a cooperative nonprofit  
10 basis, regularly engages, in whole or in part, in the practice  
11 of assembling or evaluating consumer credit information or  
12 other information on consumers for the purpose of furnishing  
13 credit reports to third parties.

14 (4) "Credit report" means any written, oral or other  
15 communication of any information by a consumer-reporting  
16 agency bearing on a consumer's credit worthiness, credit  
17 standing, credit capacity, character, general reputation,  
18 personal characteristics or mode of living which is used or  
19 expected to be used or collected, in whole or in part, for the  
20 purpose of serving as a factor in establishing the consumer's  
21 eligibility for:

22 (A) Credit or insurance to be used primarily for a  
23 personal, family, household or agricultural purpose, except  
24 that nothing in this article authorizes or prohibits the use of  
25 credit evaluations, credit scoring or insurance scoring in the  
26 underwriting of personal lines of property or casualty  
27 insurance;

28 (B) Employment purposes; or

29 (C) Any other purpose authorized under Section 15 U. S.  
30 C. §1681b as in effect on the effective date of this article.

31 (5) "Security freeze" means a notice, at the request of the  
32 consumer and subject to certain exceptions, that prohibits the  
33 consumer-reporting agency from releasing all or any part of  
34 the consumer's credit report or any information derived from  
35 it without the express authorization of the consumer.

36 (6) "Reviewing the account" or "account review" includes  
37 activities related to account maintenance, monitoring, credit  
38 line increases and account upgrades and enhancements.

**§46A-6L-102. Security freeze; timing; effect; covered entities;  
cost.**

1 (a) A consumer-reporting agency shall permit a consumer  
2 to place a security freeze on his or her credit report by the  
3 consumer selecting either of the following:

4 (1) A request in writing by certified or overnight mail to  
5 a consumer-reporting agency; or

6 (2) Making a request directly to the consumer-reporting  
7 agency through a secure electronic method, if available:  
8 *Provided*, That by the thirty-first day of January, two  
9 thousand nine, a secure electronic method shall be made  
10 available to the consumer by the consumer-reporting agency.

11 (b) A consumer-reporting agency shall place a security  
12 freeze on a credit report no later than five business days after  
13 receiving a written request from the consumer. If a security  
14 freeze is in place, a report or information may not be  
15 distributed to a third party without prior express authorization  
16 from the consumer. This subdivision does not prevent a  
17 consumer-reporting agency from advising a third party that  
18 a security freeze is in effect with respect to the consumer's  
19 credit report. A consumer-reporting agency may, regardless  
20 of the existence of a security freeze, distribute information  
21 contained in a consumer file to the extent otherwise permitted  
22 by law if the information was lawfully obtained by or for a

23 consumer-reporting agency from an open public record,  
24 without respect to the existence of a security freeze. Nothing  
25 herein prevents a consumer-reporting agency from choosing  
26 to apply the security freeze to the entire contents of the credit  
27 reporting file that is subject to the security freeze.

28 (c) The consumer-reporting agency shall send a written  
29 confirmation of the security freeze to the consumer within  
30 five business days of placing the freeze and at the same time  
31 shall provide the consumer with a unique personal  
32 identification number or password to be used by the  
33 consumer when providing authorization for the distribution  
34 of his or her credit information.

35 (d) If the consumer wishes to allow his or her credit  
36 report to be accessed for a period of time while a freeze is in  
37 place, he or she shall contact the consumer-reporting agency  
38 by regular mail or a procedure developed under subsection (f)  
39 of this section and request that the freeze be temporarily  
40 lifted, providing all of the following:

41 (1) Proper identification;

42 (2) The unique personal identification number or  
43 password provided by the consumer-reporting agency  
44 pursuant to subsection (c) of this section; and

45 (3) The time period for which the credit report shall be  
46 available to users of the credit report.

47 (e) A consumer-reporting agency that receives a request  
48 from a consumer to temporarily lift a freeze on a credit report  
49 pursuant to subsection (d) of this section shall comply with  
50 the request no later than three business days after receiving  
51 the request.

52 (f) A consumer-reporting agency shall develop  
53 procedures involving the use of telephone, fax, the internet or  
54 other electronic media to receive and process a request from  
55 a consumer pursuant to subsection (d) of this section to

56 temporarily lift a freeze on a credit report in an expedited  
57 manner .

58 (g) (1) Beginning on the first day of September, two  
59 thousand eight, a consumer-reporting agency shall  
60 temporarily lift a security freeze from a consumer's credit  
61 report within fifteen minutes after the consumer's request is  
62 received pursuant to subsection (f) of this section by the  
63 consumer-reporting agency.

64 (2) A consumer-reporting agency does not have to  
65 remove a security freeze within the time provided in this  
66 subsection if:

67 (A) The consumer fails to meet the requirements of  
68 subsection (d) of this section; or

69 (B) The consumer-reporting agency's ability to remove  
70 the security freeze within fifteen minutes is prevented by:

71 (i) An act of God, including fire, earthquakes, hurricanes,  
72 storms or similar natural disasters or phenomena;

73 (ii) Unauthorized or illegal acts by a third party, including  
74 terrorism, sabotage, riot, vandalism, labor strikes or disputes  
75 disrupting operations or similar occurrence;

76 (iii) Operational interruption, including electrical failure,  
77 unanticipated delay in equipment or replacement part  
78 delivery, computer hardware or software failures inhibiting  
79 response time or similar disruption;

80 (iv) Governmental action, including emergency orders or  
81 regulations, judicial or law-enforcement action or similar  
82 directives;

83 (v) Regularly scheduled maintenance, during other than  
84 normal business hours, of, or updates to, the consumer-  
85 reporting agency's systems; or

86 (vi) Commercially reasonable maintenance of, or repair  
87 to, the consumer-reporting agency's systems that is  
88 unexpected or unscheduled.



89 (h) A consumer-reporting agency shall remove or  
90 temporarily lift a freeze placed on a credit report only upon  
91 the request of the consumer, pursuant to subsection (d) or (j)  
92 of this section.

93 (i) If a third party requests access to a credit report on  
94 which a security freeze is in effect, and this request is in  
95 connection with an application for credit or any other use,  
96 and the consumer has not allowed his or her credit report to  
97 be accessed for a period of time, the third party may treat the  
98 application as incomplete.

99 (j) A security freeze shall remain in place until the  
100 consumer requests that the security freeze be removed. A  
101 consumer-reporting agency shall remove a security freeze  
102 within three business days of receiving a request for removal  
103 from the consumer who provides the following:

104 (1) Proper identification; and

105 (2) The unique personal identification number or  
106 password provided by the consumer-reporting agency  
107 pursuant to subsection (c) of this section.

108 (k) A consumer-reporting agency shall require proper  
109 identification of the person making a request to place or  
110 remove a security freeze.

111 (l) The provisions of this section do not apply to the  
112 distribution of a consumer credit report to any of the  
113 following:

114 (1) A person or the person's subsidiary, affiliate, agent or  
115 assignee with whom the consumer has or, prior to  
116 assignment, had an account, contract or debtor-creditor  
117 relationship for the purposes of reviewing the account or  
118 collecting the financial obligation owing for the account,  
119 contract or debt;

120 (2) A subsidiary, affiliate, agent, assignee or prospective  
121 assignee of a person to whom access has been granted under

122 this section for purposes of facilitating the extension of credit  
123 or other permissible use;

124 (3) A person acting pursuant to a court order, warrant or  
125 subpoena;

126 (4) A state or local agency that administers a program for  
127 establishing and enforcing child support obligations;

128 (5) The West Virginia Department of Health and Human  
129 Resources or its agents or assigns acting to investigate fraud;

130 (6) The West Virginia Department of Revenue or its  
131 agents or assigns acting to investigate or collect delinquent  
132 taxes or unpaid court orders or to fulfill any of its other  
133 statutory responsibilities;

134 (7) A person for the purposes of prescreening as defined  
135 by the federal Fair Credit Reporting Act;

136 (8) A person or entity administering a credit file  
137 monitoring subscription service to which the consumer has  
138 subscribed; and

139 (9) A person or entity for the purpose of providing a  
140 consumer with a copy of his or her credit report upon the  
141 consumer's request.

142 (10) Any person or entity for use in setting or adjusting  
143 a rate, adjusting a claim or underwriting for insurance  
144 purposes to the extent not otherwise prohibited by law.

145 (m) The provisions of this section do not apply to any of  
146 the following:

147 (1) A consumer-reporting agency that acts only as a  
148 reseller of credit information by assembling and merging  
149 information contained in the database of another consumer-  
150 reporting agency or multiple consumer credit-reporting  
151 agencies and does not maintain a permanent database of  
152 credit information from which new consumer credit reports  
153 are produced. A consumer-reporting agency acting as a

154 reseller shall honor any security freeze placed on a consumer  
155 credit report by another consumer-reporting agency.

156 (2) A check services or fraud prevention services  
157 company which issues reports on incidents of fraud or  
158 authorizations for the purpose of approving or processing  
159 negotiable instruments, electronic funds transfers or similar  
160 methods of payments.

161 (3) A deposit account information service company  
162 which issues reports regarding account closures due to fraud,  
163 a substantial number of overdrafts, ATM abuse or similar  
164 negative information regarding a consumer to inquiring  
165 banks or other financial institutions for use only in reviewing  
166 a consumer request for a deposit account at the inquiring  
167 bank or financial institution.

168 (4) A consumer-reporting agency's database or file which  
169 consists of information concerning, and used for, criminal  
170 record information, fraud prevention or detection, personal  
171 loss history information and employment, tenant or  
172 background screening.

173 (n) Except as prohibited by subsection (o) of this section,  
174 a consumer-reporting agency may charge a reasonable fee,  
175 not to exceed five dollars, to a consumer who elects to place,  
176 remove or temporarily lift a security freeze on the  
177 consumer's credit report. No fees except those authorized by  
178 this subsection and subsection (p) of this section may be  
179 charged in connection with a security freeze.

180 (o) A consumer-reporting agency may not charge a fee  
181 for security freeze services to a consumer who is a victim of  
182 identity theft and who provides a copy of a police report, an  
183 investigative report or a written complaint made to the  
184 Federal Trade Commission, to the office of the Attorney  
185 General of West Virginia or to a law-enforcement agency  
186 concerning the identity theft.

187 (p) A consumer may be charged a reasonable fee, not to  
188 exceed five dollars, if the consumer fails to retain the original  
189 unique personal identification number or password provided

190 by the consumer-reporting agency and must be reissued the  
191 same or a new unique personal identification number or  
192 password.

**§46A-6L-103. Notice of rights.**

1 (a) At any time that a consumer is required to receive a  
2 summary of rights required under Section 609 of the federal  
3 Fair Credit Reporting Act, 15 U. S. C. §1681g, as in effect on  
4 the effective date of this article, the following notice shall be  
5 included:

6 "West Virginia consumers have the right to obtain a  
7 security freeze.

8 You may obtain a security freeze on your credit report to  
9 protect your privacy and ensure that credit is not granted in  
10 your name without your knowledge. You have a right to  
11 place a security freeze on your credit report pursuant to West  
12 Virginia law.

13 The security freeze will prohibit a consumer reporting  
14 agency from releasing any information in your credit report  
15 without your express authorization or approval.

16 The security freeze is designed to prevent credit, loans  
17 and services from being approved in your name without your  
18 consent. When you place a security freeze on your credit  
19 report, within five business days you will be provided a  
20 unique personal identification number or password to use if  
21 you choose to remove the freeze on your credit report or to  
22 temporarily authorize the distribution of your credit report for  
23 a period of time after the freeze is in place. To provide that  
24 authorization, you must contact the consumer-reporting  
25 agency and provide all of the following:

26 (1) The unique personal identification number or  
27 password provided by the consumer-reporting agency;

28 (2) Proper identification to verify your identity; and

29 (3) The period of time for which the report shall be  
30 available to users of the credit report.

31 A consumer-reporting agency that receives a request  
32 from a consumer to temporarily lift a freeze on a credit report  
33 shall comply with the request no later than three business  
34 days after receiving the request.

35 A security freeze does not apply to circumstances in  
36 which you have an existing account relationship and a copy  
37 of your report is requested by your existing creditor or its  
38 agents or affiliates for certain types of account review,  
39 collection, fraud control or similar activities.

40 If you are actively seeking credit, you should understand  
41 that the procedures involved in lifting a security freeze may  
42 slow your own applications for credit. You should plan ahead  
43 and lift a freeze, either completely if you are shopping around  
44 or specifically for a certain creditor, a few days before  
45 actually applying for new credit.

46 You have the right to bring a civil action against someone  
47 who violates your rights under the credit reporting laws. The  
48 action can be brought against a consumer-reporting agency."

49 (b) If a consumer requests information about a security  
50 freeze, he or she shall be provided with the notice provided  
51 in this section about how to place, temporarily lift and  
52 remove a security freeze.

#### **§46A-6L-104. Violations; penalties.**

1 (a) If a consumer-reporting agency negligently violates  
2 the security freeze by releasing credit information that has  
3 been placed under a security freeze, the affected consumer is  
4 entitled to:

5 (1) Notification within five business days following  
6 discovery or actual knowledge of the distribution of the  
7 information, including specificity as to the information  
8 distributed and the third-party recipient of the information.

9 (2) File a complaint with the Federal Trade Commission  
10 or the office of the Attorney General of West Virginia.

11 (3) File a civil action against the consumer-reporting  
12 agency seeking:

13 (A) Injunctive relief to prevent or restrain further  
14 violation of the security freeze;

15 (B) Actual damages sustained or not more than one  
16 thousand dollars, whichever is greater; and

17 (C) Reasonable expenses, court costs, investigative costs  
18 and attorney's fees.

19 (4) Each violation of the security freeze is a separate  
20 incident for purposes of imposing penalties under this  
21 section.

22 (b) If a consumer-reporting agency willfully violates the  
23 security freeze by releasing credit information that has been  
24 placed under a security freeze, the affected consumer is  
25 entitled to:

26 (1) Notification within five business days following  
27 discovery or actual knowledge of the distribution of the  
28 information, including specificity as to the information  
29 distributed and the third-party recipient of the information.

30 (2) File a complaint with the Federal Trade Commission  
31 or the office of the Attorney General of West Virginia.

32 (3) File a civil action against the consumer-reporting  
33 agency seeking:

34 (A) Injunctive relief to prevent or restrain further  
35 violation of the security freeze;

36 (B) Actual damages sustained or not more than five  
37 thousand dollars, whichever is greater; and

38 (C) Reasonable expenses, court costs, investigative costs  
39 and attorney's fees.

40 (4) Each violation of the security freeze is a separate  
41 incident for purposes of imposing penalties under this  
42 section.

**§46A-6L-105. Unfair or deceptive acts or practices.**

1 Any violation of this article constitutes an unlawful act or  
2 practice under the provisions of article six of this chapter  
3 regarding fraudulent acts or practices committed by a person  
4 in connection with a consumer transaction and shall be  
5 subject to the enforcement provisions of article seven of this  
6 chapter.

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**CHAPTER 46**

**(S.B. 403 - By Senator Tomblin, Mr. President)**

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[Passed March 10, 2007; in effect ninety days from passage.]  
[Approved by the Governor on April 4, 2007.]

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AN ACT to amend and reenact §7-15-16 of the Code of West Virginia, 1931, as amended, relating to increasing the limitation requiring sealed bids for certain purchases and contracts entered into by emergency ambulance service authorities.

*Be it enacted by the Legislature of West Virginia:*

That §7-15-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 15. EMERGENCY AMBULANCE SERVICE ACT OF 1975.**

**§7-15-16. Competitive bids; publication of solicitation for sealed bids.**

1 A purchase of or contract for all supplies, equipment and  
2 materials and a contract for the construction of facilities by  
3 any authority, when the expenditure required exceeds the  
4 sum of ten thousand dollars, shall be based on competitive  
5 sealed bids. Bids shall be obtained by public notice  
6 published as a Class II legal advertisement in compliance  
7 with the provisions of article three, chapter fifty-nine of this  
8 code and the publication area for publication is the service  
9 area of the authority. The second publication shall be made  
10 at least fourteen days before the final date for submitting  
11 bids. In addition to publication, the notice may also be  
12 published by any other advertising medium the authority may  
13 consider advisable and the authority may also solicit sealed  
14 bids by sending requests by mail to prospective suppliers and  
15 by posting notice on a bulletin board in the office of the  
16 authority.

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## CHAPTER 47

**(S.B. 142 - By Senators Kessler, Foster, Green, Jenkins,  
Minard, Stollings, Wells, White, Barnes, Caruth,  
Deem, Hall, McKenzie and Yoder)**

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[Passed February 16, 2007; in effect ninety days from passage.]  
[Approved by the Governor on February 28, 2007.]

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AN ACT to amend and reenact §60A-10-15 of the Code of West Virginia, 1931, as amended, relating to providing a penalty for illegally possessing, possessing with intent to distribute or distributing an iodine matrix and/or iodine crystals; defining iodine matrix; and establishing exemption for household uses not intended for manufacture of a controlled substance.

*Be it enacted by the Legislature of West Virginia:*

That §60A-10-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:



**ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.**

**§60A-10-15. Iodine solution greater than two percent; prescription or permit required; offenses; penalties.**

1 (a) A person may offer to sell, sell or distribute an iodine  
2 matrix only:

3 (1) As a prescription drug, pursuant to a prescription  
4 issued by a veterinarian or physician licensed within the  
5 state; or

6 (2) To a person who is actively engaged in the legal  
7 practice of animal husbandry of livestock.

8 (b) Prescriptions issued under this section:

9 (1) Shall provide for a specified number of refills;

10 (2) May be issued by any means authorized by the Board  
11 of Pharmacy; and

12 (3) May be filled by a person other than the veterinarian  
13 or physician issuing the prescription.

14 (c) A person offering iodine matrix for sale:

15 (1) Shall store the iodine matrix so that the public does  
16 not have access to the iodine matrix without the direct  
17 assistance or intervention of a retail employee;

18 (2) Shall keep a record, which may consist of sales  
19 receipts of each person purchasing iodine matrix; and

20 (3) Shall, if necessary to ascertain the identity of the  
21 purchaser, ask for proof of identification from the purchaser.

22 (d) A person engaging in a regulated transaction pursuant  
23 to the provisions of subsection (a) of this section shall not

24 possess with intent to distribute or distribute an iodine matrix  
25 to a person who:

26 (1) Does not present a prescription or is not engaged in  
27 animal husbandry, as required under subsection (a) of this  
28 section; or

29 (2) Is not excepted under subsection (h) of this section.

30 (e) Any person who violates subsection (d) of this section  
31 is guilty of a misdemeanor and, upon conviction, shall be  
32 fined not more than ten thousand dollars.

33 (f) A person shall not:

34 (1) Possess iodine crystals and/or an iodine matrix  
35 without proof of obtaining the crystals and/or solution in  
36 compliance with subsection (a) of this section; or

37 (2) Possess with intent to distribute or distribute iodine  
38 crystals and/or an iodine matrix in violation of subsection (a)  
39 of this section.

40 (g) Any person who violates subsection (f) of this section  
41 is guilty of a misdemeanor and, upon conviction, shall be  
42 fined not more than ten thousand dollars.

43 (h) The provisions of subdivision (1), subsection (f) of  
44 this section do not apply to:

45 (1) A public or private regularly established primary or  
46 secondary school or a public or private institution of higher  
47 education that is accredited by a regional or national  
48 accrediting agency recognized by the United States  
49 Department of Education;

50 (2) A veterinarian licensed to practice pursuant to the  
51 provisions of article ten, chapter thirty of this code;

52 (3) A health care facility; or

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53 (4) A veterinarian, physician, pharmacist, retail  
54 distributor, wholesaler, manufacturer, warehouseman or  
55 common carrier, or an agent of any of these persons, who  
56 possesses an iodine matrix in the regular course of lawful  
57 business activities.

58 (5) The transfer or receipt of any betadine or povidone  
59 solution with an iodine content not exceeding ten percent in  
60 containers of eight ounces or less, or any tincture of iodine  
61 not exceeding two percent in containers of one ounce or less  
62 that is sold over the counter and is employed solely for its  
63 intended common household use.

64 (i) As used in this section, "iodine matrix" means iodine  
65 at a concentration greater than two percent, by weight, in a  
66 matrix or solution.

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CHAPTER 48

**(Com. Sub. for S.B. 175 - By Senators Prezioso, Minard,  
Kessler and Foster)**

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[Passed March 10, 2007; in effect ninety days from passage.]  
[Approved by the Governor on April 3, 2007.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §60A-11-1, §60A-11-2, §60A-11-3, §60A-11-4, §60A-11-5 and §60A-11-6, all relating to regulation and procedures for the remediation of clandestine drug laboratories; defining terms; establishing a program of certification and licensing of persons engaged in the business of remediation; providing for legislative rules; authorizing the Department of Health and Human Resources to establish fees for certification, licensing and notification requirements; setting forth the responsibility of law-enforcement agencies to notify the Department of Health and Human Resources and residential property owners of the existence of a clandestine drug

laboratory; setting forth the responsibility of residential property owners for remediation of clandestine drug laboratories; providing immunity from liability for innocent property owners who successfully remediate a clandestine drug laboratory; and establishing civil penalties for persons convicted pursuant to subsection (d), section four, article ten of said chapter and whose actions resulted in the necessity of remediation of a clandestine drug laboratory.

*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 §60A-11-1, §60A-11-2, §60A-11-3, §60A-11-4, §60A-11-5 and §60A-11-6, all to read as follows:

## **ARTICLE 11. CLANDESTINE DRUG LABORATORY REMEDICATION ACT.**

§60A-11-1. Legislative findings and purpose.

§60A-11-2. Definitions.

§60A-11-3. Remediation of clandestine drug laboratories; promulgation of legislative rules.

§60A-11-4. Law-enforcement responsibility.

§60A-11-5. Residential property owner responsibility; owner immunity; voluntary compliance.

§60A-11-6. Liability for costs of remediation.

### **§60A-11-1. Legislative findings and purpose.**

1       (a) *Findings.*-- The Legislature finds that some residential  
2 and business properties are being used for the consumption,  
3 production and manufacture of illegal drugs resulting in  
4 contamination with hazardous chemical residues. These  
5 illegal laboratories present an immediate and ongoing danger  
6 to public health and safety. Innocent members of the public  
7 may be harmed when they are exposed to the chemical  
8 residues if the property is not decontaminated prior to  
9 subsequent rental, sale or use of the property.

10       (b) *Purpose.*-- The purpose of this article is to protect the  
11 public health, safety and welfare by designating the  
12 Department of Health and Human Resources as the state

13 agency to set forth standards for the remediation of  
14 clandestine drug laboratories.

**§60A-11-2. Definitions.**

1 In this article:

2 (a) "Clandestine drug laboratory" means the area or areas  
3 where controlled substances, or their immediate precursors,  
4 have been, or were attempted to be, manufactured, processed,  
5 cooked, disposed of or stored and all proximate areas that are  
6 likely to be contaminated as a result of such manufacturing,  
7 processing, cooking, disposing or storing.

8 (b) "Department" means the West Virginia Department  
9 of Health and Human Resources.

10 (c) "Controlled substance" means the same as that term  
11 is defined in section one hundred one, article one of this  
12 chapter and article ten, section three of this chapter a drug,  
13 substance or immediate precursor in Schedules I through V  
14 of article two of this chapter.

15 (d) "Immediate precursor" means a substance which the  
16 "West Virginia Board of Pharmacy" (hereinafter in this act  
17 referred to as the State Board of Pharmacy) has found to be  
18 and by rule designates as being the principal compound  
19 commonly used or produced primarily for use and which is  
20 an immediate chemical intermediary used or likely to be used  
21 in the manufacture of a controlled substance, the control of  
22 which is necessary to prevent, curtail or limit manufacture.

23 (e) "Law-enforcement agency" means the West Virginia  
24 State Police or any other policing agency of the state or of  
25 any political subdivision of the state.

26 (f) "Remediation" means the act of rendering safe and  
27 usable for the purposes for which it is intended residential  
28 property, as defined in subsection (g) of this section, or any  
29 structure appurtenant to the residential property, or other  
30 structure on the residential property that has been used for the

31 manufacture or consumption of methamphetamines or other  
32 illicit drug products.

33 (g) “Residential property” means any building or  
34 structure to be primarily occupied by people, either as a  
35 dwelling or as a business, including, but not limited to, a  
36 storage facility, a mobile home, manufactured home or  
37 recreational vehicle, hotel or motel that may be sold, leased  
38 or rented for any length of time.

39 (h) “Residential property owner” means the person  
40 holding record title to residential property as that term is  
41 defined in subsection (f) of this section.

**§60A-11-3. Remediation of clandestine drug laboratories;  
promulgation of legislative rules.**

1 (a) The Department of Health and Human Resources  
2 shall propose rules for legislative approval in accordance  
3 with the provisions of article three, chapter twenty-nine-a of  
4 this code to address, at a minimum, the following issues:

5 (1) Establishment of scientific guidelines and numeric  
6 decontamination levels for the remediation of clandestine  
7 drug laboratories;

8 (2) Establishment of a certification program for persons  
9 or contractors who engage in the business of clandestine drug  
10 lab remediation;

11 (3) Establishment of a licensure procedure whereby  
12 individuals and businesses certified to do remediation of  
13 clandestine drug laboratories obtain a license from the  
14 Department of Health and Human Resources to do such  
15 work;

16 (4) Requiring licensed contractors to notify the  
17 Department of Health and Human Resources prior to  
18 beginning any remediation project;

19 (5) Setting forth certification procedures for the  
20 department to certify that the completed remediation of the  
21 residential property fully meets the scientific guidelines and

22 numeric decontamination levels set forth in the legislative  
23 rule; and

24 (6) Establishing requirements for property owners, sellers  
25 and landlords to disclose the existence of any former  
26 clandestine laboratory site or activity to any potential  
27 occupant of the residential property.

28 (b) Fees may be set by the legislative rule to be charged  
29 to persons or contractors engaged in the business of  
30 clandestine drug laboratory remediation for certification,  
31 licensing and notification as required in this article.

**§60A-11-4. Law-enforcement responsibility.**

1 Any law-enforcement agency, upon locating chemicals,  
2 equipment, supplies or precursors indicative of a clandestine  
3 drug laboratory on residential property, shall notify the  
4 residential property owner and the department in a manner  
5 prescribed by the legislative rule authorized by this article.

**§60A-11-5. Residential property owner responsibility; owner immunity; voluntary compliance.**

1 (a) Upon notification to the residential property owner by  
2 a law-enforcement agency that chemicals, equipment,  
3 supplies or precursors indicative of a clandestine drug  
4 laboratory have been located on the residential property  
5 owner's property, the residential property owner shall be  
6 responsible for actions necessary to meet the remediation  
7 standards established by the legislative rule authorized by this  
8 article. The residential property owner is responsible for  
9 actions to ensure the residential property shall remain  
10 unoccupied from the time the residential property owner is  
11 notified of the clandestine drug laboratory until such time as  
12 the department certifies that the completed remediation meets  
13 the numeric decontamination levels set forth in the legislative  
14 rule authorized in this article. The department shall have  
15 forty-five days from receipt of all necessary paperwork and  
16 documentation to complete remediation certification:  
17 *Provided*, That a residential property owner may demolish

18 the residential property as an alternative to meeting the  
19 remediation standards established by the department.

20 (b) Once the remediation has been certified complete by  
21 the department, the residential property owner and any  
22 representative or agent of a residential property owner who  
23 neither knew or should have known of the property's illegal  
24 use shall be immune from civil liability for action brought for  
25 injuries or loss based upon the prior use of the residential  
26 property as a clandestine drug laboratory by future owners,  
27 renters, lessees or any other person who occupies the  
28 residential property.

29 (c) Any residential property owner who neither knew or  
30 should have known of the property's illegal use who chooses  
31 to voluntarily and successfully complete the remediation  
32 prior to notification by a law-enforcement agency shall have  
33 the same immunity from liability as set forth in subsection (b)  
34 of this section if the remediation meets the certification  
35 standards set forth in legislative rules authorized by this  
36 article.

**§60A-11-6. Liability for costs of remediation.**

1 Any person convicted pursuant to section four,  
2 subsection (d), article ten of this chapter and whose actions  
3 also resulted in the necessity of remediation of a clandestine  
4 drug laboratory, shall be liable to the person or entity for all  
5 costs associated with the remediation of the clandestine drug  
6 laboratory. These costs may include attorney's fees and court  
7 costs reasonably necessary to bring an action to collect the  
8 amount paid for the remediation.



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CHAPTER 49

**(S.B. 531 - By Senator Kessler)**

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[Passed March 2, 2007; in effect ninety days from passage.]  
[Approved by the Governor on March 16, 2007.]

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AN ACT to amend and reenact §31D-5-504 of the Code of West Virginia, 1931, as amended, relating to the process of filing with the office of the Secretary of State service of process on corporations in class action suits.

*Be it enacted by the Legislature of West Virginia:*

That §31D-5-504 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. OFFICE AND AGENT.**

**§31D-5-504. Service on corporation.**

- 1       (a) A corporation's registered agent is the corporation's  
2 agent for service of process, notice or demand required or  
3 permitted by law to be served on the corporation.
- 4       (b) If a corporation has no registered agent, or the agent  
5 cannot with reasonable diligence be served, the corporation  
6 may be served by registered or certified mail, return receipt  
7 requested, addressed to the secretary of the corporation at its  
8 principal office. Service is perfected under this subsection at  
9 the earliest of:
- 10       (1) The date the corporation receives the mail;
- 11       (2) The date shown on the return receipt, if signed on  
12 behalf of the corporation; or

13 (3) Five days after its deposit in the United States mail,  
14 as evidenced by the postmark, if mailed postpaid and  
15 correctly addressed.

16 (c) In addition to the methods of service on a corporation  
17 provided in subsections (a) and (b) of this section, the  
18 Secretary of State is hereby constituted the attorney-in-fact  
19 for and on behalf of each corporation created pursuant to the  
20 provisions of this chapter. The Secretary of State has the  
21 authority to accept service of notice and process on behalf of  
22 each corporation and is an agent of the corporation upon  
23 whom service of notice and process may be made in this state  
24 for and upon each corporation. No act of a corporation  
25 appointing the Secretary of State as attorney-in-fact is  
26 necessary. Service of any process, notice or demand on the  
27 Secretary of State may be made by delivering to and leaving  
28 with the Secretary of State the original process, notice or  
29 demand and two copies of the process, notice or demand for  
30 each defendant, along with the fee required by section two,  
31 article one, chapter fifty-nine of this code: *Provided*, That  
32 with regard to a class action suit in which all defendants are  
33 to be served with the same process, notice or demand, service  
34 may be made by filing with the Secretary of State the original  
35 process, notice or demand and one copy for each named  
36 defendant. Immediately after being served with or accepting  
37 any process or notice, the Secretary of State shall: (1) File in  
38 his or her office a copy of the process or notice, endorsed as  
39 of the time of service or acceptance; and (2) transmit one  
40 copy of the process or notice by registered or certified mail,  
41 return receipt requested, to: (A) The corporation's registered  
42 agent; or (B) if there is no registered agent, to the individual  
43 whose name and address was last given to the Secretary of  
44 State's office as the person to whom notice and process are  
45 to be sent and if no person has been named, to the principal  
46 office of the corporation as that address was last given to the  
47 Secretary of State's office. Service or acceptance of process  
48 or notice is sufficient if return receipt is signed by an agent or  
49 employee of the corporation, or the registered or certified  
50 mail sent by the Secretary of State is refused by the addressee  
51 and the registered or certified mail is returned to the  
52 Secretary of State, or to his or her office, showing the stamp  
53 of the United States Postal Service that delivery has been

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54 refused, and the return receipt or registered or certified mail  
55 is appended to the original process or notice and filed in the  
56 clerk's office of the court from which the process or notice  
57 was issued. No process or notice may be served on the  
58 Secretary of State or accepted by him or her less than ten  
59 days before the return day of the process or notice. The court  
60 may order continuances as may be reasonable to afford each  
61 defendant opportunity to defend the action or proceedings.

62       (d) This section does not prescribe the only means, or  
63 necessarily the required means, of serving a corporation.

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CHAPTER 50

**(Com. Sub. for S.B. 411 - By Senators Kessler, Oliverio, Foster,  
Green, Minard, Stollings, Wells, Barnes, Hall and Yoder)**

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[Passed March 7, 2007; in effect ninety days from passage.]  
[Approved by the Governor on March 27, 2007.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §25-1B-1, §25-1B-2, §25-1B-3, §25-1B-4, §25-1B-5, §25-1B-6 and §25-1B-7, all relating to creation of the West Virginia Correctional Center Nursery Act; defining terms; establishing eligibility requirements and terms of participation; providing for termination from the program; authorizing collection of child support; requiring assignment of child support to the Division of Corrections; requiring a portion of child support and other moneys collected on behalf of a mother or child to be saved and given to the mother upon her release; creating the Correctional Center Nursery Fund; authorizing the Division of Corrections to accept grants, gifts and other moneys; authorizing expenditures from the fund; and allowing voluntary regulation of the program.

*Be it enacted by the Legislature of West Virginia:*

CORRECTIONAL CENTER NURSERY ACT [Ch. 50

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §25-1B-1, §25-1B-2, §25-1B-3, §25-1B-4, §25-1B-5, §25-1B-6 and §25-1B-7, all to read as follows:

**ARTICLE 1B. WEST VIRGINIA CORRECTIONAL CENTER NURSERY ACT.**

- §25-1B-1. Authorization; definitions.
- §25-1B-2. Eligible inmates.
- §25-1B-3. Terms of participation.
- §25-1B-4. Termination of inmate's participation in program.
- §25-1B-5. Collection of child support.
- §25-1B-6. Program support; Correctional Center Nursery Fund.
- §25-1B-7. Voluntary regulation.

**§25-1B-1. Authorization; definitions.**

1 (a) The Division of Corrections may establish a  
2 correctional center nursery in one or more of the correctional  
3 centers for women operated by the division. The program  
4 would allow eligible inmates and children born to them while  
5 in the custody of the division to reside together in the  
6 institution. In establishing this program, neither the inmate's  
7 participation in the program nor any provision of this article  
8 shall affect, modify or interfere with the inmate's custodial  
9 rights to the child nor does it establish legal custody of the  
10 child with the division.

11 (b) As used in this article:

12 (1) "Correctional Center Nursery Program" means the  
13 program authorized by this article.

14 (2) "Public assistance" means all forms of assistance,  
15 including monetary assistance from any public source paid  
16 either to the mother or child or any other person on behalf of  
17 the child.

18 (3) "Support" means the payment of money, including  
19 interest:

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20       (A) For a child or spouse ordered by a court of competent  
21 jurisdiction, whether the payment is ordered in an emergency,  
22 temporary, permanent or modified order, the amount of  
23 unpaid support shall bear simple interest from the date it  
24 accrued, at a rate of ten dollars upon one hundred dollars per  
25 annum, and proportionately for a greater or lesser sum, or for  
26 a longer or shorter time;

27       (B) To third parties on behalf of a child or spouse,  
28 including, but not limited to, payments to medical, dental or  
29 educational providers, payments to insurers for health and  
30 hospitalization insurance, payments of residential rent or  
31 mortgage payments, payments on an automobile or payments  
32 for day care; or

33       (C) For a mother, ordered by a court of competent  
34 jurisdiction, for the necessary expenses incurred by or for the  
35 mother in connection with her confinement or of other  
36 expenses in connection with the pregnancy of the mother.

37       (4) "Support order" means an award of support by order  
38 of a court of competent jurisdiction.

**§25-1B-2. Eligible inmates.**

1       An inmate is eligible to participate in the Correctional  
2 Center Nursery Program if she is pregnant at the time she is  
3 delivered into the custody of the Division of Corrections; she  
4 gives birth on or after the date the program is implemented;  
5 and she and the child meet any other criteria established by  
6 the division. Placement into the nursery program shall be by  
7 internal classification of the division. A sentencing court is  
8 without jurisdiction to order a placement of an inmate into  
9 the nursery program.

**§25-1B-3. Terms of participation.**

1       To participate in the Correctional Center Nursery  
2 Program, each eligible inmate selected by the division shall  
3 agree in writing to:

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4 (1) Comply with any educational, counseling or other  
5 requirements established for the program by the Division of  
6 Corrections;

7 (2) If eligible, have the child participate in the Medicaid  
8 program or a health insurance program;

9 (3) Accept the normal risks of child bearing;

10 (4) Abide by any court decisions regarding the allocation  
11 of parental rights and responsibilities with respect to the  
12 child;

13 (5) Assign to the division any rights to support from any  
14 other person; and

15 (6) Specify with whom the child is to be placed in the  
16 event the inmate's participation in the program is terminated  
17 for a reason other than release from imprisonment.

**§25-1B-4. Termination of inmate's participation in program.**

1 An inmate's participation in the Correctional Center  
2 Nursery Program may be terminated by the division if one of  
3 the following occurs:

4 (a) The inmate fails to comply with the agreement  
5 entered into under section three of this article;

6 (b) The inmate's child becomes seriously ill, cannot meet  
7 medical criteria established by the division for the program  
8 or otherwise cannot safely participate in the program;

9 (c) A court of competent jurisdiction issues an order that  
10 designates a person other than the inmate as the child's  
11 custodial parent and legal custodian;

12 (d) A court of competent jurisdiction grants custody of  
13 the child to a person other than the inmate;

14 (e) An order is issued granting shared parenting of the  
15 child;

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16       (f) An order regarding the child is issued granting  
17 temporary, permanent, or legal custody of the child to a  
18 person other than the inmate, or to a public children services  
19 agency or private child placing agency; or

20       (g) The inmate is released from imprisonment.

**§25-1B-5. Collection of child support.**

1       (a) The rights to support assigned by any inmate shall  
2 constitute an obligation of the person who is responsible for  
3 providing the support to the division for the support provided  
4 the inmate and child pursuant to the Correctional Center  
5 Nursery Program. The Bureau of Child Support Enforcement  
6 shall collect support payments made pursuant to the  
7 assignment and forward them to the division.

8       (b) The division may receive the following:

9       (1) Money that is assigned or donated on behalf of, and  
10 public assistance provided to, a specific inmate or child  
11 participating in the Correctional Center Nursery Program;  
12 and

13       (2) Money or other property assigned or donated to  
14 establish and maintain the Correctional Center Nursery  
15 Program.

16       (c) Ten percent of the moneys described in this section  
17 shall be placed in the mandatory savings account of the  
18 mother for whom the money was received. The remaining  
19 moneys shall be used for items not covered by other program  
20 funds.

**§25-1B-6. Program support; Correctional Center Nursery Fund.**

1       The division shall obtain sufficient resources to initiate  
2 and maintain the Correctional Center Nursery Program if the  
3 program is established. The division may accept gifts, grants,  
4 property, funds, money, interest on investment of the fund,  
5 materials, labor, supplies or services from the United States

6 of America or from any governmental unit or any person,  
 7 foundation, firm or corporation to support the program. All  
 8 moneys collected shall be deposited in a special revenue  
 9 account, designated the Correctional Center Nursery Fund,  
 10 which is hereby created. Expenditures from the fund shall be  
 11 for the purposes set forth in this article and are not authorized  
 12 from collections but are to be made only in accordance with  
 13 appropriation by the Legislature and in accordance with the  
 14 provisions of article two, chapter eleven-b of this code:  
 15 *Provided*, That for the fiscal year ending the thirtieth day of  
 16 June, two thousand eight, expenditures are authorized from  
 17 collections rather than pursuant to appropriation by the  
 18 Legislature. If there are sufficient moneys in the fund, they  
 19 shall be invested by the West Virginia Investment  
 20 Management Board in accordance with the provisions of  
 21 article six, chapter twelve of this code.

**§25-1B-7. Voluntary regulation.**

1 Notwithstanding any other provision of this code to the  
 2 contrary, neither the Correctional Center Nursery Program  
 3 nor the division, with respect to the program, is subject to any  
 4 regulation, licensing or oversight by the Department of  
 5 Health and Human Resources unless the division and the  
 6 Department of Health and Human Resources agree to  
 7 voluntary regulation, licensing or oversight.

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## CHAPTER 51

**(Com. Sub. for H.B. 2253 - By Delegates Caputo, Perdue,  
 Tucker and Stalnaker)**

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[Passed March 10, 2007; in effect January 1, 2008.]  
 [Approved by the Governor on March 22, 2007.]

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AN ACT to amend and reenact §31-20-27 of the Code of West Virginia, 1931, as amended, relating to requiring classified



service designation for certain Regional Jail and Correctional Facility Authority employees; providing that certain employees retain their current exempt status; and authorizing employment of new employees who have successfully completed certain required examinations.

*Be it enacted by the Legislature of West Virginia:*

That §31-20-27 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND  
CORRECTIONAL FACILITY  
AUTHORITY.**

**\*§31-20-27. Employees of Regional Jail Authority; priority of hiring; civil service coverage.**

1 (a) Notwithstanding any provision of this code to the  
2 contrary, the authority, when hiring employees to complete  
3 the approved staffing plan of a regional jail shall do so at a  
4 salary and with benefits consistent with the approved plan of  
5 compensation of the Division of Personnel, created under  
6 section five, article six, chapter twenty-nine of this code. All  
7 persons employed under this subsection shall be placed in the  
8 civil service system as covered employees. On and after the  
9 first day of January, two thousand eight, the executive  
10 director, of the Regional Jail and Correctional Facility  
11 Authority; all employees within the office of the executive  
12 director and all regional jail administrators are exempt from  
13 coverage under the classified service.

14 (b) Persons employed under the provisions of this  
15 subsection shall be employed at a salary and with benefits  
16 consistent with the approved plan of compensation of the  
17 Division of Personnel, created under section five, article six,  
18 chapter twenty-nine of this code. All persons employed  
19 under this subsection shall also be covered by the policies  
20 and procedures of the West Virginia Public Employees

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\*CLERK'S NOTE: This section was also amended by S.B. 442 (Chapter 207), which passed prior to this act

21 Grievance Board created under section one, article three,  
22 chapter six-c of this code.

23 (c) Notwithstanding the provisions of section ten, article  
24 six, chapter twenty-nine of this code, and any rule  
25 promulgated thereunder, on and after the first day of July,  
26 two thousand seven, any person applying for employment  
27 with the Regional Jail and Correctional Facility Authority  
28 shall be hired based on passage of the correctional officer  
29 examination without regard to his or her position on the  
30 correctional officer register and shall be placed in the civil  
31 service system as covered employees: *Provided*, That no such  
32 person shall be hired before an otherwise qualified person on  
33 a preference register.

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## CHAPTER 52

**(Com. Sub. for H.B. 2422 - By Delegates Perry,  
Pino and Stemple)**

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[Passed March 9, 2007; in effect ninety days from passage.]  
[Approved by the Governor on March 22, 2007.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §25-1-4; and to amend said code by adding thereto a new section, designated §31-20-30, all relating to reducing the reimbursement provided by the Regional Jails and the Division of Corrections provided that the Department of Health and Human Services and the Regional Jail Authority and the Department of Corrections will effectuate an electronic payment system.

*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 §25-1-4; and that said code be amended by adding thereto a new section, designated §31-20-30, all to read as follows:

**Chapter**

- 25. Division of Corrections.
- 31. Corporations.

**CHAPTER 25. DIVISION OF CORRECTIONS.**

**ARTICLE 1. ORGANIZATION AND INSTITUTIONS AND CORRECTIONS MANAGEMENT.**

**§25-1-4. Limitation on reimbursement rate to medical service providers for services outside division facilities.**

1 (a) Effective the first day of July, two thousand seven, the  
2 division, or its contracted medical provider, may not pay an  
3 amount to an outside provider of a medical service for a  
4 person residing in a correctional facility greater than seventy-  
5 three percent of the billed charges: *Provided*, That critical  
6 access hospitals shall be reimbursed at eighty-five percent of  
7 the billed charges. This limitation applies to all medical care  
8 services, goods, prescription drugs and medications provided  
9 to a person who is in the custody of a correctional facility and  
10 is provided these services outside of said correctional facility.

11 (b) Effective the first day of July, two thousand eight, the  
12 division, or its contracted medical providers, may not pay an  
13 amount to an outside provider of a medical service for a  
14 person residing in a correctional facility greater than the  
15 reimbursement rate applicable to service providers  
16 established by legislative rule of the Bureau for Medical  
17 Service within the Department of Health and Human  
18 Resources: *Provided*, That critical access hospitals shall be  
19 reimbursed at seventy-five percent of the billed charges.  
20 These limitations apply to all medical care services, goods,  
21 prescription drugs and medications provided to a person who  
22 is in the custody of a correctional facility and is provided  
23 these services outside of a correctional facility: *Provided*,  
24 *however*, That the Department of Military Affairs and Public  
25 Safety and the Department of Health and Human Resources  
26 effectuate an interagency agreement for the electronic  
27 processing and payment of medical services.

**CHAPTER 31. CORPORATIONS.**

**ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.**

**§31-20-30. Limitation on reimbursement rate to medical service providers for services outside regional jail facilities.**

1       (a) Effective the first day of July, two thousand seven, the  
2 authority, or its contracted medical provider, may not pay an  
3 amount to an outside provider of a medical service for a  
4 person residing in a regional jail greater than seventy-three  
5 percent of the billed charges: *Provided*, That critical access  
6 hospitals shall be reimbursed at eighty-five percent of the  
7 billed charges. These limitations apply to all medical care  
8 services, goods, prescription drugs and medications provided  
9 to a person who is in the custody of a regional jail and is  
10 provided these services outside of a regional jail.

11       (b) Effective the first day of July, two thousand eight, the  
12 authority, or its contracted medical providers, may not pay an  
13 amount to an outside provider of a medical service for a  
14 person residing in a regional jail greater than the  
15 reimbursement rate applicable to service providers  
16 established by legislative rule of the Bureau for Medical  
17 Service within the Department of Health and Human  
18 Resources: *Provided*, That critical access hospitals shall be  
19 reimbursed at seventy-five percent of the billed charges. This  
20 limitation applies to all medical care services, goods,  
21 prescription drugs and medications provided to a person who  
22 is in the custody of a regional jail and is provided these  
23 services outside of a regional jail: *Provided, however*, That  
24 the Department of Military Affairs and Public Safety and the  
25 Department of Health and Human Resources effectuate an  
26 interagency agreement for the electronic processing and  
27 payment of medical services.

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**CHAPTER 53**

**(Com. Sub. for S.B. 361 - By Senators Tomblin,  
Mr. President, and Caruth)  
[By Request of the Executive]**

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[Passed March 10, 2007; in effect ninety days from passage.]  
[Approved by the Governor on April 4, 2007.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31-20-31, relating to authorizing the Executive Director of the West Virginia Regional Jail and Correctional Facility Authority to establish a work program for qualified inmates in regional jail facilities; providing accounting procedures and requirements; specifying required deductions from earnings; permitting transfer of funds to the Commissioner of Corrections; and authorizing legislative rules.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §31-20-31, to read as follows:

**ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND  
CORRECTIONAL FACILITY  
AUTHORITY.**

**§31-20-31. Work program.**

1 (a) The executive director is authorized to establish at  
2 each regional jail facility a work program for qualified  
3 inmates and to establish at each regional jail facility under his  
4 or her jurisdiction an inmate trustee account. The authority  
5 shall establish guidelines and qualifications to allow inmates  
6 sentenced to a regional jail facility to be gainfully employed  
7 with local businesses and governmental entities as part of a

8 job program: *Provided*, That with regard to an inmate  
9 sentenced to the Division of Corrections that is domiciled at  
10 a regional jail facility under the supervision of the authority,  
11 the Commissioner of the Division of Corrections or designee  
12 shall first determine the eligibility of such inmate for  
13 participation in the work program authorized by this section  
14 and consent to such inmate's participation therein. A  
15 qualified inmate does not include an inmate convicted of a  
16 sexual offense or a violent felony.

17 (b) The administrator or designee of each regional jail  
18 facility shall receive and take charge of the money of all  
19 inmates in his or her regional jail and all money sent to the  
20 inmates or earned by the inmates as compensation for work  
21 performed under this section. The administrator or designee  
22 shall credit the money and earnings to the inmate entitled to  
23 it and shall keep an accurate account of all the money so  
24 received, which account is subject to examination by the  
25 executive director or designee. The administrator or designee  
26 shall deposit the moneys in one or more responsible banks in  
27 accounts to be designated inmate trustee account.

28 (c) For each inmate sentenced to the Division of  
29 Corrections participating in a work program authorized by  
30 this section, the administrator or designee of the regional jail  
31 facility shall keep in an account at least ten percent of all  
32 money earned during the inmate's incarceration and pay the  
33 money to the inmate at the time of the inmate's release. The  
34 administrator may authorize the inmate to withdraw money  
35 from his or her mandatory savings for the purpose of  
36 preparing the inmate for reentry into society.

37 (d) An inmate who works in work programs established  
38 under this section shall make reimbursement to the authority  
39 toward the cost of his or her incarceration to be credited to  
40 the agency billed for that incarceration: *Provided*, That prior  
41 to directing a qualified inmate to make reimbursement under  
42 this section, the executive director or designee shall consider  
43 the following:

44 (1) The inmate's ability to pay;

45 (2) The nature and extent of the inmate's responsibilities  
46 to his or her dependents, if any;

47 (3) The length of probable incarceration under the court's  
48 sentence; and

49 (4) The effect, if any, that reimbursement might have on  
50 the inmate's rehabilitation.

51 (e) (1) The administrator shall deduct from the earnings  
52 of each qualified inmate legitimate court-ordered financial  
53 obligations including, but not limited to, child support  
54 payments, liens and any other court-ordered financial  
55 obligation. The executive director shall develop a policy that  
56 outlines the formula for the distribution of the qualified  
57 inmate's income and the formula shall include a percentage  
58 deduction, not to exceed forty percent in the aggregate, for  
59 any court ordered victim restitution, court fees and child  
60 support obligations owed under a support order, including an  
61 administrative fee not to exceed one dollar, consistent with  
62 the provisions of subsection (c), section four hundred six,  
63 article fourteen, chapter forty-eight of this code, to support  
64 the authority's administration of this financial service.

65 (2) In the event that the qualified inmate's income is  
66 subject to garnishment for child support enforcement  
67 deductions, it shall be calculated on the net wages after taxes,  
68 legal financial obligations and garnishment: *Provided*, That  
69 nothing in this section limits the authority of the Bureau for  
70 Child Support Enforcement of the Department of Health and  
71 Human Resources from taking collection action against an  
72 inmate's moneys, assets or property.

73 (f) The administrator or designee of a regional jail  
74 facility, upon request of an inmate to release funds, on behalf  
75 of the family of the inmate, may authorize the release of  
76 funds up to one half of the money earned by the inmate  
77 participating in a work program as authorized by this section:  
78 *Provided*, That the court-ordered financial obligations  
79 provided in subsection (e) of this section and other fees owed  
80 by the inmate including, but not limited to, the costs of  
81 incarceration and any restitution for facility rule infractions,

82 have been paid. The remainder of the money earned, after  
83 deducting amounts expended as authorized, shall be  
84 accumulated to the credit of the inmate and be paid to the  
85 inmate at times as may be prescribed by rules. The funds so  
86 accumulated on behalf of inmates shall be held by the  
87 administrator or designee of each institution under a bond  
88 approved by the Attorney General.

89 (g) The administrator or designee shall deliver to the  
90 inmate at the time he or she leaves the regional jail facility,  
91 or as soon as practicable after departure, moneys and  
92 earnings then credited to the inmate: *Provided*, That if an  
93 inmate is transferred to the physical custody of the  
94 Commissioner of the Division of Corrections, as defined in  
95 section two of this article, at the time he or she leaves the  
96 regional jail facility, the administrator or designee shall  
97 deliver moneys and earnings then credited to the inmate to  
98 the Commissioner of the Division of Corrections for  
99 administration in accordance with the provisions of section  
100 three-a, article one, chapter twenty-five of this code. In case  
101 of the death of the inmate before authorized release from the  
102 regional jail facility, the administrator or designee shall  
103 deliver the property to the inmate's lawful representative. In  
104 case a conservator is appointed for the inmate while he or she  
105 is domiciled at the regional jail facility, the administrator  
106 shall deliver to the conservator, upon proper demand, all  
107 moneys and personal property belonging to the inmate that  
108 are in the custody of the administrator.

109 (h) The executive director shall propose rules for  
110 legislative approval in accordance with article three, chapter  
111 twenty-nine-a of this code to administer and establish the  
112 work programs authorized by this section.

113 (i) Notwithstanding any provision of this code to the  
114 contrary, the county commission, its members and agents, the  
115 Executive Director of the West Virginia Regional Jail and  
116 Correctional Facility Authority or designee its members or  
117 agents, the sheriff, his or her deputies, correctional officers  
118 and agents shall be immune from all liability of any kind  
119 except for accident, injury or death resulting directly from  
120 gross negligence or malfeasance.



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CHAPTER 54

(S.B. 707 - By Senators Love and Kessler)

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[Passed March 10, 2007; in effect from passage.]  
[Approved by the Governor on March 28, 2007.]

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AN ACT to repeal §7-8-13 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §31-20-32, all relating to amount, collection of and refunding of jail processing fees.

*Be it enacted by the Legislature of West Virginia:*

That §7-8-13 of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new section, designated §31-20-32, all to read as follows:

**ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND  
CORRECTIONAL FACILITY  
AUTHORITY.**

**§31-20-32. Jail processing fee.**

1 (a) A person committed to be housed in jail by order of  
2 magistrate, circuit judge or by temporary commitment order  
3 shall, at the time of booking into the jail, pay a processing fee  
4 of thirty dollars. If the person is unable to pay at the time of  
5 booking, the fee shall be deducted, at a rate of fifty percent,  
6 from any new deposits made into the person's jail trust  
7 account until the jail processing fee is paid in full. The fee  
8 shall be credited to the Regional Jail and Correctional Facility  
9 Authority's operating budget. The fee should be paid prior  
10 to the offender being released.

11 (b) A refund of a fee collected under this section shall be  
12 made to a person who has paid the fee if the person is not  
13 convicted of the offense for which the person was booked  
14 and the person provides documentation from the court  
15 showing that all charges for which the person was booked  
16 were dismissed, accurate current name and address and a  
17 valid photographic identification. In the case of multiple  
18 offenses, if the person is convicted of any of the offenses the  
19 fee may not be refunded. If the person is convicted of a  
20 lesser included offense or a related offense, no refund may be  
21 made.

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## CHAPTER 55

**(Com. Sub. for S.B. 192 - By Senators Love,  
Hunter, White, McKenzie and Plymale)**

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[Passed March 9, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2007.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §62-8-8, relating to authorizing the Commissioner of the Division of Corrections to issue orders of arrest for certain inmates who are no longer in the physical custody of the commissioner; allowing division personnel to obtain criminal complaints and warrants for escapees and absconders; and entering data into all criminal reporting databases and other computerized systems for the reporting and apprehension of criminals and fugitives.

*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 §62-8-8, to read as follows:

**ARTICLE 8. CRIMES BY AND PROCEEDINGS AGAINST  
INMATES.****§62-8-8. Orders and warrants for arrest of inmates;  
authorization to obtain arrest warrants.**

1 (a) Notwithstanding any provision of this code to the  
2 contrary, the Commissioner of the Division of Corrections,  
3 or his or her designee, may issue an order of arrest for  
4 inmates who have been released from the custody of the  
5 division due to a clerical error, mistake or due to the failure  
6 of a sentencing court to timely transmit an order of  
7 commitment prior to the release of an inmate from the  
8 commissioner's custody or to the commissioner's custody.  
9 All law-enforcement officers shall honor and enforce orders  
10 of arrest in the same manner afforded warrants of arrest  
11 issued by magistrate or circuit courts notwithstanding any  
12 provision of this code to the contrary.

13 (b) The Commissioner of the Division of Corrections, or  
14 his or her designee, may file criminal complaints and obtain  
15 from a court of competent jurisdiction an arrest warrant for  
16 any inmate under commitment to the commissioner for  
17 service of a sentence of incarceration who has escaped from  
18 a facility or otherwise absconded from a furlough or  
19 temporary release.

20 (c) The Commissioner of the Division of Corrections, or  
21 his or her designee, may enter such orders of arrest or  
22 warrants referred to in this section into all criminal reporting  
23 databases and other computerized systems utilized by law  
24 enforcement for the reporting and apprehension of criminals  
25 and fugitives.

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CHAPTER 56

**(H.B. 2831 - By Delegates Duke, Doyle, Overington,  
Tabb and Blair)**

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[Passed March 10, 2007; in effect ninety days from passage.]  
[Approved by the Governor on April 3, 2007.]

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AN ACT to amend and reenact §7-1-3mm of the Code of West Virginia, 1931, as amended, relating to transfer of development rights; eliminating the five year ordinance waiting period; and providing that the transfer of development rights may be renewable.

*Be it enacted by the Legislature of West Virginia:*

That §7-1-3mm of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

**§7-1-3mm. Transfer of development rights in growth counties.**

1       (a) In addition to all other powers and duties now  
2 conferred by law upon county commissions, if a county has  
3 been designated as a growth county as that term is defined  
4 in section three, article twenty of this chapter, those county  
5 commissions, upon approval by a majority of the legal votes  
6 cast at an election as provided in section three-~~nn~~ of this  
7 article, are hereby authorized to, as part of a county-wide  
8 zoning ordinance, establish a program for the transfer of  
9 development rights in order to:

10       (1) Encourage the preservation of natural resources;

11       (2) Protect the historic, scenic, recreational and  
12 agricultural qualities of open lands; and

13       (3) Facilitate orderly growth and development in the  
14 county.

15       (b) The program for the transfer of development rights  
16 may provide for:

17       (1) The voluntary transfer of the development rights  
18 permitted on any parcel of land to another parcel of land for  
19 use in accordance with the zoning and subdivision  
20 ordinance;

21       (2) Restricting or prohibiting further development of the  
22 parcel from which development rights are severed; and

23       (3) Increasing the density or intensity of development of  
24 the parcel to which such rights are transferred.

25       (c) The program for the transfer of development rights  
26 shall:

27       (1) Designate a program for which development rights  
28 may be transferred from any parcel of land to any other  
29 parcel of land for use in accordance with the zoning and  
30 subdivision ordinance;

31       (2) Provide that any rights transferred under this section  
32 be for a period of ten years and may be renewed for  
33 additional ten year periods; and

34       (3) Any rights which expire before being used for  
35 development, revert to the original parcel of land from  
36 which the rights were first severed.

37 (d) The county commission may not set a price for any  
38 development rights that are proposed to be transferred or  
39 received.

40 (e) "Transferable development rights" means an interest  
41 in real property that constitutes the right to develop and use  
42 property under the zoning ordinance which is made  
43 severable from the parcel to which the interest is  
44 appurtenant and transferable to another parcel of land for  
45 development and use in accordance with the zoning  
46 ordinance.

47 (f) Transferable development rights may be transferred  
48 by deed from the owner of the parcel from which the  
49 development rights are derived and upon the transfer shall  
50 vest in the grantee and be freely alienable.

51 (g) The zoning ordinance may provide for:

52 (1) The method of transfer of development rights;

53 (2) Recordation of the date of each transfer;

54 (3) The names of the transferor and transferee;

55 (4) A description of the property;

56 (5) The granting of easements;

57 (6) Reasonable regulations to effect and control transfers  
58 and assure compliance with the provisions of the ordinance;  
59 and

60 (7) Any other information necessary to administer the  
61 program.



# CHAPTER 57

**(S.B. 436 - By Senators Kessler, Oliverio, Foster, Green, Hunter, Jenkins, Stollings, Wells, White, Barnes, Caruth, Deem, Hall and Yoder)**

[Passed March 2, 2007; in effect ninety days from passage.]  
[Approved by the Governor on March 16, 2007.]

AN ACT to amend and reenact §7-1-3r of the Code of West Virginia, 1931, as amended, relating to selection of executive secretary to county commission on crime, delinquency and correction; and removing circuit clerk from that position.

*Be it enacted by the Legislature of West Virginia:*

That §7-1-3r of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

## **ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

**§7-1-3r. Purposes of section; county commissions on crime, delinquency and correction created and established; composition of commission; powers and duties of commission; executive secretary; duties of executive secretary.**

- 1 (a) The enactment of the Omnibus Crime Control and
- 2 Safe City Streets Act of 1968 and subsequent amendments
- 3 thereto with millions of federal dollars available to local
- 4 units of government in the fiscal year one thousand nine
- 5 hundred seventy-two--one thousand nine hundred seventy-
- 6 three, and the probability that this program will be continued
- 7 and expanded in future years makes the establishment of a
- 8 county agency to ensure that the county may make the best
- 9 use of the benefits of this act.

10           (b) There is hereby established in each county a county  
11 commission on crime, delinquency and correction. The  
12 commission shall consist of the members of the county  
13 commission and such other members as may be designated  
14 by the county commission. Members other than the county  
15 commission members shall serve at the will and pleasure of  
16 the county commission.

17           (c) This commission shall collect and compile all data  
18 and other information with respect to police agencies, courts  
19 of record and justice of peace courts, prosecution of crimes,  
20 probation, jails, juvenile detention facilities and such other  
21 matters as might be concerned with the total criminal justice  
22 system.

23           (d) The commission shall work closely with the  
24 Governor's Committee on Crime, Delinquency and  
25 Correction established by Executive Order 7-A66 dated the  
26 first day of September, one thousand nine hundred sixty-six.

27           (e) The commission shall analyze the data and  
28 information herein required, shall determine federal funds  
29 available under the provisions of the state plan developed by  
30 the aforesaid Governor's Committee on Crime, Delinquency  
31 and Correction and shall make recommendations to the  
32 governing body with respect to priorities in the expenditure  
33 of funds.

34           (f) The commission may make recommendations with  
35 respect to steps to be taken in the county designed to  
36 improve the criminal justice system.

37           (g) The commission shall select one of its members to  
38 be the executive secretary to the commission and as such  
39 shall keep a record of all proceedings, shall collect and  
40 compile data and information as may be required by the  
41 commission and perform other duties as reasonably may be  
42 required by the commission to effectuate the purposes of  
43 this section.



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CHAPTER 58

**(Com. Sub. for S.B. 697 - By Senators Caruth,  
Foster and Guills)**

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[Passed March 10, 2007; in effect ninety days from passage.]  
[Approved by the Governor on April 4, 2007.]

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AN ACT to amend and reenact §7-12-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §7-24-1, all relating to the Appalachian Region Interstate Compact; authorizing revenue-sharing agreements between development authorities or similar authorities outside the state; providing that certain obligations of development authorities are not debts pursuant to section eight, article X of the Constitution of West Virginia; creating the Appalachian Region Interstate Compact; providing a short title; establishing the compact and authorizing membership under certain conditions; setting forth powers and duties of compact members; providing for six compact commissioners; authorizing appointment by the President of the Senate and the Speaker of the House of Delegates; specifying terms of service; providing for funding for operating expenses; providing that members will receive compensation and reimbursement for reasonable and necessary expenses as determined by each state; and providing that the act will become effective upon adoption of at least one other state.

*Be it enacted by the Legislature of West Virginia:*

That §7-12-7 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 §7-24-1, all to read as follows:

**ARTICLE 12. COUNTY AND MUNICIPAL DEVELOPMENT  
AUTHORITIES.****Article**

- 12. County and Municipal Development Authorities.**
- 24. Appalachian Region Interstate Compact.**

**§7-12-7. Powers generally.**

1 (a) The development authority is hereby given power  
2 and authority as follows: (1) To make and adopt all  
3 necessary bylaws and rules for its organization and  
4 operations not inconsistent with laws; (2) to elect its own  
5 officers, to appoint committees and to employ and fix  
6 compensation for personnel necessary for its operation; (3)  
7 to enter into contracts with any person, agency,  
8 governmental department, firm or corporation, including  
9 both public and private corporations, and generally to do  
10 any and all things necessary or convenient for the purpose  
11 of promoting, developing and advancing the business  
12 prosperity and economic welfare of the county in which it is  
13 intended to operate, its citizens and industrial complex,  
14 including, without limiting any of the foregoing, the  
15 construction of any building or structure for lease to the  
16 federal government or any of its agencies or departments,  
17 and in connection therewith to prepare and submit bids and  
18 negotiate with the federal government or such agencies or  
19 departments in accordance with plans and specifications and  
20 in the manner and on the terms and conditions and subject  
21 to any requirements, regulations, rules and laws of the  
22 United States of America for the construction of said  
23 buildings or structures and the leasing thereof to the federal  
24 government or such agencies or departments; (4) to amend  
25 or supplement any contracts or leases or to enter into new,  
26 additional or further contracts or leases upon such terms and  
27 conditions, for such consideration and for such term of  
28 duration, with or without option of renewal, as may be  
29 agreed upon by the authority and such person, agency,  
30 governmental department, firm or corporation; (5) unless  
31 otherwise provided for in, and subject to the provisions of,  
32 such contracts, or leases, to operate, repair, manage and  
33 maintain such buildings and structures and provide adequate

34 insurance of all types and in connection with the primary use  
35 thereof and incidental thereto to provide such services, such  
36 as barber shops, newsstands, drugstores and restaurants, and  
37 to effectuate such incidental purposes, grant leases, permits,  
38 concessions or other authorizations to any person or persons,  
39 upon such terms and conditions, for such consideration and  
40 for such term of duration as may be agreed upon by the  
41 authority and such person, agency, governmental  
42 department, firm or corporation; (6) to delegate any  
43 authority given to it by law to any of its officers,  
44 committees, agents or employees; (7) to apply for, receive  
45 and use grants-in-aid, donations and contributions from any  
46 source or sources and to accept and use bequests, devises,  
47 gifts and donations from any person, firm or corporation; (8)  
48 to acquire real property by gift, purchase or construction, or  
49 in any other lawful manner, and hold title thereto in its own  
50 name and to sell, lease or otherwise dispose of all or part of  
51 such real property which it may own, either by contract or  
52 at public auction, upon the approval by the board of  
53 directors of the development authority; (9) to purchase or  
54 otherwise acquire, own, hold, sell, lease and dispose of all  
55 or part of any personal property which it may own, either by  
56 contract or at public auction; (10) pursuant to a  
57 determination by the board that there exists a continuing  
58 need for programs to alleviate and prevent unemployment  
59 within the county in which the authority is intended to  
60 operate or aid in the rehabilitation of areas in said county  
61 which are underdeveloped, decaying or otherwise  
62 economically depressed and that moneys or funds of the  
63 authority are necessary therefor, to borrow money and  
64 execute and deliver the authority's negotiable notes,  
65 mortgage bonds, other bonds, debentures and other  
66 evidences of indebtedness therefor, on such terms as the  
67 authority shall determine and give such security therefor as  
68 shall be requisite, including giving a mortgage or deed of  
69 trust on its real or personal property and facilities in  
70 connection with the issuance of mortgage bonds; (11) to  
71 raise funds by the issuance and sale of revenue bonds in the  
72 manner provided by the applicable provisions of article  
73 sixteen, chapter eight of this code, it being hereby expressly  
74 provided that a development authority created under this

75 article is a "governing body" within the definition of that  
76 term as used in said article sixteen, chapter eight of this  
77 code; and (12) to expend its funds in the execution of the  
78 powers and authority herein given, which expenditures, by  
79 the means authorized herein, are hereby determined and  
80 declared as a matter of legislative finding to be for a public  
81 purpose and use, in the public interest, and for the general  
82 welfare of the people of West Virginia, to alleviate and  
83 prevent economic deterioration and to relieve the existing  
84 critical condition of unemployment existing within the state.

85 (b) The amendment of this section enacted in the year  
86 one thousand nine hundred ninety-eight is intended to  
87 clarify the intent of the Legislature as to the manner in  
88 which an authority may sell, lease or otherwise dispose of  
89 real and personal property owned by an authority and shall  
90 be retroactive to the date of the prior enactment of this  
91 section.

92 (c) Notwithstanding any provision of this code to the  
93 contrary, any development authority participating in the  
94 Appalachian Region Interstate Compact pursuant to chapter  
95 seven-a of this code may agree to a revenue and economic  
96 growth-sharing arrangement with respect to tax revenues  
97 and other income and revenues generated by any facility  
98 owned by an authority. Any development authority or  
99 member locality may be located in any jurisdiction  
100 participating in the Appalachian Region Interstate Compact  
101 or a similar agreement for interstate cooperation for  
102 economic and workforce development authorized by law.  
103 The obligations of the parties to any such agreement shall  
104 not be debt within the meaning of section eight, article X of  
105 the Constitution of West Virginia. Any such agreement  
106 shall be approved by a majority vote of the governing bodies  
107 of the member localities reaching such an agreement but  
108 does not require any other approval.

109 (d) "Member localities" means the counties,  
110 municipalities or combination thereof which are members of  
111 an authority.

**ARTICLE 24. APPALACHIAN REGION INTERSTATE  
COMPACT.**

**§7-24-1. Appalachian Region Interstate Compact; form of  
compact.**

1       The Appalachian Region Interstate Compact (the  
2 compact) is hereby created and entered into with all other  
3 jurisdictions legally joining therein in the form substantially  
4 as follows:

**Article I. Short title.**

1       This act shall be known and may be cited as the  
2 Appalachian Region Interstate Compact.

**Article II. Compact established.**

1       Pursuant to section ten, article I of the Constitution of  
2 the United States, the signatories hereby provide a  
3 mechanism for the creation of one or more authorities for  
4 the purpose of developing one or more facilities to enhance  
5 the regional economy that shall constitute instrumentalities  
6 of the signatories. For purposes of this chapter,  
7 "Appalachian Region" means the areas included in "region"  
8 as defined in §403 of the Appalachian Regional  
9 Development Act of 1965, as amended (40 U. S. C. §14102  
10 (a)(1)).

**Article III. Agreement.**

1       The State of West Virginia may enter into agreement  
2 with one or more signatory states and, upon adoption of this  
3 compact, agree as follows:

4       1. To study, develop and promote a plan for the design,  
5 construction, financing and operation of interstate facilities  
6 of strategic interest to the signatory states;

7           2. To coordinate efforts to establish a common legal  
8 framework in all the signatory states to authorize and  
9 facilitate design, construction, financing and operation of  
10 such facilities either as publicly operated facilities or  
11 through other structures authorized by law;

12           3. To advocate for federal and other public and private  
13 funding to support the establishment of interstate facilities  
14 of interest to all signatory states;

15           4. To make available to such interstate facilities funding  
16 and resources that are or may be appropriated and allocated  
17 for that purpose; and

18           5. To do all things necessary or convenient to facilitate  
19 and coordinate the economic and workforce development  
20 plans and programs of the State of West Virginia and the  
21 other signatory states to the extent such plans and programs  
22 are not inconsistent with federal law and the laws of the  
23 State of West Virginia or other signatory states.

**Article IV. Compact commission established; membership;  
chairman; meetings; and report.**

1           Each signatory state to the compact shall establish a  
2 compact commission. In West Virginia, the Appalachian  
3 Region Interstate Compact Commission (the commission)  
4 shall be established as a regional instrumentality and agency  
5 of the State of West Virginia and the signatory states. The  
6 compact commissions of the signatory states shall be  
7 empowered to carry out the purposes of their respective  
8 compacts.

9           The Appalachian Region Interstate Compact  
10 Commission shall consist of six members from each of the  
11 other signatory states to be appointed pursuant to the laws of  
12 the signatory states and six members of the West Virginia  
13 delegation to the commission to be appointed as follows:  
14 Three members to be appointed by the President of the  
15 Senate and three members to be appointed by the Speaker of  
16 the House of Delegates. Members of the West Virginia

17 delegation to the compact commission shall serve terms  
18 coincident with their terms of office if an elected state or  
19 local representative, and may be reappointed. Members who  
20 are not elected officials shall serve a term of four years and  
21 may be reappointed. The chairman of the commission shall  
22 be elected by the members of the commission from among  
23 its membership. The chairman shall serve for a term of two  
24 years and the chairmanship shall rotate among the signatory  
25 states.

26 The commission shall meet not less than twice annually;  
27 however, the commission shall not meet more than once  
28 consecutively in the same state.

**Article V. Powers and duties of the commission.**

1 The commission is vested with the powers of a body  
2 corporate, including the power to sue and be sued in its own  
3 name, plead and be impleaded and adopt and use a common  
4 seal and alter the same as may be deemed expedient. In  
5 addition to the powers set forth elsewhere in this chapter, the  
6 commission may:

7 1. Adopt bylaws, rules and regulations to carry out the  
8 provisions of this chapter;

9 2. Employ, either as regular employees or as  
10 independent contractors, consultants, engineers, architects,  
11 accountants, attorneys, financial experts, construction  
12 experts and personnel, superintendents, managers and other  
13 professional personnel, personnel and agents as may be  
14 necessary in the judgment of the commission and fix their  
15 compensation;

16 3. Determine the locations of, develop, establish,  
17 construct, erect, repair, remodel, add to, extend, improve,  
18 equip, operate, regulate and maintain facilities to the extent  
19 necessary or convenient to accomplish the purposes of the  
20 compact;

21           4. Acquire, own, hold, lease, use, sell, encumber,  
22 transfer, or dispose of, in its own name, any real or personal  
23 property or interests therein;

24           5. Invest and reinvest funds of the commission;

25           6. Enter into contracts of any kind and execute all  
26 instruments necessary or convenient with respect to its  
27 carrying out the powers in this chapter to accomplish the  
28 purposes of the compact;

29           7. Expend such funds as may be available to it for the  
30 purpose of developing facilities, including, but not limited  
31 to: (i) Purchasing real estate; (ii) grading sites; (iii)  
32 improving, replacing and extending water, sewer, natural  
33 gas, electrical and other utility lines; (iv) constructing,  
34 rehabilitating and expanding buildings; (v) constructing  
35 parking facilities; (vi) constructing access roads, streets and  
36 rail lines; (vii) purchasing or leasing machinery and tools;  
37 and (viii) making any other improvements deemed  
38 necessary by the commission to meet its objectives;

39           8. Fix and revise, from time to time, and charge and  
40 collect rates, rents, fees or other charges for the use of  
41 facilities or for services rendered in connection with the  
42 facilities in accordance with applicable state and federal  
43 laws and as approved by the commission;

44           9. Borrow money from any source for any valid  
45 purpose, including working capital for its operations, reserve  
46 funds or interest; mortgage, pledge or otherwise encumber  
47 the property or funds of the commission; and contract with  
48 or engage the services of any person in connection with any  
49 financing, including financial institutions, issuers of letters  
50 of credit or insurers;

51           10. Issue bonds the principal and interest on which are  
52 payable exclusively from the revenues and receipts of a  
53 specific facility in accordance with applicable laws;



54       11. Accept funds and property from the state and other  
55       signatory jurisdictions, persons, counties, cities and towns  
56       and use the same for any of the purposes for which the  
57       commission is created;

58       12. Apply for and accept grants or loans of money or  
59       other property from any federal agency for any of the  
60       purposes authorized in this chapter and expend or use the  
61       same in accordance with the directions and requirements  
62       attached thereto or imposed thereon by any such federal  
63       agency;

64       13. Make loans or grants to, and enter into cooperative  
65       arrangements with, any person, partnership, association,  
66       corporation, business or governmental entity in furtherance  
67       of the purposes of this chapter for the purposes of promoting  
68       economic and workforce development, provided that such  
69       loans or grants shall be made only from revenues of the  
70       commission that have not been pledged or assigned for the  
71       payment of any of the commission's bonds, and to enter into  
72       such contracts, instruments, and agreements as may be  
73       expedient to provide for such loans, and any security  
74       therefor. The word "revenues" as used in this subdivision  
75       includes grants, loans, funds and property, as set out in  
76       subdivisions (11) and (12) of this article;

77       14. Enter into agreements with political subdivisions of  
78       the state for joint or cooperative action;

79       15. Exercise any additional powers granted to it by  
80       subsequent legislation; and

81       16. Do all things necessary or convenient to carry out  
82       the purposes of this chapter.

#### **Article VI. Funding and compensation.**

1       The commission may utilize for its operation and  
2       expenses: (i) Funds that may be generated by borrowing,  
3       gifts and grants; (ii) funds appropriated to it for  
4       such purposes by the West Virginia Legislature and the

5 legislatures of the other signatory states; (iii) federal funds;  
6 and (iv) revenues collected for the use of any facility  
7 approved by the commission.

8 Members of the West Virginia delegation to the  
9 commission shall not receive compensation but shall be  
10 reimbursed for reasonable and necessary expenses incurred  
11 in the performance of their duties to the commission. All  
12 such expenses shall be paid from existing appropriations,  
13 gifts, grants, federal funds or other revenues collected for  
14 the use of any facility approved by the commission.  
15 Members of the commission representing other signatory  
16 states shall receive compensation and reimbursement of  
17 expenses incurred in the performance of their duties to the  
18 commission in accordance with the applicable laws of the  
19 respective signatory states.

20 The provisions of this act shall become effective upon  
21 the enactment of the Appalachian Region Interstate  
22 Compact as authorized by this article and upon the  
23 enactment of this compact by at least one other state in  
24 accordance with its terms and federal law.

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CHAPTER 59

**(Com. Sub. for S.B. 105 - Senators Foster, Hall, McCabe,  
Oliverio, Deem, Edgell, Plymale and McKenzie)**

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[Passed March 4, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 16, 2007.]

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AN ACT to amend and reenact §7-14E-2 of the Code of West Virginia, 1931, as amended, relating to imposing a surcharge on county commissions for delinquent payment of fees due the Deputy Sheriff Retirement Fund.

*Be it enacted by the Legislature of West Virginia:*

That §7-14E-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 14E. ESTABLISHMENT OF CERTAIN FEES;  
DEDICATION OF FEE TO DEPUTY  
SHERIFF RETIREMENT SYSTEM.**

**§7-14E-2. Statewide uniform fees for reports generated by  
sheriff's offices; dedication of fees.**

1           (a) The county commission of each county in this state  
2 shall set a fee for obtaining certain reports. This fee shall be  
3 set at a minimum of ten dollars for each report, with a  
4 maximum of twenty dollars for each report. Ten dollars of  
5 the charge for each report shall be deposited into the Deputy  
6 Sheriff Retirement Fund created in section six, article  
7 fourteen-d of this chapter. The reports for which a charge  
8 may be made are traffic accident reports, criminal  
9 investigation reports, incident reports and property reports.

10           (b) All sheriff's offices in this state shall collect a fee of  
11 five dollars for performing the following services: Adult  
12 private employment fingerprinting; fingerprinting for federal  
13 firearm permits; motor vehicle number identification; adult  
14 identification cards; and photo-identification cards. Upon  
15 collection, these fees shall be deposited into the Deputy  
16 Sheriff Retirement Fund created in section six, article  
17 fourteen-d of this chapter.

18           (c) All sheriff's offices in this state shall collect a fee of  
19 five dollars for each nongovernmental background  
20 investigation report. Upon collection, these fees shall be  
21 deposited into the Deputy Sheriff Retirement Fund created  
22 in section six, article fourteen-d of this chapter.

23           (d) No charge may be made under this section for any  
24 report or reports made to governmental agencies.

25 (e) Any county commission which fails to make any  
 26 payment due the Deputy Sheriff Retirement Fund by the  
 27 fifteenth day following the end of each calendar month in  
 28 which a fee or other contribution is received by the county's  
 29 sheriff may be required to pay the actuarial rate of interest  
 30 lost on the total amount owed for each day the payment is  
 31 delinquent. Accrual of the loss of earnings owed by the  
 32 delinquent county commission commences after the  
 33 fifteenth day following the end of the calendar month in  
 34 which the fee or other contribution is due and continues until  
 35 receipt of the delinquent amount. Interest compounds daily  
 36 and the minimum surcharge is fifty dollars.

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## CHAPTER 60

**(S.B. 141 - By Senators Kessler, Foster, Green, Hunter,  
 Jenkins, Oliverio, Stollings, Wells, White, Barnes, Caruth,  
 Deem, Hall and McKenzie)**

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[Passed February 2, 2007; in effect ninety days from passage.]

[Approved by the Governor on February 20, 2007.]

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AN ACT to amend and reenact §51-2A-2 of the Code of West Virginia, 1931, as amended, relating to family court jurisdiction in sibling visitation proceedings.

*Be it enacted by the Legislature of West Virginia:*

That §51-2A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 2A. FAMILY COURTS.**

**§51-2A-2. Family court jurisdiction; exceptions; limitations.**

1 (a) The family court shall exercise jurisdiction over the  
2 following matters:

3 (1) All actions for divorce, annulment or separate  
4 maintenance brought under the provisions of article three,  
5 four or five, chapter forty-eight of this code except as  
6 provided in subsections (b) and (c) of this section;

7 (2) All actions to obtain orders of child support brought  
8 under the provisions of articles eleven, twelve and fourteen,  
9 chapter forty-eight of this code;

10 (3) All actions to establish paternity brought under the  
11 provisions of article twenty-four, chapter forty-eight of this  
12 code and any dependent claims related to such actions  
13 regarding child support, parenting plans or other allocation  
14 of custodial responsibility or decision-making responsibility  
15 for a child;

16 (4) All actions for grandparent visitation brought under  
17 the provisions of article ten, chapter forty-eight of this code;

18 (5) All actions for the interstate enforcement of family  
19 support brought under article sixteen, chapter forty-eight of  
20 this code and for the interstate enforcement of child custody  
21 brought under the provisions of article twenty of said  
22 chapter;

23 (6) All actions for the establishment of a parenting plan  
24 or other allocation of custodial responsibility or decision-  
25 making responsibility for a child, including actions brought  
26 under the Uniform Child Custody Jurisdiction and  
27 Enforcement Act, as provided in article twenty, chapter  
28 forty-eight of this code;

29 (7) All petitions for writs of habeas corpus wherein the  
30 issue contested is custodial responsibility for a child;

31 (8) All motions for temporary relief affecting parenting  
32 plans or other allocation of custodial responsibility or

33 decision-making responsibility for a child, child support,  
34 spousal support or domestic violence;

35 (9) All motions for modification of an order providing  
36 for a parenting plan or other allocation of custodial  
37 responsibility or decision-making responsibility for a child  
38 or for child support or spousal support;

39 (10) All actions brought, including civil contempt  
40 proceedings, to enforce an order of spousal or child support  
41 or to enforce an order for a parenting plan or other allocation  
42 of custodial responsibility or decision-making responsibility  
43 for a child;

44 (11) All actions brought by an obligor to contest the  
45 enforcement of an order of support through the withholding  
46 from income of amounts payable as support or to contest an  
47 affidavit of accrued support, filed with the circuit clerk,  
48 which seeks to collect an arrearage;

49 (12) All final hearings in domestic violence proceedings;

50 (13) Petitions for a change of name, exercising  
51 concurrent jurisdiction with the circuit court;

52 (14) All proceedings for payment of attorney fees if the  
53 family court judge has jurisdiction of the underlying action;

54 (15) All proceedings for property distribution brought  
55 under article seven, chapter forty-eight of this code;

56 (16) All proceedings to obtain spousal support brought  
57 under article eight, chapter forty-eight of this code;

58 (17) All proceedings relating to the appointment of  
59 guardians or curators of minor children brought pursuant to  
60 sections three, four and six, article ten, chapter forty-four of  
61 this code, exercising concurrent jurisdiction with the circuit  
62 court; and

63           (18) All proceedings relating to petitions for sibling  
64   visitation.

65           (b) If an action for divorce, annulment or separate  
66   maintenance does not require the establishment of a  
67   parenting plan or other allocation of custodial responsibility  
68   or decision-making responsibility for a child and does not  
69   require an award or any payment of child support, the circuit  
70   court has concurrent jurisdiction with the family court over  
71   the action if, at the time of the filing of the action, the parties  
72   also file a written property settlement agreement executed  
73   by both parties.

74           (c) If an action for divorce, annulment or separate  
75   maintenance is pending and a petition is filed pursuant to the  
76   provisions of article six, chapter forty-nine of this code  
77   alleging abuse or neglect of a child by either of the parties  
78   to the divorce, annulment or separate maintenance action,  
79   the orders of the circuit court in which the abuse or neglect  
80   petition is filed shall supercede and take precedence over an  
81   order of the family court respecting the allocation of  
82   custodial and decision-making responsibility for the child  
83   between the parents. If no order for the allocation of  
84   custodial and decision-making responsibility for the child  
85   between the parents has been entered by the family court in  
86   the pending action for divorce, annulment or separate  
87   maintenance, the family court shall stay any further  
88   proceedings concerning the allocation of custodial and  
89   decision-making responsibility for the child between the  
90   parents and defer to the orders of the circuit court in the  
91   abuse or neglect proceedings.

92           (d) A family court is a court of limited jurisdiction. A  
93   family court is a court of record only for the purpose of  
94   exercising jurisdiction in the matters for which the  
95   jurisdiction of the family court is specifically authorized in  
96   this section and in chapter forty-eight of this code. A family  
97   court may not exercise the powers given courts of record in  
98   section one, article five, chapter fifty-one of this code or  
99   exercise any other powers provided for courts of record in  
100   this code unless specifically authorized by the Legislature.

101 A family court judge is not a “judge of any court of record”  
 102 or a “judge of a court of record” as the terms are defined and  
 103 used in article nine of this chapter.

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## CHAPTER 61

**(Com. Sub. for H.B. 3106 - By Delegates Webster, White,  
 Fragale, Long, Moore, Hrutkay, Brown, Tabb, Miley,  
 Fleischauer and Guthrie)**

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[Passed March 9, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2007.]

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AN ACT to amend and reenact §51-2A-3 and §51-2A-5 of the Code of West Virginia, 1931, as amended, all relating to family courts; realigning and increasing family court circuits; and increasing the number of family court judges.

*Be it enacted by the Legislature of West Virginia:*

That §51-2A-3 and §51-2A-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

### **ARTICLE 2A. FAMILY COURTS.**

§51-2A-3. Number of family court judges; assignment of family court judges by family court circuits.

§51-2A-5. Term of office of family court judge; initial appointment; elections.

#### **§51-2A-3. Number of family court judges; assignment of family court judges by family court circuits.**

1 (a) Until the first day of January, two thousand nine, a  
 2 total of thirty-five family court judges shall serve throughout  
 3 the state.



4 (b) Until the first day of January, two thousand nine, the  
5 state shall be divided into twenty-six family court circuits  
6 with the family court judges allocated as follows:

7 (1) The counties of Brooke, Hancock and Ohio  
8 constitute the first family court circuit and have two family  
9 court judges;

10 (2) The counties of Marshall, Wetzel and Tyler  
11 constitute the second family court circuit and have one  
12 family court judge;

13 (3) The counties of Pleasants, Ritchie, Wood and Wirt  
14 constitute the third family court circuit and have two family  
15 court judges;

16 (4) The counties of Doddridge, Roane, Calhoun and  
17 Gilmer constitute the fourth family court circuit and have  
18 one family court judge;

19 (5) The counties of Mason and Jackson constitute the  
20 fifth family court circuit and have one family court judge;

21 (6) The county of Cabell constitutes the sixth family  
22 court circuit and has two family court judges;

23 (7) The county of Wayne constitutes the seventh family  
24 court circuit and has one family court judge;

25 (8) The county of Mingo constitutes the eighth family  
26 court circuit and has one family court judge;

27 (9) The county of Logan constitutes the ninth family  
28 court circuit and has one family court judge;

29 (10) The counties of Lincoln and Boone constitute the  
30 tenth family court circuit and have one family court judge;

31 (11) The county of Kanawha constitutes the eleventh  
32 family court circuit and has four family court judges;

33 (12) The counties of McDowell and Mercer constitute  
34 the twelfth family court circuit and have two family court  
35 judges;

36 (13) The counties of Raleigh and Wyoming constitute  
37 the thirteenth family court circuit and have two family court  
38 judges;

39 (14) The counties of Fayette and Summers constitute the  
40 fourteenth family court circuit and have one family court  
41 judge;

42 (15) The counties of Greenbrier and Monroe constitute  
43 the fifteenth family court circuit and have one family court  
44 judge;

45 (16) The counties of Clay, Nicholas and Webster  
46 constitute the sixteenth family court circuit and have one  
47 family court judge;

48 (17) The counties of Braxton, Lewis and Upshur  
49 constitute the seventeenth family court circuit and have one  
50 family court judge;

51 (18) The county of Harrison constitutes the eighteenth  
52 family court circuit and has one family court judge;

53 (19) The county of Marion constitutes the nineteenth  
54 family court circuit and has one family court judge;

55 (20) The county of Monongalia constitutes the twentieth  
56 family court circuit and has one family court judge;

57 (21) The counties of Barbour, Preston and Taylor  
58 constitute the twenty-first family court circuit and have one  
59 family court judge;

60 (22) The counties of Grant, Tucker and Randolph  
61 constitute the twenty-second family court circuit and have  
62 one family court judge;

63           (23) The counties of Mineral, Hampshire and Morgan  
64 constitute the twenty-third family court circuit and have one  
65 family court judge;

66           (24) The counties of Berkeley and Jefferson constitute  
67 the twenty-fourth family court circuit and have two family  
68 court judges;

69           (25) The counties of Hardy, Pendleton and Pocahontas  
70 constitute the twenty-fifth family court circuit and have one  
71 family court judge; and

72           (26) The county of Putnam constitutes the twenty-sixth  
73 family court circuit and has one family court judge.

74           (c) Beginning on the first day of January, two thousand  
75 nine, the family court circuits shall be realigned and adjusted  
76 to add an additional ten family court judges, so that a total  
77 of forty-five family court judges shall serve throughout the  
78 state, allocated among a total of twenty-seven family court  
79 circuits as follows:

80           (1) The counties of Brooke, Hancock and Ohio shall  
81 constitute the first family court circuit and have two family  
82 court judges;

83           (2) The counties of Marshall, Wetzel and Tyler shall  
84 constitute the second family court circuit and have one  
85 family court judge;

86           (3) The counties of Pleasants and Wood shall constitute  
87 the third family court circuit and have two family court  
88 judges;

89           (4) The counties of Roane, Calhoun, Gilmer and Ritchie  
90 shall constitute the fourth family court circuit and have one  
91 family court judge;

92           (5) The counties of Mason, Jackson and Wirt shall  
93 constitute the fifth family court circuit and have two family  
94 court judges;

95           (6) The county of Cabell shall constitute the sixth family  
96       court circuit and have two family court judges;

97           (7) The county of Wayne shall constitute the seventh  
98       family court circuit and have one family court judge;

99           (8) The county of Mingo shall constitute the eighth  
100       family court circuit and have one family court judge;

101          (9) The county of Logan shall constitute the ninth family  
102       court circuit and have two family court judges;

103          (10) The counties of Lincoln and Boone shall constitute  
104       the tenth family court circuit and have two family court  
105       judges;

106          (11) The county of Kanawha shall constitute the  
107       eleventh family court circuit and have five family court  
108       judges;

109          (12) The counties of McDowell and Mercer shall  
110       constitute the twelfth family court circuit and have three  
111       family court judges;

112          (13) The counties of Raleigh, Summers and Wyoming  
113       shall constitute the thirteenth family court circuit and have  
114       three family court judges;

115          (14) The county of Fayette shall constitute the  
116       fourteenth family court circuit and have one family court  
117       judge;

118          (15) The counties of Greenbrier and Monroe shall  
119       constitute the fifteenth family court circuit and have one  
120       family court judge;

121          (16) The counties of Clay and Nicholas shall constitute  
122       the sixteenth family court circuit and have one family court  
123       judge;

124       (17) The counties of Braxton, Lewis and Upshur shall  
125       constitute the seventeenth family court circuit and have one  
126       family court judge;

127       (18) The counties of Harrison and Doddridge shall  
128       constitute the eighteenth family court circuit and have two  
129       family court judges;

130       (19) The county of Marion shall constitute the  
131       nineteenth family court circuit and have one family court  
132       judge;

133       (20) The counties of Monongalia and Preston shall  
134       constitute the twentieth family court circuit and have two  
135       family court judges;

136       (21) The counties of Barbour and Taylor shall constitute  
137       the twenty-first family court circuit and have one family  
138       court judge;

139       (22) The counties of Tucker and Randolph shall  
140       constitute the twenty-second family court circuit and have  
141       one family court judge;

142       (23) The counties of Mineral, Hampshire and Morgan  
143       shall constitute the twenty-third family court circuit and  
144       have one family court judge;

145       (24) The counties of Berkeley and Jefferson shall  
146       constitute the twenty-fourth family court circuit and have  
147       three family court judges;

148       (25) The counties of Hardy, Pendleton and Grant shall  
149       constitute the twenty-fifth family court circuit and have one  
150       family court judge;

151       (26) The county of Putnam shall constitute the twenty-  
152       sixth family court circuit and have one family court judge;  
153       and

154 (27) The counties of Webster and Pocahontas shall  
155 constitute the twenty-seventh family court circuit and have  
156 one family court judge.

157 (d) The Legislature has the authority and may determine  
158 to realign the family court circuits and has the authority and  
159 may determine to increase or decrease the number of family  
160 court judges within a family court circuit, from time to time.  
161 Any person appointed or elected to the office of family court  
162 judge acknowledges the authority of the Legislature to  
163 realign family court circuits and the authority of the  
164 Legislature to increase or decrease the number of family  
165 court judges within a family court circuit.

**§51-2A-5. Term of office of family court judge; initial  
appointment; elections.**

1 (a) Beginning with the primary and general elections to  
2 be conducted in the year two thousand two, family court  
3 judges shall be elected. In family court circuits having two  
4 or more family court judges there shall be, for election  
5 purposes, numbered divisions corresponding to the number  
6 of family court judges in each area. Each family court judge  
7 shall be elected at large by the entire family court circuit. In  
8 each numbered division of a family court circuit, the  
9 candidates for nomination or election shall be voted upon  
10 and the votes cast for the candidates in each division shall be  
11 tallied separately from the votes cast for candidates in other  
12 numbered divisions within the family court circuit. The  
13 candidate or candidates receiving the highest number of the  
14 votes cast within a numbered division shall be nominated or  
15 elected, as the case may be.

16 (b) The term of office for all family court judges elected  
17 in two thousand two shall be for six years, commencing on  
18 the first day of January, two thousand three, and ending on  
19 the thirty-first day of December, two thousand eight.  
20 Subsequent terms of office for family court judges elected  
21 thereafter shall be for eight years.

22 (c) The primary and general elections conducted in the  
 23 year two thousand eight shall be conducted to fill the family  
 24 court judge positions in the reconfigured districts set forth  
 25 by subsection (c), section three of this article, for terms to  
 26 commence on the first day of January, two thousand nine.



## CHAPTER 62

**(S.B. 208 - By Senators Kessler, Oliverio, Chafin, Foster,  
 Green, Hunter, Jenkins, Minard, Stollings, Wells, White,  
 Barnes, Caruth, Deem, Hall, McKenzie and Yoder)**

[Passed March 5, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2007.]

AN ACT to amend and reenact §51-9-9 of the Code of West Virginia, 1931, as amended, relating to requiring certified copies of eligibility for judicial retirement be provided to the Supreme Court of Appeals and the Consolidated Public Retirement Board; and making stylistic changes throughout.

*Be it enacted by the Legislature of West Virginia:*

That §51-9-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.**

#### **§51-9-9. Determination of eligibility for benefits.**

1 Before any person is entitled to retirement benefits  
 2 under the provisions of this article, he or she shall submit  
 3 proof of his or her eligibility for retirement benefits to the  
 4 Governor. If the judge is still sitting, he or she shall at the

5 same time tender to the Governor his or her resignation as  
6 judge to the Governor upon condition that, if the resignation  
7 is accepted, he or she will be paid retirement benefits as  
8 provided in this article. Upon request for retirement by a  
9 sitting judge, the governor shall investigate to the extent he  
10 or she deems advisable to determine the judge's eligibility.  
11 If the Governor determines that such person is entitled to  
12 retirement benefits under the provisions of this article, the  
13 Governor shall accept the resignation and certify the facts  
14 and the amount of retirement benefits to be paid to the judge  
15 upon retirement by a written order filed in the office of the  
16 Secretary of State. The Secretary of State shall, upon receipt  
17 of the order, file a certified copy of the order with the State  
18 Auditor, the Governor's office, the Supreme Court of  
19 Appeals' administrative office and the Consolidated Public  
20 Retirement Board. After accepting the judge's resignation,  
21 a vacancy is created in the office of the retiring judge which  
22 shall be filled by appointment or election as provided by  
23 law.

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## CHAPTER 63

**(H.B. 2770 - By Delegates Ellem, Webster, Hamilton,  
Proudfoot, Schadler, Guthrie, Shook, Burdiss, Amores,  
Kessler and Mahan)**

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[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 14, 2007.]

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AN ACT to amend and reenact §61-2-10b of the Code of West Virginia, 1931, as amended, relating to court security personnel and Public Service Commission motor carrier inspector and enforcement officer; enhancing penalties for



certain acts against court security personnel and Public Service Commission motor carrier inspector and enforcement officer; defining “court security personnel” and “Public Service Commission motor carrier inspector and enforcement officer”; and incorporating certain acts previously enacted by the Legislature during the 2007 regular session.

*Be it enacted by the Legislature of West Virginia:*

That §61-2-10b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

## **ARTICLE 2. CRIMES AGAINST THE PERSON.**

**§61-2-10b. Malicious assault; unlawful assault; battery and recidivism of battery; assault on police officers, conservation officers, probation officers, humane officers, emergency medical service personnel, firefighters, fire marshal, Division of Forestry employees, county or state correctional employees, Public Service Commission motor carrier inspector and enforcement officer and court security personnel; penalties.**

1       (a) *Malicious assault.* -- Any person who maliciously  
 2 shoots, stabs, cuts or wounds or by any means causes bodily  
 3 injury with intent to maim, disfigure, disable or kill a police  
 4 officer, probation officer, conservation officer, humane  
 5 officer, emergency medical service personnel, firefighter,  
 6 State Fire Marshal or employee, Division of Forestry  
 7 employee, county correctional employee or state  
 8 correctional employee, employee of an urban mass  
 9 transportation system, court security personnel or Public  
 10 Service Commission motor carrier inspector and  
 11 enforcement officer acting in his or her official capacity and  
 12 the person committing the malicious assault knows or has  
 13 reason to know that the victim is acting in his or her official  
 14 capacity is guilty of a felony and, upon conviction thereof,

15 shall be confined in a correctional facility for not less than  
16 three nor more than fifteen years.

17 (b) *Unlawful assault.* -- Any person who unlawfully but  
18 not maliciously shoots, stabs, cuts or wounds or by any  
19 means causes a police officer, probation officer,  
20 conservation officer, humane officer, emergency medical  
21 service personnel, firefighter, State Fire Marshal or  
22 employee, Division of Forestry employee, county  
23 correctional employee or state correctional employee,  
24 employee of an urban mass transportation system, court  
25 security personnel or Public Service Commission motor  
26 carrier inspector and enforcement officer acting in his or her  
27 official capacity bodily injury with intent to maim, disfigure,  
28 disable or kill him or her and the person committing the  
29 unlawful assault knows or has reason to know that the  
30 victim is acting in his or her official capacity is guilty of a  
31 felony and, upon conviction thereof, shall be confined in a  
32 correctional facility for not less than two nor more than five  
33 years.

34 (c) *Battery.* -- Any person who unlawfully, knowingly  
35 and intentionally makes physical contact of an insulting or  
36 provoking nature with a police officer, probation officer,  
37 conservation officer, humane officer, emergency medical  
38 service personnel, firefighter, State Fire Marshal or  
39 employee, Division of Forestry employee, county  
40 correctional employee, state correctional employee,  
41 employee of a mass transportation system, court security  
42 personnel or Public Service Commission motor carrier  
43 inspector and enforcement officer acting in his or her  
44 official capacity, or unlawfully and intentionally causes  
45 physical harm to that person acting in such capacity, is  
46 guilty of a misdemeanor and, upon conviction thereof, shall

47 be confined in jail for not less than one month nor more than  
48 twelve months, fined the sum of five hundred dollars, or  
49 both. If any person commits a second such offense, he or  
50 she is guilty of a felony and, upon conviction thereof, shall  
51 be confined in a correctional facility for not less than one  
52 year nor more than three years or fined the sum of one  
53 thousand dollars or both fined and confined. Any person  
54 who commits a third violation of this subsection is guilty of  
55 a felony and, upon conviction thereof, shall be confined in  
56 a correctional facility not less than two years nor more than  
57 five years or fined not more than two thousand dollars or  
58 both fined and confined.

59 (d) *Assault*. -- Any person who unlawfully attempts to  
60 commit a violent injury to the person of a police officer,  
61 probation officer, conservation officer, humane officer,  
62 emergency medical service personnel, firefighter, State Fire  
63 Marshal or employee, Division of Forestry employee,  
64 county correctional employee, state correctional employee,  
65 employee of a mass transportation system, court security  
66 personnel or Public Service Commission motor carrier  
67 inspector and enforcement officer acting in his or her  
68 official capacity, or unlawfully commits an act which places  
69 that person acting in his or her official capacity in  
70 reasonable apprehension of immediately receiving a violent  
71 injury, is guilty of a misdemeanor and, upon conviction  
72 thereof, shall be confined in jail for not less than twenty-four  
73 hours nor more than six months, fined not more than two  
74 hundred dollars, or both fined and confined.

75 (e) For purposes of this section:

76 (1) "Police officer" means any person employed by the  
77 State Police, any person employed by the state to perform

78 law-enforcement duties, any person employed by a political  
79 subdivision of this state who is responsible for the  
80 prevention or detection of crime and the enforcement of the  
81 penal, traffic or highway laws of this state or employed as a  
82 special police officer as defined in section forty-one, article  
83 three of this chapter.

84 (2) "Employee of an urban mass transportation system"  
85 means any person employed by an urban mass  
86 transportation system as such is defined in section three,  
87 article twenty-seven, chapter eight of this code or by a  
88 system that receives federal transit administration funding  
89 under 49 U.S.C. §5307 or §5311.

90 (3) "Division of Forestry employee" means an officer,  
91 agent, employee or servant, whether full-time or not, of the  
92 Division of Forestry.

93 (4) "Court security personnel" means any person  
94 employed by a circuit court, family court, magistrate court,  
95 county commission, sheriff, the state or other political  
96 subdivision to operate and maintain security devices,  
97 including, but not limited to, a metal detector, x-ray  
98 machine, video monitoring equipment and/or other security  
99 devices, prevent or detect crime, enforce the laws of this  
100 state, or otherwise provide court security.

101 (5) "Public Service Commission motor carrier inspector  
102 and enforcement officer" means an officer, agent or  
103 employee of the Public Service Commission charged with  
104 the enforcement of commercial motor vehicle safety and  
105 weight restriction laws of the State of West Virginia.

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**CHAPTER 64**

**(Com. Sub. for H.B. 3161 - By Delegates Stemple,  
Varner and Kominar)**

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[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2007.]

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AN ACT to amend and reenact §61-3-45 of the Code of West Virginia, 1931, as amended, relating to the theft of oil, natural gas, water, telecommunications and electric service; and increasing the maximum fine upon conviction.

*Be it enacted by the Legislature of West Virginia:*

That §61-3-45 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. CRIMES AGAINST PROPERTY.**

**§61-3-45. Tampering with pipes, tubes, wires or electrical conductors; penalty.**

1 Every person who, with intent to injure or defraud,  
2 connects, or causes to be connected, any pipe, tube, wire,  
3 electrical conductor or other instrument with any main,  
4 service pipe, or other pipe or conduit or flume for  
5 conducting water, or with any main, service pipe, or other  
6 pipe or conduit for conducting oil, natural gas, or with any  
7 main, service wire or other electric conductor used for the

8 purpose of conducting electric energy for light, heat or  
9 motive services, for the purpose of taking therefrom water,  
10 oil, natural gas, telecommunications service, or electric  
11 energy, without the knowledge of the owner thereof and  
12 with intent to evade payment therefor, is guilty of a  
13 misdemeanor and, upon conviction thereof, shall be  
14 confined in jail not exceeding twelve months, or fined not  
15 exceeding two thousand dollars, or both, in the discretion of  
16 the court.

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## CHAPTER 65

**(Com. Sub. for H.B. 2498 - By Delegates Azinger and Craig)**

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[Amended and again passed March 18, 2007, as a result of the objections  
of the Governor; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2007.]

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AN ACT to amend and reenact §61-8-9 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-8B-1 of said code, all relating to sexual offenses generally; increasing penalties for second and subsequent convictions for indecent exposure; clarifying that breast feeding an infant in public is not indecent exposure; and expanding the definition of sexual contact to include the touching of the buttocks or breasts.

*Be it enacted by the Legislature of West Virginia:*

That §61-8-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §61-8B-1 of said code be amended and reenacted, all to read as follows:

**ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.**

**§61-8-9. Indecent exposure.**

1 (a) A person is guilty of indecent exposure when such  
2 person intentionally exposes his or her sex organs or anus or  
3 the sex organs or anus of another person, or intentionally  
4 causes such exposure by another or engages in any overt act  
5 of sexual gratification, and does so under circumstances in  
6 which the person knows that the conduct is likely to cause  
7 affront or alarm: *Provided*, That it is not considered indecent  
8 exposure for a mother to breast feed a child in any location,  
9 public or private.

10 (b) Except as provided in subsection (c), any person who  
11 violates the provisions of this section shall be guilty of a  
12 misdemeanor and, upon conviction thereof, shall be  
13 confined in jail not more than ninety days, or fined not more  
14 than two hundred fifty dollars, or both fined and confined.

15 (c) Any person who violates the provisions of subsection  
16 (a) of this section by intentionally exposing himself or  
17 herself to another person and the exposure was done for the  
18 purpose of sexual gratification, is guilty of a misdemeanor  
19 and, upon conviction thereof, shall be fined not more than  
20 five hundred dollars or confined in jail not more than twelve  
21 months, or both. For a second offense, the person is guilty  
22 of a misdemeanor and, upon conviction thereof, shall be  
23 fined not more than one thousand dollars and confined in  
24 jail for not less than thirty days nor more than twelve  
25 months. For a third or subsequent offense, the person is  
26 guilty of a felony and, upon conviction thereof, shall be  
27 fined not more than three thousand dollars and imprisoned  
28 in a state correctional facility for not less than one year nor  
29 more than five years.

**ARTICLE 8B. SEXUAL OFFENSES.**

**§61-8B-1. Definition of terms.**

1 In this article, unless a different meaning plainly is  
2 required:

3 (1) "Forcible compulsion" means:

4 (a) Physical force that overcomes such earnest resistance  
5 as might reasonably be expected under the circumstances;  
6 or

7 (b) Threat or intimidation, expressed or implied, placing  
8 a person in fear of immediate death or bodily injury to  
9 himself or herself or another person or in fear that he or she  
10 or another person will be kidnapped; or

11 (c) Fear by a person under sixteen years of age caused  
12 by intimidation, expressed or implied, by another person  
13 who is at least four years older than the victim.

14 For the purposes of this definition "resistance" includes  
15 physical resistance or any clear communication of the  
16 victim's lack of consent.

17 (2) "Married", for the purposes of this article in addition  
18 to its legal meaning, includes persons living together as  
19 husband and wife regardless of the legal status of their  
20 relationship.

21 (3) "Mentally defective" means that a person suffers  
22 from a mental disease or defect which renders that person  
23 incapable of appraising the nature of his or her conduct.

24 (4) "Mentally incapacitated" means that a person is  
25 rendered temporarily incapable of appraising or controlling  
26 his or her conduct as a result of the influence of a controlled  
27 or intoxicating substance administered to that person  
28 without his or her consent or as a result of any other act  
29 committed upon that person without his or her consent.

30 (5) "Physically helpless" means that a person is  
31 unconscious or for any reason is physically unable to  
32 communicate unwillingness to an act.



33 (6) "Sexual contact" means any intentional touching,  
34 either directly or through clothing, of the breasts, buttocks,  
35 anus or any part of the sex organs of another person, or  
36 intentional touching of any part of another person's body by  
37 the actor's sex organs, where the victim is not married to the  
38 actor and the touching is done for the purpose of gratifying  
39 the sexual desire of either party.

40 (7) "Sexual intercourse" means any act between persons  
41 involving penetration, however slight, of the female sex  
42 organ by the male sex organ or involving contact between  
43 the sex organs of one person and the mouth or anus of  
44 another person.

45 (8) "Sexual intrusion" means any act between persons  
46 involving penetration, however slight, of the female sex  
47 organ or of the anus of any person by an object for the  
48 purpose of degrading or humiliating the person so  
49 penetrated or for gratifying the sexual desire of either party.

50 (9) "Bodily injury" means substantial physical pain,  
51 illness or any impairment of physical condition.

52 (10) "Serious bodily injury" means bodily injury which  
53 creates a substantial risk of death, which causes serious or  
54 prolonged disfigurement, prolonged impairment of health or  
55 prolonged loss or impairment of the function of any bodily  
56 organ.

57 (11) "Deadly weapon" means any instrument, device or  
58 thing capable of inflicting death or serious bodily injury, and  
59 designed or specially adapted for use as a weapon, or  
60 possessed, carried or used as a weapon.

61 (12) "Forensic medical examination" means an  
62 examination provided to a possible victim of a violation of  
63 the provisions of this article by medical personnel qualified  
64 to gather evidence of the violation in a manner suitable for  
65 use in a court of law, to include: An examination for  
66 physical trauma; a determination of penetration or force; a  
67 patient interview; and the collection and evaluation of other  
68 evidence that is potentially relevant to the determination that  
69 a violation of the provisions of this article occurred and to  
70 the determination of the identity of the assailant.

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**CHAPTER 66****(H.B. 3228 - By Delegates Ashley, Carmichael and Webster)**

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[Passed March 9, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2007.]

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AN ACT to amend and reenact §61-8B-10 of the Code of West Virginia, 1931, as amended, providing that it is a crime for home confinement officers to engage in sexual intercourse or sexual intrusion with persons incarcerated; defining the phrase ‘incarcerated in this state’ to include home confinement subject to the Home Incarceration Act; and providing penalties.

*Be it enacted by the Legislature of West Virginia:*

That §61-8B-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 8B. SEXUAL OFFENSES.****§61-8B-10. Imposition of sexual intercourse or sexual intrusion on incarcerated persons; penalties.**

- 1 (a) Any person employed by the Division of Corrections,
- 2 any person working at a correctional facility managed by the
- 3 Commissioner of Corrections pursuant to contract or as an
- 4 employee of a state agency, any person working at a
- 5 correctional facility managed by the Division of Juvenile
- 6 Services pursuant to contract or as an employee of a state

7 agency, any person employed by a jail or by the Regional Jail  
8 and Correctional Facility Authority, any person working at a  
9 facility managed by the Regional Jail and Correctional  
10 Facility Authority or a jail or any person employed by, or  
11 acting pursuant to, the authority of any sheriff, county  
12 commission or court to ensure compliance with the  
13 provisions of article eleven-b, chapter sixty-two of this code  
14 who engages in sexual intercourse or sexual intrusion with a  
15 person who is incarcerated in this state is guilty of a felony  
16 and, upon conviction thereof, shall be confined in a state  
17 correctional facility under the control of the Commissioner of  
18 Corrections for not less than one nor more than five years or  
19 fined not more than five thousand dollars.

20 (b) Any person employed by the Division of Corrections  
21 as a parole officer or by the West Virginia Supreme Court of  
22 Appeals as an adult or juvenile probation officer who  
23 engages in sexual intercourse or sexual intrusion with a  
24 person said parole officer or probation officer is charged as  
25 part of his or her employment with supervising, is guilty of  
26 a felony and, upon conviction thereof, shall be confined in a  
27 state correctional facility under the control of the  
28 Commissioner of Corrections for not less than one nor more  
29 than five years or fined not more than five thousand dollars,  
30 or both.

31 (c) The term “incarcerated in this state” for purposes of  
32 this section includes in addition to its usual meaning,  
33 offenders serving a sentence under the provisions of article  
34 eleven-b, chapter sixty-two of this code.

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**CHAPTER 67**

**(Com. Sub. for H.B. 3094 - By Delegates Webster, Proudfoot, Stagers, Long, Burdiss, Kessler, Hrutkay, Shook, Moore, Pino and Hamilton)**

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[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2007.]

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AN ACT to amend and reenact §61-10-15 of the Code of West Virginia, 1931, as amended, relating to prohibiting county and district officers, teachers and school officials from having a pecuniary interest in certain contracts; and exemptions.

*Be it enacted by the Legislature of West Virginia:*

That §61-10-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.**

**§ 61-10-15. Pecuniary interest of county and district officers, teachers and school officials in contracts; exceptions; offering or giving compensation penalties.**

1 (a) It is unlawful for any member of a county  
2 commission, overseer of the poor, district school officer,  
3 secretary of a board of education, supervisor or  
4 superintendent, principal or teacher of public schools or any  
5 member of any other county or district board or any county  
6 or district officer to be or become pecuniarily interested,  
7 directly or indirectly, in the proceeds of any contract or  
8 service or in the furnishing of any supplies in the contract for

9 or the awarding or letting of a contract if, as a member,  
10 officer, secretary, supervisor, superintendent, principal or  
11 teacher, he or she may have any voice, influence or control:  
12 *Provided*, That nothing in this section prevents or makes  
13 unlawful the employment of the spouse of a member, officer,  
14 secretary, supervisor, superintendent, principal or teacher as  
15 a principal or teacher or auxiliary or service employee in the  
16 public schools of any county or prevents or makes unlawful  
17 the employment by any joint county and circuit clerk of his  
18 or her spouse.

19 (b) Any person who violates the provisions of subsection  
20 (a) of this section is guilty of a misdemeanor and, upon  
21 conviction thereof, shall be fined not less than fifty dollars  
22 nor more than five hundred dollars or confined in jail not  
23 more than one year, or both fined and confined.

24 (c) Any person convicted of violating the provisions of  
25 subsection (a) of this section shall also be removed from his  
26 or her office and the certificate or certificates of any teacher,  
27 principal, supervisor or superintendent so convicted shall,  
28 upon conviction thereof, be immediately revoked: *Provided*,  
29 That no person may be removed from office and no  
30 certificate may be revoked for a violation of the provisions of  
31 this section unless the person has first been convicted of the  
32 violation.

33 (d) Any person, firm or corporation that offers or gives  
34 any compensation or thing of value or who forebears to  
35 perform an act to any of the persons named in subsection (a)  
36 of this section or to or for any other person with the intent to  
37 secure the influence, support or vote of the person for any  
38 contract, service, award or other matter as to which any  
39 county or school district becomes or may become the

40 paymaster is guilty of a misdemeanor and, upon conviction  
41 thereof, shall be fined not less than five hundred dollars nor  
42 more than twenty-five hundred dollars and, in the court's  
43 discretion, the person or any member of the firm or, if it is a  
44 corporation, any agent or officer of the corporation offering  
45 or giving any compensation or other thing of value may, in  
46 addition to a fine, be confined in jail for a period not to  
47 exceed one year.

48 (e) The provisions of subsection (a) of this section do not  
49 apply to any person who is a salaried employee of a vendor  
50 or supplier under a contract subject to the provisions of said  
51 subsection if the employee, his or her spouse or child:

52 (1) Is not a party to the contract;

53 (2) Is not an owner, a shareholder, a director or an officer  
54 of a private entity under the contract;

55 (3) Receives no commission, bonus or other direct  
56 remuneration or thing of value by virtue of the contract;

57 (4) Does not participate in the deliberations or awarding  
58 of the contract; and

59 (5) Does not approve or otherwise authorize the payment  
60 for any services performed or supplies furnished under the  
61 contract.

62 (f) The provisions of subsection (a) of this section do not  
63 apply to any person who has a pecuniary interest in a bank  
64 within the county serving or under consideration to serve as  
65 a depository of funds for the county or board of education, as  
66 the case may be, if the person does not participate in the

62 (f) The provisions of subsection (a) of this section do not  
63 apply to any person who has a pecuniary interest in a bank  
64 within the county serving or under consideration to serve as  
65 a depository of funds for the county or board of education, as  
66 the case may be, if the person does not participate in the  
67 deliberations or any ultimate determination of the depository  
68 of the funds.

69 (g) The provisions of subsection (a) of this section do not  
70 apply to any person who has a pecuniary interest in a public  
71 utility which is subject to regulation by the Public Service  
72 Commission of this state.

73 (h) Where the provisions of subsection (a) of this section  
74 would result in the loss of a quorum in a public body or  
75 agency, in excessive cost, undue hardship, or other  
76 substantial interference with the operation of a governmental  
77 body or agency, the affected governmental body or agency  
78 may make written application to the West Virginia Ethics  
79 Commission pursuant to subsection (d), section five, article  
80 two, chapter six-b of the code, for an exemption from  
81 subsection (a) of this section.

82 (i) The provisions of this section do not apply to  
83 publications in newspapers required by law to be made.

84 (j) No school employee or school official subject to the  
85 provisions of subsection (a) of this section has an interest in  
86 the sale, proceeds or profits in any book or other thing used  
87 or to be used in the free school system of this state, as  
88 proscribed in section nine, article XII of the Constitution of  
89 West Virginia, if they qualify for the exceptions set forth in  
90 subsections (e), (f), (g) or (h) of this section.

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## CHAPTER 68

**(Com. Sub. for S.B. 529 - By Senators Kessler, Sprouse,  
Minard, Plymale and Jenkins)**

[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 28 2007.]

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AN ACT to amend and reenact §61-8B-16 of the Code of West Virginia, 1931, as amended, relating to forensic medical examinations; prohibiting any requirement that an alleged victim of a sexual offense must pay for the costs of a forensic medical examination, participate in the criminal justice system or cooperate with law enforcement in order to receive a forensic medical examination; eliminating certain reimbursement; and clarifying that licensed medical facilities may seek payment from the alleged victim or his or her insurer for services rendered other than the forensic medical examination.

*Be it enacted by the Legislature of West Virginia:*

That §61-8B-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 8B. SEXUAL OFFENSES.**

#### **§61-8B-16. Payment for costs of forensic medical examination.**

- 1 (a) When any person alleges that he or she has been the
- 2 victim of an offense proscribed by this article, the West
- 3 Virginia prosecuting attorneys institute shall pay to a licensed
- 4 medical facility from the forensic medical examination fund



5 the cost of the forensic medical examination for the alleged  
6 victim on the following conditions and in the following  
7 manner:

8 (1) The payment shall cover all reasonable, customary  
9 and usual costs of the forensic medical examination;

10 (2) The costs of additional nonforensic procedures  
11 performed by the licensed medical facility, including, but not  
12 limited to, prophylactic treatment, treatment of injuries,  
13 testing for pregnancy and testing for sexually transmitted  
14 diseases, may not be paid from the fund: *Provided*, That  
15 nothing in this section shall be construed to prohibit a  
16 licensed medical facility from seeking payment for services  
17 referred to in this subdivision from the alleged victim or his  
18 or her insurer, if any;

19 (3) The forensic medical examination must have been  
20 conducted within a reasonable time of the alleged violation;

21 (4) The licensed medical facility must apply for payment  
22 of the costs of a forensic medical examination from the fund  
23 within a reasonable time of the examination;

24 (5) The licensed medical facility shall certify that the  
25 forensic medical examination was performed and may submit  
26 a statement of charges to the West Virginia Prosecuting  
27 Attorneys Institute for payment from the fund.

28 (b) No licensed medical facility may collect the costs of  
29 a forensic medical examination from the alleged victim of a  
30 violation of this article or from the alleged victim's insurance  
31 coverage, if any.

32 (c) Nothing in this section shall be construed to require an  
33 alleged victim of sexual assault to participate in the criminal  
34 justice system or to cooperate with law enforcement in order  
35 to be provided a forensic medical examination pursuant to the  
36 provisions of this section.

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**CHAPTER 69**

**(Com. Sub. for S.B. 512 - By Senators Kessler and Oliverio)**

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[Passed March 6, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2007.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §62-6-8, relating to prohibiting law-enforcement officers or prosecutors from asking or requiring an adult, youth or child victim of an alleged sexual offense to submit to a polygraph examination or other truth testing device as a condition for proceeding with the investigation of the offense; and establishing that refusal to undergo such testing shall not prevent investigation of the offense.

*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 §62-6-8, to read as follows:

**ARTICLE 6. MISCELLANEOUS PROVISIONS CONCERNING  
CRIMINAL PROCEDURE.**

**§62-6-8. Alleged victim of sexual offense may not be required to submit to a polygraph examination or other truth telling device as a condition of investigating an alleged offense nor may prosecutors or law-enforcement officers decline to proceed if the victim refuses such examination.**

No law-enforcement officer, prosecutor or any other government official may ask or require the adult, youth or child victim of an alleged sexual offense, as set forth in the provisions of section six, article eight, chapter sixty-one of this code; section six, article twelve of said chapter; section five, article eight-d, of said chapter; and article eight-b of said chapter, or any other sexual offense as defined under state or local law, to submit to a polygraph examination or other truth-testing examination as a condition for proceeding with the investigation of the alleged offense. No law-enforcement officer, prosecutor or any other government official may refuse to proceed with an investigation, warrant, indictment, information or prosecution of the alleged offense because the alleged victim refused to submit to such an examination.

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## CHAPTER 70

**(Com. Sub. for H.B. 2791 - By Delegates Webster,  
Proudfoot, Stemple, Varner, Longstreth and Kominar)**

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[Passed February 23, 2007; in effect ninety days from passage.]  
[Approved by the Governor on March 6, 2007.]

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AN ACT to repeal §62-6-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §62-10-1 and §62-10-3 of said code, all relating to penalties for violating peace bonds.

*Be it enacted by the Legislature of West Virginia:*

That §62-6-2 of the Code of West Virginia, 1931, as amended, be repealed; and that §62-10-1 and §62-10-3 of said code be amended and reenacted, all to read as follows:

**ARTICLE 10. PREVENTION OF CRIME.**

§62-10-1. Security to keep the peace.

§62-10-3. Hearing, judgment, appeal process for security to keep the peace.

**§62-10-1. Security to keep the peace.**

1 Every magistrate shall have the power to require, from  
2 persons not of good fame, security for their good behavior  
3 and to keep the peace, for a term not exceeding one year. A  
4 person who violates a court order to keep the peace may be  
5 fined not more than two hundred fifty dollars.

**§62-10-3. Hearing, judgment, appeal process for security to keep the peace.**

1 When a defendant appears pursuant to section one, article  
2 ten, chapter sixty-two of the Code of West Virginia, if the  
3 magistrate, upon hearing the parties, decides that there is not  
4 good cause for the complaint, the magistrate shall discharge  
5 the defendant, and may grant judgment in the defendant's  
6 favor and against the complainant for the defendant's costs.  
7 If the magistrate decides there is good cause for the  
8 complaint, he or she may grant judgment for the complainant  
9 and may require a bond of the person against whom the  
10 judgment is granted. The magistrate may then enter a  
11 judgment against the defendant for the full costs of the  
12 prosecution, or any part thereof. If the defendant violates the  
13 conditions of the bond, he or she may be fined not more than  
14 two hundred fifty dollars. If the defendant fails to pay the fine  
15 imposed, the magistrate granting the judgment under this  
16 section for costs may, pursuant to article four, chapter thirty-  
17 eight of the Code of West Virginia issue a writ of execution  
18 on the defendant's personal property. A person from whom  
19 a bond is required may, upon the imposition of the bond,  
20 appeal the judgment to the circuit court of the county in  
21 which the judgment was granted.

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CHAPTER 71

**(Com. Sub. for S.B. 66 - By Senators Tomblin,  
Mr. President, and Caruth )  
[By Request of the Executive]**

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[Passed March 5, 2007; in effect ninety days from passage.]  
[Approved by the Governor on March 26, 2007.]

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AN ACT to amend and reenact §62-11C-4 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Community Corrections Fund; establishing fee collected from persons on home incarceration; setting fee amount; and removing provision allowing modification of fee amount by legislative rule.

*Be it enacted by the Legislature of West Virginia:*

That §62-11C-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 11C. THE WEST VIRGINIA COMMUNITY  
CORRECTIONS ACT.**

**§62-11C-4. Special revenue account.**

- 1 (a) There is hereby created in the State Treasury a special
- 2 revenue account to be known as the West Virginia
- 3 Community Corrections Fund. Expenditures from the fund
- 4 are for the purposes set forth in subsection (e) of this section
- 5 and are not authorized from collections but are to be made
- 6 only in accordance with appropriation by the Legislature and
- 7 in accordance with the provisions of article three, chapter

8 twelve of this code and upon the fulfillment of the provisions  
9 set forth in article two, chapter five-a of this code. The West  
10 Virginia Community Corrections Fund may receive any gifts,  
11 grants, contributions or other money from any source which  
12 is specifically designated for deposit in the fund.

13 (b) Beginning on the first day of July, two thousand six,  
14 in addition to the fee required in section nine, article twelve  
15 of this chapter, a fee not to exceed thirty-five dollars per  
16 month, unless modified by legislative rule as provided in  
17 section three of this article, is also to be collected from those  
18 persons on probation. This fee is to be based upon the  
19 person's ability to pay. The magistrate or circuit judge shall  
20 conduct a hearing prior to imposition of probation and make  
21 a determination on the record that the offender is able to pay  
22 the fee without undue hardship. The magistrate clerk or  
23 circuit clerk shall collect all fees imposed pursuant to this  
24 subsection and deposit them in a separate account. Within  
25 ten calendar days following the beginning of the calendar  
26 month, the magistrate clerk or circuit clerk shall forward the  
27 amount deposited to the State Treasurer to be credited to the  
28 West Virginia Community Corrections Fund.

29 (c) Beginning on the first day of July, two thousand  
30 seven, in addition to the fee required in section five, article  
31 eleven-b of this chapter, a fee of two dollars fifty cents per  
32 day is to be collected from those persons on home  
33 incarceration. The circuit judge, magistrate or municipal  
34 court judge shall consider the person's ability to pay in  
35 determining the imposition of the fee. The circuit clerk,  
36 magistrate clerk or municipal court clerk shall collect all fees  
37 imposed pursuant to this subsection and deposit them in a  
38 separate account. Within ten calendar days following the  
39 beginning of the calendar month, the circuit clerk or  
40 municipal court clerk shall forward the amount deposited to

41 the State Treasurer to be credited to the West Virginia  
42 Community Corrections Fund.

43 (d) Beginning on the first day of July, two thousand six,  
44 in addition to the usual court costs in any criminal case taxed  
45 against any defendant convicted in a municipal, magistrate or  
46 circuit court, excluding municipal parking ordinances, a ten-  
47 dollar fee shall be added. The circuit clerk, magistrate clerk  
48 or municipal court clerk shall collect all fees imposed  
49 pursuant to this subsection and deposit them in a separate  
50 account. Within ten calendar days following the beginning  
51 of the calendar month, the circuit clerk, magistrate court clerk  
52 and the municipal court clerk shall forward the amount  
53 deposited to the State Treasurer to be credited to the West  
54 Virginia Community Corrections Fund.

55 (e) The moneys of the West Virginia Community  
56 Corrections Fund are to be disbursed by the Governor's  
57 Committee on Crime, Delinquency and Correction, upon  
58 recommendation by the community corrections  
59 subcommittee, for the funding of community corrections  
60 programs and to pay expenses of the Governor's committee  
61 in administering the provisions of this article, which expenses  
62 may not in any fiscal year exceed ten percent of the funds  
63 deposited to the special revenue account during that fiscal  
64 year.

65 (f) Any disbursements from the West Virginia  
66 Community Corrections Fund allocated for community  
67 corrections programs by the Governor's committee may be  
68 made contingent upon local appropriations or gifts in money  
69 or in kind for the support of the programs. Any county  
70 commission of any county or the governing body of a  
71 municipality may appropriate and expend money for  
72 establishing and maintaining community corrections  
73 programs.

74 (g) Nothing in this article may be construed to mandate  
75 funding for the West Virginia Community Corrections Fund  
76 or to require any appropriation by the Legislature.



## CHAPTER 72

**(S.B. 206 - By Senators Kessler, Oliverio, Chafin, Foster,  
Green, Hunter, Jenkins, Minard, Stollings, Wells, White,  
Barnes, Caruth, Deem, Hall, McKenzie and Yoder)**

[Passed March 2, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 16, 2007.]

AN ACT to amend and reenact §62-11C-9 of the Code of West Virginia, 1931, as amended, relating to assessing court costs for participants in pretrial diversion programs.

*Be it enacted by the Legislature of West Virginia:*

That §62-11C-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 11C. THE WEST VIRGINIA COMMUNITY CORRECTIONS ACT.**

#### **§62-11C-9. Use of community corrections programs for those not under court supervision.**

1 (a) Subject to the availability of community corrections  
2 programs in the county, a written pretrial diversion  
3 agreement, entered into pursuant to the provisions of section  
4 twenty-two, article eleven, chapter sixty-one of this code,  
5 may require participation or supervision in a community  
6 corrections program as part of the prosecution and resolution  
7 of charges.



1 (b) Any pretrial diversion program for a defendant  
2 charged with a violation of the provisions of section twenty-  
3 eight, article two, chapter sixty-one of this code, subsection  
4 (b) or (c), section nine of said article where the alleged victim  
5 is a family or household member or the provisions of section  
6 two, article five, chapter seventeen-c of this code is to require  
7 the person charged to appear before the presiding judge or  
8 magistrate and either acknowledge his or her understanding  
9 of the terms of the agreement or tender a plea of guilty or  
10 nolo contendere to the charge or charges. Upon the  
11 defendant's motion, the court shall continue the matter for the  
12 period of time necessary for the person charged to complete  
13 the pretrial diversion program. If the person charged  
14 successfully completes the pretrial diversion program, the  
15 matter is to be resolved pursuant to the terms of the pretrial  
16 diversion agreement. If the person charged fails to  
17 successfully complete the pretrial diversion program, the  
18 matter, if no plea of guilty or nolo contendere has been  
19 tendered, is to be returned to the court's docket for resolution.  
20 If the person charged has tendered a plea of guilty or nolo  
21 contendere and fails to successfully complete the pretrial  
22 diversion program, the court shall accept the tendered plea of  
23 guilty or nolo contendere and proceed to sentencing.

24 (c) No provision of this article may be construed to limit  
25 the prosecutor's discretion to prosecute an individual who has  
26 not fulfilled the terms of a written pretrial diversion  
27 agreement by not completing the required supervision or  
28 participation in a community corrections program.

29 (d) Notwithstanding any provision of this code to the  
30 contrary, any person whose case is disposed of by entering  
31 into a pretrial diversion agreement, pursuant to the provisions  
32 of section twenty-two, article eleven of this chapter, shall be  
33 liable for any applicable court costs. Payment of the court  
34 costs shall be made a condition of the pretrial diversion  
35 agreement.

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**CHAPTER 73**

**(Com. Sub. for S.B. 465 - By Senators Unger, Jenkins,  
Prezioso and Plymale)**

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[Passed March 9, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2007.]

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AN ACT to amend and reenact §22-14-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §22-14-19, all relating to deficient dams; establishing the Dam Safety Rehabilitation Revolving Fund for deficient dams; and providing for promulgation of rules.

*Be it enacted by the Legislature of West Virginia:*

That §22-14-3 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 §22-14-19, all to read as follows:

**ARTICLE 14. DAM CONTROL ACT.**

§22-14-3. Definition of terms used in article.

§22-14-19. Dam Safety Rehabilitation Revolving Fund established; disbursement of fund moneys.

**§22-14-3. Definition of terms used in article.**

- 1 As used in this article, unless used in a context that
- 2 clearly requires a different meaning, the term:

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3            (a) "Alterations" or "repairs" means only those changes  
4 in the structure or integrity of a dam that may affect its safety  
5 to be determined by the secretary.

6            (b) "Application for a certificate of approval" means the  
7 written application provided to the secretary requesting that  
8 a person be issued a certificate of approval.

9            (c) "Appurtenant works" means any structure or facility  
10 that is an adjunct of, or connected, appended or annexed to a  
11 dam, including, but not limited to, spillways, a reservoir and  
12 its rim, low-level outlet works or water conduits such as  
13 tunnels, pipelines and penstocks either through the dam or its  
14 abutments.

15            (d) "Certificate of approval" means the written approval  
16 issued by the secretary to a person who has applied to the  
17 secretary for a certificate of approval that authorizes the  
18 person to place, construct, enlarge, alter, repair or remove a  
19 dam and specifies the conditions or limitations under which  
20 the work is to be performed by that person.

21            (e)(1) "Dam" means an artificial barrier or obstruction,  
22 including any works appurtenant to it and any reservoir  
23 created by it, which is or will be placed, constructed,  
24 enlarged, altered or repaired so that it does or will impound  
25 or divert water and:

26            (A) Is or will be twenty-five feet or more in height from  
27 the natural bed of the stream or watercourse measured at the  
28 downstream toe of the barrier and which does or can  
29 impound fifteen acre-feet or more of water; or

30 (B) Is or will be six feet or more in height from the  
31 natural bed of the stream or watercourse measured at the  
32 downstream toe of the barrier and which does or can  
33 impound fifty acre-feet or more of water;

34 (2) “Dam” does not mean:

35 (A) Any dam owned by the federal government;

36 (B) Any dam for which the operation and maintenance of  
37 the dam is the responsibility of the federal government;

38 (C) Farm ponds constructed and used primarily for  
39 agricultural purposes, including, but not limited to, livestock  
40 watering, irrigation, retention of animal wastes and fish  
41 culture, and that have no potential to cause loss of human life  
42 in the event of embankment failure; or

43 (D) Roadfill or other transportation structures that do not  
44 or will not impound water under normal conditions and that  
45 have a designed culvert or similar conveyance or capacity  
46 that would be used under a state designed highway at the  
47 same location: *Provided*, That the secretary may apply the  
48 provisions of section ten of this article for roadfill or other  
49 transportation structures that become a hazard to human life  
50 or property through the frequent or continuous impoundment  
51 of water.

52 (f) “Deficient dam” means a noncoal-related dam that  
53 exhibits one or more design, maintenance or operational  
54 problems that may adversely affect the performance of the  
55 dam over a period of time or during a major storm or other  
56 inclement weather that may cause loss of life or property; or  
57 a noncoal-related dam that otherwise fails to meet the  
58 requirements of this article.

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59            (g) "Department" means the Department of  
60 Environmental Protection.

61            (h) "Enlargement" means any change in or addition to an  
62 existing dam which: (1) Raises the height of the dam; (2)  
63 raises or may raise the water storage elevation of the water  
64 impounded by the dam; (3) increases or may increase the  
65 amount of water impounded by the dam; or (4) increases or  
66 may increase the watershed area from which water is  
67 impounded by the dam.

68            (i) "Person" means any public or private corporation,  
69 institution, association, society, firm, organization or  
70 company organized or existing under the laws of this or any  
71 other state or country; the State of West Virginia; any state  
72 governmental agency; any political subdivision of the state or  
73 of its counties or municipalities; a sanitary district; a public  
74 service district; a drainage district; a conservation district; a  
75 watershed improvement district; a partnership, trust, or  
76 estate; a person or individual; a group of persons or  
77 individuals acting individually or as a group; or any other  
78 legal entity. The term "person", when used in this article,  
79 includes and refers to any authorized agent, lessee or trustee  
80 of any of the foregoing, or receiver or trustee appointed by  
81 any court for any of the foregoing.

82            (j) "Reservoir" means any basin which contains or will  
83 contain impounded water.

84            (k) "Secretary" means the Secretary of the Department of  
85 Environmental Protection.

86            (l) "Natural Resources Conservation Service" means the  
87 Natural Resources Conservation Service of the United States  
88 Department of Agriculture or any successor or predecessor  
89 agency, including the Soil Conservation Service.

90 (m) "Water" means any liquid, including any solids or  
91 other matter that may be contained in the liquid, which is or  
92 may be impounded by a dam.

93 (n) "Water storage elevation" means the maximum  
94 elevation that water can reach behind a dam without  
95 encroaching on the freeboard approved for the dam under  
96 flood conditions.

**§22-14-19. Dam Safety Rehabilitation Revolving Fund  
established; disbursement of fund moneys.**

1 (a) There is created in the State Treasury a special  
2 revenue fund known as the Dam Safety Rehabilitation  
3 Revolving Fund. The fund shall be comprised of money  
4 allocated to the state by the federal government expressly for  
5 the purposes of establishing and maintaining a state Dam  
6 Safety Rehabilitation Revolving Fund. The fund shall also  
7 include all receipts from loans made by the fund, any moneys  
8 appropriated by the Legislature, all income from the  
9 investment of moneys held in the fund and all other moneys  
10 designated for deposit to the fund from any source, public or  
11 private. The fund shall operate as a special revenue fund and  
12 all deposits and payments into the fund do not expire to the  
13 General Revenue Fund, but shall remain in the account and  
14 be available for expenditure in succeeding fiscal years.

15 (b) The fund, to the extent that money is available, shall  
16 be used solely to make loans to persons who own an interest  
17 in a deficient dam to finance the engineering, design,  
18 alteration, improvement, repair, breaching or removal of the  
19 deficient dam necessary to correct or remove the deficiencies  
20 and other activities as authorized by a federal grant or a  
21 legislative appropriation. Further, the fund may be used to  
22 defray costs incurred by the department in administering the  
23 provisions of this subsection.

24 (c) The secretary shall promulgate rules, in accordance  
25 with the provisions of article three, chapter twenty-nine-a of  
26 this code, to govern the disbursement of moneys from the  
27 fund, establish a state deficient dams rehabilitation assistance  
28 program to direct the distribution of loans from the fund,  
29 establish criteria for eligibility to receive loans from the fund  
30 and establish the terms and conditions of the loans, including  
31 interest rates and repayment terms.

32 (d) The secretary may employ qualified officers, agents,  
33 advisors and consultants and other persons necessary to carry  
34 out the administration and management of the fund.

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## CHAPTER 74

**(Com. Sub. for H.B. 3097 - By Delegates Moore and Craig)**

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[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2007.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §5-10B-3a and §5-10B-10a; and to amend and reenact §36-8-13 of said code, all relating to government employees deferred compensation plans; authorizing automatic enrollment in a plan; authorizing a matching contribution program; establishing matching program term; establishing qualifications for participation; limiting the match to twenty-five percent of employee contributions at a maximum of one hundred dollars per year, not to exceed four hundred dollars over the life of the matching program; establishing the Deferred Compensation Matching Fund; specifying that operation of a matching program is contingent upon funding by the Legislature and may be changed or discontinued at any time for a time certain or

indefinitely; specifying that disbursements from the matching fund may not exceed one million dollars in any one fiscal year; allowing earnings to accrue to the matching fund; requiring the unclaimed property administrator to transfer two million dollars from the unclaimed property trust fund to the matching fund on or before the first day of June, two thousand seven, and one million dollars on or before the first day of June, two thousand eight.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto two new sections, designated §5-10B-3a and; §5-10B-10a; and that §36-8-13 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.**
- 36. **Estates and Property.**

**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 10B. GOVERNMENT EMPLOYEES DEFERRED  
COMPENSATION PLANS.**

§5-10B-3a. Automatic enrollment.

§5-10B-10a. Matching contribution program.

**§5-10B-3a. Automatic enrollment.**

- 1 (a) Every state employee commencing work on and after
- 2 the first day of July, two thousand seven, shall have a



3 minimum of ten dollars per pay period of his or her salary  
4 deferred to the state deferred compensation plan unless the  
5 state employee provides written notice declining to  
6 participate in accordance with the Treasurer's guidelines. A  
7 state employee may change the contribution amount or cease  
8 participating at any time. An employee declining  
9 participation in the state deferred compensation plan may  
10 elect to participate at a later time.

11 (b) A political subdivision may establish an automatic  
12 enrollment program in a deferred compensation plan pursuant  
13 to this article. A political subdivision employee may elect to  
14 not participate in the deferred compensation plan at any time  
15 and to change the contribution amount.

**§5-10B-10a. Matching contribution program.**

1 (a) For a period commencing the first day of July, two  
2 thousand seven, and continuing through the thirtieth day of  
3 September, two thousand twelve, the Treasurer is authorized  
4 to establish and operate a savings incentive program pursuant  
5 to section 401(a) of the Internal Revenue Code of 1986, as  
6 amended, in which a state employee participating in the  
7 deferred compensation plan authorized in this article may  
8 receive certain matching contributions pursuant to this  
9 section. The Treasurer shall establish matching program  
10 guidelines in accordance with this article.

11 (b) To qualify for participation in the matching program,  
12 a state employee shall have contributed to his or her deferred  
13 compensation account not less than ten dollars every pay  
14 period during a fiscal year.

15 (c)(1) Subject to the limitations provided by subdivision  
16 (2) of this subsection and subsections (e) and (f) of this  
17 section, the Treasurer shall allocate and credit a matching  
18 sum of up to twenty-five percent of the contributions a  
19 qualified state employee made to his or her deferred  
20 compensation account during a fiscal year subsequent to  
21 qualifying to participate in the matching program for a period  
22 of up to five fiscal years, which contributions shall be at least  
23 ten dollars in every pay period during the fiscal year, and  
24 which matching contributions for any employee shall not  
25 exceed one hundred dollars in any one fiscal year and four  
26 hundred dollars total over the life of the matching program.

27 (2) The Treasurer shall set the amount of funds a  
28 qualified state employee may receive as a match in  
29 accordance with this section in an amount not to exceed the  
30 amount of funds authorized by the Legislature for this  
31 purpose.

32 (d) The matching contribution shall be remitted annually  
33 by the Treasurer from the West Virginia Deferred  
34 Compensation Matching Fund, which is hereby created, to  
35 the employee's account in the West Virginia Deferred  
36 Compensation Trust Fund no later than the thirtieth day of  
37 September each year for the prior fiscal year.

38 (e) The Treasurer shall not obligate, authorize or pay any  
39 match for which funds are not available in the West Virginia  
40 Deferred Compensation Matching Fund.

41 (f) Operation of the matching program is contingent upon  
42 funding made available by the West Virginia Legislature and  
43 may be changed or discontinued at any time for a time certain  
44 or indefinitely, as determined by the Legislature or the  
45 Treasurer. The maximum amount of funds that may be

46 expended from the Deferred Compensation Matching Fund  
47 in any one fiscal year is one million dollars.

48 (g) On or before the first day of June, two thousand  
49 seven, the unclaimed property administrator shall transfer the  
50 amount of two million dollars from the Unclaimed Property  
51 Trust Fund, created in section thirteen, article eight, chapter  
52 thirty-six of this code, to the Deferred Compensation  
53 Matching Fund for operation of the matching program. On  
54 or before the first day of June, two thousand eight, the  
55 unclaimed property administrator shall transfer the amount of  
56 one million dollars from the Unclaimed Property Trust Fund  
57 to the Deferred Compensation Matching Fund for operation  
58 of the matching program.

59 (h) Moneys in the Deferred Compensation Matching  
60 Fund may be invested, in whole or in part, with the West  
61 Virginia Board of Treasury Investments or any other entity  
62 the Treasurer selects, and all earnings shall accrue to and be  
63 retained by the fund.

64 (i) The State of West Virginia, the Treasurer and his or  
65 her employees, agents and representatives shall not be liable  
66 for any losses incurred by the Deferred Compensation  
67 Matching Fund.

68 (j) Any moneys remaining in the Deferred Compensation  
69 Matching Fund at the termination of the matching program  
70 shall be transferred to the General Revenue Fund of the state  
71 no later than the thirty-first day of December, two thousand  
72 twelve.

73 (k) Any public employer may elect to operate its own  
74 matching program.

**CHAPTER 36. ESTATES AND PROPERTY.****ARTICLE 8. THE UNIFORM UNCLAIMED PROPERTY ACT.****§36-8-13. Deposit of funds.**

1 (a) The administrator shall record the name and last  
2 known address of each person appearing from the holders  
3 reports to be entitled to the property and the name and last  
4 known address of each insured person or annuitant and  
5 beneficiary and with respect to each policy or annuity listed  
6 in the report of an insurance company, its number, the name  
7 of the company and the amount due.

8 (b) The Unclaimed Property Fund is continued. The  
9 administrator shall deposit all funds received pursuant to this  
10 article in the Unclaimed Property Fund, including the  
11 proceeds from the sale of abandoned property under section  
12 twelve of this article. In addition to paying claims of  
13 unclaimed property duly allowed, the administrator may  
14 deduct the following expenses from the Unclaimed Property  
15 Fund:

16 (1) Expenses of the sale of abandoned property;

17 (2) Expenses incurred in returning the property to  
18 owners, including without limitation the costs of mailing and  
19 publication to locate owners;

20 (3) Reasonable service charge; and

21 (4) Expenses incurred in examining records of holders of  
22 property and in collecting the property from those holders.

23 (c) The Unclaimed Property Trust Fund is continued  
24 within the State Treasury. After deducting the expenses  
25 specified in subsection (b) of this section and maintaining a  
26 sum of money from which to pay claims duly allowed, the  
27 administrator shall transfer the remaining moneys in the  
28 Unclaimed Property Fund to the Unclaimed Property Trust  
29 Fund.

30 (d) On or before the fifteenth day of December of each  
31 year and after receipt of a report from the Chairman of the  
32 Board of Trustees of the West Virginia College Prepaid  
33 Tuition and Savings Program stating the amount certified by  
34 an actuary in accordance with the provisions of section six,  
35 article thirty, chapter eighteen of this code, notwithstanding  
36 any provision of this code to the contrary, the administrator  
37 shall transfer the sum of money certified by the actuary from  
38 the Unclaimed Property Trust Fund to the Prepaid Tuition  
39 Trust Escrow Fund, the amount transferred not to exceed one  
40 million dollars annually.

41 (e) On or before the first day of June, two thousand  
42 seven, the unclaimed property administrator shall transfer the  
43 amount of two million dollars from the Unclaimed Property  
44 Trust Fund to the Deferred Compensation Matching Fund for  
45 operation of the deferred compensation matching program for  
46 state employees. On or before the first day of June, two  
47 thousand eight, the unclaimed property administrator shall  
48 transfer the amount of one million dollars from the  
49 Unclaimed Property Trust Fund to the Deferred  
50 Compensation Matching Fund for operation of the matching  
51 program.

52 (f) After transferring any money required by subsections  
53 (d) and (e) of this section, the administrator shall transfer  
54 moneys remaining in the Unclaimed Property Trust Fund to  
55 the General Revenue Fund.

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**CHAPTER 75**

**(H.B. 2571 - By Delegates Morgan, Craig, Stephens,  
Reynolds, Sobonya and C. Miller)**

[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 22, 2007.]

AN ACT to amend and reenact §11A-2-18 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11A-3-2 of said code, all relating to clarifying the deadline for redeeming delinquent lands.

*Be it enacted by the Legislature of West Virginia:*

That §11A-2-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11A-3-2 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-2-18. Redemption before sale; record; lien.**

- 1 The owner of any real estate returned delinquent, or any
- 2 other person entitled to pay the taxes thereon, may redeem at
- 3 any time before the close of business on the last business day
- 4 prior to the sale provided in the following article by payment

5 of the taxes, interest and charges due. However, redemption  
 6 of an undivided interest included in a group assessment or of  
 7 part of a tract or lot the whole of which was assessed in the  
 8 name of a person other than the owner shall not be permitted  
 9 until the applicable provisions of section nine or of section  
 10 ten, article one of this chapter, have been complied with. The  
 11 sheriff shall give to the person redeeming a duplicate receipt,  
 12 one of which shall be filed with the clerk of the county court,  
 13 who shall note the fact of such redemption on his or her  
 14 record of delinquent lands. Whenever only part of a tract or  
 15 lot, or only an undivided interest therein, has been redeemed,  
 16 the clerk shall make the necessary changes in his or her  
 17 record of delinquent lands before noting the fact of  
 18 redemption on the record. Any person redeeming an interest  
 19 of another shall be subrogated to the lien of the State on such  
 20 interest as provided in section nine, article one of this  
 21 chapter.

**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.**

1 (a) On or before the tenth day of September of each year,  
 2 the sheriff shall prepare a second list of delinquent lands,  
 3 which shall include all real estate in his or her county  
 4 remaining delinquent as of the first day of September,  
 5 together with a 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  
 8 in the County of \_\_\_\_\_ which are delinquent  
 9 for the nonpayment of taxes for the year (or years) 20\_\_\_\_,  
 10 will be offered for sale by the undersigned sheriff (or

DELINQUENT LANDS

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11 collector) at public auction at the front door of the courthouse  
 12 of the county, between the hours of nine in the morning and  
 13 four in the afternoon, on the \_\_\_\_\_ day of  
 14 \_\_\_\_\_, 20\_\_\_\_.

15 Tax liens on each unredeemed tract or lot, or each  
 16 unredeemed part thereof or undivided interest therein, will be  
 17 sold at public auction to the highest bidder in an amount  
 18 which shall not be less than the taxes, interest and charges  
 19 which shall be due thereon to the date of sale, as set forth in  
 20 the following table:

Name of person charged with taxes	Quantity of land	Local description	Total amount of taxes, interest and charges due to date of sale

1 Any of the aforesaid tracts or lots, or part thereof or an  
 2 undivided interest therein, may be redeemed by the payment  
 3 to the undersigned sheriff (or collector) before sale, of the  
 4 total amount of taxes, interest and charges due thereon up to  
 5 the date of redemption. Payment received within fourteen  
 6 business days prior to the date of sale must be paid by cashier  
 7 check, money order, certified check or United States  
 8 currency. Payment must be received in the tax office by the  
 9 close of business on the last business day prior to the sale.

10 Given under my hand this \_\_\_\_\_ day of  
 11 \_\_\_\_\_, 20\_\_\_\_.  
 12 \_\_\_\_\_  
 13 Sheriff (or collector).



14 The sheriff shall publish the list and notice prior to the  
15 sale date fixed in the notice as a Class III-0 legal  
16 advertisement in compliance with the provisions of article  
17 three, chapter fifty-nine of this code, and the publication area  
18 for such publication shall be the county.

19 (b) In addition to such publication, no less than thirty  
20 days prior to the sale, the sheriff shall send a notice of the  
21 delinquency and the date of sale by certified mail: (1) To the  
22 last known address of each person listed in the land books  
23 whose taxes are delinquent; (2) to each person having a lien  
24 on real property upon which the taxes are due as disclosed by  
25 a statement filed with the sheriff pursuant to the provisions of  
26 section three of this article; (3) to each other person with an  
27 interest in the property or with a fiduciary relationship to a  
28 person with an interest in the property who has in writing  
29 delivered to the sheriff on a form prescribed by the Tax  
30 Commissioner a request for such notice of delinquency; and  
31 (4) in the case of property which includes a mineral interest  
32 but does not include an interest in the surface other than an  
33 interest for the purpose of developing the minerals, to each  
34 person who has in writing delivered to the sheriff, on a form  
35 prescribed by the Tax Commissioner, a request for such  
36 notice which identifies the person as an owner of an interest  
37 in the surface of real property that is included in the  
38 boundaries of such property: *Provided*, That in a case where  
39 one owner owns more than one parcel of real property upon  
40 which taxes are delinquent, the sheriff may, at his or her  
41 option, mail separate notices to the owner and each lienholder  
42 for each parcel or may prepare and mail to the owner and  
43 each lienholder a single notice which pertains to all such  
44 delinquent parcels. If the sheriff elects to mail only one  
45 notice, that notice shall set forth a legally sufficient

46 description of all parcels of property on which taxes are  
47 delinquent. In no event shall failure to receive the mailed  
48 notice by the landowner or lienholder affect the validity of  
49 the title of the property conveyed if it is conveyed pursuant  
50 to section twenty-seven or fifty-nine of this article.

51 (c) (1) To cover the cost of preparing and publishing the  
52 second delinquent list, a charge of twenty-five dollars shall  
53 be added to the taxes, interest and charges already due on  
54 each item and all such charges shall be stated in the list as a  
55 part of the total amount due.

56 (2) To cover the cost of preparing and mailing notice to  
57 the landowner, lienholder or any other person entitled thereto  
58 pursuant to this section, a charge of ten dollars per addressee  
59 shall be added to the taxes, interest and charges already due  
60 on each item and all such charges shall be stated in the list as  
61 a part of the total amount due.

62 (d) Any person whose taxes were delinquent on the first  
63 day of September may have his or her name removed from  
64 the delinquent list prior to the time the same is delivered to  
65 the newspapers for publication by paying to the sheriff the  
66 full amount of taxes and costs owed by the person at the date  
67 of such redemption. In such case, the sheriff shall include  
68 but three dollars of the costs provided in this section in  
69 making such redemption. Costs collected by the sheriff  
70 hereunder which are not expended for publication and  
71 mailing shall be paid into the General County Fund.

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CHAPTER 76

**(Com. Sub. for S.B. 539 - By Senators Foster, McKenzie,  
Plymale and Kessler)**

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[Passed March 7, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2007.]

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AN ACT to amend and reenact §7-14D-2, §7-14D-9 and §7-14D-11 of the Code of West Virginia, 1931, as amended, all relating to the Deputy Sheriff Retirement System; amending the definition of “annuity start date”; requiring a member’s application for retirement; and providing the basis for determining a member’s retirement benefit.

*Be it enacted by the Legislature of West Virginia:*

That §7-14D-2, §7-14D-9 and §7-14D-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 14D. DEPUTY SHERIFF RETIREMENT  
SYSTEM ACT.**

§7-14D-2. Definitions.

§7-14D-9. Retirement; commencement of benefits.

§7-14D-11. Retirement benefits.

**§7-14D-2. Definitions.**

1 As used in this article, unless a federal law or  
2 regulation or the context clearly requires a different  
3 meaning:

4 (a) "Accrued benefit" means on behalf of any member  
5 two and one-quarter percent of the member's final average  
6 salary multiplied by the member's years of credited  
7 service. A member's accrued benefit may not exceed the  
8 limits of Section 415 of the Internal Revenue Code and is  
9 subject to the provisions of section nine-a of this article.

10 (b) "Accumulated contributions" means the sum of all  
11 amounts deducted from the compensation of a member, or  
12 paid on his or her behalf pursuant to article ten-c, chapter  
13 five of this code, either pursuant to section seven of this  
14 article or section twenty-nine, article ten, chapter five of  
15 this code as a result of covered employment together with  
16 regular interest on the deducted amounts.

17 (c) "Active military duty" means full-time active duty  
18 with any branch of the armed forces of the United States,  
19 including service with the National Guard or reserve  
20 military forces when the member has been called to active  
21 full-time duty and has received no compensation during  
22 the period of that duty from any board or employer other  
23 than the armed forces.

24 (d) "Actuarial equivalent" means a benefit of equal  
25 value computed upon the basis of the mortality table and  
26 interest rates as set and adopted by the retirement board in  
27 accordance with the provisions of this article.

28 (e) "Annual compensation" means the wages paid to  
29 the member during covered employment within the  
30 meaning of Section 3401(a) of the Internal Revenue Code,  
31 but determined without regard to any rules that limit the

32 remuneration included in wages based upon the nature or  
33 location of employment or services performed during the  
34 plan year plus amounts excluded under Section 414(h)(2)  
35 of the Internal Revenue Code and less reimbursements or  
36 other expense allowances, cash or noncash fringe benefits  
37 or both, deferred compensation and welfare benefits.  
38 Annual compensation for determining benefits during any  
39 determination period may not exceed one hundred fifty  
40 thousand dollars as adjusted for cost of living in  
41 accordance with Section 401(a)(17)(B) of the Internal  
42 Revenue Code.

43 (f) "Annual leave service" means accrued annual leave.

44 (g) "Annuity starting date" means the first day of the  
45 first calendar month following receipt of the retirement  
46 application by the board: *Provided*, That the member has  
47 ceased covered employment and reached early or normal  
48 retirement age.

49 (h) "Base salary" means a member's cash  
50 compensation exclusive of overtime from covered  
51 employment during the last twelve months of employment.  
52 Until a member has worked twelve months, annualized  
53 base salary is used as base salary.

54 (i) "Board" means the Consolidated Public Retirement  
55 Board created pursuant to article ten-d, chapter five of this  
56 code.

57 (j) "County commission" has the meaning ascribed to  
58 it in section one, article one, chapter seven of this code.

59 (k) "Covered employment" means either: (1)  
60 Employment as a deputy sheriff and the active  
61 performance of the duties required of a deputy sheriff; or

62 (2) the period of time which active duties are not  
63 performed but disability benefits are received under  
64 section fourteen or fifteen of this article; or (3) concurrent  
65 employment by a deputy sheriff in a job or jobs in addition  
66 to his or her employment as a deputy sheriff where the  
67 secondary employment requires the deputy sheriff to be a  
68 member of another retirement system which is  
69 administered by the Consolidated Public Retirement Board  
70 pursuant to article ten-d, chapter five of this code:  
71 *Provided*, That the deputy sheriff contributes to the fund  
72 created in section six of this article the amount specified as  
73 the deputy sheriff's contribution in section seven of this  
74 article.

75 (l) "Credited service" means the sum of a member's  
76 years of service, active military duty, disability service and  
77 annual leave service.

78 (m) "Deputy sheriff" means an individual employed as  
79 a county law-enforcement deputy sheriff in this state and  
80 as defined by section two, article fourteen of this chapter.

81 (n) "Dependent child" means either:

82 (1) An unmarried person under age eighteen who is:

83 (A) A natural child of the member;

84 (B) A legally adopted child of the member;

85 (C) A child who at the time of the member's death was  
86 living with the member while the member was an adopting  
87 parent during any period of probation; or

88 (D) A stepchild of the member residing in the  
89 member's household at the time of the member's death; or

90 (2) Any unmarried child under age twenty-three:

91 (A) Who is enrolled as a full-time student in an  
92 accredited college or university;

93 (B) Who was claimed as a dependent by the member  
94 for federal income tax purposes at the time of the  
95 member's death; and

96 (C) Whose relationship with the member is described  
97 in subparagraph (A), (B) or (C), paragraph (1) of this  
98 subdivision.

99 (o) "Dependent parent" means the father or mother of  
100 the member who was claimed as a dependent by the  
101 member for federal income tax purposes at the time of the  
102 member's death.

103 (p) "Disability service" means service received by a  
104 member, expressed in whole years, fractions thereof or  
105 both, equal to one half of the whole years, fractions thereof  
106 or both, during which time a member receives disability  
107 benefits under section fourteen or fifteen of this article.

108 (q) "Early retirement age" means age forty or over and  
109 completion of twenty years of service.

110 (r) "Effective date" means the first day of July, one  
111 thousand nine hundred ninety-eight.

112 (s) "Final average salary" means the average of the  
113 highest annual compensation received for covered  
114 employment by the member during any five consecutive  
115 plan years within the member's last ten years of service.  
116 If the member did not have annual compensation for the  
117 five full plan years preceding the member's attainment of  
118 normal retirement age and during that period the member

119 received disability benefits under section fourteen or  
120 fifteen of this article then "final average salary" means the  
121 average of the monthly salary determined paid to the  
122 member during that period as determined under section  
123 seventeen of this article multiplied by twelve.

124 (t) "Fund" means the West Virginia Deputy Sheriff  
125 Retirement Fund created pursuant to section six of this  
126 article.

127 (u) "Hour of service" means:

128 (1) Each hour for which a member is paid or entitled to  
129 payment for covered employment during which time  
130 active duties are performed. These hours shall be credited  
131 to the member for the plan year in which the duties are  
132 performed; and

133 (2) Each hour for which a member is paid or entitled to  
134 payment for covered employment during a plan year but  
135 where no duties are performed due to vacation, holiday,  
136 illness, incapacity including disability, layoff, jury duty,  
137 military duty, leave of absence or any combination thereof  
138 and without regard to whether the employment  
139 relationship has terminated. Hours under this paragraph  
140 shall be calculated and credited pursuant to West Virginia  
141 Division of Labor rules. A member will not be credited  
142 with any hours of service for any period of time he or she  
143 is receiving benefits under section fourteen or fifteen of  
144 this article; and

145 (3) Each hour for which back pay is either awarded or  
146 agreed to be paid by the employing county commission,  
147 irrespective of mitigation of damages. The same hours of  
148 service shall not be credited both under this paragraph and  
149 paragraph (1) or (2) of this subdivision. Hours under this  
150 paragraph shall be credited to the member for the plan year



151 or years to which the award or agreement pertains rather  
152 than the plan year in which the award, agreement or  
153 payment is made.

154 (v) "Member" means a person first hired as a deputy  
155 sheriff after the effective date of this article, as defined in  
156 subsection (r) of this section, or a deputy sheriff first hired  
157 prior to the effective date and who elects to become a  
158 member pursuant to section five or section seventeen of  
159 this article. A member shall remain a member until the  
160 benefits to which he or she is entitled under this article are  
161 paid or forfeited.

162 (w) "Monthly salary" means the portion of a member's  
163 annual compensation which is paid to him or her per  
164 month.

165 (x) "Normal form" means a monthly annuity which is  
166 one twelfth of the amount of the member's accrued benefit  
167 which is payable for the member's life. If the member dies  
168 before the sum of the payments he or she receives equals  
169 his or her accumulated contributions on the annuity  
170 starting date, the named beneficiary shall receive in one  
171 lump sum the difference between the accumulated  
172 contributions at the annuity starting date and the total of  
173 the retirement income payments made to the member.

174 (y) "Normal retirement age" means the first to occur of  
175 the following: (1) Attainment of age fifty years and the  
176 completion of twenty or more years of service; (2) while  
177 still in covered employment, attainment of at least age fifty  
178 years and when the sum of current age plus years of  
179 service equals or exceeds seventy years; (3) while still in  
180 covered employment, attainment of at least age sixty years  
181 and completion of five years of service; or (4) attainment  
182 of age sixty-two years and completion of five or more  
183 years of service.

184 (z) "Partially disabled" means a member's inability to  
185 engage in the duties of deputy sheriff by reason of any  
186 medically determinable physical or mental impairment that  
187 can be expected to result in death or that has lasted or can  
188 be expected to last for a continuous period of not less than  
189 twelve months. A member may be determined partially  
190 disabled for the purposes of this article and maintain the  
191 ability to engage in other gainful employment which exists  
192 within the state but which ability would not enable him or  
193 her to earn an amount at least equal to two-thirds of the  
194 average annual compensation earned by all active  
195 members of this plan during the plan year ending as of the  
196 most recent thirtieth day of June, as of which plan data has  
197 been assembled and used for the actuarial valuation of the  
198 plan.

199 (aa) "Public Employees Retirement System" means the  
200 West Virginia Public Employee's Retirement System  
201 created by article ten, chapter five of this code.

202 (bb) "Plan" means the West Virginia Deputy Sheriff  
203 Death, Disability and Retirement Plan established by this  
204 article.

205 (cc) "Plan year" means the twelve-month period  
206 commencing on the first day of July of any designated year  
207 and ending the following thirtieth day of June.

208 (dd) "Regular interest" means the rate or rates of  
209 interest per annum, compounded annually, as the board  
210 adopts in accordance with the provisions of this article.

211 (ee) "Retirement income payments" means the annual  
212 retirement income payments payable under the plan.

213 (ff) "Spouse" means the person to whom the member  
214 is legally married on the annuity starting date.

215 (gg) "Surviving spouse" means the person to whom the  
216 member was legally married at the time of the member's  
217 death and who survived the member.

218 (hh) "Totally disabled" means a member's inability to  
219 engage in substantial gainful activity by reason of any  
220 medically determined physical or mental impairment that  
221 can be expected to result in death or that has lasted or can  
222 be expected to last for a continuous period of not less than  
223 twelve months. For purposes of this subdivision: (1) A  
224 member is totally disabled only if his or her physical or  
225 mental impairment or impairments are so severe that he or  
226 she is not only unable to perform his or her previous work  
227 as a deputy sheriff but also cannot, considering his or her  
228 age, education and work experience, engage in any other  
229 kind of substantial gainful employment which exists in the  
230 state regardless of whether: (A) The work exists in the  
231 immediate area in which the member lives; (B) a specific  
232 job vacancy exists; or (C) the member would be hired if he  
233 or she applied for work.

234 (2) "Physical or mental impairment" is an impairment  
235 that results from an anatomical, physiological or  
236 psychological abnormality that is demonstrated by  
237 medically accepted clinical and laboratory diagnostic  
238 techniques. A member's receipt of social security  
239 disability benefits creates a rebuttable presumption that the  
240 member is totally disabled for purposes of this plan.  
241 Substantial gainful employment rebuts the presumption of  
242 total disability.

243 (ii) "Year of service". -- A member shall, except in his  
244 or her first and last years of covered employment, be  
245 credited with year of service credit based upon the hours  
246 of service performed as covered employment and credited  
247 to the member during the plan year based upon the  
248 following schedule:

DEPUTY SHERIFFS

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249	Hours of Service	Years of Service
250		Credited
251	Less than 500 .....	0
252	500 to 999 .....	1/3
253	1,000 to 1,499 .....	2/3
254	1,500 or more .....	1

255        During a member's first and last years of covered  
256 employment, the member shall be credited with one  
257 twelfth of a year of service for each month during the plan  
258 year in which the member is credited with an hour of  
259 service. A member is not entitled to credit for years of  
260 service for any time period during which he or she  
261 received disability payments under section fourteen or  
262 fifteen of this article. Except as specifically excluded,  
263 years of service include covered employment prior to the  
264 effective date. Years of service which are credited to a  
265 member prior to his or her receipt of accumulated  
266 contributions upon termination of employment pursuant to  
267 section thirteen of this article or section thirty, article ten,  
268 chapter five of this code, shall be disregarded for all  
269 purposes under this plan unless the member repays the  
270 accumulated contributions with interest pursuant to section  
271 thirteen of this article or had prior to the effective date  
272 made the repayment pursuant to section eighteen, article  
273 ten, chapter five of this code.

274        (jj) "Required beginning date" means the first day of  
275 April of the calendar year following the later of: (i) The  
276 calendar year in which the member attains age seventy and  
277 one-half; or (ii) the calendar year in which he or she retires  
278 or otherwise separates from covered employment.

**§7-14D-9. Retirement; commencement of benefits.**

1       A member may retire and commence to receive  
2 retirement income payments on the first day of the  
3 calendar month following the board's receipt of the  
4 member's voluntary written application for retirement.  
5 Before receiving retirement income payments, the member  
6 shall have ceased covered employment and reached early  
7 or normal retirement age. The retirement income  
8 payments shall be in an amount as provided under section  
9 eleven of this article: *Provided*, That retirement income  
10 payments under this plan shall be subject to the provisions  
11 of section nine-b of this article. Upon receipt of the  
12 application, the board shall promptly provide the member  
13 with an explanation of his or her optional forms of  
14 retirement benefits and upon receipt of properly executed  
15 forms from the member, the board shall process the  
16 member's request and commence payments as soon as  
17 administratively feasible.

**§7-14D-11. Retirement benefits.**

1       This section provides for a member's accrued benefit  
2 payable starting at the member's annuity starting date  
3 which follows the completion of a written application for  
4 the commencement of benefits. The member shall receive  
5 the accrued retirement benefit in the normal form or in an  
6 actuarial equivalent amount in an optional form as  
7 provided under section twelve of this chapter. The first  
8 day of the calendar month following the calendar month of  
9 birth shall be used in lieu of any birth date that does not  
10 fall on the first day of a calendar month.

11       (a) *Normal retirement.* -- A member whose annuity  
12 starting date is the date the member attains normal  
13 retirement age or later is entitled to his or her accrued

14 retirement benefit based on years of service and final  
15 average salary at termination of employment.

16 (b) *Early retirement.* -- A member who ceases  
17 covered employment and has attained early retirement age  
18 while in covered employment may elect to receive  
19 retirement income payments commencing on the first day  
20 of the month coincident with or following the date the  
21 member ceases covered employment. "Normal retirement  
22 age" for such a member is the first day of the calendar  
23 month coincident with or next following the month in  
24 which the member attains the age of fifty years. If the  
25 member's annuity starting date is prior to the date the  
26 member attains normal retirement age, his or her accrued  
27 benefit is reduced to the actuarial equivalent benefit  
28 amount based on the years and months by which his or her  
29 annuity starting date precedes the date he or she attains  
30 normal retirement age.

31 (c) Retirement benefits shall be paid monthly in an  
32 amount equal to one twelfth of the retirement income  
33 payments elected and at those times established by the  
34 board. Notwithstanding any other provision of the plan, a  
35 member who is married on the annuity starting date will  
36 receive his or her retirement income payments in the form  
37 of a sixty-six and two-thirds percent joint and survivor  
38 annuity with his or her spouse unless prior to the annuity  
39 starting date the spouse waives the form of benefit.

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CHAPTER 77

**(H.B. 2130 - By Delegate Swartzmiller)**

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[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2007.]

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AN ACT to amend and reenact §7-14D-14 of the Code of West Virginia, 1931, as amended, relating to eliminating any reduction in the benefit of a deputy sheriff who is totally disabled on the job.

*Be it enacted by the Legislature of West Virginia:*

That §7-14D-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM  
ACT**

**§7-14D-14. Awards and benefits for disability -- Duty related.**

1 Any member who after the effective date of this article  
2 and during covered employment: (A) Has been or becomes  
3 either totally or partially disabled by injury, illness or disease;  
4 and (B) the disability is a result of an occupational risk or  
5 hazard inherent in or peculiar to the services required of  
6 members; or (C) the disability was incurred while performing  
7 law-enforcement functions during either scheduled work

8 hours or at any other time; and (D) in the opinion of the  
9 board, the member is by reason of the disability unable to  
10 perform adequately the duties required of a deputy sheriff, is  
11 entitled to receive and shall be paid from the fund in monthly  
12 installments during the lifetime of the member, or if sooner,  
13 until the member attains normal retirement age or until the  
14 disability sooner terminates, the compensation under either  
15 subdivision (a) or (b) of this section.

16 (a) If the member is totally disabled, the member shall  
17 receive ninety percent of his or her average full monthly  
18 compensation for the twelve-month contributory period  
19 preceding the member's disability award, or the shorter  
20 period if the member has not worked twelve months.

21 (b) If the member is partially disabled, the member shall  
22 receive forty-five percent of his or her average full monthly  
23 compensation for the twelve-month contributory period  
24 preceding the member's disability award, or the shorter  
25 period if the member has not worked twelve months.

26 If the member remains partially disabled until attaining  
27 sixty years of age, the member shall then receive the  
28 retirement benefit provided in sections eleven and twelve of  
29 this article.





## CHAPTER 78

**(Com. Sub. for H.B. 2206 - By Delegates Talbott, Stemple,  
Eldridge, Hamilton, M. Poling and Argento)**

[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 22, 2007.]

AN ACT to amend and reenact §19-20-12 of the Code of West Virginia, 1931, as amended, relating to protection of registered dogs; prohibiting a person not the owner of a registered dog from removing tags, collars or apparel from a registered dog, or turning off a radio transmitting collar without the permission of the owner; providing for limited exceptions thereto; and establishing related penalties.

*Be it enacted by the Legislature of West Virginia:*

That §19-20-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 20. DOGS AND CATS.**

**§19-20-12. Dogs, other animals and reptiles protected by law; unlawful killing thereof; aggrieved owner's remedy; penalties; penalties for unlawful stealing of companion animals.**

- 1 (a) Any dog which is registered, kept and controlled as
- 2 provided in this article or any dog, cat or other animal or any
- 3 reptile which is owned, kept and maintained as a companion

4 animal by any person, irrespective of age, is protected by law;  
5 and, except as otherwise authorized by law, any person who  
6 shall intentionally, knowingly or recklessly kill, injure, poison  
7 or in any other manner, cause the death or injury of any dog, cat,  
8 other animal or any reptile is guilty of a misdemeanor and, upon  
9 conviction thereof, shall be ordered to provide public service for  
10 not less than thirty nor more than ninety days or fined not less  
11 than three hundred dollars nor more than five hundred dollars,  
12 or both. However, this section does not apply to a dog who is  
13 killed while attacking a person, a companion animal or  
14 livestock. Any person whose dog, cat, other animal or reptile as  
15 specified herein is killed or injured wrongfully or unlawfully by  
16 any other person shall have a right of action against the person  
17 who shall so kill or injure any dog, cat, animal or reptile.

18 (b) Any person who shall intentionally and unlawfully steal  
19 a dog, cat, other animal or reptile as specified in subsection (a)  
20 of this section is guilty of a misdemeanor and, upon conviction  
21 thereof, shall be ordered to provide public service for not less  
22 than thirty nor more than ninety days or fined not less than three  
23 hundred nor more than five hundred dollars, or both. Any  
24 person violating the provisions of this subsection, for second or  
25 subsequent offense, is guilty of a misdemeanor and, upon  
26 conviction thereof, shall be confined in jail for a period of not  
27 less than ninety days nor more than six months, or shall be  
28 ordered to provide public service for not more than one year,  
29 and fined not less than one thousand dollars. In no case can any  
30 action or prosecution relating to a dog under the provisions of  
31 this section be maintained if the dog concerned has not been  
32 duly registered pursuant to the provisions of this article or  
33 owned and kept pursuant to the provisions of this section or  
34 owned and kept pursuant to the provisions of this section at the  
35 time the cause of action shall have arisen.

36 (c) No person other than the owner of a registered dog may  
37 remove a tag, collar or other identifying apparel from the  
38 registered dog, nor remove or turn off a radio transmitting collar  
39 on the registered dog, without the permission of the owner,  
40 unless removal of the tag, collar or apparel is necessary to  
41 prevent or treat an injury to the dog or is done by a law-  
42 enforcement officer for a legitimate law-enforcement purpose.  
43 Any person who intentionally removes a tag, collar or other  
44 apparel from a registered dog in violation of the provisions of  
45 this subsection is guilty of a misdemeanor and, upon conviction  
46 thereof, shall be ordered to provide community service for not  
47 less than eight hours nor more than forty hours or fined not less  
48 than fifty dollars nor more than one hundred fifty dollars, or  
49 both.

50 (d) The Commissioner of Agriculture is hereby authorized  
51 to designate a reasonable number of his or her present  
52 employees as may be necessary to investigate alleged incidents  
53 of the unlawful stealing of dogs, other domestic animals or  
54 reptiles, alleged incidents of cruelty to animals or reptiles and  
55 the alleged incidents of the unlawful stealing of animals or  
56 reptiles for the purpose of sale to medical or other research  
57 companies. The deputies shall make the results of their  
58 investigations known to any law-enforcement officers who have  
59 authority to enforce the provisions of this article.

60 (e) It shall be the duty of all members of the West Virginia  
61 State Police, sheriffs and police officers to aid in the  
62 enforcement of the provisions of this article and, for services  
63 rendered in the enforcement thereof, those persons shall be  
64 entitled to fees in the amounts set forth in section eight of this  
65 article. The fees shall be paid by the county commission from  
66 the dog and kennel fund.

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**CHAPTER 79****(S.B. 550 - By Senator Kessler)**

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[Passed March 9, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2007.]

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AN ACT amend and reenact §48-2-402 of the Code of West Virginia, 1931, as amended, relating to the maintenance of a registry for registration and renewal of persons authorized to perform marriages; eliminating the bonding requirement; providing for the removal of a registrant to inactive status; and establishing a fee for reactivation of a registrant on inactive status.

*Be it enacted by the Legislature of West Virginia:*

That §48-2-402 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. MARRIAGES.**

**§48-2-402. Qualifications of religious representative for celebrating marriages; registry of persons authorized to perform marriage ceremonies; special revenue fund.**

- 1           (a) Beginning the first day of September, two thousand  
2 one, the Secretary of State shall, upon payment of the  
3 registration fee established by the Secretary of State pursuant  
4 to subsection (d) of this section, make an order authorizing a  
5 person who is a religious representative to celebrate the rites of  
6 marriage in all the counties of the state, upon proof that the  
7 person:

- 8           (1) Is eighteen years of age or older;
- 9           (2) Is duly authorized to perform marriages by his or her  
10 church, synagogue, spiritual assembly or religious  
11 organization; and
- 12           (3) Is in regular communion with the church, synagogue,  
13 spiritual assembly or religious organization of which he or she  
14 is a member.
- 15           (b) The Secretary of State shall establish a central registry  
16 of persons authorized to celebrate marriages in this state. Every  
17 person authorized under the provisions of subsection (a) of this  
18 section to celebrate marriages shall be listed in this registry.  
19 Every county clerk shall, prior to the first day of October, two  
20 thousand one, transmit to the Secretary of State the name of  
21 every person authorized to celebrate marriages by order issued  
22 in his or her county since one thousand nine hundred sixty and  
23 the Secretary of State shall include these names in the registry.  
24 The completed registry and periodic updates shall be  
25 transmitted to every county clerk.
- 26           (c) (1) Upon written request from the registrant, the  
27 Secretary of State shall designate the registrant as inactive on  
28 the registry.
- 29           (2) Upon written notice from the governing body of the  
30 registrant's authorizing body that the registrant has died or that  
31 the registrant's authority to perform marriages has been  
32 revoked, the Secretary of State shall attempt to notify the  
33 registrant of the change in the registrant's status by United  
34 States mail addressed to the registrant's last known address. If  
35 the registrant fails to provide the Secretary of State with proof  
36 of good standing with his or her authorizing body within thirty  
37 days, the registrant shall be designated on the registry as  
38 inactive.

39 (d) A fee not to exceed twenty-five dollars may be charged  
40 by the Secretary of State for each registration or reactivation of  
41 an individual designated as inactive on the registry received on  
42 or after the first day of September, two thousand one, and all  
43 money received shall be deposited in a special revenue  
44 revolving fund designated the Marriage Celebrants Registration  
45 Fee Administration Fund in the State Treasury to be  
46 administered by the Secretary of State. Expenses incurred by  
47 the secretary in the implementation and operation of the  
48 registry program shall be paid from the fund.

49 (e) No marriage performed by a person authorized by law  
50 to celebrate marriages may be invalidated solely because the  
51 person was not listed in the registry provided for in this  
52 section.

53 (f) The Secretary of State shall promulgate rules to  
54 implement the provisions of this section.

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## CHAPTER 80

**(Com. Sub. for H.B. 2870 - By Delegates Fleischauer, Hrutkay,  
Manchin, Doyle, Hatfield, Marshall, Ellis, Shook, Guthrie  
and Mahan)**

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[Passed March 7, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 20, 2007.]

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AN ACT to amend and reenact §48-26-603 of the Code of West Virginia, 1931, as amended, relating to authorizing the court to order payment into the Domestic Violence Legal Services Fund under certain circumstances.

*Be it enacted by the Legislature of West Virginia:*

That §48-26-603 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

## **ARTICLE 26. DOMESTIC VIOLENCE ACT.**

### **§48-26-603. Domestic Violence Legal Services Fund.**

1       (a) There is hereby established in the State Treasury a  
2 special revenue account, designated as the “Domestic Violence  
3 Legal Services Fund,” which shall be an appropriated fund for  
4 receipt of grants, gifts, fees, or federal or state funds designated  
5 for legal services for domestic violence victims. Expenditures  
6 from the fund shall be limited to attorneys employed by  
7 domestic violence shelters, or employed by nonprofit agencies  
8 which establish a collaborative relationship with a domestic  
9 violence shelter, that provide civil legal services to victims of  
10 domestic violence.

11       (b) Any court of this state may order a nonprevailing party  
12 to pay an amount equivalent to the reasonable attorney’s fee to  
13 which the prevailing litigant would be entitled into the Domestic  
14 Violence Legal Services Fund, established in subsection (a) of  
15 this section, if the following circumstances occur:

16       (1) A prevailing litigant is entitled by statute or common  
17 law to a reasonable attorney’s fee, and

18       (2) The prevailing litigant’s legal counsel informs the court  
19 that no fee will be requested.



## CHAPTER 81

**(Com. Sub. for H.B. 2926 - By Delegates Brown, Hatfield,  
Mahan, Guthrie, Staggers, Fleischauer and Marshall)**

[Passed March 9, 2007; in effect ninety days from passage.]  
[Approved by the Governor on March 23, 2007.]

AN ACT to amend and reenact §48-27-401 of the Code of West Virginia, 1931, as amended, relating to domestic violence protective orders; providing for the development of rules by the Supreme Court of Appeals regarding the provision of notice to the parties, law-enforcement and the domestic violence registry when a domestic violence protective order is extended by the reopening of or filing of certain civil actions between the parties; and, providing that a party's right to a domestic violence order is not affected by the entry of a procedural order in a separate domestic relations action between the parties.

*Be it enacted by the Legislature of West Virginia:*

That §48-27-401 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.**

#### **§48-27-401. Interaction between domestic proceedings.**

- 1 (a) During the pendency of a divorce action, a person may
- 2 file for and be granted relief provided by this article until an
- 3 order other than a procedural order is entered in the divorce
- 4 action pursuant to Part 5-501, et seq.



5 (b) If a person who has been granted relief under this article  
6 should subsequently become a party to an action for divorce,  
7 separate maintenance or annulment, such person shall remain  
8 entitled to the relief provided under this article including the  
9 right to file for and obtain any further relief, so long as no  
10 temporary order other than a procedural order has been entered  
11 in the action for divorce, annulment and separate maintenance,  
12 pursuant to Part 5-501, et seq.

13 (c) Except as provided in section 5-509 of this chapter and  
14 section 27-402 of this article for a petition and a temporary  
15 emergency protective order, no person who is a party to a  
16 pending action for divorce, separate maintenance or annulment  
17 in which an order other than a procedural order has been entered  
18 pursuant to Part 5-501, et seq. of this chapter, shall be entitled  
19 to file for or obtain relief against another party to that action  
20 under this article until after the entry of a final order which  
21 grants or dismisses the action for divorce, annulment or separate  
22 maintenance.

23 (d) Notwithstanding the provisions set forth in section  
24 27-505, when an action seeking a divorce, an annulment or  
25 separate maintenance, the allocation of custodial responsibility  
26 or a habeas corpus action to establish custody, the establishment  
27 of paternity, the establishment or enforcement of child support,  
28 or other relief under the provisions of this chapter is filed or is  
29 reopened by petition, motion or otherwise, then any order issued  
30 pursuant to this article which is in effect on the day the action is  
31 filed or reopened shall remain in full force and effect by  
32 operation of this statute until: (1) A temporary order other than  
33 a procedural order or a final order is entered pursuant to the  
34 provisions of Part 5-501, et seq. or Part 6-601 et seq., of this  
35 chapter; or (2) an order is entered modifying such order issued  
36 pursuant to this article; or (3) the entry of a final order granting  
37 or dismissing the action. The Supreme Court of Appeals shall  
38 provide by rule for notice of the extension of the Domestic  
39 Violence Order to be provided to the parties, law enforcement  
40 and the domestic violence registry by the clerk of the court, or  
41 clerks of the courts, in which the action or actions are filed.

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**CHAPTER 82**

**(S.B. 205 - By Senators Kessler, Oliverio, Chafin, Foster, Green, Hunter, Jenkins, Minard, Stollings, Wells, White, Barnes, Caruth, Deem, Hall, McKenzie and Yoder)**

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[Passed February 13, 2007; in effect ninety days from passage.]

[Approved by the Governor on February 28, 2007.]

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AN ACT to amend and reenact §48-27-902 and §48-27-903 of the Code of West Virginia, 1931, as amended, all relating to clarifying that continuing to threaten or harass a petitioner, by whatever means, is a violation of a domestic violence protective order.

*Be it enacted by the Legislature of West Virginia:*

That §48-27-902 and §48-27-903 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 27. PREVENTION AND TREATMENT OF  
DOMESTIC VIOLENCE.**

§48-27-902. Violations of protective orders; criminal complaints.

§48-27-903. Misdemeanor offenses for violation of protective order, repeat offenses, penalties.

**§48-27-902. Violations of protective orders; criminal complaints.**

- 1 (a) When a respondent abuses the petitioner or minor
- 2 children, or both, or is physically present at any location, or
- 3 continues to contact, threaten or harass the petitioner, the minor
- 4 children, or both, by phone, voice mail, e-mail or other means,

5 even if the respondent is not physically present with the  
6 petitioner or minor children at the time of the threats or  
7 harassment:

8 (1) In knowing and willful violation of the terms of an  
9 emergency or final protective order under the provisions of this  
10 article or section five hundred nine or six hundred eight, article  
11 five of this chapter granting the relief pursuant to the provisions  
12 of this article;

13 (2) In knowing and willful violation of the terms of a  
14 protection order from another jurisdiction that is required to be  
15 enforced pursuant to section three, article twenty-eight of this  
16 chapter; or

17 (3) In knowing and willful violation of the terms of a  
18 condition of bail, probation or parole imposed in another state  
19 which has the express intent or effect of protecting the personal  
20 safety of a particular person or persons in violation of  
21 subdivision (3), subsection (a), section seven, article twenty-  
22 eight of this chapter then any person authorized to file a petition  
23 pursuant to the provisions of section three hundred five of this  
24 article or the legal guardian or guardian ad litem may file a  
25 petition for civil contempt as set forth in section nine hundred  
26 one of this article.

27 (b) When any such violation of a valid order has occurred,  
28 the petitioner may file a criminal complaint. If the court finds  
29 probable cause upon the complaint, the court shall issue a  
30 warrant for arrest of the person charged.

**§48-27-903. Misdemeanor offenses for violation of protective order, repeat offenses, penalties.**

1 (a) A respondent who abuses the petitioner or minor  
2 children or who is physically present at any location, or  
3 continues to contact, threaten or harass the petitioner, the minor  
4 children, or both, by phone, voice mail, e-mail or other means,  
5 even if the respondent is not physically present with the  
6 petitioner or minor children at the time of the threats or  
7 harassment in knowing and willful violation of the terms of: (1)  
8 An emergency or final protective order issued under the  
9 provisions of this article or section five hundred nine or six  
10 hundred eight, article five of this chapter granting relief  
11 pursuant to the provisions of this article; or (2) a condition of  
12 bail, probation or parole which has the express intent or effect  
13 of protecting the personal safety of a particular person or  
14 persons is guilty of a misdemeanor and, upon conviction  
15 thereof, shall be confined in the county or regional jail for a  
16 period of not less than one day nor more than one year, which  
17 jail term shall include actual confinement of not less than  
18 twenty-four hours, and shall be fined not less than two hundred  
19 fifty dollars nor more than two thousand dollars.

20 (b) A respondent who is convicted of a second or  
21 subsequent offense under subsection (a) of this section is guilty  
22 of a misdemeanor and, upon conviction thereof, shall be  
23 confined in the county or regional jail for not less than three  
24 months nor more than one year, which jail term shall include  
25 actual confinement of not less than twenty-four hours, and fined  
26 not less than five hundred dollars nor more than three thousand  
27 dollars, or both.

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CHAPTER 83

**(S.B. 416 - By Senators Kessler, Oliverio, Chafin, Foster, Hunter, Jenkins, Minard, Stollings, Wells, White, Barnes, Caruth, Deem, Hall, McKenzie and Yoder)**

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[Passed March 5, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2007.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §60A-4-412, relating to creating misdemeanor offenses for adulterating or defeating or attempting to adulterate or defeat bodily fluid test results and drug and alcohol tests; creating adulteration offenses; defining terms; and penalties for first, second and subsequent offenses.

*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 §60A-4-412, to read as follows:

**ARTICLE 4. OFFENSES AND PENALTIES.**

**§ 60A-4-412. Defeating drug and alcohol screening tests; penalties.**

- 1 (a) Any person who:
- 2 (1) Knowingly sells, gives away, distributes or markets
- 3 any substance or product in this state or transports such a

4 substance or product into this state with the intent that the  
5 substance or product will be used to defeat a drug or alcohol  
6 screening test;

7 (2) Attempts to defeat a drug or alcohol screening test by  
8 the substitution of a false sample;

9 (3) Knowingly advertises for sale or distribution any  
10 substance or product the advertised purpose of which is to  
11 defeat a bodily fluid screening test for drugs or alcohol;

12 (4) Adulterates a bodily fluid sample with the intent to  
13 defeat a drug or alcohol screening test;

14 (5) Knowingly possesses adulterants for the purpose of  
15 defeating a drug or alcohol screening test; or

16 (6) Knowingly sells adulterants which are intended to be  
17 used to adulterate a urine or other bodily fluid sample for the  
18 purpose of defeating a drug or alcohol screening test.

19 (b) A person who violates a provision of subsection (a) of  
20 this section:

21 (1) For a first offense is guilty of a misdemeanor and,  
22 upon conviction, shall be fined not more than one thousand  
23 dollars;

24 (2) For a second offense is guilty of a misdemeanor and,  
25 upon conviction, be fined not more than five thousand  
26 dollars; and

27 (3) For a third or subsequent offense is guilty of a  
28 misdemeanor and, upon conviction, be fined not more than

29 ten thousand dollars or confined in the regional jail for not  
30 more than one year, or both.

31 (c) As used in this section, “adulterate” means a  
32 substance that is not expected to be in human fluids but that  
33 is a concentration so high that it is not consistent with human  
34 bodily fluids, including, but not limited to:

- 35 (1) Bleach;
- 36 (2) Chromium;
- 37 (3) Creatinine;
- 38 (4) Detergent;
- 39 (5) Glutaraldehyde;
- 40 (6) Glutaraldehyde/squalene;
- 41 (7) Hydrochloric acid;
- 42 (8) Hydroiodic acid;
- 43 (9) Iodine;
- 44 (10) Nitrite;
- 45 (11) Peroxidase;
- 46 (12) Potassium dichromate;
- 47 (13) Potassium nitrate;
- 48 (14) Pyridinium chlorochromate; and
- 49 (15) Sodium nitrite.

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## CHAPTER 84

**(Com. Sub. for H.B. 2544 - By Delegates Fragale,  
Miley and Iaquina)**

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[Passed March 10, 2007; in effect ninety days from passage.]  
[Approved by the Governor on March 23, 2007.]

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AN ACT to amend and reenact §17C-5-2 of the Code of West Virginia, 1931, as amended, relating to increasing the penalty for conviction of the offense of driving under the influence causing death.

*Be it enacted by the Legislature of West Virginia:*

That §17C-5-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

#### **§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.**

- 1 (a) Any person who:
- 2 (1) Drives a vehicle in this state while he or she:
- 3 (A) Is under the influence of alcohol; or
- 4 (B) Is under the influence of any controlled substance; or
- 5 (C) Is under the influence of any other drug; or



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

8 (E) Has an alcohol concentration in his or her blood of  
9 eight hundredths of one percent or more, by weight; and

10 (2) When so driving does any act forbidden by law or  
11 fails to perform any duty imposed by law in the driving of the  
12 vehicle, which act or failure proximately causes the death of  
13 any person within one year next following the act or failure;  
14 and

15 (3) Commits the act or failure in reckless disregard of the  
16 safety of others, and when the influence of alcohol,  
17 controlled substances or drugs is shown to be a contributing  
18 cause to the death, is guilty of a felony and, upon conviction  
19 thereof, shall be imprisoned in a state correctional facility for  
20 not less than two nor more than ten years and fined not less  
21 than one thousand dollars nor more than three thousand  
22 dollars.

23 (b) Any person who:

24 (1) Drives a vehicle in this state while he or she:

25 (A) Is under the influence of alcohol; or

26 (B) Is under the influence of any controlled substance; or

27 (C) Is under the influence of any other drug; or

28 (D) Is under the combined influence of alcohol and any  
29 controlled substance or any other drug; or

30 (E) Has an alcohol concentration in his or her blood of  
31 eight hundredths of one percent or more, by weight; and

32 (2) When so driving does any act forbidden by law or  
33 fails to perform any duty imposed by law in the driving of the  
34 vehicle, which act or failure proximately causes the death of  
35 any person within one year next following the act or failure,  
36 is guilty of a misdemeanor and, upon conviction thereof,  
37 shall be confined in jail for not less than ninety days nor more  
38 than one year and shall be fined not less than five hundred  
39 dollars nor more than one thousand dollars.

40 (c) Any person who:

41 (1) Drives a vehicle in this state while he or she:

42 (A) Is under the influence of alcohol; or

43 (B) Is under the influence of any controlled substance; or

44 (C) Is under the influence of any other drug; or

45 (D) Is under the combined influence of alcohol and any  
46 controlled substance or any other drug; or

47 (E) Has an alcohol concentration in his or her blood of  
48 eight hundredths of one percent or more, by weight; and

49 (2) When so driving does any act forbidden by law or  
50 fails to perform any duty imposed by law in the driving of the  
51 vehicle, which act or failure proximately causes bodily injury  
52 to any person other than himself or herself, is guilty of a  
53 misdemeanor and, upon conviction thereof, shall be confined  
54 in jail for not less than one day nor more than one year,  
55 which jail term is to include actual confinement of not less

56 than twenty-four hours, and shall be fined not less than two  
57 hundred dollars nor more than one thousand dollars.

58 (d) Any person who:

59 (1) Drives a vehicle in this state while he or she:

60 (A) Is under the influence of alcohol; or

61 (B) Is under the influence of any controlled substance; or

62 (C) Is under the influence of any other drug; or

63 (D) Is under the combined influence of alcohol and any  
64 controlled substance or any other drug; or

65 (E) Has an alcohol concentration in his or her blood of  
66 eight hundredths of one percent or more, by weight;

67 (2) Is guilty of a misdemeanor and, upon conviction  
68 thereof, shall be confined in jail for not less than one day nor  
69 more than six months, which jail term is to include actual  
70 confinement of not less than twenty-four hours, and shall be  
71 fined not less than one hundred dollars nor more than five  
72 hundred dollars.

73 (e) Any person who, being an habitual user of narcotic  
74 drugs or amphetamine or any derivative thereof, drives a  
75 vehicle in this state, is guilty of a misdemeanor and, upon  
76 conviction thereof, shall be confined in jail for not less than  
77 one day nor more than six months, which jail term is to  
78 include actual confinement of not less than twenty-four  
79 hours, and shall be fined not less than one hundred dollars  
80 nor more than five hundred dollars.

81 (f) Any person who:

82 (1) Knowingly permits his or her vehicle to be driven in  
83 this State by any other person who:

84 (A) Is under the influence of alcohol; or

85 (B) Is under the influence of any controlled substance; or

86 (C) Is under the influence of any other drug; or

87 (D) Is under the combined influence of alcohol and any  
88 controlled substance or any other drug; or

89 (E) Has an alcohol concentration in his or her blood of  
90 eight hundredths of one percent or more, by weight;

91 (2) Is guilty of a misdemeanor and, upon conviction  
92 thereof, shall be confined in jail for not more than six months  
93 and shall be fined not less than one hundred dollars nor more  
94 than five hundred dollars.

95 (g) Any person who knowingly permits his or her vehicle  
96 to be driven in this state by any other person who is an  
97 habitual user of narcotic drugs or amphetamine or any  
98 derivative thereof, is guilty of a misdemeanor and, upon  
99 conviction thereof, shall be confined in jail for not more than  
100 six months and shall be fined not less than one hundred  
101 dollars nor more than five hundred dollars.

102 (h) Any person under the age of twenty-one years who  
103 drives a vehicle in this state while he or she has an alcohol  
104 concentration in his or her blood of two hundredths of one  
105 percent or more, by weight, but less than eight hundredths of  
106 one percent, by weight, for a first offense under this

107 subsection, is guilty of a misdemeanor and, upon conviction  
108 thereof, shall be fined not less than twenty-five dollars nor  
109 more than one hundred dollars. For a second or subsequent  
110 offense under this subsection, the person is guilty of a  
111 misdemeanor and, upon conviction thereof, shall be confined  
112 in jail for twenty-four hours, and shall be fined not less than  
113 one hundred dollars nor more than five hundred dollars. A  
114 person who is charged with a first offense under the  
115 provisions of this subsection may move for a continuance of  
116 the proceedings, from time to time, to allow the person to  
117 participate in the vehicle alcohol test and lock program as  
118 provided in section three-a, article five-a of this chapter.  
119 Upon successful completion of the program, the court shall  
120 dismiss the charge against the person and expunge the  
121 person's record as it relates to the alleged offense. In the  
122 event the person fails to successfully complete the program,  
123 the court shall proceed to an adjudication of the alleged  
124 offense. A motion for a continuance under this subsection  
125 may not be construed as an admission or be used as evidence.

126 A person arrested and charged with an offense under the  
127 provisions of subsection (a), (b), (c), (d), (e), (f), (g) or (i) of  
128 this section may not also be charged with an offense under  
129 this subsection arising out of the same transaction or  
130 occurrence.

131 (i) Any person who:

132 (1) Drives a vehicle in this state while he or she:

133 (A) Is under the influence of alcohol; or

134 (B) Is under the influence of any controlled substance; or

135 (C) Is under the influence of any other drug; or

136 (D) Is under the combined influence of alcohol and any  
137 controlled substance or any other drug; or

138 (E) Has an alcohol concentration in his or her blood of  
139 eight hundredths of one percent or more, by weight; and

140 (2) The person when so driving has on or within the  
141 motor vehicle one or more other persons who are  
142 unemancipated minors who have not reached their sixteenth  
143 birthday, is guilty of a misdemeanor and, upon conviction  
144 thereof, shall be confined in jail for not less than two days  
145 nor more than twelve months, which jail term is to include  
146 actual confinement of not less than forty-eight hours, and  
147 shall be fined not less than two hundred dollars nor more than  
148 one thousand dollars.

149 (j) A person violating any provision of subsection (b), (c),  
150 (d), (e), (f), (g) or (i) of this section, for the second offense  
151 under this section, is guilty of a misdemeanor and, upon  
152 conviction thereof, shall be confined in jail for not less than  
153 six months nor more than one year, and the court may, in its  
154 discretion, impose a fine of not less than one thousand dollars  
155 nor more than three thousand dollars.

156 (k) A person violating any provision of subsection (b),  
157 (c), (d), (e), (f), (g) or (i) of this section, for the third or any  
158 subsequent offense under this section, is guilty of a felony  
159 and, upon conviction thereof, shall be imprisoned in a state  
160 correctional facility for not less than one nor more than three  
161 years, and the court may, in its discretion, impose a fine of  
162 not less than three thousand dollars nor more than five  
163 thousand dollars.

164 (l) For purposes of subsections (j) and (k) of this section  
165 relating to second, third and subsequent offenses, the

166 following types of convictions are to be regarded as  
167 convictions under this section:

168 (1) Any conviction under the provisions of subsection (a),  
169 (b), (c), (d), (e) or (f) of this section or under a prior  
170 enactment of this section for an offense which occurred  
171 within the ten-year period immediately preceding the date of  
172 arrest in the current proceeding;

173 (2) Any conviction under a municipal ordinance of this  
174 state or any other state or a statute of the United States or of  
175 any other state of an offense which has the same elements as  
176 an offense described in subsection (a), (b), (c), (d), (e), (f) or  
177 (g) of this section, which offense occurred within the ten-year  
178 period immediately preceding the date of arrest in the current  
179 proceeding.

180 (m) A person may be charged in a warrant or indictment  
181 or information for a second or subsequent offense under this  
182 section if the person has been previously arrested for or  
183 charged with a violation of this section which is alleged to  
184 have occurred within the applicable time period for prior  
185 offenses, notwithstanding the fact that there has not been a  
186 final adjudication of the charges for the alleged previous  
187 offense. In that case, the warrant or indictment or  
188 information must set forth the date, location and particulars  
189 of the previous offense or offenses. No person may be  
190 convicted of a second or subsequent offense under this  
191 section unless the conviction for the previous offense has  
192 become final.

193 (n) The fact that any person charged with a violation of  
194 subsection (a), (b), (c), (d) or (e) of this section, or any  
195 person permitted to drive as described under subsection (f) or  
196 (g) of this section, is or has been legally entitled to use

197 alcohol, a controlled substance or a drug does not constitute  
198 a defense against any charge of violating subsection (a), (b),  
199 (c), (d), (e), (f) or (g) of this section.

200 (o) For purposes of this section, the term "controlled  
201 substance" has the meaning ascribed to it in chapter sixty-a  
202 of this code.

203 (p) The sentences provided herein upon conviction for a  
204 violation of this article are mandatory and may not be subject  
205 to suspension or probation: *Provided*, That the court may  
206 apply the provisions of article eleven-a, chapter sixty-two of  
207 this code to a person sentenced or committed to a term of one  
208 year or less for a first offense under this section. An order for  
209 home detention by the court pursuant to the provisions of  
210 article eleven-b of said chapter may be used as an alternative  
211 sentence to any period of incarceration required by this  
212 section for a first or subsequent offense: *Provided, however*,  
213 That for any period of home incarceration ordered for a  
214 person convicted of second offense under this section,  
215 electronic monitoring shall be required for no fewer than five  
216 days of the total period of home confinement ordered and the  
217 offender may not leave home for those five days  
218 notwithstanding the provisions of section five, article eleven-  
219 b, chapter sixty-two of this code: *Provided further*, That for  
220 any period of home incarceration ordered for a person  
221 convicted of a third or subsequent violation of this section,  
222 electronic monitoring shall be included for no fewer than ten  
223 days of the total period of home confinement ordered and the  
224 offender may not leave home for those ten days  
225 notwithstanding section five, article eleven-b, chapter sixty-  
226 two of this code.



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CHAPTER 85

**(Com. Sub. for H.B. 2585 - By Delegates M. Poling  
and Paxton (By Request))**

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[Passed March 10, 2007; in effect July 1, 2007.]

[Approved by the Governor on April 4, 2007.]

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AN ACT to repeal §18A-3-11 of the Code of West Virginia, 1931, as amended; to amend and reenact §5-16-2 of said code; to amend and reenact §18-7A-3 of said code; to amend and reenact §18-7B-2 of said code; to amend and reenact §18-23-4a of said code; to amend and reenact §18A-3-3 of said code; and to amend said code by adding thereto a new section, designated §18A-3-11, all relating to education generally; findings; definitions; allowing for the designation of up to twenty-five professional educators as 21st Century Learner Fellows; allowing Fellows to continue as a member of either the teachers retirement system or the defined contribution system, as applicable, while being employed by a state institution of higher education or a research corporation; allowing Fellows to continue to participate in public employee insurance programs during the employment; limiting the responsibility of a state institution of higher education or a research corporation for a fellow's annual and sick leave earned from prior employment; the renewal of teaching certificates and permanent certification; providing certification through National Board for Professional Teaching Standards as an additional option for attaining permanent certification; providing for state board member participation in the public employees insurance program; and making technical improvements.

*Be it enacted by the Legislature of West Virginia:*

That §18A-3-11 of the Code of West Virginia, 1931, as amended, be repealed; that §5-16-2 of said code be amended and reenacted; that §18-7A-3 of said code be amended and reenacted; that §18-7B-2 of said code be amended and reenacted; that §18-23-4a of said code be amended and reenacted; that §18A-3-3 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18A-3-11, 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.**
- 18A. School Personnel.**

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

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

**\*§5-16-2. Definitions.**

1 The following words and phrases as used in this article,  
2 unless a different meaning is clearly indicated by the  
3 context, have the following meanings:

4 (1) "Agency" means the public employees insurance  
5 agency created by this article.

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**CLERK'S NOTE:** This section was also amended by S.B. 129 (Chapter 208), which passed prior to this act.

6       (2) "Director" means the director of the public employees  
7 insurance agency created by this article.

8       (3) "Employee" means any person, including an elected  
9 officer, who works regularly full time in the service of the  
10 State of West Virginia and, for the purpose of this article  
11 only, the term "employee" also means any person, including  
12 an elected officer, who works regularly full time in the  
13 service of a county board of education; a county, city or town  
14 in the state; any separate corporation or instrumentality  
15 established by one or more counties, cities or towns, as  
16 permitted by law; any corporation or instrumentality  
17 supported in most part by counties, cities or towns; any  
18 public corporation charged by law with the performance of a  
19 governmental function and whose jurisdiction is coextensive  
20 with one or more counties, cities or towns; any  
21 comprehensive community mental health center or  
22 comprehensive mental retardation facility established,  
23 operated or licensed by the secretary of health and human  
24 resources pursuant to section one, article two-a, chapter  
25 twenty-seven of this code and which is supported in part by  
26 state, county or municipal funds; any person who works  
27 regularly full time in the service of the Higher Education  
28 Policy Commission, the West Virginia Council for  
29 Community and Technical College Education or a governing  
30 board, as defined in section two, article one, chapter  
31 eighteen-b of this code; any person who works regularly full  
32 time in the service of a combined city-county health  
33 department created pursuant to article two, chapter sixteen of  
34 this code; any person designated as a 21st Century Learner  
35 Fellow pursuant to section eleven, article three, chapter  
36 eighteen-a of this code; and any person who works as a long  
37 term substitute as defined in section one, article one, chapter  
38 eighteen-a of this code, in the service of a county board of  
39 education: *Provided*, That a long term substitute who is  
40 continuously employed for at least one hundred thirty-three  
41 instructional days during an instructional term and until the

42 end of that instructional term, is eligible for the benefits  
43 provided in this article until the first day of September  
44 following that instructional term: *Provided, however,* That  
45 a long term substitute employed fewer than one hundred  
46 thirty-three instructional days during an instructional term is  
47 eligible for the benefits provided in this article only during  
48 such time as he or she is actually employed as a long term  
49 substitute. On and after the first day of January, one  
50 thousand nine hundred ninety-four, and upon election by a  
51 county board of education to allow elected board members to  
52 participate in the public employees insurance program  
53 pursuant to this article, any person elected to a county board  
54 of education shall be considered to be an "employee" during  
55 the term of office of the elected member. Upon election by  
56 the State Board of Education to allow appointed board  
57 members to participate in the public employees insurance  
58 program pursuant to this article, any person appointed to the  
59 State Board of Education is considered an "employee" during  
60 the term of office of the appointed member: *Provided*  
61 *further,* That the elected member of a county board of  
62 education and the appointed member of the State Board of  
63 Education shall pay the entire cost of the premium if he or  
64 she elects to be covered under this article. Any matters of  
65 doubt as to who is an employee within the meaning of this  
66 article shall be decided by the director.

67 On or after the first day of July, one thousand nine  
68 hundred ninety-seven, a person shall be considered an  
69 "employee" if that person meets the following criteria:

70 (i) Participates in a job-sharing arrangement as defined in  
71 section one, article one, chapter eighteen-a of this code;

72 (ii) Has been designated, in writing, by all other  
73 participants in that job-sharing arrangement as the  
74 "employee" for purposes of this section; and

75 (iii) Works at least one third of the time required for a  
76 full-time employee.

77 (4) "Employer" means the State of West Virginia, its  
78 boards, agencies, commissions, departments, institutions or  
79 spending units; a county board of education; a county, city or  
80 town in the state; any separate corporation or instrumentality  
81 established by one or more counties, cities or towns, as  
82 permitted by law; any corporation or instrumentality  
83 supported in most part by counties, cities or towns; any  
84 public corporation charged by law with the performance of a  
85 governmental function and whose jurisdiction is coextensive  
86 with one or more counties, cities or towns; any  
87 comprehensive community mental health center or  
88 comprehensive mental retardation facility established,  
89 operated or licensed by the Secretary of Health and Human  
90 Resources pursuant to section one, article two-a, chapter  
91 twenty-seven of this code and which is supported in part by  
92 state, county or municipal funds; a combined city-county  
93 health department created pursuant to article two, chapter  
94 sixteen of this code; and a corporation meeting the  
95 description set forth in section three, article twelve, chapter  
96 eighteen-b of this code that is employing a 21st Century  
97 Learner Fellow pursuant to section eleven, article three,  
98 chapter eighteen of this code but the corporation is not  
99 considered an employer with respect to any employee other  
100 than a 21st Century Learner Fellow. Any matters of doubt as  
101 to who is an "employer" within the meaning of this article  
102 shall be decided by the director. The term "employer" does  
103 not include within its meaning the national guard.

104 (5) "Finance board" means the Public Employees  
105 Insurance Agency finance board created by this article.

106 (6) "Person" means any individual, company, association,  
107 organization, corporation or other legal entity, including, but  
108 not limited to, hospital, medical or dental service

109 corporations; health maintenance organizations or similar  
 110 organization providing prepaid health benefits; or individuals  
 111 entitled to benefits under the provisions of this article.

112 (7) "Plan", unless the context indicates otherwise, means  
 113 the medical indemnity plan, the managed care plan option or  
 114 the group life insurance plan offered by the agency.

115 (8) "Retired employee" means an employee of the state  
 116 who retired after the twenty-ninth day of April, one thousand  
 117 nine hundred seventy-one, and an employee of the higher  
 118 education policy commission, the council for community and  
 119 technical college education, a state institution of higher  
 120 education or a county board of education who retires on or  
 121 after the twenty-first day of April, one thousand nine hundred  
 122 seventy-two, and all additional eligible employees who retire  
 123 on or after the effective date of this article, meet the  
 124 minimum eligibility requirements for their respective state  
 125 retirement system and whose last employer immediately prior  
 126 to retirement under the state retirement system is a  
 127 participating employer: *Provided*, That for the purposes of  
 128 this article, the employees who are not covered by a state  
 129 retirement system but who are covered by a state approved or  
 130 state contracted retirement program shall, in the case of  
 131 education employees, meet the minimum eligibility  
 132 requirements of the State Teachers' Retirement System and  
 133 in all other cases, meet the minimum eligibility requirements  
 134 of the public employees retirement system.

## CHAPTER 18. EDUCATION.

### Article

- 7A. State Teachers' Retirement System.
- 7B. Teachers' Defined Contribution Retirement System.
- 23. Additional Powers, Duties and Responsibilities of Governing Boards of State Institutions of Higher Education.

**ARTICLE 7A. STATE TEACHERS' RETIREMENT SYSTEM.**

**§18-7A-3. Definitions.**

1 (a) As used in this article, unless the context clearly  
2 require a different meaning:

3 (1) "Accumulated contributions" means all deposits and  
4 all deductions from the gross salary of a contributor plus  
5 regular interest.

6 (2) "Accumulated net benefit" means the aggregate  
7 amount of all benefits paid to or on behalf of a retired  
8 member.

9 (3) "Annuities" means the annual retirement payments  
10 for life granted beneficiaries in accordance with this article.

11 (4) "Average final salary" means the average of the five  
12 highest fiscal year salaries earned as a member within the last  
13 fifteen fiscal years of total service credit, including military  
14 service as provided in this article, or if total service is less  
15 than fifteen years, the average annual salary for the period on  
16 which contributions were made.

17 (5) "Beneficiary" means the recipient of annuity  
18 payments made under the retirement system.

19 (6) "Contributor" means a member of the retirement  
20 system who has an account in the teachers accumulation  
21 fund.

22 (7) "Deposit" means a voluntary payment to his or her  
23 account by a member.

24 (8) "Employer" means the agency of and within the state  
25 which has employed or employs a member.

26 (9) "Employment term" means employment for at least  
27 ten months, a month being defined as twenty employment  
28 days.

29 (10) "Gross salary" means the fixed annual or periodic  
30 cash wages paid by a participating public employer to a  
31 member for performing duties for the participating public  
32 employer for which the member was hired. Gross salary also  
33 shall include retroactive payments made to a member to  
34 correct a clerical error, or pursuant to a court order or final  
35 order of an administrative agency charged with enforcing  
36 federal or state law pertaining to the member's rights to  
37 employment or wages, with all the retroactive salary  
38 payments to be allocated to and considered paid in the  
39 periods in which the work was or would have been done.  
40 Gross salary shall not include lump sum payments for  
41 bonuses, early retirement incentives, severance pay, or any  
42 other fringe benefit of any kind including, but not limited to,  
43 transportation allowances, automobiles or automobile  
44 allowances, or lump sum payments for unused, accrued leave  
45 of any type or character.

46 (11) "Internal Revenue Code" means the Internal  
47 Revenue Code of 1986, as it has been amended.

48 (12) "Member" means a member of the retirement  
49 system.

50 (13) "Members of the administrative staff of the public  
51 schools" means deans of instruction, deans of men, deans of  
52 women, and financial and administrative secretaries.

53 (14) "Members of the extension staff of the public  
54 schools" means every agricultural agent, boys' and girls' club



55 agent and every member of the agricultural extension staff  
56 whose work is not primarily stenographic, clerical or  
57 secretarial.

58 (15) "New entrant" means a teacher who is not a present  
59 teacher.

60 (16) "Nonteaching member" means any person, except a  
61 teacher member, who is regularly employed for full-time  
62 service by: (a) Any county board of education; (b) the State  
63 Board of Education; (c) the Higher Education Policy  
64 Commission, the West Virginia Council for Community and  
65 Technical College Education or a governing board, as  
66 defined in section two, article one, chapter eighteen-b of this  
67 code; or (d) the Teachers Retirement Board: *Provided*, That  
68 any person whose employment with the Higher Education  
69 Policy Commission, the West Virginia Council for  
70 Community and Technical College Education or a governing  
71 board commences on or after the first day of July, one  
72 thousand nine hundred ninety-one, is not considered a  
73 nonteaching member.

74 (17) "Pick-up service" means service that a member was  
75 entitled to, but which the employer has not withheld or paid  
76 for.

77 (18) "Plan year" means the twelve-month period  
78 commencing on the first day of July and ending the following  
79 thirtieth day of June of any designated year.

80 (19) "Present member" means a present teacher who is a  
81 member of the retirement system.

82 (20) "Present teacher" means any person who was a  
83 teacher within the thirty-five years beginning the first day of  
84 July, one thousand nine hundred thirty-four, and whose  
85 membership in the retirement system is currently active.

86 (21) "Prior service" means all service as a teacher  
87 completed prior to the first day of July, one thousand nine  
88 hundred forty-one, and all service of a present member who  
89 was employed as a teacher, and did not contribute to a  
90 retirement account because he or she was legally ineligible  
91 for membership during the service.

92 (22) "Public schools" means all publicly supported  
93 schools, including colleges and universities in this state.

94 (23) "Refund beneficiary" means the estate of a deceased  
95 contributor or a person he or she has nominated as  
96 beneficiary of his or her contributions by written designation  
97 duly executed and filed with the retirement board.

98 (24) "Refund interest" means interest compounded,  
99 according to the formula established in legislative rules,  
100 series seven of the Consolidated Public Retirement Board.

101 (25) "Regular interest" means interest at four percent  
102 compounded annually, or a higher earnable rate if set forth in  
103 the formula established in legislative rules, series seven of the  
104 Consolidated Public Retirement Board.

105 (26) "Regularly employed for full-time service" means  
106 employment in a regular position or job throughout the  
107 employment term regardless of the number of hours worked  
108 or the method of pay.

109 (27) "Required beginning date" means the first day of  
110 April of the calendar year following the later of: (a) The  
111 calendar year in which the member attains age seventy and  
112 one-half years; or (b) the calendar year in which the member  
113 retires or ceases covered employment under the system after  
114 having attained the age of seventy and one-half years.

115 (28) “Retirement system” means the State Teachers’  
116 Retirement System provided for in this article.

117 (29) “Teacher member” means the following persons, if  
118 regularly employed for full-time service: (a) Any person  
119 employed for instructional service in the public schools of  
120 West Virginia; (b) principals; (c) public school librarians; (d)  
121 superintendents of schools and assistant county  
122 superintendents of schools; (e) any county school attendance  
123 director holding a West Virginia teacher’s certificate; (f) the  
124 Executive Secretary of the Retirement Board; (g) members of  
125 the research, extension, administrative or library staffs of the  
126 public schools; (h) the State Superintendent of Schools, heads  
127 and assistant heads of the divisions under his or her  
128 supervision, or any other employee under the State  
129 Superintendent performing services of an educational nature;  
130 (i) employees of the State Board of Education who are  
131 performing services of an educational nature; (j) any person  
132 employed in a nonteaching capacity by the State Board of  
133 Education, any county board of education, the State  
134 Department of Education or the Teachers Retirement Board,  
135 if that person was formerly employed as a teacher in the  
136 public schools; (k) all classroom teachers, principals and  
137 educational administrators in schools under the supervision  
138 of the Division of Corrections, the Division of Health or the  
139 Division of Human Services; (l) employees of the State  
140 Board of School Finance, if that person was formerly  
141 employed as a teacher in the public schools; and (m) any  
142 person designated as a 21st Century Learner Fellow pursuant  
143 to section eleven, article three, chapter eighteen-a of this code  
144 who elects to remain a member of the Teachers’ Retirement  
145 System provided for in this article.

146 (30) “Total service” means all service as a teacher while  
147 a member of the retirement system since last becoming a  
148 member and, in addition thereto, credit for prior service, if  
149 any.

150 The masculine gender shall be construed so as to include  
151 the feminine.

152 Age in excess of seventy years shall be considered to be  
153 seventy years.

## **ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.**

### **§18-7B-2. Definitions.**

1 As used in this article, unless the context clearly requires  
2 a different meaning:

3 (1) "Defined contribution system" or "system" means the  
4 Teachers' Defined Contribution Retirement System created  
5 and established by this article;

6 (2) "Existing retirement system" means the State  
7 Teachers' Retirement System established in article seven-a of  
8 this chapter;

9 (3) "Existing employer" means any employer who  
10 employed or employs a member of the existing retirement  
11 system;

12 (4) "Consolidated board" or "board" means the  
13 Consolidated Public Retirement Board created and  
14 established pursuant to article ten-d, chapter five of this code;

15 (5) "Member" or "employee" means the following  
16 persons, if regularly employed for full-time service: (A) Any  
17 person employed for instructional service in the public  
18 schools of West Virginia; (B) principals; (C) public school  
19 librarians; (D) superintendents of schools and assistant  
20 county superintendents of schools; (E) any county school  
21 attendance director holding a West Virginia teacher's

22 certificate; (F) members of the research, extension,  
23 administrative or library staffs of the public schools; (G) the  
24 State Superintendent of Schools, heads and assistant heads of  
25 the divisions under his or her supervision, or any other  
26 employee under the State Superintendent performing services  
27 of an educational nature; (H) employees of the State Board of  
28 Education who are performing services of an educational  
29 nature; (I) any person employed in a nonteaching capacity by  
30 the State Board of Education, any county board of education  
31 or the State Department of Education if that person was  
32 formerly employed as a teacher in the public schools; (J) all  
33 classroom teachers, principals and educational administrators  
34 in schools under the supervision of the Division of  
35 Corrections and the Department of Health and Human  
36 Resources; (K) any person who is regularly employed for  
37 full-time service by any county board of education or the  
38 State Board of Education (L) the administrative staff of the  
39 public schools including deans of instruction, deans of men  
40 and deans of women, and financial and administrative  
41 secretaries; and (M) any person designated as a 21st Century  
42 Learner Fellow pursuant to section eleven, article three,  
43 chapter eighteen-a of this code who elects to remain a  
44 member of the Teachers' Defined Contribution System  
45 established by this article;

46 (6) "Regularly employed for full-time service" means  
47 employment in a regular position or job throughout the  
48 employment term regardless of the number of hours worked  
49 or the method of pay;

50 (7) "Year of employment service" means employment for  
51 at least ten months, a month being defined as twenty  
52 employment days: *Provided*, That no more than one year of  
53 service may be accumulated in any twelve-month period;

54 (8) "Employer" means the agency of and within the State  
55 of West Virginia which has employed or employs a member;

56 (9) "Compensation" means the full compensation actually  
57 received by members for service whether or not a part of the  
58 compensation is received from other funds, federal or  
59 otherwise, than those provided by the state or its  
60 subdivisions;

61 (10) "Public schools" means all publicly supported  
62 schools, including normal schools, colleges and universities  
63 in this state;

64 (11) "Member contribution" means an amount reduced  
65 from the employee's regular pay periods, and deposited into  
66 the member's individual annuity account within the Defined  
67 Contribution Retirement System;

68 (12) "Employer contribution" means an amount deposited  
69 into the member's individual annuity account on a periodic  
70 basis coinciding with the employee's regular pay period by  
71 an employer from its own funds;

72 (13) "Annuity account" or "annuity" means an account  
73 established for each member to record the deposit of member  
74 contributions and employer contributions and interest,  
75 dividends or other accumulations credited on behalf of the  
76 member;

77 (14) "Retirement" means a member's withdrawal from  
78 the active employment of a participating employer and  
79 completion of all conditions precedent to retirement;

80 (15) "Permanent, total disability" means a mental or  
81 physical incapacity requiring absence from employment  
82 service for at least six months: *Provided*, That the incapacity  
83 is shown by an examination by a physician or physicians  
84 selected by the Board: *Provided, however*, That for  
85 employees hired on or after the first day of July, two  
86 thousand five, permanent, total disability means an inability

87 to engage in substantial gainful activity by reason of any  
88 medically determinable physical or mental impairment that  
89 can be expected to result in death, or has lasted or can be  
90 expected to last for a continuous period of not less than  
91 twelve months and the incapacity is so severe that the  
92 member is likely to be permanently unable to perform the  
93 duties of the position the member occupied immediately prior  
94 to his or her disabling injury or illness.

95 (16) "Plan year" means the twelve-month period  
96 commencing on the first day of July of any designated year  
97 and ending on the following thirtieth day of June;

98 (17) "Required beginning date" means the first day of  
99 April of the calendar year following the later of: (a) The  
100 calendar year in which the member attains age seventy-one  
101 and one-half years; or (b) the calendar year in which the  
102 member retires or otherwise ceases employment with a  
103 participating employer after having attained the age of  
104 seventy and one-half years; and

105 (18) "Internal Revenue Code" means the Internal  
106 Revenue Code of 1986, as it has been amended.

**ARTICLE 23. ADDITIONAL POWERS, DUTIES AND  
RESPONSIBILITIES OF GOVERNING  
BOARDS OF STATE INSTITUTIONS  
OF HIGHER EDUCATION**

**§18-23-4a. Supplemental and additional retirement plans for  
employees; payroll deductions; authority to  
match employee contributions; retroactive  
curative and technical corrective action.**

1 (a) Any reference in this code to the "additional  
2 retirement plan" relating to state higher education employees,  
3 means the "higher education retirement plan" provided in this

4 section. Any state higher education employee participating  
5 in a retirement plan upon the effective date of this section  
6 continues to participate in that plan and may not elect to  
7 participate in any other state retirement plan. Any such  
8 retirement plan continues to be governed by the provisions of  
9 law applicable on the effective date of this section.

10 (b) The Higher Education Policy Commission, on behalf  
11 of the governing boards and itself, shall contract for a  
12 retirement plan for its employees, to be known as the “Higher  
13 Education Retirement Plan”. The governing boards and  
14 Higher Education Policy Commission shall make periodic  
15 deductions from the salary payments due the employees in  
16 the amount they are required to contribute to the Higher  
17 Education Retirement Plan, which deductions shall be six  
18 percent.

19 (c) The Higher Education Policy Commission and the  
20 governing boards, with policy commission approval, may  
21 contract for a supplemental retirement plan for any or all of  
22 their employees to supplement the benefits the employees  
23 otherwise receive. The governing boards and Higher  
24 Education Policy Commission may make additional periodic  
25 deductions from the salary payments due the employees in  
26 the amount they are required to contribute for the  
27 supplemental retirement plan.

28 (d) The Higher Education Policy Commission shall  
29 conduct a study of the feasibility of offering multiple vendors  
30 of retirement products and services to be offered for the  
31 benefit of higher education employees. The commission  
32 shall report the findings of the study, along with a plan for  
33 offering multiple vendors for the employees, to the Joint  
34 Committee on Pensions and Retirement no later than the first  
35 day of December, two thousand one. Upon approval by the  
36 Joint Committee on Pensions and Retirement, the  
37 commission shall provide a choice of vendors to their



38 employees. Any selection of vendors made by the  
39 commission shall be determined according to a request for  
40 proposal issued pursuant to the provisions of section four,  
41 article five, chapter eighteen-b of this code.

42 (e) Each governing board and the Higher Education  
43 Policy Commission, by way of additional compensation to  
44 their employees, shall pay an amount equal to the  
45 contributions of the employees into the higher education  
46 retirement plan from funds appropriated to the board or  
47 commission for personal services.

48 (f) Each participating employee has a full and immediate  
49 vested interest in the retirement and death benefits accrued  
50 from all the moneys paid into the Higher Education  
51 Retirement Plan or a supplemental retirement plan for his or  
52 her benefit. Upon proper requisition of a board or the Higher  
53 Education Policy Commission, the auditor shall periodically  
54 issue a warrant, payable as specified in the requisition, for the  
55 total contributions so withheld from the salaries of all  
56 participating employees and for the governing board's or  
57 Higher Education Policy Commission's matching funds.

58 (g) Any person whose employment commences on or  
59 after the first day of July, one thousand nine hundred ninety-  
60 one, and who is eligible to participate in the Higher  
61 Education Retirement Plan, shall participate in that plan and  
62 is not eligible to participate in any other state retirement  
63 system: *Provided*, That the foregoing provision does not  
64 apply to a person designated as a 21st Century Learner  
65 Fellow pursuant to section eleven, article three, chapter  
66 eighteen-a of this code. The additional retirement plan  
67 contracted for by the governing boards prior to the first day  
68 of July, one thousand nine hundred ninety-one, remains in  
69 effect unless changed by the Higher Education Policy  
70 Commission. Nothing in this section may be construed to  
71 consider employees of the governing boards as employees of

72 the Higher Education Policy Commission, nor is the Higher  
73 Education Policy Commission responsible or liable for  
74 retirement benefits contracted by, or on behalf of, the  
75 governing boards.

76 (h) It is the intent of the Legislature in amending and  
77 reenacting this section during its two thousand one regular  
78 session solely to:

79 (1) Maintain the current retirement plans offered to state  
80 higher education employees in their current form;

81 (2) Clarify that employees of the Higher Education Policy  
82 Commission are participants in the higher education  
83 retirement plan;

84 (3) Codify the current contribution levels of the  
85 governing boards, the Higher Education Policy Commission  
86 and their employees toward the present higher education  
87 retirement plan;

88 (4) Make mandatory the contribution levels of the  
89 governing boards and Higher Education Policy Commission;

90 (5) Establish a standardized retirement policy for all state  
91 higher education employees as determined by the policy  
92 commission;

93 (6) Clarify the application and purposes of the additional  
94 and supplemental retirement plans previously provided for in  
95 this section; and

96 (7) Remove obsolete and archaic language.

**CHAPTER 18A. SCHOOL PERSONNEL.**

**ARTICLE 3. TRAINING, CERTIFICATION, LICENSING,  
PROFESSIONAL DEVELOPMENT.**

§18A-3-3. Renewal of certificates; permanent certification.

§18A-3-11. Fellowship for 21st Century Learners.

**§18A-3-3. Renewal of certificates; permanent certification.**

1 (a) Until the person qualifies for a permanent certificate,  
2 any professional or first class certificate based upon a  
3 bachelor's degree shall be renewable provided the holder  
4 within five years from the date the certificate became valid:

5 (1) Files application on a prescribed form with the State  
6 Department of Education;

7 (2) Presents an official transcript of six semester hours of  
8 approved credit as may be prescribed by the state board;

9 (3) Successfully completes a beginning teacher internship  
10 program, if applicable; and

11 (4) Submits a recommendation based on successful  
12 teaching experience from the county superintendent of  
13 schools of the county in which the holder last taught or  
14 resides.

15 (b) The holder of a professional certificate, valid for five  
16 years, shall have the certificate made permanent upon  
17 meeting any of the following requirements:

18 (1) Completion of the second renewal, in accordance with  
19 the provisions set forth in subsection (a) of this section; or

20 (2) After five years of service in the public schools,  
21 presentation of a transcript showing the completion of  
22 requirements for a master's degree from an institution of  
23 higher education accredited to offer the master's degree and  
24 in a program relevant to the public school program or  
25 completes the fifth year of training leading to a bachelor's  
26 degree in library science from a school fully approved by the  
27 American Library Association; or

28 (3) Receives certification through the National Board for  
29 Professional Teaching Standards.

30 (c) To satisfy any of the requirements of subsection (b) of  
31 this section, the person must file application on a prescribed  
32 form with the State Department of Education and must  
33 submit a recommendation from the county superintendent of  
34 schools of the county in which the person last taught or  
35 resides.

36 (d) All certificates and permits, other than the  
37 professional certificate, shall be renewed in accordance with  
38 state board regulations.

39 (e) If the applicant seeking renewal has cause to believe  
40 that the county superintendent refuses to give a  
41 recommendation without just cause, the applicant shall have  
42 the right, in such case, to appeal to the State Superintendent  
43 of Schools whose responsibility it shall be to investigate the  
44 matter and issue a certificate if, in the opinion of the state  
45 superintendent, the county superintendent's recommendation  
46 was withheld arbitrarily.

47 (f) A person who has reached the age of sixty and holds  
48 a renewable certificate, as provided in this section, need not  
49 present renewal credit but shall meet all other renewal  
50 requirements.

**§18A-3-11. Fellowship for 21st Century Learners.**

1 (a) The Legislature finds that:

2 (1) There are instances, especially for the purpose of  
3 professional development, where it would be beneficial for  
4 persons who are members of the Teachers' Retirement  
5 System or the Teachers' Defined Contribution System to be  
6 employed by state institutions of higher education or research  
7 corporations;

8 (2) Members of the Teachers' Retirement System are  
9 discouraged from terminating their membership to that  
10 system because their annuity is based on their final average  
11 salary and their total service credit;

12 (3) A member of the Teachers' Defined Contribution  
13 System may be discouraged from terminating his or her  
14 membership to that system because the member may be  
15 completely vested in that system or have made substantial  
16 progress toward being vested;

17 (4) These members also are discouraged from leaving  
18 employment that allows them to participate in the Public  
19 Employees Insurance Program pursuant to article sixteen,  
20 chapter five of this code; and

21 (5) An example of this beneficial arrangement would be  
22 the employment of a member of the Teachers' Retirement  
23 System or a member of the Teachers' Defined Contribution  
24 System by an entity that otherwise would not be considered  
25 an employer under article seven-a, chapter eighteen of this  
26 code or article seven-b, chapter eighteen of this code for the  
27 purpose of working on a joint professional development  
28 project between higher education and public education.

29 (b) For the purposes of this section only, unless the  
30 context clearly indicates otherwise:

31 (1) “Employer” means either the state institution of  
32 higher education or the research corporation employing a  
33 21st Century Learner Fellow;

34 (2) “Research corporation” means a corporation meeting  
35 the description set forth in section three, article twelve,  
36 chapter eighteen-b of this code; and

37 (3) “State institution of higher education” means the same  
38 as defined in section two, article one, chapter eighteen-b of  
39 this code.

40 (c) The State Superintendent is authorized to designate up  
41 to twenty-five professional educators who are currently  
42 employed and who are members of either the Teachers’  
43 Retirement System set forth in article seven-a, chapter  
44 eighteen of this code or the Teachers’ Defined Contribution  
45 System set forth in article seven-b, chapter eighteen of this  
46 code as 21st Century Learner Fellows, subject to the  
47 following:

48 (1) Before designating a person as a 21st Century Learner  
49 Fellow, the State Superintendent shall consult with the state  
50 institution of higher education or the research corporation  
51 that would employ the member if designated;

52 (2) In determining whether or not to designate a person  
53 as a 21st Century Learner Fellow, the State Superintendent  
54 shall give preference to a person who:

55 (A) Is certified by the National Board for Professional  
56 Teaching Standards; and

57 (B) Demonstrates leadership within his or her content  
58 field in the county, regional education service agency area or  
59 the state;

60 (3) The duration of the person's designation as a 21st  
61 Century Learner Fellow shall be for the period in which the  
62 specific project to be undertaken by the person will last as  
63 determined by the State Superintendent at the time he or she  
64 designates the person; and

65 (4) Only the employer may terminate the employment of  
66 a person designated as a 21st Century Learner Fellow prior  
67 to the end of the duration of the person's designation as set  
68 forth in subsection (3) of this subsection.

69 (d) Notwithstanding any other provision of the code to  
70 the contrary, the professional educators designated as 21st  
71 Century Learner Fellows may elect to remain a member of  
72 the retirement system in which they were a member of  
73 immediately preceding their designation while they are  
74 employed by either a state institution of higher education or  
75 a research corporation, subject to the following:

76 (1) This authorization to remain a member of the  
77 retirement system in which they were a member of  
78 immediately preceding their designation only applies to  
79 authorization to remain a member of either the Teachers'  
80 Retirement System set forth in article seven-a, chapter  
81 eighteen of this code or to the Teachers' Defined  
82 Contribution System set forth in article seven-b, chapter  
83 eighteen of this code, but not both;

84 (2) Both the employer and the member each shall  
85 contribute their share as required by article seven-a, chapter  
86 eighteen of this code or article seven-b, chapter eighteen of  
87 this code, as applicable;

88       (3) If a 21st Century Learner Fellow elects to remain a  
89 member of either the Teachers' Retirement System set forth  
90 in article seven-a, chapter eighteen of this code or the  
91 Teachers' Defined Contribution System set forth in article  
92 seven-b, chapter eighteen of this code, he or she may not  
93 participate in any retirement plan offered by the employer;  
94 and

95       (4) Notwithstanding any other provision of law to the  
96 contrary, the employer does not assume any liability for  
97 benefits accrued by the 21st Century Learner Fellow while he  
98 or she was employed by any other entity.

99       (e) Notwithstanding any other provision of code to the  
100 contrary, each 21st Century Learner Fellow also qualifies as  
101 an employee for the purposes of being authorized to  
102 participate in the Public Employees Insurance Program  
103 pursuant to article sixteen, chapter five of this code and the  
104 state institution of higher education or the research  
105 corporation, as applicable, shall be considered an employer  
106 under that program, subject to the following:

107       (1) The state institution of higher education or the  
108 research corporation, as applicable, is not considered an  
109 employer with respect to any employee other than a 21st  
110 Century Learner Fellow;

111       (2) For any employee that elects to participate in the  
112 program pursuant to this subdivision, the employer shall pay  
113 their share of the premium and the employee shall pay his or



114 her share of the premium pursuant to article sixteen, chapter  
115 five of this code; and

116 (3) Notwithstanding any other provision of law to the  
117 contrary, the employer does not assume any liability for  
118 benefits accrued by the 21st Century Learner Fellow while he  
119 or she was employed by any other entity.

120 (f) Notwithstanding any other provision of law to the  
121 contrary:

122 (1) The employer is not responsible for any accrued  
123 annual leave, sick leave or both that a 21st Century Learner  
124 Fellow has accumulated during any prior employment; and

125 (2) If a 21st Century Learner Fellow has accumulated  
126 sick leave from prior employment, and if not for this  
127 subsection that sick leave obligation or any part of that  
128 obligation otherwise would have been transferred to the  
129 employer, after expending all sick leave accrued with the  
130 employer, the 21st Century Learner may expend the sick  
131 leave accumulated with the prior employer, and the prior  
132 employer is responsible for paying the cost of the sick leave  
133 expended by the 21st Century Learner Fellow at a rate  
134 equivalent to the salary and benefits paid to the 21st Century  
135 Learner Fellow at the time his or her employment with the  
136 prior employer ended.

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**CHAPTER 86**

**(Com. Sub. for H.B. 2189 - By Delegates Caputo, Paxton,  
Perry, Fragale and M. Poling)**

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[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2007.]

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AN ACT to amend and reenact §18-1-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-5-13 of said code; to amend and reenact §18-20-2 of said code; to amend and reenact §18A-1-1 of said code; to amend and reenact §18A-4-8, §18A-4-8b, §18A-4-8f, §18A-4-8g, §18A-4-10 and §18A-4-15 of said code; to amend said code by adding thereto two new sections, designated §18A-4-7c and §18A-4-10f; and to amend and reenact §18A-5-8 of said code, all relating to public schools and county boards of education; school service personnel; personal leave and leave banks for school personnel; authority of county boards of education; updating definitions; expanding purposes for which schools may expend funds; establishing certain vehicle and driver safety requirements for transporting students to a school-sponsored activity; expanding the purposes for which county boards may lease school buses; giving preference to a currently employed professional educator for summer employment; establishing service personnel classification title for licensed practical nurse; adding posting and notice requirements for filling service personnel positions; prohibiting displacement of aides to create vacancy for licensed practical nurse; establishing parameters for the workday and

beginning work station for certain service personnel; modifying process for determining certain service personnel hiring priority in cases of school merger or consolidation; authorizing transfer of personal leave in certain circumstances; modifying employment benefits accrued by substitute service personnel; requiring county boards of education to make certain training available to all regularly employed teachers' aides; prohibiting an autism mentor or aide who works with autistic students from transferring to another position after the fifth day prior to the beginning of the instructional term under certain conditions; deleting obsolete language; and making technical corrections.

*Be it enacted by the Legislature of West Virginia:*

That §18-1-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18-5-13 of said Code be amended and reenacted; that §18-20-2 of said Code be amended and reenacted; that §18A-1-1 of said Code be amended and reenacted; that §18A-4-8, §18A-4-8b, §18A-4-8f, §18A-4-8g, §18A-4-10 and §18A-4-15 of said Code be amended and reenacted; that said Code be amended by adding thereto two new sections, designated §18A-4-7c and §18A-4-10f; and that §18A-5-8 of said Code be amended and reenacted, all to read as follows:

**Chapter**

- 18. Education.**
- 18A. School Personnel.**

**CHAPTER 18. EDUCATION.**

**Article**

- 1. Definitions; Limitations of Chapter; Goals for Education.**
- 5. County Board of Education.**
- 20. Education of Exceptional Children.**

**ARTICLE 1. DEFINITIONS; LIMITATIONS OF CHAPTER;  
GOALS FOR EDUCATION.**

**§18-1-1. Definitions.**

1       The following words used in this chapter and in any  
2 proceedings pursuant thereto have the meanings ascribed to  
3 them unless the context clearly indicates a different meaning:

4       (a) "School" means the students and teachers assembled  
5 in one or more buildings, organized as a unit;

6       (b) "District" means county school district;

7       (c) "State board" means the West Virginia Board of  
8 Education;

9       (d) "County board" or "board" means a county board of  
10 education;

11       (e) "State superintendent" means the State Superintendent  
12 of Free Schools;

13       (f) "County superintendent" or "superintendent" means  
14 a county superintendent of schools;

15       (g) "Teacher" means a teacher, supervisor, principal,  
16 superintendent or public school librarian; registered  
17 professional nurse, licensed by the West Virginia Board of  
18 Examiners for Registered Professional Nurses and employed  
19 by a county board, who has a baccalaureate degree; or any  
20 other person regularly employed for instructional purposes in  
21 a public school in this state;

22 (h); "Service person" or "service personnel", whether  
23 singular or plural, means any non-teaching school employee  
24 who is not included in the meaning of "teacher" as defined in  
25 this section, and who serves the school or schools as a whole,  
26 in a nonprofessional capacity, including such areas as  
27 secretarial, custodial, maintenance, transportation, school  
28 lunch and aides. Any reference to "service employee" or  
29 "service employees" in this chapter or chapter eighteen-a of  
30 this code means service person or service personnel as  
31 defined in this section;

32 (i) "Social worker" means a nonteaching school employee  
33 who, at a minimum, possesses an undergraduate degree in  
34 social work from an accredited institution of higher learning  
35 and who provides various professional social work services,  
36 activities or methods as defined by the State Board for the  
37 benefit of students;

38 (j) "Regular full-time employee" means any person  
39 employed by a county board who has a regular position or  
40 job throughout his or her employment term, without regard  
41 to hours or method of pay;

42 (k) "Career clusters" means broad groupings of related  
43 occupations;

44 (l) "Work-based learning" means a structured activity that  
45 correlates with and is mutually supportive of the  
46 school-based learning of the student and includes specific  
47 objectives to be learned by the student as a result of the  
48 activity;

49 (m) "School-age juvenile" means any individual who is  
50 entitled to attend or who, if not placed in a residential facility,  
51 would be entitled to attend public schools in accordance with:

52 (1) Section five, article two of this chapter; (2) sections  
53 fifteen and eighteen, article five of this chapter; or (3) section  
54 one, article twenty of this chapter;

55 (n) "Student with a disability" means an exceptional  
56 child, other than gifted, pursuant to section one, article  
57 twenty of this chapter;

58 (o) "Low-density county" means a county whose ratio of  
59 student population to square miles is less than or equal to the  
60 state average ratio as computed by the State Department of  
61 Education;

62 (p) "High-density county" means a county whose ratio of  
63 student population to square miles is greater than the state  
64 average ratio as computed by the State Department of  
65 Education; and

66 (q) "Casual deficit" means a deficit of not more than three  
67 percent of the approved levy estimate or a deficit that is  
68 nonrecurring from year to year.

## **ARTICLE 5. COUNTY BOARD OF EDUCATION.**

### **§18-5-13. Authority of boards generally.**

1 Subject to the provisions of this chapter and the rules of  
2 the State Board, each county board may:

3 (a) Control and manage all of the schools and school  
4 interests for all school activities and upon all school property  
5 owned or leased by the county, including:

6 (1) Requiring schools to keep records regarding funds  
7 connected with the school or school interests, including all  
8 receipts and disbursements of all funds collected or received  
9 by:

10 (A) Any principal, teacher, student or other person in  
11 connection with the schools and school interests;

12 (B) Any program, activity or other endeavor of any  
13 nature operated or conducted by or in the name of the school;  
14 and

15 (C) Any organization or body directly connected with the  
16 school;

17 (2) Allowing schools to expend funds for student, parent,  
18 teacher and community recognition programs. A school may  
19 use only funds it generates through a fund-raising or  
20 donation-soliciting activity. Prior to commencing the  
21 activity, the school shall:

22 (A) Publicize the activity as intended for this purpose;  
23 and

24 (B) Designate for this purpose the funds generated;

25 (3) Auditing the records and conserving the funds,  
26 including securing surety bonds by expending board moneys.  
27 The funds described in this subsection are quasipublic funds,  
28 which means the moneys were received for the benefit of the  
29 school system as a result of curricular or noncurricular  
30 activities;

31 (b) Establish:

- 32       (1) Schools, from preschool through high school;
- 33       (2) Vocational schools; and
- 34       (3) Schools and programs for post-high school  
35 instruction, subject to approval of the State Board;
- 36       (c) Close any school:
- 37           (1) Which is unnecessary and assign the students to other  
38 schools. The closing shall occur pursuant to official action of  
39 the county board. Except in emergency situations when the  
40 timing and manner of notification are subject to approval by  
41 the state superintendent, the county board shall notify the  
42 affected teachers and service personnel of the county board  
43 action not later than the first Monday in April. The board  
44 shall provide notice in the same manner as set forth in section  
45 four of this article; or
- 46           (2) Pursuant to the provisions of subsection (e) of this  
47 section;
- 48       (d) Consolidate schools;
- 49       (e) Close any elementary school whose average daily  
50 attendance falls below twenty students for two consecutive  
51 months. The county board may assign the students to other  
52 schools in the district or to schools in adjoining districts. If  
53 the teachers in the closed school are not transferred or  
54 reassigned to other schools, they shall receive one month's  
55 salary;



56 (f) Provide transportation according to rules established  
57 by the county board, as follows:

58 (1) To provide at public expense adequate means of  
59 transportation:

60 (A) For all children of school age who live more than two  
61 miles distance from school by the nearest available road;

62 (B) For school children participating in county board-  
63 approved curricular and extracurricular activities;

64 (C) Across county lines for students transferred from one  
65 district to another by mutual agreement of both county  
66 boards. The agreement shall be recorded in the meeting  
67 minutes of each participating county board and is subject to  
68 the provisions of subsection (h) of this section; and

69 (D) Within available revenues, for students within two  
70 miles distance of the school; and

71 (2) To provide transportation for participants in projects  
72 operated, financed, sponsored or approved by the Bureau of  
73 Senior Services. This transportation shall be provided at no  
74 cost to the county board. All costs and expenses incident in  
75 any way to this transportation shall be borne by the Bureau or  
76 the local or county affiliate of the Bureau;

77 (3) Any school bus owned by the county board may be  
78 operated only by a bus operator regularly employed by the  
79 county board;

80 (4) Pursuant to rules established by the State Board, the  
81 county board may provide for professional employees to be  
82 certified to drive county board-owned vehicles that have a  
83 seating capacity of fewer than ten passengers. These  
84 employees may use the vehicles to transport students for  
85 school-sponsored activities, but may not use the vehicles to  
86 transport students between school and home. Not more than  
87 one of these vehicles may be used for any school-sponsored  
88 activity;

89 (5) Students may not be transported to a school-  
90 sponsored activity in any county-owned or leased vehicle that  
91 does not meet school bus or public transit ratings. This  
92 section does not prohibit a parent from transporting ten or  
93 fewer students in a privately-owned vehicle;

94 (6) Students may be transported to a school-sponsored  
95 activity in a vehicle that has a seating capacity of sixteen or  
96 more passengers which is not owned and operated by the  
97 county board only as follows:

98 (A) The State Board shall promulgate a rule to establish  
99 requirements for:

100 (i) Automobile insurance coverage;

101 (ii) Vehicle safety specifications;

102 (iii) School bus or public transit ratings; and

103 (iv) Driver training, certification and criminal history  
104 record check; and

105 (B) The vehicle owner shall provide to the county board  
106 proof that the vehicle and driver satisfy the requirements of  
107 the State Board rule; and

108 (7) Buses shall be used for extracurricular activities as  
109 provided in this section only when the insurance coverage  
110 required by this section is in effect;

111 (g) Lease school buses pursuant to rules established by  
112 the county board.

113 (1) Leased buses may be operated only by bus operators  
114 regularly employed by the county board.

115 (2) The lessee shall bear all costs and expenses incurred  
116 by, or incidental to the use of, the bus.

117 (3) The county board may lease buses to:

118 (A) Public and private nonprofit organizations and  
119 private corporations to transport school-age children for  
120 camps or educational activities;

121 (B) Any college, university or officially recognized  
122 campus organization for transporting students, faculty and  
123 staff to and from the college or university. Only college and  
124 university students, faculty and staff may be transported  
125 pursuant to this paragraph. The lease shall include provisions  
126 for:

127 (i) Compensation for bus operators;

128 (ii) Consideration for insurance coverage, repairs and  
129 other costs of service; and

130 (iii) Any rules concerning student behavior;

131 (C) Public and private nonprofit organizations, including  
132 education employee organizations, for transportation  
133 associated with fairs, festivals and other educational and  
134 cultural events. The county board may charge fees in  
135 addition to those charges otherwise required by this  
136 subsection;

137 (h) To provide at public expense for insurance coverage  
138 against negligence of the drivers of school buses, trucks or  
139 other vehicles operated by the county board. Any contractual  
140 agreement for transportation of students shall require the  
141 vehicle owner to maintain insurance coverage against  
142 negligence in an amount specified by the county board;

143 (i) Provide for the full cost or any portion thereof for  
144 group plan insurance benefits not provided or available under  
145 the West Virginia Public Employees Insurance Act. Any of  
146 these benefits shall be provided:

147 (1) Solely from county board funds; and

148 (2) For all regular full-time employees of the county  
149 board;

150 (j) Employ teacher aides; to provide in-service training  
151 for the aides pursuant to rules established by the State Board;  
152 and, prior to assignment, to provide a four-clock-hour

153 program of training for a service person assigned duties as a  
154 teacher aide in an exceptional children program. The four-  
155 clock-hour program shall consist of training in areas  
156 specifically related to the education of exceptional children;

157 (k) Establish and operate a self-supporting dormitory for:

158 (1) Students attending a high school or participating in a  
159 post high school program; and

160 (2) Persons employed to teach in the high school or post  
161 high school program;

162 (l) At the county board's discretion, employ, contract  
163 with or otherwise engage legal counsel in lieu of using the  
164 services of the prosecuting attorney to advise, attend to,  
165 bring, prosecute or defend, as the case may be, any matters,  
166 actions, suits and proceedings in which the county board is  
167 interested;

168 (m) Provide appropriate uniforms for school service  
169 personnel;

170 (n) Provide at public expense for payment of traveling  
171 expenses incurred by any person invited to appear to be  
172 interviewed concerning possible employment by the county  
173 board, subject to rules established by the county board;

174 (o) Allow designated employees to use publicly provided  
175 carriage to travel from their residences to their workplace and  
176 return. The use:

177 (1) Is subject to the supervision of the county board; and

178 (2) Shall be directly connected with, required by and  
179 essential to the performance of the employee's duties and  
180 responsibilities;

181 (p) Provide at public expense adequate public liability  
182 insurance, including professional liability insurance, for  
183 county board employees;

184 (q) Enter into cooperative agreements with other county  
185 boards to provide improvements to the instructional needs of  
186 each district. The cooperative agreements may be used to  
187 employ specialists in a field of academic study or for support  
188 functions or services for the field. The agreements are  
189 subject to approval by the State Board;

190 (r) Provide information about vocational and higher  
191 education opportunities to exceptional students. The county  
192 board shall provide in writing to the students and their  
193 parents or guardians information relating to programs of  
194 vocational education and to programs available at state  
195 institutions of higher education. The information may  
196 include sources of available funding, including grants,  
197 mentorships and loans for students who wish to attend classes  
198 at institutions of higher education;

199 (s) Enter into agreements with other county boards for the  
200 transfer and receipt of any funds determined to be fair when  
201 students are permitted or required to attend school in a  
202 district other than the district of their residence. These  
203 agreements are subject to the approval of the State Board;  
204 and

205 (t) Enter into job-sharing arrangements, as defined in  
206 section one, article one, chapter eighteen-a of this code, with  
207 its employees, subject to the following provisions:

208 (1) A job-sharing arrangement shall meet all the  
209 requirements relating to posting, qualifications and seniority,  
210 as provided for in article four, chapter eighteen-a of this  
211 code;

212 (2) Notwithstanding any contrary provision of this code  
213 or legislative rule and specifically the provisions of article  
214 sixteen, chapter five of this code, a county board that enters  
215 into a job-sharing arrangement:

216 (A) Shall provide insurance coverage to the one  
217 employee mutually agreed upon by the employees  
218 participating in that arrangement; and

219 (B) May not provide insurance benefits of any type to  
220 more than one of the job-sharing employees, including any  
221 group plan available under the State Public Employees  
222 Insurance Act;

223 (3) Each job-sharing agreement shall be in writing on a  
224 form prescribed and furnished by the county board. The  
225 agreement shall designate specifically one employee only  
226 who is entitled to the insurance coverage. Any employee  
227 who is not designated is not eligible for state public  
228 employees insurance coverage regardless of the number of  
229 hours he or she works;

230 (4) All employees involved in the job-sharing agreement  
231 shall meet the requirements of subdivision (3), section two,  
232 article sixteen, chapter five of this code; and

233 (5) When entering into a job-sharing agreement, the  
234 county board and the participating employees shall consider  
235 issues such as retirement benefits, termination of the job-  
236 sharing agreement and any other issue the parties consider  
237 appropriate. Any provision in the agreement relating to  
238 retirement benefits may not cause any cost to be incurred by  
239 the retirement system that is more than the cost that would be  
240 incurred if a single employee were filling the position ; and

241 (u) Under rules it establishes for each child, expend an  
242 amount not to exceed the proportion of all school funds of the  
243 district that each child would be entitled to receive if all the  
244 funds were distributed equally among all the children of  
245 school age in the district upon a per capita basis.

## **ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.**

### **§18-20-2. Providing suitable educational facilities, equipment and services.**

1 (a) Each county board shall provide suitable educational  
2 facilities, special equipment and special services that are  
3 necessary. Special services include provisions and procedures  
4 for finding and enumerating exceptional children of each  
5 type, diagnosis by appropriate specialists who will certify the  
6 child's need and eligibility for special education and make  
7 recommendations for treatment and prosthesis as may



8 alleviate the disability, special teaching by qualified and  
9 specially trained teachers, transportation, lunches and  
10 remedial therapeutic services. Qualifications of teachers and  
11 therapists shall be in accordance with standards prescribed or  
12 approved by the State Board.

13 (b) A county board may provide for educating resident  
14 exceptional children by contracting with other counties or  
15 other educational agencies which maintain special education  
16 facilities. Fiscal matters shall follow policies approved by  
17 the State.

18 (c) The county board shall provide a four-clock-hour  
19 program of training for any teacher aide employed to assist  
20 teachers in providing services to exceptional children under  
21 this article prior to the assignment. The program shall consist  
22 of training in areas specifically related to the education of  
23 exceptional children, pursuant to rules of the State Board.  
24 The training shall occur during normal working hours and an  
25 opportunity to be trained shall be provided to service person  
26 prior to filling a vacancy in accordance with the provisions of  
27 section eight-b, article four, chapter eighteen-a of this Code.

28 (d) The county board annually shall make available  
29 during normal working hours to all regularly employed  
30 teachers' aides twelve hours of training that satisfies the  
31 continuing education requirements for the aides regarding:

32 (1) Providing services to children who have displayed  
33 violent behavior or have demonstrated the potential for  
34 violent behavior; and

35 (2) Providing services to children diagnosed as autistic or  
 36 with autism spectrum disorder. This training shall be  
 37 structured to permit the employee to qualify as an autism  
 38 mentor after a minimum of four years of training. The  
 39 county board shall:

40 (A) Notify in writing all teachers' aides of the location,  
 41 date and time when training will be offered for qualification  
 42 as an autism mentor; and

43 (B) Reimburse any regularly employed or substitute  
 44 teacher's aide who elects to attend this training for one-half  
 45 of the cost of the tuition.

## CHAPTER 18A. SCHOOL PERSONNEL.

### Article

1. General Provisions.
4. Salaries, Wages and Other Benefits.
5. Authority; Rights; Responsibility.

## ARTICLE 1. GENERAL PROVISIONS.

### \*§18A-1-1. Definitions.

1 The definitions contained in section one, article one,  
 2 chapter eighteen of this code apply to this chapter. In  
 3 addition, the following words used in this chapter and in any  
 4 proceedings pursuant to this chapter have the meanings  
 5 ascribed to them unless the context clearly indicates a  
 6 different meaning:

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\*CLERK'S NOTE: This section was also amended by S.B. 129 (Chapter 208) which passed prior to this act.

7 (a) "School personnel" means all personnel employed by  
8 a county board whether employed on a regular full-time  
9 basis, an hourly basis or otherwise. "School personnel" is  
10 comprised of two categories: Professional personnel and  
11 service personnel;

12 (b) "Professional person" or "Professional personnel"  
13 means those persons or employees who meet the certification  
14 requirements of the state, licensing requirements of the state,  
15 or both, and includes a professional educator and other  
16 professional employee;

17 (c) "Professional educator" has the same meaning as  
18 "teacher" as defined in section one, article one, chapter  
19 eighteen of this code. Professional educators are classified as  
20 follows:

21 (1) "Classroom teacher" means a professional educator  
22 who has a direct instructional or counseling relationship with  
23 students and who spends the majority of his or her time in  
24 this capacity;

25 (2) "Principal" means a professional educator who  
26 functions as an agent of the county board and has  
27 responsibility for the supervision, management and control of  
28 a school or schools within the guidelines established by the  
29 county board. The principal's major area of responsibility is  
30 the general supervision of all the schools and all school  
31 activities involving students, teachers and other school  
32 personnel;

33 (3) "Supervisor" means a professional educator who is  
34 responsible for working primarily in the field with  
35 professional and other personnel in instructional and other  
36 school improvement. This category includes other  
37 appropriate titles or positions with duties that fit within this  
38 definition; and

39 (4) "Central office administrator" means a superintendent,  
40 associate superintendent, assistant superintendent and other  
41 professional educators who are charged with administering  
42 and supervising the whole or some assigned part of the total  
43 program of the countywide school system. This category  
44 includes other appropriate titles or positions with duties that  
45 fit within this definition;

46 (d) "Other professional employee" means a person from  
47 another profession who is properly licensed and who is  
48 employed to serve the public schools. This definition  
49 includes a registered professional nurse, licensed by the West  
50 Virginia Board of Examiners for Registered Professional  
51 Nurses, who is employed by a county board and has  
52 completed either a two-year (sixty-four semester hours) or a  
53 three-year (ninety-six semester hours) nursing program;

54 (e) "Service person" or "service personnel", whether  
55 singular or plural, means a non-teaching school employee  
56 who is not included in the meaning of "teacher" as defined in  
57 section one, article one, chapter eighteen of this code, and  
58 who serves the school or schools as a whole, in a  
59 nonprofessional capacity, including such areas as secretarial,  
60 custodial, maintenance, transportation, school lunch and  
61 aides. Any reference to "service employee" or "service

62 employees” in this chapter or chapter eighteen of this code  
63 means service person or service personnel as defined in this  
64 section;

65 (f) "Principals Academy" or "Academy" means the  
66 Academy created pursuant to section two-b, article three-a of  
67 this chapter;

68 (g) "Center for Professional Development" means the  
69 Center created pursuant to section one, article three-a of this  
70 chapter;

71 (h) "Job-sharing arrangement" means a formal, written  
72 agreement voluntarily entered into by a county board with  
73 two or more of its employees who wish to divide between  
74 them the duties and responsibilities of one authorized full-  
75 time position;

76 (i) "Prospective employable professional person" whether  
77 singular or plural, means a certified professional educator  
78 who:

79 (1) Has been recruited on a reserve list of a county board;

80 (2) Has been recruited at a job fair or as a result of  
81 contact made at a job fair;

82 (3) Has not obtained regular employee status through the  
83 job posting process provided for in section seven-a, article  
84 four of this chapter; and

85 (4) Has obtained a baccalaureate degree from an  
86 accredited institution of higher education within the past  
87 year;

88 (j) "Dangerous student" means a student who is  
89 substantially likely to cause serious bodily injury to himself,  
90 herself or another individual within that student's educational  
91 environment, which may include any alternative education  
92 environment, as evidenced by a pattern or series of violent  
93 behavior exhibited by the student, and documented in writing  
94 by the school, with the documentation provided to the student  
95 and parent or guardian at the time of any offense; and

96 (k) "Alternative education" means an authorized  
97 departure from the regular school program designed to  
98 provide educational and social development for students  
99 whose disruptive behavior places them at risk of not  
100 succeeding in the traditional school structures and in adult  
101 life without positive interventions.

102 (l) "Long-term substitute" means a substitute employee  
103 who fills a vacant position:

104 (1) That the county superintendent expects to extend for  
105 at least ninety consecutive days, and is either:

106 (A) Listed in the job posting as a long term substitute  
107 position of over ninety days; or

108 (B) Listed in a job posting as a regular, full-time position  
109 and:

110 (i) Is not filled by a regular, full-time employee; and

111 (ii) Is filled by a substitute employee.

112 For the purposes of section two, article sixteen, chapter  
113 five of this code, long-term substitute does not include a  
114 retired employee hired to fill the vacant position.

**ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.**

- §18A-4-7c. Summer employment of professional educators.
- §18A-4-8. Employment term and class titles of service personnel; definitions.
- §18A-4-8b. Seniority rights for school service personnel.
- §18A-4-8f. Seniority rights, school consolidation.
- §18A-4-8g. Determination of seniority for service personnel.
- §18A-4-10. Personal leave for illness and other causes; leave banks; substitutes.
- §18A-4-10f. Leave donation program.
- §18A-4-15. Employment of service personnel substitutes.

**§18A-4-7c. Summer employment of professional educators.**

1 (a) A county board shall hire professional educators for  
2 positions in summer school programs in accordance with  
3 section thirty-nine, article five, chapter eighteen of this code  
4 or section seven-a of this article, as applicable, except that a  
5 professional educator who is currently employed by the  
6 county board shall be given employment preference over  
7 applicants who are not current employees.

4 ten months. A month is defined as twenty employment days:  
5 *Provided*, That the county board may contract with all or part  
6 of these service personnel for a longer term. The beginning  
7 and closing dates of the ten-month employment term may not  
8 exceed forty-three weeks.

9 (b) Service personnel employed on a yearly or twelve-  
10 month basis may be employed by calendar months.  
11 Whenever there is a change in job assignment during the  
12 school year, the minimum pay scale and any county  
13 supplement are applicable.

14 (c) Service personnel employed in the same classification  
15 for more than the two hundred day minimum employment  
16 term shall be paid for additional employment at a daily rate  
17 of not less than the daily rate paid for the two hundred day  
18 minimum employment term.

19 (d) A service person may not be required to report for  
20 work more than five days per week without his or her  
21 agreement, and no part of any working day may be  
22 accumulated by the employer for future work assignments,  
23 unless the employee agrees thereto.

24 (e) If a service person whose regular work week is  
25 scheduled from Monday through Friday agrees to perform  
26 any work assignments on a Saturday or Sunday, the service  
27 person shall be paid for at least one-half day of work for each  
28 day he or she reports for work. If the service person works  
29 more than three and one-half hours on any Saturday or  
30 Sunday, he or she shall be paid for at least a full day of work  
31 for each day.

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**CLERK'S NOTE:** This section was also amended by H.B. 2777 (Chapter 95), which  
passed prior to this act.



27 person shall be paid for at least one-half day of work for each  
28 day he or she reports for work. If the service person works  
29 more than three and one-half hours on any Saturday or  
30 Sunday, he or she shall be paid for at least a full day of work  
31 for each day.

32 (f) A custodian, aide, maintenance, office and school  
33 lunch service person required to work a daily work schedule  
34 that is interrupted shall be paid additional compensation.

35 (1) A maintenance person is defined as a person who  
36 holds a classification title other than in a custodial, aide,  
37 school lunch, office or transportation category as provided in  
38 section one, article one of this chapter.

39 (2) A service person's schedule is considered to be  
40 interrupted if he or she does not work a continuous period in  
41 one day. Aides are not regarded as working an interrupted  
42 schedule when engaged exclusively in the duties of  
43 transporting students;

44 (3) The additional compensation provided for in this  
45 subsection:

46 (A) Is equal to at least one eighth of a service person's  
47 total salary as provided by the state minimum pay scale and  
48 any county pay supplement; and

49 (B) Is payable entirely from county board funds.

50 (g) When there is a change in classification or when a  
51 service person meets the requirements of an advanced  
52 classification, his or her salary shall be made to comply with

53 the requirements of this article and any county salary  
54 schedule in excess of the minimum requirements of this  
55 article, based upon the service person's advanced  
56 classification and allowable years of employment.

57 (h) A service person's, contract as provided in section  
58 five, article two of this chapter, shall state the appropriate  
59 monthly salary the employee is to be paid, based on the class  
60 title as provided in this article and on any county salary  
61 schedule in excess of the minimum requirements of this  
62 article.

63 (i) The column heads of the state minimum pay scale and  
64 class titles, set forth in section eight-a of this article, are  
65 defined as follows:

66 (1) "Pay grade" means the monthly salary applicable to  
67 class titles of service personnel;

68 (2) "Years of employment" means the number of years  
69 which an employee classified as a service person has been  
70 employed by a county board in any position prior to or  
71 subsequent to the effective date of this section and includes  
72 service in the armed forces of the United States, if the  
73 employee was employed at the time of his or her induction.  
74 For the purpose of section eight-a of this article, years of  
75 employment is limited to the number of years shown and  
76 allowed under the state minimum pay scale as set forth in  
77 section eight-a of this article;

78 (3) "Class title" means the name of the position or job  
79 held by a service person;

80 (4) "Accountant I" means a person employed to maintain  
81 payroll records and reports and perform one or more  
82 operations relating to a phase of the total payroll;

83 (5) "Accountant II" means a person employed to maintain  
84 accounting records and to be responsible for the accounting  
85 process associated with billing, budgets, purchasing and  
86 related operations;

87 (6) "Accountant III" means a person employed in the  
88 county board office to manage and supervise accounts  
89 payable, payroll procedures, or both;

90 (7) "Accounts payable supervisor" means a person  
91 employed in the county board office who has primary  
92 responsibility for the accounts payable function and who  
93 either has completed twelve college hours of accounting  
94 courses from an accredited institution of higher education or  
95 has at least eight years of experience performing  
96 progressively difficult accounting tasks. Responsibilities of  
97 this class title may include supervision of other personnel;

98 (8) "Aide I" means a person selected and trained for a  
99 teacher-aide classification such as monitor aide, clerical aide,  
100 classroom aide or general aide;

101 (9) "Aide II" means a service person referred to in the  
102 "Aide I" classification who has completed a training program  
103 approved by the State Board, or who holds a high school  
104 diploma or has received a general educational development  
105 certificate. Only a person classified in an Aide II class title  
106 may be employed as an aide in any special education  
107 program;

108 (10) "Aide III" means a service person referred to in the  
109 "Aide I" classification who holds a high school diploma or a  
110 general educational development certificate; and

111 (A) Has completed six semester hours of college credit at  
112 an institution of higher education; or

113 (B) Is employed as an aide in a special education program  
114 and has one year's experience as an aide in special education;

115 (11) "Aide IV" means a service person referred to in the  
116 "Aide I" classification who holds a high school diploma or a  
117 general educational development certificate; and

118 (A) Has completed eighteen hours of State Board-  
119 approved college credit at a regionally accredited institution  
120 of higher education, or

121 (B) Has completed fifteen hours of State Board-approved  
122 college credit at a regionally accredited institution of higher  
123 education; and has successfully completed an in-service  
124 training program determined by the State Board to be the  
125 equivalent of three hours of college credit;

126 (12) "Audiovisual technician" means a person employed  
127 to perform minor maintenance on audiovisual equipment,  
128 films, and supplies and who fills requests for equipment;

129 (13) "Auditor" means a person employed to examine and  
130 verify accounts of individual schools and to assist schools  
131 and school personnel in maintaining complete and accurate  
132 records of their accounts;

133 (14) "Autism mentor" means a person who works with  
134 autistic students and who meets standards and experience to  
135 be determined by the State Board. A person who has held or  
136 holds an aide title and becomes employed as an autism  
137 mentor shall hold a multiclassification status that includes  
138 both aide and autism mentor titles, in accordance with section  
139 eight-b of this article;

140 (15) "Braille or sign language specialist" means a person  
141 employed to provide braille and/or sign language assistance  
142 to students, A service person who has held or holds an aide  
143 title and becomes employed as a braille or sign language  
144 specialist shall hold a multiclassification status that includes  
145 both aide and braille or sign language specialist title, in  
146 accordance with section eight-b of this article;

147 (16) "Bus operator" means a person employed to operate  
148 school buses and other school transportation vehicles as  
149 provided by the State Board;

150 (17) "Buyer" means a person employed to review and  
151 write specifications, negotiate purchase bids and recommend  
152 purchase agreements for materials and services that meet  
153 predetermined specifications at the lowest available costs;

154 (18) "Cabinetmaker" means a person employed to  
155 construct cabinets, tables, bookcases and other furniture;

156 (19) "Cafeteria manager" means a person employed to  
157 direct the operation of a food services program in a school,  
158 including assigning duties to employees, approving  
159 requisitions for supplies and repairs, keeping inventories,  
160 inspecting areas to maintain high standards of sanitation,

161 preparing financial reports and keeping records pertinent to  
162 food services of a school;

163 (20) "Carpenter I" means a person classified as a  
164 carpenter's helper;

165 (21) "Carpenter II" means a person classified as a  
166 journeyman carpenter;

167 (22) "Chief mechanic" means a person employed to be  
168 responsible for directing activities which ensure that student  
169 transportation or other county board-owned vehicles are  
170 properly and safely maintained;

171 (23) "Clerk I" means a person employed to perform  
172 clerical tasks;

173 (24) "Clerk II" means a person employed to perform  
174 general clerical tasks, prepare reports and tabulations and  
175 operate office machines;

176 (25) "Computer operator" means a qualified person  
177 employed to operate computers;

178 (26) "Cook I" means a person employed as a cook's  
179 helper;

180 (27) "Cook II" means a person employed to interpret  
181 menus and to prepare and serve meals in a food service  
182 program of a school. This definition includes a service  
183 person who has been employed as a "Cook I" for a period of  
184 four years;

185 (28) "Cook III" means a person employed to prepare and  
186 serve meals, make reports, prepare requisitions for supplies,  
187 order equipment and repairs for a food service program of a  
188 school system;

189 (29) "Crew leader" means a person employed to organize  
190 the work for a crew of maintenance employees to carry out  
191 assigned projects;

192 (30) "Custodian I" means a person employed to keep  
193 buildings clean and free of refuse;

194 (31) "Custodian II" means a person employed as a  
195 watchman or groundsman;

196 (32) "Custodian III" means a person employed to keep  
197 buildings clean and free of refuse, to operate the heating or  
198 cooling systems and to make minor repairs;

199 (33) "Custodian IV" means a person employed as head  
200 custodians. In addition to providing services as defined in  
201 "custodian III," duties may include supervising other  
202 custodian personnel;

203 (34) "Director or coordinator of services" means an  
204 employee of a county board who is assigned to direct a  
205 department or division.

206 (A) Nothing in this subdivision prohibits a professional  
207 person or a professional educator from holding this class title;

208 (B) Professional personnel holding this class title may not  
209 be defined or classified as service personnel unless the

210 professional person held a service personnel title under this  
211 section prior to holding the class title of "director or  
212 coordinator of services."

213 (C) The director or coordinator of services shall be  
214 classified either as a professional person or a service person  
215 for state aid formula funding purposes; and

216 (D) Funding for the position of director or coordinator of  
217 services is based upon the employment status of the director  
218 or coordinator either as a professional person or a service  
219 person;

220 (35) "Draftsman" means a person employed to plan,  
221 design and produce detailed architectural/engineering  
222 drawings;

223 (36) "Electrician I" means a person employed as an  
224 apprentice electrician helper or one who holds an electrician  
225 helper license issued by the state fire marshal;

226 (37) "Electrician II" means a person employed as an  
227 electrician journeyman or one who holds a journeyman  
228 electrician license issued by the state fire marshal;

229 (38) "Electronic technician I" means a person employed  
230 at the apprentice level to repair and maintain electronic  
231 equipment;

232 (39) "Electronic technician II" means a person employed  
233 at the journeyman level to repair and maintain electronic  
234 equipment;



235 (40) "Executive secretary" means a person employed as  
236 secretary to the county school superintendent or as a  
237 secretary who is assigned to a position characterized by  
238 significant administrative duties;

239 (41) "Food services supervisor" means a qualified person  
240 who is not a professional person or professional educator as  
241 defined in section one, article one of this chapter. The food  
242 services supervisor is employed to manage and supervise a  
243 county school system's food service program. The duties  
244 include preparing in-service training programs for cooks and  
245 food service employees, instructing personnel in the areas of  
246 quantity cooking with economy and efficiency and keeping  
247 aggregate records and reports;

248 (42) "Foreman" means a skilled person employed to  
249 supervise personnel who work in the areas of repair and  
250 maintenance of school property and equipment;

251 (43) "General maintenance" means a person employed as  
252 a helper to skilled maintenance employees and to perform  
253 minor repairs to equipment and buildings of a county school  
254 system;

255 (44) "Glazier" means a person employed to replace glass  
256 or other materials in windows and doors and to do minor  
257 carpentry tasks;

258 (45) "Graphic artist" means a person employed to prepare  
259 graphic illustrations;

260 (46) "Groundsman" means a person employed to perform  
261 duties that relate to the appearance, repair and general care of

262 school grounds in a county school system. Additional  
263 assignments may include the operation of a small heating  
264 plant and routine cleaning duties in buildings;

265 (47) "Handyman" means a person employed to perform  
266 routine manual tasks in any operation of the county school  
267 system;

268 (48) "Heating and air conditioning mechanic I" means a  
269 person employed at the apprentice level to install, repair and  
270 maintain heating and air conditioning plants and related  
271 electrical equipment;

272 (49) "Heating and air conditioning mechanic II" means a  
273 person employed at the journeyman level to install, repair and  
274 maintain heating and air conditioning plants and related  
275 electrical equipment;

276 (50) "Heavy equipment operator" means a person  
277 employed to operate heavy equipment;

278 (51) "Inventory supervisor" means a person employed to  
279 supervise or maintain operations in the receipt, storage,  
280 inventory and issuance of materials and supplies;

281 (52) "Key punch operator" means a qualified person  
282 employed to operate key punch machines or verifying  
283 machines;

284 (53) "Licensed practical nurse" means a nurse, licensed  
285 by the West Virginia Board of Examiners for Licensed  
286 Practical Nurses, employed to work in a public school under  
287 the supervision of a school nurse;

288 (54) "Locksmith" means a person employed to repair and  
289 maintain locks and safes;

290 (55) "Lubrication man" means a person employed to  
291 lubricate and service gasoline or diesel-powered equipment  
292 of a county school system;

293 (56) "Machinist" means a person employed to perform  
294 machinist tasks which include the ability to operate a lathe,  
295 planer, shaper, threading machine and wheel press. A person  
296 holding this class title also should have the ability to work  
297 from blueprints and drawings;

298 (57) "Mail clerk" means a person employed to receive,  
299 sort, dispatch, deliver or otherwise handle letters, parcels and  
300 other mail;

301 (58) "Maintenance clerk" means a person employed to  
302 maintain and control a stocking facility to keep adequate  
303 tools and supplies on hand for daily withdrawal for all school  
304 maintenance crafts;

305 (59) "Mason" means a person employed to perform tasks  
306 connected with brick and block laying and carpentry tasks  
307 related to these activities;

308 (60) "Mechanic" means a person employed to perform  
309 skilled duties independently in the maintenance and repair of  
310 automobiles, school buses and other mechanical and mobile  
311 equipment to use in a county school system;

312 (61) "Mechanic assistant" means a person employed as a  
313 mechanic apprentice and helper;

314 (62) "Multiclassification" means a person employed to  
315 perform tasks that involve the combination of two or more  
316 class titles in this section. In these instances the minimum  
317 salary scale shall be the higher pay grade of the class titles  
318 involved;

319 (63) "Office equipment repairman I" means a person  
320 employed as an office equipment repairman apprentice or  
321 helper;

322 (64) "Office equipment repairman II" means a person  
323 responsible for servicing and repairing all office machines  
324 and equipment. A person holding this class title is  
325 responsible for the purchase of parts necessary for the proper  
326 operation of a program of continuous maintenance and repair;

327 (65) "Painter" means a person employed to perform  
328 duties painting, finishing and decorating wood, metal and  
329 concrete surfaces of buildings, other structures, equipment,  
330 machinery and furnishings of a county school system;

331 (66) "Paraprofessional" means a person certified pursuant  
332 to section two-a, article three of this chapter to perform duties  
333 in a support capacity including, but not limited to, facilitating  
334 in the instruction and direct or indirect supervision of  
335 students under the direction of a principal, a teacher or  
336 another designated professional educator.

337 (A) A person employed on the effective date of this  
338 section in the position of an aide may not be subject to a  
339 reduction in force or transferred to create a vacancy for the  
340 employment of a paraprofessional;

341 (B) A person who has held or holds an aide title and  
342 becomes employed as a paraprofessional shall hold a  
343 multiclassification status that includes both aide and  
344 paraprofessional titles in accordance with section eight-b of  
345 this article; and

346 (C) When a service person who holds an aide title  
347 becomes certified as a paraprofessional and is required to  
348 perform duties that may not be performed by an aide without  
349 paraprofessional certification, he or she shall receive the  
350 paraprofessional title pay grade;

351 (67) "Payroll supervisor" means a person employed in the  
352 county board office who has primary responsibility for the  
353 payroll function and who either has completed twelve college  
354 hours of accounting from an accredited institution of higher  
355 education or has at least eight years of experience performing  
356 progressively difficult accounting tasks. Responsibilities of  
357 this class title may include supervision of other personnel;

358 (68) "Plumber I" means a person employed as an  
359 apprentice plumber and helper;

360 (69) "Plumber II" means a person employed as a  
361 journeyman plumber;

362 (70) "Printing operator" means a person employed to  
363 operate duplication equipment, and to cut, collate, staple,  
364 bind and shelve materials as required;

365 (71) "Printing supervisor" means a person employed to  
366 supervise the operation of a print shop;

367 (72) "Programmer" means a person employed to design  
368 and prepare programs for computer operation;

369 (73) "Roofing/sheet metal mechanic" means a person  
370 employed to install, repair, fabricate and maintain roofs,  
371 gutters, flashing and duct work for heating and ventilation;

372 (74) "Sanitation plant operator" means a person employed  
373 to operate and maintain a water or sewage treatment plant to  
374 ensure the safety of the plant's effluent for human  
375 consumption or environmental protection;

376 (75) "School bus supervisor" means a qualified person  
377 employed to assist in selecting school bus operators and  
378 routing and scheduling school buses, operate a bus when  
379 needed, relay instructions to bus operators, plan emergency  
380 routing of buses and promote good relationships with parents,  
381 students, bus operators and other employees;

382 (76) "Secretary I" means a person employed to transcribe  
383 from notes or mechanical equipment, receive callers, perform  
384 clerical tasks, prepare reports and operate office machines;

385 (77) "Secretary II" means a person employed in any  
386 elementary, secondary, kindergarten, nursery, special  
387 education, vocational or any other school as a secretary. The  
388 duties may include performing general clerical tasks;  
389 transcribing from notes, stenotype, mechanical equipment or  
390 a sound-producing machine; preparing reports; receiving  
391 callers and referring them to proper persons; operating office  
392 machines; keeping records and handling routine  
393 correspondence. Nothing in this subdivision prevents a  
394 service person from holding or being elevated to a higher  
395 classification;

396 (78) "Secretary III" means a person assigned to the  
397 county board office administrators in charge of various  
398 instructional, maintenance, transportation, food services,  
399 operations and health departments, federal programs or  
400 departments with particular responsibilities in purchasing and  
401 financial control or any person who has served for eight years  
402 in a position which meets the definition of "secretary II" or  
403 "secretary III";

404 (79) "Supervisor of maintenance" means a skilled person  
405 who is not a professional person or professional educator as  
406 defined in section one, article one of this chapter. The  
407 responsibilities include directing the upkeep of buildings and  
408 shops, and issuing instructions to subordinates relating to  
409 cleaning, repairs and maintenance of all structures and  
410 mechanical and electrical equipment of a county board;

411 (80) "Supervisor of transportation" means a qualified  
412 person employed to direct school transportation activities  
413 properly and safely, and to supervise the maintenance and  
414 repair of vehicles, buses and other mechanical and mobile  
415 equipment used by the county school system;

416 (81) "Switchboard operator-receptionist" means a person  
417 employed to refer incoming calls, to assume contact with the  
418 public, to direct and to give instructions as necessary, to  
419 operate switchboard equipment and to provide clerical  
420 assistance;

421 (82) "Truck driver" means a person employed to operate  
422 light or heavy duty gasoline and diesel-powered vehicles;

423 (83) "Warehouse clerk" means a person employed to be  
424 responsible for receiving, storing, packing and shipping  
425 goods;

426 (84) "Watchman" means a person employed to protect  
427 school property against damage or theft. Additional  
428 assignments may include operation of a small heating plant  
429 and routine cleaning duties;

430 (85) "Welder" means a person employed to provide  
431 acetylene or electric welding services for a school system;  
432 and

433 (86) "WVEIS data entry and administrative clerk" means  
434 a person employed to work under the direction of a school  
435 principal to assist the school counselor or counselors in the  
436 performance of administrative duties, to perform data entry  
437 tasks on the West Virginia Education Information System,  
438 and to perform other administrative duties assigned by the  
439 principal.

440 (j) Notwithstanding any provision in this code to the  
441 contrary, and in addition to the compensation provided for  
442 service personnel in section eight-a of this article, each  
443 service person is, entitled to all service personnel employee  
444 rights, privileges and benefits provided under this or any  
445 other chapter of this code without regard to the employee's  
446 hours of employment or the methods or sources of  
447 compensation.

448 (k) A service person whose years of employment exceeds  
449 the number of years shown and provided for under the state  
450 minimum pay scale set forth in section eight-a of this article  
451 may not be paid less than the amount shown for the  
452 maximum years of employment shown and provided for in  
453 the classification in which he or she is employed.

454 (l) Each county board shall review each service person's  
455 job classification annually and shall reclassify all service  
456 persons as required by the job classifications. The state



457 superintendent may withhold state funds appropriated  
458 pursuant to this article for salaries for service personnel who  
459 are improperly classified by the county boards. Further, the  
460 state superintendent shall order a county board to correct  
461 immediately any improper classification matter and, with the  
462 assistance of the attorney general, shall take any legal action  
463 necessary against any county board to enforce the order.

464 (m) Without his or her written consent, a service person  
465 may not be:

466 (1) Reclassified by class title; or

467 (2) Relegated to any condition of employment which  
468 would result in a reduction of his or her salary, rate of pay,  
469 compensation or benefits earned during the current fiscal  
470 year; or for which he or she would qualify by continuing in  
471 the same job position and classification held during that fiscal  
472 year and subsequent years.

473 (n) Any county board failing to comply with the  
474 provisions of this article may be compelled to do so by  
475 mandamus and is liable to any party prevailing against the  
476 board for court costs and the prevailing party's reasonable  
477 attorney fee, as determined and established by the court.

478 (o) Notwithstanding any provision of this code to the  
479 contrary, a service person who holds a continuing contract in  
480 a specific job classification and who is physically unable to  
481 perform the job's duties as confirmed by a physician chosen  
482 by the employee, shall be given priority status over any  
483 employee not holding a continuing contract in filling other  
484 service personnel job vacancies if the service person is  
485 qualified as provided in section eight-e of this article.

486 (p) Any person employed in an aide position on the  
487 effective date of this section may not be transferred or subject  
488 to a reduction in force for the purpose of creating a vacancy  
489 for the employment of a licensed practical nurse.

490 (q) Without the written consent of the service person, a  
491 county board may not establish the beginning work station  
492 for a bus operator or transportation aide at any site other than  
493 a county board-owned facility with available parking. The  
494 workday of the bus operator or transportation aide  
495 commences at the bus at the designated beginning work  
496 station and ends when the employee is able to leave the bus  
497 at the designated beginning work station, unless he or she  
498 agrees otherwise in writing. The application or acceptance of  
499 a posted position may not be construed as the written consent  
500 referred to in this subsection.

**§18A-4-8b. Seniority rights for school service personnel.**

1 (a) A county board shall make decisions affecting  
2 promotions and the filling of any service personnel positions  
3 of employment or jobs occurring throughout the school year  
4 that are to be performed by service personnel as provided in  
5 section eight of this article, on the basis of seniority,  
6 qualifications and evaluation of past service.

7 (b) Qualifications means that the applicant holds a  
8 classification title in his or her category of employment as  
9 provided in this section and shall be given first opportunity  
10 for promotion and filling vacancies. Other employees then  
11 shall be considered and shall qualify by meeting the  
12 definition of the job title as defined in section eight of this  
13 article, that relates to the promotion or vacancy. If requested  
14 by the employee, the county board shall show valid cause  
15 why a service person with the most seniority is not promoted

16 or employed in the position for which he or she applies.  
17 Applicants shall be considered in the following order:

18 (1) Regularly employed service personnel;

19 (2) Service personnel whose employment has been  
20 discontinued in accordance with this section;

21 (3) Professional personnel who held temporary service  
22 personnel jobs or positions prior to the ninth day of June, one  
23 thousand nine hundred eighty-two, and who apply only for  
24 these temporary jobs or positions;

25 (4) Substitute service personnel; and

26 (5) New service personnel.

27 (c) The county board may not prohibit a service person  
28 from retaining or continuing his or her employment in any  
29 positions or jobs held prior to the effective date of this  
30 section and thereafter.

31 (d) A promotion is defined as any change in employment  
32 that the service person considers to improve his or her  
33 working circumstance within the classification category of  
34 employment.

35 (1) A promotion includes a transfer to another  
36 classification category or place of employment if the position  
37 is not filled by an employee who holds a title within that  
38 classification category of employment.

39 (2) Each class title listed in section eight of this article is  
40 considered a separate classification category of employment  
41 for service personnel, except for those class titles having

42 Roman numeral designations, which shall be considered a  
43 single classification of employment:

44 (A) The cafeteria manager class title is included in the  
45 same classification category as cooks;

46 (B) The executive secretary class title is included in the  
47 same classification category as secretaries;

48 (C) Paraprofessional, autism mentor and braille or sign  
49 language specialist class titles are included in the same  
50 classification category as aides; and

51 (D) The mechanic assistant and chief mechanic class  
52 titles are included in the same classification category as  
53 mechanics.

54 (e) For purposes of determining seniority under this  
55 section an service person's seniority begins on the date that  
56 he or she enters into the assigned duties.

57 (f) *Extra-duty assignments.*

58 (1) For the purpose of this section, "extra-duty  
59 assignments" are defined as irregular jobs that occur  
60 periodically or occasionally such as, but not limited to, field  
61 trips, athletic events, proms, banquets and band festival trips.

62 (2) Notwithstanding any other provisions of this chapter  
63 to the contrary, decisions affecting service personnel with  
64 respect to extra-duty assignments shall be made in the  
65 following manner:

66 (A) A service person with the greatest length of service  
67 time in a particular category of employment shall be given  
68 priority in accepting extra duty assignments, followed by

69 other fellow employees on a rotating basis according to the  
70 length of their service time until all such employees have had  
71 an opportunity to perform similar assignments. The cycle  
72 then shall be repeated.

73 (B) An alternative procedure for making extra-duty  
74 assignments within a particular classification category of  
75 employment may be used if the alternative procedure is  
76 approved both by the county board and by an affirmative vote  
77 of two thirds of the employees within that classification  
78 category of employment.

79 (g) County boards shall post and date notices of all job  
80 vacancies of established existing or newly created positions  
81 in conspicuous places for all school service personnel to  
82 observe for at least five working days.

83 (1) Posting locations shall include any website  
84 maintained by or available for the use of the county board.

85 (2) Notice of a job vacancy shall include the job  
86 description, the period of employment, the amount of pay and  
87 any benefits and other information that is helpful to  
88 prospective applicants to understand the particulars of the  
89 job. Job postings for vacancies made pursuant to this section  
90 shall be written so as to ensure that the largest possible pool  
91 of qualified applicants may apply. Job postings may not  
92 require criteria which are not necessary for the successful  
93 performance of the job and may not be written with the intent  
94 to favor a specific applicant.

95 (3) After the five-day minimum posting period, all  
96 vacancies shall be filled within twenty working days from the  
97 posting date notice of any job vacancies of established  
98 existing or newly created positions.

99           (4) The county board shall notify any person who has  
100 applied for a job posted pursuant to this section of the status  
101 of his or her application as soon as possible after the county  
102 board makes a hiring decision regarding the posted position.

103           (h) All decisions by county boards concerning reduction  
104 in work force of service personnel shall be made on the basis  
105 of seniority, as provided in this section.

106           (i) The seniority of any service person shall be  
107 determined on the basis of the length of time the employee  
108 has been employed by the county board within a particular  
109 job classification. For the purpose of establishing seniority  
110 for a preferred recall list as provided in this section, when a  
111 service person has been employed in one or more  
112 classifications, the seniority accrued in each previous  
113 classification is retained by the employee.

114           (j) If a county board is required to reduce the number of  
115 service personnel within a particular job classification, the  
116 following conditions apply:

117           (1) The employee with the least amount of seniority  
118 within that classification or grades of classification shall be  
119 properly released and employed in a different grade of that  
120 classification if there is a job vacancy;

121           (2) If there is no job vacancy for employment within that  
122 classification or grades of classification, the service person  
123 shall be employed in any other job classification which he or  
124 she previously held with the county board if there is a  
125 vacancy and shall retain any seniority accrued in the job  
126 classification or grade of classification.

127           (k) Prior to the first day of August after a reduction in  
128 force or transfer is approved:

129 (1) If the county board in its sole and exclusive judgment  
130 determines that the reason for any particular reduction in  
131 force or transfer no longer exists, the board shall rescind the  
132 reduction in force or transfer and notify the affected  
133 employee in writing of the right to be restored to his or her  
134 former position of employment.

135 (2) Within five days of being notified, the affected  
136 employee shall notify the county board of his or her intent to  
137 return to the former position of employment or the right of  
138 restoration to the former position terminates.

139 (3) The county board shall not rescind the reduction in  
140 force of an employee until all service personnel with more  
141 seniority in the classification category on the preferred recall  
142 list have been offered the opportunity for recall to regular  
143 employment as provided in this section.

144 (4) If there are insufficient vacant positions to permit  
145 reemployment of all more senior employees on the preferred  
146 recall list within the classification category of the service  
147 person who was subject to reduction in force, the position of  
148 the released service person shall be posted and filled in  
149 accordance with this section.

150 (l) If two or more service persons accumulate identical  
151 seniority, the priority shall be determined by a random  
152 selection system established by the employees and approved  
153 by the county board.

154 (m) All service personnel whose seniority with the county  
155 board is insufficient to allow their retention by the county  
156 board during a reduction in work force shall be placed upon  
157 a preferred recall list and shall be recalled to employment by  
158 the county board on the basis of seniority.

159 (n) A service person placed upon the preferred list shall  
160 be recalled to any position openings by the county board  
161 within the classification(s) where he or she had previously  
162 been employed, or to any lateral position for which the  
163 service person is qualified or to a lateral area for which a  
164 service person has certification and/or licensure.

165 (o) A service person on the preferred recall list shall not  
166 forfeit the right to recall by the county board if compelling  
167 reasons require him or her to refuse an offer of reemployment  
168 by the county board.

169 (p) The county board shall notify all service personnel on  
170 the preferred recall list of all position openings that exist  
171 from time to time. The notice shall be sent by certified mail  
172 to the last known address of the service person. Each service  
173 person shall notify the county board of any change of  
174 address.

175 (q) No position openings may be filled by the county  
176 board, whether temporary or permanent, until all service  
177 personnel on the preferred recall list have been properly  
178 notified of existing vacancies and have been given an  
179 opportunity to accept reemployment.

180 (r) A service person released from employment for lack  
181 of need as provided in sections six and eight-a, article two of  
182 this chapter shall be accorded preferred recall status on the  
183 first day of July of the succeeding school year if the he or she  
184 has not been reemployed as a regular employee.

185 (s) A county board failing to comply with the provisions  
186 of this article may be compelled to do so by mandamus and  
187 is liable to any party prevailing against the board for court  
188 costs and the prevailing party's reasonable attorney fee, as  
189 determined and established by the court.



190 (1) A service person denied promotion or employment in  
191 violation of this section shall be awarded the job, pay and any  
192 applicable benefits retroactively to the date of the violation  
193 and shall be paid entirely from local funds.

194 (2) The county board is liable to any party prevailing  
195 against the board for any court reporter costs including copies  
196 of transcripts.

**§18A-4-8f. Seniority rights, school consolidation.**

1 (a) Notwithstanding any provision of this article to the  
2 contrary, when a majority of the classroom teachers or school  
3 service personnel, who vote to do so, in accordance with  
4 procedures established in this section, and who are employed  
5 by a county board, the board shall give priority to classroom  
6 teachers or school service personnel in any school or schools  
7 to be closed as a result of a consolidation or merger when  
8 filling positions in the new school created by consolidation or  
9 newly created positions in existing schools as a result of the  
10 merger.

11 (b) Each year a consolidation or merger is proposed, prior  
12 to the implementation of that plan, the superintendent shall  
13 cause to be prepared and distributed to all faculty senates and  
14 to all schools or other work sites a ballot on which teachers  
15 and service personnel may indicate whether or not they desire  
16 those affected by school closings to be given priority status  
17 in filling new positions. A secret ballot election shall be  
18 conducted:

19 (1) In each faculty senate for classroom teachers. The  
20 faculty senate chair shall convey the results of the election to  
21 the superintendent; and

22       (2) At each school or work site for school service  
23 personnel. The service personnel supervisor at each school  
24 or work site shall convey the results of the election to the  
25 superintendent.

26       (c) The superintendent shall tabulate and post all results  
27 prior to the notice requirements for reduction in force and  
28 transfer as outlined in sections two and seven, article two of  
29 this chapter. The total number of votes shall be tabulated  
30 separately for classroom teachers and for service personnel.  
31 The provisions of this section also shall be implemented  
32 separately as follows:

33       (1) For classroom teachers only if a majority of the total  
34 number of teachers who cast a ballot vote to do so; and

35       (2) For school service personnel only if a majority of the  
36 total number of service personnel who cast a ballot vote to do  
37 so.

38       (d) If a majority approves, the teachers or school service  
39 personnel in the school or schools to be closed have priority  
40 in filling new positions in the new or merged schools for  
41 which the teachers are certified or for which the school  
42 service personnel are qualified and meet the standards set  
43 forth in the job posting on the basis of seniority within the  
44 county. A teacher or school service person may receive  
45 priority for filling a position at a school affected by a merger  
46 or consolidation only for the position being created by the  
47 influx of students from a consolidated or merged school into  
48 the school receiving students from their closed school or  
49 grade level.

50       (1) The most senior teacher from the closed school or  
51 schools shall be placed first, the second most senior shall be  
52 placed next and so on until all the newly created positions are

53 filled, or until all the teachers in the closed school or schools  
54 who wish to transfer into the newly created positions are  
55 placed.

56 (2) The most senior service person from the closed school  
57 or schools has priority in filling any position within his or her  
58 classification category. The second most senior service  
59 person from the closed school or schools then has priority in  
60 filling remaining vacancies and so on until all available  
61 positions are filled.

62 (3) If there are fewer new positions in the newly created  
63 school or merged school than there are classroom teachers or  
64 school service personnel from the school or schools to be  
65 closed, the teachers or school service personnel who were not  
66 placed in the new positions retain the same rights as all other  
67 teachers or service personnel with regard to seniority, transfer  
68 and reduction in force.

69 (4) This section does not grant any employee additional  
70 rights or protections with regard to reduction in force.

71 (e) For the purposes of this section only:

72 (1) A consolidation means that one or more schools are  
73 closed, or one or more grade levels are removed from one or  
74 more schools, and the students who previously attended the  
75 closed schools or grade levels are assigned to a new school.

76 (2) A merger means that one or more schools are closed  
77 or one or more grade levels are removed from one or more  
78 schools and the students who previously attended the closed  
79 schools or grade levels are assigned to another existing  
80 school.

81 (f) The provisions of this section do not apply to  
82 positions that are filled by a county board prior to the  
83 effective date of this section, as reenacted during the regular  
84 session of the Legislature, two thousand seven.

**§18A-4-8g. Determination of seniority for service personnel.**

1 (a) Seniority accumulation for a regular school service  
2 person:

3 (1) Begins on the date the employee enters upon regular  
4 employment duties pursuant to a contract as provided in  
5 section five, article two of this chapter;

6 (2) Continues until the service person's employment as  
7 a regular employee is severed with the county board; and

8 (3) Does not cease to accumulate when the county board  
9 has authorized an absence whether without pay or due to  
10 illness or other reason over which the employee has no  
11 control.

12 (b) Seniority accumulation for a substitute service person:

13 (1) Begins on the date the employee enters upon the  
14 duties of a substitute as provided in section fifteen of this  
15 article, after executing with the county board a contract of  
16 employment as provided in section five, article two of this  
17 chapter; and

18 (2) Continues until the employee enters into the duties of  
19 a regular employment contract as provided in section five,  
20 article two of this chapter; or employment as a substitute  
21 service person with the county board is severed.

22 (c) Seniority of a regular or substitute service person does  
23 not continue to accumulate under the following conditions:

24 (1) When a service person is willfully absent from  
25 employment duties because of a concerted work stoppage or  
26 strike; or

27 (2) When a service person is suspended without pay.

28 (d) For all purposes including the filling of vacancies and  
29 reduction in force, seniority shall be accumulated within  
30 particular classification categories of employment as those  
31 classification categories are referred to in section eight-e of  
32 this article.

33 (e) When implementing a reduction in force, the service  
34 person with the least seniority within a particular  
35 classification category shall be properly released and placed  
36 on the preferred recall list. The particular classification title  
37 held by a service person within the classification category  
38 may not be considered when implementing a reduction in  
39 force.

40 (f) On or before the first day of September and the  
41 fifteenth day of January of each school year, county boards  
42 shall post at each county school or working station the  
43 current seniority list or lists of each service personnel  
44 classification. Each list shall contain the name of each  
45 regularly employed school service person employed in each  
46 classification and the date that each employee began  
47 performing his or her assigned duties in each classification.  
48 Current seniority lists of substitute school service personnel  
49 shall be available to employees upon request at the county  
50 board office.

51 (g) The seniority of a service person who transfers out of  
52 a class title or classification category of employment and  
53 subsequently returns to that class title or classification  
54 category of employment is calculated as follows:

55 (1) The county board shall establish the number of  
56 calendar days between the date the service person left the  
57 class title or category of employment in question and the date  
58 of return to the class title or classification category of  
59 employment.

60 (2) This number of days shall be added to the service  
61 person's initial seniority date to establish a new beginning  
62 seniority date within the class title or classification category.

63 (3) The service person then shall be considered as having  
64 held uninterrupted service within the class title or classification  
65 category from the newly established seniority date.

66 The seniority of an employee who has had a break in the  
67 accumulation of seniority as a result of being willfully absent  
68 from employment duties because of a concerted work  
69 stoppage or strike shall be calculated in the same manner.

70 (h) Beginning on the first day of July, two thousand  
71 seven, a substitute school service person shall acquire regular  
72 employment status, but not regular employee job bidding  
73 rights or regular seniority, if the employee receives a position  
74 pursuant to the leave of absence or suspension provisions of  
75 subdivisions (2) and (5), subsection (a), section fifteen of this  
76 article.

77 (1) A substitute service person shall accumulate  
78 substitute employee seniority while holding a position  
79 acquired pursuant to subsections (2) and (5).

80 (2) Upon termination of the regular service person's leave  
81 of absence or suspension, the substitute service person shall  
82 return to the status previously held.

83 (3) County boards are not prohibited from providing any  
84 benefits of regular employment for substitute service  
85 personnel, but the benefits may not include regular service  
86 personnel employee status or seniority.

87 (i) If two or more service personnel accumulate identical  
88 seniority, the priority shall be determined by a random  
89 selection system established by the service personnel and  
90 approved by the county board.

91 (1) A board shall conduct the random selection within  
92 thirty days of the time the service personnel establish an  
93 identical seniority date. All service personnel with an  
94 identical seniority date within the same class title or  
95 classification category shall participate in the random  
96 selection.

97 (2) As long as the affected employees hold identical  
98 seniority within the same classification category, the initial  
99 random selection conducted by the board shall be permanent  
100 for the duration of the employment within the same  
101 classification category of the employees by the board. This  
102 random selection priority applies to the filling of vacancies  
103 and to the reduction in force of school service personnel.

104 (3) If any other service person subsequently acquires  
105 seniority identical to the employees involved in the original  
106 random selection, a second random selection shall be held  
107 within thirty days to determine the seniority ranking of the  
108 new employee within the group.

109 (A) The priority between the employees who participated  
110 in the original random selection remains the same.

111 (B) The second random selection is performed by placing  
112 numbered pieces of paper equal to the number of employees  
113 with identical seniority in a container. Any service person  
114 who was not involved in the original random selection shall  
115 draw a number from the container which will determine his  
116 or her seniority within the group as a whole.

117 (C) This process will be repeated if any additional service  
118 person subsequently acquires identical seniority.

119 (D) The same process shall be used if any additional  
120 service person is subsequently discovered to have the same  
121 seniority as the original group of employees but who did not  
122 participate in the original random selection due to oversight  
123 or mistake.

124 (j) Service personnel who are employed in a classification  
125 category of employment at the time when a vacancy is posted  
126 in the same classification category of employment shall be  
127 given first opportunity to fill the vacancy.

128 (k) Seniority acquired as a substitute service person and  
129 as a regular service person shall be calculated separately and  
130 may not be combined for any purpose. Seniority acquired  
131 within different classification categories shall be calculated  
132 separately. If a school service employee applies for a  
133 position outside of the classification category he or she  
134 currently holds, and if the vacancy is not filled by an  
135 applicant within the classification category of the vacancy,  
136 the applicant shall combine all regular employment seniority  
137 acquired for the purpose of bidding on the position.



138 (l) A school service person who holds a  
139 multiclassification title accrues seniority in each  
140 classification category of employment that the employee  
141 holds and is considered an employee of each classification  
142 category contained within his or her multiclassification title.  
143 A multiclassified service person is subject to reduction in  
144 force in any category of employment contained within his or  
145 her multiclassification title, based upon the seniority  
146 accumulated within that category of employment. If a  
147 multiclassified service person is subject to a reduction in  
148 force in one classification category, the service person retains  
149 employment in any of the other classification categories that  
150 he or she holds within his or her multiclassification title. In  
151 that case, the county board shall delete the appropriate  
152 classification title or classification category from the contract  
153 of the multiclassified employee.

154 (m) When applying to fill a vacancy outside the  
155 classification categories held by a multiclassified service  
156 person, seniority acquired simultaneously in different  
157 classification categories is calculated as if accrued in one  
158 classification category only.

159 (n) The seniority conferred in this section applies  
160 retroactively to all affected school service personnel, but the  
161 rights incidental to the seniority commence as of the effective  
162 date of this section.

**§18A-4-10. Personal leave for illness and other causes; leave banks; substitutes.**

1 (a) *Personal Leave.*

2 (1) At the beginning of the employment term, any full-  
3 time employee of a county board is entitled annually to at  
4 least one and one-half days personal leave for each

5 employment month or major fraction thereof in the  
6 employee's employment term. Unused leave shall be  
7 accumulative without limitation and is transferable within the  
8 state. A change in job assignment during the school year  
9 does not affect the employee's rights or benefits.

10 (2) A regular full-time employee who is absent from  
11 assigned duties due to accident, sickness, death in the  
12 immediate family, or life threatening illness of the  
13 employee's spouse, parents or child, or other cause authorized  
14 or approved by the board, shall be paid the full salary from  
15 his or her regular budgeted salary appropriation during the  
16 period which the employee is absent, but not to exceed the  
17 total amount of leave to which the employee is entitled.

18 (3) Each employee is permitted to use three days of leave  
19 annually without regard to the cause for the absence. Personal  
20 leave without cause may not be used on consecutive work  
21 days unless authorized or approved by the employee's  
22 principal or immediate supervisor, as appropriate. The  
23 employee shall give notice of leave without cause to the  
24 principal or immediate supervisor at least twenty-four hours  
25 in advance, except that in the case of sudden and unexpected  
26 circumstances, notice shall be given as soon as reasonably  
27 practicable. The principal or immediate supervisor may deny  
28 use of the day if, at the time notice is given, either fifteen  
29 percent of the employees or three employees, whichever is  
30 greater, under the supervision of the principal or immediate  
31 supervisor, have previously given notice of their intention to  
32 use that day for leave. Personal leave may not be used in  
33 connection with a concerted work stoppage or strike. Where  
34 the cause for leave originated prior to the beginning of the  
35 employment term, the employee shall be paid for time lost  
36 after the start of the employment term. If an employee uses  
37 personal leave which the employee has not yet accumulated  
38 on a monthly basis and subsequently leaves the employment,

39 the employee is required to reimburse the board for the salary  
40 or wages paid for the unaccumulated leave.

41 (4) The State Board shall maintain a rule to restrict the  
42 payment of personal leave benefits and the charging of  
43 personal leave time used to an employee receiving a workers'  
44 compensation benefit from a claim filed against and billed to  
45 the county board by which the person is employed. If an  
46 employee is awarded this benefit, the employee shall receive  
47 personal leave compensation only to the extent the  
48 compensation is required, when added to the workers'  
49 compensation benefit, to equal the amount of compensation  
50 regularly paid the employee. If personal leave compensation  
51 equal to the employee's regular pay is paid prior to the award  
52 of the workers' compensation benefit, the amount which,  
53 when added to the benefit, is in excess of the employee's  
54 regular pay shall be deducted from the employee's  
55 subsequent pay. The employee's accrued personal leave days  
56 shall be charged only for such days as equal the amount of  
57 personal leave compensation required to compensate the  
58 employee at the employee's regular rate of pay.

59 (5) The county board may establish reasonable rules for  
60 reporting and verification of absences for cause. If any error  
61 in reporting absences occurs, the county board may make  
62 necessary salary adjustments:

63 (A) In the next pay after the employee has returned to  
64 duty; or

65 (B) In the final pay if the absence occurs during the last  
66 month of the employment term.

67 (b) *Leave Banks.*

68 (1) Each county board shall establish a personal leave  
69 bank that is available to all school personnel. The board may  
70 establish joint or separate banks for professional personnel  
71 and school service personnel. Each employee may contribute  
72 up to two days of personal leave per school year. An  
73 employee may not be coerced or compelled to contribute to  
74 a personal leave bank.

75 (2) The personal leave bank shall be established and  
76 operated pursuant to a rule adopted by the county board. The  
77 rule:

78 (A) May limit the maximum number of days used by an  
79 employee;

80 (B) Shall limit the use of leave bank days to an active  
81 employee with fewer than five days accumulated personal  
82 leave who is absent from work due to accident or illness of  
83 the employee; and

84 (C) Shall prohibit the use of days to:

85 (i) Qualify for or add to service for any retirement system  
86 administered by the state; or

87 (ii) Extend insurance coverage pursuant to section  
88 thirteen, article sixteen, chapter five of this code.

89 (D) Shall require that each personal leave day  
90 contributed:

91 (i) Is deducted from the number of personal leave days to  
92 which the donor employee is entitled by this section;

93 (ii) Is not deducted from the personal leave days without  
94 cause to which a donor employee is entitled if sufficient

95 general personal leave days are otherwise available to the  
96 donor employee;

97 (iii) Is credited to the receiving employee as one full  
98 personal leave day;

99 (iv) May not be credited for more or less than a full day  
100 by calculating the value of the leave according to the hourly  
101 wage of each employee; and

102 (v) May be used only for an absence due to the purpose  
103 for which the leave was transferred. Any transferred days  
104 remaining when the catastrophic medical emergency ends  
105 revert back to the leave bank.

106 (3) The administration, subject to county board approval,  
107 may use its discretion as to the need for a substitute where  
108 limited absence may prevail, when an allowable absence does  
109 not:

110 (i) Directly affect the instruction of the students; or

111 (ii) Require a substitute employee because of the nature  
112 of the work and the duration of the cause for the absence.

113 (4) If funds in any fiscal year, including transfers, are  
114 insufficient to pay the full cost of substitutes for meeting the  
115 provisions of this section, the remainder shall be paid on or  
116 before the thirty-first day of August from the budget of the  
117 next fiscal year.

118 (5) A county board may supplement the leave provisions  
119 in any manner it considers advisable in accordance with  
120 applicable rules of the State Board and the provisions of this  
121 chapter and chapter eighteen of this code.

**§18A-4-10f. Leave donation program.**1 (a) *Definitions.*

2 For the purposes of this section and section ten of this  
3 article, the following words have the meanings specified  
4 unless the context clearly indicates a different meaning:

5 (1) "Catastrophic medical emergency" means a medical  
6 or physical condition that:

7 (A) Incapacitates an employee or an immediate family  
8 member for whom the employee will provide care;

9 (B) Is likely to require the prolonged absence of the  
10 employee from duty; and

11 (C) Will result in a substantial loss of income to the  
12 employee because the employee:

13 (i) Has exhausted all accrued personal leave; and

14 (ii) Is not eligible to receive personal leave or has  
15 exhausted personal leave available from a leave bank  
16 established pursuant to this article;

17 (2) "Employee" means a professional educator or school  
18 service person who is employed by a county board and  
19 entitled to accrue personal leave as a benefit of employment;

20 (3) "Donor employee" means a professional educator or  
21 school service person employed by a county board who  
22 voluntarily contributes personal leave to another designated  
23 employee; and

24 (4) "Receiving employee" means a professional educator  
25 or school service person employed by a county board who  
26 receives donated personal leave from another employee.

27 (b) *Leave donation program.*

28 (1) In addition to any personal leave bank established  
29 pursuant to this article, a county board shall establish a leave  
30 donation program pursuant to which a donor employee may  
31 transfer accrued personal leave to the personal leave account  
32 of another designated employee.

33 (2) A county board:

34 (A) May not limit the number of personal leave days a  
35 donor employee may transfer to a receiving employee who is  
36 his or her spouse;

37 (B) May not limit the total number of personal leave days  
38 a receiving employee receives; and

39 (C) May limit the number of days a donor employee  
40 transfers to a receiving employee who is not his or her  
41 spouse.

42 (c) *Rule.*

43 (1) The county board shall adopt a rule to implement the  
44 program.

45 (2) The rule shall set forth at least the following  
46 conditions:

47 (A) The donor employee voluntarily agrees to the leave  
48 transfer;

49 (B) The donor employee selects the employee designated  
50 to receive the personal leave transferred; and

51 (C) The receiving employee requires additional personal  
52 leave because of a catastrophic medical emergency;

53 (D) The donated leave may not be used to:

54 (i) Qualify for or add to service for any retirement system  
55 administered by the state; or

56 (ii) Extend insurance coverage pursuant to section  
57 thirteen, article sixteen, chapter five of this code;

58 (E) Each personal leave day contributed:

59 (i) Shall be deducted from the number of personal leave  
60 days to which the donor employee is entitled by section ten  
61 of this article;

62 (ii) Shall not be deducted from the number of personal  
63 leave days without cause to which the donor employee is  
64 entitled if sufficient general personal leave days are otherwise  
65 available to the donor employee;

66 (iii) Shall be credited to the receiving employee as one  
67 full personal leave day;

68 (iv) May not be credited for more or less than a full day  
69 by calculating the value of the leave according to the hourly  
70 wage of each employee; and

71 (v) May be used only for an absence due to the purpose  
72 for which the leave was transferred. Any transferred days  
73 remaining when the catastrophic medical emergency ends  
74 revert back to the donor employee; and



75 (F) An employee may not be coerced or compelled to  
76 contribute to a leave donation program.

**§18A-4-15. Employment of service personnel substitutes.**

1 (a) The county board shall employ and the county  
2 superintendent, subject to the approval of the county board,  
3 shall assign substitute service personnel on the basis of  
4 seniority to perform any of the following duties:

5 (1) To fill the temporary absence of another service  
6 employee;

7 (2) To fill the position of a regular service person as  
8 follows:

9 (A) If the regular service person requests a leave of  
10 absence from the county board in writing and is granted the  
11 leave in writing by the county board; or

12 (B) If the regular service person is on workers'  
13 compensation and absent.

14 (C) If an absence pursuant to paragraph (A) or (B) of this  
15 subdivision is to extend beyond thirty working days, the  
16 county board shall post the position of the absent employee  
17 under the procedures set forth in section eight-b of this  
18 article. If a substitute service person is employed to fill the  
19 position of the absent employee and is employed in the  
20 position for twenty or more working days, the substitute  
21 service person:

22 (i) Acquires regular employment status with the  
23 exception of regular employee job bidding rights;

24 (ii) Does not accrue regular seniority; and

25 (iii) Is accorded all other rights, privileges and benefits  
26 pertaining to the position until the regular employee returns  
27 to the position or ceases to be employed by the county board;

28 (D) If a regular or substitute employee fills a vacancy that  
29 is related in any manner to a leave of absence or the absence  
30 of an employee on workers' compensation as provided in this  
31 section, upon termination of the absence the employee shall  
32 be returned to his or her original position or status;

33 (E) A service person may not be:

34 (i) Required to request or to take a leave of absence; or

35 (ii) Deprived of any right or privilege of regular  
36 employment status for refusal to request or failure to take a  
37 leave of absence;

38 (3) To perform the service of a service person who is  
39 authorized to be absent from duties without loss of pay;

40 (4) To temporarily fill a vacancy in a permanent position  
41 caused by severance of employment by the resignation,  
42 transfer, retirement, permanent disability, dismissal pursuant  
43 to section eight, article two of this chapter, or death of the  
44 regular service person who had been assigned to the position.  
45 Within twenty working days from the commencement of the  
46 vacancy, the county board shall fill the vacancy under the  
47 procedures set forth in section eight-b of this article and  
48 section five, article two of this chapter. The person hired to  
49 fill the vacancy shall have and be accorded all rights,  
50 privileges and benefits pertaining to the position;

51 (5) To fill the vacancy created by a regular employee's  
52 suspension.

53 (A) If the suspension is for more than thirty working  
54 days, the county board shall post the position of the  
55 suspended employee under the procedures set forth in section  
56 eight-b of this article.

57 (B) If a substitute service person is employed to fill the  
58 suspended employee's position, the substitute service person:

59 (i) Acquires regular employment status with the  
60 exception of regular employee job-bidding rights;

61 (ii) Does not accrue regular seniority; and

62 (iii) Is accorded all other rights, privileges and benefits  
63 pertaining to the position until the termination by the county  
64 board becomes final or the suspended employee is returned  
65 to employment.

66 (C) If the suspended employee is not returned to his or  
67 her job, the county board shall fill the vacancy under the  
68 procedures set forth in section eight-b of this article and  
69 section five, article two of this chapter; and

70 (6) To fill temporarily a vacancy in a newly created  
71 position prior to employing a service person on a regular  
72 basis pursuant to section eight-b of this article.

73 (b) Service personnel substitutes shall be assigned in the  
74 following manner:

75 (1) The substitute with the greatest length of service time  
76 in the vacant category of employment has priority in  
77 accepting the assignment throughout the period of the regular  
78 service person's absence or until the vacancy is filled on a  
79 regular basis pursuant to section eight-b of this article.  
80 Length of service time is calculated from the date a substitute

81 service person begins assigned duties as a substitute in a  
82 particular category of employment.

83 (2) All service personnel substitutes are employed on a  
84 rotating basis according to their lengths of service time until  
85 each substitute has had an opportunity to perform similar  
86 assignments.

87 (3) Any regular service person employed in the same  
88 building or working station and the same classification  
89 category of employment as the absent employee shall be  
90 given the first opportunity to fill the position of the absent  
91 employee on a rotating and seniority basis. In such case the  
92 regular service person's position is filled by a substitute  
93 service person. A regular service person assigned to fill the  
94 position of an absent employee has the opportunity to hold  
95 that position throughout the absence. For the purpose of this  
96 section only, all regularly employed school bus operators are  
97 considered to be employed within the same building or  
98 working station.

99 (c) The county board shall return a regular school service  
100 person to the same position held prior to any approved leave  
101 of absence or period of recovery from injury or illness. The  
102 school service person:

103 (1) Retains all rights, privileges and benefits which had  
104 accrued at the time of the absence or accrued under any other  
105 provision of law during the absence; and

106 (2) Has all rights, privileges and benefits generally  
107 accorded school service personnel at the time of return to  
108 work.

109 (d) The salary of a substitute service person is  
110 determined:

111 (1) Based upon his or her years of employment as defined  
112 in section eight of this article;

113 (2) As provided in the state minimum pay scale set forth  
114 in section eight-a of this article; and

115 (3) In accordance with the salary schedule of persons  
116 regularly employed in the same position in the county in  
117 which he or she is employed.

118 (e) A substitute service person shall execute a written  
119 contract with the county board pursuant to section five,  
120 article two of this chapter, prior to beginning assigned duties.

121 (f) The following method shall be used to establish a fair,  
122 equitable and uniform system for assigning service personnel  
123 substitutes to their duties for the first time:

124 (1) The initial order of assigning newly-employed  
125 substitutes is determined by a random selection system  
126 established by the affected substitute employees and  
127 approved by the county board; and

128 (2) The initial order is effective only until the substitute  
129 service personnel have begun their duties for the first time.

130 (g) A substitute service person who has worked thirty  
131 days for a school system has all rights pertaining to  
132 suspension, dismissal and contract renewal as are granted to  
133 regular service personnel in sections six, seven, eight and  
134 eight-a, article two of this chapter.

**ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.****§18A-5-8. Authority of certain aides to exercise control over students; compensation; transfers.**

1 (a) Within the limitations provided in this section, any  
2 aide who agrees to do so shall stand in the place of the parent  
3 or guardian and shall exercise such authority and control over  
4 students as is required of a teacher as provided in section one  
5 of this article. The principal shall designate aides in the  
6 school who agree to exercise that authority on the basis of  
7 seniority as an aide and shall enumerate the instances in  
8 which the authority shall be exercised by an aide when  
9 requested by the principal, assistant principal or professional  
10 employee to whom the aide is assigned.

11 (b) The authority provided for in subsection (a) of this  
12 section may not extend to suspending or expelling any  
13 student, participating in the administration of corporal  
14 punishment or performing instructional duties as a teacher or  
15 substitute teacher. However, the authority extends to  
16 supervising students undergoing in-school suspension if the  
17 instructional duties required by the supervision are limited  
18 solely to handing out class work and collecting class work.  
19 The authority to supervise students undergoing in-school  
20 suspension may not include actual instruction.

21 (c) An aide designated by the principal under subsection  
22 (a) of this section shall receive a salary not less than one pay  
23 grade above the highest pay grade held by the service person  
24 under section eight-a, article four of this chapter and any  
25 county salary schedule in excess of the minimum  
26 requirements of this article.

27 (d) An aide may not be required by the operation of this  
28 section to perform noninstructional duties for an amount of

29 time which exceeds that required under the aide's contract of  
30 employment or that required of other aides in the same school  
31 unless the assignment of the duties is mutually agreed upon  
32 by the aide and the county superintendent, or the  
33 superintendent's designated representative, subject to board  
34 approval.

35 (1) The terms and conditions of the agreement shall be in  
36 writing, signed by both parties, and may include additional  
37 benefits.

38 (2) The agreement shall be uniform as to aides assigned  
39 similar duties for similar amounts of time within the same  
40 school.

41 (3) Aides have the option of agreeing to supervise  
42 students and of renewing related assignments annually. If an  
43 aide elects not to renew the previous agreement to supervise  
44 students, the minimum salary of the aide shall revert to the  
45 pay grade specified in section eight-a, article four of this  
46 chapter for the classification title held by the aide and any  
47 county salary schedule in excess of the minimum  
48 requirements of this article.

49 (e) For the purposes of this section, aide means any aide  
50 class title as defined in section eight, article four of this  
51 chapter regardless of numeric classification.

52 (f) Subject to the limitations set forth in subsection (g) of  
53 this section, an aide may transfer to another position of  
54 employment one time only during any one half of a school  
55 term, unless otherwise mutually agreed upon by the aide and  
56 the county superintendent, or the superintendent's designee,  
57 subject to board approval. During the first year of  
58 employment as an aide, an aide may not transfer to another

59 position of employment during the first one-half school term  
60 of employment unless mutually agreed upon by the aide and  
61 county superintendent, subject to board approval.

62 (g) Autism mentors and aides providing services to  
63 children diagnosed as autistic or with autism spectrum  
64 disorder.

65 (1) Legislative findings and intent.

66 (A) The Legislature finds that it is not in the best interest  
67 of students with autism to have multiple teachers, mentors,  
68 aides or any combination thereof during the instructional  
69 term; and

70 (B) It is the intent of the Legislature that filling positions  
71 for autism mentors and aides who work with autistic students  
72 through transfers of personnel from one position to another  
73 after the fifth day prior to the beginning of the instructional  
74 term be kept to a minimum.

75 (2) Transfer limitations and conditions.

76 (A) After the fifth day prior to the beginning of the  
77 instructional term, no service person employed and assigned  
78 as an autism mentor or aide who works with autistic students  
79 may transfer to another position in the county during that  
80 instructional term unless the service person holding that  
81 position does not have valid certification.



82 (B) The provisions of this subsection are subject to the  
83 following conditions:

84 (i) The aide or autism mentor may apply for any posted,  
85 vacant position with the successful applicant assuming the  
86 position at the beginning of the next instructional term;

87 (ii) The county board, upon recommendation of the  
88 superintendent, may fill a position before the beginning of the  
89 next instructional term when it is determined to be in the best  
90 interest of the students; and

91 (iii) The county superintendent shall notify the State  
92 Board when a service person employed in a position as  
93 autism mentor or aide working with autistic students is  
94 transferred to another position after the fifth day prior to the  
95 beginning of the instructional term;

96 (h) Regular service personnel employed in a category of  
97 employment other than aide who seek employment as an aide  
98 shall hold a high school diploma or shall have received a  
99 general educational development certificate and shall have  
100 the opportunity to receive appropriate training pursuant to  
101 subsection (10), section thirteen, article five, chapter eighteen  
102 of this code and section two, article twenty of said chapter.

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**CHAPTER 87**

**(S.B. 657 - By Senators Plymale, Edgell, Unger,  
Stollings and McCabe)**

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[Passed March 10, 2007; in effect July 1, 2007.]

[Approved by the Governor on April 4, 2007.]

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AN ACT to amend and reenact §18-2E-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §29A-3B-9 and §29A-3B-10 of said code, all relating to public education generally; standards, assessment and accountability for student performance and progress; requiring 21st Century Skills Initiative incorporation into standards; renaming unified improvement plans as strategic improvement plans; revising uniform statewide student assessment program; providing annual performance measures for the No Child Left Behind Act of 2001; providing state annual performance measures; providing additional category of school accreditation and renaming existing category; revising criteria for accreditation status; providing for appeal of on-site findings and report to oversight commission; removing obsolete provisions; and allowing electronic filing of state board rules with the Legislative Oversight Commission on Education Accountability.

*Be it enacted by the Legislature of West Virginia:*

That §18-2E-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §29A-3B-9 and §29A-3B-10 of said code be amended and reenacted, all to read as follows:

Chapter

18. Education.

29A. State Administrative Procedures Act.

**CHAPTER 18. EDUCATION.**

**ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.**

**§18-2E-5. Process for improving education; education standards; statewide assessment program; accountability measures; Office of Education Performance Audits; school accreditation and school system approval; intervention to correct low performance.**

1 (a) *Legislative findings, purpose and intent.* -- The  
2 Legislature makes the following findings with respect to the  
3 process for improving education and its purpose and intent in  
4 the enactment of this section:

5 (1) The process for improving education includes four  
6 primary elements, these being:

7 (A) Standards which set forth the knowledge and skills  
8 that students should know and be able to do as the result of  
9 a thorough and efficient education that prepares them for the  
10 twenty-first century, including measurable criteria to evaluate  
11 student performance and progress;

12 (B) Assessments of student performance and progress  
13 toward meeting the standards;

14 (C) A system for holding schools and school systems  
15 accountable for student performance and progress toward  
16 obtaining the knowledge and skills intrinsic to a high quality

17 education in the twenty-first century which is delivered in an  
18 efficient manner; and

19 (D) A method for building the capacity and improving  
20 the efficiency of schools and school systems to improve  
21 student performance and progress.

22 (2) As the constitutional body charged with the general  
23 supervision of schools as provided by general law, the state  
24 board has the authority and the responsibility to establish the  
25 standards, assess the performance and progress of students  
26 against the standards, hold schools and school systems  
27 accountable and assist schools and school systems to build  
28 capacity and improve efficiency so that the standards are met,  
29 including, when necessary, seeking additional resources in  
30 consultation with the Legislature and the Governor.

31 (3) As the constitutional body charged with providing for  
32 a thorough and efficient system of schools, the Legislature  
33 has the authority and the responsibility to establish and be  
34 engaged constructively in the determination of the knowledge  
35 and skills that students should know and be able to do as the  
36 result of a thorough and efficient education. This  
37 determination is made by using the process for improving  
38 education to determine when school improvement is needed,  
39 by evaluating the results and the efficiency of the system of  
40 schools, by ensuring accountability and by providing for the  
41 necessary capacity and its efficient use.

42 (4) In consideration of these findings, the purpose of this  
43 section is to establish a process for improving education that  
44 includes the four primary elements as set forth in subdivision  
45 (1) of this subsection to provide assurances that the high  
46 quality standards are, at a minimum, being met and that a  
47 thorough and efficient system of schools is being provided

48 for all West Virginia public school students on an equal  
49 education opportunity basis.

50 (5) The intent of the Legislature in enacting this section  
51 and section five-c of this article is to establish a process  
52 through which the Legislature, the Governor and the state  
53 board can work in the spirit of cooperation and collaboration  
54 intended in the process for improving education to consult  
55 and examine the performance and progress of students,  
56 schools and school systems and, when necessary, to consider  
57 alternative measures to ensure that all students continue to  
58 receive the thorough and efficient education to which they are  
59 entitled. However, nothing in this section requires any  
60 specific level of funding by the Legislature.

61 (b) *Electronic county and school strategic improvement*  
62 *plans.* -- The state board shall promulgate a rule consistent  
63 with the provisions of this section and in accordance with  
64 article three-b, chapter twenty-nine-a of this code establishing  
65 an electronic county strategic improvement plan for each  
66 county board and an electronic school strategic improvement  
67 plan for each public school in this state. Each respective plan  
68 shall be a five-year plan that includes the mission and goals  
69 of the school or school system to improve student, school or  
70 school system performance and progress, as applicable. The  
71 strategic plan shall be revised annually in each area in which  
72 the school or system is below the standard on the annual  
73 performance measures. The revised annual plan also shall  
74 identify any deficiency which is reported on the check lists  
75 identified in paragraph (G), subdivision (5), subsection (l) of  
76 this section including any deficit more than a casual deficit  
77 by the county board. The plan shall be revised when required  
78 pursuant to this section to include each annual performance  
79 measure upon which the school or school system fails to meet  
80 the standard for performance and progress, the action to be  
81 taken to meet each measure, a separate time line and a date

82 certain for meeting each measure, a cost estimate and, when  
83 applicable, the assistance to be provided by the department  
84 and other education agencies to improve student, school or  
85 school system performance and progress to meet the annual  
86 performance measure.

87 The department shall make available to all public schools  
88 through its website or the West Virginia Education  
89 Information System an electronic school strategic  
90 improvement plan boilerplate designed for use by all schools  
91 to develop an electronic school strategic improvement plan  
92 which incorporates all required aspects and satisfies all  
93 improvement plan requirements of the No Child Left Behind  
94 Act.

95 (c) *High quality education standards and efficiency*  
96 *standards.* -- In accordance with the provisions of article  
97 three-b, chapter twenty-nine-a of this code, the state board  
98 shall adopt and periodically review and update high quality  
99 education standards for student, school and school system  
100 performance and processes in the following areas:

- 101 (1) Curriculum;
- 102 (2) Workplace readiness skills;
- 103 (3) Finance;
- 104 (4) Transportation;
- 105 (5) Special education;
- 106 (6) Facilities;
- 107 (7) Administrative practices;

108 (8) Training of county board members and  
109 administrators;

110 (9) Personnel qualifications;

111 (10) Professional development and evaluation;

112 (11) Student performance and progress;

113 (12) School and school system performance and progress;

114 (13) A code of conduct for students and employees;

115 (14) Indicators of efficiency; and

116 (15) Any other areas determined by the state board.

117 The standards, as applicable, shall incorporate the state's  
118 21st Century Skills Initiative and shall assure that graduates  
119 are prepared for continuing post-secondary education,  
120 training and work and that schools and school systems are  
121 making progress toward achieving the education goals of the  
122 state.

123 (d) *Comprehensive statewide student assessment*  
124 *program.* -- The state board shall promulgate a rule in  
125 accordance with the provisions of article three-b, chapter  
126 twenty-nine-a of this code establishing a comprehensive  
127 statewide student assessment program to assess student  
128 performance and progress in grades three through twelve.  
129 The state board may require that student proficiencies be  
130 measured through the ACT EXPLORE and the ACT PLAN  
131 assessments or other comparable assessments, which are  
132 approved by the state board and provided by future vendors.  
133 The state board may require that student proficiencies be  
134 measured through the West Virginia writing assessment at

135 any of the grade levels four, seven and ten determined by the  
136 state board to be appropriate: *Provided*, That, effective the  
137 first day of July, two thousand eight, the state board may  
138 require that student proficiencies be measured through the  
139 West Virginia writing assessment at any of the grade levels  
140 four, seven and eleven determined by the state board to be  
141 appropriate. The state board may provide through the  
142 statewide assessment program other testing or assessment  
143 instruments applicable to grade levels kindergarten through  
144 grade twelve which may be used by each school upon  
145 approval by the school curriculum team to promote student  
146 achievement. The use of assessment results are subject to the  
147 following:

148 (1) The assessment results for grade levels three through  
149 eight and eleven are the only assessment results which may  
150 be used for determining whether any school or school system  
151 has made adequate yearly progress (AYP);

152 (2) Only the assessment results in the subject areas of  
153 reading/language arts and mathematics may be used for  
154 determining whether a school or school system has made  
155 adequate yearly progress (AYP);

156 (3) The results of the West Virginia writing assessment,  
157 the ACT EXPLORE assessments and the ACT PLAN  
158 assessments may not be used for determining whether a  
159 school or school system has made adequate yearly progress  
160 (AYP);

161 (4) The results of testing or assessment instruments  
162 provided by the state board for optional use by schools and  
163 school systems to promote student achievement may not be  
164 used for determining whether a school or school system has  
165 made adequate yearly progress (AYP); and



166 (5) All assessment provisions of the comprehensive  
167 statewide student assessment program in effect for the school  
168 year two thousand six--two thousand seven shall remain in  
169 effect until replaced by the state board rule.

170 (e) *Annual performance measures for Public Law 107-*  
171 *110, the Elementary and Secondary Education Act of 1965,*  
172 *as amended (No Child Left Behind Act of 2001).* -- The  
173 standards shall include annual measures of student, school  
174 and school system performance and progress for the grade  
175 levels and the content areas defined by the act. The  
176 following annual measures of student, school and school  
177 system performance and progress shall be the only measures  
178 for determining whether adequately yearly progress under the  
179 No Child Left Behind Act has been achieved:

180 (1) The acquisition of student proficiencies as indicated  
181 by student performance and progress on the required  
182 accountability assessments at the grade levels and content  
183 areas as required by the act subject to the limitations set forth  
184 in subsection (d) of this section.

185 (2) The student participation rate in the uniform statewide  
186 assessment must be at least ninety-five percent or the average  
187 of the participation rate for the current and the preceding two  
188 years is ninety-five percent for the school, county and state;

189 (3) Only for schools that do not include grade twelve, the  
190 school attendance rate which shall be no less than ninety  
191 percent in attendance for the school, county and state. The  
192 following absences shall be excluded:

193 (A) Student absences excused in accordance with the  
194 state board rule promulgated pursuant to section four, article  
195 eight of this chapter;

196 (B) Students not in attendance due to disciplinary  
197 measures; and

198 (C) Absent students for whom the attendance director has  
199 pursued judicial remedies compelling attendance to the extent  
200 of his or her authority; and

201 (4) The high school graduation rate which shall be no less  
202 than eighty percent for the school, county and state; or if the  
203 high school graduation rate is less than eighty percent, the  
204 high school graduation rate shall be higher than the high  
205 school graduation rate of the preceding year as determined  
206 from information on the West Virginia Education  
207 Information System on the fifteenth day of August.

208 (f) *State annual performance measures for school and*  
209 *school system accreditation.* -- The state board shall  
210 establish a system to assess and weigh annual performance  
211 measures for state accreditation of schools and school  
212 systems in a manner that gives credit or points such as an  
213 index to prevent any one measure alone from causing a  
214 school to achieve less than full accreditation status or a  
215 school system from achieving less than full approval status:  
216 *Provided,* That a school or school system that achieves  
217 adequate yearly progress is eligible for no less than full  
218 accreditation or approval status, as applicable, and the system  
219 established pursuant to this subsection shall only apply to  
220 schools and school systems that do not achieve adequate  
221 yearly progress.

222 The following types of measures, as may be appropriate  
223 at the various programmatic levels, may be approved by the  
224 state board for the school and school system accreditation:

225 (1) The acquisition of student proficiencies as indicated  
226 by student performance and progress on the uniform

227 statewide assessment program at the grade levels as provided  
228 in subsection (d) of this section. The state board may  
229 approve providing bonus points or credits for students  
230 scoring at or above mastery and distinguished levels;

231 (2) Writing assessment results in grades tested;

232 (3) School attendance rates;

233 (4) Percentage of courses taught by highly qualified  
234 teachers;

235 (5) Percentage of students scoring at benchmarks on the  
236 currently tested ACT EXPLORE and ACT PLAN  
237 assessments or other comparable assessments, which are  
238 approved by the state board and provided by future vendors;

239 (6) Graduation rates;

240 (7) Job placement rates for vocational programs;

241 (8) Percent of students passing end-of-course  
242 career/technical tests;

243 (9) Percent of students not requiring college remediation  
244 classes; and

245 (10) Bonus points or credits for subgroup improvement,  
246 advanced placement percentages, dual credit completers and  
247 international baccalaureate completers.

248 (g) *Indicators of exemplary performance and progress.*  
249 —The standards shall include indicators of exemplary  
250 student, school and school system performance and progress.  
251 The indicators of exemplary student, school and school  
252 system performance and progress shall be used only as

253 indicators for determining whether accredited and approved  
254 schools and school systems should be granted exemplary  
255 status. These indicators shall include, but are not limited to,  
256 the following:

257 (1) The percentage of graduates who declare their intent  
258 to enroll in college and other post-secondary education and  
259 training following high school graduation;

260 (2) The percentage of graduates who receive additional  
261 certification of their skills, competence and readiness for  
262 college, other post-secondary education or employment  
263 above the level required for graduation; and

264 (3) The percentage of students who successfully complete  
265 advanced placement, dual credit and honors classes.

266 (h) *Indicators of efficiency.* -- In accordance with the  
267 provisions of article three-b, chapter twenty-nine-a of this  
268 code, the state board shall adopt by rule and periodically  
269 review and update indicators of efficiency for use by the  
270 appropriate divisions within the department to ensure  
271 efficient management and use of resources in the public  
272 schools in the following areas:

273 (1) Curriculum delivery including, but not limited to, the  
274 use of distance learning;

275 (2) Transportation;

276 (3) Facilities;

277 (4) Administrative practices;

278 (5) Personnel;

279 (6) Use of regional educational service agency programs  
280 and services, including programs and services that may be  
281 established by their assigned regional educational service  
282 agency or other regional services that may be initiated  
283 between and among participating county boards; and

284 (7) Any other indicators as determined by the state board.

285 (i) *Assessment and accountability of school and school*  
286 *system performance and processes.* -- In accordance with the  
287 provisions of article three-b, chapter twenty-nine-a of this  
288 code, the state board shall establish by rule a system of  
289 education performance audits which measures the quality of  
290 education and the preparation of students based on the annual  
291 measures of student, school and school system performance  
292 and progress. The system of education performance audits  
293 shall provide information to the state board, the Legislature  
294 and the Governor, individually and collectively as the  
295 Process for Improving Education Council, upon which they  
296 may determine whether a thorough and efficient system of  
297 schools is being provided. The system of education  
298 performance audits shall include:

299 (1) The assessment of student, school and school system  
300 performance and progress based on the annual measures set  
301 forth in subsection (d) of this section;

302 (2) The evaluation of records, reports and other  
303 information collected by the department upon which the  
304 quality of education and compliance with statutes, policies  
305 and standards may be determined;

306 (3) The review of school and school system electronic  
307 strategic improvement plans; and

308 (4) The on-site review of the processes in place in schools  
309 and school systems to enable school and school system  
310 performance and progress and compliance with the standards.

311 (j) *Uses of school and school system assessment*  
312 *information.* -- The state board and the Process for  
313 Improving Education Council established pursuant to section  
314 five-c of this article shall use information from the system of  
315 education performance audits to assist them in ensuring that  
316 a thorough and efficient system of schools is being provided  
317 and to improve student, school and school system  
318 performance and progress. Information from the system of  
319 education performance audits further shall be used by the  
320 state board for these purposes, including, but not limited to,  
321 the following:

322 (1) Determining school accreditation and school system  
323 approval status;

324 (2) Holding schools and school systems accountable for  
325 the efficient use of existing resources to meet or exceed the  
326 standards; and

327 (3) Targeting additional resources when necessary to  
328 improve performance and progress.

329 The state board shall make accreditation information  
330 available to the Legislature, the Governor, the general public  
331 and to any individual who requests the information, subject  
332 to the provisions of any act or rule restricting the release of  
333 information.

334 (k) *Early detection and intervention programs.* -- Based  
335 on the assessment of student, school and school system  
336 performance and progress, the state board shall establish  
337 early detection and intervention programs using the available

338 resources of the Department of Education, the regional  
339 educational service agencies, the Center for Professional  
340 Development and the Principals Academy, as appropriate, to  
341 assist underachieving schools and school systems to improve  
342 performance before conditions become so grave as to warrant  
343 more substantive state intervention. Assistance shall include,  
344 but is not limited to, providing additional technical assistance  
345 and programmatic, professional staff development, providing  
346 monetary, staffing and other resources where appropriate,  
347 and, if necessary, making appropriate recommendations to  
348 the Process for Improving Education Council.

349 (1) *Office of Education Performance Audits.* --

350 (1) To assist the state board and the Process for  
351 Improving Education Council in the operation of a system of  
352 education performance audits, the state board shall establish  
353 an Office of Education Performance Audits consistent with  
354 the provisions of this section. The Office of Education  
355 Performance Audits shall be operated under the direction of  
356 the state board independently of the functions and  
357 supervision of the State Department of Education and state  
358 superintendent. The Office of Education Performance Audits  
359 shall report directly to and be responsible to the state board  
360 and the Process for Improving Education Council created in  
361 section five-c of this article in carrying out its duties under  
362 the provisions of this section.

363 (2) The office shall be headed by a director who shall be  
364 appointed by the state board and who shall serve at the will  
365 and pleasure of the state board. The annual salary of the  
366 director shall be set by the state board and may not exceed  
367 eighty percent of the salary cap of the State Superintendent  
368 of Schools.

369 (3) The state board shall organize and sufficiently staff  
370 the office to fulfill the duties assigned to it by law and by the  
371 state board. Employees of the State Department of Education  
372 who are transferred to the Office of Education Performance  
373 Audits shall retain their benefits and seniority status with the  
374 Department of Education.

375 (4) Under the direction of the state board, the Office of  
376 Education Performance Audits shall receive from the West  
377 Virginia education information system staff research and  
378 analysis data on the performance and progress of students,  
379 schools and school systems, and shall receive assistance, as  
380 determined by the state board, from staff at the State  
381 Department of Education, the regional education service  
382 agencies, the Center for Professional Development, the  
383 Principals Academy and the School Building Authority to  
384 carry out the duties assigned to the office.

385 (5) In addition to other duties which may be assigned to  
386 it by the state board or by statute, the Office of Education  
387 Performance Audits also shall:

388 (A) Assure that all statewide assessments of student  
389 performance used as annual performance measures are secure  
390 as required in section one-a of this article;

391 (B) Administer all accountability measures as assigned  
392 by the state board, including, but not limited to, the  
393 following:

394 (i) Processes for the accreditation of schools and the  
395 approval of school systems; and

396 (ii) Recommendations to the state board on appropriate  
397 action, including, but not limited to, accreditation and  
398 approval action;



399 (C) Determine, in conjunction with the assessment and  
400 accountability processes, what capacity may be needed by  
401 schools and school systems to meet the standards established  
402 by the state board and recommend to the state board and the  
403 Process for Improving Education Council plans to establish  
404 those needed capacities;

405 (D) Determine, in conjunction with the assessment and  
406 accountability processes, whether statewide system  
407 deficiencies exist in the capacity of schools and school  
408 systems to meet the standards established by the state board,  
409 including the identification of trends and the need for  
410 continuing improvements in education, and report those  
411 deficiencies and trends to the state board and the Process for  
412 Improving Education Council;

413 (E) Determine, in conjunction with the assessment and  
414 accountability processes, staff development needs of schools  
415 and school systems to meet the standards established by the  
416 state board and make recommendations to the state board, the  
417 Process for Improving Education Council, the Center for  
418 Professional Development, the regional educational service  
419 agencies, the Higher Education Policy Commission and the  
420 county boards;

421 (F) Identify, in conjunction with the assessment and  
422 accountability processes, exemplary schools and school  
423 systems and best practices that improve student, school and  
424 school system performance and make recommendations to  
425 the state board and the Process for Improving Education  
426 Council for recognizing and rewarding exemplary schools  
427 and school systems and promoting the use of best practices.  
428 The state board shall provide information on best practices to  
429 county school systems and shall use information identified  
430 through the assessment and accountability processes to select  
431 schools of excellence; and

432 (G) Develop reporting formats, such as check lists, which  
433 shall be used by the appropriate administrative personnel in  
434 schools and school systems to document compliance with  
435 various of the applicable laws, policies and process standards  
436 as considered appropriate and approved by the state board,  
437 including, but not limited to, the following:

438 (i) The use of a policy for the evaluation of all school  
439 personnel that meets the requirements of sections twelve and  
440 twelve-a, article two, chapter eighteen-a of this code;

441 (ii) The participation of students in appropriate physical  
442 assessments as determined by the state board, which  
443 assessment may not be used as a part of the assessment and  
444 accountability system;

445 (iii) The appropriate licensure of school personnel; and

446 (iv) The school provides multicultural activities.

447 Information contained in the reporting formats is subject  
448 to examination during an on-site review to determine  
449 compliance with laws, policies and standards. Intentional  
450 and grossly negligent reporting of false information are  
451 grounds for dismissal.

452 (m) *On-site reviews.* --

453 (1) The system of education performance audits shall  
454 include on-site reviews of schools and school systems which  
455 shall be conducted only at the specific direction of the state  
456 board upon its determination that the performance and  
457 progress of the school or school system are persistently  
458 below standard or that other circumstances exist that warrant  
459 an on-site review. Any discussion by the state board of  
460 schools to be subject to an on-site review or dates for which

461 on-site reviews will be conducted may be held in executive  
462 session and is not subject to the provisions of article nine-a,  
463 chapter six of this code relating to open governmental  
464 proceedings. An on-site review shall be conducted by the  
465 Office of Education Performance Audits of a school or  
466 school system for the purpose of investigating the reasons for  
467 performance and progress that are persistently below  
468 standard and making recommendations to the school and  
469 school system, as appropriate, and to the state board on such  
470 measures as it considers necessary to improve performance  
471 and progress to meet the standard. The investigation may  
472 include, but is not limited to, the following:

473 (A) Verifying data reported by the school or county  
474 board;

475 (B) Examining compliance with the laws and policies  
476 affecting student, school and school system performance and  
477 progress;

478 (C) Evaluating the effectiveness and implementation  
479 status of school and school system electronic strategic  
480 improvement plans;

481 (D) Investigating official complaints submitted to the  
482 state board that allege serious impairments in the quality of  
483 education in schools or school systems;

484 (E) Investigating official complaints submitted to the  
485 state board that allege that a school or county board is in  
486 violation of policies or laws under which schools and county  
487 boards operate; and

488 (F) Determining and reporting whether required reviews  
489 and inspections have been conducted by the appropriate  
490 agencies, including, but not limited to, the State Fire Marshal,

491 the Health Department, the School Building Authority and  
492 the responsible divisions within the Department of Education,  
493 and whether noted deficiencies have been or are in the  
494 process of being corrected. The Office of Education  
495 Performance Audits may not conduct a duplicate review or  
496 inspection of any compliance reviews or inspections  
497 conducted by the department or its agents or other duly  
498 authorized agencies of the state, nor may it mandate more  
499 stringent compliance measures.

500 (2) The Director of the Office of Education Performance  
501 Audits shall notify the county superintendent of schools five  
502 school days prior to commencing an on-site review of the  
503 county school system and shall notify both the county  
504 superintendent and the principal five school days prior to  
505 commencing an on-site review of an individual school:  
506 *Provided*, That the state board may direct the Office of  
507 Education Performance Audits to conduct an unannounced  
508 on-site review of a school or school system if the state board  
509 believes circumstances warrant an unannounced on-site  
510 review.

511 (3) The Office of Education Performance Audits shall  
512 conduct on-site reviews which are limited in scope to specific  
513 areas in which performance and progress are persistently  
514 below standard as determined by the state board unless  
515 specifically directed by the state board to conduct a review  
516 which covers additional areas.

517 (4) An on-site review of a school or school system shall  
518 include a person or persons from the Department of  
519 Education or a public education agency in the state who has  
520 expert knowledge and experience in the area or areas to be  
521 reviewed and who has been trained and designated by the  
522 state board to perform such functions. If the size of the  
523 school or school system and issues being reviewed

524 necessitate the use of an on-site review team or teams, the  
525 person or persons designated by the state board shall advise  
526 and assist the director to appoint the team or teams. The  
527 person or persons designated by the state board shall be the  
528 team leaders.

529 The persons designated by the state board shall be  
530 responsible for completing the report on the findings and  
531 recommendations of the on-site review in their area of  
532 expertise. It is the intent of the Legislature that the persons  
533 designated by the state board participate in all on-site reviews  
534 that involve their area of expertise, to the extent practicable,  
535 so that the on-site review process will evaluate compliance  
536 with the standards in a uniform, consistent and expert  
537 manner.

538 (5) The Office of Education Performance Audits shall  
539 reimburse a county board for the costs of substitutes required  
540 to replace county board employees while they are serving on  
541 a review team.

542 (6) At the conclusion of an on-site review of a school  
543 system, the director and team leaders shall hold an exit  
544 conference with the superintendent and shall provide an  
545 opportunity for principals to be present for at least the portion  
546 of the conference pertaining to their respective schools. In  
547 the case of an on-site review of a school, the exit conference  
548 shall be held with the principal and curriculum team of the  
549 school and the superintendent shall be provided the  
550 opportunity to be present. The purpose of the exit conference  
551 is to review the initial findings of the on-site review, clarify  
552 and correct any inaccuracies and allow the opportunity for  
553 dialogue between the reviewers and the school or school  
554 system to promote a better understanding of the findings.

555 (7) The Office of Education Performance Audits shall  
556 report the findings of an on-site review to the county  
557 superintendent and the principals whose schools were  
558 reviewed within thirty days following the conclusion of the  
559 on-site review. The Office of Education Performance Audits  
560 shall report the findings of the on-site review to the state  
561 board within forty-five days after the conclusion of the on-  
562 site review. A copy of the report shall be provided to the  
563 Process for Improving Education Council at its request. A  
564 school or county that believes one or more findings of a  
565 review are clearly inaccurate, incomplete or misleading,  
566 misrepresent or fail to reflect the true quality of education in  
567 the school or county, or address issues unrelated to the health,  
568 safety and welfare of students and the quality of education,  
569 may appeal to the state board for removal of the findings.  
570 The state board shall establish a process for it to receive,  
571 review and act upon the appeals. The state board shall report  
572 to the Legislative Oversight Commission on Education  
573 Accountability during its July interim meetings, or as soon  
574 thereafter as practical, on each appeal during the preceding  
575 school year.

576 (8) The Legislature finds that the accountability and  
577 oversight of the following activities and programmatic areas  
578 in the public schools is controlled through other mechanisms  
579 and that additional accountability and oversight are not only  
580 unnecessary but counterproductive in distracting necessary  
581 resources from teaching and learning. Therefore,  
582 notwithstanding any other provision of this section to the  
583 contrary, the following activities and programmatic areas are  
584 not subject to review by the Office of Education Performance  
585 Audits:

586 (A) Work-based learning;

587 (B) Use of advisory councils;

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- 588 (C) Program accreditation and student credentials;
- 589 (D) Student transition plans;
- 590 (E) Graduate assessment form;
- 591 (F) Casual deficit;
- 592 (G) Accounting practices;
- 593 (H) Transportation services;
- 594 (I) Special education services;
- 595 (J) Safe, healthy and accessible facilities;
- 596 (K) Health services;
- 597 (L) Attendance director;
- 598 (M) Business/community partnerships;
- 599 (N) Pupil-teacher ratio/split grade classes;
- 600 (O) Local school improvement council, faculty senate,  
601 student assistance team and curriculum team;
- 602 (P) Planning and lunch periods;
- 603 (Q) Skill improvement program;
- 604 (R) Certificate of proficiency;
- 605 (S) Training of county board members;
- 606 (T) Excellence in job performance;
- 607 (U) Staff development; and
- 608 (V) Preventive discipline, character education and student  
609 and parental involvement.

610 (n) *School accreditation.* — The state board annually  
611 shall review the information from the system of education  
612 performance audits submitted for each school and shall issue  
613 to every school one of the following approval levels:  
614 Exemplary accreditation status, distinction accreditation  
615 status, full accreditation status, temporary accreditation  
616 status, conditional accreditation status, or low performing  
617 accreditation status.

618 (1) Full accreditation status shall be given to a school  
619 when the school's performance and progress meet or exceed  
620 the standards adopted by the state board pursuant to  
621 subsection (e) or (f), as applicable, of this section and it does  
622 not have any deficiencies which would endanger student  
623 health or safety or other extraordinary circumstances as  
624 defined by the state board. A school that meets or exceeds  
625 the performance and progress standards but has the other  
626 deficiencies shall remain on full accreditation status for the  
627 remainder of the accreditation period and shall have an  
628 opportunity to correct those deficiencies, notwithstanding  
629 other provisions of this subsection.

630 (2) Temporary accreditation status shall be given to a  
631 school when the school's performance and progress are  
632 below the level required for full accreditation status.  
633 Whenever a school is given temporary accreditation status,  
634 the county board shall ensure that the school's electronic  
635 strategic improvement plan is revised in accordance with  
636 subsection (b) of this section to increase the performance and  
637 progress of the school to a full accreditation status level. The  
638 revised plan shall be submitted to the state board for  
639 approval.

640 (3) Conditional accreditation status shall be given to a  
641 school when the school's performance and progress are  
642 below the level required for full accreditation, but the



643 school's electronic strategic improvement plan meets the  
644 following criteria:

645 (A) The plan has been revised to improve performance  
646 and progress on the standard or standards by a date or dates  
647 certain;

648 (B) The plan has been approved by the state board; and

649 (C) The school is meeting the objectives and time line  
650 specified in the revised plan.

651 (4) Exemplary accreditation status shall be given to a  
652 school when the school's performance and progress  
653 substantially exceed the standards adopted by the state board  
654 pursuant to subsections (f) and (g) of this section. The state  
655 board shall promulgate legislative rules in accordance with  
656 the provisions of article three-b, chapter twenty-nine-a of this  
657 code designated to establish standards of performance and  
658 progress to identify exemplary schools.

659 (5) Distinction accreditation status shall be given to a  
660 school when the school's performance and progress exceed  
661 the standards adopted by the state board. The state board  
662 shall promulgate legislative rules in accordance with the  
663 provisions of article three-b, chapter twenty-nine-a of this  
664 code establishing standards of performance and progress to  
665 identify schools of distinction.

666 (6) Low-performing accreditation status shall be given to  
667 a school whenever extraordinary circumstances exist as  
668 defined by the state board.

669 (A) These circumstances shall include, but are not limited  
670 to, the following:

671 (i) The failure of a school on temporary accreditation  
672 status to obtain approval of its revised electronic school  
673 strategic improvement plan within a reasonable time period  
674 as defined by the state board;

675 (ii) The failure of a school on conditional accreditation  
676 status to meet the objectives and time line of its revised  
677 electronic school strategic improvement plan; or

678 (iii) The failure of a school to meet a standard by the date  
679 specified in the revised plan.

680 (B) Whenever the state board determines that the quality  
681 of education in a school is low performing, the state board  
682 shall appoint a team of improvement consultants to make  
683 recommendations within sixty days of appointment for  
684 correction of the low performance. When the state board  
685 approves the recommendations, they shall be communicated  
686 to the county board. If progress in correcting the low  
687 performance as determined by the state board is not made  
688 within six months from the time the county board receives  
689 the recommendations, the state board shall place the county  
690 board on temporary approval status and provide consultation  
691 and assistance to the county board to assist it in the following  
692 areas:

693 (i) Improving personnel management;

694 (ii) Establishing more efficient financial management  
695 practices;

696 (iii) Improving instructional programs and rules; or

697 (iv) Making any other improvements that are necessary  
698 to correct the low performance.

699 (C) If the low performance is not corrected by a date  
700 certain as set by the state board:

701 (i) The state board shall appoint a monitor who shall be  
702 paid at county expense to cause improvements to be made at  
703 the school to bring it to full accreditation status within a  
704 reasonable time period as determined by the state board. The  
705 monitor's work location shall be at the school and the  
706 monitor shall work collaboratively with the principal. The  
707 monitor shall, at a minimum, report monthly to the state  
708 board on the measures being taken to improve the school's  
709 performance and the progress being made. The reports may  
710 include requests for additional assistance and  
711 recommendations required in the judgment of the monitor to  
712 improve the school's performance, including, but not limited  
713 to, the need for targeting resources strategically to eliminate  
714 deficiencies;

715 (ii) The state board may make a determination, in its sole  
716 judgment, that the improvements necessary to provide a  
717 thorough and efficient education to the students at the school  
718 cannot be made without additional targeted resources, in  
719 which case it shall establish a plan in consultation with the  
720 county board that includes targeted resources from sources  
721 under the control of the state board and the county board to  
722 accomplish the needed improvements. Nothing in this  
723 subsection shall be construed to allow a change in personnel  
724 at the school to improve school performance and progress,  
725 except as provided by law;

726 (iii) If the low performance is not corrected within one  
727 year after the appointment of a monitor, the state board may  
728 make a determination, in its sole judgment, that continuing a  
729 monitor arrangement is not sufficient to correct the low  
730 performance and may intervene in the operation of the school  
731 to cause improvements to be made that will provide

732 assurances that a thorough and efficient system of schools  
733 will be provided. This intervention may include, but is not  
734 limited to, establishing instructional programs, taking such  
735 direct action as may be necessary to correct the low  
736 performance, declaring the position of principal is vacant and  
737 assigning a principal for the school who shall serve at the will  
738 and pleasure of and, under the sole supervision of, the state  
739 board: *Provided*, That prior to declaring that the position of  
740 the principal is vacant, the state board must make a  
741 determination that all other resources needed to correct the  
742 low performance are present at the school. If the principal  
743 who was removed elects not to remain an employee of the  
744 county board, then the principal assigned by the state board  
745 shall be paid by the county board. If the principal who was  
746 removed elects to remain an employee of the county board,  
747 then the following procedure applies:

748 (I) The principal assigned by the state board shall be paid  
749 by the state board until the next school term, at which time  
750 the principal assigned by the state board shall be paid by the  
751 county board;

752 (II) The principal who was removed shall be eligible for  
753 all positions in the county, including teaching positions, for  
754 which the principal is certified, by either being placed on the  
755 transfer list in accordance with section seven, article two,  
756 chapter eighteen-a of this code, or by being placed on the  
757 preferred recall list in accordance with section seven-a, article  
758 four, chapter eighteen-a of this code; and

759 (III) The principal who was removed shall be paid by the  
760 county board and may be assigned to administrative duties,  
761 without the county board being required to post that position  
762 until the end of the school term;

763 (6) The county board shall take no action nor refuse any  
764 action if the effect would be to impair further the school in  
765 which the state board has intervened.

766 (7) The state board may appoint a monitor pursuant to the  
767 provisions of this subsection to assist the school principal  
768 after intervention in the operation of a school is completed.

769 (o) *Transfers from low-performing schools.* -- Whenever  
770 a school is determined to be low performing and fails to  
771 improve its status within one year, following state  
772 intervention in the operation of the school to correct the low  
773 performance, any student attending the school may transfer  
774 once to the nearest fully accredited school in the county,  
775 subject to approval of the fully accredited school and at the  
776 expense of the school from which the student transferred.

777 (p) *School system approval.* -- The state board annually  
778 shall review the information submitted for each school  
779 system from the system of education performance audits and  
780 issue one of the following approval levels to each county  
781 board: Full approval, temporary approval, conditional  
782 approval or nonapproval.

783 (1) Full approval shall be given to a county board whose  
784 schools have all been given full, temporary or conditional  
785 accreditation status and which does not have any deficiencies  
786 which would endanger student health or safety or other  
787 extraordinary circumstances as defined by the state board. A  
788 fully approved school system in which other deficiencies are  
789 discovered shall remain on full accreditation status for the  
790 remainder of the approval period and shall have an  
791 opportunity to correct those deficiencies, notwithstanding  
792 other provisions of this subsection.

793 (2) Temporary approval shall be given to a county board  
794 whose education system is below the level required for full  
795 approval. Whenever a county board is given temporary  
796 approval status, the county board shall revise its electronic  
797 county strategic improvement plan in accordance with  
798 subsection (b) of this section to increase the performance and  
799 progress of the school system to a full approval status level.  
800 The revised plan shall be submitted to the state board for  
801 approval.

802 (3) Conditional approval shall be given to a county board  
803 whose education system is below the level required for full  
804 approval, but whose electronic county strategic improvement  
805 plan meets the following criteria:

806 (i) The plan has been revised in accordance with  
807 subsection (b) of this section;

808 (ii) The plan has been approved by the state board; and

809 (iii) The county board is meeting the objectives and time  
810 line specified in the revised plan.

811 (4) Nonapproval status shall be given to a county board  
812 which fails to submit and gain approval for its electronic  
813 county strategic improvement plan or revised electronic  
814 county strategic improvement plan within a reasonable time  
815 period as defined by the state board or which fails to meet the  
816 objectives and time line of its revised electronic county  
817 strategic improvement plan or fails to achieve full approval  
818 by the date specified in the revised plan.

819 (A) The state board shall establish and adopt additional  
820 standards to identify school systems in which the program  
821 may be nonapproved and the state board may issue  
822 nonapproval status whenever extraordinary circumstances  
823 exist as defined by the state board.

824 (B) Whenever a county board has more than a casual  
825 deficit, as defined in section one, article one of this chapter,  
826 the county board shall submit a plan to the state board  
827 specifying the county board's strategy for eliminating the  
828 casual deficit. The state board either shall approve or reject  
829 the plan. If the plan is rejected, the state board shall  
830 communicate to the county board the reason or reasons for  
831 the rejection of the plan. The county board may resubmit the  
832 plan any number of times. However, any county board that  
833 fails to submit a plan and gain approval for the plan from the  
834 state board before the end of the fiscal year after a deficit  
835 greater than a casual deficit occurred or any county board  
836 which, in the opinion of the state board, fails to comply with  
837 an approved plan may be designated as having nonapproval  
838 status.

839 (C) Whenever nonapproval status is given to a school  
840 system, the state board shall declare a state of emergency in  
841 the school system and shall appoint a team of improvement  
842 consultants to make recommendations within sixty days of  
843 appointment for correcting the emergency. When the state  
844 board approves the recommendations, they shall be  
845 communicated to the county board. If progress in correcting  
846 the emergency, as determined by the state board, is not made  
847 within six months from the time the county board receives  
848 the recommendations, the state board shall intervene in the  
849 operation of the school system to cause improvements to be  
850 made that will provide assurances that a thorough and  
851 efficient system of schools will be provided. This  
852 intervention may include, but is not limited to, the following:

853 (i) Limiting the authority of the county superintendent  
854 and county board as to the expenditure of funds, the  
855 employment and dismissal of personnel, the establishment  
856 and operation of the school calendar, the establishment of  
857 instructional programs and rules and any other areas

858 designated by the state board by rule, which may include  
859 delegating decision-making authority regarding these matters  
860 to the state superintendent;

861 (ii) Declaring that the office of the county superintendent  
862 is vacant;

863 (iii) Delegating to the state superintendent both the  
864 authority to conduct hearings on personnel matters and  
865 school closure or consolidation matters and, subsequently, to  
866 render the resulting decisions and the authority to appoint a  
867 designee for the limited purpose of conducting hearings while  
868 reserving to the state superintendent the authority to render  
869 the resulting decisions;

870 (iv) Functioning in lieu of the county board of education  
871 in a transfer, sale, purchase or other transaction regarding real  
872 property; and

873 (v) Taking any direct action necessary to correct the  
874 emergency including, but not limited to, the following:

875 (I) Delegating to the state superintendent the authority to  
876 replace administrators and principals in low performing  
877 schools and to transfer them into alternate professional  
878 positions within the county at his or her discretion; and

879 (II) Delegating to the state superintendent the authority to  
880 fill positions of administrators and principals with individuals  
881 determined by the state superintendent to be the most  
882 qualified for the positions. Any authority related to  
883 intervention in the operation of a county board granted under  
884 this paragraph is not subject to the provisions of article four,  
885 chapter eighteen-a of this code;



886 (q) Notwithstanding any other provision of this section,  
887 the state board may intervene immediately in the operation of  
888 the county school system with all the powers, duties and  
889 responsibilities contained in subsection (p) of this section, if  
890 the state board finds the following:

891 (1) That the conditions precedent to intervention exist as  
892 provided in this section; and that delaying intervention for  
893 any period of time would not be in the best interests of the  
894 students of the county school system; or

895 (2) That the conditions precedent to intervention exist as  
896 provided in this section and that the state board had  
897 previously intervened in the operation of the same school  
898 system and had concluded that intervention within the  
899 preceding five years.

900 (r) *Capacity*. -- The process for improving education  
901 includes a process for targeting resources strategically to  
902 improve the teaching and learning process. Development of  
903 electronic school and school system strategic improvement  
904 plans, pursuant to subsection (b) of this section, is intended,  
905 in part, to provide mechanisms to target resources  
906 strategically to the teaching and learning process to improve  
907 student, school and school system performance. When  
908 deficiencies are detected through the assessment and  
909 accountability processes, the revision and approval of school  
910 and school system electronic strategic improvement plans  
911 shall ensure that schools and school systems are efficiently  
912 using existing resources to correct the deficiencies. When the  
913 state board determines that schools and school systems do not  
914 have the capacity to correct deficiencies, the state board shall  
915 work with the county board to develop or secure the

916 resources necessary to increase the capacity of schools and  
917 school systems to meet the standards and, when necessary,  
918 seek additional resources in consultation with the Legislature  
919 and the Governor.

920 The state board shall recommend to the appropriate body  
921 including, but not limited to, the Process for Improving  
922 Education Council, the Legislature, county boards, schools  
923 and communities methods for targeting resources  
924 strategically to eliminate deficiencies identified in the  
925 assessment and accountability processes. When making  
926 determinations on recommendations, the state board shall  
927 include, but is not limited to, the following methods:

928 (1) Examining reports and electronic strategic  
929 improvement plans regarding the performance and progress  
930 of students, schools and school systems relative to the  
931 standards and identifying the areas in which improvement is  
932 needed;

933 (2) Determining the areas of weakness and of  
934 ineffectiveness that appear to have contributed to the  
935 substandard performance and progress of students or the  
936 deficiencies of the school or school system;

937 (3) Determining the areas of strength that appear to have  
938 contributed to exceptional student, school and school system  
939 performance and progress and promoting their emulation  
940 throughout the system;

941 (4) Requesting technical assistance from the School  
942 Building Authority in assessing or designing comprehensive  
943 educational facilities plans;

944 (5) Recommending priority funding from the School  
945 Building Authority based on identified needs;

946 (6) Requesting special staff development programs from  
947 the Center for Professional Development, the Principals  
948 Academy, higher education, regional educational service  
949 agencies and county boards based on identified needs;

950 (7) Submitting requests to the Legislature for  
951 appropriations to meet the identified needs for improving  
952 education;

953 (8) Directing county boards to target their funds  
954 strategically toward alleviating deficiencies;

955 (9) Ensuring that the need for facilities in counties with  
956 increased enrollment are appropriately reflected and  
957 recommended for funding;

958 (10) Ensuring that the appropriate person or entity is held  
959 accountable for eliminating deficiencies; and

960 (11) Ensuring that the needed capacity is available from  
961 the state and local level to assist the school or school system  
962 in achieving the standards and alleviating the deficiencies.

**CHAPTER 29A. STATE ADMINISTRATIVE  
PROCEDURES ACT.**

**ARTICLE 3B. STATE BOARD OF EDUCATION  
RULEMAKING.**

§29A-3B-9. Submission of legislative rules to the Legislative Oversight Commission on Education Accountability.

§29A-3B-10. Emergency legislative rules; procedure for promulgation; definition.

**§29A-3B-9. Submission of legislative rules to the Legislative  
Oversight Commission on Education  
Accountability.**

1       (a) When the board proposes a legislative rule, the board  
2 shall submit the following to the Legislative Oversight  
3 Commission on Education Accountability: (1) The full text  
4 of the legislative rule as proposed by the board and filed with  
5 the office of the Secretary of State, with new language  
6 underlined and with language to be deleted from any existing  
7 rule stricken through but clearly legible; (2) a brief summary  
8 of the content of the legislative rule and a description and a  
9 copy of any existing rule which the agency proposes to  
10 amend or repeal; (3) a statement of the circumstances which  
11 require the rule; (4) a fiscal note containing all information  
12 included in a fiscal note for either house of the Legislature  
13 and a statement of the economic impact of the rule on the  
14 state or its residents; and (5) any other information which the  
15 commission may request or which may be required by law.

16       (b) At its discretion, the board may meet the filing  
17 requirement of subsection (a) of this section using either of  
18 the following methods:

19 (1) By submitting twenty copies of the proposed rule to  
20 the Legislative Oversight Commission on Education  
21 Accountability at its offices or at a regular meeting of the  
22 commission; or

23 (2) By submitting the proposed rule electronically to the  
24 Legislative Oversight Commission on Education  
25 Accountability. Proposed rules submitted electronically shall  
26 be transmitted in a timely manner, shall contain all required  
27 information and shall be compatible with computer  
28 applications in use by the Legislative Oversight Commission  
29 on Education Accountability.

30 (c) The commission shall review each proposed  
31 legislative rule and, in its discretion, may hold public  
32 hearings thereon. Such review shall include, but not be  
33 limited to, a determination of:

34 (1) Whether the board has exceeded the scope of its  
35 statutory authority in approving the proposed legislative rule;

36 (2) Whether the proposed legislative rule is in conformity  
37 with the legislative intent of the statute which the rule is  
38 intended to implement, extend, apply, interpret or make  
39 specific;

40 (3) Whether the proposed legislative rule conflicts with  
41 any other provision of this code or with any other rule  
42 adopted by the same or a different agency;

43 (4) Whether the proposed legislative rule is necessary to  
44 fully accomplish the objectives of the statute under which the  
45 proposed rule was promulgated;

46 (5) Whether the proposed legislative rule is reasonable,  
47 especially as it affects the convenience of the general public  
48 or of persons particularly affected by it;

49 (6) Whether the proposed legislative rule could be made  
50 less complex or more readily understandable by the general  
51 public; and

52 (7) Whether the proposed legislative rule was  
53 promulgated in compliance with the requirements of this  
54 article and with any requirements imposed by any other  
55 provision of this code.

56 (d) After reviewing the legislative rule, the commission  
57 may recommend to the board any changes needed to comply  
58 with the legislative intent of the statute upon which the rule  
59 is based or otherwise to modify the activity subject to the  
60 rule, or may make any other recommendations to the board  
61 as it considers appropriate.

62 (e) When the board finally adopts a legislative rule, the  
63 board shall submit to the Legislative Oversight Commission  
64 on Education Accountability at its offices or at a regular  
65 meeting of the commission six copies of the rule as adopted  
66 by the board. The board, at its discretion, may meet the filing  
67 requirement contained in this subsection by submitting the  
68 legislative rule in electronic format to the Legislative  
69 Oversight Commission on Education Accountability. Rules  
70 submitted electronically shall be transmitted in a timely  
71 manner and shall be compatible with computer applications  
72 in use by the Legislative Oversight Commission on  
73 Education Accountability.

74 (f) After reviewing the legislative rule, the commission  
75 may recommend to the Legislature any statutory changes  
76 needed to clarify the legislative intent of the statute upon  
77 which the rule is based or may make any other  
78 recommendations to the Legislature as it considers  
79 appropriate.

**§29A-3B-10. Emergency legislative rules; procedure for promulgation; definition.**

1 (a) The board may, without hearing, find that an  
2 emergency exists requiring that emergency rules be  
3 promulgated and promulgate the same in accordance with  
4 this section. Such emergency rules, together with a statement  
5 of the facts and circumstances constituting the emergency,  
6 shall be filed in the State Register and shall become effective  
7 immediately upon such filing. Such emergency rules may  
8 adopt, amend or repeal any legislative rule, but the  
9 circumstances constituting the emergency requiring such  
10 adoption, amendment or repeal shall be stated with  
11 particularity and be subject to de novo review by any court  
12 having original jurisdiction of an action challenging their  
13 validity.

14 (b) The board shall file ten copies of the rules and of the  
15 required statement with the Legislative Oversight  
16 Commission on Education Accountability. At its discretion,  
17 the board may meet the filing requirement contained in this  
18 subsection by submitting the emergency rule electronically to  
19 the Legislative Oversight Commission on Education  
20 Accountability. Proposed rules submitted electronically shall  
21 be transmitted in a timely manner, shall contain all required  
22 information and shall be compatible with computer  
23 applications in use by the Legislative Oversight Commission  
24 on Education Accountability.

25 (c) An emergency rule shall be effective for not more  
26 than fifteen months and shall expire earlier if any of the  
27 following occurs:

28 (1) The board has not previously filed and fails to file a  
29 notice of public hearing on the proposed rule within sixty  
30 days of the date the proposed rule was filed as an emergency

31 rule; in which case the emergency rule expires on the sixty-  
32 first day.

33 (2) The board has not previously filed and fails to file the  
34 proposed rule with the Legislative Oversight Commission on  
35 Education Accountability within one hundred eighty days of  
36 the date the proposed rule was filed as an emergency rule; in  
37 which case the emergency rule expires on the one hundred  
38 eighty-first day.

39 (3) The board adopts a legislative rule dealing with  
40 substantially the same subject matter since such emergency  
41 rule was first promulgated and in which case the emergency  
42 rule expires on the date the authorized rule is made effective.

43 (d) Any amendment to an emergency rule made by the  
44 board shall be filed in the State Register and does not  
45 constitute a new emergency rule for the purpose of acquiring  
46 additional time or avoiding the expiration dates in  
47 subdivision (1), (2) or (3), subsection (c) of this section.

48 (e) Once an emergency rule expires due to the conclusion  
49 of fifteen months or due to the effect of subdivision (1), (2)  
50 or (3), subsection (c) of this section, the board may not refile  
51 the same or similar rule as an emergency rule.

52 (f) Emergency legislative rules currently in effect under  
53 the prior provisions of this section may be refiled under the  
54 provisions of this section.

55 (g) The provision of this section shall not be used to  
56 avoid or evade any provision of this article or any other  
57 provisions of this code, including any provisions for  
58 legislative review of proposed rules. Any emergency rule  
59 promulgated for any such purpose may be contested in a  
60 judicial proceeding before a court of competent jurisdiction.



61 (h) The Legislative Oversight Commission on Education  
62 Accountability may review any emergency rule to determine:  
63 (1) Whether the board has exceeded the scope of its statutory  
64 authority in promulgating the emergency rule; (2) whether  
65 there exists an emergency justifying the promulgation of such  
66 rule; and (3) whether the rule was promulgated in compliance  
67 with the requirements and prohibitions contained in this  
68 section. The commission may recommend to the board, the  
69 Legislature or the Secretary of State such action as it may  
70 deem proper.

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## CHAPTER 88

**(Com. Sub. for S.B. 603 - By Senators Plymale, Edgell, Unger,  
Jenkins, McCabe, Foster and Hunter)**

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[Passed March 10, 2007; in effect July 1, 2007.]

[Approved by the Governor on April 4, 2007.]

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AN ACT to amend and reenact §18-2E-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-9A-10 of said code, all relating to establishing a 21st Century Tools for 21st Century Schools Technology Initiative to replace and enhance current technology programs and provide formula funding therefor; findings; requiring a West Virginia 21st Century Strategic Technology Learning Plan and setting forth specific areas it should address; requiring that the provision of technologies and services to students and teachers be based on a plan aligned with the goals of the West Virginia 21st Century Strategic Technology Learning Plan; allocation of technology funds; purchasing; use of technology and technology infrastructure; including funding stream in public school

support plan from proportion of growth in local share; changing plans used for the allocation of funds to improve instructional programs; and including employment of technology integration specialists as justification prior to authorization to expend certain funds.

*Be it enacted by the Legislature of West Virginia:*

That §18-2E-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §18-9A-10 of said code be amended and reenacted, all to read as follows:

**Article**

**2E. High Quality Educational Programs.**

**9A. Public School Support.**

**ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.**

**§18-2E-7. Providing for twenty-first century instruction and learning in all public schools.**

1 (a) The Legislature finds that:

2 (1) The knowledge and skills children need to succeed in  
3 the twenty-first century are changing dramatically and that  
4 West Virginia students must develop proficiency in twenty-  
5 first century content, technology tools and learning skills to  
6 succeed and prosper in life, in school and on the job;

7 (2) Students must be equipped to live in a multitasking,  
8 multifaceted, technology-driven world;

9 (3) The provision of twenty-first century technologies  
10 and software resources in grades prekindergarten through  
11 twelve is necessary to meet the goal that high school  
12 graduates will be prepared fully for college, other post-  
13 secondary education or gainful employment;

14 (4) This goal reflects a fundamental belief that the youth  
15 of the state exit the system equipped with the skills,  
16 competencies and attributes necessary to succeed, to continue  
17 learning throughout their lifetimes and to attain self-  
18 sufficiency;

19 (5) To promote twenty-first century learning, teachers  
20 must be competent in twenty-first century content and  
21 learning skills and must be equipped to fully integrate  
22 technology to transform instructional practice and to support  
23 twenty-first century skills acquisition;

24 (6) For students to learn twenty-first century skills,  
25 students and teachers must have equitable access to high  
26 quality, twenty-first century technology tools and resources;

27 (7) When aligned with standards and curriculum,  
28 technology-based assessments can be a powerful tool for  
29 teachers; and

30 (8) Teachers must understand how to use technology to  
31 create classroom assessments for accurate, timely  
32 measurements of student proficiency in attainment of  
33 academic content and twenty-first century skills.

34 (b) The state board shall ensure that the resources to be  
35 used to provide technology services to students in grades  
36 prekindergarten through twelve are included in a West  
37 Virginia 21st Century Strategic Technology Learning Plan to  
38 be developed by the Department of Education as an integral  
39 component of the county and school electronic strategic  
40 improvement plans as required in section five of this article.  
41 The provision of technologies and services to students and  
42 teachers shall be based on a plan developed by each  
43 individual school team and aligned with the goals and  
44 objectives of the West Virginia 21st Century Strategic  
45 Technology Learning Plan. This plan shall be an integral

46 component of the county and school electronic strategic  
47 improvement plans as required in section five of this article.  
48 Funds shall be allocated equitably to county school systems  
49 following peer review of the plans that includes providing  
50 necessary technical assistance prior to submission and allows  
51 timely review and approval by the West Virginia Department  
52 of Education. Technology tools, including hardware,  
53 software, network cabling, network electronics and related  
54 professional development, shall be purchased pursuant to the  
55 provisions of article three, chapter five-a of this code in the  
56 amount equal to anticipated revenues being appropriated and  
57 based on the approved county and school plans. County  
58 allocations that support this legislation shall adhere to state  
59 contract prices: *Provided*, That contingent upon approval of  
60 the county technology plan, counties that identify, within that  
61 plan, specific software or peripheral equipment not listed on  
62 the state contract, but necessary to support implementation of  
63 twenty-first century skills, may request the West Virginia  
64 Department of Education to secure state purchasing prices for  
65 those identified items. Total expenditure to purchase these  
66 additional items may not exceed ten percent of the annual  
67 county allocation. To the extent practicable, the technology  
68 shall be used:

69 (1) To maximize student access to learning tools and  
70 resources at all times including during regular school hours,  
71 before and after school or class, in the evenings, on weekends  
72 and holidays and for public education, noninstructional days  
73 and during vacations; and

74 (2) For student use for homework, remedial work,  
75 independent learning, career planning and adult basic  
76 education.

77 (c) The implementation of this section should provide a  
78 technology infrastructure capable of supporting multiple  
79 technology-based learning strategies designed to enable

80 students to achieve at higher academic levels. The technology  
81 infrastructure should facilitate student development by  
82 addressing the following areas:

83 (1) Mastery of rigorous core academic subjects in grades  
84 prekindergarten through eight by providing software, other  
85 technology resources or both aligned with state standards in  
86 reading, mathematics, writing, science, social studies, twenty-  
87 first century learning skills and twenty-first century learning  
88 tools;

89 (2) Mastery of rigorous core academic subjects in grades  
90 nine through twelve by providing appropriate twenty-first  
91 century technology tools aligned with state standards for  
92 learning skills and technology tools;

93 (3) Attainment of twenty-first century skills outcomes for  
94 all students in the use of technology tools and learning skills;

95 (4) Proficiency in new, emerging twenty-first century  
96 content;

97 (5) Participation in relevant, contextual instruction that  
98 uses dynamic, real-world contexts that are engaging and  
99 meaningful for students, making learning relevant to life  
100 outside of school and bridging the gap between how students  
101 live and how they learn in school;

102 (6) Ability to use digital and emerging technologies to  
103 manage information, communicate effectively, think  
104 critically, solve problems, work productively as an individual  
105 and collaboratively as part of a team and demonstrate  
106 personal accountability and other self-directional skills;

107 (7) Providing students with information on post-  
108 secondary educational opportunities, financial aid and the  
109 skills and credentials required in various occupations that will

110 help them better prepare for a successful transition following  
111 high school;

112 (8) Providing greater access to advanced and other  
113 curricular offerings than could be provided efficiently  
114 through traditional on-site delivery formats, including  
115 increasing student access to quality distance learning  
116 curricula and online distance education tools;

117 (9) Providing resources for teachers in differentiated  
118 instructional strategies, technology integration, sample lesson  
119 plans, curriculum resources and online staff development that  
120 enhance student achievement; and

121 (10) Providing resources to support basic skills  
122 acquisition and improvement at the above mastery and  
123 distinguished levels.

124 (d) Developed with input from appropriate stakeholder  
125 groups, the West Virginia 21st Century Strategic Technology  
126 Learning Plan shall be an integral component of the  
127 electronic strategic county and school improvement plans as  
128 required in section five of this article. The West Virginia 21st  
129 Century Strategic Technology Learning Plan shall be  
130 comprehensive and shall address, but not necessarily be  
131 limited to, the following provisions:

132 (1) Allocation of adequate resources to provide students  
133 with equitable access to twenty-first century technology  
134 tools, including instructional offerings and appropriate  
135 curriculum, assessment and technology integration resources  
136 aligned to both the content and rigor of state content  
137 standards as well as to learning skills and technology tools;

138 (2) Providing students and staff with equitable access to  
139 a technology infrastructure that supports the acquisition of  
140 twenty-first century skills, including the ability to access

141 information, solve problems, communicate clearly, make  
142 informed decisions, acquire new knowledge, construct  
143 products, reports and systems and access online assessment  
144 systems;

145 (3) Inclusion of various technologies that enable and  
146 enhance the attainment of twenty-first century skills  
147 outcomes for all students;

148 (4) Collaboration with various partners, including  
149 parents, community organization, higher education, schools  
150 of education in colleges and universities, employers and  
151 content providers;

152 (5) Seeking of applicable federal government funds,  
153 philanthropic funds, other partnership funds or any  
154 combination of those types of funds to augment state  
155 appropriations and encouraging the pursuit of funding  
156 through grants, gifts, donations or any other sources for uses  
157 related to education technology;

158 (6) Sufficient bandwidth to support teaching and learning  
159 and to provide satisfactorily for instructional management  
160 needs;

161 (7) Protection of the integrity and security of the network,  
162 as well as student and administrative workstations;

163 (8) Flexibility to adjust the plan based on developing  
164 technology, federal and state requirements and changing local  
165 school and county needs;

166 (9) Incorporation of findings based upon validation from  
167 research-based evaluation findings from previous West  
168 Virginia-based evaluation projects;

169 (10) Continuing study of emerging technologies for  
170 application in a twenty-first century learning environment  
171 and inclusion in the technology plan, as appropriate;

172 (11) An evaluation component to determine the  
173 effectiveness of the program and make recommendations for  
174 ongoing implementation;

175 (12) A program of embedded, sustained professional  
176 development for teachers that is strategically developed to  
177 support a twenty-first century education for all students and  
178 that aligns with state standards for technology, integrates  
179 twenty-first century skills into educational practice and  
180 supports the implementation of twenty-first century software,  
181 technology and assessment resources in the classroom;

182 (13) Providing for uniformity in technological hardware  
183 and software standards and procedures;

184 (14) The strategy for ensuring that the capabilities and  
185 capacities of the technology infrastructure is adequate for  
186 acceptable performance of the technology being implemented  
187 in the public schools;

188 (15) Providing for a comprehensive, statewide uniform,  
189 integrated education management and information system for  
190 data collection and reporting to the Department of Education  
191 as provided in section twenty-six, article two of this chapter  
192 and commonly referred to as the West Virginia Education  
193 Information System;

194 (16) Providing for an effective model for the distance  
195 delivery, virtual delivery or both types of delivery of  
196 instruction in subjects where there exists low student  
197 enrollment or a shortage of certified teachers or where the  
198 delivery method substantially improves the quality of an



199 instructional program such as the West Virginia Virtual  
200 School;

201 (17) Providing a strategy to implement, support and  
202 maintain technology in the public schools;

203 (18) Providing a strategy to provide ongoing support and  
204 assistance to teachers in integrating technology into twenty-  
205 first century instruction such as with technology integration  
206 specialists;

207 (19) A method of allowing public education to take  
208 advantage of appropriate bulk purchasing abilities and to  
209 purchase from competitively bid contracts initiated through  
210 the southern regional education board educational technology  
211 cooperative and the America TelEdCommunications  
212 Alliance;

213 (20) Compliance with United States Department of  
214 Education regulations and Federal Communications  
215 Commission requirements for federal E-rate discounts; and

216 (21) Other provisions as considered appropriate,  
217 necessary or both to align with applicable guidelines,  
218 policies, rules, regulations and requirements of the West  
219 Virginia Legislature, the Board of Education and the  
220 Department of Education.

221 (e) Any state code and budget references to the Basic  
222 Skills/Computer Education Program and the SUCCESS  
223 Initiative will be understood to refer to the statewide  
224 technology initiative referenced in this section, commonly  
225 referred to as the 21st Century Tools for 21st Century  
226 Schools Technology Initiative.

**ARTICLE 9A. PUBLIC SCHOOL SUPPORT.****§18-9A-10. Foundation allowance to improve instructional programs.**

1 (a) The total allowance to improve instructional programs  
2 shall be the sum of the following:

3 (1) For instructional improvement in accordance with  
4 county and school electronic strategic improvement plans  
5 required by section five, article two-e of this chapter, an  
6 amount equal to fifteen percent of the increase in the local  
7 share amount for the next school year above any required  
8 allocation pursuant to section six-b of this article shall be  
9 added to the amount of the appropriation for this purpose for  
10 the immediately preceding school year. The sum of these  
11 amounts shall be distributed to the counties as follows:

12 (A) One hundred fifty thousand dollars shall be allocated  
13 to each county;

14 (B) Distribution to the counties of the remainder of these  
15 funds shall be made proportional to the average of each  
16 county's average daily attendance for the preceding year and  
17 the county's second month net enrollment. Moneys allocated  
18 by provision of this section shall be used to improve  
19 instructional programs according to the county and school  
20 electronic strategic improvement plans required by section  
21 five, article two-e of this chapter and approved by the state  
22 board: *Provided*, That notwithstanding any other provision of  
23 this code to the contrary, moneys allocated by provision of  
24 this section may also be used in the implementation and  
25 maintenance of the uniform integrated regional computer  
26 information system.

27 Up to twenty-five percent of this allocation may be used  
28 to employ professional educators and service personnel in

29 counties after all applicable provisions of sections four and  
30 five of this article have been fully utilized.

31 Prior to the use of any funds from this section for  
32 personnel costs, the county board must receive authorization  
33 from the state superintendent of schools. The state  
34 superintendent shall require the county board to demonstrate:  
35 (1) The need for the allocation; (2) efficiency and fiscal  
36 responsibility in staffing; (3) sharing of services with  
37 adjoining counties and the regional educational service  
38 agency for that county in the use of the total local district  
39 board budget; and (4) employment of technology integration  
40 specialists to meet the needs for implementation of the West  
41 Virginia 21st Century Strategic Technology Learning Plan.  
42 County boards shall make application for available funds for  
43 the next fiscal year by the first day of May of each year. On  
44 or before the first day of June, the state superintendent shall  
45 review all applications and notify applying county boards of  
46 the distribution of the allocation. The funds shall be  
47 distributed during the fiscal year appropriate. The state  
48 superintendent shall require the county board to demonstrate  
49 the need for an allocation for personnel based upon the  
50 county's inability to meet the requirements of state law or  
51 state board policy: *Provided*, That the funds available for  
52 personnel under this section may not be used to increase the  
53 total number of professional noninstructional personnel in the  
54 central office beyond four. The plan shall be made available  
55 for distribution to the public at the office of each affected  
56 county board; plus

57 (2) For the purposes of the West Virginia 21st Century  
58 Strategic Technology Learning Plan provided for in section  
59 seven, article two-e of this chapter, an amount equal to fifteen  
60 percent of the increase in the local share amount for the next  
61 school year above any required allocation pursuant to section  
62 six-b of this article shall be added to the amount of the  
63 appropriation for this purpose for the immediately preceding

64 school year. The sum of these amounts shall be allocated to  
65 the counties as provided in section seven, article two-e of this  
66 chapter to meet the objectives of the West Virginia 21st  
67 Century Strategic Technology Learning Plan; plus

68 (3) An amount not less than the amount required to meet  
69 debt service requirements on any revenue bonds issued prior  
70 to the first day of January, one thousand nine hundred ninety-  
71 four, and the debt service requirements on any revenue bonds  
72 issued for the purpose of refunding revenue bonds issued  
73 prior to the first day of January, one thousand nine hundred  
74 ninety-four, shall be paid into the School Building Capital  
75 Improvements Fund created by section six, article nine-d of  
76 this chapter and shall be used solely for the purposes of that  
77 article. The School Building Capital Improvements Fund  
78 shall not be utilized to meet the debt services requirement on  
79 any revenue bonds or revenue refunding bonds for which  
80 moneys contained within the School Building Debt Service  
81 Fund have been pledged for repayment pursuant to that  
82 section.

83 (b) When the school improvement bonds secured by  
84 funds from the School Building Capital Improvements Fund  
85 mature, the State Board of Education shall annually deposit  
86 an amount equal to twenty-four million dollars from the  
87 funds allocated in this section into the School Construction  
88 Fund created pursuant to the provisions of section six, article  
89 nine-d of this chapter to continue funding school facility  
90 construction and improvements.

91 (c) Any project funded by the School Building Authority  
92 shall be in accordance with a comprehensive educational  
93 facility plan which must be approved by the state board and  
94 the School Building Authority.

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**CHAPTER 89**

**(S.B. 134 - By Senators Foster and Plymale)**

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[Passed March 6, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 26, 2007.]

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AN ACT to amend and reenact §18-7A-13a, §18-7A-14 and §18-7A-23 of the Code of West Virginia, 1931, as amended, all relating to the State Teachers Retirement System; establishing deadline for remittance of contributions due the State Teachers Retirement System; requiring that a summary of amounts of contributions withheld accompany the remittance; and clarifying certain terms used in the language of the statute.

*Be it enacted by the Legislature of West Virginia:*

That §18-7A-13a, §18-7A-14 and §18-7A-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**

§18-7A-13a. Resumption of service by retired teachers.

§18-7A-14. Contributions by members; contributions by employers.

§18-7A-23. Withdrawal and death benefits.

**§18-7A-13a. Resumption of service by retired teachers.**

- 1 (a) For the purpose of this section, reemployment of a
- 2 former or retired teacher as a teacher shall in no way impair the
- 3 teacher's eligibility for a prior service pension or any other
- 4 benefit provided by this article.

5 (b) Retired teachers who qualified for an annuity because of  
6 age or service may not receive prior service allowance from the  
7 retirement board when employed as a teacher and when  
8 regularly employed by the State of West Virginia. The payment  
9 of the allowance shall be discontinued on the first day of the  
10 month within which such employment begins and shall be  
11 resumed on the first day of the month succeeding the month  
12 within which such employment ceases. The annuity paid the  
13 teacher on first retirement resulting from the Teachers'  
14 Accumulation Fund and the Employers' Accumulation Fund  
15 shall continue throughout the governmental service and  
16 thereafter according to the option selected by the teacher upon  
17 first retirement.

18 (c) Retired teachers who qualified for an annuity because of  
19 disability shall receive no further retirement payments if the  
20 retirement board finds that the disability of the teacher no longer  
21 exists; payment shall be discontinued on the first day of the  
22 month within which the finding is made. If the retired teacher  
23 returns to service as a teacher, he or she shall contribute to the  
24 Teachers' Accumulation Fund as a member of the system. His  
25 or her prior service eligibility, if any, shall not be impaired  
26 because of his or her disability retirement. His or her  
27 accumulated contributions which were transferred to the benefit  
28 fund upon his or her retirement shall be returned to his or her  
29 individual account in the Teachers' Accumulation Fund, minus  
30 retirement payments received which were not supported by such  
31 contributions and interest. Upon subsequent retirement, he or  
32 she shall receive credit for all of his or her contributory  
33 experience, anything to the contrary in this article  
34 notwithstanding.

35 (d) Notwithstanding any provision of this code to the  
36 contrary, a person who retires under the system provided by this  
37 article may subsequently become employed on either a full-time  
38 basis, part-time basis or contract basis by any institution of  
39 higher education without any loss of retirement annuity or  
40 retirement benefits if the person's retirement commences  
41 between the effective date of the enactment of this section in

42 two thousand two and the thirty-first day of December, two  
43 thousand two: *Provided*, That the person shall not be eligible to  
44 participate in any other state retirement system provided by this  
45 code.

46 (e) The retirement board is herewith authorized to require of  
47 the retired teachers and their employers such reports as it deems  
48 necessary to effectuate the provisions of this section.

**§18-7A-14. Contributions by members; contributions by employers.**

1 (a) At the end of each month every member of the  
2 retirement system shall contribute six percent of that member's  
3 monthly gross salary to the retirement board: *Provided*, That  
4 any member employed by a state institution of higher education  
5 shall contribute on the member's full earnable compensation,  
6 unless otherwise provided in section fourteen-a of this article.  
7 The sums are due the Teachers Retirement System at the end of  
8 each calendar month in arrears and shall be paid not later than  
9 fifteen days following the end of the calendar month. Each  
10 remittance shall be accompanied by a detailed summary of the  
11 sums withheld from the compensation of each member for that  
12 month on forms, either paper or electronic, provided by the  
13 Teachers Retirement System for that purpose.

14 (b) Annually, the contributions of each member shall be  
15 credited to the member's account in the Teachers Retirement  
16 System Fund. The contributions shall be deducted from the  
17 salaries of the members as prescribed in this section and every  
18 member shall be considered to have given consent to the  
19 deductions. No deductions, however, shall be made from the  
20 earnable compensation of any member who retired because of  
21 age or service and then resumed service unless as provided in  
22 section thirteen-a of this article.

23 (c) The aggregate of employer contributions, due and  
24 payable under this article, shall equal annually the total  
25 deductions from the gross salary of members required by this

26 section. Beginning the first day of July, one thousand nine  
27 hundred ninety-four, the rate shall be seven and one-half  
28 percent; beginning on the first day of July, one thousand nine  
29 hundred ninety-five, the rate shall be nine percent; beginning on  
30 the first day of July, one thousand nine hundred ninety-six, the  
31 rate shall be ten and one-half percent; beginning on the first day  
32 of July, one thousand nine hundred ninety-seven, the rate shall  
33 be twelve percent; beginning on the first day of July, one  
34 thousand nine hundred ninety-eight, the rate shall be thirteen  
35 and one-half percent; and beginning on the first day of July, one  
36 thousand nine hundred ninety-nine and thereafter, the rate shall  
37 be fifteen percent: *Provided*, That the rate shall be seven and  
38 one-half percent for any individual who becomes a member of  
39 the Teachers Retirement System for the first time on or after the  
40 first day of July, two thousand five, or any individual who  
41 becomes a member of the Teachers Retirement System as a  
42 result of the merger contemplated in article seven-c of this  
43 chapter.

44 (d) Payment by an employer to a member of the sum  
45 specified in the employment contract minus the amount of the  
46 employee's deductions shall be considered to be a full discharge  
47 of the employer's contractual obligation as to earnable  
48 compensation.

49 (e) Each contributor shall file with the retirement board or  
50 with the employer to be forwarded to the retirement board an  
51 enrollment form showing the contributor's date of birth and  
52 other data needed by the retirement board.

**§18-7A-23. Withdrawal and death benefits.**

1 (a) Benefits upon withdrawal from service prior to  
2 retirement under the provisions of this article shall be as  
3 follows:

4 (1) A contributor who withdraws from service for any cause  
5 other than death or retirement shall, upon application, be paid  
6 his or her accumulated contributions up to the end of the fiscal  
7 year preceding the year in which application is made, but in no



8 event shall interest be paid beyond the end of five years  
9 following the year in which the last contribution was made:  
10 *Provided*, That such contributor, at the time of application, is  
11 then no longer under contract, verbal or otherwise, to serve as  
12 a teacher; or

13 (2) If such contributor has completed twenty years of total  
14 service, he or she may elect to receive at retirement age an  
15 annuity which shall be computed as provided in this article:  
16 *Provided*, That if such contributor has completed at least five,  
17 but fewer than twenty, years of total service in this state, he or  
18 she may elect to receive at age sixty-two an annuity which shall  
19 be computed as provided in this article. The contributor must  
20 notify the retirement board in writing concerning the election.  
21 If the contributor has completed fewer than five years of service  
22 in this state, he or she shall be subject to the provisions as  
23 outlined in subdivision (1) of this subsection.

24 (b) Benefits upon the death of a contributor prior to  
25 retirement under the provisions of this article shall be paid as  
26 follows:

27 (1) If the contributor was at least fifty years old and if his or  
28 her total service as a teacher was at least twenty-five years at the  
29 time of his or her death, then the surviving spouse of the  
30 deceased, provided the spouse is designated as the sole refund  
31 beneficiary, is eligible for an annuity computed as though the  
32 deceased were actually a retired teacher at the time of death and  
33 had selected a survivorship option which pays the spouse the  
34 same monthly amount which would have been received by the  
35 deceased; or

36 (2) If the facts do not permit payment under subdivision (1)  
37 of this subsection, then the following sum shall be paid to the  
38 refund beneficiary of the contributor: The contributor's  
39 accumulated contributions up to the year of his or her death plus  
40 an amount equal to his or her employee contributions. The  
41 latter sum shall emanate from the Employer's Accumulation  
42 Fund.

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**CHAPTER 90**

**(Com. Sub. for S.B. 67 - By Senators Tomblin,  
Mr. President, and Caruth)  
[By Request of the Executive]**

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[Passed March 10, 2007; in effect ninety days from passage.]  
[Approved by the Governor on April 4, 2007.]

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AN ACT to amend and reenact §18-9D-2 and §18-9D-15 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §18-9D-20; and to amend said code by adding thereto a new article, designated §18-9F-1, §18-9F-2, §18-9F-3, §18-9F-4, §18-9F-5, §18-9F-6, §18-9F-7 and §18-9F-8, all relating to the School Building Authority and school access safety generally; declaring legislative findings and intent; defining certain terms; authorizing the School Building Authority to facilitate and provide funding for enhancing the safe ingress to and egress from public schools; providing for county boards to develop and submit to the authority school access safety plans; requiring authority to establish certain guidelines and procedures regarding the plans, plan modifications and evaluation of projects developed pursuant to the plans; creating a special account in the State Treasury; authorizing carry-forward of account funds; providing process, requirements and eligibility for allocating and disbursing moneys to counties; establishing school access safety requirements for certain new school buildings; authorizing legislative rules; requiring refiling of authority rules; requiring certain rules of authority to be refiled as legislative rules; and requiring report on implementation of school access safety requirements.

*Be it enacted by the Legislature of West Virginia:*

That §18-9D-2 and §18-9D-15 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 §18-9D-20; that said code be

amended by adding thereto a new article, designated §18-9F-1, §18-9F-2, §18-9F-3, §18-9F-4, §18-9F-5, §18-9F-6, §18-9F-7 and §18-9F-8, all to read as follows:

**Article**

**9D. School Building Authority.**

**9F. School Access Safety Act.**

**ARTICLE 9D. SCHOOL BUILDING AUTHORITY.**

§18-9D-2. Definitions.

§18-9D-15. Legislative intent; allocation of money among categories of projects; lease purchase options; limitation on time period for expenditure of project allocation; county maintenance budget requirements; project disbursements over period of years; preference for multicounty arrangements; submission of project designs; set-aside to encourage local participation.

§18-9D-20. Rules.

**§18-9D-2. Definitions.**

1 For the purposes of this article, unless a different meaning  
2 clearly appears from the context:

3 (1) "Authority" means the School Building Authority of  
4 West Virginia;

5 (2) "Bonds" means bonds issued by the authority pursuant  
6 to this article;

7 (3) "Construction project" means a project in the furtherance  
8 of a facilities plan with a cost greater than five hundred  
9 thousand dollars for the new construction, expansion or major  
10 renovation of facilities, buildings and structures for school  
11 purposes, including:

12 (A) The acquisition of land for current or future use in  
13 connection with the construction project;

14 (B) New or substantial upgrading of existing equipment,  
15 machinery and furnishings;

16 (C) Installation of utilities and other similar items related to  
17 making the construction project operational.

18 (D) Construction project does not include such items as  
19 books, computers or equipment used for instructional purposes;  
20 fuel; supplies; routine utility services fees; routine maintenance  
21 costs; ordinary course of business improvements; other items  
22 which are customarily considered to result in a current or  
23 ordinary course of business operating charge or a major  
24 improvement project;

25 (4) "Cost of project" means the cost of construction,  
26 expansion, renovation, repair and safety upgrading of facilities,  
27 buildings and structures for school purposes; the cost of land,  
28 equipment, machinery, furnishings, installation of utilities and  
29 other similar items related to making the project operational;  
30 and the cost of financing, interest during construction,  
31 professional service fees and all other charges or expenses  
32 necessary, appurtenant or incidental to the foregoing, including  
33 the cost of administration of this article;

34 (5) "Facilities plan" means the ten-year countywide  
35 comprehensive educational facilities plan established by a  
36 county board in accordance with guidelines adopted by the  
37 authority to meet the goals and objectives of this article that:

38 (A) Addresses the existing school facilities and facility  
39 needs of the county to provide a thorough and efficient  
40 education in accordance with the provisions of this code and  
41 policies of the state board;

42 (B) Best serves the needs of individual students, the general  
43 school population and the communities served by the facilities;

44 (C) Includes the school major improvement plan;

45 (D) Includes the county board's school access safety plan  
46 required by section three, article nine-f of this chapter;

47 (E) Is updated annually to reflect projects completed,  
48 current enrollment projections and new or continuing needs; and

49 (F) Is approved by the state board and the authority prior to  
50 the distribution of state funds pursuant to this article to any  
51 county board or other entity applying for funds;

52 (6) "Project" means a construction project or a major  
53 improvement project;

54 (7) "Region" means the area encompassed within and  
55 serviced by a regional educational service agency established  
56 pursuant to section twenty-six, article two of this chapter;

57 (8) "Revenue" or "revenues" means moneys:

58 (A) Deposited in the School Building Capital Improvements  
59 Fund pursuant to section ten, article nine-a of this chapter;

60 (B) Deposited in the School Construction Fund pursuant to  
61 section thirty, article fifteen, chapter eleven of this code and  
62 section eighteen, article twenty-two, chapter twenty-nine of this  
63 code;

64 (C) Deposited in the School Building Debt Service Fund  
65 pursuant to section eighteen, article twenty-two, chapter  
66 twenty-nine of this code;

67 (D) Deposited in the School Major Improvement Fund  
68 pursuant to section thirty, article fifteen, chapter eleven of this  
69 code;

70 (E) Received, directly or indirectly, from any source for use  
71 in any project completed pursuant to this article; and

72 (F) Received by the authority for the purposes of this article;

73 (9) "School major improvement plan" means a ten-year  
74 school maintenance plan that:

75 (A) Is prepared by a county board in accordance with the  
76 guidelines established by the authority and incorporated in its

77 Countywide Comprehensive Educational Facilities Plan, or is  
78 prepared by the state board or the administrative council of an  
79 area vocational educational center in accordance with the  
80 guidelines if the entities seek funding from the authority for a  
81 major improvement project;

82 (B) Addresses the regularly scheduled maintenance for all  
83 school facilities of the county or under the jurisdiction of the  
84 entity seeking funding;

85 (C) Includes a projected repair and replacement schedule for  
86 all school facilities of the county or of entity seeking funding;

87 (D) Addresses the major improvement needs of each school  
88 within the county or under the jurisdiction of the entity seeking  
89 funding; and

90 (E) Is required prior to the distribution of state funds for a  
91 major improvement project pursuant to this article to the county  
92 board, state board or administrative council; and

93 (10) "School major improvement project" means a project  
94 with a cost greater than fifty thousand dollars and less than five  
95 hundred thousand dollars for the renovation, expansion, repair  
96 and safety upgrading of existing school facilities, buildings and  
97 structures, including the substantial repair or upgrading of  
98 equipment, machinery, building systems, utilities and other  
99 similar items related to the renovation, repair or upgrading in  
100 the furtherance of a school major improvement plan. A major  
101 improvement project does not include such items as books,  
102 computers or equipment used for instructional purposes; fuel;  
103 supplies; routine utility services fees; routine maintenance costs;  
104 ordinary course of business improvements; or other items which

105 are customarily considered to result in a current or ordinary  
106 course of business operating charge.

**§18-9D-15. Legislative intent; allocation of money among categories of projects; lease purchase options; limitation on time period for expenditure of project allocation; county maintenance budget requirements; project disbursements over period of years; preference for multicounty arrangements; submission of project designs; set-aside to encourage local participation.**

1 (a) It is the intent of the Legislature to empower the School  
2 Building Authority to facilitate and provide state funds and to  
3 administer all federal funds provided for the construction and  
4 major improvement of school facilities so as to meet the  
5 educational needs of the people of this state in an efficient and  
6 economical manner. The authority shall make funding  
7 determinations in accordance with the provisions of this article  
8 and shall assess existing school facilities and each facility's  
9 school major improvement plan in relation to the needs of the  
10 individual student, the general school population, the  
11 communities served by the facilities and facility needs  
12 statewide.

13 (b) An amount that is not more than three percent of the  
14 sum of moneys that are determined by the authority to be  
15 available for distribution during the then current fiscal year  
16 from:

17 (1) Moneys paid into the School Building Capital  
18 Improvements Fund pursuant to section ten, article nine-a of this  
19 chapter;

20 (2) The issuance of revenue bonds for which moneys in the  
21 School Building Debt Service Fund are pledged as security;

22 (3) Moneys paid into the School Construction Fund  
23 pursuant to section six of this article; and

24 (4) Any other moneys received by the authority, except  
25 moneys paid into the School Major Improvement Fund pursuant  
26 to section six of this article and moneys deposited into the  
27 School Access Safety Fund pursuant to section five, article nine-  
28 f of this chapter, may be allocated and may be expended by the  
29 authority for projects authorized in accordance with the  
30 provisions of section sixteen of this article that service the  
31 educational community statewide or, upon application by the  
32 state board, for educational programs that are under the  
33 jurisdiction of the state board. In addition, upon application by  
34 the state board or the administrative council of an area  
35 vocational educational center established pursuant to article  
36 two-b of this chapter, the authority may allocate and expend  
37 under this subsection moneys for school major improvement  
38 projects authorized in accordance with the provisions of section  
39 sixteen of this article proposed by the state board or an  
40 administrative council for school facilities under the direct  
41 supervision of the state board or an administrative council,  
42 respectively. Furthermore, upon application by a county board,  
43 the authority may allocate and expend under this subsection  
44 moneys for school major improvement projects for vocational  
45 programs at comprehensive high schools, vocational schools  
46 cooperating with community and technical college programs, or  
47 both. Each county board is encouraged to cooperate with  
48 community and technical colleges in the use of existing or  
49 development of new vocational technical facilities. All projects  
50 eligible for funds from this subsection shall be submitted  
51 directly to the authority which shall be solely responsible for the  
52 project's evaluation, subject to the following:

53 (A) The authority may not expend any moneys for a school  
54 major improvement project proposed by the state board or the  
55 administrative council of an area vocational educational center  
56 unless the state board or an administrative council has submitted  
57 a ten-year facilities plan; and

58 (B) The authority shall, before allocating any moneys to the  
59 state board or the administrative council of an area vocational  
60 educational center for a school improvement project, consider  
61 all other funding sources available for the project.



62 (c) An amount that is not more than two percent of the  
63 moneys that are determined by the authority to be available for  
64 distribution during the current fiscal year from:

65 (1) Moneys paid into the School Building Capital  
66 Improvements Fund pursuant to section ten, article nine-a of this  
67 chapter;

68 (2) The issuance of revenue bonds for which moneys in the  
69 School Building Debt Service Fund are pledged as security;

70 (3) Moneys paid into the School Construction Fund  
71 pursuant to section six of this article; and

72 (4) Any other moneys received by the authority, except  
73 moneys deposited into the School Major Improvement Fund and  
74 moneys deposited into the School Access Safety Fund pursuant  
75 to section five, article nine-f of this chapter, shall be set aside by  
76 the authority as an emergency fund to be distributed in  
77 accordance with the guidelines adopted by the authority.

78 (d) An amount that is not more than five percent of the  
79 moneys that are determined by the authority to be available for  
80 distribution during the current fiscal year from:

81 (1) Moneys paid into the School Building Capital  
82 Improvements fund pursuant to section ten, article nine-a of this  
83 chapter;

84 (2) The issuance of revenue bonds for which moneys in the  
85 School Building Debt Service Fund are pledged as security;

86 (3) Moneys paid into the School Construction Fund  
87 pursuant to section six of this article; and

88 (4) Any other moneys received by the authority, except  
89 moneys deposited into the School Major Improvement Fund and  
90 moneys deposited into the School Access Safety Fund pursuant  
91 to section five, article nine-f of this chapter, may be reserved by  
92 the authority for multiuse vocational-technical education  
93 facilities projects that may include post-secondary programs as

94 a first priority use. The authority may allocate and expend under  
95 this subsection moneys for any purposes authorized in this  
96 article on multiuse vocational-technical education facilities  
97 projects, including equipment and equipment updates at the  
98 facilities, authorized in accordance with the provisions of  
99 section sixteen of this article. If the projects approved under this  
100 subsection do not require the full amount of moneys reserved,  
101 moneys above the amount required may be allocated and  
102 expended in accordance with other provisions of this article. A  
103 county board, the state board, an administrative council or the  
104 joint administrative board of a vocational-technical education  
105 facility which includes post-secondary programs may propose  
106 projects for facilities or equipment, or both, which are under the  
107 direct supervision of the respective body: *Provided*, That the  
108 authority shall, before allocating any moneys for a project under  
109 this subsection, consider all other funding sources available for  
110 the project.

111 (e) The remaining moneys determined by the authority to be  
112 available for distribution during the then current fiscal year  
113 from:

114 (1) Moneys paid into the School Building Capital  
115 Improvements Fund pursuant to section ten, article nine-a of this  
116 chapter;

117 (2) The issuance of revenue bonds for which moneys in the  
118 School Building Debt Service Fund are pledged as security;

119 (3) Moneys paid into the School Construction Fund  
120 pursuant to section six of this article; and

121 (4) Any other moneys received by the authority, except  
122 moneys deposited into the School Major Improvement Fund and  
123 moneys deposited into the School Access Safety Fund pursuant  
124 to section five, article nine-f of this chapter, shall be allocated  
125 and expended on the basis of need and efficient use of resources  
126 for projects funded in accordance with the provisions of section  
127 sixteen of this article.

128 (f) If a county board proposes to finance a project that is  
129 authorized in accordance with section sixteen of this article  
130 through a lease with an option to purchase leased premises upon  
131 the expiration of the total lease period pursuant to an investment  
132 contract, the authority may not allocate moneys to the county  
133 board in connection with the project: *Provided*, That the  
134 authority may transfer moneys to the state board which, with the  
135 authority, shall lend the amount transferred to the county board  
136 to be used only for a one-time payment due at the beginning of  
137 the lease term, made for the purpose of reducing annual lease  
138 payments under the investment contract, subject to the  
139 following conditions:

140 (1) The loan shall be secured in the manner required by the  
141 authority, in consultation with the state board, and shall be  
142 repaid in a period and bear interest at a rate as determined by the  
143 state board and the authority and shall have any terms and  
144 conditions that are required by the authority, all of which shall  
145 be set forth in a loan agreement among the authority, the state  
146 board and the county board;

147 (2) The loan agreement shall provide for the state board and  
148 the authority to defer the payment of principal and interest upon  
149 any loan made to the county board during the term of the  
150 investment contract, and annual renewals of the investment  
151 contract, among the state board, the authority, the county board  
152 and a lessor, subject to the following:

153 (A) In the event a county board which has received a loan  
154 from the authority for a one-time payment at the beginning of  
155 the lease term does not renew the lease annually until  
156 performance of the investment contract in its entirety is  
157 completed, the county board is in default and the principal of the  
158 loan, together with all unpaid interest accrued to the date of the  
159 default, shall, at the option of the authority, in consultation with  
160 the state board, become due and payable immediately or subject  
161 to renegotiation among the state board, the authority and the  
162 county board;

163 (B) If a county board renews the lease annually through the  
164 performance of the investment contract in its entirety, the  
165 county board shall exercise its option to purchase the leased  
166 premises;

167 (C) The failure of the county board to make a scheduled  
168 payment pursuant to the investment contract constitutes an event  
169 of default under the loan agreement;

170 (D) Upon a default by a county board, the principal of the  
171 loan, together with all unpaid interest accrued to the date of the  
172 default, shall, at the option of the authority, in consultation with  
173 the state board, become due and payable immediately or subject  
174 to renegotiation among the state board, the authority and the  
175 county board; and

176 (E) If the loan becomes due and payable immediately, the  
177 authority, in consultation with the state board, shall use all  
178 means available under the loan agreement and law to collect the  
179 outstanding principal balance of the loan, together with all  
180 unpaid interest accrued to the date of payment of the  
181 outstanding principal balance; and

182 (3) The loan agreement shall provide for the state board and  
183 the authority to forgive all principal and interest of the loan  
184 upon the county board purchasing the leased premises pursuant  
185 to the investment contract and performance of the investment  
186 contract in its entirety.

187 (g) To encourage county boards to proceed promptly with  
188 facilities planning and to prepare for the expenditure of any state  
189 moneys derived from the sources described in this section, any  
190 county board or other entity to whom moneys are allocated by  
191 the authority that fails to expend the money within three years  
192 of the allocation shall forfeit the allocation and thereafter is  
193 ineligible for further allocations pursuant to this section until it  
194 is ready to expend funds in accordance with an approved  
195 facilities plan: *Provided*, That the authority may authorize an  
196 extension beyond the three-year forfeiture period not to exceed  
197 an additional two years. Any amount forfeited shall be added to

198 the total funds available in the school construction fund of the  
199 authority for future allocation and distribution. Funds may not  
200 be distributed for any project under this article unless the  
201 responsible entity has a facilities plan approved by the state  
202 board and the School Building Authority and is prepared to  
203 commence expenditure of the funds during the fiscal year in  
204 which the moneys are distributed.

205 (h) The remaining moneys that are determined by the  
206 authority to be available for distribution during the then current  
207 fiscal year from moneys paid into the School Major  
208 Improvement Fund pursuant to section six of this article shall be  
209 allocated and distributed on the basis of need and efficient use  
210 of resources for projects authorized in accordance with the  
211 provisions of section sixteen of this article, subject to the  
212 following:

213 (1) The moneys may not be distributed for any project under  
214 this section unless the responsible entity has a facilities plan  
215 approved by the state board and the authority and is to  
216 commence expenditures of the funds during the fiscal year in  
217 which the moneys are distributed;

218 (2) Any moneys allocated to a project and not distributed  
219 for that project shall be deposited in an account to the credit of  
220 the project, the principal amount to remain to the credit of and  
221 available to the project for a period of two years; and

222 (3) Any moneys which are unexpended after a two-year  
223 period shall be redistributed on the basis of need from the  
224 School Major Improvement Fund in that fiscal year.

225 (i) Local matching funds may not be required under the  
226 provisions of this section. However, this article does not negate  
227 the responsibilities of the county boards to maintain school  
228 facilities. To be eligible to receive an allocation of school major  
229 improvement funds from the authority, a county board must  
230 have expended in the previous fiscal year an amount of county  
231 moneys equal to or exceeding the lowest average amount of  
232 money included in the county board's maintenance budget over

233 any three of the previous five years and must have budgeted an  
234 amount equal to or greater than the average in the current fiscal  
235 year: *Provided*, That the state board shall promulgate rules  
236 relating to county boards' maintenance budgets, including items  
237 which shall be included in the budgets.

238 (j) Any county board may use moneys provided by the  
239 authority under this article in conjunction with local funds  
240 derived from bonding, special levy or other sources.  
241 Distribution to a county board, or to the state board or the  
242 administrative council of an area vocational educational center  
243 pursuant to subsection (b) of this section may be in a lump sum  
244 or in accordance with a schedule of payments adopted by the  
245 authority pursuant to guidelines adopted by the authority.

246 (k) Funds in the School Construction Fund shall first be  
247 transferred and expended as follows:

248 (1) Any funds deposited in the School Construction Fund  
249 shall be expended first in accordance with an appropriation by  
250 the Legislature.

251 (2) To the extent that funds are available in the School  
252 Construction Fund in excess of that amount appropriated in any  
253 fiscal year, the excess funds may be expended for projects  
254 authorized in accordance with the provisions of section sixteen  
255 of this article.

256 (l) It is the intent of the Legislature to encourage county  
257 boards to explore and consider arrangements with other counties  
258 that may facilitate the highest and best use of all available funds,  
259 which may result in improved transportation arrangements for  
260 students or which otherwise may create efficiencies for county  
261 boards and the students. In order to address the intent of the  
262 Legislature contained in this subsection, the authority shall grant  
263 preference to those projects which involve multicounty  
264 arrangements as the authority shall determine reasonable and  
265 proper.

266 (m) County boards shall submit all designs for construction  
267 of new school buildings to the School Building Authority for  
268 review and approval prior to preparation of final bid documents.  
269 A vendor who has been debarred pursuant to the provisions of  
270 sections thirty-three-a through thirty-three-f, inclusive, article  
271 three, chapter five-a of this code may not bid on or be awarded  
272 a contract under this section.

273 (n) The authority may elect to disburse funds for approved  
274 construction projects over a period of more than one year  
275 subject to the following:

276 (1) The authority may not approve the funding of a school  
277 construction project over a period of more than three years;

278 (2) The authority may not approve the use of more than fifty  
279 percent of the revenue available for distribution in any given  
280 fiscal year for projects that are to be funded over a period of  
281 more than one year; and

282 (3) In order to encourage local participation in funding  
283 school construction projects, the authority may set aside limited  
284 funding, not to exceed five hundred thousand dollars, in reserve  
285 for one additional year to provide a county the opportunity to  
286 complete financial planning for a project prior to the allocation  
287 of construction funds. Any funding shall be on a reserve basis  
288 and converted to a part of the construction grant only after all  
289 project budget funds have been secured and all county  
290 commitments have been fulfilled. Failure of the county to  
291 solidify the project budget and meet its obligations to the state  
292 within eighteen months of the date the funding is set aside by  
293 the authority will result in expiration of the reserve and the  
294 funds shall be reallocated by the authority in the succeeding  
295 funding cycle.

**§18-9D-20. Rules.**

1 (a) The authority is hereby empowered to promulgate,  
2 adopt, amend or repeal rules in accordance with the provisions  
3 of article three-a, chapter twenty-nine-a of this code.

4 (b) All rules adopted or promulgated by the authority and in  
5 effect immediately prior to the effective date of this section shall  
6 be refiled pursuant to the provisions of article three-a, chapter  
7 twenty-nine-a of this code on or before the first day of  
8 September, two thousand seven.

9 (1) Any interpretive or procedural rule shall continue in  
10 effect until rescinded or appropriately refiled by the authority.

11 (2) Any legislative rule shall continue in effect until  
12 approved or rejected by the Legislature or rescinded by the  
13 authority.

#### **ARTICLE 9F. SCHOOL ACCESS SAFETY ACT.**

§18-9F-1. Legislative findings and intent.

§18-9F-2. Definitions.

§18-9F-3. School access safety plan.

§18-9F-4. Guidelines and procedures for school access safety plans; project  
evaluation; on-site inspection of facilities.

§18-9F-5. School Access Safety Fund.

§18-9F-6. Allocation of funds; eligibility for funding.

§18-9F-7. School access safety requirements for new schools.

§18-9F-8. Report.

#### **§18-9F-1. Legislative findings and intent.**

1 (a) The Legislature finds that:

2 (1) Establishing and maintaining safe and secure schools is  
3 critical to fostering a healthy learning environment and  
4 maximizing student achievement;



5 (2) All school facilities in the state should be designed,  
6 constructed, furnished and maintained in a manner that enhances  
7 a healthy learning environment and provides necessary  
8 safeguards for the health, safety and security of persons who  
9 enter and use the facilities;

10 (3) Adequate safeguards for the ingress to and egress from  
11 school facilities of pupils, school employees, parents, visitors  
12 and emergency personnel are critical to the overall safety of the  
13 public schools in this state;

14 (4) Safety upgrades to the means of ingress to and egress  
15 from school facilities for pupils, school employees, parents,  
16 visitors and emergency personnel must be part of a  
17 comprehensive analysis of overall schoolsafety issues that takes  
18 into consideration the input of local law-enforcement agencies,  
19 local emergency services agencies, community leaders, parents,  
20 pupils, teachers, administrators and other school employees  
21 interested in the prevention of school crime and violence.

22 (b) It is the intent of the Legislature to empower the School  
23 Building Authority to facilitate and provide state funds for the  
24 design, construction, renovation, repair and upgrading of  
25 facilities so as to enhance school access safety and provide  
26 secure ingress to and egress from school facilities to pupils,  
27 school employees, parents, visitors and emergency personnel.

#### **§18-9F-2. Definitions.**

1 As used in this article, these terms have the meanings  
2 ascribed unless the context clearly indicates a different meaning:

3 (1) “Authority” means the School Building Authority of  
4 West Virginia;

- 5       (2) “Department of Education” means the West Virginia  
6 Department of Education;
- 7       (3) “New school building” means any public school in the  
8 state for educating students in any of grades kindergarten  
9 through twelve, for which design and construction begin after  
10 the first day of July, two thousand seven;
- 11       (4) “Project cost” means the cost of:
- 12       (A) Evaluating a school facility to ascertain its safety needs;
- 13       (B) Determining appropriate measures to address safety  
14 needs;
- 15       (C) Developing a safety plan;
- 16       (D) Administering a safety project;
- 17       (E) The design, construction, renovation, repair and safety  
18 upgrading of a school's means of ingress and egress;
- 19       (F) Equipment, machinery, installation of utilities and other  
20 similar items necessary to making the project operational;
- 21       (G) Effectively maintaining structural and equipment  
22 investments made pursuant to this article, including, but not  
23 limited to, such provisions as maintenance contracts on security  
24 equipment and video surveillance services; and
- 25       (H) All other charges necessary, appurtenant or incidental  
26 to the provisions of this subdivision, including the cost of  
27 administering this article;
- 28       (5) “School Access Safety Fund” means the special account  
29 established in section five of this article;

30 (6) “School access safety plan” or “safety plan” means the  
31 comprehensive countywide school access safety plan that:

32 (A) Is prepared by each county board seeking funding under  
33 this article and incorporated into its comprehensive educational  
34 facilities plan in accordance with guidelines established by the  
35 authority;

36 (B) Addresses the access safety needs for all school  
37 facilities in the county;

38 (C) Includes a projected school access safety repair and  
39 renovation schedule for all school facilities of the county; and

40 (D) Is required prior to the disbursement of state funds for  
41 a school access safety project pursuant to this article; and

42 (7) “School access safety project” or “safety project” means  
43 a project administered in furtherance of a school access safety  
44 plan pursuant to the provisions of this article.

**§18-9F-3. School access safety plan.**

1 (a) To facilitate the goals of this article and to ensure the  
2 prudent and resourceful expenditure of state funds, each county  
3 board seeking funds for school access safety projects during a  
4 fiscal year shall submit to the authority a school access safety  
5 plan or annual plan update that addresses the school access  
6 safety needs of each school facility in the county. In developing  
7 its plan, the county board shall consult with the Countywide  
8 Council on Productive and Safe Schools in accordance with the  
9 provisions of this section and section forty-two, article five of  
10 this chapter.

11 (b) The safety plan shall include at least the following:

12 (1) A countywide inventory of each school facility's means  
13 of ingress to and egress from the school for students, school  
14 employees, parents, visitors and emergency personnel including,  
15 but not limited to:

16 (A) The number of controlled points of ingress to the school  
17 facility;

18 (B) The number and placement of exterior doors;

19 (C) The use of monitoring systems on exterior doors;

20 (D) The use of timed, magnetic or other locks on exterior  
21 doors;

22 (E) The use of two-way communication systems between  
23 points of ingress and school personnel;

24 (F) The use of functional panic or other alarm hardware on  
25 exterior doors; and

26 (G) The use of remote visitor access systems on points of  
27 ingress;

28 (2) The recommendations and guidelines developed by the  
29 Countywide Council on Productive and Safe Schools pursuant  
30 to section forty-two, article five of this chapter, together with  
31 the county board's assessment of the recommendations and  
32 guidelines;

33 (3) Recommendations for effective communication and  
34 coordination between school facilities, local law-enforcement  
35 agencies and local emergency services agencies in the county;

36 (4) An assessment of the current status of crime committed  
37 on school campuses and at school-related functions;

38 (5) A projected school access safety repair and renovation  
39 schedule for all school facilities in the county;

40 (6) A prioritized list of all projects contained in the plan,  
41 including the projected cost of each project;

42 (7) A description of how:

43 (A) The plan addresses the goals of this article and  
44 guidelines established by the authority;

45 (B) Each project furthers the county board's safety plan,  
46 facilities plan and school major improvement plan;

47 (8) Notation of the funds available for allocation and  
48 disbursement to the county board pursuant to section six of this  
49 article;

50 (9) A description of any source of local funds that the  
51 county board intends to contribute to the safety projects, or an  
52 approved financial hardship waiver, to satisfy the local  
53 contribution requirements of section six of this article; and

54 (10) Any other element considered appropriate by the  
55 authority or required by the guidelines established pursuant to  
56 section three of this article, including any project and  
57 maintenance specification.

**§18-9F-4. Guidelines and procedures for school access safety  
plans; project evaluation; on-site inspection of  
facilities.**

1 (a) By the first day of June, two thousand seven, the  
2 authority shall establish and distribute to each county board  
3 guidelines and procedures regarding school access safety plans  
4 and school access safety projects, which shall address at least  
5 the following:

6 (1) All of the necessary elements of the school access safety  
7 plan required in accordance with the provisions of section three  
8 of this article;

9 (2) The manner, time line and process for submission to the  
10 authority of each safety plan and annual plan update, including  
11 guidelines for modification of an approved safety plan;

12 (3) Any project and maintenance specifications considered  
13 appropriate by the authority;

14 (4) Procedures for a county board to submit a preliminary  
15 plan, plan outline or plan proposal to the authority prior to  
16 submitting the safety plan. The preliminary plan, plan outline or  
17 plan proposal shall be the basis for a consultation meeting  
18 between representatives of the county board and the authority.  
19 The meeting shall be held as soon as practicable following  
20 submission in order to:

21 (A) Ensure understanding of the goals of this article;

22 (B) Discuss ways the plan may be structured to meet the  
23 goals of this article; and

24 (C) Ensure efficiency and productivity in the approval  
25 process; and

26 (5) Procedures for notifying county boards of the funds  
27 available for allocation and disbursement during each fiscal year  
28 pursuant to section six of this article.

29 (b) By the first day of June, two thousand seven, the  
30 authority shall establish and distribute to each county board  
31 guidelines and procedures for evaluating safety plans and safety  
32 projects that address at least the following:

33 (1) Whether the proposed safety project furthers the safety  
34 plan and complies with the guidelines established by the  
35 authority;

36 (2) How the safety plan and safety project will ensure the  
37 prudent and resourceful expenditure of state funds and achieve  
38 the purposes of this article;

39 (3) Whether the safety plan and safety project advance  
40 student health and safety needs, including, but not limited to,  
41 critical health and safety needs;

42 (4) Whether the safety plan and safety project include  
43 regularly scheduled preventive maintenance; and

44 (5) Consideration of the prioritized list of projects required  
45 by section three of this article.

46 (c) The authority shall establish guidelines and procedures  
47 for allocating and disbursing funds in accordance with section  
48 six of this article, subject to the availability of funds.

49 (d) Each county board receiving funds pursuant to this  
50 article annually shall conduct an on-site inspection and submit  
51 an audit review to the state board. The inspection shall be  
52 conducted in accordance with the provisions of the Department  
53 of Education's Handbook on Planning School Facilities.

#### **§18-9F-5. School Access Safety Fund.**

1 (a) There is hereby established in the State Treasury a  
2 special account designated the School Access Safety Fund.

3 (b) All funds accruing to the authority pursuant to the  
4 provisions of this article shall be deposited into the fund and  
5 expended in accordance with provisions of this article.

6 (c) Any funds remaining in the account at the end of a fiscal  
7 year, including accrued interest, do not revert to the General  
8 Revenue Fund, but remain in the account.

9 (d) The authority may transfer moneys from the fund to  
10 custodial accounts maintained by the authority with a state  
11 financial institution, as necessary to the performance of any  
12 contracts executed by the authority in accordance with the  
13 provisions of this article.

**§18-9F-6. Allocation of funds; eligibility for funding.**

1 (a) On or before the first day of May of each year, the  
2 authority shall determine the amount of funds available in the  
3 School Access Safety Fund for allocation and disbursement  
4 during that fiscal year.

5 (b) The authority shall divide the amount of funds available  
6 pursuant to subsection (a) of this section by the total net  
7 enrollment in public schools for the state as a whole. That  
8 quotient is the per pupil amount. The authority shall allocate to  
9 each county board the per pupil amount of funds for each  
10 student in net enrollment of that county, as defined in section  
11 two, article nine-a of this chapter.

12 (c) The authority shall notify in writing each county board  
13 of education the amount of funds available to that board as soon  
14 as practicable upon determining that amount pursuant to  
15 subsection (b) of this section.

16 (d) Except as provided in subdivision (3) of this subsection,  
17 to be eligible to receive a disbursement of funds pursuant to this  
18 article, a county board shall contribute local funds derived from  
19 bonding, special levy or other identified sources to the school  
20 access safety projects contained in the county board's school  
21 access safety plan.



22 (1) The amount of a county board's contribution shall equal  
23 at least fifteen percent of the funds available to the county board  
24 pursuant to subsection (b) of this section.

25 (2) A county board may submit a financial hardship waiver  
26 request to the state board for consideration regarding the county  
27 board's inability to provide the contribution required by this  
28 subsection. Upon review and approval of the request by the state  
29 board, the authority shall waive the contribution requirement for  
30 that county board and allocate and disburse funds pursuant to  
31 this article.

32 (e) The authority may disburse funds pursuant to this  
33 section only to a county board that:

34 (1) Has a safety plan that has been approved by the  
35 authority; and

36 (2) Is prepared to commence expending the funds during the  
37 fiscal year in which the funds are disbursed.

38 (f) The authority may disburse funds to a county board in a  
39 lump sum or according to a schedule of payments adopted by  
40 the authority that is consistent with its guidelines.

41 (g) To encourage county boards to proceed promptly with  
42 school access safety planning and to prepare for the expenditure  
43 of funds derived pursuant to this article, a county board forfeits  
44 any funds that it fails to expend within one year of disbursement  
45 by the authority. The county board is ineligible for any  
46 additional allocation or disbursement pursuant to this article  
47 until it is prepared to expend funds according to an approved  
48 school access safety plan.

49 (1) The authority may authorize an extension beyond the  
50 one-year forfeiture period not to exceed an additional six months.

51 (2) Any forfeited funds shall be returned to the School  
52 Access Safety Fund and made available for future allocation and  
53 disbursement.

**§18-9F-7. School access safety requirements for new schools.**

1 (a) Notwithstanding any other provision of this code to the  
2 contrary, and in an effort to enhance school access safety, the  
3 design and construction of any new school building receiving  
4 funds from the authority shall comply with the school access  
5 safety standards established by the authority. Any new school  
6 building that does not comply with the school access safety  
7 standards may not receive any funds from the authority pursuant  
8 to this article.

9 (b) The authority shall propose a rule for legislative  
10 approval in accordance with the provisions of article three-a,  
11 chapter twenty-nine-a of this code that establishes standards for  
12 school access safety in public school buildings. The rule shall  
13 require for any project that will receive funding pursuant to this  
14 article that the county board shall submit any new school design  
15 to the authority for review and approval for compliance with  
16 this section prior to preparing final bid documents.

**§18-9F-8. Report.**

1 The authority shall report to the Legislative Oversight  
2 Commission on Education Accountability during the June and  
3 September, two thousand seven, and January, two thousand  
4 eight, interim meeting periods regarding implementation of the  
5 provisions of this article.

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**CHAPTER 91**

**(Com. Sub. for S.B. 599 - By Senators Plymale and Edgell]**

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[Passed March 10, 2007; in effect ninety days from passage.]  
[Approved by the Governor on April 4, 2007.]

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AN ACT to amend and reenact §18A-2-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18A-2-5a, all relating to employment of teachers and other school employees; eliminating the early notification payment for a classroom teacher who gives notice of resignation; authorizing a payment for early notification of retirement to employees other than classroom teachers under certain circumstances; and making certain technical changes.

*Be it enacted by the Legislature of West Virginia:*

That §18A-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 §18A-2-5a, all to read as follows:

**ARTICLE 2. SCHOOL PERSONNEL.**

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof.

§18A-2-5a. Authorizing payment for notification of retirement.

**§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof.**

1 (a) Before entering upon their duties, all teachers shall  
2 execute a contract with their county boards, which shall state  
3 the salary to be paid and shall be in the form prescribed by  
4 the state superintendent. Each contract shall be signed by the  
5 teacher and by the president and secretary of the county  
6 board and shall be filed, together with the certificate of the  
7 teacher, by the secretary of the office of the county board.

8 (b) A teacher's contract, under this section, shall be for a  
9 term of not less than one nor more than three years, one of  
10 which shall be for completion of a beginning teacher  
11 internship pursuant to the provisions of section two-b, article  
12 three of this chapter, if applicable. If, after three years of  
13 such employment, the teacher who holds a professional  
14 certificate, based on at least a bachelor's degree, has met the  
15 qualifications for a bachelor's degree and the county board  
16 enter into a new contract of employment, it shall be a  
17 continuing contract, subject to the following:

18 (1) Any teacher holding a valid certificate with less than  
19 a bachelor's degree who is employed in a county beyond the  
20 three-year probationary period shall upon qualifying for the  
21 professional certificate based upon a bachelor's degree, if  
22 reemployed, be granted continuing contract status; and

23 (2) A teacher holding continuing contract status with one  
24 county shall be granted continuing contract status with any  
25 other county upon completion of one year of acceptable  
26 employment if the employment is during the next succeeding  
27 school year or immediately following an approved leave of  
28 absence extending no more than one year.

29 (c) The continuing contract of any teacher shall remain in  
30 full force and effect except as modified by mutual consent of  
31 the school board and the teacher, unless and until terminated,  
32 subject to the following:

33 (1) A continuing contract may not be terminated except:

34 (A) By a majority vote of the full membership of the  
35 county board on or before the first Monday of April of the  
36 then current year, after written notice, served upon the  
37 teacher, return receipt requested, stating cause or causes and  
38 an opportunity to be heard at a meeting of the board prior to  
39 the board's action on the termination issue; or

40 (B) By written resignation of the teacher before that date,  
41 to initiate termination of a continuing contract;

42 (2) The termination shall take effect at the close of the  
43 school year in which the contract is terminated;

44 (3) The contract may be terminated at any time by mutual  
45 consent of the school board and the teacher;

46 (4) This section does not affect the powers of the school  
47 board to suspend or dismiss a principal or teacher pursuant to  
48 section eight of this article;

49 (5) A continuing contract for any teacher holding a  
50 certificate valid for more than one year and in full force and  
51 effect during the school year one thousand nine hundred  
52 eighty-four--one thousand nine hundred eighty-five shall  
53 remain in full force and effect;

54 (6) A continuing contract shall not operate to prevent a  
55 teacher's dismissal based upon the lack of need for the  
56 teacher's services pursuant to the provisions of law relating  
57 to the allocation to teachers and pupil-teacher ratios. The

58 written notification of teachers being considered for dismissal  
59 for lack of need shall be limited to only those teachers whose  
60 consideration for dismissal is based upon known or expected  
61 circumstances which will require dismissal for lack of need.  
62 An employee who was not provided notice and an  
63 opportunity for a hearing pursuant to this subsection may not  
64 be included on the list. In case of dismissal for lack of need,  
65 a dismissed teacher shall be placed upon a preferred list in  
66 the order of their length of service with that board. No  
67 teacher shall be employed by the board until each qualified  
68 teacher upon the preferred list, in order, has been offered the  
69 opportunity for reemployment in a position for which he or  
70 she is qualified, not including a teacher who has accepted a  
71 teaching position elsewhere. The reemployment shall be  
72 upon a teacher's preexisting continuing contract and has the  
73 same effect as though the contract had been suspended during  
74 the time the teacher was not employed.

75 (d) In the assignment of position or duties of a teacher  
76 under a continuing contract, the board may provide for  
77 released time of a teacher for any special professional or  
78 governmental assignment without jeopardizing the  
79 contractual rights of the teacher or any other rights, privileges  
80 or benefits under the provisions of this chapter. Released  
81 time shall be provided for any professional educator while  
82 serving as a member of the Legislature during any duly  
83 constituted session of that body and its interim and statutory  
84 committees and commissions without jeopardizing his or her  
85 contractual rights or any other rights, privileges, benefits or  
86 accrual of experience for placement on the state minimum  
87 salary schedule in the following school year under the  
88 provisions of this chapter, board policy and law.

89 (e) Any teacher who fails to fulfill his or her contract  
90 with the board, unless prevented from doing so by personal  
91 illness or other just cause or unless released from his or her  
92 contract by the board, or who violates any lawful provision

93 of the contract, shall be disqualified to teach in any other  
94 public school in the state for a period of the next ensuing  
95 school year and the State Department of Education or board  
96 may hold all papers and credentials of the teacher on file for  
97 a period of one year for the violation: *Provided*, That  
98 marriage of a teacher shall not be considered a failure to  
99 fulfill, or violation of, the contract.

100 (f) Any classroom teacher, as defined in section one,  
101 article one of this chapter, who desires to resign employment  
102 with a county board or request a leave of absence, the  
103 resignation or leave of absence to become effective on or  
104 before the fifteenth day of July of the same year and after  
105 completion of the employment term, may do so at any time  
106 during the school year by written notification of the  
107 resignation or leave of absence and any notification received  
108 by a county board shall automatically extend the teacher's  
109 public employee insurance coverage until the thirty-first day  
110 of August of the same year.

111 (g) Any classroom teacher who gives written notice to the  
112 county board on or before the first day of February of the  
113 school year of their retirement from employment with the  
114 board at the conclusion of the school year shall be paid five  
115 hundred dollars from the Early Notification of Retirement  
116 line item established for the Department of Education for this  
117 purpose, subject to appropriation by the Legislature. If the  
118 appropriations to the Department of Education for this  
119 purpose are insufficient to compensate all applicable  
120 teachers, the Department of Education shall request a  
121 supplemental appropriation in an amount sufficient to  
122 compensate all such teachers. Additionally, if funds are still  
123 insufficient to compensate all applicable teachers, the priority  
124 of payment is for teachers who give written notice the  
125 earliest. This payment shall not be counted as part of the  
126 final average salary for the purpose of calculating retirement.

**§18A-2-5a. Authorizing payment for notification of retirement.**

1 Each county board is authorized to pay, entirely from  
2 local funds, five hundred dollars or less to any service  
3 employee, or to any professional employee who is not a  
4 classroom teacher, who gives written notice to the county  
5 board on or before the first day of February of the school year  
6 of his or her retirement from employment with the board at  
7 the conclusion of the school year.

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**CHAPTER 92**

**(H.B. 2105 - By Delegates M. Poling, Paxton, Perry, Wells,  
Stephens, Tabb, Wysong, Duke, Fragale and Sumner)**

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[Passed January 24, 2007; in effect from passage.]

[Approved by the Governor on February 2, 2007.]

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AN ACT to amend and reenact §18A-2-3 of the Code of West Virginia, 1931, as amended, relating to extending expiration date of provisions permitting retired teachers to accept employment as substitutes in areas of critical need and shortage for an unlimited number of days without affecting retirement benefits.

*Be it enacted by the Legislature of West Virginia:*

That §18A-2-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:



**ARTICLE 2. SCHOOL PERSONNEL.****§18A-2-3. Employment of substitute teachers and retired teachers as substitutes in areas of critical need and shortage; employment of prospective employable professional personnel.**

1 (a) The county superintendent, subject to approval of the  
2 county board, may employ and assign substitute teachers to  
3 any of the following duties: (1) To fill the temporary absence  
4 of any teacher or an unexpired school term made vacant by  
5 resignation, death, suspension or dismissal; (2) to fill a  
6 teaching position of a regular teacher on leave of absence;  
7 and (3) to perform the instructional services of any teacher  
8 who is authorized by law to be absent from class without loss  
9 of pay, providing the absence is approved by the board of  
10 education in accordance with the law. The substitute shall be  
11 a duly certified teacher.

12 (b) Notwithstanding any other provision of this code to  
13 the contrary, a substitute teacher who has been assigned as a  
14 classroom teacher in the same classroom continuously for  
15 more than one half of a grading period and whose assignment  
16 remains in effect two weeks prior to the end of the grading  
17 period, shall remain in the assignment until the grading  
18 period has ended, unless the principal of the school certifies  
19 that the regularly employed teacher has communicated with  
20 and assisted the substitute with the preparation of lesson  
21 plans and monitoring student progress or has been approved  
22 to return to work by his or her physician. For the purposes of  
23 this section, teacher and substitute teacher, in the singular or  
24 plural, mean professional educator as defined in section one,  
25 article one of this chapter.

26 (c) (1) The Legislature hereby finds and declares that due  
27 to a shortage of qualified substitute teachers, a compelling  
28 state interest exists in expanding the use of retired teachers to  
29 provide service as substitute teachers in areas of critical need  
30 and shortage. The Legislature further finds that diverse  
31 circumstances exist among the counties for the expanded use  
32 of retired teachers as substitutes. For the purposes of this  
33 subsection, “area of critical need and shortage” means an area  
34 of certification and training in which the number of available  
35 substitute teachers in the county who hold certification and  
36 training in that area and who are not retired is insufficient to  
37 meet the projected need for substitute teachers.

38 (2) A person receiving retirement benefits under the  
39 provisions of article seven-a of this chapter or who is entitled  
40 to retirement benefits during the fiscal year in which that  
41 person retired may accept employment as a substitute teacher  
42 for an unlimited number of days each fiscal year without  
43 affecting the monthly retirement benefit to which the retirant  
44 is otherwise entitled if the following conditions are satisfied:

45 (A) The county board adopts a policy recommended by  
46 the superintendent to address areas of critical need and  
47 shortage;

48 (B) The policy sets forth the areas of critical need and  
49 shortage in the county in accordance with the definition of  
50 area of critical need and shortage set forth in subdivision (1)  
51 of this subsection;

52 (C) The policy provides for the employment of retired  
53 teachers as substitute teachers during the school year on an  
54 expanded basis in areas of critical need and shortage as  
55 provided in this subsection;

56 (D) The policy provides that a retired teacher may be  
57 employed as a substitute teacher in an area of critical need  
58 and shortage on an expanded basis as provided in this  
59 subsection only when no other teacher who holds  
60 certification and training in the area and who is not retired is  
61 available and accepts the substitute assignment;

62 (E) The policy is effective for one school year only and  
63 is subject to annual renewal by the county board;

64 (F) The state board approves the policy and the use of  
65 retired teachers as substitute teachers on an expanded basis in  
66 areas of critical need and shortage as provided in this  
67 subsection; and

68 (G) Prior to employment of a substitute teacher beyond  
69 the post-retirement employment limitations established by the  
70 consolidated public retirement board, the superintendent of  
71 the affected county submits to the Consolidated Public  
72 Retirement Board, in a form approved by the retirement  
73 board, an affidavit signed by the superintendent stating the  
74 name of the county, the fact that the county has adopted a  
75 policy to employ retired teachers as substitutes to address  
76 areas of critical need and shortage and the name or names of  
77 the person or persons to be employed pursuant to the policy.

78 (3) Any person who retires and begins work as a  
79 substitute teacher within the same employment term shall

80 lose those retirement benefits attributed to the annuity  
81 reserve, effective from the first day of employment as a  
82 retiree substitute in that employment term and ending with  
83 the month following the date the retiree ceases to perform  
84 service as a substitute.

85 (4) Retired teachers employed to perform expanded  
86 substitute service pursuant to this subsection are considered  
87 day-to-day, temporary, part-time employees. The substitutes  
88 are not eligible for additional pension or other benefits paid  
89 to regularly employed employees and shall not accrue  
90 seniority.

91 (5) When a retired teacher is employed as a substitute to  
92 fill a vacant position, the county board shall continue to post  
93 the vacant position until it is filled with a regularly employed  
94 teacher.

95 (6) Until this subsection is expired pursuant to  
96 subdivision (7) of this subsection, the state board, annually,  
97 shall report to the Joint Committee on Government and  
98 Finance prior to the first day of February of each year.  
99 Additionally, a copy shall be provided to the Legislative  
100 Oversight Commission on Education Accountability. The  
101 report shall contain information indicating the effectiveness  
102 of the provisions of this subsection on expanding the use of  
103 retired substitute teachers to address areas of critical need and  
104 shortage.

105 (7) The provisions of this subsection shall expire on the  
106 thirtieth day of June, two thousand ten.

107 (d) (1) Notwithstanding any other provision of this code  
108 to the contrary, each year a county superintendent may  
109 employ prospective employable professional personnel on a  
110 reserve list at the county level subject to the following  
111 conditions:

112 (A) The county board adopts a policy to address areas of  
113 critical need and shortage as identified by the state board.  
114 The policy shall include authorization to employ prospective  
115 employable professional personnel;

116 (B) The county board posts a notice of the areas of  
117 critical need and shortage in the county in a conspicuous  
118 place in each school for at least ten working days; and

119 (C) There are not any potentially qualified applicants  
120 available and willing to fill the position.

121 (2) Prospective employable professional personnel may  
122 only be employed from candidates at a job fair who have or  
123 will graduate from college in the current school year or  
124 whose employment contract with a county board has or will  
125 be terminated due to a reduction in force in the current fiscal  
126 year.

127 (3) Prospective employable professional personnel  
128 employed are limited to three full-time prospective  
129 employable professional personnel per one hundred  
130 professional personnel employed in a county or twenty-five  
131 full-time prospective employable professional personnel in a  
132 county, whichever is less.

133 (4) Prospective employable professional personnel shall  
134 be granted benefits at a cost to the county board and as a  
135 condition of the employment contract as approved by the  
136 county board.

137 (5) Regular employment status for prospective  
138 employable professional personnel may be obtained only in  
139 accordance with the provisions of section seven-a, article  
140 four of this chapter.

141 (e) The state board annually shall review the status of  
142 employing personnel under the provisions of subsection (d)  
143 of this section and annually shall report to the Legislative  
144 Oversight Commission on Education Accountability on or  
145 before the first day of November of each year. The report  
146 shall include, but not be limited to, the following:

147 (A) The counties that participated in the program;

148 (B) The number of personnel hired;

149 (C) The teaching fields in which personnel were hired;

150 (D) The venue from which personnel were employed;

151 (E) The place of residency of the individual hired; and

152 (F) The state board's recommendations on the  
153 prospective employable professional personnel program.

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CHAPTER 93

**(Com. Sub. for S.B. 100 - By Senators Hunter and Unger)**

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[Passed March 10, 2007; in effect July 1, 2007.]

[Approved by the Governor on April 4, 2007.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18A-2-14, relating to requiring county boards of education to reimburse school personnel for mileage costs when the employee is required to use a personal vehicle in the course of employment; and establishing parameters for rate of reimbursement.

*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 §18A-2-14, to read as follows:

**ARTICLE 2. SCHOOL PERSONNEL.**

**§18A-2-14. Mileage reimbursement for school personnel.**

1 A county board shall reimburse any school personnel for  
2 each mile traveled when the employee is required to use a  
3 personal motor vehicle in the course of employment. The  
4 county board shall reimburse at the same rate for all  
5 employees in that county. The rate of reimbursement shall be  
6 at least the lesser of, and not more than the greater of, the  
7 federal standard mileage rate and the rate authorized by the  
8 travel management rule of the Department of Administration.

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**CHAPTER 94**

**(Com. Sub. for H.B. 2588 - By Delegates M. Poling and Paxton)**

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[Passed March 10, 2007; in effect July 1, 2007.]  
[Approved by the Governor on March 28, 2007.]

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AN ACT to amend and reenact §18A-3-3a of the Code of West Virginia, 1931, as amended, relating to the reimbursement of tuition, registration and other required fees for coursework completed by teachers for certification renewal and an additional endorsement in a shortage area; creating priority for reimbursement of courses for renewals and endorsement in shortage areas if insufficient funds appropriated; and limiting semester hours of courses reimbursed for any teacher.

*Be it enacted by the Legislature of West Virginia:*

That § 18A-3-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. TRAINING, CERTIFICATION, LICENSING,  
PROFESSIONAL DEVELOPMENT.**

**§18A-3-3a. Payment of tuition, registration and other fees for  
teachers; maximum payment per teacher.**

- 1 (a) The West Virginia Department of Education shall
- 2 promulgate rules to administer the reimbursement of tuition,
- 3 registration and other required fees for coursework completed
- 4 by teachers in accordance with the provisions of this section.
- 5 The rules shall provide for reimbursement for courses



6 completed toward both certification renewal and additional  
7 endorsement in a shortage area.

8 (b) As used in this section, the following words and  
9 phrases have the meanings ascribed to them:

10 (1) "Teacher" has the meaning provided in section one,  
11 article one, chapter eighteen of this code.

12 (2) "Shortage area" shall be defined by state board policy  
13 to indicate the subject areas for which an insufficient number  
14 of teachers are available.

15 (3) "Certification" and "certificate" mean a valid West  
16 Virginia:

17 (A) Professional teaching, service or administrative  
18 certificate, or its equivalent; or

19 (B) Provisional professional teaching, service or  
20 administrative certificate, or its equivalent.

21 (4) "Requirements for certification renewal" are those  
22 requirements of the State Department of Education as  
23 provided in section three of this article.

24 (5) "Requirements for additional endorsement" are those  
25 requirements of the State Department of Education as  
26 provided in section three of this article.

27 (6) "State institution of higher education" has the  
28 meaning provided in section two, article one, chapter  
29 eighteen-b of this code.

30 (c) To the extent of funds appropriated for the purposes  
31 specified in this section, payment shall be made to any  
32 teacher who:

33 (1) Holds either a valid West Virginia:

34 (A) Certificate; or

35 (B) First class permit for full-time employment; and

36 (2) Is seeking:

37 (A) An additional endorsement in a shortage area, and  
38 either resides in the state or is employed regularly for  
39 instructional purposes in a public school in the state; or

40 (B) Certification renewal, and has a continuing contract  
41 with a county board.

42 (d) The payment shall be made as reimbursement for the  
43 tuition, registration and other required fees for any course  
44 completed at:

45 (1) Any college or university within the state; or

46 (2) A college or university outside the state if prior  
47 approval is granted by the department.

48 (e) A course is eligible for reimbursement if it meets the  
49 requirements for:

50 (1) An additional endorsement in a shortage area; or

51 (2) Certification renewal.

52 (f) If funds appropriated for the purposes specified in  
53 this section are insufficient for the reimbursement of all  
54 eligible courses within the limits provided in this section, the  
55 West Virginia Department of Education shall make the  
56 reimbursements for courses for additional endorsement in a  
57 shortage area and certification renewal in a shortage area  
58 first.

59 (g) Payment made for any single fee may not exceed the  
60 amount of the highest corresponding fee charged at a state  
61 institution of higher education.

62 (h) Reimbursement for courses completed toward  
63 certification renewal is limited to fifteen semester hours of  
64 courses for any teacher. Reimbursement for courses  
65 completed toward additional endorsement in a shortage area  
66 is limited to fifteen semester hours of courses for any teacher.

67 (i) The West Virginia Department of Education shall seek  
68 funding from sources other than general revenue  
69 appropriation, including, but not limited to, workforce  
70 investment funds.

71 (j) No provision of this section may be construed to  
72 require any appropriation or any specific amount of  
73 appropriation for the purposes specified in this section, or to  
74 require the department to expend funds for those purposes  
75 from any other amounts appropriated for expenditure by the  
76 department.

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**CHAPTER 95**

**(Com. Sub. for H.B. 2777 - By Mr. Speaker,  
Mr. Thompson, and Delegate Armstead)  
[By Request of the Executive]**

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[Passed March 9, 2007; in effect July 1, 2007.]

[Approved by the Governor on April 4, 2007.]

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AN ACT to amend and reenact §18A-4-2, §18A-4-2a, §18A-4-8 and §18A-4-8a of the Code of West Virginia, 1931, as amended, all relating to providing for compensation generally; increasing annual salaries of public school teachers; increasing the annual salary bonus for classroom teachers with national board certification; creating new service personnel class title for compensation purposes and preventing such new title from resulting in displacement of other employees; increasing monthly salaries of service personnel and clarifying certain workday parameters for such; providing and modifying certain pay grades; and making technical corrections.

*Be it enacted by the Legislature of West Virginia:*

That §18A-4-2, §18A-4-2a, §18A-4-8 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-4-2a. State minimum salary bonus for classroom teachers with national board certification.

§18A-4-8. Employment term and class titles of service personnel; definitions.

§18A-4-8a. Service personnel minimum monthly salaries.

**§18A-4-2. State minimum salaries for teachers.**

1 (a) Effective the first day of July, two thousand seven,  
 2 through the thirtieth day of June, two thousand eight, each  
 3 teacher shall receive the amount prescribed in the 2007-08  
 4 State Minimum Salary Schedule as set forth in this section,  
 5 specific additional amounts prescribed in this section or  
 6 article and any county supplement in effect in a county  
 7 pursuant to section five-a of this article during the contract  
 8 year.

9 Effective the first day of July, two thousand eight, and  
 10 thereafter, each teacher shall receive the amount prescribed  
 11 in the 2008-09 State Minimum Salary Schedule as set forth  
 12 in this section, specific additional amounts prescribed in this  
 13 section or article and any county supplement in effect in a  
 14 county pursuant to section five-a of this article during the  
 15 contract year.

**2007-08 STATE MINIMUM SALARY SCHEDULE**

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Years Exp.	4th Class	3rd Class	2nd Class	A.B.	A.B. +15	M.A.	M.A. +15	M.A. +30	M.A. +45	Doc- torate
0	24,051	24,711	24,975	26,227	26,988	28,755	29,516	30,277	31,038	32,073
1	24,379	25,039	25,303	26,745	27,506	29,274	30,035	30,795	31,556	32,591
2	24,708	25,367	25,631	27,264	28,025	29,792	30,553	31,314	32,075	33,110
3	25,036	25,695	25,959	27,783	28,543	30,311	31,072	31,832	32,593	33,628
4	25,608	26,267	26,531	28,545	29,306	31,074	31,835	32,595	33,356	34,391
5	25,936	26,595	26,859	29,064	29,825	31,592	32,353	33,114	33,875	34,910
6	26,264	26,923	27,187	29,582	30,343	32,111	32,872	33,632	34,393	35,428
7	26,592	27,252	27,515	30,101	30,862	32,629	33,390	34,151	34,912	35,947
8	26,920	27,580	27,844	30,619	31,380	33,148	33,909	34,669	35,430	36,465
9	27,248	27,908	28,172	31,138	31,899	33,666	34,427	35,188	35,949	36,984
10	27,577	28,236	28,500	31,657	32,417	34,185	34,946	35,706	36,467	37,502
11	27,905	28,564	28,828	32,175	32,936	34,704	35,464	36,225	36,986	38,021
12	28,233	28,892	29,156	32,694	33,454	35,222	35,983	36,744	37,504	38,539
13	28,561	29,220	29,484	33,212	33,973	35,741	36,501	37,262	38,023	39,058

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14	28,561	29,548	29,812	33,731	34,491	36,259	37,020	37,781	38,541	39,576
15	28,561	29,876	30,140	34,249	35,010	36,778	37,538	38,299	39,060	40,095
16	28,561	29,876	30,468	34,768	35,528	37,296	38,057	38,818	39,578	40,613
17	28,561	29,876	30,796	35,286	36,047	37,815	38,575	39,336	40,097	41,132
18	28,561	29,876	30,796	35,805	36,566	38,333	39,094	39,855	40,615	41,650
19	28,561	29,876	30,796	36,323	37,084	38,852	39,613	40,373	41,134	42,169
20	28,561	29,876	30,796	36,842	37,603	39,370	40,131	40,892	41,653	42,688
21	28,561	29,876	30,796	36,842	37,603	39,889	40,650	41,410	42,171	43,206
22	28,561	29,876	30,796	36,842	37,603	40,407	41,168	41,929	42,690	43,725
23	28,561	29,876	30,796	36,842	37,603	40,926	41,687	42,447	43,208	44,243
24	28,561	29,876	30,796	36,842	37,603	40,926	41,687	42,966	43,727	44,762
25	28,561	29,876	30,796	36,842	37,603	40,926	41,687	43,484	44,245	45,280
26	28,561	29,876	30,796	36,842	37,603	40,926	41,687	44,003	44,764	45,799
27	28,561	29,876	30,796	36,842	37,603	40,926	41,687	44,003	44,764	45,799
28	28,561	29,876	30,796	36,842	37,603	40,926	41,687	44,003	44,764	45,799
29	28,889	30,204	31,125	37,360	38,121	41,445	42,205	44,522	45,282	46,317
30	29,217	30,533	31,453	37,879	38,640	41,963	42,724	45,040	45,801	46,836
31	29,545	30,861	31,781	38,397	39,158	42,482	43,242	45,559	46,319	47,354
32	29,873	31,189	32,109	38,916	39,677	43,000	43,761	46,077	46,838	47,873
33	30,201	31,517	32,437	39,435	40,195	43,519	44,279	46,596	47,356	48,391
34	30,529	31,845	32,765	39,953	40,714	44,037	44,798	47,114	47,875	48,910
35	30,857	32,173	33,093	40,472	41,232	44,556	45,316	47,633	48,393	49,428

2008-09 STATE MINIMUM SALARY SCHEDULE

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Years Exp.	4th Class	3rd Class	2nd Class	A.B.	A.B. +15	M.A.	M.A. +15	M.A. +30	M.A. +45	Doctorate
0	24,051	24,711	24,975	26,227	26,988	28,755	29,516	30,277	31,038	32,073
1	24,379	25,039	25,303	26,745	27,506	29,274	30,035	30,795	31,556	32,591
2	24,708	25,367	25,631	27,264	28,025	29,792	30,553	31,314	32,075	33,110
3	25,036	25,695	25,959	27,783	28,543	30,311	31,072	31,832	32,593	33,628
4	25,608	26,267	26,531	28,545	29,306	31,074	31,835	32,595	33,356	34,391
5	25,936	26,595	26,859	29,064	29,825	31,592	32,353	33,114	33,875	34,910
6	26,264	26,923	27,187	29,582	30,343	32,111	32,872	33,632	34,393	35,428
7	26,592	27,252	27,515	30,101	30,862	32,629	33,390	34,151	34,912	35,947
8	26,920	27,580	27,844	30,619	31,380	33,148	33,909	34,669	35,430	36,465
9	27,248	27,908	28,172	31,138	31,899	33,666	34,427	35,188	35,949	36,984

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EDUCATION

10	27,577	28,236	28,500	31,658	32,418	34,186	34,947	35,708	36,468	37,503
11	27,905	28,564	28,828	32,176	32,937	34,705	35,465	36,226	36,987	38,022
12	28,233	28,892	29,156	32,695	33,455	35,223	35,984	36,745	37,505	38,540
13	28,561	29,220	29,484	33,213	33,974	35,742	36,502	37,263	38,024	39,059
14	28,889	29,548	29,812	33,732	34,492	36,260	37,021	37,782	38,542	39,577
15	29,217	29,876	30,140	34,250	35,011	36,779	37,539	38,300	39,061	40,096
16	29,545	30,204	30,468	34,769	35,529	37,297	38,058	38,819	39,579	40,614
17	29,873	30,533	30,796	35,287	36,048	37,816	38,577	39,337	40,098	41,133
18	30,201	30,861	31,125	35,806	36,567	38,334	39,095	39,856	40,617	41,652
19	30,529	31,189	31,453	36,324	37,085	38,853	39,614	40,374	41,135	42,170
20	30,857	31,517	31,781	36,843	37,604	39,371	40,132	40,893	41,654	42,689
21	31,186	31,845	32,109	37,361	38,122	39,890	40,651	41,411	42,172	43,207
22	31,514	32,173	32,437	37,880	38,641	40,408	41,169	41,930	42,691	43,726
23	31,842	32,501	32,765	38,399	39,159	40,927	41,688	42,448	43,209	44,244
24	32,170	32,829	33,093	38,917	39,678	41,446	42,206	42,967	43,728	44,763
25	32,498	33,157	33,421	39,436	40,196	41,964	42,725	43,486	44,246	45,281
26	32,826	33,485	33,749	39,954	40,715	42,483	43,243	44,004	44,765	45,800
27	33,154	33,813	34,077	40,473	41,233	43,001	43,762	44,523	45,283	46,318
28	33,482	34,142	34,405	40,991	41,752	43,520	44,280	45,041	45,802	46,837
29	33,810	34,470	34,734	41,510	42,270	44,038	44,799	45,560	46,320	47,355
30	34,138	34,798	35,062	42,028	42,789	44,557	45,317	46,078	46,839	47,874
31	34,467	35,126	35,390	42,547	43,308	45,075	45,836	46,597	47,357	48,392
32	34,795	35,454	35,718	43,065	43,826	45,594	46,355	47,115	47,876	48,911
33	35,123	35,782	36,046	43,584	44,345	46,112	46,873	47,634	48,395	49,430
34	35,451	36,110	36,374	44,102	44,863	46,631	47,392	48,152	48,913	49,948
35	35,779	36,438	36,702	44,621	45,382	47,149	47,910	48,671	49,432	50,467

1 (b) Six hundred dollars shall be paid annually to each  
 2 classroom teacher who has at least twenty years of teaching  
 3 experience. The payments: (i) Shall be in addition to any  
 4 amounts prescribed in the applicable state minimum salary  
 5 schedule; (ii) shall be paid in equal monthly installments; and  
 6 (iii) shall be considered a part of the state minimum salaries  
 7 for teachers.

**§18A-4-2a. State minimum salary bonus for classroom teachers with national board certification.**

1 (a) The Legislature hereby finds and declares that the  
2 rigorous standards and processes for certification by the  
3 National Board for Professional Teaching Standards  
4 (NBPTS) helps to promote the quality of teaching and  
5 learning. Therefore, classroom teachers in the public schools  
6 of West Virginia should be encouraged to achieve national  
7 board certification through a reimbursement of expenses and  
8 an additional salary bonus which reflects their additional  
9 certification, to be paid in accordance with the provisions of  
10 this section.

11 (b) Three thousand five hundred dollars shall be paid  
12 annually to each classroom teacher who holds a valid  
13 certificate issued by the National Board of Professional  
14 Teaching Standards for the life of the certification, but in no  
15 event more than ten years for any one certification.

16 (c) The payments:

17 (1) Shall be in addition to any amounts prescribed in the  
18 applicable state minimum salary schedule;

19 (2) Shall be paid in equal monthly installments; and

20 (3) Shall be considered a part of the state minimum  
21 salaries for teachers.

22 (d) One-half the certification fee shall be paid for  
23 reimbursement once to each teacher who enrolls in the  
24 program for the National Board for Professional Teaching  
25 Standards certification and one-half the certification fee shall  
26 be paid for reimbursement once to each teacher who  
27 completes the National Board for Professional Teaching  
28 Standards certification. Completion shall be defined as the  
29 completion of ten scorable entries, as verified by the National  
30 Board for Professional Teaching Standards. Teachers who



31 achieve National Board for Professional Teaching Standards  
32 certification may be reimbursed a maximum of six hundred  
33 dollars for expenses actually incurred while obtaining the  
34 National Board for Professional Teaching Standards  
35 certification.

36 (e) The state board shall limit the number of teachers who  
37 receive the initial reimbursements of the certification fees set  
38 forth in subsection (d) to two hundred teachers annually. The  
39 state board shall establish selection criteria for the teachers  
40 by the legislative rule required pursuant to subsection (g) of  
41 this section.

42 (f) Subject to the provisions of subsection (e) of this  
43 section, funding for reimbursement of the certification fee  
44 and expenses actually incurred while obtaining the National  
45 Board for Professional Teaching Standards certifications  
46 shall be administered by the state Department of Education  
47 from an appropriation established for that purpose by the  
48 Legislature. If funds appropriated by the Legislature to  
49 accomplish the purposes of this subsection are insufficient,  
50 the state department shall prorate the reimbursements for  
51 expenses and shall request of the Legislature, at its next  
52 regular session, funds sufficient to accomplish the purposes  
53 of this subsection, including needed retroactive payments.

54 (g) The state board shall promulgate legislative rules  
55 pursuant to article three-b, chapter twenty-nine-a of this code  
56 to implement the provisions of this section.

**\*§18A-4-8. Employment term and class titles of service  
personnel; definitions.**

1 (a) The purpose of this section is to establish an  
2 employment term and class titles for service personnel. The  
3 employment term for service personnel may not be less than

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\*CLERK'S NOTE: This section was also amended by H.B. 2189 (Chapter 86), which  
passed subsequent to this act.

4 ten months. A month is defined as twenty employment days:  
5 *Provided*, That the county board may contract with all or part  
6 of these service personnel for a longer term. The beginning  
7 and closing dates of the ten-month employment term may not  
8 exceed forty-three weeks.

9 (b) Service personnel employed on a yearly or twelve-  
10 month basis may be employed by calendar months.  
11 Whenever there is a change in job assignment during the  
12 school year, the minimum pay scale and any county  
13 supplement are applicable.

14 (c) Service personnel employed in the same classification  
15 for more than the two hundred day minimum employment  
16 term shall be paid for additional employment at a daily rate  
17 of not less than the daily rate paid for the two hundred day  
18 minimum employment term.

19 (d) A service person may not be required to report for  
20 work more than five days per week without his or her  
21 agreement, and no part of any working day may be  
22 accumulated by the employer for future work assignments,  
23 unless the employee agrees thereto.

24 (e) If a service person whose regular work week is  
25 scheduled from Monday through Friday agrees to perform  
26 any work assignments on a Saturday or Sunday, the service  
27 person shall be paid for at least one-half day of work for each  
28 day he or she reports for work. If the service person works  
29 more than three and one-half hours on any Saturday or  
30 Sunday, he or she shall be paid for at least a full day of work  
31 for each day.

32 (f) A custodian, aide, maintenance, office and school  
33 lunch service person required to work a daily work schedule  
34 that is interrupted shall be paid additional compensation.

35 (1) A maintenance person is defined as a person who  
36 holds a classification title other than in a custodial, aide,  
37 school lunch, office or transportation category as provided in  
38 section one, article one of this chapter.

39 (2) A service person's schedule is considered to be  
40 interrupted if he or she does not work a continuous period in  
41 one day. Aides are not regarded as working an interrupted  
42 schedule when engaged exclusively in the duties of  
43 transporting students;

44 (3) The additional compensation provided for in this  
45 subsection:

46 (A) Is equal to at least one eighth of a service person's  
47 total salary as provided by the state minimum pay scale and  
48 any county pay supplement; and

49 (B) Is payable entirely from county board funds.

50 (g) When there is a change in classification or when a  
51 service person meets the requirements of an advanced  
52 classification, his or her salary shall be made to comply with  
53 the requirements of this article and any county salary  
54 schedule in excess of the minimum requirements of this  
55 article, based upon the service person's advanced  
56 classification and allowable years of employment.

57 (h) A service person's, contract as provided in section  
58 five, article two of this chapter, shall state the appropriate  
59 monthly salary the employee is to be paid, based on the class  
60 title as provided in this article and on any county salary  
61 schedule in excess of the minimum requirements of this  
62 article.

63 (i) The column heads of the state minimum pay scale and  
64 class titles, set forth in section eight-a of this article, are  
65 defined as follows:

66 (1) "Pay grade" means the monthly salary applicable to  
67 class titles of service personnel;

68 (2) "Years of employment" means the number of years  
69 which an employee classified as a service person has been  
70 employed by a county board in any position prior to or  
71 subsequent to the effective date of this section and includes  
72 service in the armed forces of the United States, if the  
73 employee was employed at the time of his or her induction.  
74 For the purpose of section eight-a of this article, years of  
75 employment is limited to the number of years shown and  
76 allowed under the state minimum pay scale as set forth in  
77 section eight-a of this article;

78 (3) "Class title" means the name of the position or job  
79 held by a service person;

80 (4) "Accountant I" means a person employed to maintain  
81 payroll records and reports and perform one or more  
82 operations relating to a phase of the total payroll;

83 (5) "Accountant II" means a person employed to maintain  
84 accounting records and to be responsible for the accounting  
85 process associated with billing, budgets, purchasing and  
86 related operations;

87 (6) "Accountant III" means a person employed in the  
88 county board office to manage and supervise accounts  
89 payable, payroll procedures, or both;

90 (7) "Accounts payable supervisor" means a person  
91 employed in the county board office who has primary

92 responsibility for the accounts payable function and who  
93 either has completed twelve college hours of accounting  
94 courses from an accredited institution of higher education or  
95 has at least eight years of experience performing  
96 progressively difficult accounting tasks. Responsibilities of  
97 this class title may include supervision of other personnel;

98 (8) "Aide I" means a person selected and trained for a  
99 teacher-aide classification such as monitor aide, clerical aide,  
100 classroom aide or general aide;

101 (9) "Aide II" means a service person referred to in the  
102 "Aide I" classification who has completed a training program  
103 approved by the State Board, or who holds a high school  
104 diploma or has received a general educational development  
105 certificate. Only a person classified in an Aide II class title  
106 may be employed as an aide in any special education  
107 program;

108 (10) "Aide III" means a service person referred to in the  
109 "Aide I" classification who holds a high school diploma or a  
110 general educational development certificate; and

111 (A) Has completed six semester hours of college credit at  
112 an institution of higher education; or

113 (B) Is employed as an aide in a special education program  
114 and has one year's experience as an aide in special education;

115 (11) "Aide IV" means a service person referred to in the  
116 "Aide I" classification who holds a high school diploma or a  
117 general educational development certificate; and

118 (A) Has completed eighteen hours of State Board-  
119 approved college credit at a regionally accredited institution  
120 of higher education, or

121 (B) Has completed fifteen hours of State Board-approved  
122 college credit at a regionally accredited institution of higher  
123 education; and has successfully completed an in-service  
124 training program determined by the State Board to be the  
125 equivalent of three hours of college credit;

126 (12) "Audiovisual technician" means a person employed  
127 to perform minor maintenance on audiovisual equipment,  
128 films, and supplies and who fills requests for equipment;

129 (13) "Auditor" means a person employed to examine and  
130 verify accounts of individual schools and to assist schools  
131 and school personnel in maintaining complete and accurate  
132 records of their accounts;

133 (14) "Autism mentor" means a person who works with  
134 autistic students and who meets standards and experience to  
135 be determined by the State Board. A person who has held or  
136 holds an aide title and becomes employed as an autism  
137 mentor shall hold a multiclassification status that includes  
138 both aide and autism mentor titles, in accordance with section  
139 eight-b of this article;

140 (15) "Braille or sign language specialist" means a person  
141 employed to provide braille and/or sign language assistance  
142 to students. A service person who has held or holds an aide  
143 title and becomes employed as a braille or sign language  
144 specialist shall hold a multiclassification status that includes  
145 both aide and braille or sign language specialist title, in  
146 accordance with section eight-b of this article;

147 (16) "Bus operator" means a person employed to operate  
148 school buses and other school transportation vehicles as  
149 provided by the State Board;

150 (17) "Buyer" means a person employed to review and  
151 write specifications, negotiate purchase bids and recommend  
152 purchase agreements for materials and services that meet  
153 predetermined specifications at the lowest available costs;

154 (18) "Cabinetmaker" means a person employed to  
155 construct cabinets, tables, bookcases and other furniture;

156 (19) "Cafeteria manager" means a person employed to  
157 direct the operation of a food services program in a school,  
158 including assigning duties to employees, approving  
159 requisitions for supplies and repairs, keeping inventories,  
160 inspecting areas to maintain high standards of sanitation,  
161 preparing financial reports and keeping records pertinent to  
162 food services of a school;

163 (20) "Carpenter I" means a person classified as a  
164 carpenter's helper;

165 (21) "Carpenter II" means a person classified as a  
166 journeyman carpenter;

167 (22) "Chief mechanic" means a person employed to be  
168 responsible for directing activities which ensure that student  
169 transportation or other county board-owned vehicles are  
170 properly and safely maintained;

171 (23) "Clerk I" means a person employed to perform  
172 clerical tasks;

173 (24) "Clerk II" means a person employed to perform  
174 general clerical tasks, prepare reports and tabulations and  
175 operate office machines;

176 (25) "Computer operator" means a qualified person  
177 employed to operate computers;

178 (26) "Cook I" means a person employed as a cook's  
179 helper;

180 (27) "Cook II" means a person employed to interpret  
181 menus and to prepare and serve meals in a food service  
182 program of a school. This definition includes a service  
183 person who has been employed as a "Cook I" for a period of  
184 four years;

185 (28) "Cook III" means a person employed to prepare and  
186 serve meals, make reports, prepare requisitions for supplies,  
187 order equipment and repairs for a food service program of a  
188 school system;

189 (29) "Crew leader" means a person employed to organize  
190 the work for a crew of maintenance employees to carry out  
191 assigned projects;

192 (30) "Custodian I" means a person employed to keep  
193 buildings clean and free of refuse;

194 (31) "Custodian II" means a person employed as a  
195 watchman or groundsman;

196 (32) "Custodian III" means a person employed to keep  
197 buildings clean and free of refuse, to operate the heating or  
198 cooling systems and to make minor repairs;

199 (33) "Custodian IV" means a person employed as head  
200 custodians. In addition to providing services as defined in  
201 "custodian III," duties may include supervising other  
202 custodian personnel;

203 (34) "Director or coordinator of services" means an  
204 employee of a county board who is assigned to direct a  
205 department or division.



206 (A) Nothing in this subdivision prohibits a professional  
207 person or a professional educator from holding this class title;

208 (B) Professional personnel holding this class title may not  
209 be defined or classified as service personnel unless the  
210 professional person held a service personnel title under this  
211 section prior to holding the class title of "director or  
212 coordinator of services."

213 (C) The director or coordinator of services shall be  
214 classified either as a professional person or a service person  
215 for state aid formula funding purposes; and

216 (D) Funding for the position of director or coordinator of  
217 services is based upon the employment status of the director  
218 or coordinator either as a professional person or a service  
219 person;

220 (35) "Draftsman" means a person employed to plan,  
221 design and produce detailed architectural/engineering  
222 drawings;

223 (36) "Electrician I" means a person employed as an  
224 apprentice electrician helper or one who holds an electrician  
225 helper license issued by the state fire marshal;

226 (37) "Electrician II" means a person employed as an  
227 electrician journeyman or one who holds a journeyman  
228 electrician license issued by the state fire marshal;

229 (38) "Electronic technician I" means a person employed  
230 at the apprentice level to repair and maintain electronic  
231 equipment;

232 (39) "Electronic technician II" means a person employed  
233 at the journeyman level to repair and maintain electronic  
234 equipment;

235 (40) "Executive secretary" means a person employed as  
236 secretary to the county school superintendent or as a  
237 secretary who is assigned to a position characterized by  
238 significant administrative duties;

239 (41) "Food services supervisor" means a qualified person  
240 who is not a professional person or professional educator as  
241 defined in section one, article one of this chapter. The food  
242 services supervisor is employed to manage and supervise a  
243 county school system's food service program. The duties  
244 include preparing in-service training programs for cooks and  
245 food service employees, instructing personnel in the areas of  
246 quantity cooking with economy and efficiency and keeping  
247 aggregate records and reports;

248 (42) "Foreman" means a skilled person employed to  
249 supervise personnel who work in the areas of repair and  
250 maintenance of school property and equipment;

251 (43) "General maintenance" means a person employed as  
252 a helper to skilled maintenance employees and to perform  
253 minor repairs to equipment and buildings of a county school  
254 system;

255 (44) "Glazier" means a person employed to replace glass  
256 or other materials in windows and doors and to do minor  
257 carpentry tasks;

258 (45) "Graphic artist" means a person employed to prepare  
259 graphic illustrations;

260 (46) "Groundsman" means a person employed to perform  
261 duties that relate to the appearance, repair and general care of  
262 school grounds in a county school system. Additional  
263 assignments may include the operation of a small heating  
264 plant and routine cleaning duties in buildings;

265 (47) "Handyman" means a person employed to perform  
266 routine manual tasks in any operation of the county school  
267 system;

268 (48) "Heating and air conditioning mechanic I" means a  
269 person employed at the apprentice level to install, repair and  
270 maintain heating and air conditioning plants and related  
271 electrical equipment;

272 (49) "Heating and air conditioning mechanic II" means a  
273 person employed at the journeyman level to install, repair and  
274 maintain heating and air conditioning plants and related  
275 electrical equipment;

276 (50) "Heavy equipment operator" means a person  
277 employed to operate heavy equipment;

278 (51) "Inventory supervisor" means a person employed to  
279 supervise or maintain operations in the receipt, storage,  
280 inventory and issuance of materials and supplies;

281 (52) "Key punch operator" means a qualified person  
282 employed to operate key punch machines or verifying  
283 machines;

284 (53) "Licensed practical nurse" means a nurse, licensed  
285 by the West Virginia Board of Examiners for Licensed  
286 Practical Nurses, employed to work in a public school under  
287 the supervision of a school nurse;

288 (54) "Locksmith" means a person employed to repair and  
289 maintain locks and safes;

290 (55) "Lubrication man" means a person employed to  
291 lubricate and service gasoline or diesel-powered equipment  
292 of a county school system;

293 (56) "Machinist" means a person employed to perform  
294 machinist tasks which include the ability to operate a lathe,  
295 planer, shaper, threading machine and wheel press. A person  
296 holding this class title also should have the ability to work  
297 from blueprints and drawings;

298 (57) "Mail clerk" means a person employed to receive,  
299 sort, dispatch, deliver or otherwise handle letters, parcels and  
300 other mail;

301 (58) "Maintenance clerk" means a person employed to  
302 maintain and control a stocking facility to keep adequate  
303 tools and supplies on hand for daily withdrawal for all school  
304 maintenance crafts;

305 (59) "Mason" means a person employed to perform tasks  
306 connected with brick and block laying and carpentry tasks  
307 related to these activities;

308 (60) "Mechanic" means a person employed to perform  
309 skilled duties independently in the maintenance and repair of  
310 automobiles, school buses and other mechanical and mobile  
311 equipment to use in a county school system;

312 (61) "Mechanic assistant" means a person employed as a  
313 mechanic apprentice and helper;

314 (62) "Multiclassification" means a person employed to  
315 perform tasks that involve the combination of two or more

316 class titles in this section. In these instances the minimum  
317 salary scale shall be the higher pay grade of the class titles  
318 involved;

319 (63) "Office equipment repairman I" means a person  
320 employed as an office equipment repairman apprentice or  
321 helper;

322 (64) "Office equipment repairman II" means a person  
323 responsible for servicing and repairing all office machines  
324 and equipment. A person holding this class title is responsible  
325 for the purchase of parts necessary for the proper operation  
326 of a program of continuous maintenance and repair;

327 (65) "Painter" means a person employed to perform  
328 duties of painting, finishing and decorating wood, metal and  
329 concrete surfaces of buildings, other structures, equipment,  
330 machinery and furnishings of a county school system;

331 (66) "Paraprofessional" means a person certified pursuant  
332 to section two-a, article three of this chapter to perform duties  
333 in a support capacity including, but not limited to, facilitating  
334 in the instruction and direct or indirect supervision of  
335 students under the direction of a principal, a teacher or  
336 another designated professional educator.

337 (A) A person employed on the effective date of this  
338 section in the position of an aide may not be subject to a  
339 reduction in force or transferred to create a vacancy for the  
340 employment of a paraprofessional;

341 (B) A person who has held or holds an aide title and  
342 becomes employed as a paraprofessional shall hold a  
343 multiclassification status that includes both aide and  
344 paraprofessional titles in accordance with section eight-b of  
345 this article; and

346 (C) When a service person who holds an aide title  
347 becomes certified as a paraprofessional and is required to  
348 perform duties that may not be performed by an aide without  
349 paraprofessional certification, he or she shall receive the  
350 paraprofessional title pay grade;

351 (67) "Payroll supervisor" means a person employed in the  
352 county board office who has primary responsibility for the  
353 payroll function and who either has completed twelve college  
354 hours of accounting from an accredited institution of higher  
355 education or has at least eight years of experience performing  
356 progressively difficult accounting tasks. Responsibilities of  
357 this class title may include supervision of other personnel;

358 (68) "Plumber I" means a person employed as an  
359 apprentice plumber and helper;

360 (69) "Plumber II" means a person employed as a  
361 journeyman plumber;

362 (70) "Printing operator" means a person employed to  
363 operate duplication equipment, and to cut, collate, staple,  
364 bind and shelve materials as required;

365 (71) "Printing supervisor" means a person employed to  
366 supervise the operation of a print shop;

367 (72) "Programmer" means a person employed to design  
368 and prepare programs for computer operation;

369 (73) "Roofing/sheet metal mechanic" means a person  
370 employed to install, repair, fabricate and maintain roofs,  
371 gutters, flashing and duct work for heating and ventilation;

372 (74) "Sanitation plant operator" means a person employed  
373 to operate and maintain a water or sewage treatment plant to

374 ensure the safety of the plant's effluent for human  
375 consumption or environmental protection;

376 (75) "School bus supervisor" means a qualified person  
377 employed to assist in selecting school bus operators and  
378 routing and scheduling school buses, operate a bus when  
379 needed, relay instructions to bus operators, plan emergency  
380 routing of buses and promote good relationships with parents,  
381 students, bus operators and other employees;

382 (76) "Secretary I" means a person employed to transcribe  
383 from notes or mechanical equipment, receive callers, perform  
384 clerical tasks, prepare reports and operate office machines;

385 (77) "Secretary II" means a person employed in any  
386 elementary, secondary, kindergarten, nursery, special  
387 education, vocational or any other school as a secretary. The  
388 duties may include performing general clerical tasks;  
389 transcribing from notes, stenotype, mechanical equipment or  
390 a sound-producing machine; preparing reports; receiving  
391 callers and referring them to proper persons; operating office  
392 machines; keeping records and handling routine  
393 correspondence. Nothing in this subdivision prevents a  
394 service person from holding or being elevated to a higher  
395 classification;

396 (78) "Secretary III" means a person assigned to the  
397 county board office administrators in charge of various  
398 instructional, maintenance, transportation, food services,  
399 operations and health departments, federal programs or  
400 departments with particular responsibilities in purchasing and  
401 financial control or any person who has served for eight years  
402 in a position which meets the definition of "secretary II" or  
403 "secretary III";

404 (79) "Supervisor of maintenance" means a skilled person  
405 who is not a professional person or professional educator as  
406 defined in section one, article one of this chapter. The  
407 responsibilities include directing the upkeep of buildings and  
408 shops, and issuing instructions to subordinates relating to  
409 cleaning, repairs and maintenance of all structures and  
410 mechanical and electrical equipment of a county board;

411 (80) "Supervisor of transportation" means a qualified  
412 person employed to direct school transportation activities  
413 properly and safely, and to supervise the maintenance and  
414 repair of vehicles, buses and other mechanical and mobile  
415 equipment used by the county school system;

416 (81) "Switchboard operator-receptionist" means a person  
417 employed to refer incoming calls, to assume contact with the  
418 public, to direct and to give instructions as necessary, to  
419 operate switchboard equipment and to provide clerical  
420 assistance;

421 (82) "Truck driver" means a person employed to operate  
422 light or heavy duty gasoline and diesel-powered vehicles;

423 (83) "Warehouse clerk" means a person employed to be  
424 responsible for receiving, storing, packing and shipping  
425 goods;

426 (84) "Watchman" means a person employed to protect  
427 school property against damage or theft. Additional  
428 assignments may include operation of a small heating plant  
429 and routine cleaning duties;

430 (85) "Welder" means a person employed to provide  
431 acetylene or electric welding services for a school system;  
432 and



433 (86) "WVEIS data entry and administrative clerk" means  
434 a person employed to work under the direction of a school  
435 principal to assist the school counselor or counselors in the  
436 performance of administrative duties, to perform data entry  
437 tasks on the West Virginia Education Information System,  
438 and to perform other administrative duties assigned by the  
439 principal.

440 (j) Notwithstanding any provision in this code to the  
441 contrary, and in addition to the compensation provided for  
442 service personnel in section eight-a of this article, each  
443 service person is, entitled to all service personnel employee  
444 rights, privileges and benefits provided under this or any  
445 other chapter of this code without regard to the employee's  
446 hours of employment or the methods or sources of  
447 compensation.

448 (k) A service person whose years of employment exceeds  
449 the number of years shown and provided for under the state  
450 minimum pay scale set forth in section eight-a of this article  
451 may not be paid less than the amount shown for the  
452 maximum years of employment shown and provided for in  
453 the classification in which he or she is employed.

454 (l) Each county board shall review each service person's  
455 job classification annually and shall reclassify all service  
456 persons as required by the job classifications. The state  
457 superintendent may withhold state funds appropriated  
458 pursuant to this article for salaries for service personnel who  
459 are improperly classified by the county boards. Further, the  
460 state superintendent shall order a county board to correct  
461 immediately any improper classification matter and, with the  
462 assistance of the Attorney General, shall take any legal action  
463 necessary against any county board to enforce the order.

464 (m) Without his or her written consent, a service person  
465 may not be:

466 (1) Reclassified by class title; or

467 (2) Relegated to any condition of employment which  
468 would result in a reduction of his or her salary, rate of pay,  
469 compensation or benefits earned during the current fiscal  
470 year; or for which he or she would qualify by continuing in  
471 the same job position and classification held during that fiscal  
472 year and subsequent years.

473 (n) Any county board failing to comply with the  
474 provisions of this article may be compelled to do so by  
475 mandamus and is liable to any party prevailing against the  
476 board for court costs and the prevailing party's reasonable  
477 attorney fee, as determined and established by the court.

478 (o) Notwithstanding any provision of this code to the  
479 contrary, a service person who holds a continuing contract in  
480 a specific job classification and who is physically unable to  
481 perform the job's duties as confirmed by a physician chosen  
482 by the employee, shall be given priority status over any  
483 employee not holding a continuing contract in filling other  
484 service personnel job vacancies if the service person is  
485 qualified as provided in section eight-e of this article.

486 (p) Any person employed in an aide position on the  
487 effective date of this section may not be transferred or subject  
488 to a reduction in force for the purpose of creating a vacancy  
489 for the employment of a licensed practical nurse.

490 (q) Without the written consent of the service person, a  
491 county board may not establish the beginning work station  
492 for a bus operator or transportation aide at any site other than  
493 a county board-owned facility with available parking. The

494 workday of the bus operator or transportation aide  
 495 commences at the bus at the designated beginning work  
 496 station and ends when the employee is able to leave the bus  
 497 at the designated beginning work station, unless he or she  
 498 agrees otherwise in writing. The application or acceptance of  
 499 a posted position may not be construed as the written consent  
 500 referred to in this subsection.

**18A-4-8a. Service personnel minimum monthly salaries.**

1 (a) 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” and the minimum  
 5 monthly pay for each service employee whose employment  
 6 is for a period of three and one-half hours or less a day shall  
 7 be at least one-half the amount indicated in the “state  
 8 minimum pay scale pay grade” set forth in this section:

Years Exp.	STATE MINIMUM PAY SCALE PAY GRADE							
	Pay Grade							
	A	B	C	D	E	F	G	H
0	1,507	1,528	1,569	1,621	1,673	1,735	1,766	1,838
1	1,539	1,560	1,601	1,653	1,705	1,767	1,798	1,870
2	1,571	1,592	1,633	1,685	1,737	1,799	1,830	1,902
3	1,603	1,624	1,665	1,717	1,769	1,831	1,862	1,934
4	1,635	1,656	1,697	1,749	1,801	1,863	1,894	1,967
5	1,667	1,688	1,729	1,781	1,833	1,895	1,926	1,999
6	1,699	1,720	1,762	1,813	1,865	1,927	1,958	2,031
7	1,732	1,752	1,794	1,845	1,897	1,959	1,990	2,063
8	1,764	1,784	1,826	1,877	1,929	1,991	2,022	2,095
9	1,796	1,816	1,858	1,910	1,961	2,023	2,054	2,127
10	1,828	1,849	1,890	1,942	1,993	2,056	2,087	2,159
11	1,860	1,881	1,922	1,974	2,025	2,088	2,119	2,191

EDUCATION

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12	1,892	1,913	1,954	2,006	2,058	2,120	2,151	2,223
13	1,924	1,945	1,986	2,038	2,090	2,152	2,183	2,255
14	1,956	1,977	2,018	2,070	2,122	2,184	2,215	2,287
15	1,988	2,009	2,050	2,102	2,154	2,216	2,247	2,319
16	2,020	2,041	2,082	2,134	2,186	2,248	2,279	2,352
17	2,052	2,073	2,115	2,166	2,218	2,280	2,311	2,384
18	2,084	2,105	2,147	2,198	2,250	2,312	2,343	2,416
19	2,117	2,137	2,179	2,230	2,282	2,344	2,375	2,448
20	2,149	2,169	2,211	2,263	2,314	2,376	2,407	2,480
21	2,181	2,201	2,243	2,295	2,346	2,408	2,439	2,512
22	2,213	2,234	2,275	2,327	2,378	2,441	2,472	2,544
23	2,245	2,266	2,307	2,359	2,411	2,473	2,504	2,576
24	2,277	2,298	2,339	2,391	2,443	2,505	2,536	2,608
25	2,309	2,330	2,371	2,423	2,475	2,537	2,568	2,640
26	2,341	2,362	2,403	2,455	2,507	2,569	2,600	2,672
27	2,373	2,394	2,435	2,487	2,539	2,601	2,632	2,704
28	2,405	2,426	2,467	2,519	2,571	2,633	2,664	2,737
29	2,437	2,458	2,500	2,551	2,603	2,665	2,696	2,769
30	2,470	2,490	2,532	2,583	2,635	2,697	2,728	2,801
31	2,502	2,522	2,564	2,615	2,667	2,729	2,760	2,833
32	2,534	2,554	2,596	2,648	2,699	2,761	2,792	2,865
33	2,566	2,586	2,628	2,680	2,731	2,793	2,825	2,897
34	2,598	2,619	2,660	2,712	2,763	2,826	2,857	2,929
35	2,630	2,651	2,692	2,744	2,796	2,858	2,889	2,961
36	2,662	2,683	2,724	2,776	2,828	2,890	2,921	2,993
37	2,694	2,715	2,756	2,808	2,860	2,922	2,953	3,025
38	2,726	2,747	2,788	2,840	2,892	2,954	2,985	3,057
39	2,758	2,779	2,820	2,872	2,924	2,986	3,017	3,089
40	2,790	2,811	2,852	2,904	2,956	3,018	3,049	3,122

<b>CLASS TITLE</b>	<b>PAY GRADE</b>
Accountant I .....	D
Accountant II .....	E
Accountant III .....	F
Accounts Payable Supervisor .....	G
Aide I .....	A
Aide II .....	B
Aide III .....	C
Aide IV .....	D
Audiovisual Technician .....	C
Auditor .....	G
Autism Mentor .....	F
Braille or Sign Language Specialist .....	E
Bus Operator .....	D
Buyer .....	F
Cabinetmaker .....	G
Cafeteria Manager .....	D
Carpenter I .....	E
Carpenter II .....	F
Chief Mechanic .....	G
Clerk I .....	B
Clerk II .....	C
Computer Operator .....	E
Cook I .....	A
Cook II .....	B
Cook III .....	C
Crew Leader .....	F
Custodian I .....	A
Custodian II .....	B
Custodian III .....	C
Custodian IV .....	D
Director or Coordinator of Services .....	H
Draftsman .....	D
Electrician I .....	F
Electrician II .....	G
Electronic Technician I .....	F

Electronic Technician II .....	G
Executive Secretary .....	G
Food Services Supervisor .....	G
Foreman .....	G
General Maintenance .....	C
Glazier .....	D
Graphic Artist .....	D
Groundsman .....	B
Handyman .....	B
Heating and Air Conditioning Mechanic I .....	E
Heating and Air Conditioning Mechanic II .....	G
Heavy Equipment Operator .....	E
Inventory Supervisor .....	D
Key Punch Operator .....	B
Licensed Practical Nurse .....	F
Locksmith .....	G
Lubrication Man .....	C
Machinist .....	F
Mail Clerk .....	D
Maintenance Clerk .....	C
Mason .....	G
Mechanic .....	F
Mechanic Assistant .....	E
Office Equipment Repairman I .....	F
Office Equipment Repairman II .....	G
Painter .....	E
Paraprofessional .....	F
Payroll Supervisor .....	G
Plumber I .....	E
Plumber II .....	G
Printing Operator .....	B
Printing Supervisor .....	D
Programmer .....	H
Roofing/Sheet Metal Mechanic .....	F
Sanitation Plant Operator .....	G
School Bus Supervisor .....	E

Secretary I .....	D
Secretary II .....	E
Secretary III .....	F
Supervisor of Maintenance .....	H
Supervisor of Transportation .....	H
Switchboard Operator-Receptionist .....	D
Truck Driver .....	D
Warehouse Clerk .....	C
Watchman .....	B
Welder .....	F
WVEIS Data Entry and Administrative Clerk .....	B

1 (b) An additional twelve dollars per month shall be added  
 2 to the minimum monthly pay of each service employee who  
 3 holds a high school diploma or its equivalent.

4 (c) An additional eleven dollars per month also shall be  
 5 added to the minimum monthly pay of each service employee  
 6 for each of the following:

7 (1) A service employee who holds twelve college hours  
 8 or comparable credit obtained in a trade or vocational school  
 9 as approved by the state board;

10 (2) A service employee who holds twenty-four college  
 11 hours or comparable credit obtained in a trade or vocational  
 12 school as approved by the state board;

13 (3) A service employee who holds thirty-six college  
 14 hours or comparable credit obtained in a trade or vocational  
 15 school as approved by the state board;

16 (4) A service employee who holds forty-eight college  
 17 hours or comparable credit obtained in a trade or vocational  
 18 school as approved by the state board;

19 (5) A service employee who holds sixty college hours or  
20 comparable credit obtained in a trade or vocational school as  
21 approved by the state board;

22 (6) A service employee who holds seventy-two college  
23 hours or comparable credit obtained in a trade or vocational  
24 school as approved by the state board;

25 (7) A service employee who holds eighty-four college  
26 hours or comparable credit obtained in a trade or vocational  
27 school as approved by the state board;

28 (8) A service employee who holds ninety-six college  
29 hours or comparable credit obtained in a trade or vocational  
30 school as approved by the state board;

31 (9) A service employee who holds one hundred eight  
32 college hours or comparable credit obtained in a trade or  
33 vocational school as approved by the state board;

34 (10) A service employee who holds one hundred twenty  
35 college hours or comparable credit obtained in a trade or  
36 vocational school as approved by the state board;

37 (d) An additional forty dollars per month also shall be  
38 added to the minimum monthly pay of each service employee  
39 for each of the following:

40 (1) A service employee who holds an associate's degree;

41 (2) A service employee who holds a bachelor's degree;

42 (3) A service employee who holds a master's degree;

43 (4) A service employee who holds a doctorate degree.



44 (e) An additional eleven dollars per month shall be added  
45 to the minimum monthly pay of each service employee for  
46 each of the following:

47 (1) A service employee who holds a bachelor's degree  
48 plus fifteen college hours;

49 (2) A service employee who holds a master's degree plus  
50 fifteen college hours;

51 (3) A service employee who holds a master's degree plus  
52 thirty college hours;

53 (4) A service employee who holds a master's degree plus  
54 forty-five college hours; and

55 (5) A service employee who holds a master's degree plus  
56 sixty college hours.

57 (f) When any part of a school service employee's daily  
58 shift of work is performed between the hours of six o'clock  
59 p.m. and five o'clock a.m. the following day, the employee  
60 shall be paid no less than an additional ten dollars per month  
61 and one half of the pay shall be paid with local funds.

62 (g) Any service employee required to work on any legal  
63 school holiday shall be paid at a rate one and one-half times  
64 the employee's usual hourly rate.

65 (h) Any full-time service personnel required to work in  
66 excess of their normal working day during any week which  
67 contains a school holiday for which they are paid shall be  
68 paid for the additional hours or fraction of the additional  
69 hours at a rate of one and one-half times their usual hourly  
70 rate and paid entirely from county board funds.

71 (i) No service employee may have his or her daily work  
72 schedule changed during the school year without the  
73 employee's written consent and the employee's required  
74 daily work hours may not be changed to prevent the payment  
75 of time and one-half wages or the employment of another  
76 employee.

77 (j) The minimum hourly rate of pay for extra duty  
78 assignments as defined in section eight-b of this article shall  
79 be no less than one seventh of the employee's daily total  
80 salary for each hour the employee is involved in performing  
81 the assignment and paid entirely from local funds: *Provided,*  
82 That an alternative minimum hourly rate of pay for  
83 performing extra duty assignments within a particular  
84 category of employment may be utilized if the alternate  
85 hourly rate of pay is approved both by the county board and  
86 by the affirmative vote of a two-thirds majority of the regular  
87 full-time employees within that classification category of  
88 employment within that county: *Provided, however,* That the  
89 vote shall be by secret ballot if requested by a service  
90 personnel employee within that classification category within  
91 that county. The salary for any fraction of an hour the  
92 employee is involved in performing the assignment shall be  
93 prorated accordingly. When performing extra duty  
94 assignments, employees who are regularly employed on a  
95 one-half day salary basis shall receive the same hourly extra  
96 duty assignment pay computed as though the employee were  
97 employed on a full-day salary basis.

98 (k) The minimum pay for any service personnel  
99 employees engaged in the removal of asbestos material or  
100 related duties required for asbestos removal shall be their  
101 regular total daily rate of pay and no less than an additional  
102 three dollars per hour or no less than five dollars per hour for  
103 service personnel supervising asbestos removal  
104 responsibilities for each hour these employees are involved

105 in asbestos related duties. Related duties required for  
106 asbestos removal include, but are not limited to, travel,  
107 preparation of the work site, removal of asbestos  
108 decontamination of the work site, placing and removal of  
109 equipment and removal of structures from the site. If any  
110 member of an asbestos crew is engaged in asbestos related  
111 duties outside of the employee's regular employment county,  
112 the daily rate of pay shall be no less than the minimum  
113 amount as established in the employee's regular employment  
114 county for asbestos removal and an additional thirty dollars  
115 per each day the employee is engaged in asbestos removal  
116 and related duties. The additional pay for asbestos removal  
117 and related duties shall be payable entirely from county  
118 funds. Before service personnel employees may be utilized  
119 in the removal of asbestos material or related duties, they  
120 shall have completed a federal Environmental Protection Act  
121 approved training program and be licensed. The employer  
122 shall provide all necessary protective equipment and maintain  
123 all records required by the Environmental Protection Act.

124 (1) For the purpose of qualifying for additional pay as  
125 provided in section eight, article five of this chapter, an aide  
126 shall be considered to be exercising the authority of a  
127 supervisory aide and control over pupils if the aide is  
128 required to supervise, control, direct, monitor, escort or  
129 render service to a child or children when not under the direct  
130 supervision of certificated professional personnel within the  
131 classroom, library, hallway, lunchroom, gymnasium, school  
132 building, school grounds or wherever supervision is required.  
133 For purposes of this section, "under the direct supervision of  
134 certificated professional personnel" means that certificated  
135 professional personnel is present, with and accompanying the  
136 aide.

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## CHAPTER 96

**(S.B. 542 - By Senators Plymale, Edgell, Bailey, Green, Hunter,  
Oliverio, Stollings, Wells, White, Boley, Guills and Hall)**

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[Passed March 9, 2007; in effect from passage.]  
[Approved by the Governor on March 28, 2007.]

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AN ACT to amend and reenact §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, all relating to authorizing rules for the Higher Education Policy Commission and the West Virginia Council for Community and Technical College Education regarding the West Virginia Higher Education Grant Program and the Workforce Development Initiative Program.

*Be it enacted by the Legislature of West Virginia:*

That §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

### **ARTICLE 17. LEGISLATIVE RULES.**

§18B-17-2. Authorizing rules of Higher Education Policy Commission.

§18B-17-3. Authorizing rule of the Council for Community and Technical College Education.

#### **§18B-17-2. Authorizing rules of Higher Education Policy Commission.**

- 1 (a) The legislative rule filed in the State Register on the
- 2 fifteenth day of October, two thousand four, relating to the

3 Higher Education Policy Commission (Underwood-Smith  
4 Teacher Scholarship Program rule) is authorized.

5 (b) The legislative rule filed in the State Register on the  
6 fifteenth day of October, two thousand four, relating to the  
7 Higher Education Policy Commission (West Virginia  
8 Engineering, Science and Technology Scholarship Program  
9 rule) is authorized.

10 (c) The legislative rule filed in the State Register on the  
11 fifteenth day of October, two thousand four, relating to the  
12 Higher Education Policy Commission (Medical Education  
13 Fee and Medical Student Loan Program rule) is authorized.

14 (d) The legislative rule filed in the State Register on the  
15 twenty-seventh day of October, two thousand five, relating to  
16 the Higher Education Policy Commission (Authorization of  
17 degree-granting institutions) is authorized.

18 (e) The legislative rule filed in the State Register on the  
19 twenty-third day of August, two thousand six, relating to the  
20 Higher Education Policy Commission (West Virginia Higher  
21 Education Grant Program) is authorized.

**§18B-17-3. Authorizing rule of the Council for Community and  
Technical College Education.**

1 (a) The legislative rule filed in the State Register on the  
2 twenty-ninth day of September, two thousand four, relating  
3 to the West Virginia Council for Community and Technical  
4 College Education (performance indicators rule) is  
5 authorized.

6 (b) The legislative rule filed in the State Register on the  
7 thirteenth day of October, two thousand five, relating to the  
8 West Virginia Council for Community and Technical College

9 Education (Authorization of degree-granting institutions) is  
10 authorized.

11 (c) The legislative rule filed in the State Register on the  
12 thirtieth day of October, two thousand six, relating to the  
13 West Virginia Council for Community and Technical College  
14 Education (Workforce Development Initiative Program) is  
15 authorized.

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## CHAPTER 97

**(S.B. 596 - By Senators Kessler and Plymale)**

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[Passed March 5, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 26, 2007.]

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AN ACT to amend and reenact §3-1-2a of the Code of West Virginia, 1931, as amended, relating to municipal elections; and providing that municipal personnel responsible for elections must attend biannual training conducted by the office of the Secretary of State.

*Be it enacted by the Legislature of West Virginia:*

That §3-1-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

#### **3-1-2a. Municipal elections.**

1 (a) Notwithstanding other provisions of this code or of  
2 any special legislative or home rule city charter, the

3 provisions of: (1) Articles eight and nine of this chapter; (2)  
4 any rules promulgated under authority granted in articles  
5 eight and nine of this chapter; and (3) any provisions of this  
6 chapter making a practice or conduct unlawful shall apply to  
7 every municipal election held for any purpose.

8 (b) For purposes of:

9 (1) This section;

10 (2) The application of articles eight and nine of this  
11 chapter;

12 (3) The application of the rules mentioned in this section;  
13 and

14 (4) The application of provisions of this chapter making  
15 a practice or conduct unlawful, the provisions of law which  
16 impose any duty upon or define any offense or prohibition  
17 with respect to the duty or authority of a county officer or  
18 county election officer or body of county election officers  
19 shall be construed to and shall apply with equal force and  
20 effect to the person or persons in a municipal election upon  
21 whom this code or the city charter or ordinance imposes such  
22 duty or vests the same or similar authority.

23 (c) Every municipality shall by charter or ordinance  
24 designate the persons in the municipality who perform the  
25 same duties as any officer in a county election. The  
26 designated persons shall attend a biannual election training  
27 held and conducted by the office of the Secretary of State.

28 (d) This section shall not be construed to abrogate the  
29 applicability of other provisions of this chapter to municipal  
30 elections.

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## CHAPTER 98

**(Com. Sub. for S.B. 607 - By Senator Kessler)**

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[Passed March 6, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2007.]

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AN ACT to amend and reenact §3-1-9 of the Code of West Virginia, 1931, as amended, relating to political party executive committees; requiring clerk of county commission to report election of members of and vacancies on executive committees; establishing definite terms of office for executive committee members; providing time after election of executive committee members for holding organizational meeting; changing time to fill vacancies on executive committees; setting time for submission of changes in executive committee membership to the Secretary of State; removing deadline for chair of executive committee to fill vacancies; and providing for chair of state executive committee to fill vacancy on district executive committee where chair of county executive committee fails to fill vacancy.

*Be it enacted by the Legislature of West Virginia:*

That §3-1-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

**§3-1-9. Political party committees; how composed; organization.**

- 1       (a) Every fourth year at the primary election, the voters
- 2       of each political party in each state senatorial district shall



3 elect four members consisting of two male members and two  
4 female members of the state executive committee of the  
5 party. In state senatorial districts containing two or more  
6 counties, not more than two elected committee members shall  
7 be residents of the same county: *Provided*, That at each  
8 election the votes shall be tallied from highest to lowest  
9 without regard to gender or county of residence. The two  
10 candidates with the highest votes shall be elected first and the  
11 other candidates shall be qualified based on vote tallies,  
12 gender and county of residence. Upon completion of the  
13 canvass, the clerk of the county commission from each  
14 county shall send the results of the election of members of  
15 each state executive committee and certificates of  
16 announcement, if any, to the Secretary of State. Upon  
17 certification of the election results, the Secretary of State  
18 shall make known to each state executive committee the  
19 members elected to such committee and the vacancies, if any.  
20 The committee, when convened and organized as herein  
21 provided, shall appoint three additional members of the  
22 committee from the state at large which shall constitute the  
23 entire voting membership of the state executive committee:  
24 *Provided, however*, That if it chooses to do so, the committee  
25 may by motion or resolution and in accordance with party  
26 rules, may expand the voting membership of the committee.  
27 When senatorial districts are realigned following a decennial  
28 census, members of the state executive committee previously  
29 elected or appointed shall continue in office until the  
30 expiration of their terms. Appointments made to fill  
31 vacancies on the committee until the next election of  
32 executive committee members shall be selected from the  
33 previously established districts. At the first election of  
34 executive committee members following the realignment of  
35 senatorial districts, members shall be elected from the newly  
36 established districts.

37 (b) At the primary election, the voters of each political  
38 party in each county shall elect one male and one female  
39 member of the party's executive committee of the  
40 congressional district, of the state senatorial district and of  
41 the delegate district in which the county is situated, if the  
42 county is situated in a multicounty state senatorial or delegate  
43 district. Upon completion of the canvass, the clerk of the  
44 county commission from each county shall send the results  
45 of the election of members of each congressional district,  
46 state senatorial district and delegate district executive  
47 committee of each party to the Secretary of State. Upon  
48 certification of the election results, the Secretary of State  
49 shall make known to each state executive committee the  
50 members elected to each congressional district, state  
51 senatorial district and delegate district executive committee  
52 and the vacancies, if any. Upon receipt, the state executive  
53 committee shall make known any vacancies to the applicable  
54 county executive committee for the purpose of filling said  
55 vacancies as provided in subsection (f) of this section. When  
56 districts are realigned following a decennial census, members  
57 of an executive committee previously elected in a county to  
58 represent that county in a congressional or multicounty  
59 senatorial or delegate district executive committee shall  
60 continue to represent that county in the appropriate newly  
61 constituted multicounty district until the expiration of their  
62 terms: *Provided*, That the county executive committee of the  
63 political party shall determine which previously elected  
64 members will represent the county if the number of  
65 multicounty state senatorial or delegate districts in the county  
66 is decreased; and shall appoint members to complete the  
67 remainder of the term if the number of districts is increased.

68 (c) At the same time the voters of the county in each  
69 magisterial district or executive committee district, as the  
70 case may be, shall elect one male and one female member of

71 the party's county executive committee except that in  
72 counties having three executive committee districts, there  
73 shall be elected two male and two female members of the  
74 party's executive committee from each magisterial or  
75 executive committee district. Upon completion of the  
76 canvass, the clerk of the county commission from each  
77 county shall send the results of the election of members of  
78 the county executive committee of each party along with the  
79 certificates of announcement to the Secretary of State. Upon  
80 certification of the election results, the Secretary of State  
81 shall make known to each state executive committee the  
82 members elected to the county committee and the vacancies,  
83 if any. Upon receipt, the state executive committee shall  
84 make known any vacancies to the applicable county  
85 executive committee for the purpose of filling said vacancies  
86 as provided in subsection (f) of this section.

87 (d) For the purpose of complying with the provisions of  
88 this section, the county commission shall create the executive  
89 committee districts. The districts shall not be fewer than the  
90 number of magisterial districts in the county, nor shall they  
91 exceed in number the following: Forty for counties having a  
92 population of one hundred thousand persons or more; thirty  
93 for counties having a population of fifty thousand to one  
94 hundred thousand; twenty for counties having a population of  
95 twenty thousand to fifty thousand; and the districts in  
96 counties having a population of less than twenty thousand  
97 persons shall be coextensive with the magisterial districts.

98 (e) The executive committee districts shall be as nearly  
99 equal in population as practicable and shall each be  
100 composed of compact, contiguous territory. The county  
101 commissions shall change the territorial boundaries of the  
102 districts as required by the increase or decrease in the  
103 population of the districts as determined by a decennial

104 census. The changes must be made within two years  
105 following the census.

106 (f) All members of executive committees, selected for  
107 each political division as herein provided, shall reside within  
108 the county or district from which chosen. The term of office  
109 of all members of executive committees elected at the  
110 primary election in the year two thousand ten will begin on  
111 the first day of July, following the primary election and  
112 continue for four years thereafter, except as provided in  
113 subsection (g) of this section. Vacancies in the state  
114 executive committee shall be filled by the members of the  
115 committee for the unexpired term. Vacancies in the party's  
116 executive committee of a congressional district, state  
117 senatorial district, delegate district or county shall be filled by  
118 the party's executive committee of the county in which the  
119 vacancy exists for the unexpired term.

120 (g) As soon as possible after the certification of the  
121 election of the new executive committees, as herein provided,  
122 the newly elected executive committee shall convene an  
123 organizational meeting within their respective political  
124 divisions, on the call of the chair of the corresponding  
125 outgoing executive committee or by any member of the new  
126 executive committee in the event there is no corresponding  
127 outgoing executive committee. During the first meeting the  
128 new executive committee shall select a chair, a treasurer and  
129 a secretary and other officers as they may desire. Each of the  
130 officers shall, for their respective committees, perform the  
131 duties that usually appertain to his or her office. The  
132 organizational meeting may be conducted prior to the first  
133 day of July, but must occur after the certification of the  
134 election of the new executive committees. If the  
135 organizational meeting is conducted prior to the first day of  
136 July, the new committee shall serve out the remainder of the  
137 outgoing committee's term and is authorized to conduct

138 official business. A current listing of all executive  
139 committees' members shall be filed with the Secretary of  
140 State by the end of July of each year. Vacancies in any  
141 executive committee shall be filled by the appropriate  
142 executive committee as provided in subsection (f) of this  
143 section no later than sixty days after the vacancy occurs. The  
144 chair of each executive committee shall submit an updated  
145 committee list to the Secretary of State within ten days of a  
146 change occurring. Executive committee membership lists  
147 shall include at least the member's name, full address,  
148 employer, telephone number and term information. An  
149 appointment to fill a vacancy does not take effect if the  
150 executive committee does not submit the updated list to the  
151 Secretary of State within the allotted time period. If the  
152 executive committee fails to submit the updated list within  
153 the allotted time period, it must make another appointment  
154 pursuant to the provisions of this section and resubmit the  
155 updated list in a timely manner. If a vacancy on an executive  
156 committee is not filled within the sixty-day period prescribed  
157 by this section, the chair of the appropriate executive  
158 committee, as provided in subsection (f) of this section, shall  
159 name someone to fill the vacancy. If the chair of a county  
160 executive committee fails to fill a vacancy in a congressional  
161 district, state senatorial district or delegate district executive  
162 committee, and the failure to fill such vacancy prohibits said  
163 committee from conducting official business, the chair of the  
164 party's state executive committee shall fill such vacancy.

165 (h) Any meeting of any political party executive  
166 committee shall be held only after public notice and notice to  
167 each member is given according to party rules and shall be  
168 open to all members affiliated with the party. Meetings shall  
169 be conducted according to party rules, all official actions  
170 shall be made by voice vote and minutes shall be maintained  
171 and shall be open to inspection by members affiliated with  
172 the party.

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**CHAPTER 99**

**(Com. Sub. for S.B. 619 - By Senators Kessler, Edgell,  
Minard and Hunter)**

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[Passed March 7, 2007; in effect ninety days from passage.]  
[Approved by the Governor on March 28, 2007.]

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AN ACT to amend and reenact §3-1-34 of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-4A-16 and §3-4A-30 of said code, all relating to election day procedures and preparation; providing for handicapped individuals to vote on election day; providing that clerks must assure voter privacy by placement of voting devices and/or booths; and providing for sufficient space and notice of precinct consolidation.

*Be it enacted by the Legislature of West Virginia:*

That §3-1-34 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §3-4A-16 and §3-4A-30 of said code be amended and reenacted, all to read as follows:

**Article**

- 1. General Provisions and Definitions.**
- 4A. Electronic Voting Systems.**

**ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

**§3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.**

1       (a) Any person desiring to vote in an election shall, upon  
2 entering the election room, clearly state his or her name and  
3 residence to one of the poll clerks who shall thereupon  
4 announce the same in a clear and distinct tone of voice. If  
5 that person is found to be duly registered as a voter at that  
6 precinct, he or she shall sign his or her name in the space  
7 marked "signature of voter" on the pollbook provided for the  
8 precinct. If that person is physically or otherwise unable to  
9 sign his or her name, his or her mark shall be affixed by one  
10 of the poll clerks in the presence of the other, and the name  
11 of the poll clerk affixing the voter's mark shall be indicated  
12 immediately under the affixation. No ballot may be given to  
13 the person until he or she signs his or her name on the  
14 pollbook or his or her signature is affixed thereon.

15       (b) The clerk of the county commission is authorized,  
16 upon verification that the precinct at which a handicapped  
17 person is registered to vote is not handicap accessible, to  
18 transfer that person's registration to the nearest polling place  
19 in the county which is handicap accessible. A request by a  
20 handicapped person for a transfer of registration must be  
21 received by the county clerk no later than thirty days prior to  
22 the date of the election. Any handicapped person who has  
23 not made a request for a transfer of registration at least thirty  
24 days prior to the date of the election may vote a provisional  
25 ballot at a handicap accessible polling place in the county of  
26 his or her registration. If during the canvass the county  
27 commission determines that the person had been registered  
28 in a precinct that is not handicap accessible, the voted ballot,  
29 if otherwise valid, shall be counted. The handicapped person  
30 may vote in the precinct to which the registration was  
31 transferred only as long as the disability exists or the precinct  
32 from which the handicapped person was transferred remains  
33 inaccessible to the handicapped. To ensure confidentiality of  
34 the transferred ballot, the county clerk processing the ballot

35 shall provide the voter with an unmarked envelope and an  
36 outer envelope designated "provisional ballot/handicapped  
37 voter". After validation of the ballot at the canvass, the outer  
38 envelope shall be destroyed and the handicapped voter's  
39 ballot shall be placed with other approved provisional ballots  
40 prior to removal of the ballot from the unmarked envelope.

41 (c) When the voter's signature is properly on the  
42 pollbook, the two poll clerks shall sign their names in the  
43 places indicated on the back of the official ballot and deliver  
44 the ballot to the voter to be voted by him or her without  
45 leaving the election room. If he or she returns the ballot  
46 spoiled to the clerks, they shall immediately mark the ballot  
47 "spoiled" and it shall be preserved and placed in a spoiled  
48 ballot envelope together with other spoiled ballots to be  
49 delivered to the board of canvassers and deliver to the voter  
50 another official ballot, signed by the clerks on the reverse  
51 side. The voter shall thereupon retire alone to the booth or  
52 compartment prepared within the election room for voting  
53 purposes and there prepare his or her ballot. In voting for  
54 candidates in general and special elections, the voter shall  
55 comply with the rules and procedures prescribed in section  
56 five, article six of this chapter.

57 (d) It is the duty of a poll clerk, in the presence of the  
58 other poll clerk, to indicate by a check mark inserted in the  
59 appropriate place on the registration record of each voter the  
60 fact that the voter voted in the election. In primary elections  
61 the clerk shall also insert thereon a distinguishing initial or  
62 initials of the political party for whose candidates the voter  
63 voted. If a person is challenged at the polls, the challenge  
64 shall be indicated by the poll clerks on the registration record,  
65 together with the name of the challenger. The subsequent  
66 removal of the challenge shall be recorded on the registration  
67 record by the clerk of the county commission.



68 (e) (1) No voter may receive any assistance in voting  
69 unless, by reason of blindness, disability, advanced age or  
70 inability to read and write, that voter is unable to vote without  
71 assistance. Any voter qualified to receive assistance in  
72 voting under the provisions of this section may:

73 (A) Declare his or her choice of candidates to an election  
74 commissioner of each political party who, in the presence of  
75 the voter and in the presence of each other, shall prepare the  
76 ballot for voting in the manner hereinbefore provided and, on  
77 request, shall read to the voter the names of the candidates  
78 selected on the ballot;

79 (B) Require the election commissioners to indicate to him  
80 or her the relative position of the names of the candidates on  
81 the ballot, whereupon the voter shall retire to one of the  
82 booths or compartments to prepare his or her ballot in the  
83 manner hereinbefore provided;

84 (C) Be assisted by any person of the voter's choice, other  
85 than the voter's present or former employer or agent of that  
86 employer, the officer or agent of a labor union of which the  
87 voter is a past or present member or a candidate on the ballot  
88 or an official write-in candidate; or

89 (D) If he or she is handicapped, vote from an automobile  
90 outside the polling place or precinct by the absentee balloting  
91 method provided in subsection (e), section five, article three  
92 of this chapter in the presence of an election commissioner of  
93 each political party if all of the following conditions are met:

94 (i) The polling place is not handicap accessible; and

95 (ii) No voters are voting or waiting to vote inside the  
96 polling place.

97 The voted ballot shall then be returned to the precinct  
98 officials and secured in a sealed envelope to be returned to  
99 the clerk of the county commission with all other election  
100 materials. The ballot shall then be tabulated using the  
101 appropriate method provided in section eight of this chapter  
102 as it relates to the specific voting system in use.

103 (2) Any voter who requests assistance in voting but who  
104 is believed not to be qualified for assistance under the  
105 provisions of this section shall nevertheless be permitted to  
106 vote a provisional ballot with the assistance of any person  
107 herein authorized to render assistance.

108 (3) Any one or more of the election commissioners or  
109 poll clerks in the precinct may challenge the ballot on the  
110 ground that the voter thereof received assistance in voting it  
111 when in his, her or their opinion the person who received  
112 assistance in voting is not so illiterate, blind, disabled or of  
113 such advanced age as to have been unable to vote without  
114 assistance. The election commissioner or poll clerk or  
115 commissioners or poll clerks making the challenge shall enter  
116 the challenge and reason therefor on the form and in the  
117 manner prescribed or authorized by article three of this  
118 chapter.

119 (4) An election commissioner or other person who assists  
120 a voter in voting:

121 (A) May not in any manner request or seek to persuade  
122 or induce the voter to vote any particular ticket or for any  
123 particular candidate or for or against any public question and  
124 must not keep or make any memorandum or entry of  
125 anything occurring within the voting booth or compartment  
126 and must not, directly or indirectly, reveal to any person the  
127 name of any candidate voted for by the voter or which ticket

128 he or she had voted or how he or she had voted on any public  
129 question or anything occurring within the voting booth or  
130 compartment or voting machine booth except when required  
131 pursuant to law to give testimony as to the matter in a judicial  
132 proceeding; and

133 (B) Shall sign a written oath or affirmation before  
134 assisting the voter on a form prescribed by the Secretary of  
135 State stating that he or she will not override the actual  
136 preference of the voter being assisted, attempt to influence  
137 the voter's choice or mislead the voter into voting for  
138 someone other than the candidate of voter's choice. The  
139 person assisting the voter shall also swear or affirm that he or  
140 she believes that the voter is voting free of intimidation or  
141 manipulation: *Provided*, That no person providing assistance  
142 to a voter is required to sign an oath or affirmation where the  
143 reason for requesting assistance is the voter's inability to vote  
144 without assistance because of blindness as defined in section  
145 three, article fifteen, chapter five of this code and the inability  
146 to vote without assistance because of blindness is certified in  
147 writing by a physician of the voter's choice and is on file in  
148 the office of the clerk of the county commission.

149 (5) In accordance with instructions issued by the  
150 Secretary of State, the clerk of the county commission shall  
151 provide a form entitled "list of assisted voters", the form of  
152 which list shall likewise be prescribed by the Secretary of  
153 State. The commissioners shall enter the name of each voter  
154 receiving assistance in voting the ballot, together with the  
155 poll slip number of that voter and the signature of the person  
156 or the commissioner from each party who assisted the voter.  
157 If no voter has been assisted in voting, the commissioners  
158 shall likewise make and subscribe to an oath of that fact on  
159 the list.

160 (f) After preparing the ballot, the voter shall fold the  
161 ballot so that the face is not exposed and so that the names of  
162 the poll clerks thereon are seen. The voter shall announce his  
163 or her name and present his or her ballot to one of the  
164 commissioners who shall hand the same to another  
165 commissioner, of a different political party, who shall deposit  
166 it in the ballot box if the ballot is the official one and properly  
167 signed. The commissioner of election may inspect every  
168 ballot before it is deposited in the ballot box to ascertain  
169 whether it is single, but without unfolding or unrolling it so  
170 as to disclose its content. When the voter has voted, he or  
171 she shall retire immediately from the election room and  
172 beyond the sixty-foot limit thereof and may not return except  
173 by permission of the commissioners.

174 (g) Following the election, the oaths or affirmations  
175 required by this section from those assisting voters, together  
176 with the "list of assisted voters", shall be returned by the  
177 election commissioners to the clerk of the county commission  
178 along with the election supplies, records and returns. The  
179 clerk of the county commission shall make the oaths,  
180 affirmations and list available for public inspection and shall  
181 preserve them for a period of twenty-two months or until  
182 disposition is authorized or directed by the Secretary of State  
183 or court of record: *Provided*, That the clerk may use these  
184 records to update the voter registration records in accordance  
185 with subsection (d), section eighteen, article two of this  
186 chapter.

187 (h) Any person making an oath or affirmation required  
188 under the provisions of this section who knowingly swears  
189 falsely or any person who counsels, advises, aids or abets  
190 another in the commission of false swearing under this  
191 section is guilty of a misdemeanor and, upon conviction  
192 thereof, shall be fined not more than one thousand dollars or

193 confined in the county or regional jail for a period of not  
194 more than one year, or both fined and confined.

195 (i) Any election commissioner or poll clerk who  
196 authorizes or provides unchallenged assistance to a voter  
197 when the voter is known to the election commissioner or poll  
198 clerk not to require assistance in voting is guilty of a felony  
199 and, upon conviction thereof, shall be fined not more than  
200 five thousand dollars or imprisoned in a state correctional  
201 facility for a period of not less than one year nor more than  
202 five years, or both fined and imprisoned.

#### **ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.**

§3-4A-16. Delivery of vote-recording devices; time, arrangement for voting.

§3-4A-30. Adjustments in voting precincts where electronic voting system used.

#### **§3-4A-16. Delivery of vote-recording devices; time, arrangement for voting.**

1 The clerk of the county commission shall deliver or cause  
2 to be delivered each vote-recording device, where applicable,  
3 and the package of ballots to the polling place where they are  
4 to be employed. The delivery is to be made not less than one  
5 hour prior to the opening of the polls and is to be made in the  
6 presence of the precinct election commissioners. At the time  
7 of the delivery of the vote recording device, where  
8 applicable, and the ballots, the device is to be sealed to  
9 prevent its use prior to the opening of the polls and any  
10 tampering with the ballot labels; and the ballots are to be  
11 packaged and sealed to prevent any tampering with the  
12 ballots. Immediately prior to the opening of the polls on  
13 election day, the sealed packages of ballots are to be opened,  
14 where applicable, and the seal of the vote-recording device is  
15 to be broken in the presence of the precinct election  
16 commissioners, who shall certify in writing signed by them  
17 to the clerk of the county commission, that the devices, where

18 applicable, and the ballots have been delivered in their  
19 presence, that the devices and packages of ballots were found  
20 to be sealed upon delivery, and that the seals have been  
21 broken and the devices opened in their presence, as may be  
22 appropriate. The election commissioners shall then cause the  
23 vote-recording device and booth to be arranged so that the  
24 front of the vote-recording device will not be visible, when  
25 the vote-recording device is being operated, to any person  
26 other than the voter. The poll clerks shall ensure that the  
27 vote-recording device is placed in a location that maintains  
28 voter privacy through the entire period of voting.

**§3-4A-30. Adjustments in voting precincts where electronic voting system used.**

1 (a) The provisions of section five, article one of this  
2 chapter, relating to the number of registered voters in each  
3 precinct, shall apply to and control in precincts in counties in  
4 which electronic voting systems have been adopted, except  
5 that the maximum number of registered voters shall be one  
6 thousand five hundred per precinct. The county commissions  
7 of such counties, subject to other provisions of this chapter  
8 with respect to the altering or changing of the boundaries of  
9 voting precincts, may change the boundaries of precincts or  
10 consolidate precincts as practicable, to achieve the maximum  
11 advantage from the use of electronic voting systems.

12 (b) The county commission may, in the urban centers of  
13 any county adopting an electronic voting system, designate  
14 a voting place outside the boundaries of a precinct, provided  
15 such voting place is in a public building of sufficient size and  
16 in an adjoining precinct. In such event, more than one  
17 precinct may vote in any such public building. Upon  
18 combination of adjoining precincts pursuant to this  
19 subsection, the county commission shall: (1) Publish its order

20 combining the precincts in the same manner as an order of  
21 consolidation pursuant to section seven, article one of this  
22 chapter; and (2) cause its order to be published with each  
23 sample ballot publication required by this chapter.

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## CHAPTER 100

**(Com. Sub. for S.B. 617 - By Senators Kessler, Edgell,  
Minard, Hunter and Foster)**

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[Passed March 6, 2007; in effect ninety days from passage.]  
[Approved by the Governor on March 28, 2007.]

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AN ACT to amend and reenact §3-2-4a, §3-2-5, §3-2-6, §3-2-11, §3-2-13 and §3-2-30 of the Code of West Virginia, 1931, as amended, all relating to voter registration; providing for the voting history of a voter on the statewide registration system; providing that agencies may not withhold information for statewide voter registration system without a court order; allowing for Division of Motor Vehicles' identification card in lieu of driver's license for voter registration purposes; providing that the voter has four business days to correct errors on voter registration card; requiring the Department of Revenue to provide a check box for voter registration interest; requiring voting coordinators to receive training; removing provisions requiring manual voter registration lists by county clerks in lieu of electronic files; requiring county clerk to provide a copy of voter registration list availability policy to the Secretary of State's office; and modifying the cost of purchasing the voter registration list.

*Be it enacted by the Legislature of West Virginia:*

That §3-2-4a, §3-2-5, §3-2-6, §3-2-11, §3-2-13 and §3-2-30 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

## **ARTICLE 2. REGISTRATION OF VOTERS.**

§3-2-4a. Statewide voter registration list.

§3-2-5. Forms for application for registration; information required and requested; types of application forms; notices.

§3-2-6. Time of registration application before an election.

§3-2-11. Registration in conjunction with driver licensing.

§3-2-13. Agencies to provide voter registration services; designation of responsible employees; forms; prohibitions; confidentiality.

§3-2-30. Public inspection of voter registration records in the office of the clerk of the county commission; providing voter lists for noncommercial use; prohibition against resale of voter lists for commercial use or profit.

### **§3-2-4a. Statewide voter registration list.**

1       (a) The Secretary of State shall implement and maintain  
2 a single, official, statewide, centralized, interactive  
3 computerized voter registration list of every legally registered  
4 voter in the state, which shall include the following:

5       (1) The computerized list shall serve as the single system  
6 for storing and managing the official list of registered voters  
7 throughout the state.

8       (2) The computerized list shall contain the name,  
9 registration information and voter history of every legally  
10 registered voter in the state.

11       (3) Under the computerized list, the Secretary of State  
12 shall assign a unique identifier to each legally registered  
13 voter in the state.



14       (4) The computerized list shall be coordinated with other  
15 agency databases within the state.

16       (5) The Secretary of State and any clerk of the county  
17 commission may obtain immediate electronic access to the  
18 information contained in the computerized list.

19       (6) The clerk of the county commission shall  
20 electronically enter voter registration information into the  
21 computerized list on an expedited basis at the time the  
22 information is provided to the clerk.

23       (7) The Secretary of State shall provide necessary support  
24 to enable every clerk of the county commission in the state to  
25 enter information as described in subdivision (6) of this  
26 subsection.

27       (8) The computerized list shall serve as the official voter  
28 registration list for conducting all elections in the state.

29       (b) The Secretary of State or any clerk of a county  
30 commission shall perform maintenance with respect to the  
31 computerized list on a regular basis as follows:

32       (1) If an individual is to be removed from the  
33 computerized list, he or she shall be removed in accordance  
34 with the provisions of 42 U. S. C. §1973gg, *et seq.*, the  
35 National Voter Registration Act of 1993.

36       (2) The Secretary of State shall coordinate the  
37 computerized list with state agency records and remove the  
38 names of individuals who are not qualified to vote because of  
39 felony status or death: *Provided*, That no state agency may  
40 withhold information regarding a voter's status as deceased  
41 or as a felon unless ordered by a court of law.

42 (c) The list maintenance performed under subsection (b)  
43 of this section shall be conducted in a manner that ensures that:

44 (1) The name of each registered voter appears in the  
45 computerized list;

46 (2) Only voters who are not registered or who are not  
47 eligible to vote are removed from the computerized list; and

48 (3) Duplicate names are eliminated from the  
49 computerized list.

50 (d) The Secretary of State and the clerks of all county  
51 commissions shall provide adequate technological security  
52 measures to prevent the unauthorized access to the  
53 computerized list established under this section.

54 (e) The Secretary of State shall ensure that voter  
55 registration records in the state are accurate and updated  
56 regularly, including the following:

57 (1) A system of file maintenance that makes a reasonable  
58 effort to remove registrants who are ineligible to vote from  
59 the official list of eligible voters. Under the system,  
60 consistent with 42 U. S. C. §1973gg, *et seq.*, registrants who  
61 have not responded to a notice sent pursuant to section  
62 twenty-four, article three of this chapter and who have not  
63 voted in two consecutive general elections for federal office  
64 shall be removed from the official list of eligible voters,  
65 except that no registrant may be removed solely by reason of  
66 a failure to vote; and

67 (2) Safeguards to ensure that eligible voters are not  
68 removed in error from the official list of eligible voters.

69 (f) Applications for voter registration may only be  
70 accepted when the following information is provided:

71 (1) Except as provided in subdivision (2) of this  
72 subsection and notwithstanding any other provision of law to  
73 the contrary, an application for voter registration may not be  
74 accepted or processed unless the application includes:

75 (A) In the case of an applicant who has been issued a  
76 current and valid driver's license, the applicant's driver's  
77 license number;

78 (B) In the case of an applicant who has been issued an  
79 identification card by the Division of Motor Vehicles, the  
80 applicant's identification number; or

81 (C) In the case of any other applicant, the last four digits  
82 of the applicant's social security number; and

83 (2) If an applicant for voter registration has not been  
84 issued a current and valid driver's license, Division of Motor  
85 Vehicles' identification card or a social security number, the  
86 Secretary of State shall assign the applicant a number which  
87 will serve to identify the applicant for voter registration  
88 purposes. To the extent that the state has a computerized list  
89 in effect under this section and the list assigns unique  
90 identifying numbers to registrants, the number assigned under  
91 this section shall be the unique identifying number assigned  
92 under the list.

93 (g) The Secretary of State and the Commissioner of the  
94 Division of Motor Vehicles shall enter into an agreement to  
95 match and transfer applicable information in the database of  
96 the statewide voter registration system with information in  
97 the database of the Division of Motor Vehicles to the extent

98 required to enable each official to verify the accuracy of the  
99 information provided on applications for voter registration.

100 (h) The Commissioner of the Division of Motor Vehicles  
101 shall enter into an agreement with the Commissioner of  
102 Social Security under 42 U. S. C. §301, *et seq.*, the Social  
103 Security Act. All fees associated with this agreement shall be  
104 paid for from moneys in the fund created under section  
105 twelve, article two of this chapter.

**§3-2-5. Forms for application for registration; information  
required and requested; types of application  
forms; notices.**

1 (a)(1) All state forms for application for voter registration  
2 shall be prescribed by the Secretary of State and shall  
3 conform with the requirements of 42 U. S. C. §1973gg, *et*  
4 *seq.*, the National Voter Registration Act of 1993 and the  
5 requirements of the provisions of this article. Separate  
6 application forms may be prescribed for voter registration  
7 conducted by the clerk of the county commission, registration  
8 by mail, registration in conjunction with an application for  
9 motor vehicle driver's license and registration at designated  
10 agencies. These forms may consist of one or more parts, may  
11 be combined with other forms for use in registration by  
12 designated agencies or in conjunction with driver licensing  
13 and may be revised and reissued as required by the Secretary  
14 of State to provide for the efficient administration of voter  
15 registration.

16 (2) Notwithstanding any provisions of subdivision (1) of  
17 this subsection to the contrary, the federal postcard  
18 application for voter registration issued pursuant to 42 U. S.  
19 C. §1973, *et seq.*, the Uniformed and Overseas Citizens  
20 Absentee Voting Act of 1986, and the mail voter registration

21 application form prescribed by the Federal Election  
22 Commission pursuant to 42 U. S. C. §1973gg, *et seq.*, the  
23 National Voter Registration Act of 1993, shall be accepted as  
24 a valid form of application for registration pursuant to the  
25 provisions of this article.

26 (b) Each application form for registration shall include:

27 (1) A statement specifying the eligibility requirements for  
28 registration and an attestation that the applicant meets each  
29 eligibility requirement;

30 (2) Any specific notice or notices required for a specific  
31 type or use of application by 42 U. S. C. §1973gg, *et seq.*, the  
32 National Voter Registration Act of 1993;

33 (3) A notice that a voter may be permitted to vote the  
34 partisan primary election ballot of a political party only if the  
35 voter has designated that political party on the application for  
36 registration unless the political party has determined  
37 otherwise;

38 (4) The applicant's driver's license number or an  
39 identification number issued by the Division of Motor  
40 Vehicles. If the applicant does not have a driver's license or  
41 an identification card issued by the Division of Motor  
42 Vehicles, then the last four digits of the applicant's social  
43 security number; and

44 (5) Any other instructions or information essential to  
45 complete the application process.

46 (c) Each application form shall require that the following  
47 be provided by the applicant, under oath, and any application

48 which does not contain each of the following shall be  
49 considered incomplete:

50 (1) The applicant's legal name, including the first name,  
51 middle or maiden name, if any, and last name;

52 (2) The month, day and year of the applicant's birth;

53 (3) The applicant's residence address, including the  
54 number and street or route and city and county of residence  
55 except:

56 (A) In the case of a person eligible to register under the  
57 provisions of 42 U. S. C. §1973ff, *et seq.*, the Uniformed and  
58 Overseas Citizens Absentee Voting Act, the address at which  
59 he or she last resided before leaving the United States or  
60 entering the uniformed services, or if a dependent child of  
61 such a person, the address at which his or her parent last  
62 resided; and

63 (B) In the case of a homeless person having no fixed  
64 residence address who nevertheless resides and remains  
65 regularly within the county, the address of a shelter,  
66 assistance center or family member with whom he or she has  
67 regular contact or other specific location approved by the  
68 clerk of the county commission for the purposes of  
69 establishing a voting residence; and

70 (4) The applicant's signature, under penalty of perjury as  
71 provided in section thirty-six of this article, to the attestation  
72 of eligibility to register to vote and to the truth of the  
73 information given.

74 (d) The applicant shall be requested to provide the  
75 following information, but no application shall be rejected for  
76 lack of this information:

77 (1) An indication whether the application is for a new  
78 registration, change of address, change of name or change of  
79 party affiliation;

80 (2) The applicant's choice of political party affiliation, if  
81 any, or an indication of no affiliation: *Provided*, That any  
82 applicant who does not enter any choice of political party  
83 affiliation shall be listed as having no party affiliation on the  
84 voting record;

85 (3) The applicant's residence mailing address if different  
86 than the residence street address;

87 (4) The last four digits of the applicant's social security  
88 number;

89 (5) The applicant's telephone number;

90 (6) The address at which the applicant was last registered  
91 to vote, if any, for the purpose of canceling or transferring the  
92 previous registration; and

93 (7) The applicant's gender.

94 (e) The Secretary of State shall prescribe the printing  
95 specifications of each type of voter registration application  
96 and the voter registration application portion of any form  
97 which is part of a combined agency form.

98 (f) Application forms prescribed in this section may refer  
99 to various public officials by title or official position, but in  
100 no case may the actual name of any officeholder be printed

101 on the voter registration application or on any portion of a  
102 combined application form.

103 (g) No later than the first day of July of each  
104 odd-numbered year, the Secretary of State shall submit the  
105 specifications of the voter registration application by mail for  
106 statewide bidding for a contract period beginning the first day  
107 of September of each odd-numbered year and continuing for  
108 two calendar years. The successful bidder shall produce and  
109 supply the required mail voter registration forms at the  
110 contract price to all purchasers of the form for the period of  
111 the contract.

**§3-2-6. Time of registration application before an election.**

1 (a) Voter registration before an election shall close on the  
2 twenty-first day before the election, or on the first day  
3 thereafter which is not a Saturday, Sunday or legal holiday.

4 (b) An application for voter registration, transfer of  
5 registration, change of name or change of political party  
6 affiliation submitted by an eligible voter by the close of voter  
7 registration shall be effective for any subsequent primary,  
8 general or special election if the following conditions are  
9 met:

10 (1) The application contains the information required by  
11 subsection (c), section five of this article: *Provided*, That  
12 incomplete applications for registration containing  
13 information which are submitted within the required time  
14 may be corrected within four business days after the close of  
15 registration if the applicant provides the required  
16 information; and



17 (2) The application is received by the appropriate clerk of  
18 the county commission no later than the hour of the close of  
19 registration or is otherwise submitted by the following  
20 deadlines:

21 (A) If mailed, the application shall be addressed to the  
22 appropriate clerk of the county commission and is  
23 postmarked by the postal service no later than the date of the  
24 close of registration: *Provided*, That if the postmark is  
25 missing or illegible, the application shall be presumed to have  
26 been mailed no later than the close of registration if it is  
27 received by the appropriate clerk of the county commission  
28 no later than the third day following the close of registration;

29 (B) If accepted by a designated agency or motor vehicle  
30 licensing office, the application is received by that agency or  
31 office no later than the close of registration;

32 (C) If accepted through a registration outreach program,  
33 the application is received by the clerk, deputy clerk or  
34 registrar no later than the close of registration; and

35 (3) The verification notice by the provisions of section  
36 sixteen of this article mailed to the voter at the residence  
37 indicated on the application is not returned as undeliverable.

### **§3-2-11. Registration in conjunction with driver licensing.**

1 (a) The Division of Motor Vehicles or any other division  
2 or department that may be established by law to perform  
3 motor vehicle driver licensing services shall provide each  
4 qualified registrant, as an integral and simultaneous part of  
5 every process of application for the issuance, renewal or  
6 change of address of any motor vehicle driver's license or  
7 official identification card, pursuant to the provisions of

8 article two, chapter seventeen-b of this code, a voter  
9 registration application as prescribed in section five of this  
10 article.

11 (b) Any person who fails to sign the voter registration  
12 application or who fails to return the voter registration  
13 application to a driver licensing facility or to an appropriate  
14 voter registration office shall be considered to have declined  
15 to register. Information regarding any person's failure to sign  
16 the voter registration application is confidential and may not  
17 be used for any purpose other than to determine voter  
18 registration.

19 (c) Any qualified voter who submits the application for  
20 registration pursuant to the provisions of subsection (a) of  
21 this section in person at a driver licensing facility at the time  
22 of applying for, obtaining, renewing or transferring his or her  
23 driver's license or official identification card and who  
24 presents identification and proof of age at that time shall not  
25 be required to make his or her first vote in person or to again  
26 present identification in order to make that registration valid.

27 (d) Any qualified voter who submits by mail or by  
28 delivery by a third party an application for registration on the  
29 form used in conjunction with driver licensing shall be  
30 required to make his or her first vote in person and present  
31 identification as required for other mail registration in  
32 accordance with the provisions of subsection (g), section ten  
33 of this article: *Provided*, That if the applicant has been  
34 previously registered in the jurisdiction and the application is  
35 for a change of address, change of name, change of political  
36 party affiliation or other correction, the presentation of  
37 identification and first vote in person is not required.

38 (e) Any application for voter registration submitted  
39 pursuant to the provisions of this section shall be considered  
40 as updating any previous voter registration by the applicant  
41 and shall authorize the cancellation of registration in any  
42 other county or state in which the applicant was previously registered.  
43 (f) Any change of address from one residence to another  
44 within the same county which is submitted for driver  
45 licensing purposes in accordance with applicable law shall  
46 also serve as a notice of change of address for voter  
47 registration purposes unless the individual indicates on the  
48 form that the change of address is not for voter registration  
49 purposes.

50 (g) Completed applications for voter registration or  
51 change of address for voting purposes received by any office  
52 providing driver licensing services shall be forwarded to the  
53 Secretary of State within five days of receipt, unless other  
54 means are available for a more expedited transmission. The  
55 Secretary of State shall remove and file any forms which  
56 have not been signed by the applicant and shall forward  
57 completed, signed applications to the clerk of the appropriate  
58 county commission within five days of receipt.

59 (h) Voter registration application forms containing voter  
60 information which are returned to a driver licensing office  
61 unsigned shall be collected and maintained for two years  
62 according to procedural rules promulgated by the Secretary  
63 of State.

**§3-2-13. Agencies to provide voter registration services;  
designation of responsible employees; forms;  
prohibitions; confidentiality.**

1 (a) For the purposes of this article, "agency" means a  
2 department, division or office of state or local government, or

3 a program supported by state funds, which is designated  
4 under this section to provide voter registration services, but  
5 does not include departments, divisions or offices required by  
6 other sections of this article to provide voter registration  
7 services.

8 (b) The following agencies shall provide voter  
9 registration services pursuant to the provisions of this article:

10 (1) Those state agencies which administer or provide  
11 services under the food stamp program, the Aid to Families  
12 with Dependent Children (AFDC) program, the Women,  
13 Infants and Children (WIC) program and the Medicaid  
14 program;

15 (2) Those state-funded agencies primarily engaged in  
16 providing services to persons with disabilities;

17 (3) County marriage license offices;

18 (4) Armed services recruitment offices, as required by  
19 federal law; and

20 (5) The Department of Revenue, if it provides a check  
21 box on any form provided to the general public authorizing  
22 the Department of Revenue to request a voter registration  
23 application by mail from the Secretary of State on behalf of  
24 the applicant.

25 (c) No later than the first day of October, one thousand  
26 nine hundred ninety-four, the Secretary of State shall, in  
27 conjunction with a designated representative of each of the  
28 appropriate state agencies, review those programs and offices  
29 established and operating with state funds which administer  
30 or provide public assistance or services to persons with

31 disabilities and shall promulgate an emergency rule pursuant  
32 to the provisions of chapter twenty-nine-a of this code  
33 designating the specific programs and offices required to  
34 provide voter registration services in order to comply with  
35 the requirements of this section and the requirements of the  
36 National Voter Registration Act of 1993 (42 U. S. C.  
37 §1973gg, *et seq.*). The offices and programs so designated  
38 shall begin providing voter registration services on the first  
39 day of January, one thousand nine hundred ninety-five.

40 (d) In each even-numbered year,, the Secretary of State  
41 shall, in conjunction with the designated representatives of  
42 the appropriate state agencies, perform the review as required  
43 by the provisions of subsection (c) of this section. The  
44 Secretary of State shall periodically review and revise, if  
45 necessary, the legislative rule designating the specific  
46 agencies required to provide voter registration services.

47 (e) Each state agency required to provide services  
48 pursuant to the provisions of this article shall designate a  
49 current employee of that agency to serve as a state supervisor  
50 to administer voter registration services required in all  
51 programs under the agency's jurisdiction. Each state  
52 supervisor is responsible for coordination with the Secretary  
53 of State, overall operation of the program in conjunction with  
54 services within the agency, designation and supervision of  
55 local coordinators and for the review of any complaints filed  
56 against employees relating to voter registration as provided  
57 in this chapter.

58 (f) The state supervisor shall designate a current  
59 employee as a local coordinator for voter registration services  
60 for each office or program delivery center who shall be  
61 responsible for the proper conduct of voter registration  
62 services, timely return of completed voter registration

63 applications, proper handling of declinations and reporting  
64 requirements. Notice of the designation of these persons  
65 shall be made upon request of the Secretary of State and  
66 within five days following any change of designation. Each  
67 local coordinator shall receive biannual training provided by  
68 the Secretary of State.

69 (g) The registration application forms used for agency  
70 registration shall be issued pursuant to the provisions of  
71 section five of this article.

72 (h) The Secretary of State, in conjunction with those  
73 agencies designated to provide voter registration services  
74 pursuant to the provisions of this section, shall prescribe the  
75 form or portion of the appropriate agency form required by  
76 the provisions of 42 U. S. C. §1973gg, *et seq.*, section  
77 7(a)(6)(B) of the National Voter Registration Act of 1993,  
78 containing the required notices and providing boxes for the  
79 applicant to check to indicate whether the applicant would  
80 like to register or decline to register to vote. The form or  
81 portion of the form is designated the "declination form".

82 (i) A person who provides voter registration services may  
83 not:

84 (1) Seek to influence an applicant's political preference or  
85 party registration;

86 (2) Display to any applicant any political preference or  
87 party allegiance;

88 (3) Make any statement to an applicant or take any action  
89 the purpose or effect of which is to discourage the applicant  
90 from registering to vote; or

91 (4) Make any statement to an applicant or take any action  
92 the purpose or effect of which is to lead the applicant to  
93 believe that a decision to register or not to register has any  
94 bearing on the availability of services or benefits.

95 (j) No information relating to the identity of a voter  
96 registration agency through which any particular voter is  
97 registered or to a declination to register to vote in connection  
98 with an application made at any designated agency may be  
99 used for any purpose other than voter registration.

**§3-2-30. Public inspection of voter registration records in the  
office of the clerk of the county commission;  
providing voter lists for noncommercial use;  
prohibition against resale of voter lists for  
commercial use or profit.**

1 (a) The active, inactive, rejected and canceled voter  
2 registration records shall be made available for public  
3 inspection during office hours of the clerk of the county  
4 commission in accordance with the provisions of chapter  
5 twenty-nine-b of this code as follows:

6 (1) When the active and inactive files are maintained on  
7 precinct registration books, any person shall be allowed to  
8 examine these files under the supervision of the clerk and  
9 obtain copies of records except when a precinct book is in  
10 temporary use for updating and preparing lists or during the  
11 time the books are sealed for use in an election. Other  
12 original voter registration records, including canceled voter  
13 records, pending applications, rejected applications, records  
14 of change requests, reinstatements and other documents, shall  
15 be available for inspection upon specific request; and

16       (2) When the active, inactive, rejected and canceled voter  
17 files are maintained in data format, any person shall be  
18 allowed to examine voter record information in printed form  
19 or in a read-only data format on a computer terminal set aside  
20 for public use, if available. The data files available shall  
21 include all registration and voting information maintained in  
22 the file, except that the telephone number and social security  
23 number of any voter shall not be available for inspection or  
24 copying in any format.

25       (b) Printed lists of registered voters may be purchased for  
26 noncommercial use from the clerk of the county commission  
27 at a cost of one cent per name.

28       (c) In counties maintaining active and inactive files in  
29 digitized data format, the clerk of the county commission  
30 shall, upon request, prepare printed copies of the lists of  
31 voters for each precinct. No list prepared under this section  
32 may include the telephone number or social security number  
33 of the registrant. The clerk shall establish a written policy,  
34 which shall be posted within public view, listing the options  
35 which may be requested for selection and sorting criteria and  
36 available data elements, which shall include at least the name,  
37 residence address, political party affiliation and status and the  
38 format of the lists and the times at which lists will be  
39 prepared. A copy of the policy shall be filed with the  
40 Secretary of State no later than the first day of January of  
41 each even-numbered year.

42       (d) In counties which maintain voter files in a digitized  
43 data format, lists of registered voters may be obtained for  
44 noncommercial purposes in data format on disk provided and  
45 prepared by the clerk of the county commission at a cost of  
46 one cent per name plus ten dollars for each disk required. No



47 data file prepared under this subsection may include the  
48 telephone number or social security number of the registrant.

49 (e) The fees received by the clerk of the county  
50 commission shall be kept in a separate fund under the  
51 supervision of the clerk for the purpose of defraying the cost  
52 of the preparation of the voter lists. Any unexpended balance  
53 in the fund shall be transferred to the general fund of the  
54 county commission.

55 (f) The Secretary of State may make voter lists available  
56 for sale subject to the limitations as provided in this section  
57 for counties. The cost for a partial list shall be one and  
58 one-half cents per name plus ten dollars for each disk  
59 required; the cost for a complete statewide list shall be  
60 one-half cent per name and a flat fee of one thousand dollars.  
61 One cent per name for each voter from a particular county on  
62 each partial list, and one-half cent per name for each voter  
63 from a particular county on each statewide list sold shall be  
64 reimbursed to the appropriate county. The disk fee and  
65 one-half cent per name associated with a partial list and the  
66 flat fee of one thousand dollars associated with a complete  
67 statewide list shall be deposited to a special revenue account  
68 for purpose of defraying the cost of the preparation of the  
69 lists.

70 (g) An update to a previously purchased list may be  
71 provided by the Secretary of State or the clerk of the county  
72 commission at a prorated cost based on the amount of  
73 additional information provided. The additional rates  
74 charged by the clerk of the county commission shall be  
75 specified in the policy established pursuant to subsection (c)  
76 of this section.

77 (h) No voter registration lists or data files containing the  
78 names, addresses or other information relating to voters  
79 derived from voter data files obtained pursuant to the  
80 provisions of this article may be used for commercial or  
81 charitable solicitations or advertising, sold or reproduced for  
82 resale.

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## CHAPTER 101

**(S.B. 616 - By Senators Kessler, Edgell, Minard and Hunter)**

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[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2007.]

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AN ACT to repeal §3-4A-11 and §3-4A-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §3-1-20, §3-1-21 and §3-1-41 of said code; to amend and reenact §3-4A-11a and §3-4A-15 of said code; to amend and reenact §3-5-7, §3-5-10, §3-5-13 and §3-5-19 of said code; and to amend and reenact §3-6-2 and §3-6-3 of said code, all relating to election ballots; providing for two copies of sample ballots for each voting place; providing that paper ballots used in conjunction with electronic voting systems must be prepared for eighty percent of registered voters eligible to vote; providing that the number of regular official ballots packaged for each precinct shall equal at least seventy-five percent of the number of registered voters in a precinct; providing for the board of canvassers to protect the privacy of provisional ballots; clarifying ballot lay out; clarifying voter instructions and models; providing print size of sample ballots; and

changing date upon which a person may challenge a candidate's eligibility before the State Election Commission.

*Be it enacted by the Legislature of West Virginia:*

That §3-4A-11 and §3-4A-12 of the Code of West Virginia, 1931, as amended, be repealed; that §3-1-20, §3-1-21 and §3-1-41 of said code be amended and reenacted; that §3-4A-11a and §3-4A-15 of said code be amended and reenacted; that §3-5-7, §3-5-10, §3-5-13 and §3-5-19 of said code be amended and reenacted; and that §3-6-2 and §3-6-3 of said code be amended and reenacted, all to read as follows:

**Article**

1. **General Provisions and Definitions.**
- 4A. **Electronic Voting Systems.**
5. **Primary Elections and Nominating Procedures.**
6. **Conduct and Administration of Elections.**

**ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

- §3-1-20. Cards of instructions to voters; sample ballots; posting.  
 §3-1-21. Printing of official and sample ballots; number; packaging and delivery; correction of ballots.  
 §3-1-41. Challenged and provisional voter procedures; counting of provisional voters' ballots; ballots of election officials.

**§3-1-20. Cards of instructions to voters; sample ballots; posting.**

- 1 (a) The board of ballot commissioners of each county
- 2 shall provide cards of general information which will include:
  - 3 (1) The date of the election and the hours during which
  - 4 polling places will be open;
  - 5 (2) Instruction for mail-in registrants and first-time
  - 6 voters;
  - 7 (3) Voters' rights; and

8       (4) Prohibitions against fraud and misrepresentation. The  
9 board of ballot commissioners shall also provide cards of  
10 instruction for voters in preparing their ballots and casting a  
11 provisional ballot as prescribed by the Secretary of State.  
12 The board of ballot commissioners shall furnish a sufficient  
13 number of cards to the commissioners of election at the same  
14 time they deliver the ballots for the precinct.

15       (b) The commissioners of election shall post one  
16 instruction card in each voting booth giving instructions to  
17 the voters on how to prepare the ballots for deposit in the  
18 ballot boxes and how to obtain a new ballot in place of one  
19 accidentally spoiled.

20       (c) The commissioners of election shall post one or more  
21 other cards of general information at places inside and  
22 outside of the voting place where voters pass or wait to vote.  
23 The commissioners shall also post the official write-in  
24 candidates in the same locations inside and outside of the  
25 voting place.

26       (d) The ballot commissioners shall have printed, on a  
27 different color paper than the official ballot, two or more  
28 copies of sample ballots for each voting place for each  
29 election. Sample ballots shall be furnished and posted with  
30 the cards of general information at each voting place.

31       (e) During the period of early in-person voting, the clerk  
32 of the county commission shall post the cards of general  
33 information, a list of official write-in candidates and sample  
34 ballots within the area where absentee voting is conducted.

**§3-1-21. Printing of official and sample ballots; number; packaging and delivery; correction of ballots.**

1 (a) The board of ballot commissioners for each county  
2 shall provide the ballots and sample ballots necessary for  
3 conducting every election for public officers in which the  
4 voters of the county participate.

5 (b) The persons required to provide the ballots necessary  
6 for conducting all other elections are:

7 (1) The Secretary of State, for any statewide special  
8 election ordered by the Legislature;

9 (2) The board of ballot commissioners, for any  
10 countywide special election ordered by the county  
11 commission;

12 (3) The Board of Education, for any special levy or bond  
13 election ordered by the Board of Education; or

14 (4) The municipal board of ballot commissioners, for any  
15 election conducted for or within a municipality except an  
16 election in which the matter affecting the municipality is  
17 placed on the county ballot at a county election. Ballots other  
18 than those printed by the proper authorities as specified in  
19 this section may not be cast, received or counted in any  
20 election.

21 (c) When paper ballots are used, the total number of  
22 regular official ballots printed shall equal one and  
23 one-twentieth times the number of registered voters eligible  
24 to vote that ballot. When paper ballots are used in  
25 conjunction with or as part of an electronic voting system, the  
26 total number of regular official ballots printed shall equal at

27 a minimum eighty percent of the number of registered voters  
28 eligible to vote that ballot. The clerk of the county  
29 commission shall determine the number of absentee official  
30 ballots.

31 (d) The number of regular official ballots packaged for  
32 each precinct shall equal at a minimum seventy-five percent  
33 of the number of registered voters of the precinct. The  
34 remaining regular official ballots shall be packaged and  
35 delivered to the clerk of the county commission, who shall  
36 retain them unopened until they are required for an  
37 emergency. Each package of ballots shall be wrapped and  
38 sealed in a manner which will immediately make apparent  
39 any attempt to open, alter or tamper with the ballots. Each  
40 package of ballots for a precinct shall be clearly labeled, in a  
41 manner which cannot be altered, with the county name, the  
42 precinct number and the number of ballots contained in each  
43 package. If the packaging material conceals the face of the  
44 ballot, a sample ballot identical to the official ballots  
45 contained therein shall be securely attached to the outside of  
46 the package or, in the case of ballot cards, the type of ballot  
47 shall be included in the label.

48 (e) All absentee ballots necessary for conducting absentee  
49 voting in all voting systems shall be delivered to the clerk of  
50 the county commission of the appropriate county not later  
51 than the forty-second day before the election. All official  
52 ballots in paper ballot systems shall be delivered to the clerk  
53 of the county commission of the appropriate county not later  
54 than twenty-eight days before the election.

55 (f) Upon a finding of the board of ballot commissioners  
56 that an official ballot contains an error which, in the opinion  
57 of the board, is of sufficient magnitude to confuse or mislead  
58 the voters, the board shall cause the error to be corrected

59 either by the reprinting of the ballots or by the use of stickers  
60 printed with the correction and of suitable size to be placed  
61 over the error without covering any other portion of the  
62 ballot.

**§3-1-41. Challenged and provisional voter procedures;  
counting of provisional voters' ballots; ballots of  
election officials.**

1 (a) It is the duty of the members of the receiving board,  
2 jointly or severally, to challenge the right of any person  
3 requesting a ballot to vote in any election:

4 (1) If the person's registration record is not available at  
5 the time of the election;

6 (2) If the signature written by the person in the poll book  
7 does not correspond with the signature purported to be his or  
8 hers on the registration record;

9 (3) If the registration record of the person indicates any  
10 other legal disqualification; or

11 (4) If any other valid challenge exists against the voter  
12 pursuant to section ten, article three of this chapter.

13 (b) Any person challenged shall nevertheless be  
14 permitted to vote in the election. He or she shall be furnished  
15 an official ballot not endorsed by the poll clerks. In lieu of  
16 the endorsements, the poll clerks shall complete and sign an  
17 appropriate form indicating the challenge, the reason thereof  
18 and the name or names of the challengers. The form shall be  
19 securely attached to the voter's ballot and deposited together  
20 with the ballot in a separate box or envelope marked  
21 "provisional ballots".

22 (c) At the time that an individual casts a provisional  
23 ballot, the poll clerk shall give the individual written  
24 information stating that an individual who casts a provisional  
25 ballot will be able to ascertain under the free access system  
26 established in this section whether the vote was counted and,  
27 if the vote was not counted, the reason that the vote was not  
28 counted.

29 (d) Provisional ballots may not be counted by the election  
30 officials. The county commission shall, on its own motion,  
31 at the time of canvassing of the election returns, sit in session  
32 to determine the validity of any challenges according to the  
33 provisions of this chapter. If the county commission  
34 determines that the challenges are unfounded, each  
35 provisional ballot of each challenged voter, if otherwise  
36 valid, shall be counted and tallied together with the regular  
37 ballots cast in the election. The county commission, as the  
38 board of canvassers, shall protect the privacy of each  
39 provisional ballot cast. The county commission shall  
40 disregard technical errors, omissions or oversights if it can  
41 reasonably be ascertained that the challenged voter was  
42 entitled to vote.

43 (e) Any person duly appointed as an election  
44 commissioner or clerk under the provisions of section  
45 twenty-eight of this article who serves in that capacity in a  
46 precinct other than the precinct in which the person is legally  
47 entitled to vote may cast a provisional ballot in the precinct  
48 in which the person is serving as a commissioner or clerk.  
49 The ballot is not invalid for the sole reason of having been  
50 cast in a precinct other than the precinct in which the person  
51 is legally entitled to vote. The county commission shall  
52 record the provisional ballot on the voter's permanent  
53 registration record: *Provided*, That the county commission



54 may count only the votes for the offices that the voter was  
55 legally authorized to vote for in his or her own precinct.

56 (f) The Secretary of State shall establish a free access  
57 system, which may include a toll-free telephone number or an  
58 internet website, that may be accessed by any individual who  
59 casts a provisional ballot to discover whether his or her vote  
60 was counted and, if not, the reason that the vote was not  
61 counted.

#### **ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.**

§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.

§3-4A-15. Instructions and help to voters; vote-recording device models; facsimile diagrams; sample ballots; legal ballot advertisements.

#### **§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.**

1 (a) The board of ballot commissioners in counties using  
2 ballots upon which votes may be recorded by means of  
3 marking with electronically sensible ink or pencil and which  
4 marks are tabulated electronically shall cause the ballots to be  
5 printed or displayed upon the screens of the electronic voting  
6 system for use in elections.

7 (b) (1) For the primary election, the heading of the ballot,  
8 the type faces, the names and arrangement of offices and the  
9 printing of names and arrangement of candidates within each  
10 office are to conform as nearly as possible to the provisions  
11 of sections thirteen and thirteen-a, article five of this chapter.

12 (2) For the general election, the heading of the ballot, the  
13 straight ticket positions, the instructions to straight ticket  
14 voters, the type faces, the names and arrangement of offices  
15 and the printing of names and the arrangement of candidates

16 within each office are to conform as nearly as possible to the  
17 provisions of section two, article six of this chapter, except as  
18 otherwise provided in this article.

19 (3) Nonpartisan elections for board of education and any  
20 question to be voted upon are to be separated from the  
21 partisan ballot and separately headed in display type with a  
22 title clearly identifying the purpose of the election and  
23 constituting a separate ballot wherever a separate ballot is  
24 required under the provisions of this chapter.

25 (4) Both the face and the reverse side of the ballot may  
26 contain the names of candidates only if means to ensure the  
27 secrecy of the ballot are provided and lines for the signatures  
28 of the poll clerks on the ballot are printed on a portion of the  
29 ballot which is deposited in the ballot box and upon which  
30 marks do not interfere with the proper tabulation of the votes.

31 (5) The arrangement of candidates within each office is  
32 to be determined in the same manner as for other electronic  
33 voting systems, as prescribed in this chapter. On the general  
34 election ballot for all offices, and on the primary election  
35 ballot only for those offices to be filled by election, except  
36 delegate to national convention, lines for entering write-in  
37 votes are to be provided below the names of candidates for  
38 each office, and the number of lines provided for any office  
39 shall equal the number of persons to be elected, or three,  
40 whichever is fewer. The words "WRITE-IN, IF ANY" are to  
41 be printed, where applicable, directly under each line for  
42 write-ins. The lines are to be opposite a position to mark the  
43 vote.

44 (c) Except for electronic voting systems that utilize  
45 screens upon which votes may be recorded by means of a  
46 stylus or by means of touch, the primary election ballots are

47 to be printed in the color of ink specified by the Secretary of  
48 State for the various political parties, and the general election  
49 ballot is to be printed in black ink. For electronic voting  
50 systems that utilize screens upon which votes may be  
51 recorded by means of a stylus or by means of touch, the  
52 primary ballots and the general election ballot are to be  
53 printed in black ink. All ballots are to be printed, where  
54 applicable, on white paper suitable for automatic tabulation  
55 and are to contain a perforated stub at the top or bottom of  
56 the ballot, which is to be numbered sequentially in the same  
57 manner as provided in section thirteen, article five of this  
58 chapter, or are to be displayed on the screens of the electronic  
59 voting system upon which votes are recorded by means of a  
60 stylus or touch. The number of ballots printed and the  
61 packaging of ballots for the precincts are to conform to the  
62 requirements for paper ballots provided in this chapter.

63 (d) In addition to the official ballots, the ballot  
64 commissioners shall provide all other materials and  
65 equipment necessary to the proper conduct of the election.

**§3-4A-15. Instructions and help to voters; vote-recording  
device models; facsimile diagrams; sample  
ballots; legal ballot advertisements.**

1 (a) For the instruction of the voters on any election day  
2 in counties utilizing an electronic voting system that uses a  
3 screen upon which votes may be recorded by means of a  
4 stylus or by means of touch, the ballot commissioners shall  
5 provide for each polling place a sample ballot with each  
6 screen as it will appear on the devices, together with written  
7 instructions regarding the operation of the devices. Upon  
8 request, the election officers shall offer instruction to each  
9 voter, before voting, in the operation of the vote-recording  
10 device.

11 (b) The ballot commissioners shall also provide facsimile  
 12 ballots, at least two of which, or complete sets of which, are  
 13 to be posted on the walls of each polling place. The facsimile  
 14 diagrams are exact diagrams of the ballots or screens so that  
 15 the voter may become familiar with the location of the  
 16 parties, offices, candidates and questions as they appear on  
 17 the ballot to be used in his or her precinct.

18 (c) The ballot commissioners may, with the consent of  
 19 the county commission, or the county commission may,  
 20 prepare and mail to each qualified voter at the address shown  
 21 on the registration books a facsimile sample of the ballot or  
 22 screens for his or her precinct.

23 (d) In counties where an electronic voting system has  
 24 been adopted, the legal ballot advertisements required by  
 25 articles five and six of this chapter, which specify the  
 26 publication of a facsimile sample ballot, are to consist of a  
 27 facsimile of the ballot or screens with the names of the  
 28 candidates and the offices for which they are running shown  
 29 in their proper positions.

## **ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.**

§3-5-7. Filing announcements of candidacies; requirements; withdrawal of candidates when section applicable.

§3-5-10. Publication of sample ballots and lists of candidates.

§3-5-13. Form and contents of ballots.

§3-5-19. Vacancies in nominations; how filled; fees.

### **§3-5-7. Filing announcements of candidacies; requirements; withdrawal of candidates when section applicable.**

1 (a) Any person who is eligible and seeks to hold an office  
 2 or political party position to be filled by election in any  
 3 primary or general election held under the provisions of this

4 chapter shall file a certificate of announcement declaring as  
5 a candidate for the nomination or election to the office.

6 (b) The certificate of announcement shall be filed as  
7 follows:

8 (1) With the Secretary of State if it be an office or  
9 political position to be filled by the voters of more than one  
10 county;

11 (2) With the clerk of the county commission if it be for an  
12 office to be filled by the voters of a single county or of a  
13 subdivision less than a county;

14 (3) With the recorder or city clerk if it be for an office to  
15 be filled by the voters of a municipality.

16 (c) The certificate of announcement shall be filed with  
17 the proper officer not earlier than the second Monday in  
18 January next preceding the primary election day, and not later  
19 than the last Saturday in January next preceding the primary  
20 election day, and must be received before midnight, eastern  
21 standard time, of that day or, if mailed, shall be postmarked  
22 by the United States Postal Service before that hour.

23 (d) The certificate of announcement shall be on a form  
24 prescribed by the Secretary of State on which the candidate  
25 shall make a sworn statement before a notary public or other  
26 officer authorized to give oaths, containing the following  
27 information:

28 (1) The date of the election in which the candidate seeks  
29 to appear on the ballot;

30 (2) The name of the office sought; the district, if any; and  
31 the division, if any;

32 (3) The legal name of the candidate and the exact name  
33 the candidate desires to appear on the ballot, subject to  
34 limitations prescribed in section thirteen, article five of this  
35 chapter;

36 (4) The county of residence and a statement that the  
37 candidate is a legally qualified voter of that county; and the  
38 magisterial district of residence for candidates elected from  
39 magisterial districts or under magisterial district limitations;

40 (5) The specific address designating the location at which  
41 the candidate resides at the time of filing, including number  
42 and street or rural route and box number and city, state and  
43 zip code;

44 (6) For partisan elections, the name of the candidate's  
45 political party and a statement that the candidate: (A) Is a  
46 member of and affiliated with that political party as  
47 evidenced by the candidate's current registration as a voter  
48 affiliated with that party; and (B) has not been registered as  
49 a voter affiliated with any other political party for a period of  
50 sixty days before the date of filing the announcement;

51 (7) For candidates for delegate to national convention, the  
52 name of the presidential candidate to be listed on the ballot as  
53 the preference of the candidate on the first convention ballot;  
54 or a statement that the candidate prefers to remain  
55 "uncommitted";

56 (8) A statement that the person filing the certificate of  
57 announcement is a candidate for the office in good faith;

58       (9) The words "subscribed and sworn to before me this  
59       \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_" and a space for the  
60       signature of the officer giving the oath.

61       (e) The Secretary of State or the board of ballot  
62       commissioners, as the case may be, may refuse to certify the  
63       candidacy or may remove the certification of the candidacy  
64       upon receipt of a certified copy of the voter's registration  
65       record of the candidate showing that the candidate was  
66       registered as a voter in a party other than the one named in  
67       the certificate of announcement during the sixty days  
68       immediately preceding the filing of the certificate: *Provided*,  
69       That unless a signed formal complaint of violation of this  
70       section and the certified copy of the voter's registration  
71       record of the candidate are filed with the officer receiving  
72       that candidate's certificate of announcement no later than ten  
73       days following the close of the filing period, the candidate  
74       shall not be refused certification for this reason.

75       (f) The certificate of announcement shall be subscribed  
76       and sworn to by the candidate before some officer qualified  
77       to administer oaths, who shall certify the same. Any person  
78       who knowingly provides false information on the certificate  
79       is guilty of false swearing and shall be punished in  
80       accordance with section three, article nine of this chapter.

81       (g) Any candidate for delegate to a national convention  
82       may change his or her statement of presidential preference by  
83       notifying the Secretary of State by letter received by the  
84       Secretary of State no later than the third Tuesday following  
85       the close of candidate filing. When the rules of the political  
86       party allow each presidential candidate to approve or reject  
87       candidates for delegate to convention who may appear on the  
88       ballot as committed to that presidential candidate, the  
89       presidential candidate or the candidate's committee on his or

90 her behalf may file a list of approved or rejected candidates  
91 for delegate and the Secretary of State shall list as  
92 "uncommitted" any candidate for delegate who is  
93 disapproved by the presidential candidate.

94 (h) No person shall be a candidate for more than one  
95 office or office division at any election: *Provided*, That a  
96 candidate for an office may also be a candidate for President  
97 of the United States, for membership on political party  
98 executive committees or for delegate to a political party  
99 national convention.

100 (i) Any candidate who files a certificate of announcement  
101 for more than one office or division and does not withdraw,  
102 as provided by section eleven, article five of this chapter,  
103 from all but one office prior to the close of the filing period  
104 shall not be certified by the Secretary of State or placed on  
105 the ballot for any office by the board of ballot  
106 commissioners.

107 (j) The provisions of this section enacted during the  
108 regular session of the Legislature in the year one thousand  
109 nine hundred ninety-one shall apply to the primary election  
110 held in the year one thousand nine hundred ninety-two and  
111 every primary election held thereafter. The provisions of this  
112 section enacted during the regular session of the Legislature  
113 in the year one thousand nine hundred ninety-eight shall  
114 apply to the primary election held in the year two thousand  
115 and every primary election held thereafter.

### **§3-5-10. Publication of sample ballots and lists of candidates.**

1 (a) The ballot commissioners of each county shall prepare  
2 a sample official primary ballot for each party and, as the  
3 case may be, for the nonpartisan candidates to be voted for at



4 the primary election, according to the provisions of this  
5 article and articles four and four-a of this chapter, as  
6 appropriate to the voting system. If any ballot issue is to be  
7 voted on in the primary election, the ballot commissioners  
8 shall likewise prepare a sample official ballot for that issue  
9 according to the provisions of law authorizing the election.

10 (b) The facsimile sample ballot for each political party  
11 and for nonpartisan candidates or ballot issues shall be  
12 published as follows:

13 (1) For counties in which two or more qualified  
14 newspapers publish a daily newspaper, not more than  
15 twenty-six nor less than twenty days preceding the primary  
16 election, the ballot commissioners shall publish each sample  
17 official primary election ballot as a Class I-0 legal  
18 advertisement in the two qualified daily newspapers of  
19 different political parties within the county having the largest  
20 circulation in compliance with the provisions of article three,  
21 chapter fifty-nine of this code;

22 (2) For counties having no more than one daily  
23 newspaper, or having only one or more qualified newspapers  
24 which publish weekly, not more than twenty-six nor less than  
25 twenty days preceding the primary election, the ballot  
26 commissioners shall publish the sample official primary  
27 election ballot as a Class I legal advertisement in the  
28 qualified newspaper within the county having the largest  
29 circulation in compliance with the provisions of article three,  
30 chapter fifty-nine of this code; and

31 (3) Each facsimile sample ballot shall be a photographic  
32 reproduction of the official sample ballot or ballot pages and  
33 shall be printed in a size no less than sixty-five percent of the  
34 actual size of the ballot, at the discretion of the ballot

35 commissioners: *Provided*, That when the ballots for the  
36 precincts within the county contain different senatorial,  
37 delegate, magisterial or executive committee districts or  
38 when the ballots for precincts within a city contain different  
39 municipal wards, the facsimile shall be altered to include  
40 each of the various districts in the appropriate order. If, in  
41 order to accommodate the size of each ballot, the ballot or  
42 ballot pages must be divided onto more than one page, the  
43 arrangement and order shall be made to conform as nearly as  
44 possible to the arrangement of the ballot. The publisher of  
45 the newspaper shall submit a proof of the ballot and the  
46 arrangement to the ballot commissioners for approval prior  
47 to publication.

48 (c) The ballot commissioners of each county shall  
49 prepare, in the form and manner prescribed by the Secretary  
50 of State, an official list of offices and candidates for each  
51 office which will appear on the primary election ballot for  
52 each party and, as the case may be, for the nonpartisan  
53 candidates to be voted for at the primary election. All  
54 information which appears on the ballot, including  
55 instructions as to the number of candidates for whom votes  
56 may be cast for the office, any additional language which will  
57 appear on the ballot below the name of the office, any  
58 identifying information relating to the candidates, such as his  
59 or her residence and magisterial district or presidential  
60 preference, shall be included in the list in the same order in  
61 which it appears on the ballot. Following the names of all  
62 candidates, the list shall include the full title, text and voting  
63 positions of any issue to appear on the ballot.

64 (d) The official list of candidates and issues as provided  
65 in subsection (c) of this section shall be published as follows:

66 (1) For counties in which two or more qualified  
67 newspapers publish a daily newspaper, on the last day on  
68 which a newspaper is published immediately preceding the  
69 primary election, the ballot commissioners shall publish the  
70 official list of candidates and issues as a Class I-0 legal  
71 advertisement in the two qualified daily newspapers of  
72 different political parties within the county having the largest  
73 circulation in compliance with the provisions of article three,  
74 chapter fifty-nine of this code;

75 (2) For counties having no more than one daily  
76 newspaper, or having only one or more qualified newspapers  
77 which publish weekly, on the last day on which a newspaper  
78 is published immediately preceding the primary election, the  
79 ballot commissioners shall publish the sample official list of  
80 nominees and issues as a Class I legal advertisement in the  
81 qualified newspaper within the county having the largest  
82 circulation in compliance with the provisions of article three,  
83 chapter fifty-nine of this code;

84 (3) The publication of the official list of candidates for  
85 each party and for nonpartisan candidates shall be in single  
86 or double columns, as required to accommodate the type size  
87 requirements as follows: (A) The words "official list of  
88 candidates", the name of the county, the words "primary  
89 election", the date of the election, the name of the political  
90 party or the designation of nonpartisan candidates shall be  
91 printed in all capital letters and in bold type no smaller than  
92 fourteen point. The designation of the national, state, district  
93 or other tickets shall be printed in all capital letters in type no  
94 smaller than fourteen point; (B) the title of the office shall be  
95 printed in bold type no smaller than twelve point and any  
96 voting instructions or other language printed below the title  
97 shall be printed in bold type no smaller than ten point; and  
98 (C) the names of the candidates shall be printed in all capital

99 letters in bold type no smaller than ten point and the  
100 residence information shall be printed in type no smaller than  
101 ten point; and

102 (4) When any ballot issue is to appear on the ballot, the  
103 title of that ballot shall be printed in all capital letters in bold  
104 type no smaller than fourteen point. The text of the ballot  
105 issue shall appear in no smaller than eight point type. The  
106 ballot commissioners may require the publication of the  
107 ballot issue under this subsection in the facsimile sample  
108 ballot format in lieu of the alternate format.

109 (e) Notwithstanding the provisions of subsections (c) and  
110 (d) of this section, beginning with the primary election to be  
111 held in the year two thousand, the ballot commissioners of  
112 any county may choose to publish a facsimile sample ballot  
113 for each political party and for nonpartisan candidates or  
114 ballot issues instead of the official list of offices and  
115 candidates for each office for purposes of the last publication  
116 required before any primary election.

### **§3-5-13. Form and contents of ballots.**

1 The face of every primary election ballot shall conform  
2 as nearly as practicable to that used at the general election.

3 (1) The heading of every ballot is to be printed in display  
4 type. The heading is to contain a ballot title, the name of the  
5 county, the state, the words "Primary Election" and the  
6 month, day and year of the election. The ballot title of the  
7 political party ballots is to contain the words "Official Ballot  
8 of the (Name) Party" and the official symbol of the political  
9 party may be included in the heading. The ballot title of any  
10 separate paper ballot or portion of any electronic or voting  
11 machine ballot for the Board of Education is to contain the

12 words "Nonpartisan Ballot of Election of Members of the  
13 \_\_\_\_\_ County Board of Education". The districts  
14 for which less than two candidates may be elected and the  
15 number of available seats are to be specified and the names  
16 of the candidates are to be printed without reference to  
17 political party affiliation and without designation as to a  
18 particular term of office. Any other ballot or portion of a  
19 ballot on a question is to have a heading which clearly states  
20 the purpose of the election according to the statutory  
21 requirements for that question.

22 (2)(A) For paper ballots, the heading of the ballot is to be  
23 separated from the rest of the ballot by heavy lines and the  
24 offices shall be arranged in columns with the following  
25 headings, from left to right across the ballot: "National  
26 Ticket", "State Ticket", "County Ticket" and, in a presidential  
27 election year, "National Convention" or, in a nonpresidential  
28 election year, "District Ticket". The columns are to be  
29 separated by heavy lines. Within the columns, the offices are  
30 to be arranged in the order prescribed in section thirteen-a of  
31 this article.

32 (B) For voting machines, electronic voting devices and  
33 any ballot tabulated by electronic means, the offices are to  
34 appear in the same sequence as prescribed in section  
35 thirteen-a of this article and under the same headings as  
36 prescribed in subsection (a) of this section. The number of  
37 pages, columns or rows, where applicable, may be modified  
38 to meet the limitations of ballot size and composition  
39 requirements subject to approval by the Secretary of State.

40 (C) The title of each office is to be separated from  
41 preceding offices or candidates by a line and is to be printed  
42 in bold type no smaller than eight point. Below the office is  
43 to be printed the number of the district, if any, the number of

44 the division, if any, and the words "Vote for \_\_\_\_\_" with  
45 the number to be nominated or elected or "Vote For Not  
46 More Than \_\_\_\_\_" in multicandidate elections. For  
47 offices in which there are limitations relating to the number  
48 of candidates which may be nominated, elected or appointed  
49 to or hold office at one time from a political subdivision  
50 within the district or county in which they are elected, there  
51 is to be a clear explanation of the limitation, as prescribed by  
52 the Secretary of State, printed in bold type immediately  
53 preceding the names of the candidates for those offices on the  
54 ballot in every voting system. For counties in which the  
55 number of county commissioners exceeds three and the total  
56 number of members of the county commission is equal to the  
57 number of magisterial districts within the county, the office  
58 of county commission is to be listed separately for each  
59 district to be filled with the name of the magisterial district  
60 and the words "Vote for One" printed below the name of the  
61 office: *Provided*, That the office title and applicable  
62 instructions may span the width of the ballot so as it is  
63 centered among the respective columns.

64 (D) The location for indicating the voter's choices on the  
65 ballot is to be clearly shown. For paper ballots, other than  
66 those tabulated electronically, the official primary ballot is to  
67 contain a square formed in dark lines at the left of each name  
68 on the ballot, arranged in a perpendicular column of squares  
69 before each column of names.

70 (3) (A) The name of every candidate certified by the  
71 Secretary of State or the board of ballot commissioners is to  
72 be printed in capital letters in no smaller than eight point type  
73 on the ballot for the appropriate precincts. Subject to the  
74 rules promulgated by the Secretary of State, the name of each  
75 candidate is to appear in the form set out by the candidate on  
76 the certificate of announcement, but in no case may the name

77 misrepresent the identity of the candidate nor may the name  
78 include any title, position, rank, degree or nickname implying  
79 or inferring any status as a member of a class or group or  
80 affiliation with any system of belief.

81 (B) The city of residence of every candidate, the state of  
82 residence of every candidate residing outside the state, the  
83 county of residence of every candidate for an office on the  
84 ballot in more than one county and the magisterial district of  
85 residence of every candidate for an office subject to  
86 magisterial district limitations are to be printed in lower case  
87 letters beneath the names of the candidates.

88 (C) The arrangement of names within each office must be  
89 determined as prescribed in section thirteen-a of this article.

90 (D) If the number of candidates for an office exceeds the  
91 space available on a column or ballot page and requires that  
92 candidates for a single office be separated, to the extent  
93 possible, the number of candidates for the office on separate  
94 columns or pages are to be nearly equal and clear instructions  
95 given the voter that the candidates for the office are  
96 continued on the following column or page.

97 (4) When an insufficient number of candidates has filed  
98 for a party to make the number of nominations allowed for  
99 the office or for the voters to elect sufficient members to the  
100 board of education or to executive committees, the vacant  
101 positions on the ballot shall be filled with the words "No  
102 Candidate Filed": *Provided*, That in paper ballot systems  
103 which allow for write-ins to be made directly on the ballot, a  
104 blank line shall be placed in any vacant position in the office  
105 of board of education or for election to any party executive  
106 committee. A line shall separate each candidate from every  
107 other candidate for the same office. Notwithstanding any

108 other provision of this code, if there are multiple vacant  
109 positions on a ballot for one office, the multiple vacant  
110 positions which would otherwise be filled with the words  
111 "No Candidate Filed" may be replaced with a brief detailed  
112 description, approved by the Secretary of State, indicating  
113 that there are no candidates listed for the vacant positions.

114 (5) In presidential election years, the words "For election  
115 in accordance with the plan adopted by the party and filed  
116 with the Secretary of State" is to be printed following the  
117 names of all candidates for delegate to national convention.

118 (6) All paper ballots are to be printed in black ink on  
119 paper sufficiently thick so that the printing or marking cannot  
120 be discernible from the back. Ballot cards and paper for  
121 printing ballots using electronically sensible ink are to meet  
122 minimum requirements of the tabulating systems and are to  
123 conform in size and weight to ensure ease in tabulation.

124 (7) Ballots are to contain perforated tabs at the top of the  
125 ballots and are to be printed with unique sequential numbers  
126 from one to the highest number representing the total number  
127 of ballots printed. On paper ballots, the ballot is to be  
128 bordered by a solid line at least one sixteenth of an inch wide  
129 and the ballot is to be trimmed to within one-half inch of that  
130 border.

131 (8) On the back of every official ballot or ballot card the  
132 words "Official Ballot" with the name of the county and the  
133 date of the election are to be printed. Beneath the date of the  
134 election there are to be two blank lines followed by the words  
135 "Poll Clerks".



136 (9) The face of sample paper ballots and sample ballot  
137 labels are to be like other official ballots or ballot labels  
138 except that the word "sample" is to be prominently printed  
139 across the front of the ballot in a manner that ensures the  
140 names of candidates are not obscured and the word "sample"  
141 may be printed in red ink. No printing may be placed on the  
142 back of the sample.

**\*§3-5-19. Vacancies in nominations; how filled; fees.**

1 (a) If any vacancy shall occur in the party nomination of  
2 candidates for office nominated at the primary election or by  
3 appointment under the provisions of section eleven of this  
4 article, the vacancies may be filled, subject to the following  
5 requirements and limitations:

6 (1) Each appointment made under this section shall be  
7 made by the executive committee of the political party for the  
8 political division in which the vacancy occurs: *Provided*,  
9 That if the executive committee holds a duly called meeting  
10 in accordance with section nine, article one of this chapter but  
11 fails to make an appointment or fails to certify the  
12 appointment of the candidate to the proper filing officer  
13 within the time required, the chairperson of the executive  
14 committee may make the appointment not later than two days  
15 following the deadline for the executive committee.

16 (2) Each appointment made under this section is complete  
17 only upon the receipt by the proper filing officer of the  
18 certificate of appointment by the executive committee, or its  
19 chairperson, as the case may be, the certificate of  
20 announcement of the candidate as prescribed in section seven  
21 of this article and, except for appointments made under

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\*CLERK'S NOTE: This section was also amended by S.B. 753 (Chapter 104), which  
passed subsequent to this act.

22 subdivision (4), (5), (6) or (7) of this subsection, the filing fee  
23 or waiver of fee as prescribed in section eight or eight-a of  
24 this article. The proper filing officer is the officer with whom  
25 the original certificate of nomination is regularly filed for that  
26 office.

27 (3) If a vacancy in nomination is caused by the failure of  
28 a candidate to file for an office, or by withdrawal of a  
29 candidate no later than the third Tuesday following the close  
30 of candidate filing pursuant to the provisions of section  
31 eleven of this article, a nominee may be appointed by the  
32 executive committee and certified to the proper filing officer  
33 no later than the Thursday preceding the primary election.

34 (4) If a vacancy in nomination is caused by the  
35 disqualification of a candidate and the vacancy occurs not  
36 later than eighty-four days before the general election, a  
37 nominee may be appointed by the executive committee and  
38 certified to the proper filing officer not later than  
39 seventy-eight days before the general election. A candidate  
40 may be determined ineligible if a written request is made by  
41 an individual with information to show a candidate's  
42 ineligibility to the State Election Commission no later than  
43 eighty-four days before the general election explaining  
44 grounds why a candidate is not eligible to be placed on the  
45 general election ballot or not eligible to hold the office, if  
46 elected. The State Election Commission shall review the  
47 reasons for the request. If the commission finds the  
48 circumstances warrant the disqualification of the candidate,  
49 the commission may authorize appointment by the executive  
50 committee to fill the vacancy. Upon receipt of the  
51 authorization a nominee may be appointed by the executive  
52 committee and certified to the proper filing officer no later  
53 than seventy-eight days before the general election.

54 (5) If a vacancy in nomination is caused by the incapacity  
55 of the candidate and if the vacancy occurs not later than

56 eighty-four days before the general election, a nominee may  
57 be appointed by the executive committee and certified to the  
58 proper filing officer no later than seventy-eight days before  
59 the general election.

60 (6) If a vacancy in nomination is caused by the  
61 withdrawal of the candidate no later than eighty-four days  
62 before the general election due to extenuating personal  
63 circumstances which will prevent the candidate from serving  
64 in the office if elected and if the candidate or the chairperson  
65 of the executive committee for the political division applies  
66 in writing to the State Election Commission no later than  
67 eighty-four days before the general election for permission to  
68 remove the candidate's name from the general election ballot,  
69 the State Election Commission shall review the reasons for  
70 the request. If the commission finds the circumstances  
71 warrant the withdrawal of the candidate, the commission  
72 shall authorize appointment by the executive committee to  
73 fill the vacancy. Upon receipt of the authorization, a  
74 nominee may be appointed by the executive committee and  
75 certified to the proper filing officer no later than  
76 seventy-eight days before the general election.

77 (7) If a vacancy in nomination is caused by the death of  
78 the candidate occurring no later than twenty-five days before  
79 the general election, a nominee may be appointed by the  
80 executive committee and certified to the proper filing officer  
81 no later than twenty-one days following the date of death or  
82 no later than twenty-two days before the general election,  
83 whichever date occurs first.

84 (b) Except as otherwise provided in article ten of this  
85 chapter, if any vacancy occurs in a partisan office or position  
86 other than political party executive committee, which creates  
87 an unexpired term for a position which would not otherwise  
88 appear on the ballot in the general election, and the vacancy  
89 occurs after the close of candidate filing for the primary

90 election but not later than eighty-four days before the general  
 91 election, a nominee of each political party may be appointed  
 92 by the executive committee and certified to the proper filing  
 93 officer no later than seventy-eight days before the general  
 94 election. Appointments shall be filed in the same manner as  
 95 provided in subsection (a) of this section, except that the  
 96 filing fee shall be paid before the appointment is complete.

97 (c) When a vacancy occurs in the board of education after  
 98 the close of candidate filing for the primary election but not  
 99 later than eighty-four days before the general election, a  
 100 special candidate filing period shall be established.  
 101 Candidates seeking election to any unexpired term for board  
 102 of education shall file a certificate of announcement and pay  
 103 the filing fee to the clerk of the county commission no earlier  
 104 than the first Monday in August and no later than  
 105 seventy-seven days before the general election.

## ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-2. Preparation and form of general election ballots.

§3-6-3. Publication of sample ballots and lists of candidates.

### §3-6-2. Preparation and form of general election ballots.

1 (a) All ballots prepared under the provisions of this  
 2 section are to contain:

3 (1) The name and ticket of each party which is a political  
 4 party under the provisions of section eight, article one of this  
 5 chapter;

6 (2) The name chosen as the party name by each group of  
 7 citizens which has secured nomination for two or more  
 8 candidates by petition under the provisions of section  
 9 twenty-three of this article;

10 (3) The names of every candidate for any office to be  
11 voted for at the election whose nomination in the primary  
12 election, nomination by petition or nomination by  
13 appointment to fill a vacancy on the ballot has been certified  
14 and filed according to law and no others.

15 (b) The provisions of paragraphs (C) and (D), subdivision  
16 (2), section thirteen, article five of this chapter; subdivision  
17 (3) of said section; paragraphs (A) and (B), subdivision (4) of  
18 said section; and subdivisions (6), (7), (8) and (9) of said  
19 section pertaining to the preparation and form of primary  
20 election ballots shall likewise apply to general election  
21 ballots.

22 (c) (1) For all ballot systems, the ballot heading is to be  
23 in display type and contain the words "Official Ballot,  
24 General Election" and the name of the county and the month,  
25 day and year of the election.

26 (2) After the heading, each ballot is to contain, laid out in  
27 parallel columns, rows or pages as required by the particular  
28 voting system, the party emblem, the position for straight  
29 party voting for each party and the name of each party as  
30 prescribed in subsection (a) of this section. On paper ballots,  
31 the position for straight party voting is to be a heavy circle,  
32 three-fourths inch in diameter, surrounded by the words "For  
33 a straight ticket mark within this circle" printed in bold  
34 six-point type. On all other ballots or ballot labels, the  
35 positions for straight party voting is to be marked "Straight  
36 Party Ticket".

37 (3) The party whose candidate for president received the  
38 highest number of votes at the last preceding presidential  
39 election is to be placed in the left, or first column, row or  
40 page, as is appropriate to the voting system. The party which  
41 received the second highest vote is to be next and so on. Any  
42 groups or third parties which did not have a candidate for

43 president on the ballot in the previous presidential election  
44 are to be placed in the sequence in which the final certificates  
45 of nomination by petition were filed.

46 (4)(A) The following general instructions for straight  
47 party voters are to be printed in no smaller than eight point  
48 bold type: "IF YOU MARKED A STRAIGHT TICKET:  
49 When you mark any individual candidate in a different party,  
50 that vote will override your straight party vote for that office.  
51 When you mark any individual candidate in a different party  
52 for an office where more than one will be elected, YOU  
53 MUST MARK EACH OF YOUR CHOICES FOR THAT  
54 OFFICE because your straight ticket vote will not be counted  
55 for that office". The last sentence of the instructions may not  
56 be included on any ballot which does not contain any office  
57 or division where more than one candidate will be elected.

58 On paper ballots, the general instructions are to be placed  
59 below the party name and across the top of all columns,  
60 followed by a heavy line separating them from the rest of the  
61 ballot: *Provided*, That the instructions may be centered  
62 among the columns running the full width of the ballot. On  
63 ballots marked with electronically sensible ink, the general  
64 instructions are to be placed after the position for straight  
65 voting and before any office.

66 (B) The following specific instructions are to be printed  
67 on the ballot for any partisan election for an office or division  
68 to which more than one candidate is to be elected: "If you  
69 marked a straight ticket and you mark any candidate in a  
70 different party for this office, you must mark all your choices  
71 for this office because your straight ticket vote will not be  
72 counted for this office".

73 On paper ballots, the specific instructions are to be placed  
74 below the office name of any partisan office where more than  
75 one is to be elected and across the top of all columns for that

76 office or centered among the columns before the names of  
77 any candidates. On all other ballots and ballot labels, the  
78 specific instructions are to be placed above or to the side of  
79 the names of the candidates as the voting system requires.

80 (5) For all ballots, any columns, rows or sections in  
81 which the ticket of one party appears are to be clearly  
82 separated from the other columns, rows or sections by a  
83 heavy line or other clear division. For each party, the offices  
84 are to be arranged in the order prescribed in section  
85 thirteen-a, article five of this chapter under the appropriate  
86 tickets, which are to be headed "National Ticket", "State  
87 Ticket" and "County Ticket". The number of pages, columns  
88 or rows, where applicable, may be modified to meet the  
89 limitations of ballot size and composition requirements,  
90 subject to approval by the Secretary of State.

91 (d) The arrangement of names within each office for all  
92 ballot systems is to be as follows:

93 (1) In elections for presidential electors, the names of the  
94 candidates for president and vice president of each party are  
95 to be placed beside a brace with a single voting position, so  
96 that a vote for any presidential candidate is a vote for the  
97 electors of the party for which the candidates were named.

98 (2) The order of names of candidates for any office or  
99 division for which more than one is to be elected is  
100 determined as prescribed in section thirteen-a, article five of  
101 this chapter: *Provided*, That the drawing by lot is to be  
102 conducted on the seventieth day next preceding the date of  
103 the general election, beginning at 9:00 a. m.

104 (3) In any office where more than one person is to be  
105 elected, the names of the candidates for the office are to be  
106 staggered so that no two candidates for that office appear  
107 directly opposite any other candidate, as shown in the

108 example below: *Provided*, That if the voting system cannot  
 109 accurately tabulate any ballot due to this requirement, the  
 110 ballot may be adjusted so that it is accurately tabulated.  
 111 However, each candidate shall be separated by a thin line to  
 112 distinguish between each candidate.

113	For House of Delegates	For House of Delegates
114	First Delegate District	First Delegate District
115	(Vote For Not More Than Two)	(Vote For Not More Than Two)
116	SUSAN B. ANTHONY	
117	City (County)	
118		JOHN ADAMS
119		City (County)
120	ABRAHAM LINCOLN	
121	City (County)	
122		JAMES MONROE
123		City (County)

124 (4) Each voting system is to provide a means for voters  
 125 to vote for any person whose name does not appear on the  
 126 ticket by writing it with pen or pencil or by using stamps,  
 127 stickers, tapes, labels or other means of writing in the name  
 128 of a candidate which does not interfere with the tabulation of  
 129 the ballot.

130 (A) In paper ballot systems which allow for write-ins to  
 131 be made directly on the ballot, a blank square and a blank  
 132 line equal to the space which would be occupied by the name  
 133 of the candidate is to be placed under the proper office for  
 134 each vacancy in nomination and for an office for which more  
 135 than one is to be elected, any vacancy is to appear after any



136 other candidates for the office. If no write-in lines are  
137 included on the ballot, specific instructions are to be added to  
138 the top of the ballot notifying the voter that a write-in vote  
139 may be cast by writing the name and office on any location  
140 on the front of the ballot.

141 (B) In machine and electronically tabulated ballot  
142 systems in which write-in votes must be made in a place  
143 other than on the ballot, if there is a vacancy in nomination  
144 leaving fewer candidates in any party than can be elected to  
145 that office, the words "No Candidate Nominated" is to be  
146 printed in the space that would be occupied by the name of  
147 the candidate and for an office for which more than one is to  
148 be elected, any vacancy is to appear after any other  
149 candidates for the office. Notwithstanding any other  
150 provision of this code, if there are multiple vacant positions  
151 on a ballot for one office, the multiple vacant positions which  
152 would otherwise be filled with the words "No Candidate  
153 Filed" may be replaced with a brief detailed description,  
154 approved by the Secretary of State, indicating that there are  
155 no candidates listed for the vacant positions.

156 (5) In a general election in any county in which unexpired  
157 terms of the board of education are to be filled by election, a  
158 separate section or page of the ballot is to be set off by means  
159 clearly separating the nonpartisan ballot from the ballot for  
160 the political party candidates and is to be headed  
161 "Nonpartisan Board of Education".

162 (e) Any constitutional amendment is to be placed  
163 following all offices, followed by any other issue upon which  
164 the voters are to cast a vote. The heading for each  
165 amendment or issue is to be printed in large, bold type  
166 according to the requirements of the resolution authorizing  
167 the election.

168 (f) The board of ballot commissioners may not place any  
169 issue on the ballot for election which is not specifically  
170 authorized under the West Virginia Constitution or statutes  
171 or which has not been properly ordered by the appropriate  
172 governmental body charged with calling the election.

**§3-6-3. Publication of sample ballots and lists of candidates.**

1 (a) The ballot commissioners of each county shall prepare  
2 a sample official general election ballot for all political party  
3 or independent nominees, nonpartisan candidates for election,  
4 if any, and all ballot issues to be voted for at the general  
5 election, according to the provisions of this article and  
6 articles four and four-a of this chapter, as appropriate to the  
7 voting system, and for any ballot issue, according to the  
8 provisions of law authorizing the election.

9 (b) The facsimile sample general election ballot shall be  
10 published as follows:

11 (1) For counties in which two or more qualified  
12 newspapers publish a daily newspaper, not more than  
13 twenty-six nor less than twenty days preceding the general  
14 election, the ballot commissioners shall publish the sample  
15 official general election ballot as a Class I-0 legal  
16 advertisement in the two qualified daily newspapers of  
17 different political parties within the county having the largest  
18 circulation in compliance with the provisions of article three,  
19 chapter fifty-nine of this code;

20 (2) For counties having no more than one daily  
21 newspaper, or having only one or more qualified newspapers  
22 which publish weekly, not more than twenty-six nor less than  
23 twenty days preceding the primary election, the ballot  
24 commissioners shall publish the sample official general  
25 election ballot as a Class I legal advertisement in the  
26 qualified newspaper within the county having the largest

27 circulation in compliance with the provisions of article three,  
28 chapter fifty-nine of this code; and

29 (3) Each facsimile sample ballot shall be a photographic  
30 reproduction of the official sample ballot or ballot pages and  
31 shall be printed in a size no less than sixty-five percent of the  
32 actual size of the ballot, at the discretion of the ballot  
33 commissioners: *Provided*, That when the ballots for the  
34 precincts within the county contain different senatorial,  
35 delegate, magisterial or executive committee districts or  
36 when the ballots for precincts within a city contain different  
37 municipal wards, the facsimile shall be altered to include  
38 each of the various districts in the appropriate order. If, in  
39 order to accommodate the size of each ballot, the ballot or  
40 ballot pages must be divided onto more than one page, the  
41 arrangement and order shall be made to conform as nearly as  
42 possible to the arrangement of the ballot. The publisher of  
43 the newspaper shall submit a proof of the ballot and the  
44 arrangement to the ballot commissioners for approval prior  
45 to publication.

46 (c) The ballot commissioners of each county shall  
47 prepare, in the form and manner prescribed by the Secretary  
48 of State, an official list of offices and nominees for each  
49 office which will appear on the general election ballot for  
50 each political party or as independent nominees and, as the  
51 case may be, for the nonpartisan candidates to be voted for at  
52 the general election:

53 (1) All information which appears on the ballot, including  
54 the names of parties for which a straight ticket may be cast,  
55 instructions relating to straight ticket voting, instructions as  
56 to the number of candidates for whom votes may be cast for  
57 the office, any additional language which will appear on the  
58 ballot below the name of the office, any identifying  
59 information relating to the candidates, such as his or her  
60 residence and magisterial district or presidential preference.

61 Following the names of all candidates, the list shall include  
62 the full title, text and voting positions of any issue to appear  
63 on the ballot.

64 (2) The order of the straight ticket positions, offices and  
65 candidates for each office and the manner of designating the  
66 parties shall be as follows:

67 (A) The straight ticket positions shall be designated  
68 "straight (party name) ticket", with the parties listed in the  
69 order in which they appear on the ballot, from left to right or  
70 from top to bottom, as the case may be;

71 (B) The offices shall be listed in the same order in which  
72 they appear on the ballot;

73 (C) The candidates within each office for which one is to  
74 be elected shall be listed in the order they appear on the  
75 ballot, from left to right or from top to bottom, as the case  
76 may be, and the candidate's political party affiliation or  
77 independent status shall be indicated by the one or two letter  
78 initial specifying the affiliation, placed in parenthesis to the  
79 right of the candidate's name; and

80 (D) The candidates within each office for which more  
81 than one is to be elected shall be arranged by political party  
82 groups in the order they appear on the ballot and the  
83 candidate's affiliation shall be indicated as provided in  
84 paragraph (C) of this subdivision.

85 (d) The official list of candidates and issues as provided  
86 in subsection (c) of this section shall be published as follows:

87 (1) For counties in which two or more qualified  
88 newspapers publish a daily newspaper, on the last day on  
89 which a newspaper is published immediately preceding the

90 general election, the ballot commissioners shall publish the  
91 official list of nominees and issues as a Class I-0 legal  
92 advertisement in the two qualified daily newspapers of  
93 different political parties within the county having the largest  
94 circulation in compliance with the provisions of article three,  
95 chapter fifty-nine of this code;

96 (2) For counties having no more than one daily paper, or  
97 having only one or more qualified newspapers which publish  
98 weekly, on the last day on which a newspaper is published  
99 immediately preceding the general election, the ballot  
100 commissioners shall publish the sample official list of  
101 nominees and issues as a Class I legal advertisement in the  
102 qualified newspaper within the county having the largest  
103 circulation in compliance with the provisions of article three,  
104 chapter fifty-nine of this code;

105 (3) The publication of the official list of nominees for  
106 each party and for nonpartisan candidates shall be in single  
107 or double columns, as required to accommodate the type size  
108 requirements as follows:

109 (A) The words "official list of nominees and issues", the  
110 name of the county, the words "General Election" and the  
111 date of the election shall be printed in all capital letters and  
112 in bold type no smaller than fourteen point;

113 (B) The designation of the straight ticket party positions  
114 shall be printed in all capital letters in bold type no smaller  
115 than twelve point and the title of the office shall be printed in  
116 bold type no smaller than twelve point and any voting

117 instructions or other language printed below the title shall be  
118 printed in bold type no smaller than ten point; and

119 (C) The names of the candidates and the initial within  
120 parenthesis designating the candidate's affiliation shall be  
121 printed in all capital letters in bold type no smaller than ten  
122 point and the residence information shall be printed in type  
123 no smaller than ten point; and

124 (4) When any ballot issue is to appear on the ballot, the  
125 title of that ballot shall be printed in all capital letters in bold  
126 type no smaller than twelve point. The text of the ballot issue  
127 shall appear in no smaller than eight point type. The ballot  
128 commissioners may require the publication of the ballot issue  
129 under this subsection in the facsimile sample ballot format in  
130 lieu of the alternate format.

131 (e) Notwithstanding the provisions of subsections (c) and  
132 (d) of this section, beginning with the general election to be  
133 held in the year two thousand, the ballot commissioners of  
134 any county may choose to publish a facsimile sample general  
135 election ballot, instead of the official list of candidates and  
136 issues, for purposes of the last publication required before  
137 any general election.

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**CHAPTER 102**

**(Com. Sub. for S.B. 606 - By Senators Kessler,  
Hunter and White)**

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[Passed March 10, 2007; in effect ninety days from passage.]  
[Approved by the Governor on April 3, 2007.]

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AN ACT to amend and reenact §3-3-5 of the Code of West Virginia, 1931, as amended, relating to absentee voting; providing that the application for absentee voting may be distributed and returned by electronic mail; providing for distribution and return by facsimile of ballots for an absent uniformed services voter or overseas voter; and providing procedures for securely receiving and tabulating facsimile ballots.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 3. VOTING BY ABSENTEES.**

**§3-3-5. Voting an absentee ballot by mail; penalties.**

1       (a) Upon oral or written request, the official designated  
2 to supervise and conduct absentee voting shall provide to any  
3 voter of the county, in person, by mail, by electronic mail or  
4 by facsimile the appropriate application for voting absentee  
5 by mail as provided in this article. The voter shall complete  
6 and sign the application in his or her own handwriting or, if  
7 the voter is unable to complete the application because of  
8 illiteracy or physical disability, the person assisting the voter  
9 and witnessing the mark of the voter shall sign his or her  
10 name in the space provided.

11 (b) Completed applications for voting an absentee ballot  
12 by mail are to be accepted when received by the official  
13 designated to supervise and conduct absentee voting in  
14 person, by mail, by electronic mail or by facsimile within the  
15 following times:

16 (1) For persons eligible to vote an absentee ballot under  
17 the provisions of subdivision (3), subsection (b), section one  
18 of this article, relating to absent uniformed services and  
19 overseas voters, not earlier than the first day of January of an  
20 election year or eighty-four days preceding the election,  
21 whichever is earlier, and not later than the sixth day  
22 preceding the election, which application is to, upon the  
23 voter's request, be accepted as an application for the ballots  
24 for all elections in the calendar year; and

25 (2) For all other persons eligible to vote an absentee  
26 ballot by mail, not earlier than eighty-four days preceding the  
27 election and not later than the sixth day preceding the  
28 election.

29 (c) Upon acceptance of a completed application, the  
30 official designated to supervise and conduct absentee voting  
31 shall determine whether the following requirements have  
32 been met:

33 (1) The application has been completed as required by  
34 law;

35 (2) The applicant is duly registered to vote in the precinct  
36 of his or her residence and, in a primary election, is qualified  
37 to vote the ballot of the political party requested;

38 (3) The applicant is authorized for the reasons given in  
39 the application to vote an absentee ballot by mail;

40 (4) The address to which the ballot is to be mailed is an  
41 address outside the county if the voter is applying to vote by  
42 mail under the provisions of paragraph (A) or (B),



43 subdivision (2), subsection (b), section one of this article; or  
44 subdivision (3) or (4) of said subsection;

45 (5) The applicant is not making his or her first vote after  
46 having registered by postcard registration or, if the applicant  
47 is making his or her first vote after having registered by  
48 postcard registration, the applicant is exempt from these  
49 requirements; and

50 (6) No regular and repeated pattern of applications for an  
51 absentee ballot by mail for the reason of being out of the  
52 county during the entire period of voting in person exists to  
53 suggest that the applicant is no longer a resident of the  
54 county.

55 (d) If the official designated to supervise and conduct  
56 absentee voting determines that the required conditions have  
57 been met, two representatives that are registered to vote with  
58 different political party affiliations shall sign their names in  
59 the places indicated on the back of the official ballot. If the  
60 official designated to supervise and conduct absentee voting  
61 determines the required conditions have not been met, or has  
62 evidence that any of the information contained in the  
63 application is not true, the official shall give notice to the  
64 voter that the voter's absentee ballot will be challenged as  
65 provided in this article and shall enter that challenge.

66 (e) (1) Within one day after the official designated to  
67 supervise and conduct absentee voting has both the  
68 completed application and the ballot, the official shall mail to  
69 the voter at the address given on the application the following  
70 items as required and as prescribed by the Secretary of State:

71 (A) One of each type of official absentee ballot the voter  
72 is eligible to vote, prepared according to law;

73 (B) One envelope, unsealed, which may have no marks  
74 except the designation "Absent Voter's Ballot Envelope No.  
75 1" and printed instructions to the voter;

76 (C) One postage paid envelope, unsealed, designated  
77 "Absent Voter's Ballot Envelope No. 2";

78 (D) Instructions for voting absentee by mail;

79 (E) For electronic systems, a device for marking by  
80 electronically sensible pen or ink, as may be appropriate;

81 (F) Notice that a list of write-in candidates is available  
82 upon request; and

83 (G) Any other supplies required for voting in the  
84 particular voting system.

85 (2) If the voter is an absent uniformed services voter or  
86 overseas voter, as defined by 42 U. S. C. §1973, *et seq.*, the  
87 official designated to supervise and conduct absentee voting  
88 may voluntarily upon request of the voter transmit the ballot  
89 to the voter via facsimile. If the ballot is transmitted by  
90 facsimile pursuant to this subdivision, the official designated  
91 to supervise and conduct absentee voting shall also transmit  
92 via facsimile:

93 (A) A waiver of privacy form, to be promulgated by the  
94 Secretary of State;

95 (B) Instructions for voting absentee utilizing the Federal  
96 Voting Assistance Program Electronic Transmission System.  
97 For the purposes of this subsection, the "Federal Voting  
98 Assistance Program Electronic Transmission System" is the  
99 system established by the Department of Defense for the  
100 explicit purpose of sending and receiving absentee ballots by  
101 military and overseas United States citizens;

102 (C) Notice that a list of write-in candidates is available  
103 upon request.

104 The official designated to supervise and conduct absentee  
105 voting is not required to mail to the voter the materials listed

106 in paragraphs (B), (C) and (E), subdivision (1) of this  
107 subsection.

108 (f) The voter shall mark the ballot alone: *Provided*, That  
109 the voter may have assistance in voting according to the  
110 provisions of section six of this article.

111 (1) After the voter has voted the ballot or ballots to be  
112 returned by mail, the voter shall:

113 (A) Place the ballot or ballots in envelope no. 1 and seal  
114 that envelope;

115 (B) Place the sealed envelope no. 1 in envelope no. 2  
116 and seal that envelope;

117 (C) Complete and sign the forms on envelope no. 2; and

118 (D) Return that envelope to the official designated to  
119 supervise and conduct absentee voting.

120 (2) If the ballot was transmitted via facsimile as provided  
121 in subdivision (2), subsection (e) of this section, the voter  
122 shall return the ballot via facsimile to the designated  
123 facsimile number of the Federal Voting Assistance Program  
124 Electronic Transmission System, along with a signed privacy  
125 waiver form.

126 (g) Except as provided in subsection (h) of this section,  
127 absentee ballots returned by United States mail or other  
128 express shipping service are to be accepted if:

129 (1) The ballot is received by the official designated to  
130 supervise and conduct absentee voting no later than the day  
131 after the election; or

132 (2) The ballot bears a postmark of the United States  
133 Postal Service dated no later than election day and the ballot  
134 is received by the official designated to supervise and

135 conduct absentee voting no later than the hour at which the  
136 board of canvassers convenes to begin the canvass.

137 (h) Absentee ballots received through the United States  
138 mail from persons eligible to vote an absentee ballot under  
139 the provisions of subdivision (3), subsection (b), section one  
140 of this article, relating to uniform services and overseas  
141 voters, are to be accepted if the ballot is received by the  
142 official designated to supervise and conduct absentee voting  
143 no later than the hour at which the board of canvassers  
144 convenes to begin the canvass.

145 (i) Ballots transmitted via facsimile pursuant to  
146 subdivision (2), subsection (f) of this section are to be  
147 accepted if the ballot is received by the official designated to  
148 supervise and conduct absentee voting no later than the close  
149 of polls on election day: *Provided*, That the Secretary of  
150 State's office shall enter into an agreement with the Federal  
151 Voting Assistance Program of the United States Department  
152 of Defense to transmit the ballots to the county clerks at a  
153 time when two individuals of opposite political parties are  
154 available to process the received ballots.

155 (j) Ballots received after the proper time which cannot be  
156 accepted are to be placed unopened in an envelope marked  
157 for the purpose and kept secure for twenty-two months  
158 following the election, after which time they are to be  
159 destroyed without being opened.

160 (k) Absentee ballots which are hand delivered are to be  
161 accepted if they are received by the official designated to  
162 supervise and conduct absentee voting no later than the day  
163 preceding the election: *Provided*, That no person may hand  
164 deliver more than two absentee ballots in any election and  
165 any person hand delivering an absentee ballot is required to  
166 certify that he or she has not examined or altered the ballot.  
167 Any person who makes a false certification violates the

168 provisions of article nine of this chapter and is subject to  
169 those provisions.

170 (1) Upon receipt of the sealed envelope, the official  
171 designated to supervise and conduct absentee voting shall:

172 (1) Enter onto the envelope any other required  
173 information;

174 (2) Enter the challenge, if any, to the ballot;

175 (3) Enter the required information into the permanent  
176 record of persons applying for and voting an absentee ballot  
177 in person; and

178 (4) Place the sealed envelope into a ballot box that is  
179 secured by two locks with a key to one lock kept by the  
180 president of the county commission and a key to the other  
181 lock kept by the county clerk.

182 (m) Upon receipt of a ballot submitted via facsimile  
183 pursuant to subdivision (2), subsection (f) of this section, the  
184 official designated to supervise and conduct absentee voting  
185 shall place the ballot in an envelope marked "Absentee by  
186 Facsimile" with the completed waiver: *Provided*, That no  
187 ballots are to be processed without the presence of two  
188 individuals of opposite political parties.

189 (n) All ballots received by facsimile prior to the close of  
190 the polls on election day are to be tabulated in the manner  
191 prescribed for tabulating absentee ballots submitted by mail  
192 to the extent that those procedures are appropriate for the  
193 applicable voting system. The clerk of the county  
194 commission shall keep a record of absentee ballots sent and  
195 received by facsimile.

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## CHAPTER 103

**(Com. Sub. for S.B. 610 - By Senators Kessler and Hunter)**

[Passed March 6, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2007.]

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AN ACT to amend and reenact §3-4A-1, §3-4A-8, §3-4A-23, §3-4A-26 and §3-4A-28 of the Code of West Virginia, 1931, as amended, all relating to electronic voting systems generally; requiring each county to develop a policy for securing electronic voting equipment; requiring vendor of electronic voting equipment to provide an annual report of any difficulties with electronic voting machines; restricting certain recording and electronic devices from the voting booth; providing for additional testing of electronic voting machines in certain circumstances; providing for testing a set of preaudited group of ballots; and allowing qualified individuals to demand recount.

*Be it enacted by the Legislature of West Virginia:*

That §3-4A-1, §3-4A-8, §3-4A-23, §3-4A-26 and §3-4A-28 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

### **ARTICLE 4A. ELECTRONIC VOTING SYSTEM.**

§3-4A-1. Use of electronic voting systems authorized.

§3-4A-8. Approval of electronic voting system by State Election Commission; expenses; compensation of persons examining system.

§3-4A-23. Persons prohibited about voting booths; penalties.

§3-4A-26. Test of automatic tabulating equipment.

§3-4A-28. Post-election custody and inspection of vote-recording devices; canvass and recounts.

#### **§3-4A-1. Use of electronic voting systems authorized.**

- 1 (a) Electronic voting systems may be used for the
- 2 purpose of registering or recording and computing votes cast

3 in general, special and primary elections: *Provided*, That the  
4 use of the electronic voting systems shall be governed by the  
5 terms, conditions, restrictions and limitations imposed by this  
6 article.

7 (b) Each county which is authorized to use electronic  
8 voting systems in any statewide election shall establish a  
9 written policy for securing the electronic voting equipment.  
10 The policy shall outline how the equipment is secured from  
11 tampering and under what circumstances county personnel  
12 are authorized to have access. The clerk of the county  
13 commission shall submit a copy of the policy to the Secretary  
14 of State by the first day of February in each even-numbered  
15 year. The clerk shall also submit a copy of any change to the  
16 policy within thirty days after its adoption.

**§3-4A-8. Approval of electronic voting system by State Election  
Commission; expenses; compensation of persons  
examining system.**

1 (a) Any person or corporation owning or interested in any  
2 electronic voting system may apply to the State Election  
3 Commission so that the system may be examined and a report  
4 be made on its accuracy, efficiency, capacity and safety.  
5 Upon the written application of any vendor tendered to the  
6 Secretary of State or to any clerks in his or her office in  
7 charge of receiving filings for any purpose, the Secretary of  
8 State shall fix a date, time and place, not more than thirty  
9 days after the receipt of the application, for a meeting of the  
10 State Election Commission for mutual consideration of the  
11 application. The Secretary of State shall mail notice of the  
12 hearing by certified mail to each member of the commission.

13 (b) The State Election Commission shall appoint two  
14 qualified computer experts who are not members of the same  
15 political party to examine the system and make full reports on  
16 the system to the commission within thirty days from the date

17 of the application. They shall state in the report whether the  
18 examined system complies with the requirements of this  
19 article and can be safely used by voters at elections under the  
20 conditions prescribed in this article. If the report is in the  
21 affirmative on that question, the commission may approve  
22 the system and adopt a system of its make and design for use  
23 at elections as provided in this article: *Provided*, That under  
24 no circumstances may a system be approved that is not  
25 capable of accurately tabulating returns based upon all  
26 possible combinations of voting patterns including, but not  
27 limited to, crossover voting and in accordance with section  
28 five, article six of this chapter. The vendor of the approved  
29 system shall provide the State Election Commission with a  
30 report, due on the first day of January of each even-numbered  
31 year, that outlines any problem that has been experienced  
32 with the equipment by any jurisdiction in the state or in any  
33 jurisdiction outside the state that uses the same or a similar  
34 version of the equipment that has been certified for use in this  
35 state.

36 (c) No electronic voting system may be used at any  
37 election unless it has been approved under this section or its  
38 former provisions and by the appropriate agency of the  
39 federal government whose purpose is to review and issue a  
40 certificate of approval. Each of the two qualified computer  
41 experts appointed by the commission are entitled to  
42 reasonable compensation and expenses in making the  
43 examination and report, to be paid in advance of the  
44 examination required by subsection (b) of this section by the  
45 person or corporation applying for the examination. This  
46 sum shall be the sole compensation to be received by any  
47 expert for any work performed pursuant to this section.

**§3-4A-23. Persons prohibited about voting booths; penalties.**

1 Excepting election officials acting under authority of  
2 sections nineteen, twenty, twenty-one and twenty-two of this  
3 article in the conduct of the election, and qualified persons



4 assisting voters pursuant to section twenty-two of this article,  
5 no person other than the voter may be in, about or within five  
6 feet of the voting booth during the time the voter is voting at  
7 any election. While the voter is voting, no person may  
8 communicate with the voter in any manner and the voter may  
9 not communicate with any other person or persons. No  
10 person may enter a voting booth with any recording or  
11 electronic device in order to record or interfere with the  
12 voting process. Any conduct or action of an election official  
13 about or around the voting booth while the voter is in the  
14 process of voting, except as expressly provided in this article,  
15 is a violation of this section. Any person violating the  
16 provisions of this section is guilty of a misdemeanor and,  
17 upon conviction thereof, shall be fined not more than one  
18 thousand dollars or be sentenced to imprisonment in the  
19 county jail for a period not more than twelve months or, in  
20 the discretion of the court, shall be subject to both such fine  
21 and imprisonment.

**§3-4A-26. Test of automatic tabulating equipment.**

1 (a) One week prior to the start of the count of the votes  
2 recorded on ballots or screens, the clerk of the county  
3 commission shall have the automatic tabulating equipment  
4 tested to ascertain that it will accurately count the votes cast  
5 for all offices and on all measures. This test shall consist of  
6 a test of the entire voting system, including removal of data  
7 from a vote-recording device and its transferral to automatic  
8 tabulating equipment. The county commission shall give  
9 public notice of the time and place of the test not less than  
10 forty-eight hours nor more than two weeks prior to the test by  
11 publication of a notice as a Class I-0 legal advertisement in  
12 the county involved, in compliance with the provisions of  
13 article three, chapter fifty-nine of this code.

14 (b)(1) Vote-recording devices used and tested for early  
15 voting may also be used on election day upon compliance  
16 with all of the following requirements:

17 (A) Following the close of early voting, the personal  
18 electronic ballot and the programable memory chip shall be  
19 removed and replaced with another personal electronic ballot  
20 and programable memory chip prepared for, but unused  
21 during, the current election period;

22 (B) The printed paper trail used during the early voting  
23 period shall be removed and replaced with a new paper trail;  
24 and

25 (C) The vote-recording device shall be retested prior to  
26 being used on election day.

27 (2) Any personal electronic ballot programable memory  
28 chip and printed paper trail removed from a vote-recording  
29 device used for early voting shall be securely stored by the  
30 county clerk until such time as it is used to tally the votes on  
31 election day in accordance with section twenty-seven of this  
32 article.

33 (c) (1) A test performed pursuant to this section shall be  
34 open to representatives of the political parties, candidates, the  
35 press and the public. It is to be conducted by processing a set  
36 of preaudited ballots marked to record a predetermined  
37 number of valid votes for each candidate or each measure.  
38 For each multicandidate office, the test shall include one or  
39 more ballots which have cross-over votes in order to test the  
40 ability of the automatic tabulating equipment to record those  
41 votes in accordance with the provisions of this article and any  
42 other applicable law. For each office, the test shall include  
43 one or more ballots which have votes in excess of the number  
44 allowed by law in order to test the ability of the automatic  
45 tabulating equipment to reject votes. If, in the process of any  
46 of the test counts, any error is detected, the cause of the error  
47 is to be ascertained and corrective action promptly taken.  
48 After the completion of the corrective action, the test counts  
49 are to continue, including a retesting of those precincts  
50 previously test counted. Prior to the continuation of the

51 testing, the county commission shall certify in writing, signed  
52 by each commissioner, the nature of the error, its cause and  
53 the type of corrective action taken. The certification shall be  
54 recorded in the office of the clerk of the county commission  
55 in the record book. Immediately after conclusion of this  
56 completed test, a certified duplicate copy of the test results  
57 shall be sent by certified mail to the offices of the State  
58 Election Commission, where it is to be preserved and secured  
59 for one year and made available for comparison or analysis  
60 by order of a circuit court or the Supreme Court of Appeals.

61 (2) The tabulating equipment to be used in the election  
62 shall be immediately certified by the county commission to  
63 be free from error as determined by the test. All testing  
64 material shall be placed with the certification in a sealed  
65 container and kept under individual multiple locks with  
66 individual keys for each lock. The number of locks and keys  
67 shall be the same as the number of county commissioners  
68 together with the county clerk, with each commissioner and  
69 the county clerk having a single key in his or her possession.  
70 The sealed container shall be opened to conduct the test  
71 required immediately before the start of the official count.

72 (3) The test shall be repeated immediately before the start  
73 of the official count and at the conclusion of the official  
74 count before the count is approved as errorless and before the  
75 election returns are approved as official.

76 (4) All results of all of the tests are to be immediately  
77 certified by the county commission, filed in the office of the  
78 clerk of the county commission and immediately recorded in  
79 the record book. On completion of the count, the test  
80 materials and test ballots are to be sealed, except for purposes  
81 of the canvass as provided in section twenty-eight of this  
82 article, and retained and kept under individual multiple locks  
83 and individual keys for each lock. The number of locks and  
84 keys shall be the same as the number of county  
85 commissioners together with the county clerk, with each

86 commissioner and the county clerk having a single key in his  
87 or her possession.

**§3-4A-28. Post-election custody and inspection of vote-recording devices; canvass and recounts.**

1 (a) The vote-recording devices, tabulating programs and  
2 standard validation test ballots are to remain sealed during  
3 the canvass of the returns of the election, except that the  
4 equipment may be opened for the canvass and must be  
5 resealed immediately thereafter. During the seven-day period  
6 after the completion of the canvass, any candidate or the local  
7 chair of a political party may be permitted to examine any of  
8 the sealed materials: *Provided*, That a notice of the time and  
9 place of the examination shall be posted at the central  
10 counting center before and on the hour of nine o'clock in the  
11 morning on the day the examination is to occur, and all  
12 persons entitled to be present at the central counting center  
13 may, at their option, be present. Upon completion of the  
14 canvass and after the seven-day period has expired, the vote-  
15 recording devices, test results and standard validation test  
16 ballots are to be sealed for one year: *Provided, however*, That  
17 the vote-recording devices and all tabulating equipment may  
18 be released for use in any other lawful election to be held  
19 more than ten days after the canvass is completed and any of  
20 the electronic voting equipment discussed in this section may  
21 be released for inspection or review by a request of a circuit  
22 court or the Supreme Court of Appeals.

23 (b) In canvassing the returns of the election, the board of  
24 canvassers shall examine, as required by subsection (d) of  
25 this section, all of the vote-recording devices, the automatic  
26 tabulating equipment used in the election and those voter-  
27 verified paper ballots generated by direct recording electronic  
28 vote machines, shall determine the number of votes cast for  
29 each candidate and for and against each question and, by this  
30 examination, shall procure the correct returns and ascertain

31 the true results of the election. Any candidate or his or her  
32 party representative may be present at the examination.

33 (c) If any qualified individual demands a recount of the  
34 votes cast at an election, the voter-verified paper ballot shall  
35 be used according to the same rules that are used in the  
36 original vote count pursuant to section twenty-seven of this  
37 article. For purposes of this subsection, “qualified  
38 individual” means a person who is a candidate for office on  
39 the ballot or a voter affected by an issue, other than an  
40 individual’s candidacy, on the ballot.

41 (d) During the canvass and any requested recount, at least  
42 five percent of the precincts are to be chosen at random and  
43 the voter-verified paper ballots are to be counted manually.  
44 Whenever the vote total obtained from the manual count of  
45 the voter-verified paper ballots for all votes cast in a  
46 randomly selected precinct:

47 (1) Differs by more than one percent from the automated  
48 vote tabulation equipment; or

49 (2) Results in a different prevailing candidate or outcome,  
50 either passage or defeat, of one or more ballot issues in the  
51 randomly selected precincts for any contest or ballot issue,  
52 then the discrepancies shall immediately be disclosed to the  
53 public and all of the voter-verified paper ballots shall be  
54 manually counted. In every case where there is a difference  
55 between the vote totals obtained from the automated vote  
56 tabulation equipment and the corresponding vote totals  
57 obtained from the manual count of the voter-verified paper  
58 ballots, the manual count of the voter-verified paper ballots  
59 is the vote of record.

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## CHAPTER 104

**(S.B. 753 - By Senators Kessler, Oliverio, Foster, Green,  
Hunter, Minard, Wells, White, Barnes,  
Deem, Hall and McKenzie)**

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[Passed March 10, 2007; in effect ninety days from passage.]  
[Approved by the Governor on April 4, 2007.]

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AN ACT to amend and reenact §3-5-19 of the Code of West Virginia, 1931, as amended, relating to filling vacancies in nominations.

*Be it enacted by the Legislature of West Virginia:*

That §3-5-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**\*§3-5-19. Vacancies in nominations; how filled; fees.**

1       (a) If any vacancy occurs in the party nomination of  
2 candidates for office nominated at the primary election or by  
3 appointment under the provisions of section eleven of this  
4 article, the vacancies may be filled, subject to the following  
5 requirements and limitations:

6       (1) Each appointment made under this section shall be  
7 made by the executive committee of the political party for the  
8 political division in which the vacancy occurs: *Provided,*  
9 That if the executive committee holds a duly called meeting  
10 in accordance with section nine, article one of this chapter but  
11 fails to make an appointment or fails to certify the  
12 appointment of the candidate to the proper filing officer  
13 within the time required, the chairperson of the executive

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\*CLERK'S NOTE: This section was also amended by S.B. 616 (Chapter 101), which passed prior to this act.

14 committee may make the appointment not later than two days  
15 following the deadline for the executive committee.

16 (2) Each appointment made under this section is complete  
17 only upon the receipt by the proper filing officer of the  
18 certificate of appointment by the executive committee, or its  
19 chairperson, as the case may be, the certificate of  
20 announcement of the candidate as prescribed in section seven  
21 of this article and, except for appointments made under  
22 subdivision (4), (5), (6) or (7) of this subsection, the filing fee  
23 or waiver of fee as prescribed in section eight or eight-a of  
24 this article. The proper filing officer is the officer with whom  
25 the original certificate of nomination is regularly filed for that  
26 office.

27 (3) If a vacancy in nomination is caused by the failure of  
28 a candidate to file for an office, or by withdrawal of a  
29 candidate no later than the third Tuesday following the close  
30 of candidate filing pursuant to the provisions of section  
31 eleven of this article, a nominee may be appointed by the  
32 executive committee and certified to the proper filing officer  
33 no later than thirty days after the last day to file a certificate  
34 of announcement pursuant to section seven of this article.

35 (4) If a vacancy in nomination is caused by the  
36 disqualification of a candidate and the vacancy occurs not  
37 later than eighty-four days before the general election, a  
38 nominee may be appointed by the executive committee and  
39 certified to the proper filing officer not later than seventy-  
40 eight days before the general election. A candidate may be  
41 determined ineligible if a written request is made by an  
42 individual with information to show a candidate's  
43 ineligibility to the State Election Commission no later than  
44 eighty-four days before the general election explaining  
45 grounds why a candidate is not eligible to be placed on the  
46 general election ballot or not eligible to hold the office, if  
47 elected. The State Election Commission shall review the

48 reasons for the request. If the commission finds the  
49 circumstances warrant the disqualification of the candidate,  
50 the commission may authorize appointment by the executive  
51 committee to fill the vacancy. Upon receipt of the  
52 authorization a nominee may be appointed by the executive  
53 committee and certified to the proper filing officer no later  
54 than seventy-eight days before the general election.

55 (5) If a vacancy in nomination is caused by the incapacity  
56 of the candidate and if the vacancy occurs not later than  
57 eighty-four days before the general election, a nominee may  
58 be appointed by the executive committee and certified to the  
59 proper filing officer no later than seventy-eight days before  
60 the general election.

61 (6) If a vacancy in nomination is caused by the  
62 withdrawal of the candidate no later than eighty-four days  
63 before the general election due to extenuating personal  
64 circumstances which will prevent the candidate from serving  
65 in the office if elected and if the candidate or the chairperson  
66 of the executive committee for the political division applies  
67 in writing to the State Election Commission no later than  
68 eighty-four days before the general election for permission to  
69 remove the candidate's name from the general election ballot,  
70 the State Election Commission shall review the reasons for  
71 the request. If the commission finds the circumstances  
72 warrant the withdrawal of the candidate, the commission  
73 shall authorize appointment by the executive committee to  
74 fill the vacancy. Upon receipt of the authorization, a  
75 nominee may be appointed by the executive committee and  
76 certified to the proper filing officer no later than seventy-  
77 eight days before the general election.



78       (7) If a vacancy in nomination is caused by the death of  
79 the candidate occurring no later than twenty-five days before  
80 the general election, a nominee may be appointed by the  
81 executive committee and certified to the proper filing officer  
82 no later than twenty-one days following the date of death or  
83 no later than twenty-two days before the general election,  
84 whichever date occurs first.

85       (b) Except as otherwise provided in article ten of this  
86 chapter, if any vacancy occurs in a partisan office or position  
87 other than political party executive committee, which creates  
88 an unexpired term for a position which would not otherwise  
89 appear on the ballot in the general election, and the vacancy  
90 occurs after the close of candidate filing for the primary  
91 election but not later than eighty-four days before the general  
92 election, a nominee of each political party may be appointed  
93 by the executive committee and certified to the proper filing  
94 officer no later than seventy-eight days before the general  
95 election. Appointments shall be filed in the same manner as  
96 provided in subsection (a) of this section, except that the  
97 filing fee shall be paid before the appointment is complete.

98       (c) When a vacancy occurs in the board of education after  
99 the close of candidate filing for the primary election but not  
100 later than eighty-four days before the general election, a  
101 special candidate filing period shall be established.  
102 Candidates seeking election to any unexpired term for board  
103 of education shall file a certificate of announcement and pay  
104 the filing fee to the clerk of the county commission no earlier  
105 than the first Monday in August and no later than  
106 seventy-seven days before the general election.

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**CHAPTER 105****(S.B. 618 - By Senators Kessler, Edgell, Minard and Hunter)**

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[Passed March 6, 2007; in effect ninety days from passage.]  
[Approved by the Governor on March 28, 2007.]

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AN ACT to amend and reenact §3-6-4a of the Code of West Virginia, 1931, as amended, relating to filing requirements for write-in candidates; and requiring a certificate of announcement to be filed no later than forty-two days before an election.

*Be it enacted by the Legislature of West Virginia:*

That §3-6-4a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.****§3-6-4a. Filing requirements for write-in candidates.**

1 Any eligible person who seeks to be elected by write-in  
2 votes to an office, except delegate to national convention, which  
3 is to be filled in a primary, general or special election held under  
4 the provisions of this chapter, shall file a write-in candidate's  
5 certificate of announcement as provided in this section. No  
6 certificate of announcement may be accepted and no person may  
7 be certified as a write-in candidate for a political party  
8 nomination for any office or for election as delegate to national  
9 convention.

10 (a) The write-in candidate's certificate of announcement  
11 shall be in a form prescribed by the Secretary of State on which  
12 the candidate shall make a sworn statement before a notary  
13 public or other officer authorized to give oaths containing the  
14 following information:

15 (1) The name of the office sought and the district and  
16 division, if any;

17       (2) The legal name of the candidate and the first and last  
18 name by which the candidate may be identified in seeking the  
19 office;

20       (3) The specific address designating the location at which  
21 the candidate resides at the time of filing, including number and  
22 street or rural route and box number and city, state and zip code;

23       (4) A statement that the person filing the certificate of  
24 announcement is a candidate for the office in good faith; and

25       (5) The words "subscribed and sworn to before me this  
26 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_" and a space for the  
27 signature of the officer giving the oath.

28       (b) The certificate of announcement shall be filed with the  
29 filing officer for the political division of the office as prescribed  
30 in section seven, article five of this chapter.

31       (c) The certificate of announcement shall be filed with and  
32 received by the proper filing officer as follows:

33       (1) Except as provided in subdivisions (2) and (3) of this  
34 subsection, the certificate of announcement for any office shall  
35 be received no later than the close of business on the forty-  
36 second day before the election at which the office is to be filled;

37       (2) When a vacancy occurs in the nomination of candidates  
38 for an office on the ballot resulting from the death of the  
39 nominee or from the disqualification or removal of a nominee  
40 from the ballot by a court of competent jurisdiction not earlier  
41 than the twenty-first day nor later than the fifth day before the  
42 general election, the certificate shall be received no later than  
43 the close of business on the fifth day before the election or the  
44 close of business on the day following the occurrence of the  
45 vacancy, whichever is later;

46 (3) When a vacancy occurs in an elective office which  
47 would not otherwise appear on the ballot in the election, but  
48 which creates an unexpired term of one or more years which,  
49 according to the provisions of this chapter, is to be filled by  
50 election in the next ensuing election and the vacancy occurs no  
51 earlier than the twenty-first day and no later than the fifth day  
52 before the general election, the certificate shall be received no  
53 later than the close of business on the fifth day before the  
54 election or the close of business on the day following the  
55 occurrence of the vacancy, whichever is later.

56 (d) Any eligible person who files a completed write-in  
57 candidate's certificate of announcement with the proper filing  
58 officer within the required time shall be certified by that filing  
59 officer as an official write-in candidate:

60 (1) The Secretary of State shall, immediately following the  
61 filing deadline, post the names of all official write-in candidates  
62 for offices on the ballot in more than one county and certify the  
63 name of each official write-in candidate to the clerks of the  
64 county commissions of the appropriate counties.

65 (2) The clerk of the county commission shall, immediately  
66 following the filing deadline, post the names of all official  
67 write-in candidates for offices on the ballot in one county and  
68 certify and deliver to the election officials of the appropriate  
69 precincts, the names of all official write-in candidates and the  
70 office sought by each for statewide, district and county offices  
71 on the ballot in the precinct for which valid write-in votes will  
72 be counted and the names shall be posted at the office where  
73 absentee voting is conducted and at the precincts in accordance  
74 with section twenty, article one of this chapter.

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CHAPTER 106

**(Com. Sub. for S.B. 713 - By Senator Kessler)**

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[Passed March 9, 2007; in effect ninety days from passage.]  
[Approved by the Governor on April 4, 2007.]

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AN ACT to amend and reenact §3-8-1a, §3-8-2, §3-8-2b, §3-8-3, §3-8-4, §3-8-5, §3-8-5a, §3-8-5b and §3-8-5e of the Code of West Virginia, 1931, as amended, all relating to campaign finance filings; defining terms; setting value for in-kind contributions; permitting a political committee created by a membership organization to solicit contributions only from its members; requiring expedited filings of independent expenditure filings within fifteen days of election; requiring certain independent expenditures to be filed as electioneering communications; requiring disclosure as to whether an electioneering communication is intended to support or oppose an identified candidate; lowering the threshold of electioneering communications to be reported fifteen days prior to an election; modifying requirements for political committee treasurers of candidates from offices larger than one county; modifying the reporting periods; requiring certain information for contributions in excess of two hundred fifty dollars; clarifying that details of third-party expenditures must be filed; requiring electronic filing for statewide candidates; and clarifying where campaign finance reports are filed.

*Be it enacted by the Legislature of West Virginia:*

That §3-8-1a, §3-8-2, §3-8-2b, §3-8-3, §3-8-4, §3-8-5, §3-8-5a, §3-8-5b and §3-8-5e of the Code of West Virginia, 1931, as amended, 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.
- §3-8-3. Committee treasurers; required to receive and disburse funds.
- §3-8-4. Treasurers and financial agents; written designation requirements.
- §3-8-5. Detailed accounts and verified financial statements required.
- §3-8-5a. Information required in financial statement.
- §3-8-5b. Where financial statements shall be filed; filing date prescribed.
- §3-8-5e. Precandidacy financing and expenditures.

### §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  
19 publicly declared his or her intention to seek nomination or  
20 election for any state, district, county or municipal office or  
21 party office to be filled at any primary, general or special  
22 election.

23 (4) "Candidate's committee" means a political committee  
24 established with the approval of or in cooperation with a  
25 candidate or a prospective candidate to explore the  
26 possibilities of seeking a particular office or to support or aid  
27 his or her nomination or election to an office in an election  
28 cycle. If a candidate directs or influences the activities of  
29 more than one active committee in a current campaign, those  
30 committees shall be considered one committee for the  
31 purpose of contribution limits.

32 (5) "Clearly identified" means that the name, nickname,  
33 photograph, drawing or other depiction of the candidate  
34 appears or the identity of the candidate is otherwise apparent  
35 through an unambiguous reference, such as "the Governor",  
36 "your Senator" or "the incumbent" or through an  
37 unambiguous reference to his or her status as a candidate,  
38 such as "the Democratic candidate for Governor" or "the  
39 Republican candidate for Supreme Court of Appeals".

40 (6) "Contribution" means a gift subscription, assessment,  
41 payment for services, dues, advance, donation, pledge,  
42 contract, agreement, forbearance or promise of money or  
43 other tangible thing of value, whether conditional or legally  
44 enforceable, or a transfer of money or other tangible thing of  
45 value to a person, made for the purpose of influencing the  
46 nomination, election or defeat of a candidate. An offer or  
47 tender of a contribution is not a contribution if expressly and  
48 unconditionally rejected or returned. A contribution does not  
49 include volunteer personal services provided without  
50 compensation: *Provided*, That a nonmonetary contribution is  
51 to be considered at fair market value for reporting  
52 requirements and contribution limitations.

53 (7) "Corporate political action committee" means a  
54 political action committee that is a separate segregated fund  
55 of a corporation that may only accept contributions from its  
56 restricted group as outlined by the rules of the State Election  
57 Commission.

58 (8) "Direct costs of purchasing, producing or  
59 disseminating electioneering communications" means:

60 (A) Costs charged by a vendor, including, but not limited  
61 to, studio rental time, compensation of staff and employees,  
62 costs of video or audio recording media and talent, material  
63 and printing costs and postage; or

64 (B) The cost of airtime on broadcast, cable or satellite  
65 radio and television stations, the cost of disseminating printed  
66 materials, establishing a telephone bank, studio time, use of  
67 facilities and the charges for a broker to purchase airtime.

68 (9) "Disclosure date" means either of the following:

69 (A) The first date during any calendar year on which any  
70 electioneering communication is disseminated after the  
71 person paying for the communication has spent a total of five  
72 thousand dollars or more for the direct costs of purchasing,  
73 producing or disseminating electioneering communications;  
74 or

75 (B) Any other date during that calendar year after any  
76 previous disclosure date on which the person has made  
77 additional expenditures totaling five thousand dollars or more  
78 for the direct costs of purchasing, producing or disseminating  
79 electioneering communications.

80 (10) "Election" means any primary, general or special  
81 election conducted under the provisions of this code or under  
82 the charter of any municipality at which the voters nominate  
83 or elect candidates for public office. For purposes of this  
84 article, each primary, general, special or local election



85 constitutes a separate election. This definition is not intended  
86 to modify or abrogate the definition of the term "nomination"  
87 as used in this article.

88 (11)(A) "Electioneering communication" means any paid  
89 communication made by broadcast, cable or satellite signal,  
90 mass mailing, telephone bank, leaflet, pamphlet, flyer or  
91 outdoor advertising or published in any newspaper, magazine  
92 or other periodical that:

93 (i) Refers to a clearly identified candidate for Governor,  
94 Secretary of State, Attorney General, Treasurer, Auditor,  
95 Commissioner of Agriculture, Supreme Court of Appeals or  
96 the Legislature;

97 (ii) Is publicly disseminated within:

98 (I) Thirty days before a primary election at which the  
99 nomination for office sought by the candidate is to be  
100 determined; or

101 (II) Sixty days before a general or special election at  
102 which the office sought by the candidate is to be filled; and

103 (iii) Is targeted to the relevant electorate.

104 (B) "Electioneering communication" does not include:

105 (i) A news story, commentary or editorial disseminated  
106 through the facilities of any broadcast, cable or satellite  
107 television or radio station, newspaper, magazine or other  
108 periodical publication not owned or controlled by a political  
109 party, political committee or candidate: *Provided*, That a  
110 news story disseminated through a medium owned or  
111 controlled by a political party, political committee or  
112 candidate is nevertheless exempt if the news is:

113 (I) A bona fide news account communicated in a  
114 publication of general circulation or through a licensed  
115 broadcasting facility; and

116 (II) Is part of a general pattern of campaign-related news  
117 that gives reasonably equal coverage to all opposing  
118 candidates in the circulation, viewing or listening area;

119 (ii) Activity by a candidate committee, party executive  
120 committee or caucus committee, or a political action  
121 committee that is required to be reported to the State Election  
122 Commission or the Secretary of State as an expenditure  
123 pursuant to section five of this article or the rules of the State  
124 Election Commission or the Secretary of State promulgated  
125 pursuant to such provision: *Provided*, That independent  
126 expenditures by a party executive committee or caucus  
127 committee or a political action committee required to be  
128 reported pursuant to subsection (b), section two of this article  
129 are not exempt from the reporting requirements of this  
130 section;

131 (iii) A candidate debate or forum conducted pursuant to  
132 rules adopted by the State Election Commission or the  
133 Secretary of State or a communication promoting that debate  
134 or forum made by or on behalf of its sponsor;

135 (iv) A communication paid for by any organization  
136 operating under Section 501(c)(3) of the Internal Revenue  
137 Code of 1986;

138 (v) A communication made while the Legislature is in  
139 session which, incidental to promoting or opposing a specific  
140 piece of legislation pending before the Legislature, urges the  
141 audience to communicate with a member or members of the  
142 Legislature concerning that piece of legislation;

143 (vi) A statement or depiction by a membership  
144 organization, in existence prior to the date on which the

145 individual named or depicted became a candidate, made in a  
146 newsletter or other communication distributed only to bona  
147 fide members of that organization;

148 (vii) A communication made solely for the purpose of  
149 attracting public attention to a product or service offered for  
150 sale by a candidate or by a business owned or operated by a  
151 candidate which does not mention an election, the office  
152 sought by the candidate or his or her status as a candidate; or

153 (viii) A communication, such as a voter's guide, which  
154 refers to all of the candidates for one or more offices, which  
155 contains no appearance of endorsement for or opposition to  
156 the nomination or election of any candidate and which is  
157 intended as nonpartisan public education focused on issues  
158 and voting history.

159 (12) "Financial agent" means any individual acting for  
160 and by himself or herself, or any two or more individuals  
161 acting together or cooperating in a financial way to aid or  
162 take part in the nomination or election of any candidate for  
163 public office, or to aid or promote the success or defeat of  
164 any political party at any election.

165 (13) "Fund-raising event" means an event such as a  
166 dinner, reception, testimonial, cocktail party, auction or  
167 similar affair through which contributions are solicited or  
168 received by such means as the purchase of a ticket, payment  
169 of an attendance fee or by the purchase of goods or services.

170 (14) "Independent expenditure" means an expenditure  
171 made by a person other than a candidate or a candidate's  
172 committee in support of or opposition to the nomination or  
173 election of one or more clearly identified candidates and  
174 without consultation or coordination with or at the request or  
175 suggestion of the candidate whose nomination or election the  
176 expenditure supports or opposes or the candidate's agent.  
177 Supporting or opposing the election of a clearly identified

178 candidate includes supporting or opposing the candidates of  
179 a political party. An expenditure which does not meet the  
180 criteria for an independent expenditure is considered a  
181 contribution.

182 (15) "Mass mailing" means a mailing by United States  
183 mail, facsimile or electronic mail of more than five hundred  
184 pieces of mail matter of an identical or substantially similar  
185 nature within any thirty-day period.

186 (16) "Membership organization" means a group that  
187 grants bona fide rights and privileges, such as the right to  
188 vote, to elect officers or directors and the ability to hold  
189 office, to its members and which uses a majority of its  
190 membership dues for purposes other than political purposes.  
191 "Membership organization" does not include organizations  
192 that grant membership upon receiving a contribution.

193 (17) "Name" means the full first name, middle name or  
194 initial, if any, and full legal last name of an individual and the  
195 full name of any association, corporation, committee or other  
196 organization of individuals, making the identity of any person  
197 who makes a contribution apparent by unambiguous  
198 reference.

199 (18) "Person" means an individual, partnership,  
200 committee, association and any other organization or group  
201 of individuals.

202 (19) "Political action committee" means a committee  
203 organized by one or more persons for the purpose of  
204 supporting or opposing the nomination or election of one or  
205 more candidates. The following are types of political action  
206 committees:

207 (A) A corporate political action committee, as that term  
208 is defined by subdivision (7) of this section;

209 (B) A membership organization, as that term is defined  
210 by subdivision (16) of this section;

211 (C) An unaffiliated political action committee, as that  
212 term is defined by subdivision (27) of this section.

213 (20) "Political committee" means any candidate  
214 committee, political action committee or political party  
215 committee.

216 (21) "Political party" means a political party as that term  
217 is defined by section eight, article one of this chapter or any  
218 committee established, financed, maintained or controlled by  
219 the party, including any subsidiary, branch or local unit  
220 thereof and including national or regional affiliates of the  
221 party.

222 (22) "Political party committee" means a committee  
223 established by a political party or political party caucus for  
224 the purposes of engaging in the influencing of the election,  
225 nomination or defeat of a candidate in any election.

226 (23) "Political purposes" means supporting or opposing  
227 the nomination, election or defeat of one or more candidates  
228 or the passage or defeat of a ballot issue, supporting the  
229 retirement of the debt of a candidate or political committee or  
230 the administration or activities of an established political  
231 party or an organization which has declared itself a political  
232 party and determining the advisability of becoming a  
233 candidate under the precandidacy financing provisions of this  
234 chapter.

235 (24) "Targeted to the relevant electorate" means a  
236 communication which refers to a clearly identified candidate  
237 for statewide office or the Legislature and which can be  
238 received by ten thousand or more individuals in the state in  
239 the case of a candidacy for statewide office and five hundred  
240 or more individuals in the district in the case of a candidacy  
241 for the Legislature.

242 (25) "Telephone bank" means telephone calls that are  
243 targeted to the relevant electorate, other than telephone calls  
244 made by volunteer workers, regardless of whether paid  
245 professionals designed the telephone bank system, developed  
246 calling instructions or trained volunteers.

247 (26) "Two-year election cycle" means the 24-month  
248 period that begins the day after a general election and ends on  
249 the day of the subsequent general election.

250 (27) "Unaffiliated political action committee" means a  
251 political action committee that is not affiliated with a  
252 corporation or a membership organization.

**§3-8-2. Accounts for receipts and expenditures in elections;  
requirements for reporting independent  
expenditures.**

1 (a) Except for: (1) Candidates for party committeeman  
2 and committeewoman; and (2) federal committees required  
3 to file under the provisions of 2 U. S. C. §434, all candidates  
4 for nomination or election and all persons supporting, aiding  
5 or opposing the nomination, election or defeat of any  
6 candidate shall keep for a period of six months records of  
7 receipts and expenditures which are made for political  
8 purposes. All of the receipts and expenditures are subject to  
9 regulation by the provisions of this article. Verified financial  
10 statements of the records and expenditures shall be made and  
11 filed as public records by all candidates and by their financial  
12 agents, representatives or any person acting for and on behalf  
13 of any candidate and by the treasurers of all political party  
14 committees.

15 (b) In addition to any other reporting required by the  
16 provisions of this chapter, any person making an independent  
17 expenditure in the amount of one thousand dollars or more  
18 for any statewide, legislative or multicounty judicial  
19 candidate or in the amount of five hundred dollars or more  
20 for any county office, single-county judicial candidate,  
21 committee supporting or opposing a candidate on the ballot  
22 in more than one county, or any municipal candidate on a

23 municipal election ballot, on or after the fifteenth day but  
24 more than twelve hours before the day of any election shall  
25 report the expenditure, on a form prescribed by the Secretary  
26 of State, within twenty-four hours after the expenditure is  
27 made or debt is incurred for a communication, to the  
28 Secretary of State by hand-delivery, facsimile or other means  
29 to assure receipt by the Secretary of State within the 24-hour  
30 period: *Provided*, That a person making expenditures in the  
31 amount of one thousand dollars or more for any statewide or  
32 legislative candidate on or after the fifteenth day but more  
33 than twelve hours before the day of any election shall report  
34 such expenditures in accordance with section two-b of this  
35 article and shall not file an additional report as provided  
36 herein.

37 (c) Any independent expenditure must include a clear and  
38 conspicuous public notice which identifies the name of the  
39 person who paid for the expenditure and states that the  
40 communication is not authorized by the candidate or his or  
41 her committee.

42 (d) Any person who has spent a total of five thousand  
43 dollars or more for the direct costs of purchasing, producing  
44 or disseminating electioneering communications during any  
45 calendar year shall maintain all financial records and receipts  
46 related to such expenditure for a period of six months  
47 following the filing of a disclosure pursuant to subsection (a)  
48 of this section and, upon request, shall make such records and  
49 receipts available to the Secretary of State or county clerk for  
50 the purpose of an audit as provided in section seven of this  
51 article.

52 (e) Any person who willfully fails to comply with this  
53 section is guilty of a misdemeanor and, upon conviction  
54 thereof, shall be fined not less than five hundred dollars, or  
55 confined in jail for not more than one year, or both fined and  
56 confined.

**§3-8-2b. Disclosure of electioneering communications.**

1 (a) Every person who has spent:

2 (1) A total of five thousand dollars or more for the direct  
3 costs of purchasing, producing or disseminating  
4 electioneering communications during any calendar year; or

5 (2) A total of one thousand dollars or more on or after the  
6 fifteenth day but more than twelve hours before the day of  
7 any election for the direct costs of purchasing, producing or  
8 disseminating electioneering communications during any  
9 calendar year shall, within twenty-four hours of each  
10 disclosure date, file with the Secretary of State a statement  
11 which contains all of the information listed in subsection (b)  
12 of this section.

13 (b)(1) The name of the person making the expenditure,  
14 the name of any person sharing or exercising direction or  
15 control over the activities of the person making the  
16 expenditure and the name of the custodian of the books and  
17 accounts of the person making the expenditure;

18 (2) If the person making the expenditure is not an  
19 individual, the principal place of business of the partnership,  
20 committee, association, organization or group which made  
21 the expenditure;

22 (3) The amount of each expenditure of more than one  
23 thousand dollars made for electioneering communications  
24 during the period covered by the statement and the name of  
25 the person to whom the expenditure was made;

26 (4) The elections to which the electioneering  
27 communications pertain, the names, if known, of the  
28 candidates referred to or to be referred to therein, whether the  
29 electioneering communication is intended to support or  
30 oppose the identified candidates and the amount of the total



31 expenditure reported in subdivision (3) of this subsection  
32 spent to support or oppose each of the identified candidates;  
33 and

34 (5) The names and addresses of any contributors who  
35 contributed a total of more than one thousand dollars between  
36 the first day of the preceding calendar year and the disclosure  
37 date and whose contributions were used to pay for  
38 electioneering communications.

39 (c) With regard to the contributors required to be listed  
40 pursuant to subdivision (5), subsection (b) of this section, the  
41 statement shall also include:

42 (1) The month, day and year that the contributions of any  
43 single contributor exceeded two hundred fifty dollars;

44 (2) If the contributor is a political action committee, the  
45 name and address the political action committee registered  
46 with the State Election Commission;

47 (3) If the contributor is an individual, the name and  
48 address of the individual, his or her occupation, the name and  
49 address of the individual's current employer, if any, or, if the  
50 individual is self-employed, the name and address of the  
51 individual's business, if any;

52 (4) A description of the contribution, if other than money;

53 (5) The value in dollars and cents of the contribution.

54 (d) (1) Any person who makes a contribution for the  
55 purpose of funding the direct costs of purchasing, producing  
56 or disseminating an electioneering communication under this  
57 section shall, at the time the contribution is made, provide his  
58 or her name and address to the recipient of the contribution;

59 (2) Any individual who makes contributions totaling two  
60 hundred fifty dollars or more between the first day of the  
61 preceding calendar year and the disclosure date for the  
62 purpose of funding the direct costs of purchasing, producing  
63 or disseminating electioneering communications shall, at the  
64 time the contribution is made, provide the name of his or her  
65 occupation and of his or her current employer, if any, or, if  
66 the individual is self-employed, the name of his or her  
67 business, if any, to the recipient of the contribution.

68 (e) In each electioneering communication, a statement  
69 shall appear or be presented in a clear and conspicuous  
70 manner that:

71 (1) Clearly indicates that the electioneering  
72 communication is not authorized by the candidate or the  
73 candidate's committee; and

74 (2) Clearly identifies the person making the expenditure  
75 for the electioneering communication: *Provided*, That if the  
76 electioneering communication appears on or is disseminated  
77 by broadcast, cable or satellite transmission, the statement  
78 required by this subsection must be both spoken clearly and  
79 appear in clearly readable writing at the end of the  
80 communication.

81 (f) Within five business days after receiving a disclosure  
82 of electioneering communications statement pursuant to this  
83 section, the Secretary of State shall make information in the  
84 statement available to the public through the internet.

85 (g) For the purposes of this section, a person is  
86 considered to have made an expenditure when the person has  
87 entered into a contract to make the expenditure at a future  
88 time.

89 (h) The Secretary of State is hereby directed to propose  
90 legislative rules and emergency rules implementing this

91 section for legislative approval in accordance with the  
92 provisions of article three, chapter twenty-nine-a of this code.

93 (i) If any person, including, but not limited to, a political  
94 organization (as defined in Section 527(e)(1) of the Internal  
95 Revenue Code of 1986) makes, or contracts to make, any  
96 expenditure for electioneering communications which is  
97 coordinated with and made with the cooperation, consent or  
98 prior knowledge of a candidate, candidate's committee or  
99 agent of a candidate, the expenditure shall be treated as a  
100 contribution and expenditure by the candidate. If the  
101 expenditure is coordinated with and made with the  
102 cooperation or consent of a state or local political party or  
103 committee, agent or official of that party, the expenditure  
104 shall be treated as a contribution to and expenditure by the  
105 candidate's party.

106 (j) This section does not apply to candidates for federal  
107 office. This section is not intended to restrict or to expand  
108 any limitations on, obligations of or prohibitions against any  
109 candidate, committee, agent, contributor or contribution  
110 contained in any other provision of this chapter.

**§3-8-3. Committee treasurers; required to receive and disburse funds.**

1 Every political committee shall appoint and retain a  
2 treasurer to receive, keep and disburse all sums of money  
3 which may be collected or received by such committee, or by  
4 any of its members, for election expenses, and, unless such  
5 treasurer is first appointed and thereafter retained, it shall be  
6 unlawful for any such committee or any of its members to  
7 collect, receive or disburse money for any such purposes. All  
8 moneys collected or received by any such committee, or by  
9 any of its members, for election expenses shall be paid over  
10 to, and pass through the hands of, the treasurer, and shall be  
11 disbursed by him, and it shall be unlawful for any such  
12 committee, or any of its members, to disburse any money for

13 election expenses unless such money shall be paid to, and  
14 disbursed by, the treasurer. The same person may be  
15 designated to act as treasurer for two or more political party  
16 committees.

**§3-8-4. Treasurers and financial agents; written designation requirements.**

1 (a) No person may act as the treasurer of any political  
2 action committee or political party committee supporting,  
3 aiding or opposing the nomination, election or defeat of any  
4 candidate for an office encompassing an election district  
5 larger than a county unless a written statement of  
6 organization, on a form to be prescribed by the Secretary of  
7 State, is filed with the Secretary of State at least twenty-eight  
8 days before the election at which that person is to act as a  
9 treasurer and is received by the Secretary of State before  
10 midnight, eastern standard time, of that day or, if mailed, is  
11 postmarked before that hour. The form shall include the  
12 name of the political committee; the name of the treasurer;  
13 the mailing address, telephone number and e-mail address, if  
14 applicable, of the committee and of the treasurer if different  
15 from the committee information; the chairman of the  
16 committee; the affiliate organization, if any; type of  
17 committee affiliation, as defined in subdivision (19), section  
18 one-a of this article, if any; and whether the committee will  
19 participate in statewide, county or municipal elections. The  
20 form shall be certified as accurate and true and signed by the  
21 chairman and the treasurer of the committee: *Provided*, That  
22 a change of treasurer or financial agent may be made at any  
23 time by filing a written statement with the Secretary of State.

24 (b) No person may act as the treasurer for any candidate  
25 for nomination or election to any statewide office, or to any  
26 office encompassing an election district larger than a county  
27 or to any legislative office unless a written statement  
28 designating that person as the treasurer or financial agent is  
29 filed with the Secretary of State at least twenty-eight days

30 before the election at which that person is to act as a treasurer  
31 and is received by the Secretary of State before midnight,  
32 eastern standard time, of that day or if mailed, is postmarked  
33 before that hour: *Provided*, That a change of treasurer or  
34 financial agent may be made at any time by filing a written  
35 statement with the Secretary of State.

36 (c) No person may act as treasurer of any committee or  
37 as financial agent for any candidate to be nominated or  
38 elected by the voters of a county or a district therein, except  
39 legislative candidates, or as the financial agent for a  
40 candidate for the nomination or election to any other office,  
41 unless a written statement designating him or her as the  
42 treasurer or financial agent is filed with the clerk of the  
43 county commission at least twenty-eight days before the  
44 election at which he or she is to act and is received before  
45 midnight, eastern standard time, of that day or if mailed, is  
46 postmarked before that hour: *Provided*, That a change of  
47 treasurer may be made at any time by filing a written  
48 statement with the clerk of the county commission.

49 (d) Notwithstanding the provisions of subsections (a), (b)  
50 and (c) of this section, a filing designating a treasurer for a  
51 state or county political executive committee may be made  
52 anytime before the committee either accepts or spends funds.  
53 Once a designation is made by a state or county political  
54 executive committee, no additional designations are required  
55 under this section until a successor treasurer is designated.  
56 A state or county political executive committee may  
57 terminate a designation made pursuant to this section by  
58 making a written request to terminate the designation and by  
59 stating in the request that the committee has no funds  
60 remaining in the committee's account. This written request  
61 shall be filed with either the Secretary of State or the clerk of  
62 the county commission as provided by subsections (a), (b)  
63 and (c) of this section.

**§3-8-5. Detailed accounts and verified financial statements required.**

1 (a) Every candidate, treasurer, person and association of  
2 persons, organization of any kind, including every  
3 corporation, directly or indirectly, supporting a political  
4 committee established pursuant to paragraph (C), subdivision  
5 (1), subsection (b), section eight of this article or engaging in  
6 other activities permitted by this section and also including  
7 the treasurer or equivalent officer of the association or  
8 organization, advocating or opposing the nomination,  
9 election or defeat of any candidate and the treasurer of every  
10 political committee shall keep detailed accounts of every sum  
11 of money or other thing of value received by him or her,  
12 including all loans of money or things of value and of all  
13 expenditures and disbursements made, liabilities incurred, by  
14 the candidate, financial agent, person, association or  
15 organization or committee, for political purposes, or by any  
16 of the officers or members of the committee, or any person  
17 acting under its authority or on its behalf.

18 (b) Every person or association of persons required to  
19 keep detailed accounts under this section shall file with the  
20 officers hereinafter prescribed a detailed itemized sworn  
21 statement:

22 (1) Of all financial transactions, whenever the total  
23 exceeds five hundred dollars, which have taken place before  
24 the last Saturday in March, to be filed within six days  
25 thereafter and annually whenever the total of all financial  
26 transactions relating to an election exceeds five hundred  
27 dollars;

28 (2) Of all financial transactions which have taken place  
29 before the fifteenth day preceding each primary or other  
30 election and subsequent to the previous statement, if any, to  
31 be filed within four business days after the fifteenth day;

32 (3) Of all financial transactions which have taken place  
33 before the thirteenth day after each primary or other election  
34 and subsequent to the previous statement, if any, to be filed  
35 within four business days after the thirteenth day; and

36 (4) Of all financial transactions, whenever the total  
37 exceeds five hundred dollars or whenever any loans are  
38 outstanding, which have taken place before the forty-third  
39 day preceding the general election day, to be filed within four  
40 business days after the forty-third day.

41 (c) Every person who announces as a write-in candidate  
42 for any elective office and his or her financial agent or  
43 election organization of any kind shall comply with all of the  
44 requirements of this section after public announcement of the  
45 person's candidacy has been made.

46 (d) For purposes of this section, the term "financial  
47 transactions" includes all contributions or loans received and  
48 all repayments of loans or expenditures made to promote the  
49 candidacy of any person by any candidate or any  
50 organization advocating or opposing the nomination, election  
51 or defeat of any candidate to be voted on.

52 (e) Candidates for the office of conservation district  
53 supervisor elected pursuant to the provisions of article  
54 twenty-one-a, chapter nineteen of this code are required to  
55 file only the reports required by subdivisions (2) and (3),  
56 subsection (b) of this section immediately prior to and after  
57 the primary election: *Provided*, That during the election in  
58 the year two thousand eight, the statements required by this  
59 subsection shall be filed immediately prior to and after the  
60 general election.

**§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

3 communications pursuant to section two-b of this article,  
4 shall contain only the following information:

5 (1) The name, residence and mailing address and  
6 telephone number of each candidate, financial agent,  
7 treasurer or person and the name, address and telephone  
8 number of each association, organization or committee filing  
9 a financial statement.

10 (2) The balance of cash and any other sum of money on  
11 hand at the beginning and the end of the period covered by  
12 the financial statement.

13 (3) The name of any person making a contribution and  
14 the amount of the contribution. If the total contributions of  
15 any one person in any one election cycle amount to more  
16 than two hundred fifty dollars, the residence and mailing  
17 address of the contributor and, if the contributor is an  
18 individual, his or her major business affiliation and  
19 occupation shall also be reported. A contribution totaling  
20 more than fifty dollars of currency of the United States or  
21 currency of any foreign country by any one contributor is  
22 prohibited and a violation of section five-d of this article.  
23 The statement on which contributions are required to be  
24 reported by this subdivision may not distinguish between  
25 contributions made by individuals and contributions made by  
26 partnerships, firms, associations, committees, organizations  
27 or groups.

28 (4) The total amount of contributions received during the  
29 period covered by the financial statement.

30 (5) The name, residence and mailing address of any  
31 individual or the name and mailing address of each lending  
32 institution making a loan or of the spouse cosigning a loan,  
33 as appropriate, the amount of any loan received, the date and  
34 terms of the loan, including the interest and repayment  
35 schedule, and a copy of the loan agreement.



36 (6) The name, residence and mailing address of any  
37 individual or the name and mailing address of each  
38 partnership, firm, association, committee, organization or  
39 group having previously made or cosigned a loan for which  
40 payment is made or a balance is outstanding at the end of the  
41 period, together with the amount of repayment on the loan  
42 made during the period and the balance at the end of the  
43 period.

44 (7) The total outstanding balance of all loans at the end of  
45 the period.

46 (8) The name, residence and mailing address of any  
47 person to whom each expenditure was made or liability  
48 incurred, including expenditures made on behalf of a  
49 candidate or political committee that otherwise are not made  
50 directly by the candidate or political committee, together with  
51 the amount and purpose of each expenditure or liability  
52 incurred and the date of each transaction.

53 (9) The total expenditure for the nomination, election or  
54 defeat of a candidate or any person supporting, aiding or  
55 opposing the nomination, election or defeat of any candidate  
56 in whose behalf an expenditure was made or a contribution  
57 was given for the primary or other election.

58 (10) The total amount of expenditures made during the  
59 period covered by the financial statement.

60 (b) Any unexpended balance at the time of making the  
61 financial statements herein provided for shall be properly  
62 accounted for in that financial statement and shall appear as  
63 a beginning balance in the next financial statement.

64 (c) Each financial statement required by this section shall  
65 contain a separate section setting forth the following  
66 information for each fund-raising event held during the  
67 period covered by the financial statement:

68 (1) The type of event, date held and address and name, if  
69 any, of the place where the event was held.

70 (2) All of the information required by subdivision (3),  
71 subsection (a) of this section.

72 (3) The total of all moneys received at the fund-raising  
73 event.

74 (4) The expenditures incident to the fund-raising event.

75 (5) The net receipts of the fund-raising event.

76 (d) When any lump sum payment is made to any  
77 advertising agency or other disbursing person who does not  
78 file a report of detailed accounts and verified financial  
79 statements as required in this section, such lump sum  
80 expenditures shall be accounted for in the same manner as  
81 provided for herein.

82 (e) Any contribution or expenditure made by or on behalf  
83 of a candidate for public office, to any other candidate or  
84 committee for a candidate for any public office in the same  
85 election shall be accounted for in accordance with the  
86 provisions of this section.

87 (f) No person may make any contribution except from  
88 his, her or its own funds, unless such person discloses in  
89 writing to the person required to report under this section the  
90 name, residence, mailing address, major business affiliation  
91 and occupation of the person which furnished the funds to the  
92 contributor. All such disclosures shall be included in the  
93 statement required by this section.

94 (g) Any firm, association, committee or fund permitted  
95 by section eight of this article to be a political committee  
96 shall disclose on the financial statement its corporate or other  
97 affiliation.

98 (h) No contribution may be made, directly or indirectly,  
99 in a fictitious name, anonymously or by one person through  
100 an agent, relative or other person so as to conceal the identity  
101 of the source of the contribution or in any other manner so as  
102 to effect concealment of the contributor's identity.

103 (i) No person may accept any contribution for the  
104 purpose of influencing the nomination, election or defeat of  
105 a candidate or for the passage or defeat of any ballot issue  
106 unless the identity of the donor and the amount of the  
107 contribution is known and reported.

108 (j) When any person receives an anonymous contribution  
109 which cannot be returned because the donor cannot be  
110 identified, that contribution shall be donated to the General  
111 Revenue Fund of the state. Any anonymous contribution  
112 shall be recorded as such on the candidate's financial  
113 statement, but may not be expended for election expenses.  
114 At the time of filing, the financial statement shall include a  
115 statement of distribution of anonymous contributions, which  
116 total amount shall equal the total of all anonymous  
117 contributions received during the period.

118 (k) Any membership organization which raises funds for  
119 political purposes by payroll deduction, assessing them as  
120 part of its membership dues or as a separate assessment, may  
121 report the amount raised as follows:

122 (1) If the portion of dues or assessments designated for  
123 political purposes equals twenty-five dollars or less per  
124 member over the course of a calendar year, the total amount  
125 raised for political purposes through membership dues or  
126 assessments during the period is reported by showing the  
127 amount required to be paid by each member and the number  
128 of members.

129 (2) If the total payroll deduction for political purposes of  
130 each participating member equals twenty-five dollars or less

131 over the course of a calendar or fiscal year, as specified by  
132 the organization, the organization shall report the total  
133 amount received for political purposes through payroll  
134 deductions during the reporting period and, to the maximum  
135 extent possible, the amount of each yearly payroll deduction  
136 contribution level and the number of members contributing  
137 at each such specified level. The membership organization  
138 shall maintain records of the name and yearly payroll  
139 deduction amounts of each participating member.

140 (3) If any member contributes to the membership  
141 organization through individual voluntary contributions by  
142 means other than payroll deduction, membership dues, or  
143 assessments as provided in this subsection, the reporting  
144 requirements of subdivision (3), subsection (a) of this section  
145 shall apply. Funds raised for political purposes must be  
146 segregated from the funds for other purposes and listed in its  
147 report.

148 (1) Notwithstanding the provisions of section five of this  
149 article or of the provisions of this section to the contrary, an  
150 alternative reporting procedure may be followed by a  
151 political party committee in filing financial reports for fund-  
152 raising events if the total profit does not exceed five thousand  
153 dollars per year. A political party committee may report  
154 gross receipts for the sale of food, beverages, services,  
155 novelty items, raffle tickets or memorabilia, except that any  
156 receipt of more than fifty dollars from an individual or  
157 organization shall be reported as a contribution. A political  
158 party committee using this alternative method of reporting  
159 shall report:

- 160 (i) The name of the committee;
- 161 (ii) The type of fund-raising activity undertaken;
- 162 (iii) The location where the activity occurred;
- 163 (iv) The date of the fundraiser;

164 (v) The name of any individual who contributed more  
165 than fifty dollars worth of items to be sold;

166 (vi) The name and amount received from any person or  
167 organization purchasing more than fifty dollars worth of  
168 food, beverages, services, novelty items, raffle tickets or  
169 memorabilia;

170 (vii) The gross receipts of the fundraiser; and

171 (viii) The date, amount, purpose and name and address of  
172 each person or organization from whom items with a fair  
173 market value of more than fifty dollars were purchased for  
174 resale.

**§3-8-5b. Where financial statements shall be filed; filing date prescribed.**

1 (a) The financial statements provided for in this article  
2 shall be filed, by or on behalf of candidates, with:

3 (1) The Secretary of State for legislative offices and for  
4 statewide and other offices to be nominated or elected by the  
5 voters of a political division greater than a county;

6 (2) The clerk of the county commission by candidates for  
7 offices to be nominated or elected by the voters of a single  
8 county or a political division within a single county; or

9 (3) The proper municipal officer by candidates for office  
10 to be nominated or elected to municipal office.

11 (b) The statements may be filed by mail, in person, or by  
12 facsimile or other electronic means of transmission:  
13 *Provided*, That the financial statements filed by or on behalf  
14 of candidates for Governor, Secretary of State, Attorney  
15 General, Auditor, Treasurer, Commissioner of Agriculture  
16 and Supreme Court of Appeals shall be filed electronically by

17 the means of an internet program to be established by the  
18 Secretary of State.

19 (c) Committees required to report electronically may  
20 apply to the State Election Commission for an exemption  
21 from mandatory electronic filing in the case of hardship. An  
22 exemption may be granted at the discretion of the State  
23 Election Commission.

24 (d) For purposes of this article, the filing date of a  
25 financial statement shall, in the case of mailing, be the date  
26 of the postmark of the United States Postal Service, and in  
27 the case of hand delivery or delivery by facsimile or other  
28 electronic means of transmission, the date delivered to the  
29 office of the Secretary of State or to the office of the clerk of  
30 the county commission, in accordance with the provisions of  
31 subsection (a) of this section, during regular business hours  
32 of such office.

33 (e) The sworn financial statements required to be filed by  
34 this section with the Secretary of State shall be posted on the  
35 internet by the Secretary of State within ten business days  
36 from the date the financial statement was filed.

### **§3-8-5e. Precandidacy financing and expenditures.**

1 (a) Notwithstanding any other provisions of this code, it  
2 is lawful for a person, otherwise qualified to be a candidate  
3 for any public office or position to be determined by public  
4 election, to receive contributions or make expenditures, or  
5 both, personally or by another individual acting as a  
6 treasurer, to determine the advisability of becoming such a  
7 candidate or preparing to be such a candidate: *Provided*, That  
8 such contributions may be received and such expenditures  
9 made only during the four years immediately preceding the  
10 term for which such person may be a candidate or during the  
11 term of office immediately preceding the term for which such  
12 person may be a candidate, whichever is less: *Provided*,

13 *however*, That no person is disqualified from receiving  
14 contributions or making expenditures as permitted under the  
15 provisions of this section solely because such person then  
16 holds a public office or position.

17 (b) Any person undertaking to determine the advisability  
18 of becoming or preparing to be a candidate, who desires to  
19 receive contributions before filing a certificate of candidacy,  
20 shall name himself or another individual to act as a treasurer  
21 and shall file a designation of treasurer in the manner  
22 provided in section four of this chapter before receiving any  
23 contributions permitted by this section. Any expenditures  
24 made before the filing of a designation of treasurer shall be  
25 reported in accordance with the provisions of this section,  
26 regardless of the source of funds used for such expenditures.

27 (c) A person who receives a contribution who is acting  
28 for and by himself or as treasurer or agent for another  
29 pursuant to the provisions of this section shall keep detailed  
30 accounts of every sum of money or other thing of value  
31 received by him, and of all expenditures and disbursements  
32 made, and liabilities incurred, in the same manner as such  
33 accounts are required by section five of this article, for the  
34 period prior to the date of filing for candidacy for the office  
35 he is considering seeking. Any person who has received  
36 contributions or made expenditures subject to the provisions  
37 of this section shall file annually on the last Saturday in  
38 March or within six days thereafter preceding the election at  
39 which the names of candidates would appear on the ballot for  
40 the public office or position which the person originally  
41 considered seeking, a detailed itemized statement setting  
42 forth all contributions received and expenditures made  
43 pursuant to the provisions of this section concerning the  
44 candidacy of that person. If the person on whose behalf such  
45 contributions are received or expenditures are made becomes  
46 a candidate for any office or position to be decided at such  
47 election then the itemized statement shall be included within  
48 the first statement required to be filed by the provisions of

49 section five of this article. If such person does not become a  
50 candidate for any office or position to be decided at such  
51 election, then the detailed itemized statements required by  
52 this subsection shall be the only statements required to be  
53 filed by such person. Regardless of whether such person  
54 becomes a candidate as originally intended, or becomes a  
55 candidate for some office other than the office or position  
56 originally intended, or does not become a candidate, all limits  
57 on campaign contributions and campaign expenditures  
58 applicable to the candidacy of or advocacy of the candidacy  
59 of such person for the office he actually seeks, shall be  
60 applicable to and inclusive of the receipts had and  
61 expenditures made during such precandidacy period as well  
62 as after the person becomes a candidate.

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## CHAPTER 107

**(S.B. 754 - By Senators Kessler, Oliverio, Foster, Green, Hunter,  
Minard, Wells, White, Barnes, Deem, Hall and McKenzie)**

[Passed March 7, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2007.]

AN ACT to amend and reenact §3-8-9 of the Code of West Virginia, 1931, as amended, relating to campaign expenditures; clarifying language on contributions from political committees to certain other political committees; clarifying language regarding expenditures and contributions; prohibiting candidate committees from contributing to another candidate committee except in certain circumstances; and prohibiting political action committees from contributing to other political action committees except in certain circumstances.

*Be it enacted by the Legislature of West Virginia:*

That §3-8-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:



**ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.**

**§3-8-9. Lawful and unlawful election expenses; public opinion polls and limiting their purposes; limitation upon expenses; use of advertising agencies and reporting requirements; delegation of expenditures.**

1 (a) No financial agent or treasurer of a political  
2 committee shall pay, give or lend, either directly or  
3 indirectly, any money or other thing of value for any election  
4 expenses, except for the following purposes:

5 (1) For rent, maintenance, office equipment and other  
6 furnishing of offices to be used as political headquarters and  
7 for the payment of necessary clerks, stenographers, typists,  
8 janitors and messengers actually employed therein;

9 (2) In the case of a candidate who does not maintain a  
10 headquarters, for reasonable office expenses, including, but  
11 not limited to, filing cabinets and other office equipment and  
12 furnishings, computers, computer hardware and software,  
13 scanners, typewriters, calculators, audio visual equipment,  
14 the rental of the use of the same, or for the payment for the  
15 shared use of same with the candidate's business and for the  
16 payment of necessary clerks, stenographers and typists  
17 actually employed;

18 (3) For printing and distributing books, pamphlets,  
19 circulars and other printed matter and radio and television  
20 broadcasting and painting, printing and posting signs,  
21 banners and other advertisements, including contributions to  
22 charitable, educational or cultural events, for the promotion  
23 of the candidate, the candidate's name or an issue on the  
24 ballot;

25 (4) For renting and decorating halls for public meetings  
26 and political conventions, for advertising public meetings and

27 for the payment of traveling expenses of speakers and  
28 musicians at such meetings;

29 (5) For the necessary traveling and hotel expenses of  
30 candidates, political agents and committees and for  
31 stationery, postage, telegrams, telephone, express, freight and  
32 public messenger service;

33 (6) For preparing, circulating and filing petitions for  
34 nomination of candidates;

35 (7) For examining the lists of registered voters, securing  
36 copies thereof, investigating the right to vote of the persons  
37 listed therein and conducting proceedings to prevent unlawful  
38 registration or voting;

39 (8) For conveying voters to and from the polls;

40 (9) For securing publication in newspapers and by radio  
41 and television broadcasting of documents, articles, speeches,  
42 arguments and any information relating to any political issue,  
43 candidate or question or proposition submitted to a vote;

44 (10) For conducting public opinion poll or polls. For the  
45 purpose of this section, the phrase "conducting of public  
46 opinion poll or polls" shall mean and be limited to the  
47 gathering, collection, collation and evaluation of information  
48 reflecting public opinion, needs and preferences as to any  
49 candidate, group of candidates, party, issue or issues. No  
50 such poll shall be deceptively designed or intentionally  
51 conducted in a manner calculated to advocate the election or  
52 defeat of any candidate or group of candidates or calculated  
53 to influence any person or persons so polled to vote for or  
54 against any candidate, group of candidates, proposition or  
55 other matter to be voted on by the public at any election:  
56 *Provided*, That nothing herein shall prevent the use of the  
57 results of any such poll or polls to further, promote or  
58 enhance the election of any candidate or group of candidates

59 or the approval or defeat of any proposition or other matter to  
60 be voted on by the public at any election;

61 (11) For legitimate advertising agency services, including  
62 commissions, in connection with any campaign activity for  
63 which payment is authorized by subdivisions (3), (4), (5), (6),  
64 (7), (9) and (10) of this subsection;

65 (12) For the purchase of memorials, flowers or citations  
66 by political party executive committees or political action  
67 committees representing a political party;

68 (13) For the purchase of nominal noncash expressions of  
69 appreciation following the close of the polls of an election or  
70 within thirty days thereafter;

71 (14) For the payment of dues or subscriptions to any  
72 national, state or local committee of any political party;

73 (15) For contributions to a county party executive  
74 committee, state party executive committee or a state party  
75 legislative caucus political committee; and

76 (16) For contributions to a candidate committee:  
77 *Provided*, That a candidate committee may not contribute to  
78 another candidate committee except as otherwise provided by  
79 section ten of this article.

80 (b) A political action committee may not contribute to  
81 another political action committee or receive contributions  
82 from another political action committee: *Provided*, That a  
83 political action committee may receive contributions from its  
84 national affiliate, if any.

85 (c) Every liability incurred and payment made shall be  
86 for the fair market value of the services rendered.

87 (d) Every advertising agency subject to the provisions of  
88 this article shall file, in the manner and form required by  
89 section five-a of this article, the financial statements required  
90 by section five of this article at the times required therein and  
91 include therein, in itemized detail, all receipts from and  
92 expenditures made on behalf of a candidate, financial agent  
93 or treasurer of a political party committee.

94 (e) Any candidate may designate a financial agent by a  
95 writing duly subscribed by him which shall be in such form  
96 and filed in accordance with the provisions of section four of  
97 this article.

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## CHAPTER 108

**(Com. Sub. for H.B. 2875 - By Delegates Webster, Proudfoot,  
Moore, Hatfield, Caputo, DeLong, Hrutkay, Fragale and Perdue)**

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[Passed March 8, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 20, 2007.]

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AN ACT to amend and reenact §3-10-7 of the Code of West Virginia, 1931, as amended, relating to amending the procedure by which a vacancy on a county commission is filled in the event the remaining commissioners cannot agree on a person to fill the vacancy.

*Be it enacted by the Legislature of West Virginia:*

That §3-10-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 10. FILLING VACANCIES.****§3-10-7. Vacancies in offices of county commissioner and clerk of county commission.**

1 Any vacancy in the office of county commissioner or  
2 clerk of county commission shall be filled by the county  
3 commission of the county, unless the number of vacancies in  
4 a county commission deprive that body of a quorum, in  
5 which case the Governor of the state shall fill any vacancy in  
6 the county commission necessary to create a quorum thereof.  
7 Persons appointed shall be of the same political party as the  
8 officeholder vacating the office and shall continue in office  
9 until the next general election is certified, or until the  
10 completion of the term if the term ends on the thirty-first day  
11 of December following the next general election: *Provided,*  
12 That in the event a quorum of the county commission cannot  
13 agree upon a person to fill a vacancy in the office of county  
14 commissioner within thirty days of the date the vacancy first  
15 occurred, the county executive committee of the vacating  
16 county commissioner's political party shall select and name  
17 a person to fill the vacancy from the membership of the  
18 vacating county commissioner's political party.

19 Notice of the election shall be given by order of the  
20 county commission and published as prescribed in section six  
21 of this article. Nomination of candidates to fill the office for  
22 an unexpired term in the office of county commissioner or  
23 clerk of the county commission shall be made in the manner  
24 prescribed for making nominations to fill a vacancy in the  
25 office of the clerk of the circuit court.

26 In the event that the election for an unexpired term is held  
27 at the same time as the election for a full term for county  
28 commissioner, the full term shall be counted first and the

29 unexpired term shall be counted second. If the candidate  
30 with the highest number of votes for the unexpired term  
31 resides in the same magisterial district as the candidate with  
32 the highest number of votes for the full term, the candidate  
33 for the full term shall be seated. The candidate with the next  
34 highest number of votes for the unexpired term residing in a  
35 different magisterial district shall be seated for the unexpired  
36 term.



## CHAPTER 109

**(Com. Sub. for H.B. 2145 - By Delegate Yost)**

\_\_\_\_\_  
[Passed March 9, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 19, 2007.]  
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AN ACT to amend and reenact §21-3C-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §21-3C-2a, all relating to limited use/limited access elevators; prohibiting installation of certain elevators after a certain date; exemptions; and establishing requirements for the installation of limited use/limited access elevators.

*Be it enacted by the Legislature of West Virginia:*

That §21-3C-1 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 §21-3C-2a, all to read as follows:

**ARTICLE 3C. ELEVATOR SAFETY.**

§21-3C-1. Definitions.

§21-3C-2a. Installation prohibited; exemptions; two-way communication required; key required.

**§21-3C-1. Definitions.**

1 (1) "Certificate of acceptance" means a certificate issued  
2 by the Division of Labor certifying that a newly installed  
3 elevator has been inspected and was found to be installed in  
4 compliance with the safety standards set forth in the  
5 American Society of Mechanical Engineers Safety Code for  
6 Elevators and Escalators (ASME) A17.1-3, "Safety Code for  
7 Elevators" and ASME A18.1, "Safety Code for Platform Lifts  
8 and Stairway Chairlifts."

9 (2) "Certificate of competency" means a certificate  
10 issued by the Division of Labor certifying that an individual  
11 is qualified to inspect elevators.

12 (3) "Certificate of operation" means a certificate issued  
13 by the Division of Labor certifying that an elevator has been  
14 inspected and is safe for operation.

15 (4) "Division" means the Division of Labor.

16 (5) "Division inspector" means an employee or contractor  
17 of the division who has been examined and issued a  
18 certificate of competency and who only inspects elevators in  
19 state owned buildings.

20 (6) "Elevator" means all the machinery, construction,  
21 apparatus and equipment used in raising and lowering a car,  
22 cage or platform vertically between permanent rails or guides

23 and includes all elevators, power dumbwaiters, escalators,  
24 gravity elevators and other lifting or lowering apparatus  
25 permanently installed between rails or guides, but does not  
26 include hand operated dumbwaiters, manlifts of the platform  
27 type with a platform area not exceeding nine hundred square  
28 inches, construction hoists or other similar temporary lifting  
29 or lowering apparatus.

30 (7) "Freight elevator" means an elevator used for carrying  
31 freight and on which only the operator, by the permission of  
32 the employer, is allowed to ride.

33 (8) "Inspector" means both a division inspector and a  
34 private inspector.

35 (9) "Limited use/limited access elevator" means a  
36 passenger elevator of which use is limited by size, capacity,  
37 rise and speed, and access is limited by its location, by the  
38 requirement of a key for its operation or by other restriction.

39 (10) "Passenger elevator" means an elevator that is  
40 designed to carry persons to its contract capacity.

41 (11) "Private inspector" means a person who has been  
42 examined and issued a certificate of competency to inspect  
43 elevators within this state.

**§21-3C-2a. Installation prohibited; exemptions; two-way  
communication required; key required.**

1 (a) On and after the first day of July, two thousand seven,  
2 no limited use/limited access elevator may be installed in  
3 nonresidential settings unless the elevator:



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4 (1) Meets the specifications as set forth in the American  
5 Society of Mechanical Engineers (ASME) Safety Code for  
6 Elevators and Escalators A17.1-5.3 "Safety Code for  
7 Elevators";

8 (2) Has a method of two-way communication between  
9 the car and each floor served by the elevator; and

10

11 (3) Is operated automatically.

12 (b) A limited use/limited access elevator which is in use  
13 on the first day of July, two thousand seven, may continue in  
14 use so long as the elevator is inspected annually in  
15 accordance with the legislative rule of the division, and is  
16 issued a certificate of operation by the division.

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CHAPTER 110

**(H.B. 2944 - By Delegates Hatfield, Fleischauer,  
Wysong, Marshall, Hrutkay, Eldridge, Boggs,  
Spencer, Guthrie and Rowan)**

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[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2007.]

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AN ACT to amend the Code of West Virginia, 1931, as amended,  
by adding thereto a new section, designated §16-5C-20,  
relating to the end-of-life care of residents of nursing homes;

and requiring that certain residents be given information about the option of hospice palliative care.

*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 §16-5C-20, to read as follows:

#### **ARTICLE 5C. NURSING HOMES.**

##### **§16-5C-20. Hospice palliative care required to be offered.**

1       (a) When the health status of a nursing home facility  
2 resident declines to the state of terminal illness or when the  
3 resident receives a physician's order for "comfort measures  
4 only," the facility shall notify the resident with information  
5 about the option of receiving hospice palliative care. If a  
6 nursing home resident is incapacitated, the facility shall also  
7 notify any person who has been given the authority of  
8 guardian, a medical power of attorney or health care  
9 surrogate over the resident, information stating that the  
10 resident has the option of receiving hospice palliative care.

11       (b) The facility shall document that it has notified the  
12 resident, and any person who has been given a medical power  
13 of attorney or health care surrogate over the resident,  
14 information about the option of hospice palliative care and  
15 maintain the documentation so that the director may inspect  
16 the documentation, to verify the facility has complied with  
17 this section.

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CHAPTER 111

**(Com. Sub. for S.B. 177 - By Senator Unger)**

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[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor in April 4, 2007.]

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AN ACT to amend and reenact §5B-1-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §5B-2A-1, §5B-2A-3, §5B-2A-4, §5B-2A-5 and §5B-2A-12 of said code; to amend said code by adding thereto a new article, designated §5B-2F-1 and §5B-2F-2; to amend and reenact §5D-1-4 of said code; to amend and reenact §5F-2-1 of said code; and to amend and reenact §22-3A-7 of said code, all relating to the creation of the Division of Energy within the Department of Commerce; charging the Division of Energy to develop energy policies; placing the Office of Coalfield Community Development within the Division of Energy; creating the position of Director of the Division of Energy; continuing and reconstituting the West Virginia Public Energy Authority; charging Director of the Division of Energy to chair and administer the functions of the Public Energy Authority; providing the director acts under the authority of the Secretary of Commerce; providing the director has authority over the Office of Coalfield Community Development and the Energy Efficiency Program of the West Virginia Development Office; providing the Public Energy Authority, the Office of Coalfield Community Development, director and other public agencies develop an energy policy and development plan and seek public input thereof; requiring submission of an energy policy and development plan to the Governor and Joint Committee on Government and Finance; setting forth matters to be addressed in the energy policy and development plan; providing that the division shall prepare an energy use database; providing that the division shall promote

initiatives to enhance the nation's energy security; providing that the division shall encourage the development of energy infrastructure and strategic resources that will ensure the continuity of governmental operations in situations of emergency, inoperativeness or disaster; providing funding for the Division of Energy; and establishing a performance audit to be performed during the Department of Commerce's review.

*Be it enacted by the Legislature of West Virginia:*

That §5B-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §5B-2A-1, §5B-2A-3, §5B-2A-4, §5B-2A-5 and §5B-2A-12 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §5B-2F-1 and §5B-2F-2; that §5D-1-4 of said code be amended and reenacted; that §5F-2-1 of said code be amended and reenacted; and that §22-3A-7 of said code be amended and reenacted, all to read as follows:

**Chapter**

- 5B. Economic Development Act of 1985.**
- 5D. Public Energy Authority.**
- 5F. Reorganization of the Executive Branch of State Government.**
- 22. Environmental Resources.**

**CHAPTER 5B. ECONOMIC DEVELOPMENT  
ACT OF 1985.**

**Article**

- 1. Department of Commerce.**
- 2A. Office of Coalfield Community Development.**
- 2F. Division of Energy.**

**ARTICLE 1. DEPARTMENT OF COMMERCE.**

**\*§5B-1-2. Agencies, boards, commissions, divisions and offices comprising the Department of Commerce.**

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**\*CLERK'S NOTE:** This section was also amended by S.B. 454 (Chapter 27), which passed subsequent to this act.

1 The Department of Commerce consists of the following  
2 agencies, boards, commissions, divisions and offices,  
3 including all of the allied, advisory, affiliated or related  
4 entities, which are incorporated in and administered as part  
5 of the Department of Commerce:

6 (1) Division of Labor provided in article one, chapter  
7 twenty-one of this code, which includes:

8 (A) Occupational Safety and Health Review Commission  
9 provided in article three-a, chapter twenty-one of this code;  
10 and

11 (B) Board of Manufactured Housing Construction and  
12 Safety provided in article nine, chapter twenty-one of this  
13 code;

14 (2) Office of Miners' Health, Safety and Training  
15 provided in article one, chapter twenty-two-a of this code.  
16 The following boards are transferred to the Office of Miners'  
17 Health, Safety and Training for purposes of administrative  
18 support and liaison with the office of the Governor:

19 (A) Board of Coal Mine Health and Safety and Coal  
20 Mine Safety and Technical Review Committee provided in  
21 article six, chapter twenty-two-a of this code;

22 (B) Board of Miner Training, Education and Certification  
23 provided in article seven, chapter twenty-two-a of this code;  
24 and

25 (C) Mine Inspectors' Examining Board provided in article  
26 nine, chapter twenty-two-a of this code;

27 (3) The West Virginia Development Office, which  
28 includes the Division of Tourism and the Tourism  
29 Commission, provided in article two, chapter five-b of this  
30 code;

31 (4) Division of Natural Resources and Natural Resources  
32 Commission provided in article one, chapter twenty of this  
33 code;

34 (5) Division of Forestry provided in article one-a, chapter  
35 nineteen of this code;

36 (6) Geological and Economic Survey provided in article  
37 two, chapter twenty-nine of this code;

38 (7) Workforce West Virginia provided in chapter twenty-  
39 one-a of this code, which includes:

40 (A) Division of Unemployment Compensation;

41 (B) Division of Employment Service;

42 (C) Division of Workforce Development; and

43 (D) Division of Research, Information and Analysis; and

44 (8) Division of Energy provided in article two-f, chapter  
45 five-b of this code.

## **ARTICLE 2A. OFFICE OF COALFIELD COMMUNITY DEVELOPMENT.**

§5B-2A-1. Legislative findings and declaration.

§5B-2A-3. Definitions.

§5B-2A-4. Office of Coalfield Community Development.

§5B-2A-5. Powers and duties.

§5B-2A-12. Rulemaking.

### **§5B-2A-1. Legislative findings and declaration.**

1 The Legislature hereby finds and declares the following:

2 (a) Coal mining has made and continues to make  
3 significant contributions to the economy of West Virginia.  
4 These contributions include the creation of quality jobs that  
5 pay high wages and provide good benefits; the consequent  
6 stimulation and support of mining contractors, suppliers of  
7 mining equipment and services, other mining-related  
8 industries and numerous providers of goods and services that  
9 are indirectly related to coal mining and dependent upon its  
10 existence and prosperity; the generation of significant  
11 severance and other tax revenues that support important  
12 economic development, infrastructure and education  
13 initiatives in mining communities and throughout the state;  
14 the support of civic, education and service groups in mining  
15 communities; and, in the case of surface mining operations,  
16 including mountaintop mining, the creation of much-needed  
17 flat land for economic development and recreational uses.

18 (b) The development and increasing prominence of  
19 surface mining operations, including mountaintop mining,  
20 has brought increasingly high levels of productivity, safety  
21 and efficiency to the state's mining industry, enabling the  
22 recovery of coal that could not otherwise be mined and  
23 marketed profitably, increasing the severance tax revenues  
24 and other economic benefits described in subsection (a) of  
25 this section and ensuring the competitiveness of the state's  
26 coal industry from a national and international perspective.

27 (c) Where implemented, surface mining operations,  
28 particularly mountaintop mining, tend to extract most, if not  
29 all, of the recoverable coal reserves in an accelerated fashion.  
30 For a state long dependent on the employment and revenue  
31 coal mining provides, this reality should be sobering and  
32 there is no place in which the comprehension of this reality  
33 is more crucial than the coalfields of West Virginia. Long  
34 dependent primarily on mining, this area must plan for a  
35 future without coal. The state and its subdivisions have a  
36 legitimate interest in securing that future.

37 (d) The coal industry and those related to the extraction  
38 of mineral resources benefit from the mining of our state's  
39 coal through mining practices which impact its citizens --  
40 some in a negative way -- and through practices which will  
41 extract significant portions of coal reserves in an accelerated  
42 fashion. Those industries must therefore accept a greater  
43 responsibility to help address the long-term needs of the  
44 communities and citizens impacted by their activities.

45 (e) Once it becomes public knowledge that a permit is  
46 being sought, the marketability of property may change and  
47 the relative bargaining power of the parties may change with  
48 it. The potential for negative impact on those living in  
49 communities near surface mining operations may limit the  
50 options and bargaining power of the property owners.

51 (f) Surface mining operations, including mountaintop  
52 mining, present unique challenges to the coal mining industry  
53 and the state and its citizens, especially those living and  
54 working in communities that rely heavily upon these methods

55 of mining. This requires that these communities, in  
 56 conjunction with county commissions, state, local, county  
 57 and regional development authorities, landowners and civic,  
 58 community and business groups and interested citizens,  
 59 develop plans related to the communities' long-term  
 60 economic viability.

61 (g) The Division of Energy, as the state agency charged  
 62 with energy policy and development activities, shall take a  
 63 more active role in the long-term economic development of  
 64 communities in which these mining methods are prevalent  
 65 and shall establish a formal process to assist property owners  
 66 in the determination of the fair market value where the  
 67 property owner and the coal company voluntarily enter into  
 68 an agreement relating to the purchase and sale of such  
 69 property.

### **§5B-2A-3. Definitions.**

1 (a) For the purpose of this article, the following terms  
 2 have the meanings ascribed to them:

3 (1) "Department" means the Department of  
 4 Environmental Protection established in article one, chapter  
 5 twenty-two of this code;

6 (2) "Office" means the Office of Coalfield Community  
 7 Development.

8 (b) Unless used in a context that clearly requires a  
 9 different meaning or as otherwise defined herein, terms used  
 10 in this article shall have the definitions set forth in this  
 11 section.

### **§5B-2A-4. Office of Coalfield Community Development.**

1 (a) The Office of Coalfield Community Development is  
 2 hereby established within the Division of Energy.

3 (b) The director of the Division of Energy may appoint a  
 4 chief to administer the office, who will serve at the will and  
 5 pleasure of the Director of the Division of Energy.



**§5B-2A-5. Powers and duties.**

1       The office has and may exercise the following duties,  
2 powers and responsibilities:

3       (1) To establish a procedure for developing a community  
4 impact statement as provided in section six of this article and  
5 to administer the procedure so established;

6       (2) To establish a procedure for determining the assets  
7 that could be developed in and maintained by the community  
8 to foster its long-term viability as provided in section eight of  
9 this article and to administer the procedure so established;

10       (3) To establish a procedure for determining the land and  
11 infrastructure needs in the general area of the surface mining  
12 operations as provided in section nine of this article and to  
13 administer the procedure so established;

14       (4) To establish a procedure to develop action reports and  
15 annual updates as provided in section ten of this article and  
16 to administer the procedure so established;

17       (5) To determine the need for meetings to be held among  
18 the various interested parties in the communities impacted by  
19 surface mining operations and, when appropriate, to facilitate  
20 the meetings;

21       (6) To establish a procedure to assist property owners in  
22 the sale of their property as provided in section eleven of this  
23 article and to administer the procedure so established;

24       (7) In conjunction with the department, to maintain and  
25 operate a system to receive and address questions, concerns  
26 and complaints relating to surface mining; and

27       (8) On its own initiative or at the request of a community  
28 in close proximity to a mining operation, or a mining  
29 operation, offer assistance to facilitate the development of

30 economic or community assets. Such assistance may include  
 31 the preparation of a master land use plan pursuant to the  
 32 provisions of section nine of this article.

### **§5B-2A-12. Rulemaking.**

1 The office shall propose rules for legislative approval in  
 2 accordance with article three, chapter twenty-nine-a of this  
 3 code to establish, implement and enforce the provisions of  
 4 this article, which rules shall include, but not be limited to:

5 (1) The development of standards for establishing the  
 6 value of property by the office; and

7 (2) Criteria for the development of a master plan by local,  
 8 county, regional or redevelopment authorities which  
 9 coordinates the permitting and reclamation requirements of  
 10 the Department of Environmental Protection with these  
 11 authorities.

## **ARTICLE 2F. DIVISION OF ENERGY.**

§5B-2F-1. Short title.

§5B-2F-2. Purpose; office of Director for Energy Development; director to be member of Public Energy Authority; division to develop energy policy and development plan; contents of energy policy and development plan; and division to promote energy initiatives.

### **§5B-2F-1. Short title.**

1 This chapter shall be known and cited as the West  
 2 Virginia Energy Policy and Development Act.

**§5B-2F-2. Purpose; office of Director for Energy Development;  
 director to be member of Public Energy  
 Authority; division to develop energy policy  
 and development plan; contents of energy  
 policy and development plan; and division to  
 promote energy initiatives.**

1 (a) Effective the first day of July, two thousand seven, the  
 2 Division of Energy is created as a state agency under the  
 3 Department of Commerce. The division may receive federal

4 funds. The division shall be administered by a director, who  
5 shall be appointed by the Governor, by and with the advice  
6 and consent of the Senate, and shall continue to serve until  
7 his or her successor is appointed and qualified as provided.  
8 The director shall be selected with special preference and  
9 consideration given to his or her training, experience,  
10 capacity and interest in energy policy and development  
11 activities.

12 (b) Creation of the division is intended to provide  
13 leadership for developing energy policies emphasizing the  
14 increased efficiency of energy use, the increased  
15 development and production of new and existing domestic  
16 energy sources, the increased awareness of energy use on the  
17 environment and the economy, dependable, efficient and  
18 economical statewide energy systems capable of supporting  
19 the needs of the state, increased energy self-sufficiency  
20 where the ratio of indigenous to imported energy use is  
21 increased, reduce the ratio energy consumption to economic  
22 activity and maintain low-cost energy. The energy policies  
23 and development plans shall also provide direction for the  
24 private sector.

25 (c) The director shall administer the daily operations of  
26 the Public Energy Authority provided under the provisions of  
27 chapter five-d of this code. The director shall also have  
28 authority over the Office of Coalfield Community  
29 Development, created by the provisions of article two-a of  
30 this chapter, and the energy efficiency program existing  
31 under the West Virginia Development Office which are  
32 hereby transferred to the division. The director shall  
33 effectuate coordination of these entities relative to the  
34 purposes provided in this article.

35 (d) The division shall develop an energy policy and shall  
36 report the same back to the Governor and the Joint  
37 Committee on Government and Finance before the first day  
38 of December, two thousand seven. The energy policy shall  
39 be a five-year plan setting forth the state's energy policies and  
40 shall provide a direction for the private sector. Prior to the  
41 expiration of the energy policy, the division shall begin

42 review of the policy and submit a revised energy policy to the  
43 Governor and the Joint Committee on Government and  
44 Finance six months before the expiration of the policy.

45 (e) The director shall be a member of the Public Energy  
46 Authority and as such shall attend and participate in all  
47 official meetings and public hearings conducted under the  
48 auspices of the authority.

49 (f) The division shall prepare and submit an annual  
50 energy development plan to the Governor and the Joint  
51 Committee on Government and Finance on or before the first  
52 day of December of each year. The development plan shall  
53 relate to the division's implementation of the energy policy  
54 and the activities of the division during the previous year.  
55 The development plan shall include any recommended  
56 legislation. The Public Energy Authority, the Office of  
57 Coalfield Community Development, the energy efficiency  
58 program, the Department of Environmental Protection and  
59 the Public Service Commission, in addition to their other  
60 duties prescribed by this code, shall assist the division and  
61 the director in the development of an energy policy and  
62 related development plans. The energy development plan  
63 shall set forth the plans for implementing the state's energy  
64 policy and shall provide a direction for the private sector.  
65 The energy development plan shall recognize the powers of  
66 the Public Energy Authority as to development and financing  
67 of projects under its jurisdiction and shall make such  
68 recommendations as are reasonable and practicable for the  
69 exercise of such powers.

70 (g) The division shall hold public hearings and meetings  
71 with notice to receive public input regarding proposed energy  
72 policies and development plans. The energy policy and  
73 development plans required by subsections (d) and (f) of this  
74 section shall address increased efficiency of energy use,  
75 traditional and alternative energy, water as a resource and a  
76 component of energy production, energy distribution  
77 systems, the siting of energy facilities, the increased  
78 development and production of new and existing domestic

79 energy sources, increased awareness of energy use on the  
80 environment and the economy, energy infrastructure, the  
81 development and implementation of renewable, clean,  
82 technically innovative and advanced energy projects in this  
83 state. Projects may include, without limitation, solar and  
84 wind energy, low-impact hydro power, geothermal, biomass,  
85 landfill gas, fuel cells, renewable hydrogen fuel technologies,  
86 waste coal, coal mine methane, coal gasification to ultraclean  
87 fuels, solid waste to fuel grade ethanol and coal liquefaction  
88 technologies.

89 (h) The division may propose rules for legislative  
90 approval in accordance with the provisions of article three,  
91 chapter twenty-nine-a of this code designed to implement an  
92 energy policy and development plan in accordance with the  
93 provisions of this chapter.

94 (i) The energy policy and development plans required by  
95 subsections (d) and (f) of this section shall identify and report  
96 on the energy infrastructure in this state and include without  
97 limitation energy infrastructure related to protecting the  
98 state's essential data, information systems and critical  
99 government services in times of emergency, inoperativeness  
100 or disaster. In consultation with the Director of the Division  
101 of Homeland Security and Emergency Management, the  
102 director of the division shall encourage the development of  
103 energy infrastructure and strategic resources that will ensure  
104 the continuity of governmental operations in situations of  
105 emergency, inoperativeness or disaster.

106 (j) In preparing or revising the energy policy and  
107 development plan, the division may rely upon internal staff  
108 reports or the advice of outside advisors or consultants and  
109 may procure such services with the consent of the Secretary  
110 of Commerce. The division may also involve national, state  
111 and local government leadership and energy experts.

112 (k) The division shall prepare an energy use database,  
113 including without limitation, end-use applications and  
114 infrastructure needs for different classes of energy users  
115 including residential, commercial and industrial users, data  
116 regarding the interdependencies and sources of electricity,  
117 oil, coal, water and gas infrastructure, data regarding energy  
118 use of schools and state-owned facilities and collect data on  
119 the impact of the energy policy and development plan on the  
120 decisions and strategies of energy users of the state.

121 (l) The division shall promote collaboration between the  
122 state's universities and colleges, private industry and  
123 nonprofit organizations to encourage energy research and  
124 leverage available federal energy research and development  
125 resources.

126 (m) The division shall promote initiatives to enhance the  
127 nation's energy security through research and development  
128 directed at transforming the state's energy resources into the  
129 resources that fuel the nation.

130 (n) The Performance Evaluation and Research Division  
131 of the Legislative Auditor's office shall perform an agency  
132 review of the Division of Energy in two thousand ten as part  
133 of its review of the Department of Commerce as set forth in  
134 article four, chapter ten of this code.

## CHAPTER 5D. PUBLIC ENERGY AUTHORITY.

### ARTICLE 1. PUBLIC ENERGY AUTHORITY OF THE STATE OF WEST VIRGINIA.

#### **§5D-1-4. West Virginia Public Energy Authority continued; West Virginia Public Energy Board continued; organization of authority and board; appointment of board members; term, compensation and expenses; director of authority; appointment.**

1 (a) The West Virginia Public Energy Authority is  
2 continued. The authority is a governmental instrumentality  
3 of the state and a body corporate. The exercise by the

4 authority of the powers conferred by this article and the  
5 carrying out of its purposes and duties are essential  
6 governmental functions and for a public purpose.

7 (b) The authority shall be controlled, managed and  
8 operated by a seven-member board known as the West  
9 Virginia Public Energy Authority Board, which is continued.  
10 The seven members include the Director of the Division of  
11 Energy or designee; the Secretary of the Department of  
12 Environmental Protection or designee; the Director of the  
13 Economic Development Authority or designee; and four  
14 members representing the general public. The public  
15 members are appointed by the Governor, by and with the  
16 advice and consent of the Senate, for terms of one, two, three  
17 and four years, respectively.

18 (c) On the thirtieth day of June, two thousand seven, the  
19 terms of all appointed members shall expire. Not later than  
20 the first day of July, two thousand seven, the Governor shall  
21 appoint the public members required in subsection (b) of this  
22 section to assume the duties of the office immediately,  
23 pending the advice and consent of the Senate.

24 (d) The successor of each appointed member is appointed  
25 for a four-year term. A vacancy is filled by appointment by  
26 the Governor in the same manner as the original appointment.  
27 A member appointed to fill a vacancy serves for the  
28 remainder of the unexpired term. Each board member serves  
29 until a successor is appointed.

30 (e) No more than three of the public members may at any  
31 one time belong to the same political party. No more than  
32 two public members may be employed by or associated with  
33 any industry the authority is empowered to affect. One  
34 member shall be a person with significant experience in the  
35 advocacy of environmental protection. Board members may  
36 be reappointed to serve additional terms.

37 (f) All members of the board shall be citizens of the state.  
38 Before engaging in their duties, each member of the board  
39 shall comply with the requirements of article one, chapter six  
40 of this code and give bond in the sum of twenty-five  
41 thousand dollars in the manner provided in article two of said  
42 chapter. The Governor may remove any board member as  
43 provided in section four, article six of said chapter.

44 (g) The Director of the Division of Energy shall serve as  
45 chair. The board annually elects one of its members as vice  
46 chair and appoints a secretary-treasurer who need not be a  
47 member of the board.

48 (h) Four members of the board constitute a quorum and  
49 the affirmative vote of the majority of members present at  
50 any meeting is necessary for any action taken by vote of the  
51 board. A vacancy in the membership of the board does not  
52 impair the rights of a quorum by such vote to exercise all the  
53 rights and perform all the duties of the board and the  
54 authority.

55 (i) The person appointed as secretary-treasurer, including  
56 a board member if so appointed, shall give bond in the sum  
57 of fifty thousand dollars in the manner provided in article  
58 two, chapter six of this code.

59 (j) Each public member shall be reimbursed for  
60 reasonable expenses incurred in the discharge of official  
61 duties. All expenses incurred by the board shall be paid in a  
62 manner consistent with guidelines of the Travel Management  
63 Office of the Department of Administration and are payable  
64 solely from funds of the authority or from funds appropriated  
65 for such purpose by the Legislature. Liability or obligation  
66 is not incurred by the authority beyond the extent to which  
67 moneys are available from funds of the authority or from  
68 such appropriations.



69 (k) In addition to such other duties and responsibilities as  
 70 may be prescribed in this code, the Director of the Division  
 71 of Energy is responsible for managing and administering the  
 72 daily functions of the authority and for performing all other  
 73 functions necessary to the effective operation of the  
 74 authority.

**CHAPTER 5F. REORGANIZATION OF THE  
 EXECUTIVE BRANCH OF STATE GOVERNMENT.**

**ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.**

**\*§5F-2-1. Transfer and incorporation of agencies and boards;  
 funds.**

1 (a) The following agencies and boards, including all of  
 2 the allied, advisory, affiliated or related entities and funds  
 3 associated with any agency or board, are incorporated in and  
 4 administered as a part of the Department of Administration:

5 (1) Building Commission provided in article six, chapter  
 6 five of this code;

7 (2) Public Employees Insurance Agency and Public  
 8 Employees Insurance Agency Advisory Board provided in  
 9 article sixteen, chapter five of this code;

10 (3) Governor's Mansion Advisory Committee provided in  
 11 article five, chapter five-a of this code;

12 (4) Commission on Uniform State Laws provided in  
 13 article one-a, chapter twenty-nine of this code;

14 (5) West Virginia Public Employees Grievance Board  
 15 provided in article three, chapter six-c of this code;

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\*CLERK'S NOTE: This section was also amended by S.B. 442 (Chapter 207) and S.B. 582 (Chapter 214) which passed prior to this act, and S.B. 454 (Chapter 27) which passed subsequent to this act.

16 (6) Board of Risk and Insurance Management provided  
17 in article twelve, chapter twenty-nine of this code;

18 (7) Boundary Commission provided in article twenty-  
19 three, chapter twenty-nine of this code;

20 (8) Public Defender Services provided in article twenty-  
21 one, chapter twenty-nine of this code;

22 (9) Division of Personnel provided in article six, chapter  
23 twenty-nine of this code;

24 (10) The West Virginia Ethics Commission provided in  
25 article two, chapter six-b of this code;

26 (11) Consolidated Public Retirement Board provided in  
27 article ten-d, chapter five of this code; and

28 (12) Real Estate Commission.

29 (b) The following agencies and boards, including all of  
30 the allied, advisory, affiliated or related entities and funds  
31 associated with any agency or board, are incorporated in and  
32 administered as a part of the Department of Commerce:

33 (1) Division of Labor provided in article one, chapter  
34 twenty-one of this code, which includes:

35 (A) Occupational Safety and Health Review Commission  
36 provided in article three-a, chapter twenty-one of this code;  
37 and

38 (B) Board of Manufactured Housing Construction and  
39 Safety provided in article nine, chapter twenty-one of this code;

40 (2) Office of Miners' Health, Safety and Training  
41 provided in article one, chapter twenty-two-a of this code.  
42 The following boards are transferred to the Office of Miners'

43 Health, Safety and Training for purposes of administrative  
44 support and liaison with the office of the Governor:

45 (A) Board of Coal Mine Health and Safety and Coal  
46 Mine Safety and Technical Review Committee provided in  
47 article six, chapter twenty-two-a of this code;

48 (B) Board of Miner Training, Education and Certification  
49 provided in article seven, chapter twenty-two-a of this code;  
50 and

51 (C) Mine Inspectors' Examining Board provided in article  
52 nine, chapter twenty-two-a of this code;

53 (3) The West Virginia Development Office, which  
54 includes the Division of Tourism and the Tourism  
55 Commission provided in article two, chapter five-b of this  
56 code;

57 (4) Division of Natural Resources and Natural Resources  
58 Commission provided in article one, chapter twenty of this  
59 code;

60 (5) Division of Forestry provided in article one-a, chapter  
61 nineteen of this code;

62 (6) Geological and Economic Survey provided in article  
63 two, chapter twenty-nine of this code;

64 (7) Workforce West Virginia provided in chapter twenty-  
65 one-a of this code, which includes:

66 (A) Division of Unemployment Compensation;

67 (B) Division of Employment Service;

68 (C) Division of Workforce Development; and

69 (D) Division of Research, Information and Analysis; and

70 (8) Division of Energy provided in article two-f, chapter  
71 five-b of this code.

72 (c) The Economic Development Authority provided in  
73 article fifteen, chapter thirty-one of this code is continued as  
74 an independent agency within the executive branch.

75 (d) The Water Development Authority and Board  
76 provided in article one, chapter twenty-two-c of this code is  
77 continued as an independent agency within the executive  
78 branch.

79 (e) The following agencies and boards, including all of  
80 the allied, advisory and affiliated entities, are transferred to  
81 the Department of Environmental Protection for purposes of  
82 administrative support and liaison with the office of the  
83 Governor:

84 (1) Air Quality Board provided in article two, chapter  
85 twenty-two-b of this code;

86 (2) Solid Waste Management Board provided in article  
87 three, chapter twenty-two-c of this code;

88 (3) Environmental Quality Board, or its successor board,  
89 provided in article three, chapter twenty-two-b of this code;

90 (4) Surface Mine Board provided in article four, chapter  
91 twenty-two-b of this code;

92 (5) Oil and Gas Inspectors' Examining Board provided in  
93 article seven, chapter twenty-two-c of this code;

94 (6) Shallow Gas Well Review Board provided in article  
95 eight, chapter twenty-two-c of this code; and

96 (7) Oil and Gas Conservation Commission provided in  
97 article nine, chapter twenty-two-c of this code.

98 (f) The following agencies and boards, including all of  
99 the allied, advisory, affiliated or related entities and funds  
100 associated with any agency or board, are incorporated in and  
101 administered as a part of the Department of Education and  
102 the Arts:

103 (1) Library Commission provided in article one, chapter  
104 ten of this code;

105 (2) Educational Broadcasting Authority provided in  
106 article five, chapter ten of this code;

107 (3) Division of Culture and History provided in article  
108 one, chapter twenty-nine of this code;

109 (4) Division of Rehabilitation Services provided in  
110 section two, article ten-a, chapter eighteen of this code.

111 (g) The following agencies and boards, including all of  
112 the allied, advisory, affiliated or related entities and funds  
113 associated with any agency or board, are incorporated in and  
114 administered as a part of the Department of Health and  
115 Human Resources:

116 (1) Human Rights Commission provided in article eleven,  
117 chapter five of this code;

118 (2) Division of Human Services provided in article two,  
119 chapter nine of this code;

120 (3) Bureau for Public Health provided in article one,  
121 chapter sixteen of this code;

122 (4) Office of Emergency Medical Services and Advisory  
123 Council provided in article four-c, chapter sixteen of this  
124 code;

125 (5) Health Care Authority provided in article twenty-  
126 nine-b, chapter sixteen of this code;

127 (6) Commission on Mental Retardation provided in  
128 article fifteen, chapter twenty-nine of this code;

129 (7) Women's Commission provided in article twenty,  
130 chapter twenty-nine of this code; and

131 (8) The Child Support Enforcement Division provided in  
132 chapter forty-eight of this code.

133 (h) The following agencies and boards, including all of  
134 the allied, advisory, affiliated or related entities and funds  
135 associated with any agency or board, are incorporated in and  
136 administered as a part of the Department of Military Affairs  
137 and Public Safety:

138 (1) Adjutant General's Department provided in article  
139 one-a, chapter fifteen of this code;

140 (2) Armory Board provided in article six, chapter fifteen  
141 of this code;

142 (3) Military Awards Board provided in article one-g,  
143 chapter fifteen of this code;

144 (4) West Virginia State Police provided in article two,  
145 chapter fifteen of this code;

146 (5) Division of Homeland Security and Emergency  
147 Management and Disaster Recovery Board provided in  
148 article five, chapter fifteen of this code and Emergency

149 Response Commission provided in article five-a of said  
150 chapter;

151 (6) Sheriffs' Bureau provided in article eight, chapter  
152 fifteen of this code;

153 (7) Division of Corrections provided in chapter twenty-  
154 five of this code;

155 (8) Fire Commission provided in article three, chapter  
156 twenty-nine of this code;

157 (9) Regional Jail and Correctional Facility Authority  
158 provided in article twenty, chapter thirty-one of this code;

159 (10) Board of Probation and Parole provided in article  
160 twelve, chapter sixty-two of this code; and

161 (11) Division of Veterans' Affairs and Veterans' Council  
162 provided in article one, chapter nine-a of this code.

163 (i) The following agencies and boards, including all of  
164 the allied, advisory, affiliated or related entities and funds  
165 associated with any agency or board, are incorporated in and  
166 administered as a part of the Department of Revenue:

167 (1) Tax Division provided in article one, chapter eleven  
168 of this code;

169 (2) Racing Commission provided in article twenty-three,  
170 chapter nineteen of this code;

171 (3) Lottery Commission and position of Lottery Director  
172 provided in article twenty-two, chapter twenty-nine of this  
173 code;

174 (4) Agency of Insurance Commissioner provided in  
175 article two, chapter thirty-three of this code;

176 (5) Office of Alcohol Beverage Control Commissioner  
177 provided in article sixteen, chapter eleven of this code and  
178 article two, chapter sixty of this code;

179 (6) Board of Banking and Financial Institutions provided  
180 in article three, chapter thirty-one-a of this code;

181 (7) Lending and Credit Rate Board provided in chapter  
182 forty-seven-a of this code;

183 (8) Division of Banking provided in article two, chapter  
184 thirty-one-a of this code;

185 (9) The State Budget Office provided in article two of  
186 this chapter;

187 (10) The Municipal Bond Commission provided in article  
188 three, chapter thirteen of this code;

189 (11) The Office of Tax Appeals provided in article ten-a,  
190 chapter eleven of this code; and

191 (12) The State Athletic Commission provided in article  
192 five-a, chapter twenty-nine of this code.

193 (j) The following agencies and boards, including all of  
194 the allied, advisory, affiliated or related entities and funds  
195 associated with any agency or board, are incorporated in and  
196 administered as a part of the Department of Transportation:

197 (1) Division of Highways provided in article two-a,  
198 chapter seventeen of this code;



199 (2) Parkways, Economic Development and Tourism  
200 Authority provided in article sixteen-a, chapter seventeen of  
201 this code;

202 (3) Division of Motor Vehicles provided in article two,  
203 chapter seventeen-a of this code;

204 (4) Driver's Licensing Advisory Board provided in article  
205 two, chapter seventeen-b of this code;

206 (5) Aeronautics Commission provided in article two-a,  
207 chapter twenty-nine of this code;

208 (6) State Rail Authority provided in article eighteen,  
209 chapter twenty-nine of this code; and

210 (7) Port Authority provided in article sixteen-b, chapter  
211 seventeen of this code.

212 (k) Except for powers, authority and duties that have been  
213 delegated to the secretaries of the departments by the  
214 provisions of section two of this article, the position of  
215 administrator and the powers, authority and duties of each  
216 administrator and agency are not affected by the enactment  
217 of this chapter.

218 (l) Except for powers, authority and duties that have been  
219 delegated to the secretaries of the departments by the  
220 provisions of section two of this article, the existence,  
221 powers, authority and duties of boards and the membership,  
222 terms and qualifications of members of the boards are not  
223 affected by the enactment of this chapter. All boards that are  
224 appellate bodies or are independent decision makers shall not  
225 have their appellate or independent decision-making status  
226 affected by the enactment of this chapter.

227 (m) Any department previously transferred to and  
228 incorporated in a department by prior enactment of this  
229 section means a division of the appropriate department.  
230 Wherever reference is made to any department transferred to  
231 and incorporated in a department created in section two,  
232 article one of this chapter, the reference means a division of  
233 the appropriate department and any reference to a division of  
234 a department so transferred and incorporated means a section  
235 of the appropriate division of the department.

236 (n) When an agency, board or commission is transferred  
237 under a bureau or agency other than a department headed by  
238 a secretary pursuant to this section, that transfer is solely for  
239 purposes of administrative support and liaison with the office  
240 of the Governor, a department secretary or a bureau. Nothing  
241 in this section extends the powers of department secretaries  
242 under section two of this article to any person other than a  
243 department secretary and nothing limits or abridges the  
244 statutory powers and duties of statutory commissioners or  
245 officers pursuant to this code.

## CHAPTER 22. ENVIRONMENTAL RESOURCES.

### ARTICLE 3A. OFFICE OF EXPLOSIVES AND BLASTING.

#### §22-3A-7. Funding.

1 (a) The office shall assess each operator permitted under  
2 the provisions of this chapter a fee on each quantity of  
3 explosive material used for any purpose on the surface  
4 mining operations.

5 (b) The office shall propose a legislative rule for  
6 promulgation in accordance with article three, chapter  
7 twenty-nine-a of this code establishing the fees required by  
8 this section. The fees shall be calculated to generate  
9 sufficient money to provide for the operation of this office

10 and the Division of Energy as provided for in article two-f,  
11 chapter five-b of this code. These fees cannot be increased  
12 except by legislative rule and cannot be used to fund  
13 additional positions in the Division of Energy in future years.

14 (c) The office shall deposit all moneys received from  
15 these fees into a special revenue fund to be known as the  
16 Mountaintop Removal Fund in the State Treasury to be  
17 expended by the offices and the Division of Energy in the  
18 performance of their duties. The expenditure of moneys in  
19 the fund is not authorized from collections, but shall be  
20 appropriated by the Legislature.

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## CHAPTER 112

**(S.B. 490 - By Senators Hunter, Foster, Kessler, Minard,  
Oliverio, White, Caruth, Deem and Jenkins)**

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[Passed March 8, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2007.]

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AN ACT to amend and reenact §22-17-22 of the Code of West Virginia, 1931, as amended, relating to the Underground Storage Tank Insurance Fund; providing for expiration of the fund and disposal of its assets; directing the Department of Environmental Protection to assist certain policyholders reclaim sites insured by the fund; providing that the Department of Environmental Protection is not liable for claims

against the fund nor may be bound to policy terms; providing legislative findings; directing the Secretary of the Department of Environmental Protection to develop a plan to cause remediation of these sites; authorizing the Secretary of the Department of Environmental Protection to place conditions on remediation recipients; establishing criteria and preconditions for remediations; allowing persons who have undertaken remediation or expended funds to undertake remediation of sites to be reimbursed expenses; and allowing the secretary to establish conditions for reimbursement for prior or future remediations of insured sites.

*Be it enacted by the Legislature of West Virginia:*

That §22-17-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

## **ARTICLE 17. UNDERGROUND STORAGE TANK ACT.**

### **§22-17-22. Underground storage tank insurance fund.**

1       (a) The secretary may establish an Underground Storage  
2 Tank Insurance Fund for the purpose of satisfying the  
3 financial responsibility requirements established pursuant to  
4 section ten of this article. In addition to the capitalization fee  
5 to be assessed against all owners or operators of underground  
6 storage tanks provided by subdivision (6), subsection (b),  
7 section six of this article, the secretary shall promulgate rules  
8 establishing an annual financial responsibility assessment to  
9 be assessed on and paid by owners or operators of

10 underground storage tanks who are unable to obtain  
11 insurance or otherwise meet the financial responsibility  
12 requirements established pursuant to section ten of this  
13 article. Assessments shall be paid into the State Treasury into  
14 a special fund designated the Underground Storage Tank  
15 Insurance Fund.

16 (b) At the end of each fiscal year, any unexpended  
17 balance of such assessment shall not be transferred to the  
18 General Revenue Fund but shall remain in the Underground  
19 Storage Tank Insurance Fund. Upon the effective date of the  
20 enactment of the amendment to this section passed during the  
21 two thousand seven regular session of the West Virginia  
22 Legislature, the Underground Storage Tank Insurance Fund  
23 shall cease to operate as an insurance fund. Any remaining  
24 assets of the fund shall be administered by the secretary  
25 pursuant to subsections (c), (d), (e), (f), (g) and (h) of this  
26 section. Because the fund was intended to be self funding, the  
27 secretary is not bound by any terms, limitations or conditions  
28 contained in any insurance policies issued by the fund, but in  
29 no case may reimburse any person for an amount in excess of  
30 the limits of liability.

31 (c) *Legislative Findings Regarding Cessation of the Fund*  
32 – The Underground Storage Tank Insurance Fund was  
33 established by the Legislature to assist storage tank owners  
34 who were mandated by federal law to have insurance but  
35 were unable to find insurance in the private market, and was  
36 funded solely by assessments of policyholders paid to the  
37 fund. Policies were issued from the years one thousand nine

38 hundred ninety to two thousand. As private insurance  
39 coverage became available and a number of the insured left  
40 the business, premiums paid into the fund decreased. These  
41 factors, combined with greater than anticipated remediation  
42 costs at sites remediated during the fund's solvency, caused  
43 claims against the fund to exceed moneys collected. As a  
44 result, the fund became insolvent. Although the fund was not  
45 intended to and does not create any legal obligation for the  
46 state for any claims made against the fund, it is the sense of  
47 the Legislature that to the extent public funds are determined  
48 by the Legislature to be available, they may be appropriated  
49 to assist individuals with the remediation of these sites and to  
50 prevent potential adverse environmental impacts and harm to  
51 human health that could result from a failure to remediate.  
52 This assistance by the state in funding these remediations  
53 would be intended to provide an option for the insured to  
54 fulfill their legal duty to reclaim these sites and the  
55 Department of Environmental Protection may not assume any  
56 legal liability for remediation of these sites beyond the  
57 assistance provided pursuant to subsections (d), (e), (f), (g)  
58 and (h) of this section.

59 (d) The secretary shall request that the Governor include  
60 in each budget submitted to the Legislature funding to cause  
61 remediation of these existing sites as identified by the  
62 secretary. The secretary shall submit a proposal to undertake  
63 or cause to be undertaken these remediations to the Joint  
64 Committee of Government and Finance by the first day of  
65 November, two thousand seven. The secretary's proposal  
66 shall provide, at a minimum, budget amounts needed each

67 year for completing these remediation activities by the thirty-  
68 first day of December, two thousand nine, but in no case later  
69 than the thirty-first day of December, two thousand twelve.

70 (e) The secretary shall also request funding to reimburse  
71 insured persons and vendors who have incurred costs not yet  
72 reimbursed as of the effective date of this section by the fund  
73 for work undertaken at insured sites previously authorized by  
74 the secretary.

75 (f) Any agreements with insured persons for payment of  
76 remediations shall provide that, prior to any remediation  
77 activities on any site or for reimbursement for expenses  
78 previously incurred, an agreement be executed that provides  
79 that the insured person or persons agree that the site will be  
80 remediated pursuant to either subsection (g) or (h) of this  
81 section.

82 (g) The secretary may cause remediation of an insured  
83 site to a voluntary remediation standard as provided in article  
84 twenty-two of this chapter, including any appropriate land-  
85 use covenant and other deed restrictions and any other  
86 conditions as established by the secretary prior to payment  
87 for any costs associated with a site remediation.

88 (h) If an insured person demonstrates to the secretary that  
89 it is more cost effective to clean up a site through an  
90 alternative program or method that will result in remediation  
91 at a standard equal to or greater than provided for in  
92 subsection (g) of this section, then the secretary may, as an  
93 alternative, authorize use of that method or program. The  
94 secretary may place any appropriate requirements upon the  
95 insured person as a condition for undertaking a remediation  
96 by an alternative program or method.

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**CHAPTER 113****(H.B. 3271 - By Delegates Webster and Amores)**

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[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2007.]

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AN ACT to amend and reenact §36-1-18 of the Code of West Virginia, 1931, as amended, relating to clarifying spendthrift trusts.

*Be it enacted by the Legislature of West Virginia:*

That §36-1-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. CREATION OF ESTATES GENERALLY.****§36-1-18. Trust estates; debts of beneficiaries; spendthrift trusts; nonmerger of trusts.**

1       (a) Estates held in trust are subject to the debts of the  
2 beneficiary of the trust, except where the creator has  
3 expressly provided in the trust instrument words substantially  
4 to the effect that:

5       (1) The income or principal, or both, may only be applied  
6 to the health, education, support or maintenance of a  
7 beneficiary, other than the creator of the trust, for the life of  
8 the beneficiary, or the income or principal, or both, may only  
9 be applied at the discretion of the trustee to or for the benefit



10 of a beneficiary, other than the creator of the trust, for the life  
11 of the beneficiary, for a fixed term of years or other fixed  
12 duration of time, or a fixed annuity amount or a unitrust  
13 amount computed under a formula as a percentage of fair  
14 market value of assets in the trust, regardless of whether the  
15 same is income, principal, or both, may only be applied to or  
16 for the benefit of a beneficiary, other than the creator of the  
17 trust, for the life of the beneficiary or for a fixed term of  
18 years or other fixed duration of time; and

19 (2) The trust is not subject to the liability of or alienation  
20 by the beneficiary or beneficiaries.

21 (b) A trust, whenever created, may not be set aside or  
22 terminated solely on the assertion of a creditor that the trustee  
23 or trustees are the same person or persons as the beneficiary  
24 or beneficiaries of the trust.

25 (c) This section applies to any trust established by an  
26 instrument executed on or after the first day of July, two  
27 thousand one, except as otherwise expressly provided in the  
28 terms of the trust.

29 (d) This section applies to any trust established under an  
30 instrument executed prior to the first day of July, two  
31 thousand one, when the trustee elects, in his or her sole  
32 discretion, to administer the trust pursuant to the provisions  
33 of this section.

34 (e) Except as provided in subsection (c) of this section,  
35 this section may not be construed to create or imply a duty on  
36 a trustee to administer the trust pursuant to the provisions of  
37 this section, and a trustee may not be held liable for refusing  
38 to administer a trust pursuant to the provisions of this section.

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**CHAPTER 114****(Com. Sub. for S.B. 82 - By Senator Hunter)**

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[Passed March 10, 2007; in effect from passage.]

[Approved by the Governor on April 3, 2007.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §62-1E-1, §62-1E-2 and §62-1E-3, all relating to creating the Eyewitness Identification Act; and establishing definitions, eyewitness identification procedures, a study task force and related training.

*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 §62-1E-1, §62-1E-2 and §62-1E-3, all to read as follows:

**ARTICLE 1E. EYEWITNESS IDENTIFICATION ACT.**

§62-1E-1. Definitions.

§62-1E-2. Eyewitness identification procedures.

§62-1E-3. Training of law-enforcement officers.

**§62-1E-1. Definitions.**

- 1 For the purposes of this article:
- 2 (1) "Eyewitness" means a person whose identification of
- 3 another person may be relevant in a criminal proceeding.

4 (2) "Lineup" means a live or photographic array of  
5 persons of similar appearance.

6 (3) "Lineup administrator" means the person who  
7 conducts a lineup.

8 (4) "Live lineup" means a procedure in which a group of  
9 people is displayed to an eye witness for the purpose of  
10 determining if the eyewitness is able to identify the  
11 perpetrator of a crime.

12 (5) "Photo lineup" means a procedure in which an array  
13 of photographs is displayed to an eyewitness for the purpose  
14 of determining if the eyewitness is able to identify the  
15 perpetrator of a crime.

### **§62-1E-2. Eyewitness identification procedures.**

1 (a) Before a lineup, the eyewitness should be given the  
2 following three instructions:

3 (1) That the perpetrator might or might not be present in  
4 the lineup;

5 (2) That the eyewitness is not required to make an  
6 identification; and

7 (3) That it is as important to exclude innocent persons as  
8 it is to identify the perpetrator.

9 (b) Law-enforcement officers should make a written  
10 record of a lineup, including the following information:

11 (1) The date, time and location of the lineup.

12 (2) The names of every person in the lineup, if known,  
13 and all other persons present at the lineup.

14 (3) The words used by the eyewitness in any  
15 identification, including words that describe the eyewitness'  
16 certainty or uncertainty in the identification at the time the  
17 identification is made.

18 (4) Whether it was a photo lineup or live lineup.

19 (5) The number of photos or individuals that were  
20 presented in the lineup.

21 (6) Whether the lineup administrator knew which person  
22 in the lineup was the suspect.

23 (7) Whether, before the lineup, the eyewitness was  
24 instructed that the perpetrator might or might not be  
25 presented in the lineup.

26 (8) Whether the lineup was simultaneous or sequential.

27 (9) The signature, or initials, of the eyewitness, or  
28 notation if the eyewitness declines or is unable to sign.

29 (10) A video of the lineup and the eyewitness' response  
30 may be included.

31 (c) There is hereby created a task force to study and  
32 identify best practices for eyewitness identification. The task  
33 force consists of the following members:

34 (1) The Director of Criminal Justice Services, or his or  
35 her designee, who shall chair, without voting, the task force;

36 (2) The Superintendent of the State Police, or his or her  
37 designee;

38 (3) A victim advocate to be designated by the Director of  
39 Criminal Justice Services;

40 (4) The Director of Public Defender Services, or his or  
41 her designee;

42 (5) The Executive Director of the West Virginia  
43 Prosecuting Attorneys Institute, or his or her designee;

44 (6) A circuit judge designated by the Chief Justice of the  
45 West Virginia Supreme Court of Appeals;

46 (7) Two professionals in the field of forensic sciences,  
47 one to be designated by the Executive Director of the West  
48 Virginia Prosecuting Attorneys Institute and the other to be  
49 designated by the Director of Public Defender Services;

50 (8) The President of the West Virginia Fraternal Order of  
51 Police, or his or her designee;

52 (9) A representative of the Innocence Project of the West  
53 Virginia University College of Law;

54 (10) Two licensed practitioners of criminal law, one to be  
55 designated by the Executive Director of the West Virginia  
56 Prosecuting Attorneys Institute and the other to be designated  
57 by the Director of Public Defender Services;

58 (11) The President of the West Virginia Sheriff's  
59 Association, or his or her designee.

60 (d) The task force, or their assigned designees, shall serve  
61 without compensation, and in consultation with eyewitness  
62 identification practitioners and experts, shall develop  
63 recommended guidelines for policies, procedures and training

64 with respect to the collection and handling of eyewitness  
65 evidence in criminal investigations by law-enforcement  
66 agencies that are consistent with the reliable evidence  
67 supporting best practices. The purpose of the guidelines is to  
68 provide law-enforcement agencies with information  
69 regarding eyewitness identification policies and procedures  
70 to increase the accuracy of the crime investigation process.

71 (e) Such guidelines shall include procedures for the  
72 administration of live and photographic lineups and  
73 instructions that will increase the accuracy of eyewitness  
74 identifications. The task force, in developing these  
75 guidelines, shall consider:

76 (1) The use of blind administration of live and photo  
77 lineups;

78 (2) The issuance of specific instructions to the eyewitness  
79 before and during the identification procedure;

80 (3) The number and selection of fillers to be used in live  
81 and photo lineups;

82 (4) Sequential versus simultaneous presentation of lineup  
83 members;

84 (5) Whether only one suspect should be included in any  
85 live or photo lineup;

86 (6) The timing of when the administrator should request  
87 and record the eyewitness's statement of his confidence in his  
88 selection;

89 (7) Whether to refrain from providing of any  
90 confirmatory information to the eyewitness;

91 (8) The visual recording of the lineup and its  
92 administration;

93 (9) The video or audio recording of the lineup procedure;

94 (10) Any other policies or procedures the task force  
95 determines to be relevant; and

96 (11) What training, if any, should be made available to  
97 law-enforcement personnel in the use of these procedures.

98 (f) Not later than the fifteenth day of December, two  
99 thousand eight, the task force shall submit a report on the  
100 guidelines developed and recommendations concerning their  
101 use to the standing committees of the Legislature having  
102 cognizance of matters relating to criminal law and procedure.  
103 Minority reports may also be issued. The task force shall  
104 terminate on the fifteenth day of December, two thousand  
105 nine, unless earlier terminated by legislative action.

### **§62-1E-3. Training of law-enforcement officers.**

1 The Superintendent of State Police may create  
2 educational materials and conduct training programs to  
3 instruct law-enforcement officers and recruits how to conduct  
4 lineups in compliance with this section.

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**CHAPTER 115****(H.B. 3270 - By Delegates Webster and Amores)**

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[Passed March 10, 2007; in effect ninety days from passage.]  
[Approved by the Governor on April 3, 2007.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §44-4-12a, relating to the compensation and expenses of fiduciaries.

*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 §44-4-12a, to read as follows:

**ARTICLE 4. ACCOUNTING BY FIDUCIARIES.****§44-4-12a. Compensation and expenses of personal representatives.**

1 (a) Personal representatives, as defined in section one,  
2 article one, chapter forty-two of this code, shall be allowed  
3 any reasonable expenses incurred by the personal  
4 representative as such and commissions upon the amount of  
5 all the personal estate which is subject to administration,  
6 including the income from the personal estate, that is  
7 received and accounted for by them and upon the proceeds of  
8 real estate that is sold, as follows:



1       (1) For the first one hundred thousand dollars, at the rate  
2 of five percent;

3       (2) All above one hundred thousand dollars and not  
4 exceeding four hundred thousand dollars, at the rate of four  
5 percent;

6       (3) All above four hundred thousand dollars and not  
7 exceeding eight hundred thousand dollars, at the rate of three  
8 percent; and

9       (4) All above eight hundred thousand dollars, at the rate  
10 of two percent.

11       (b) Personal representatives also shall be allowed a  
12 commission of one percent on the value of real estate that is  
13 not sold. Personal representatives also shall be allowed a  
14 commission of one percent on all property that is not subject  
15 to administration and that is includable for purposes of  
16 computing the federal estate tax. Notwithstanding the  
17 foregoing, no commission shall be allowed on joint and  
18 survivorship property, whether real or personal.

19       (c) The basis of valuation for the allowance of such  
20 commissions on real estate sold shall be the gross proceeds  
21 of sale, and for all other property the fair market value of the  
22 other property as of the date of death of the decedent. The  
23 commissions allowed to personal representatives in this  
24 section shall be received in full compensation for all of their  
25 ordinary services. If more than one personal representative  
26 serves, the total compensation as set forth herein shall be  
27 apportioned between them as agreed upon by the personal  
28 representatives, or in the absence of an agreement between  
29 the personal representatives, in proportion to the services  
30 performed by them.

31       (d) The commission set forth herein may be denied or

32 reduced by the county commission upon a determination that  
33 the personal representative has not faithfully discharged the  
34 personal representative's duties. The commission set forth  
35 herein may be increased by the county commission upon a  
36 determination that the personal representative has performed  
37 extraordinary services in discharging the personal  
38 representative's duties.

39 (e) Where the personal representative of an estate is a  
40 lawyer who renders professional services, compensation for  
41 such professional services in addition to a commission shall  
42 not be allowed.

43 (f) Notwithstanding the foregoing, a testator may deviate  
44 from the commissions allowed herein by express language in  
45 the testator's last will and testament.

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## CHAPTER 116

**(Com. Sub. for H.B. 3145 - By Delegates Palumbo, Webster,  
Cann, Amores, Doyle, DeLong and White)**

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[Passed March 10, 2007; in effect ninety days from passage.]  
[Approved by the Governor on April 2, 2007.]

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AN ACT to amend the Code of West Virginia, 1931, as amended,  
by adding thereto a new article, designated §11-13X-1,  
§11-13X-2, §11-13X-3, §11-13X-4, §11-13X-5, §11-13X-6,  
§11-13X-7, §11-13X-8, §11-13X-9, §11-13X-10, §11-13X-11,  
§11-13X-12 and §11-13X-13, all relating to activities of the  
film industry in West Virginia; creating a tax credit on direct  
production and post production expenditures directly related to  
the production of film or commercial audiovisual products;

requiring approval of the West Virginia development office; and providing for reports of the cost effectiveness of the credits and recommendations for the expansion of the film industry in West Virginia.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §11-13X-1, §11-13X-2, §11-13X-3, §11-13X-4, §11-13X-5, §11-13X-6, §11-13X-7, §11-13X-8, §11-13X-9, §11-13X-10, §11-13X-11, §11-13X-12 and §11-13X-13, all to read as follows:

**ARTICLE 13X. WEST VIRGINIA FILM INDUSTRY INVESTMENT ACT.**

- §11-13X-1. Short title.
- §11-13X-2. Legislative findings and purpose.
- §11-13X-3. Definitions.
- §11-13X-4. Creation of the tax credit.
- §11-13X-5. Amount of credit allowed; limitation of the credits.
- §11-13X-6. Requirements for credit.
- §11-13X-7. Application of credit to state taxes.
- §11-13X-8. Uses of credit; unused credit; carry forward; carry back prohibited; expiration and forfeiture of credit.
- §11-13X-9. Legislative rules.
- §11-13X-10. Burden of proof.
- §11-13X-11. Tax credit review and accountability.
- §11-13X-12. Economic Development.
- §11-13X-13. Effective date.

**§11-13X-1. Short title.**

- 1 This article may be cited as the “West Virginia Film
- 2 Industry Investment Act.”

**§11-13X-2. Legislative findings and purpose.**

- 1 The legislature finds that the encouragement of economic
- 2 growth through the production of motion pictures and other
- 3 commercial film or audiovisual projects in this state is in the

4 public interest and promotes the general welfare of the people  
5 of this state. In order to encourage greater economic growth  
6 and development in this state, there is hereby enacted the  
7 West Virginia film industry investment act.

**§11-13X-3. Definitions.**

1 (a) *General.* -- When used in this article, or in the  
2 administration of this article, terms defined in subsection (b)  
3 of this section have the meanings ascribed to them by this  
4 section, unless a different meaning is clearly required by the  
5 context in which the term is used.

6 (b) *Terms defined.*

7 (1) "Commercial film or audiovisual project" means a  
8 "film," as defined by this subsection, or videogame intended  
9 for commercial exploitation.

10 (2) "Direct production expenditure" means a transaction  
11 that is subject to taxation in the State of West Virginia,  
12 including:

13 (A) Payment of wages, fringe benefits or fees for talent,  
14 management, or labor to a person who is a resident of West  
15 Virginia;

16 (B) Payment to a personal services corporation for the  
17 services of a performing artist if:

18 (i) The personal services corporation pays West Virginia  
19 income tax on those payments; and

20 (ii) The performing artist receiving payments from the  
21 personal services corporation pays West Virginia income tax;  
22 and

- 23 (C) Any of the following provided by a vendor:
- 24 (i) The story and scenario to be used by a film;
- 25 (ii) Set construction and operations, wardrobe,  
26 accessories and related services;
- 27 (iii) Photography, sound synchronization, lighting, and  
28 related services;
- 29 (iv) Editing and related services;
- 30 (v) Rental of facilities and equipment;
- 31 (vi) Leasing of vehicles;
- 32 (vii) Food or lodging;
- 33 (viii) Airfare if purchased through a West Virginia-based  
34 travel agency or travel company;
- 35 (ix) Insurance coverage and bonding if purchased through  
36 a West Virginia-based insurance agent; and
- 37 (x) Other direct costs of producing a film in accordance  
38 with generally accepted entertainment industry practices.
- 39 (3) “Eligible film production company” means a person  
40 or business entity that produces one or more “films” as  
41 defined by this subsection.
- 42 (4) “Federal new markets tax credit program” means the  
43 tax credit program codified as Section 45D of the United  
44 States Internal Revenue Code of 1986, as amended;

45 (5) "Film" means any single media or multimedia  
46 program, excluding advertising messages other than national  
47 advertising messages intended for exhibition, that:

48 (A) Is fixed on film, digital medium, videotape, computer  
49 disk, laser disc or other similar delivery medium;

50 (B) Can be viewed or reproduced;

51 (C) Is not intended to and does not violate a provision of  
52 article eight-c, chapter sixty-one of this code;

53 (D) Does not contain "obscene matter" or "sexually  
54 explicit conduct," as defined by article eight-a, chapter  
55 sixty-one, of this code; and

56 (E) Is intended for reasonable commercial exploitation  
57 for the delivery medium used.

58 (6) "Postproduction expenditure" means an expenditure  
59 that occurs after the completion of principal and ongoing  
60 photography, including an expenditure for editing, Foley  
61 recording, automatic dialogue replacement, sound editing,  
62 special effects, including computer-generated imagery or  
63 other effects, scoring and music editing, beginning and end  
64 credits, negative cutting, soundtrack production, dubbing,  
65 subtitling or addition of sound or visual effects; but not  
66 including an expenditure for advertising, marketing,  
67 distribution or expense payments.

68 (7) "Tax Commissioner" means the state Tax  
69 Commissioner or a designee of the state Tax Commissioner.

#### **§11-13X-4. Creation of the tax credit.**

1 An eligible film production company may apply for, and  
2 the Tax Commissioner shall allow, a nonrefundable tax credit

3 in an amount equal to the percentage specified in section five  
4 of this article of:

5 (1) Direct production expenditures made in West Virginia  
6 that are directly attributable to the production in West  
7 Virginia of a film or commercial audiovisual product and that  
8 are subject to taxation by the State of West Virginia; and

9 (2) Postproduction expenditures made in West Virginia  
10 that are:

11 (A) Directly attributable to the production of a  
12 commercial film or audiovisual product;

13 (B) For services performed in West Virginia; and

14 (C) Subject to the taxation by the State of West Virginia.

**§11-13X-5. Amount of credit allowed; limitation of the credits.**

1 (a) *Base allowance.* – (1) The amount allowed to every  
2 eligible film production company, except as provided in  
3 subsection (b) of this section, shall be twenty-two percent;  
4 and

5 (2) For taxable years beginning prior to the first day of  
6 January, two thousand ten, an additional five percent.

7 (b) *Extra allowance for hiring of local workers.* -- Any  
8 amount allowed in subsection (a) of this section shall be  
9 increased by:

10 (1) An additional two percent if the eligible film  
11 production company, or its authorized payroll service  
12 company, employs ten or more West Virginia residents as

13 part of its full time employees working in the state or as  
14 apprentices working in the state.

15 (2) An additional two percent above the credit allowed  
16 under paragraph (1) of this subsection if at least twenty-five  
17 percent the full-time workforce of the eligible film  
18 production company, or its authorized payroll service  
19 company, is comprised of residents of West Virginia.

20 (c) *Application of the credits.* – The tax credit allowed  
21 under this section shall be applied to the eligible production  
22 company’s state tax burden as provided in section seven of  
23 this article.

24 (d) *Limitation of the credits.* – No more than ten million  
25 dollars of the tax credits shall be allocated by the Tax  
26 Commissioner in any given taxable year. The Tax  
27 Commissioner shall allocate the tax credits in the order the  
28 applications therefor are received.

29 (e) The additional five percent tax credit amount  
30 pursuant to subdivision (2), subsection (a) of this section  
31 shall not be available with respect to expenditures attributable  
32 to a production for which the film production company  
33 receives a tax credit pursuant to the federal new markets tax  
34 credit program.

35 (f) The film production tax credit shall not be claimed  
36 with respect to direct production expenditures or  
37 postproduction expenditures for which the film production  
38 company has claimed an exemption from taxation pursuant  
39 to article fifteen or article fifteen-a of this chapter.



**§11-13X-6. Requirements for credit.**

1 (a) In order for any eligible film production company to  
2 claim a tax credit under this article, it shall comply with the  
3 following requirements:

4 (1) If the commercial film or audiovisual project is a  
5 motion picture, agree that the phrase “filmed in West  
6 Virginia” shall appear in the closing credits of the motion  
7 picture;

8 (2) Apply to the Tax Commissioner on forms and in the  
9 manner the commissioner may prescribe; and

10 (3) Submit to the West Virginia development office  
11 information required by the development office to  
12 demonstrate conformity with the requirements of this section  
13 and shall agree in writing:

14 (1) To pay all obligations the film production company  
15 has incurred in West Virginia;

16 (2) To publish, at completion of principal photography,  
17 a notice at least once a week for three consecutive weeks in  
18 local newspapers in regions where filming has taken place to  
19 notify the public of the need to file creditor claims against the  
20 film production company by a specified date;

21 (3) That outstanding obligations are not waived should a  
22 creditor fail to file by the specified date; and

23 (4) To delay filing of a claim for the film production tax  
24 credit until the development office delivers written  
25 notification to the Tax Commissioner that the film production  
26 company has fulfilled all requirements for the credit.

27       The development office shall determine the eligibility of  
28 the company and shall report this information to the Tax  
29 Commissioner in a manner and at times the development  
30 office and the Tax Commissioner shall agree upon.

31       (b) The application to the Tax Commissioner shall  
32 include a certificate of the amount of direct production  
33 expenditures or post production expenditures made in West  
34 Virginia for which the film production company is seeking  
35 the film production tax credit.

36       (c) If the eligible film production company is claiming a  
37 film tax credit under subsection (b), section five of this  
38 article, the eligible film production company shall also  
39 provide to the Tax Commissioner a list of the names and  
40 social security numbers of all West Virginia residents  
41 employed full time or hired as apprentices in the state on the  
42 commercial film or audiovisual project for which the film tax  
43 credit is being sought.

44       (d) If the requirements of this section have been complied  
45 with, the Tax Commissioner shall approve the film tax credit  
46 and issue a document granting the appropriate tax credit.

#### **§11-13X-7. Application of credit to state taxes.**

1       (a) *Credit allowed.* -- Beginning in the taxable year that  
2 the expenditures permitted under section four of this article  
3 are incurred, eligible film production companies and owners  
4 of eligible film production companies, as described in  
5 subsection (d) of this section, are permitted a credit, as  
6 described in section five of this article, against the taxes  
7 imposed by articles twenty-three, twenty-four and twenty-one  
8 of this chapter, in that order, as specified in this section.

9       (b) *Business franchise tax.* -- The credit is first applied to  
10 reduce the taxes imposed by article twenty-three of this  
11 chapter for the taxable year, determined after application of  
12 the credits against tax provided in section seventeen of said  
13 article, but before application of any other allowable credits  
14 against tax.

15       (c) *Corporation net income taxes.* -- After application of  
16 subsection (b) of this section, any unused credit is next  
17 applied to reduce the taxes imposed by article twenty-four of  
18 this chapter for the taxable year, determined before  
19 application of allowable credits against tax.

20       (d) *Personal income tax.* -- (1) If the eligible taxpayer is  
21 an electing small business corporation (as defined in section  
22 1361 of the United States Internal Revenue Code of 1986, as  
23 amended), a partnership, a limited liability company that is  
24 treated as a partnership for federal income tax purposes or a  
25 sole proprietorship, then any unused credit, after application  
26 of subsections (b) and (c) of this subsection, is allowed as a  
27 credit against the taxes imposed by article twenty-one of this  
28 chapter on the income from business or other activity subject  
29 to tax under article twenty-three of this chapter or on income  
30 of a sole proprietor attributable to the business.

31       (2) Electing small business corporations, limited liability  
32 companies, partnerships and other unincorporated  
33 organizations shall allocate the credit allowed by this article  
34 among its members in the same manner as profits and losses  
35 are allocated for the taxable year.

**§11-13X-8. Uses of credit; unused credit; carry forward; carry back prohibited; expiration and forfeiture of credit.**

1 (a) No credit is allowed under this section against any  
2 employer withholding taxes imposed by article twenty-one of  
3 this chapter.

4 (b) If the tax credit allowed under this article in any  
5 taxable year exceeds the sum of the taxes enumerated in  
6 subsections (b),(c) or (d), section seven of this article for that  
7 taxable year, the excess may be applied against those taxes,  
8 in the order and manner stated in section seven of this article,  
9 for succeeding taxable years until the earlier of the following:

10 (1) The full amount of the excess tax credit is used; or

11 (2) The expiration of the second taxable year after the  
12 taxable year in which the expenditures occurred. The tax  
13 credit remaining thereafter is forfeited.

14 (c) No carryback to a prior taxable year is allowed for the  
15 amount of any unused portion of any annual credit allowance.

**§11-13X-9. Legislative rules.**

1 The Tax Commissioner shall propose for promulgation  
2 rules pursuant to the provisions of article three, chapter  
3 twenty-nine-a of this code, as may be necessary to carry out  
4 the purposes of this article.

**§11-13X-10. Burden of proof.**

1 The burden of proof is on the film production company  
2 claiming the credit allowed by this article to establish by  
3 clear and convincing evidence that the film production  
4 company is entitled to the amount of credit asserted for the  
5 taxable year.

**§11-13X-11. Tax credit review and accountability.**

1 (a) Beginning on the first day of the third taxable year  
2 after the passage of this article and every two years  
3 thereafter, the Tax ommissioner shall submit to the Governor,  
4 the President of the Senate and the Speaker of the House of  
5 Delegates a tax credit review and accountability report  
6 evaluating the cost effectiveness of the film industry  
7 investment act during the most recent two-year period for  
8 which information is available. The criteria to be evaluated  
9 shall include, but not limited to, for each year of the two-year  
10 period:

11 (1) The number of eligible production companies  
12 claiming the credit;

13 (2) The number of new jobs, if any, created by the tax  
14 credit; and

15 (3) The cost of the credit.

16 (b) Eligible production companies claiming the credit  
17 shall provide any information the Tax Commissioner may  
18 require to prepare the report: *Provided*, That the information  
19 provided is subject to the confidentiality and disclosure  
20 provisions of section five-d and five-s, article ten of this  
21 chapter.

**§11-13X-12. Economic Development.**

1 The development office, in consultation and coordination  
2 with the appropriate public and private entities, shall  
3 promote, foster, encourage and monitor the development of  
4 the film industry in this state as part of its comprehensive  
5 economic development strategy for West Virginia and report  
6 recommendations for expanding the industry in the state to  
7 the Governor and the Joint Committee on Government and  
8 Finance annually on or before the first day of December.

**§11-13X-13. Effective date.**

- 1 The credit allowed by this article shall be allowed upon
- 2 eligible expenditures occurring after the thirty-first day of
- 3 December, two thousand seven.

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**CHAPTER 117**

**(Com. Sub. for S.B. 386 - By Senators Boley and Love)**

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[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2007.]

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AN ACT to amend and reenact §29B-1-4 of the Code of West Virginia, 1931, as amended, relating to exempting from public disclosure specific engineering plans of existing public utility plants and equipment; and exempting customer proprietary network information from public disclosure of information, consistent with federal law.

*Be it enacted by the Legislature of West Virginia:*

That §29B-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. PUBLIC RECORDS.****§29B-1-4. Exemptions.**

- 1 (a) The following categories of information are
- 2 specifically exempt from disclosure under the provisions of
- 3 this article:

4 (1) Trade secrets, as used in this section, which may  
5 include, but are not limited to, any formula, plan pattern,  
6 process, tool, mechanism, compound, procedure, production  
7 data or compilation of information which is not patented  
8 which is known only to certain individuals within a  
9 commercial concern who are using it to fabricate, produce or  
10 compound an article or trade or a service or to locate  
11 minerals or other substances, having commercial value, and  
12 which gives its users an opportunity to obtain business  
13 advantage over competitors;

14 (2) Information of a personal nature such as that kept in  
15 a personal, medical or similar file, if the public disclosure  
16 thereof would constitute an unreasonable invasion of privacy,  
17 unless the public interest by clear and convincing evidence  
18 requires disclosure in the particular instance: *Provided*, That  
19 nothing in this article shall be construed as precluding an  
20 individual from inspecting or copying his or her own  
21 personal, medical or similar file;

22 (3) Test questions, scoring keys and other examination  
23 data used to administer a licensing examination, examination  
24 for employment or academic examination;

25 (4) Records of law-enforcement agencies that deal with  
26 the detection and investigation of crime and the internal  
27 records and notations of such law-enforcement agencies  
28 which are maintained for internal use in matters relating to  
29 law enforcement;

30 (5) Information specifically exempted from disclosure by  
31 statute;

32 (6) Records, archives, documents or manuscripts  
33 describing the location of undeveloped historic, prehistoric,  
34 archaeological, paleontological and battlefield sites or

35 constituting gifts to any public body upon which the donor  
36 has attached restrictions on usage or the handling of which  
37 could irreparably damage such record, archive, document or  
38 manuscript;

39 (7) Information contained in or related to examination,  
40 operating or condition reports prepared by, or on behalf of, or  
41 for the use of any agency responsible for the regulation or  
42 supervision of financial institutions, except those reports  
43 which are by law required to be published in newspapers;

44 (8) Internal memoranda or letters received or prepared by  
45 any public body;

46 (9) Records assembled, prepared or maintained to  
47 prevent, mitigate or respond to terrorist acts or the threat of  
48 terrorist acts, the public disclosure of which threaten the  
49 public safety or the public health;

50 (10) Those portions of records containing specific or  
51 unique vulnerability assessments or specific or unique  
52 response plans, data, databases and inventories of goods or  
53 materials collected or assembled to respond to terrorist acts;  
54 and communication codes or deployment plans of law  
55 enforcement or emergency response personnel;

56 (11) Specific intelligence information and specific  
57 investigative records dealing with terrorist acts or the threat  
58 of a terrorist act shared by and between federal and  
59 international law-enforcement agencies, state and local law  
60 enforcement and other agencies within the Department of  
61 Military Affairs and Public Safety;

62 (12) National security records classified under federal  
63 executive order and not subject to public disclosure under  
64 federal law that are shared by federal agencies and other  
65 records related to national security briefings to assist state



66 and local government with domestic preparedness for acts of  
67 terrorism;

68 (13) Computing, telecommunications and network  
69 security records, passwords, security codes or programs used  
70 to respond to or plan against acts of terrorism which may be  
71 the subject of a terrorist act;

72 (14) Security or disaster recovery plans, risk assessments,  
73 tests or the results of those tests;

74 (15) Architectural or infrastructure designs, maps or other  
75 records that show the location or layout of the facilities where  
76 computing, telecommunications or network infrastructure  
77 used to plan against or respond to terrorism are located or  
78 planned to be located;

79 (16) Codes for facility security systems; or codes for  
80 secure applications for such facilities referred to in  
81 subdivision (15) of this subsection;

82 (17) Specific engineering plans and descriptions of  
83 existing public utility plants and equipment; and

84 (18) Customer proprietary network information of other  
85 telecommunications carriers, equipment manufacturers and  
86 individual customers, consistent with 47 U. S. C. §222.

87 (b) As used in subdivisions (9) through (16), inclusive,  
88 subsection (a) of this section, the term "terrorist act" means  
89 an act that is likely to result in serious bodily injury or  
90 damage to property or the environment and is intended to:

91 (1) Intimidate or coerce the civilian population;

92 (2) Influence the policy of a branch or level of  
93 government by intimidation or coercion;

94 (3) Affect the conduct of a branch or level of government  
95 by intimidation or coercion; or

96 (4) Retaliate against a branch or level of government for  
97 a policy or conduct of the government.

98 (c) Nothing in the provisions of subdivisions (9) through  
99 (16), inclusive, subsection (a) of this section should be  
100 construed to make subject to the provisions of this chapter  
101 any evidence of an immediate threat to public health or safety  
102 unrelated to a terrorist act or the threat thereof which comes  
103 to the attention of a public entity in the course of conducting  
104 a vulnerability assessment response or similar activity.

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## CHAPTER 118

**(Com. Sub. for S.B. 521 - By Senators Tomblin,  
Mr. President, Sprouse and Plymale)**

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[Passed March 9, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2007.]

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AN ACT to amend and reenact §20-14-8 of the Code of West Virginia, 1931, as amended, relating to civil and criminal penalties within the Hatfield-McCoy Regional Recreation Area; establishing civil penalty fund; and providing for criminal penalties for certain offenses.

*Be it enacted by the Legislature of West Virginia:*

That §20-14-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**§20-14-8. Violation of rules, criminal and civil penalties; fund established.**

1 (a) Any person who violates any of the rules promulgated  
2 by the board pursuant to this article is guilty of a  
3 misdemeanor and, upon conviction thereof, shall be fined not  
4 more than five hundred dollars for each offense.

5 (b) Any person who violates any of the rules promulgated  
6 by the board pursuant of this article relating to permits or  
7 failure to purchase a permit, safety violations or other civil  
8 violations is subject to a civil penalty of one hundred dollars.  
9 Authority rangers shall issue citations for civil violations.

10 (c) All civil penalties for civil violations received  
11 pursuant to this section shall be remitted to the authority for  
12 deposit, on or before the last day of each month, with the  
13 State Treasurer in the State Treasury to the credit of a special  
14 revenue fund to be known as the Hatfield-McCoy Recreation  
15 Area Fund, which is hereby created for the benefit of the  
16 Hatfield-McCoy Recreation Area. Amounts collected which  
17 are found, from time to time, to exceed the funds needed for  
18 the purposes set forth in this article may be transferred to  
19 other accounts or funds and designated for other purposes by  
20 appropriation of the Legislature.

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**CHAPTER 119**

**(Com. Sub. for H.B. 2717 - By Delegates Stalnaker,  
Amores, Craig and Spencer)**

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[Passed March 9, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2007.]

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AN ACT to amend and reenact §5-10A-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §5-10D-1 of said code; and to amend said code by adding thereto a new article, designated §16-5V-1, §16-5V-2, §16-5V-3, §16-5V-4, §16-5V-5, §16-5V-6, §16-5V-7, §16-5V-8, §16-5V-9, §16-5V-10, §16-5V-11, §16-5V-12, §16-5V-13, §16-5V-14, §16-5V-14a, §16-5V-15, §16-5V-16, §16-5V-17, §16-5V-18, §16-5V-19, §16-5V-20, §16-5V-21, §16-5V-22, §16-5V-23, §16-5V-24, §16-5V-25, §16-5V-26, §16-5V-27, §16-5V-28, §16-5V-29, §16-5V-30, §16-5V-31, §16-5V-32, §16-5V-33 and §16-5V-34, all relating to the Consolidated Public Retirement Board; providing that the board administer the Emergency Medical Services Retirement System; establishing the Emergency Medical Services Retirement System; setting forth definitions including application of honorable service condition to plan participants; providing effective dates and voting requirement; establishing federal qualification requirements; providing for liberal construction; providing that plan is not a substitute for social security; providing for and setting membership standards; setting forth required contributions from members and employers; creating fund and

providing for investments; providing for transfer from Public Employees Retirement System; setting time limits; setting forth notice requirements; providing for the commencement of benefits, federal law maximum benefit limitations, minimum required distributions and direct rollovers; providing for retirement credited through member's use of accrued annual or sick leave; providing for retirement benefits; setting forth annuity options; providing for refunds in certain circumstances; providing for deferred retirement; providing for forfeitures of benefits; providing awards and benefits for duty-related disability and for other causes; requiring physical examinations; establishing criteria for termination of disability; providing for prior disability; providing awards and benefits to surviving spouse and additional death benefits and scholarships for dependent children; providing for burial benefit; prohibiting double death benefits; establishing exemption from taxation, garnishment and other process; authorizing certain deductions; establishing the effect of qualified domestic relation orders; prohibiting fraud; establishing criminal penalties; requiring repayment in certain circumstances; providing for treatment of prior military service; establishing effective date of the system; providing voluntary employer participation; establishing starting date for benefits; limiting county liability; and providing for no forfeiture of benefits if system terminates.

*Be it enacted by the Legislature of West Virginia:*

That §5-10A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §5-10D-1 of said code be amended and reenacted; and that said code be amended by adding thereto a new article, designated §16-5V-1, §16-5V-2, §16-5V-3, §16-5V-4, §16-5V-5, §16-5V-6, §16-5V-7, §16-5V-8, §16-5V-9,

§16-5V-10, §16-5V-11, §16-5V-12, §16-5V-13, §16-5V-14, §16-5V-14a, §16-5V-15, §16-5V-16, §16-5V-17, §16-5V-18, §16-5V-19, §16-5V-20, §16-5V-21, §16-5V-22, §16-5V-23, §16-5V-24, §16-5V-25, §16-5V-26, §16-5V-27, §16-5V-28, §16-5V-29, §16-5V-30, §16-5V-31, §16-5V-32, §16-5V-33 and §16-5V-34, 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.**

**16. Public Health.**

**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**

**10A. Disqualification for Public Retirement Plan Benefits.**

**10D. Consolidated Public Retirement Board.**

**ARTICLE 10A. DISQUALIFICATION FOR PUBLIC RETIREMENT PLAN BENEFITS.**

**§5-10A-2. Definitions.**

1 As used in this article:

2 (a) “Retirement plan” or “plan” means the Public  
3 Employees Retirement Act, pursuant to article ten, chapter  
4 five of this code; each municipal employees retirement plan,  
5 pursuant to article twenty-two, chapter eight of this code;  
6 each policemen’s and firemen’s pension and relief fund,

7 pursuant to article twenty-two, chapter eight of this code; the  
8 West Virginia State Police Death, Disability and Retirement  
9 Fund, pursuant to article two, chapter fifteen of this code; the  
10 West Virginia State Police Retirement System, pursuant to  
11 article two-a, chapter fifteen of this code; the State Teachers  
12 Retirement System, pursuant to article seven-a, chapter  
13 eighteen of this code; the Teachers' Defined Contribution  
14 Retirement System, pursuant to article seven-b, chapter  
15 eighteen of this code; the Deputy Sheriff Retirement System,  
16 pursuant to article fourteen-d, chapter seven of this code;  
17 supplemental and additional retirement plans, pursuant to  
18 section four-a, article twenty-three, chapter eighteen of this  
19 code; the Judges' Retirement System, pursuant to article nine,  
20 chapter fifty-one of this code; the Emergency Medical  
21 Services Retirement System established in article five-v,  
22 chapter sixteen of this code; and any other plan established  
23 pursuant to this code for the payment of pension, annuity,  
24 disability or other benefits to any person by reason of his or  
25 her service as an officer or employee of this state or of any  
26 political subdivision, agency or instrumentality thereof,  
27 whenever the plan is supported in whole or in part by public  
28 funds.

29 (b) "Beneficiary" means any person eligible for or  
30 receiving benefits on account of the service for a public  
31 employer by a participant in a retirement plan.

32 (c) "Benefits" means pension, annuity, disability or any  
33 other benefits granted pursuant to a retirement plan.

34 (d) "Conviction" means a conviction on or after the  
35 effective date of this article in any federal or state court of

36 record whether following a plea of guilty, not guilty or nolo  
37 contendere, and whether or not the person convicted was  
38 serving as an officer or employee of a public employer at the  
39 time of the conviction.

40 (e) “Less than honorable service” means:

41 (1) Impeachment and conviction of a participant under  
42 the provisions of section nine, article four of the Constitution  
43 of West Virginia, except for a misdemeanor;

44 (2) Conviction of a participant of a felony for conduct  
45 related to his or her office or employment which he or she  
46 committed while holding the office or during the  
47 employment; or

48 (3) Conduct of a participant which constitutes all of the  
49 elements of a crime described in either of the foregoing  
50 subdivisions (1) or (2) but for which the participant was not  
51 convicted because:

52 (i) Having been indicted or having been charged in an  
53 information for the crime, he or she made a plea bargaining  
54 agreement pursuant to which he or she pleaded guilty to or  
55 nolo contendere to a lesser crime: *Provided*, That the lesser  
56 crime is a felony containing all the elements described in  
57 subdivisions (1) or (2) of this subsection; or

58 (ii) Having been indicted or having been charged in an  
59 information for the crime, he or she was granted immunity  
60 from prosecution for the crime.



61 (f) “Participant” means any person eligible for or  
62 receiving any benefit under a retirement plan on account of  
63 his or her service as an officer or employee for a public  
64 employer.

65 (g) “Public employer” means the State of West Virginia  
66 and any political subdivision, agency, or instrumentality  
67 thereof for which there is established a retirement plan.

68 (h) “Supervisory board” or “Board” means the  
69 Consolidated Public Retirement Board; the board of trustees  
70 of any municipal retirement fund; the board of trustees of any  
71 policemen’s or firemen’s retirement plan; the governing  
72 board of any supplemental retirement plan instituted pursuant  
73 to authority granted by section four-a, article twenty-three,  
74 chapter eighteen of this code, and any other board,  
75 commission or public body having the duty to supervise and  
76 operate any retirement plan.

**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  
2 continued to administer all public retirement plans in this  
3 state. It shall administer the Public Employees Retirement  
4 System established in article ten of this chapter; the Teachers  
5 Retirement System established in article seven-a, chapter  
6 eighteen of this code; the Teachers Defined Contribution  
7 Retirement System created by article seven-b of said chapter;  
8 the West Virginia State Police Death, Disability and

9 Retirement Fund created by article two, chapter fifteen of this  
10 code; the West Virginia State Police Retirement System  
11 created by article two-a of said chapter; the Deputy Sheriff  
12 Death, Disability and Retirement Fund created by article  
13 fourteen-d, chapter seven of this code; the Judges'  
14 Retirement System created under article nine, chapter fifty-  
15 one of this code; and the Emergency Medical Services  
16 Retirement System established in article five-v, chapter  
17 sixteen of this code.

18 (b) The membership of the Consolidated Public  
19 Retirement Board consists of:

20 (1) The Governor or his or her designee;

21 (2) The State Treasurer or his or her designee;

22 (3) The State Auditor or his or her designee;

23 (4) The Secretary of the Department of Administration or  
24 his or her designee;

25 (5) Four residents of the state, who are not members,  
26 retirants or beneficiaries of any of the public retirement  
27 systems, to be appointed by the Governor, with the advice  
28 and consent of the Senate; and

29 (6) A member, annuitant or retirant of the Public  
30 Employees Retirement System who is or was a state  
31 employee; a member, annuitant or retirant of the Public  
32 Employees Retirement System who is not or was not a state  
33 employee; a member, annuitant or retirant of the Teachers

34 Retirement System; a member, annuitant or retirant of the  
35 West Virginia State Police Death, Disability and Retirement  
36 Fund; a member, annuitant or retirant of the Deputy Sheriff  
37 Death, Disability and Retirement Fund; a member, annuitant  
38 or retirant of the Teachers Defined Contribution Retirement  
39 System; and a member, annuitant or retirant of the  
40 Emergency Medical Services Retirement System, all to be  
41 appointed by the Governor, with the advice and consent of  
42 the Senate.

43 (c) The appointed members of the board shall serve five-  
44 year terms. A member appointed pursuant to subdivision (6),  
45 subsection (b) of this section ceases to be a member of the  
46 board if he or she ceases to be a member of the represented  
47 system. If a vacancy occurs in the appointed membership,  
48 the Governor, within sixty days, shall fill the vacancy by  
49 appointment for the unexpired term. No more than five  
50 appointees may be of the same political party.

51 (d) The Consolidated Public Retirement Board has all the  
52 powers, duties, responsibilities and liabilities of the Public  
53 Employees Retirement System established pursuant to article  
54 ten of this chapter; the Teachers Retirement System  
55 established pursuant to article seven-a, chapter eighteen of  
56 this code; the Teachers Defined Contribution System  
57 established pursuant to article seven-b of said chapter; the  
58 West Virginia State Police Death, Disability and Retirement  
59 Fund created pursuant to article two, chapter fifteen of this  
60 code; the West Virginia State Police Retirement System  
61 created by article two-a of said chapter; the Deputy Sheriff  
62 Death, Disability and Retirement Fund created pursuant to  
63 article fourteen-d, chapter seven of this code; the Judges'

64 Retirement System created pursuant to article nine, chapter  
65 fifty-one of this code; and the Emergency Medical Services  
66 Retirement System established in article five-v, chapter  
67 sixteen of this code and their appropriate governing boards.

68 (e) The Consolidated Public Retirement Board may  
69 propose rules for legislative approval, in accordance with  
70 article three, chapter twenty-nine-a of this code, necessary to  
71 effectuate its powers, duties and responsibilities: *Provided,*  
72 That the board may adopt any or all of the rules, previously  
73 promulgated, of a retirement system which it administers.

74 (f)(1) The Consolidated Public Retirement Board shall  
75 continue to transfer all funds received for the benefit of the  
76 retirement systems within the consolidated pension plan as  
77 defined in section three-c, article six-b, chapter forty-four of  
78 this code, including, but not limited to, all employer and  
79 employee contributions, to the West Virginia Investment  
80 Management Board: *Provided,* That the employer and  
81 employee contributions of the Teachers Defined Contribution  
82 System, established in section three, article seven-b, chapter  
83 eighteen of this code, and voluntary deferred compensation  
84 funds invested by the West Virginia Consolidated Public  
85 Retirement Board pursuant to section five, article ten-b of  
86 this chapter may not be transferred to the West Virginia  
87 Investment Management Board.

88 (2) The board may recover from a participating employer  
89 that fails to pay any amount due a retirement system in a  
90 timely manner the contribution due and an additional amount  
91 not to exceed interest or other earnings lost as a result of the  
92 untimely payment, or a reasonable minimum fee, whichever  
93 is greater, as provided by legislative rule promulgated

94 pursuant to the provisions of article three, chapter twenty-  
95 nine-a of this code. Any amounts recovered shall be  
96 administered in the same manner in which the amount due is  
97 required to be administered.

98 (g) Notwithstanding any provision of this code or any  
99 legislative rule to the contrary, all assets of the public  
100 retirement plans set forth in subsection (a) of this section  
101 shall be held in trust. The Consolidated Public Retirement  
102 Board is a trustee for all public retirement plans, except with  
103 regard to the investment of funds: *Provided*, That the  
104 Consolidated Public Retirement Board is a trustee with  
105 regard to the investments of the Teachers' Defined  
106 Contribution System and any other assets of the public  
107 retirement plans administered by the Consolidated Public  
108 Retirement Board as set forth in subsection (a) of this section  
109 for which no trustee has been expressly designated in this  
110 code.

111 (h) The board may employ the West Virginia Investment  
112 Management Board to provide investment management  
113 consulting services for the investment of funds in the  
114 Teachers' Defined Contribution System.

## CHAPTER 16. PUBLIC HEALTH.

### ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

- §16-5V-1. Title.
- §16-5V-2. Definitions.
- §16-5V-3. Meaning of terms.
- §16-5V-4. Creation and administration of West Virginia Emergency Medical Services Retirement System; specification of actuarial assumptions.
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- §16-5V-6. Members.
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- §16-5V-31. How a county commission or political subdivision becomes a participating public employer.
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- §16-5V-33. Limitation of county liability.
- §16-5V-34. Benefits not forfeited if system terminates.

**§16-5V-1. Title.**

1 This article is known and may be cited as the “West  
2 Virginia Emergency Medical Services Retirement System  
3 Act.”

**§16-5V-2. Definitions.**

1 As used in this article, unless a federal law or regulation  
2 or the context clearly requires a different meaning:

3 (a) “Accrued benefit” means on behalf of any member  
4 two and six-tenths percent per year of the member’s final  
5 average salary for the first twenty years of credited service.  
6 Additionally, two percent per year for twenty-one through  
7 twenty-five years and one percent per year for twenty-six  
8 through thirty years will be credited with a maximum benefit  
9 of sixty-seven percent. A member’s accrued benefit may not  
10 exceed the limits of Section 415 of the Internal Revenue  
11 Code and is subject to the provisions of section twelve of this  
12 article.

13 (1) The board may upon the recommendation of the  
14 board actuary increase the employees’ contribution rate to ten  
15 and five-tenths percent should the funding of the plan not  
16 reach seventy percent funded by the first day of July, two  
17 thousand twelve. The board shall decrease the contribution  
18 rate to eight and one-half percent once the plan funding  
19 reaches the seventy percent support objective as of any later  
20 actuarial valuation date.

21 (2) Upon reaching the seventy-five percent actuarial  
22 funded level, as of an actuarial valuation date, the board shall  
23 increase the two and six-tenths percent to two and three-  
24 quarter percent for the first twenty years of credited service.

25 The maximum benefit will also be increased from sixty-seven  
26 percent to seventy percent.

27 (b) “Accumulated contributions” means the sum of all  
28 retirement contributions deducted from the compensation of  
29 a member, or paid on his or her behalf as a result of covered  
30 employment, together with regular interest on the deducted  
31 amounts.

32 (c) “Active military duty” means full-time active duty  
33 with any branch of the armed forces of the United States,  
34 including service with the national guard or reserve military  
35 forces when the member has been called to active full-time  
36 duty and has received no compensation during the period of  
37 that duty from any board or employer other than the armed  
38 forces.

39 (d) “Actuarial equivalent” means a benefit of equal value  
40 computed upon the basis of the mortality table and interest  
41 rates as set and adopted by the board in accordance with the  
42 provisions of this article.

43 (e) “Annual compensation” means the wages paid to the  
44 member during covered employment within the meaning of  
45 Section 3401(a) of the Internal Revenue Code, but  
46 determined without regard to any rules that limit the  
47 remuneration included in wages based upon the nature or  
48 location of employment or services performed during the  
49 plan year plus amounts excluded under Section 414(h)(2) of  
50 the Internal Revenue Code and less reimbursements or other  
51 expense allowances, cash or noncash fringe benefits or both,  
52 deferred compensation and welfare benefits. Annual  
53 compensation for determining benefits during any  
54 determination period may not exceed one hundred thousand



55 dollars as adjusted for cost-of-living in accordance with  
56 Section 401(a)(17)(B) of the Internal Revenue Code.

57 (f) “Annual leave service” means accrued annual leave.

58 (g) “Annuity starting date” means the first day of the  
59 month for which an annuity is payable after submission of a  
60 retirement application. For purposes of this subsection, if  
61 retirement income payments commence after the normal  
62 retirement age, “retirement” means the first day of the month  
63 following or coincident with the latter of the last day the  
64 member worked in covered employment or the member’s  
65 normal retirement age and after completing proper written  
66 application for such “retirement” on an application supplied  
67 by the board.

68 (h) “Board” means the Consolidated Public Retirement  
69 Board.

70 (i) “County commission or political subdivision” has the  
71 meaning ascribed to it in this code.

72 (j) “Covered employment” means either: (1)  
73 Employment as an emergency medical technician, emergency  
74 medical technician/ paramedic or emergency medical  
75 services/registered nurse and the active performance of the  
76 duties required of emergency medical services officers; or (2)  
77 the period of time during which active duties are not  
78 performed but disability benefits are received under this  
79 article; or (3) concurrent employment by an emergency  
80 medical services officer in a job or jobs in addition to his or  
81 her employment as an emergency medical services officer  
82 where such secondary employment requires the emergency  
83 medical services officer to be a member of another retirement  
84 system which is administered by the Consolidated Public

85 Retirement Board pursuant to this code: *Provided*, That the  
86 emergency medical services officer contributes to the fund  
87 created in this article the amount specified as the member's  
88 contribution in section eight of this article.

89 (k) "Credited service," means the sum of a member's  
90 years of service, active military duty, disability service and  
91 accrued annual and sick leave service.

92 (l) "Emergency medical services officer" means an  
93 individual employed by the State, county or other political  
94 subdivision as a medical professional that is qualified to  
95 respond to medical emergencies, aids the sick and injured and  
96 arranges or transports to medical facilities, as defined by the  
97 West Virginia Office of Emergency Medical Services. This  
98 definition is construed to include employed ambulance  
99 providers and other services such as law enforcement, rescue,  
100 or fire department personnel who primarily perform these  
101 functions and are not provided any other credited service  
102 benefits or retirement plans. These persons may hold the  
103 rank of emergency medical technician/basic, emergency  
104 medical technician/paramedic, emergency medical  
105 services/registered nurse, or others as defined by the West  
106 Virginia Office of Emergency Medical Services and the  
107 Consolidated Public Retirement Board.

108 (m) "Dependent child" means either:

109 (1) An unmarried person under age eighteen who is:

110 (A) A natural child of the member;

111 (B) A legally adopted child of the member;

112 (C) A child who at the time of the member's death was  
113 living with the member while the member was an adopting  
114 parent during any period of probation; or

115 (D) A stepchild of the member residing in the member's  
116 household at the time of the member's death; or

117 (2) Any unmarried child under age twenty-three:

118 (A) Who is enrolled as a full-time student in an  
119 accredited college or university;

120 (B) Who was claimed as a dependent by the member for  
121 federal income tax purposes at the time of member's death;  
122 and

123 (C) Whose relationship with the member is described in  
124 paragraph (A), (B) or (C), subdivision (1) of this subsection.

125 (n) "Dependent parent" means the father or mother of the  
126 member who was claimed as a dependent by the member for  
127 federal income tax purposes at the time of the member's  
128 death.

129 (o) "Disability service" means service received by a  
130 member, expressed in whole years, fractions thereof or both,  
131 equal to one half of the whole years, fractions thereof, or  
132 both, during which time a member receives disability benefits  
133 under this article.

134 (p) "Effective date" means the first day of January, two  
135 thousand eight.

136 (q) "Final average salary" means the average of the  
137 highest annual compensation received for covered

138 employment by the member during any five consecutive plan  
139 years within the member's last ten years of service while  
140 employed, prior to any disability payment. If the member did  
141 not have annual compensation for the five full plan years  
142 preceding the member's attainment of normal retirement age  
143 and during that period the member received disability  
144 benefits under this article then "final average salary" means  
145 the average of the monthly salary determined paid to the  
146 member during that period as determined under section  
147 twenty-two of this article multiplied by twelve. "Final  
148 average salary" does not include any lump sum payment for  
149 unused, accrued leave of any kind or character.

150 (r) "Fund" means the West Virginia Emergency Medical  
151 Services Retirement Fund created by this article.

152 (s) "Hour of service" means:

153 (1) Each hour for which a member is paid or entitled to  
154 payment for covered employment during which time active  
155 duties are performed. These hours shall be credited to the  
156 member for the plan year in which the duties are performed;  
157 and

158 (2) Each hour for which a member is paid or entitled to  
159 payment for covered employment during a plan year but  
160 where no duties are performed due to vacation, holiday,  
161 illness, incapacity including disability, layoff, jury duty,  
162 military duty, leave of absence or any combination thereof,  
163 and without regard to whether the employment relationship  
164 has terminated. Hours under this subdivision shall be  
165 calculated and credited pursuant to West Virginia Division of  
166 Labor rules. A member will not be credited with any hours  
167 of service for any period of time he or she is receiving  
168 benefits under section nineteen or twenty of this article; and

169 (3) Each hour for which back pay is either awarded or  
170 agreed to be paid by the employing county commission or  
171 political subdivision, irrespective of mitigation of damages.  
172 The same hours of service shall not be credited both under  
173 subdivision (1) or (2) of this subsection and under this  
174 subdivision. Hours under this paragraph shall be credited to  
175 the member for the plan year or years to which the award or  
176 agreement pertains, rather than the plan year in which the  
177 award, agreement or payment is made.

178 (t) "Member" means a person first hired as an emergency  
179 medical services officer by an employer which is a  
180 participating public employer of the Public Employees  
181 Retirement System or the Emergency Medical Services  
182 Retirement System after the effective date of this article, as  
183 defined in subsection (p) of this section, or an emergency  
184 medical services officer of an employer which is a  
185 participating public employer of the Public Employees  
186 Retirement System first hired prior to the effective date and  
187 who elects to become a member pursuant to this article. A  
188 member shall remain a member until the benefits to which he  
189 or she is entitled under this article are paid or forfeited.

190 (u) "Monthly salary" means the W-2 reportable  
191 compensation received by a member during the month.

192 (v) "Normal form" means a monthly annuity which is one  
193 twelfth of the amount of the member's accrued benefit which  
194 is payable for the member's life. If the member dies before  
195 the sum of the payments he or she receives equals his or her  
196 accumulated contributions on the annuity starting date, the  
197 named beneficiary shall receive in one lump sum the  
198 difference between the accumulated contributions at the  
199 annuity starting date and the total of the retirement income  
200 payments made to the member.

201 (w) “Normal retirement age” means the first to occur of  
202 the following:

203 (1) Attainment of age fifty years and the completion of  
204 twenty or more years of regular contributory service,  
205 excluding active military duty, disability service and accrued  
206 annual and sick leave service.

207 (2) While still in covered employment, attainment of at  
208 least age fifty years and when the sum of current age plus  
209 regular contributory years of service equals or exceeds  
210 seventy years;

211 (3) While still in covered employment, attainment of at  
212 least age sixty years and completion of ten years of regular  
213 contributory service; or

214 (4) Attainment of age sixty-two years and completion of  
215 five or more years of regular contributory service.

216 (x) “Public Employees Retirement System” means the  
217 West Virginia Public Employee’s Retirement System created  
218 by West Virginia Code.

219 (y) “Plan” means the West Virginia Emergency Medical  
220 Services Retirement System established by this article.

221 (z) “Plan year” means the twelve-month period  
222 commencing on the first day of January of any designated  
223 year and ending the following thirty-first day of December.

224 (aa) “Regular interest” means the rate or rates of interest  
225 per annum, compounded annually, as the board adopts in  
226 accordance with the provisions of this article.

227 (bb) "Retirement income payments" means the monthly  
228 retirement income payments payable under the plan.

229 (cc) "Spouse" means the person to whom the member is  
230 legally married on the annuity starting date.

231 (dd) "Surviving spouse" means the person to whom the  
232 member was legally married at the time of the member's  
233 death and who survived the member.

234 (ee) "Totally disabled" means a member's inability to  
235 engage in substantial gainful activity by reason of any  
236 medically determined physical or mental impairment that can  
237 be expected to result in death or that has lasted or can be  
238 expected to last for a continuous period of not less than  
239 twelve months.

240 For purposes of this subsection:

241 (1) A member is totally disabled only if his or her  
242 physical or mental impairment or impairments is so severe  
243 that he or she is not only unable to perform his or her  
244 previous work as an emergency medical services officer but  
245 also cannot, considering his or her age, education and work  
246 experience, engage in any other kind of substantial gainful  
247 employment which exists in the State regardless of whether:  
248 (A) The work exists in the immediate area in which the  
249 member lives; (B) a specific job vacancy exists; or (C) the  
250 member would be hired if he or she applied for work. For  
251 purposes of this article, substantial gainful employment is the  
252 same definition as used by the United States Social Security  
253 Administration.

254 (2) "Physical or mental impairment" is an impairment  
255 that results from an anatomical, physiological or

256 psychological abnormality that is demonstrated by medically  
 257 accepted clinical and laboratory diagnostic techniques. The  
 258 board may require submission of a member's annual tax  
 259 return for purposes of monitoring the earnings limitation

260 (ff) "Year of service" means a member shall, except in  
 261 his or her first and last years of covered employment, be  
 262 credited with years of service credit based upon the hours of  
 263 service performed as covered employment and credited to the  
 264 member during the plan year based upon the following  
 265 schedule:

266	Hours of Service	Year of Service Credited
267	Less than 500 .....	0
268	500 to 999 .....	1/3
269	1,000 to 1,499 .....	2/3
270	1,500 or more .....	1

271 During a member's first and last years of covered  
 272 employment, the member shall be credited with one twelfth  
 273 of a year of service for each month during the plan year in  
 274 which the member is credited with an hour of service. A  
 275 member is not entitled to credit for years of service for any  
 276 time period during which he or she received disability  
 277 payments under section nineteen or twenty of this article.  
 278 Except as specifically excluded, years of service include  
 279 covered employment prior to the effective date.

280 Years of service which are credited to a member prior to  
 281 his or her receipt of accumulated contributions upon  
 282 termination of employment pursuant to section eighteen of  
 283 this article or section thirty, article ten, chapter five of this  
 284 code, shall be disregarded for all purposes under this plan  
 285 unless the member repays the accumulated contributions with



286 interest pursuant to section eighteen of this article or had  
287 prior to the effective date made the repayment pursuant to  
288 section eighteen, article ten, chapter five of this code.

289 (gg) "Required beginning date" means the first day of  
290 April of the calendar year following the later of: (1) The  
291 calendar year in which the member attains age seventy and  
292 one-half; or (2) the calendar year in which he or she retires or  
293 otherwise separates from covered employment; or (3) for  
294 members who are covered under the Public Employees  
295 Retirement System, their service shall be recognized upon  
296 transfer of asset from the Public Employees Retirement  
297 System according to the provisions of section nine of this  
298 article. Prior service for members not covered under the  
299 Public Employees Retirement System shall be recognized  
300 only upon repayment of amounts covered under the  
301 provisions of section six of this article.

#### **§16-5V-3. Meaning of terms.**

1 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, unless a different meaning is clearly required. Any  
4 reference in this article to the Internal Revenue Code means  
5 the Internal Revenue Code of 1986, as amended.

#### **§16-5V-4. Creation and administration of West Virginia Emergency Medical Services Retirement System; specification of actuarial assumptions.**

1 There is hereby created the West Virginia Emergency  
2 Medical Services Retirement System. The purpose of this  
3 system is to provide for the orderly retirement of emergency  
4 medical services officers who become superannuated because  
5 of age or permanent disability and to provide certain survivor

6 death benefits. The retirement system shall come into effect  
7 the first day of January, two thousand eight: *Provided*, That  
8 at least seventy percent of all eligible emergency medical  
9 services officers and at least eighty-five percent of the  
10 eligible emergency medical services officers who are  
11 currently active members of the Public Employees  
12 Retirement System elect to participate in this plan by the  
13 thirty-first day of December, two thousand seven. If this  
14 level of participation is not reached, then all of the provisions  
15 of this article are void and of no force and effect. All business  
16 of the system shall be transacted in the name of the West  
17 Virginia Emergency Medical Services Retirement System.  
18 The board shall specify and adopt all actuarial assumptions  
19 for the plan at its first meeting of every calendar year or as  
20 soon thereafter as may be practicable, which assumptions  
21 shall become part of the plan.

**§16-5V-5. Article to be liberally construed; supplements  
federal social security; federal qualification  
requirements.**

1 (a) The provisions of this article shall be liberally  
2 construed so as to provide a general retirement system for  
3 emergency medical services officers eligible to retire under  
4 the provisions of this plan. Nothing in this article may be  
5 construed to permit a county to substitute this plan for federal  
6 social security now in force in West Virginia.

7 (b) The board shall administer the plan in accordance  
8 with its terms and may construe the terms and determine all  
9 questions arising in connection with the administration,  
10 interpretation and application of the plan. The board may sue  
11 and be sued, contract and be contracted with and conduct all  
12 the business of the system in the name of the plan. The board  
13 may employ those persons it considers necessary or desirable

14 to administer the plan. The board shall administer the plan  
15 for the exclusive benefit of the members and their  
16 beneficiaries subject to the specific provisions of the plan.

17 (c) The plan is intended to meet the federal qualification  
18 requirements of Section 401(a) and related sections of the  
19 Internal Revenue Code as applicable to governmental plans.  
20 Notwithstanding any other provision of state law, the board  
21 shall administer the plan to fulfill this intent for the exclusive  
22 benefit of the members and their beneficiaries. Any  
23 provision of this article referencing or relating to these  
24 federal qualification requirements is effective as of the date  
25 required by federal law. The board may propose rules for  
26 promulgation and amend or repeal conflicting rules in  
27 accordance with the authority granted to the board pursuant  
28 to section one, article ten-d of chapter five of this code to  
29 assure compliance with the requirements of this section.

#### **§16-5V-6. Members.**

1 (a) Any emergency medical services officer first  
2 employed by a county or political subdivision in covered  
3 employment after the effective date of this article shall be a  
4 member of this retirement system and plan and upon such  
5 membership does not qualify for membership in any other  
6 retirement system administered by the board, so long as he or  
7 she remains employed in covered employment.

8 (b) Any emergency medical services officer employed in  
9 covered employment by an employer which is currently a  
10 participating public employer of the Public Employees  
11 Retirement System shall notify in writing both the county  
12 commission in the county or officials in their political  
13 subdivision in which he or she is employed and the board of  
14 his or her desire to become a member of the plan by the

15 thirty-first day of December, two thousand seven. Any  
16 emergency medical services officer who elects to become a  
17 member of the plan ceases to be a member or have any credit  
18 for covered employment in any other retirement system  
19 administered by the board and shall continue to be ineligible  
20 for membership in any other retirement system administered  
21 by the board so long as the emergency medical services  
22 officer remains employed in covered employment by an  
23 employer which is currently a participating public employer  
24 of the Public Employees Retirement System in this plan:  
25 *Provided*, That any emergency medical services officer who  
26 does not affirmatively elect to become a member of the plan  
27 continues to be eligible for any other retirement system as is  
28 from time to time offered to other county employees but is  
29 ineligible for this plan regardless of any subsequent  
30 termination of employment and rehire.

31 (c) Any emergency medical services officer who was  
32 employed as an emergency medical services officer prior to  
33 the effective date, but was not employed on the effective date  
34 of this article, shall become a member upon rehire as an  
35 emergency medical services officer. For purposes of this  
36 section, the member's years of service and credited service  
37 prior to the effective date shall not be counted for any  
38 purposes under this plan unless: (1) The emergency medical  
39 services officer has not received the return of his or her  
40 accumulated contributions in the Public Employees  
41 Retirement Fund System pursuant to section thirty, article  
42 ten, chapter five of this code; or (2) the accumulated  
43 contributions returned to the member from the Public  
44 Employees Retirement System have been repaid pursuant to  
45 this article. If the conditions of subdivision (1) or (2) of this  
46 subsection are met, all years of the emergency medical  
47 services officer's covered employment shall be counted as  
48 years of service for the purposes of this article. Each

49 transferring emergency medical services officer shall be  
50 given credited service for the purposes of this article for all  
51 covered employment transferred from the Public Employees  
52 Retirement System regardless of whether the credited service  
53 (as that term is defined in section two, article ten, chapter five  
54 of this code) was earned as an emergency medical services  
55 officer. All service in the Public Employees Retirement  
56 System accrued by a transferring emergency medical services  
57 officer shall be transferred into the plan created by this article  
58 and the transferring emergency medical services officer shall  
59 be given the same credit for the purposes of this article for all  
60 covered service which is transferred from the Public  
61 Employees Retirement System as that transferring emergency  
62 medical services officer would have received from the Public  
63 Employees Retirement System if the transfer had not  
64 occurred. In connection with each emergency medical  
65 services officer receiving credit for prior employment  
66 provided in this subsection, a transfer from Public Employees  
67 Retirement System to this plan shall be made pursuant to the  
68 procedures described in this article.

69 (d) Once made, the election made under this section is  
70 irrevocable. All emergency medical services officers  
71 employed by an employer which is a participating public  
72 employer of the Public Employees Retirement System after  
73 the effective date and emergency medical services officers  
74 electing to become members as described in this section shall  
75 be members as a condition of employment and shall make the  
76 contributions required by this article.

77 (e) Notwithstanding any other provisions of this article,  
78 any individual who is a leased employee is not eligible to  
79 participate in the plan. For purposes of this plan, a “leased  
80 employee” means any individual who performs services as an  
81 independent contractor or pursuant to an agreement with an  
82 employee leasing organization or similar organization. If a

83 question arises regarding the status of an individual as a  
84 leased employee, the board has final power to decide the  
85 question.

**§16-5V-7. Creation of Fund; investments.**

1 (a) There is hereby created the “West Virginia  
2 Emergency Medical Services Retirement Fund” for the  
3 benefit of the members of the retirement system created  
4 pursuant to this article and the dependents of any deceased or  
5 retired member of the system.

6 (b) All moneys paid into and accumulated in the fund,  
7 except amounts designated by the board for payment of  
8 benefits as provided in this article, shall be held in trust and  
9 invested in the consolidated pensions fund administered by  
10 the West Virginia Investment Management Board as  
11 provided by law.

**§16-5V-8. Members’ contributions; employer contributions.**

1 There shall be deducted from the monthly salary of each  
2 member and paid into the fund an amount equal to eight and  
3 one-half percent of his or her monthly salary. Any active  
4 member who has concurrent employment in an additional job  
5 or jobs and such additional employment requires the  
6 emergency medical services officer to be a member of  
7 another retirement system which is administered by the  
8 Consolidated Public Retirement Board pursuant to article  
9 ten-d, chapter five of this code shall contribute to the fund the  
10 sum of eight and one-half percent of his or her monthly  
11 salary earned as an emergency medical services officer as  
12 well as the sum of eight and one-half percent of his or her  
13 monthly salary earned from any additional employment  
14 which additional employment requires the emergency

15 medical services officer to be a member of another retirement  
16 system which is administered by the Consolidated Public  
17 Retirement Board pursuant to article ten-d, chapter five of  
18 this code. An additional ten and one-half percent of the  
19 monthly salary of each member shall be paid to the fund by  
20 the concurrent employer by which the member is employed.  
21 All required deposits shall be remitted to the board no later  
22 than fifteen days following the end of the calendar month for  
23 which the deposits are required. If the board upon the  
24 recommendation of the board actuary finds that the benefits  
25 provided by this article can be actuarially funded with a  
26 lesser contribution, then the board shall reduce the required  
27 member and employer contributions proportionally.

**§16-5V-9. Transfer from Public Employees Retirement System.**

1 (a) The Consolidated Retirement Board shall, within one  
2 hundred eighty days of the effective date of the transfer of an  
3 emergency medical services officer from the Public  
4 Employees Retirement System to the plan, transfer assets  
5 from the Public Employees Retirement System Trust Fund  
6 into the West Virginia Emergency Medical Services Trust  
7 Fund.

8 (b) The amount of assets to be transferred for each  
9 transferring emergency medical services officer shall be  
10 computed as of the first day of January, two thousand eight,  
11 using the first day of July, two thousand seven, actuarial  
12 valuation of the Public Employees Retirement System, and  
13 updated with seven and one-half percent annual interest to  
14 the date of the actual asset transfer. The market value of the  
15 assets of the transferring emergency medical services officer  
16 in the Public Employees Retirement System shall be  
17 determined as of the end of the month preceding the actual

18 transfer. To determine the computation of the asset share to  
19 be transferred the board shall:

20 (1) Compute the market value of the Public Employees  
21 Retirement System assets as of the first day of July, two  
22 thousand seven actuarial valuation date, under the actuarial  
23 valuation approved by the board;

24 (2) Compute the actuarial accrued liabilities for all Public  
25 Employees Retirement System retirees, beneficiaries,  
26 disabled retirees and terminated inactive members as of the  
27 first day of July, two thousand seven actuarial valuation date;

28 (3) Compute the market value of active member assets in  
29 the Public Employees Retirement System as of the first day  
30 of July, two thousand seven by reducing the assets value  
31 under subdivision one by the inactive liabilities under  
32 subdivision (2) of this subsection;

33 (4) Compute the actuarial accrued liability for all active  
34 Public Employees Retirement System members as of the first  
35 day of July, two thousand seven actuarial valuation date  
36 approved by the board;

37 (5) Compute the funded percentage of the active  
38 members' actuarial accrued liabilities under the Public  
39 Employees Retirement System as of the first day of July, two  
40 thousand seven by dividing the active members' market value  
41 of assets under subdivision three by the active members'  
42 actuarial accrued liabilities under subdivision (4) of this  
43 subsection;

44 (6) Compute the actuarial accrued liabilities under the  
45 Public Employees Retirement System as of the first day of  
46 July, two thousand seven for active emergency medical



47 services officers transferring to the Emergency Medical  
48 Services Retirement System;

49 (7) Determine the assets to be transferred from the Public  
50 Employees Retirement System to the Emergency Medical  
51 Services Retirement System by multiplying the active  
52 members' funded percentage determined under subdivision  
53 (5) of this subsection by the transferring active members'  
54 actuarial accrued liabilities under the Public Employees  
55 Retirement System under subdivision (6) of this subsection  
56 and adjusting such asset transfer amount by interest at seven  
57 and five-tenths percent for the period from the calculation  
58 date of the first day of July, two thousand seven through the  
59 first day of the month in which the asset transfer is to be  
60 completed.

61 (c) Once an Emergency Medical Services Officer has  
62 elected to transfer from the Public Employees Retirement  
63 System, transfer of that amount as calculated in accordance  
64 with the provisions of subsection (b) of this section by the  
65 Public Employees Retirement System shall operate as a  
66 complete bar to any further liability to the Public Employees  
67 Retirement System, and constitutes an agreement whereby  
68 the transferring emergency medical services officer forever  
69 indemnifies and holds harmless the Public Employees  
70 Retirement System from providing him or her any form of  
71 retirement benefit whatsoever until such time as that  
72 emergency medical services officer obtains other  
73 employment which would make him or her eligible to reenter  
74 the Public Employees Retirement System with no credit  
75 whatsoever for the amounts transferred to the Emergency  
76 Medical Services Retirement System.

77 (d) Eligible emergency medical services officers that  
78 transfer from plans other than the Public Employees  
79 Retirement System shall have service recognized under this  
80 plan through the purchase of the service through payment by  
81 the member of sixty percent of the actuarial accrued liabilities  
82 which would result if the service is fully credited under the  
83 Emergency Medical Services Retirement System. The  
84 purchase of the service must begin within twelve months of  
85 the effective date and full payment must be made within sixty  
86 months by either equal monthly or a one time lump sum  
87 payment.

**§16-5V-10. Notice requirements; test case.**

1 (a) Each county commission or political subdivision shall  
2 prepare a written notice to be delivered to each emergency  
3 medical services officer employed prior to the first day of  
4 July, two thousand seven. This notice shall clearly and  
5 accurately explain the benefits, financial implications and  
6 consequences to an emergency medical services officer of  
7 electing to participate in the retirement plan created in this  
8 article, including the consequences and financial implications  
9 in regard to the benefits under the Public Employees  
10 Insurance Plan as set forth in this code for those emergency  
11 medical services officers employed by a county commission  
12 or political subdivision which participates in that insurance  
13 plan. This notice shall be distributed to each emergency  
14 medical services officer and the county or political  
15 subdivision shall obtain a signed receipt from each  
16 emergency medical services officer acknowledging that the  
17 emergency medical services officer was provided a copy of  
18 the notice required in this subsection. If an emergency  
19 medical services officer makes the election provided in  
20 section six of this article, he or she shall be considered to

21 have made a voluntary, informed decision in regard to the  
22 election to participate in the retirement system created in this  
23 article.

24 (b) Nothing in this section may be construed to alter,  
25 affect or change any of the rights and benefits of any  
26 emergency medical services officer who has insurance  
27 coverage under article sixteen, chapter five of this code as a  
28 result of being a spouse or dependant of a participant who is  
29 the primary insured under article sixteen, chapter five of this  
30 code.

31 (c) Nothing contained in this section may be construed to  
32 affect or pertain to any life insurance coverage under article  
33 sixteen, chapter five of this code.

**§16-5V-11. Retirement; commencement of benefits.**

1 (a) Except for duty disability retirement, no member may  
2 retire before the first day of January, two thousand eleven.

3 (b) A member may retire and commence to receive  
4 retirement income payments on the first day of the calendar  
5 month following written application for his or her voluntary  
6 petition for retirement coincident with or next following the  
7 later of the date the member ceases employment, or the date  
8 the member attains early or normal retirement age, in an  
9 amount as provided under this article: *Provided*, That  
10 retirement income payments under this plan are subject to the  
11 provisions of this article. Upon receipt of the petition, the  
12 board shall promptly provide the member with an explanation  
13 of his or her optional forms of retirement benefits and upon  
14 receipt of properly executed forms from the member, the  
15 board shall process member's request for and commence  
16 payments as soon as administratively feasible.

**§16-5V-12. Federal law maximum benefit limitations.**

1 Notwithstanding any other provision of this article or  
2 state law, the board shall administer the retirement system in  
3 compliance with the limitations of Section 415 of the Internal  
4 Revenue Code and regulations under that section to the  
5 extent applicable to governmental plans so that no annuity or  
6 other benefit provided under this system shall exceed those  
7 limitations. The extent to which any annuity or other benefit  
8 payable under this retirement system shall be reduced as  
9 compared with the extent to which an annuity, contributions  
10 or other benefits under any other defined benefit plans or  
11 defined contribution plans required to be taken into  
12 consideration under Section 415 of the Internal Revenue  
13 Code shall be reduced, shall be determined by the board in a  
14 manner that maximizes the aggregate benefits payable to the  
15 member. If the reduction is under this retirement system, the  
16 board shall advise affected members of any additional  
17 limitation on the annuities required by this section.

**§16-5V-13. Federal law minimum required distributions.**

1 The requirements of this section apply to any distribution  
2 of a member's or beneficiary's interest and take precedence  
3 over any inconsistent provisions of this plan. This section  
4 applies to plan years beginning after the thirty-first day of  
5 December, one thousand nine hundred eighty-six.  
6 Notwithstanding anything in the plan to the contrary, the  
7 payment of benefits under this article shall be determined and  
8 made in accordance with Section 401(a)(9) of the Internal  
9 Revenue Code and its regulations. For this purpose, the  
10 following provisions apply:

11 (a) The payment of benefits under the plan to any  
12 member shall be distributed to him or her not later than the

13 required beginning date, or be distributed to him or her  
14 commencing not later than the required beginning date, in  
15 accordance with regulations prescribed under Section  
16 401(a)(9) of the Internal Revenue Code, over the life of the  
17 member or over the lives of the member and his or her  
18 beneficiary or over a period not extending beyond the life  
19 expectancy of the member and his or her beneficiary.

20 (b) If a member dies after distribution to him or her has  
21 commenced pursuant to this section but before his or her  
22 entire interest in the plan has been distributed, then the  
23 remaining portion of that interest shall be distributed at least  
24 as rapidly as under the method of distribution being used at  
25 the date of his or her death.

26 (c) If a member dies before distribution to him or her has  
27 commenced, then his or her entire interest in the plan shall be  
28 distributed by the thirty-first day of December of the calendar  
29 year containing the fifth anniversary of the member's death,  
30 except as follows:

31 (1) If a member's interest is payable to a beneficiary,  
32 distributions may be made over the life of that beneficiary or  
33 over a period certain not greater than the life expectancy of  
34 the beneficiary, commencing on or before the thirty-first of  
35 December of the calendar year immediately following the  
36 calendar year in which the member died; or

37 (2) If the member's beneficiary is the surviving spouse,  
38 the date distributions are required to begin shall be no later  
39 than the later of:

40 (A) The thirty-first day of December of the calendar year  
41 in which the member would have attained age seventy and  
42 one-half; or

43 (B) The earlier of: (i) The thirty-first day of December of  
44 the calendar year following the calendar year in which the  
45 member died; or (ii) the thirty-first day of December of the  
46 calendar year following the calendar year in which the spouse  
47 died.

**§16-5V-14. Direct rollovers.**

1 (a) This section applies to distributions made on or after  
2 the first day of January, one thousand nine hundred ninety-  
3 three. Notwithstanding any provision of this article to the  
4 contrary that would otherwise limit a distributee's election  
5 under this plan, a distributee may elect, at the time and in the  
6 manner prescribed by the board, to have any portion of an  
7 eligible rollover distribution that is equal to at least five  
8 hundred dollars paid directly to an eligible retirement plan  
9 specified by the distributee in a direct rollover. For purposes  
10 of this section, the following definitions apply:

11 (1) "Eligible rollover distribution" means any distribution  
12 of all or any portion of the balance to the credit of the  
13 distributee, except that an eligible rollover distribution does  
14 not include any of the following: (A) Any distribution that is  
15 one of a series of substantially equal periodic payments not  
16 less frequently than annually made for the life or life  
17 expectancy of the distributee or the joint lives or the joint life  
18 expectancies of the distributee and the distributee's  
19 designated beneficiary, or for a specified period of ten years  
20 or more; (B) any distribution to the extent such distribution  
21 is required under Section 401(a)(9) of the Internal Revenue  
22 Code; (C) the portion of any distribution that is not  
23 includable in gross income determined without regard to the  
24 exclusion for net unrealized appreciation with respect to  
25 employer securities; (D) any hardship distribution described  
26 in Section 401(k) (2) (B) (i) (iv) of the Internal Revenue

27 Code; and (E) any other distribution or distributions  
28 reasonably expected to total less than two hundred dollars  
29 during a year.

30 (2) “Eligible retirement plan” means an individual  
31 retirement account described in Section 408(a) of the Internal  
32 Revenue Code, an individual retirement annuity described in  
33 Section 408(b) of the Internal Revenue Code, an annuity plan  
34 described in Section 403(a) of the Internal Revenue Code or  
35 a qualified plan described in Section 401(a) of the Internal  
36 Revenue Code that accepts the distributee’s eligible rollover  
37 distribution: *Provided*, That in the case of an eligible  
38 rollover distribution to the surviving spouse, an eligible  
39 retirement plan is an individual retirement account or  
40 individual retirement annuity.

41 (3) “Distributee” means an employee or former  
42 employee. In addition, the employee’s or former employee’s  
43 surviving spouse and the employee’s or former employee’s  
44 spouse or former spouse who is the alternate payee under a  
45 qualified domestic relations order, as defined in Section  
46 414(p) of the Internal Revenue Code with respect to  
47 governmental plans, are distributees with regard to the  
48 interest of the spouse or former spouse.

49 (4) “Direct rollover” means a payment by the plan to the  
50 eligible retirement plan.

**§16-5V-14a. Rollovers and transfers to purchase service credit  
or repay withdrawn contributions.**

1 (a) This section applies to rollovers and transfers as  
2 specified in this section made on or after the first day of  
3 January, two thousand eight. Notwithstanding any provision  
4 of this article to the contrary that would otherwise prohibit or

5 limit rollovers and plan transfers to this system, the plan shall  
6 accept the following rollovers and plan transfers on behalf of  
7 a member solely for the purpose of purchasing permissive  
8 service credit, in whole or in part, as otherwise provided in  
9 this article or for the repayment of withdrawn or refunded  
10 contributions, in whole and in part, with respect to a previous  
11 forfeiture of service credit as otherwise provided in this  
12 article: (A) One or more rollovers within the meaning of  
13 Section 408(d)(3) of the Internal Revenue Code from an  
14 individual retirement account described in Section 408(a) of  
15 the Internal Revenue Code or from an individual retirement  
16 annuity described in Section 408(b) of the Internal Revenue  
17 Code; (B) one or more rollovers described in Section 402(c)  
18 of the Internal Revenue Code from a retirement plan that is  
19 qualified under Section 401(a) of the Internal Revenue Code  
20 or from a plan described in Section 403(b) of the Internal  
21 Revenue Code; (C) one or more rollovers described in  
22 Section 457(e)(16) of the Internal Revenue Code from a  
23 governmental plan described in Section 457 of the Internal  
24 Revenue Code; or (D) direct trustee-to-trustee transfers or  
25 rollovers from a plan that is qualified under Section 401(a) of  
26 the Internal Revenue Code, from a plan described in Section  
27 403(b) of the Internal Revenue Code or from a governmental  
28 plan described in Section 457 of the Internal Revenue Code:  
29 *Provided*, That any rollovers or transfers pursuant to this  
30 section shall be accepted by the system only if made in cash  
31 or other asset permitted by the board and only in accordance  
32 with such policies, practices and procedures established by  
33 the board from time to time. For purposes of this section, the  
34 following definitions apply:

35 (1) "Permissive service credit" means service credit  
36 which is permitted to be purchased under the terms of the  
37 retirement system by voluntary contributions in an amount  
38 which does not exceed the amount necessary to fund the



39 benefit attributable to the period of service for which the  
40 service credit is being purchased, all as defined in Section  
41 415(n)(3)(A) of the Internal Revenue Code.

42 (2) “Repayment of withdrawn or refunded contributions”  
43 means the payment into the retirement system of the funds  
44 required pursuant to this article for the reinstatement of  
45 service credit previously forfeited on account of any refund  
46 or withdrawal of contributions permitted in this article, as set  
47 forth in Section 415(k)(3) of the Internal Revenue Code.

48 (b) Nothing in this section may be construed as  
49 permitting rollovers or transfers into this system or any other  
50 system administered by the retirement board other than as  
51 specified in this section and no rollover or transfer shall be  
52 accepted into the system in an amount greater than the  
53 amount required for the purchase of permissive service credit  
54 or repayment of withdrawn or refunded contributions.

55 (c) Nothing in this section shall be construed as  
56 permitting the purchase of service credit or repayment of  
57 withdrawn or refunded contributions except as otherwise  
58 permitted in this article.

**§16-5V-15. Retirement credited service through member’s use,  
as option, of accrued annual or sick leave days.**

1 Any member accruing annual leave or sick leave days  
2 may, after the effective date of this section, elect to use the  
3 days at the time of retirement to acquire additional credited  
4 service in this retirement system: *Provided*, That the accrued  
5 annual or sick leave may not be used to purchase health  
6 insurance under the Public Employees Insurance Agency  
7 until the member reaches the age of fifty-five. The days shall  
8 be applied on the basis of two workdays’ credit granted for  
9 each one day of accrued annual or sick leave days, with each

10 month of retirement service credit to equal twenty workdays  
11 and with any remainder of ten workdays or more to constitute  
12 a full month of additional credit and any remainder of less  
13 than ten workdays to be dropped and not used,  
14 notwithstanding any provisions of the code to the contrary.  
15 The credited service shall be allowed and not considered to  
16 controvert the requirement of no more than twelve months'  
17 credited service in any year's period.

**§16-5V-16. Retirement benefits.**

1 This section provides for the adjustment of a member's  
2 accrued benefit to reflect the difference in age, in years and  
3 months, between the member's annuity starting date and the  
4 date the member attains normal retirement age. This age  
5 adjustment shall be made based upon the normal form of  
6 benefit and shall be the actuarial equivalent of the accrued  
7 benefit at the member's normal retirement age. The member  
8 shall receive the age adjusted retirement income in the  
9 normal form or in an actuarial equivalent amount in an  
10 optional form as provided under this chapter. The first day  
11 of the calendar month following the month of birth shall be  
12 used in lieu of any birth date that does not fall on the first day  
13 of a calendar month.

14 (a) *Normal retirement.* -- A member whose annuity  
15 starting date is the date the member attains normal retirement  
16 age, is entitled to his or her accrued benefit without  
17 adjustment for age at commencement. To the extent that a  
18 member's starting date is later than his or her normal  
19 retirement age, the amount of that member's retirement  
20 income benefit shall be adjusted as provided in subsection (c)  
21 of this section.

22 (b) *Early retirement.* -- A member who ceases covered  
23 employment and has attained early retirement age while in  
24 covered employment may elect in writing by completion of

25 an application for retirement required by and submitted to the  
26 board to receive retirement income payments commencing on  
27 the first day of the month coincident with or following the  
28 date the member ceases covered employment and submits the  
29 proper application to the board. "Normal retirement age" for  
30 such a member is the first day of the calendar month  
31 coincident with or next following the month in which the  
32 member attains the age of fifty years. If the member's  
33 annuity starting date is prior to the date the member attains  
34 normal retirement age, his or her accrued benefit is reduced  
35 to the actuarial equivalent benefit amount based on the years  
36 and months by which his or her annuity starting date precedes  
37 the date he or she attains normal retirement age. If the  
38 member's annuity starting date is later than the date the  
39 member attains the age of fifty years, the accrued benefit is  
40 adjusted as provided in subsection (c) of this section.

41 (c) *Late retirement.* -- A member whose annuity starting  
42 date is later than the date the member attains normal  
43 retirement age shall receive retirement income payments in  
44 the normal form which is the benefit to which he or she is  
45 entitled according to his or her accrued benefit based on his  
46 or her final average salary and credited service at the time of  
47 his or her actual retirement and following the completion of  
48 an application for retirement as required by the board.

49 (d) Retirement benefits shall be paid monthly in an  
50 amount equal to one twelfth of the retirement income  
51 payments elected and at those times established by the board.  
52 Notwithstanding any other provision of the plan, a member  
53 who is married on the annuity starting date will receive his or  
54 her retirement income payments in the form of a sixty-six and  
55 two-thirds percent joint and survivor annuity with his or her  
56 spouse unless prior to the annuity starting date the spouse  
57 waives the form of benefit.

**§16-5V-17. Annuity options.**

1 Prior to the effective date of retirement, but not after that  
2 date, a member may elect to receive retirement income  
3 payments in the normal form, or the actuarial equivalent of  
4 the normal form from the following options:

5 (a) *Option A-- Contingent joint and survivor annuity.* --  
6 A life annuity payable during the joint lifetime of the member  
7 and his or her beneficiary who must be a natural person with  
8 an insurable interest in the member's life. Upon the death of  
9 the member, the benefit shall continue as a life annuity to the  
10 beneficiary in an amount equal to fifty percent, sixty-six and  
11 two-thirds percent, seventy-five percent or one hundred  
12 percent of the amount paid while both were living as selected  
13 by the member. If the beneficiary dies first, the monthly  
14 amount of benefits may not be reduced, but shall be paid at  
15 the amount that was in effect before the death of the  
16 beneficiary. If the retiring member is married, the spouse  
17 shall sign a waiver of benefit rights if the beneficiary is to be  
18 other than the spouse.

19 (b) *Option B -- Ten years certain and life annuity.* -- A  
20 life annuity payable during the member's lifetime but in any  
21 event for a minimum of ten years. If the member dies before  
22 the expiration of ten years, the remaining payments shall be  
23 made to a designated beneficiary, if any, or otherwise to the  
24 member's estate.

**§16-5V-18. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.**

1 (a) Any member who terminates covered employment  
2 and is not eligible to receive disability benefits under this  
3 article is, by written request filed with the board, entitled to

4 receive from the fund the member's accumulated  
5 contributions. Except as provided in subsection (b) of this  
6 section, upon withdrawal the member shall forfeit his or her  
7 accrued benefit and cease to be a member.

8 (b) Any member who withdraws accumulated  
9 contributions from either this plan or the Public Employees  
10 Retirement System and thereafter becomes reemployed in  
11 covered employment may not receive any credited service for  
12 the prior covered employment unless following his or her  
13 return to covered employment, the member re-deposits in the  
14 fund the amount of the accumulated contributions withdrawn  
15 from previous covered employment, together with interest on  
16 the accumulated contributions at the rate determined by the  
17 board from the date of withdrawal to the date of redeposit.  
18 Upon repayment he or she shall receive the same credit on  
19 account of his or her former covered employment as if no  
20 refund had been made. The repayment shall be made in a  
21 lump sum within sixty months of the emergency medical  
22 services officer's reemployment or if later, within sixty  
23 months of the effective date of this article.

24 (c) Every member who completes sixty months of  
25 covered employment is eligible, upon cessation of covered  
26 employment, to either withdraw his or her accumulated  
27 contributions in accordance with this section, or to choose not  
28 to withdraw his or her accumulated contribution and to  
29 receive retirement income payments upon attaining early or  
30 normal retirement age.

31 (d) Notwithstanding any other provision of this article,  
32 forfeitures under the plan may not be applied to increase the  
33 benefits any member would otherwise receive under the plan.

**§16-5V-19. Awards and benefits for disability -- Duty related.**

1 (a) Any member who after the effective date of this  
2 article and during covered employment: (1) Has been or  
3 becomes totally disabled by injury, illness or disease; and (2)  
4 the disability is a result of an occupational risk or hazard  
5 inherent in or peculiar to the services required of members;  
6 or (3) the disability was incurred while performing  
7 emergency medical services functions during either  
8 scheduled work hours or at any other time; and (4) in the  
9 opinion of two physicians after medical examination, one of  
10 whom shall be named by the board, the member is by reason  
11 of the disability unable to perform adequately the duties  
12 required of an emergency medical services officer, is entitled  
13 to receive and shall be paid from the fund in monthly  
14 installments during the lifetime of the member, or if sooner  
15 until the member attains normal retirement age or until the  
16 disability sooner terminates, the compensation under this  
17 section.

18 (b) If the member is totally disabled, the member shall  
19 receive ninety percent of his or her average monthly  
20 compensation for the twelve-month period preceding the  
21 member's disability, or the shorter period if the member has  
22 not worked twelve months.

23 (c) If the member remains totally disabled until attaining  
24 sixty-five years of age, the member shall then receive the  
25 retirement benefit provided in sections sixteen and seventeen  
26 of article.

**§16-5V-20. Same -- Due to other causes.**

1 (a) Any member who after the effective date of this  
2 article and during covered employment: (1) Has been or

3 becomes totally disabled from any cause other than those set  
4 forth in section nineteen of this article and not due to vicious  
5 habits, intemperance or willful misconduct on his or her part;  
6 and (2) in the opinion of two physicians after medical  
7 examination, one of whom shall be named by the board, he  
8 or she is by reason of the disability unable to perform  
9 adequately the duties required of an emergency medical  
10 services officer, is entitled to receive and shall be paid from  
11 the fund in monthly installments during the lifetime of the  
12 member, or if sooner until the member attains normal  
13 retirement age or until the disability sooner terminates the  
14 compensation set forth in, either subsection (b) or (c) of this  
15 section.

16 (b) If the member is totally disabled, he or she shall  
17 receive sixty-six and two-thirds percent of his or her average  
18 monthly compensation for the twelve-month period  
19 preceding the disability, or the shorter period, if the member  
20 has not worked twelve months.

21 (c) If the member remains totally disabled until attaining  
22 sixty years of age, then the member shall receive the  
23 retirement benefit provided in sections sixteen and seventeen  
24 of this article.

25 (d) The board shall propose legislative rules for  
26 promulgation in accordance with the provisions of article  
27 three, chapter twenty-nine-a of this code concerning member  
28 disability payments so as to ensure that the payments do not  
29 exceed one hundred percent of the average current salary for  
30 the position last held by the member.

**§16-5V-21. Same -- Physical examinations; termination of disability.**

1       The board may require any member who has applied for  
2 or is receiving disability benefits under this article to submit  
3 to a physical examination, mental examination or both, by a  
4 physician or physicians selected or approved by the board  
5 and may cause all costs incident to the examination and  
6 approved by the board to be paid from the fund. The costs  
7 may include hospital, laboratory, X-ray, medical and  
8 physicians' fees. A report of the findings of any physician  
9 shall be submitted in writing to the board for its  
10 consideration. If, from the report, independent information,  
11 or from the report and any hearing on the report, the board is  
12 of the opinion and finds that: (1) The member has become  
13 reemployed as an emergency medical services officer; (2) a  
14 physician who has examined the member has found that  
15 considering the opportunities for emergency medical services  
16 in West Virginia, the member could be so employed as an  
17 emergency medical services officer; or (3) other facts exist to  
18 demonstrate that the member is no longer totally disabled,  
19 then the disability benefits shall cease. Benefits shall cease  
20 once the member has been found to be no longer totally  
21 disabled: *Provided*, That the board shall require annual  
22 recertification.

**§16-5V-22. Prior disability.**

1       Any emergency medical services officer who became  
2 totally disabled as a result of illness or injury incurred in the  
3 line of duty prior to the effective date of this article may be  
4 a member of the plan at his or her election and is entitled to



5 disability, death and retirement benefits under this article in  
6 lieu of any other disability, death or retirement benefits  
7 provided solely in conjunction with a retirement system of  
8 this state or his or her county of employment: *Provided*, That  
9 the emergency medical services officer would have been  
10 eligible for disability under section nineteen of this article  
11 had that section been in effect at the time of the disability.  
12 The amounts of the benefits shall be determined as if the  
13 disability first commenced after the effective date of this  
14 article with monthly compensation equal to that average  
15 monthly compensation which the member was receiving in  
16 the plan year prior to the initial disability. For the purposes  
17 of this section, benefits paid pursuant to chapter twenty-three  
18 of this code are not death or retirement benefits provided  
19 solely in conjunction with a retirement system of this state or  
20 county of this state.

**§16-5V-23. Awards and benefits to surviving spouse – When member dies in performance of duty, etc.**

1 (a) The surviving spouse of any member who, after the  
2 effective date of this article while in covered employment,  
3 has died or dies 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  
6 member was or is engaged in the performance of his or her  
7 duties as an emergency medical services officer, or the  
8 survivor spouse of a member who dies from any cause while  
9 receiving benefits pursuant to section nineteen of this article,  
10 is entitled to receive and shall be paid from the fund benefits  
11 as determined in subsection (b) of this section: To the  
12 surviving spouse annually, in equal monthly installments  
13 during his or her lifetime an amount equal to the greater of:  
14 (1) Two thirds of the annual compensation received in the

15 preceding twelve-month period by the deceased member; or  
16 (2) if the member dies after his or her early or normal  
17 retirement age, the monthly amount which the spouse would  
18 have received had the member retired the day before his or  
19 her death, elected a one hundred percent joint and survivor  
20 annuity with the spouse as the joint annuitant, and then died.

21 (b) Benefits for a surviving spouse received under this  
22 section, section twenty-five and section twenty-six of this  
23 article are in lieu of receipt of any other benefits under this  
24 article for the spouse or any other person or under the  
25 provisions of any other state retirement system based upon  
26 the member's covered employment.

**§16-5V-24. Same -- When member dies from nonservice-connected causes.**

1 (a) If a member who has been a member for at least ten  
2 years, while in covered employment after the effective date  
3 of this article, has died or dies from any cause other than  
4 those specified in section twenty-three of this article and not  
5 due to vicious habits, intemperance or willful misconduct on  
6 his or her part, the fund shall pay annually in equal monthly  
7 installments to the surviving spouse during his or her  
8 lifetime, a sum equal to the greater of: (1) One half of the  
9 annual compensation received in the preceding twelve-month  
10 employment period by the deceased member; or (2) if the  
11 member dies after his or her early or normal retirement age,  
12 the monthly amount which the spouse would have received  
13 had the member retired the day before his or her death,  
14 elected a one hundred percent joint and survivor annuity with  
15 the spouse as the joint annuitant, and then died. Where the  
16 member is receiving disability benefits under this article at  
17 the time of his or her death, the most recent monthly  
18 compensation determined under section twenty-two of this

19 article shall be substituted for the annual compensation in  
20 subdivision (1) of this subsection.

21 (b) Benefits for a surviving spouse received under this  
22 section, or other sections of this article are in lieu of receipt  
23 of any other benefits under this article for the spouse or any  
24 other person or under the provisions of any other state  
25 retirement system based upon the member's covered  
26 employment.

**§16-5V-25. Additional death benefits and scholarships --  
Dependent children.**

1 (a) In addition to the spouse death benefits in this article,  
2 the surviving spouse is entitled to receive and there shall be  
3 paid to the spouse one hundred dollars monthly for each  
4 dependent child.

5 (b) If the surviving spouse dies or if there is no surviving  
6 spouse, the fund shall pay monthly to each dependent child  
7 a sum equal to one hundred percent of the spouse's  
8 entitlement under this article divided by the number of  
9 dependant children. If there is neither a surviving spouse nor  
10 a dependent child, the fund shall pay in equal monthly  
11 installments to the dependent parents of the deceased member  
12 during their joint lifetimes a sum equal to the amount which  
13 a surviving spouse, without children, would have received:  
14 *Provided*, That when there is only one dependent parent  
15 surviving, that parent is entitled to receive during his or her  
16 lifetime one-half the amount which both parents, if living,  
17 would have been entitled to receive.

18 (c) Any person qualifying as a dependent child under this,  
19 in addition to any other benefits due under this or other  
20 sections of this article, is entitled to receive a scholarship to  
21 be applied to the career development education of that

22 person. This sum, up to but not exceeding six thousand  
23 dollars per year, shall be paid from the fund to any university  
24 or college in this State or to any trade or vocational school or  
25 other entity in this State approved by the board, to offset the  
26 expenses of tuition, room and board, books, fees or other  
27 costs incurred in a course of study at any of these institutions  
28 so long as the recipient makes application to the board on an  
29 approved form and under such rules as the board may  
30 provide, and maintains scholastic eligibility as defined by the  
31 institution or the board. The board may propose legislative  
32 rules for promulgation in accordance with article three,  
33 chapter twenty-nine-a of this code which define age  
34 requirements, physical and mental requirements, scholastic  
35 eligibility, disbursement methods, institutional qualifications  
36 and other requirements as necessary and not inconsistent with  
37 this section.

**§16-5V-26. Burial benefit.**

1 Any member who dies as a result of any service related  
2 illness or injury after the effective date is entitled to a lump  
3 sum burial benefit of five thousand dollars. If the member is  
4 married, the burial benefit shall be paid to the member's  
5 spouse. If the member is not married, the burial benefit shall  
6 be paid to the member's estate for the purposes of paying  
7 burial expenses, settling the member's final affairs, or both.

**§16-5V-27. Double death benefits prohibited.**

1 A surviving spouse is not entitled to receive simultaneous  
2 death benefits under this article as a result of the death of two  
3 or more members to whom the spouse was married. Any  
4 spouse who becomes eligible for a subsequent death benefit  
5 under this article while receiving a death benefit under this  
6 article shall receive the higher benefit, but not both.

**§16-5V-28. Right to benefits not subject to execution, etc.; assignments prohibited; deductions for group insurance; setoffs for fraud; exception for certain domestic relations orders; benefits exempt from taxes.**

1       The right of a person to any benefit provided for in this  
2 article shall not be subject to execution, attachment,  
3 garnishment, the operation of bankruptcy or insolvency laws,  
4 or other process whatsoever, nor shall any assignment thereof  
5 be enforceable in any court except that the benefits or  
6 contributions under this system shall be subject to “qualified  
7 domestic relations orders” as that term is defined in Section  
8 414(p) of the Internal Revenue Code as applicable to  
9 governmental plans: *Provided*, That should a member be  
10 covered by a group insurance or prepayment plan participated  
11 in by a participating public employer, and should he or she be  
12 permitted to, and elect to, continue such coverage as a  
13 retirant, he or she may authorize the board of trustees to have  
14 deducted from his or her annuity the payments required of  
15 him or her to continue coverage under such group insurance  
16 or prepayment plan: *Provided, however*, That a participating  
17 public employer shall have the right of setoff for any claim  
18 arising from embezzlement by, or fraud of, a member,  
19 retirant or beneficiary. The assets of the retirement system are  
20 hereby exempt from state, county and municipal taxes.

**§16-5V-29. Fraud; penalties; and repayment.**

1       Any person who knowingly makes any false statement or  
2 who falsifies or permits to be falsified any record of the  
3 retirement system in any attempt to defraud that system is  
4 guilty of a misdemeanor and, upon conviction thereof, shall  
5 be punished by a fine not to exceed one thousand dollars, by  
6 confinement in jail not to exceed one year, or by both fine

7 and confinement. Any increased benefit received by any  
8 person as a result of the falsification or fraud shall be  
9 returned to the fund upon demand by the board.

**§16-5V-30. Credit toward retirement for member's prior  
military service; credit toward retirement when  
member has joined armed forces in time of  
armed conflict; qualified military service.**

1 (a) Any member who has previously served on active  
2 military duty is entitled to receive additional years of service  
3 for the purpose of determining his or her years of credited  
4 service for a period equal to the active military duty not to  
5 exceed five years, subject to the following:

6 (1) That he or she has been honorably discharged from  
7 the armed forces;

8 (2) That he or she substantiates by appropriate  
9 documentation or evidence his or her period of active  
10 military duty; and

11 (3) That he or she is receiving no benefits from any other  
12 retirement system for his or her active military duty.

13 (b) In addition, any member who while in covered  
14 employment was commissioned, enlisted or inducted into the  
15 armed forces of the United States or, being a member of the  
16 reserve officers' corps, was called to active duty in the armed  
17 forces between the first day of September, one thousand nine  
18 hundred forty, and the close of hostilities in World War II, or  
19 between the twenty-seventh day of June, one thousand nine  
20 hundred fifty, and the close of the armed conflict in Korea on  
21 the twenty-seventh day of July, one thousand nine hundred  
22 fifty-three, between the first day of August, one thousand  
23 nine hundred sixty-four, and the close of the armed conflict

24 in Vietnam, or during any other period of armed conflict by  
25 the United States whether sanctioned by a declaration of war  
26 by Congress or by executive or other order of the President,  
27 is entitled to and shall receive credited service, for a period  
28 equal to the full time that he or she has or, pursuant to that  
29 commission, enlistment, induction or call, shall have served  
30 with the armed forces subject to the following:

31 (1) That he or she has been honorably discharged from  
32 the armed forces;

33 (2) That within ninety days after honorable discharge  
34 from the armed forces, he or she presented himself or herself  
35 to the county commission or other political subdivision and  
36 offered to resume service as an emergency medical services  
37 officer; and

38 (3) That he or she has made no voluntary act, whether by  
39 reenlistment, waiver of discharge, acceptance of commission  
40 or otherwise, to extend or participate in extension of the  
41 period of service with the armed forces beyond the period of  
42 service for which he or she was originally commissioned,  
43 enlisted, inducted or called.

44 (c) The total amount of service allowable under  
45 subsections (a) and (b) of this section may not exceed five  
46 years.

47 (d) Any service credit allowed under this section may be  
48 credited one time only for each emergency medical services  
49 officer, regardless of any changes in job title or  
50 responsibilities.

51 (e) Notwithstanding any provision of this section to the  
52 contrary, contributions, benefits and service credit with  
53 respect to qualified military service shall be provided in  
54 accordance with Section 414(u) of the Internal Revenue  
55 Code. For purposes of this section, “qualified military  
56 service” has the same meaning as in Section 414(u) of the  
57 Internal Revenue Code. The Retirement Board is authorized  
58 to determine all questions and make all decisions relating to  
59 this section and, pursuant to the authority granted to the  
60 board in section one, article ten-d, chapter five of this code,  
61 may promulgate rules relating to contributions, benefits and  
62 service credit to comply with Section 414(u) of the Internal  
63 Revenue Code.

**§16-5V-31. How a county commission or political subdivision  
becomes a participating public employer.**

1 Any county commission or political subdivision  
2 employing emergency medical services officers may by a  
3 three-fifths vote of its governing body, or by a majority vote  
4 of its electors, elect to become a participating public  
5 employer and thereby include its emergency medical services  
6 officers in the membership of the plan. The clerk or secretary  
7 of each such county commission or political subdivision  
8 electing to become a participating public employer shall  
9 certify the determination of the county commission or  
10 political subdivision to the Consolidated Public Retirement  
11 Board within ten days from and after the vote of the  
12 governing body or the canvass of votes upon such action.  
13 Once a county commission or political subdivision elects to  
14 participate in the plan, the action is final and it may not, at a  
15 later date, elect to terminate its participation in the plan.



**§16-5V-32. Effective date; report to Joint Committee on Government and Finance; special starting date for benefits.**

1 (a) The provisions of this article become effective the  
2 first day of January, two thousand eight: *Provided*, That no  
3 payout of any benefits may be made to any person prior to  
4 the first day of January, two thousand eleven: *Provided*,  
5 *however*, That members who retired due to a disability may  
6 begin receiving the benefits at the rate and in the amount  
7 specified in this article, from this fund after the thirtieth day  
8 of June, two thousand eight: *Provided further*, That until the  
9 thirtieth day of June, two thousand eight those members who  
10 retired due to a disability may draw benefits from this fund at  
11 the rate and in the amount set forth in section twenty-five,  
12 article ten, chapter five of this code.

13 (b) During the eighteen-month period before the payout  
14 of benefits begins, the Joint Committee on Government and  
15 Finance shall cause an interim study or studies to be  
16 conducted on potential effects of the implementation of this  
17 retirement system, including, but not limited to, potential  
18 funding mechanisms to provide health insurance coverage for  
19 retirees in the fifty to fifty-five age group: *Provided*, That  
20 after the effective date of this provision, the Director of the  
21 Public Employees Insurance Agency shall propose a rule for  
22 legislative approval in accordance with the provisions of  
23 article three, chapter twenty-nine-a of this code governing the  
24 funding of health insurance coverage for retirees under the  
25 plan provided in this article who are in the fifty to fifty-five  
26 year age group, which rule may be filed as an emergency  
27 rule: *Provided, however*, That any rule filed as an emergency  
28 rule pursuant to this subsection shall be refiled at the earliest  
29 opportunity as a legislative rule for review and promulgation  
30 in accordance with the provisions of article three, chapter  
31 twenty-nine-a of this code.

**§16-5V-33. Limitation of county liability.**

1 No county which has timely met all of its obligations  
 2 under this article is liable for any payments or contributions  
 3 to the emergency medical services retirement plan which are  
 4 owed to the plan by another county or counties.

**§16-5V-34. Benefits not forfeited if system terminates.**

1 If the retirement system is terminated or contributions are  
 2 completely discontinued, the rights of all members to benefits  
 3 accrued or contributions made to the date of the termination  
 4 or discontinuance, to the extent then funded, are not forfeited.

**CHAPTER 120**

**(Com. Sub. for S.B. 447 - By Senators Caruth, Prezioso,  
 Stollings, Jenkins, McKenzie and Guills)**

\_\_\_\_\_  
 [Passed March 10, 2007; in effect ninety days from passage.]  
 [Approved by the Governor on April 4, 2007.]  
 \_\_\_\_\_

AN ACT to amend and reenact §16-1-4 of the Code of West Virginia, 1931, as amended, relating generally to the regulation of opioid treatment centers; and providing for specific minimum requirements established by the rules provided in said section.

*Be it enacted by the Legislature of West Virginia:*

That §16-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.****§16-1-4. Proposal of rules by the secretary.**

1       The secretary may propose rules in accordance with the  
2 provisions of article three, chapter twenty-nine-a of this code  
3 that are necessary and proper to effectuate the purposes of  
4 this chapter. The secretary may appoint or designate advisory  
5 councils of professionals in the areas of hospitals, nursing  
6 homes, barbers and beauticians, postmortem examinations,  
7 mental health and mental retardation centers and any other  
8 areas necessary to advise the secretary on rules.

9       The rules may include, but are not limited to, the  
10 regulation of:

11       (a) Land usage endangering the public health: *Provided,*  
12 That no rules may be promulgated or enforced restricting the  
13 subdivision or development of any parcel of land within  
14 which the individual tracts, lots or parcels exceed two acres  
15 each in total surface area and which individual tracts, lots or  
16 parcels have an average frontage of not less than one hundred  
17 fifty feet even though the total surface area of the tract, lot or  
18 parcel equals or exceeds two acres in total surface area, and  
19 which tracts are sold, leased or utilized only as single-family  
20 dwelling units. Notwithstanding the provisions of this  
21 subsection, nothing in this section may be construed to abate  
22 the authority of the department to: (1) Restrict the  
23 subdivision or development of a tract for any more intense or  
24 higher density occupancy than a single-family dwelling unit;  
25 (2) propose or enforce rules applicable to single-family  
26 dwelling units for single-family dwelling unit sanitary  
27 sewerage disposal systems; or (3) restrict any subdivision or  
28 development which might endanger the public health, the  
29 sanitary condition of streams or sources of water supply;

30 (b) The sanitary condition of all institutions and schools,  
31 whether public or private, public conveyances, dairies,  
32 slaughterhouses, workshops, factories, labor camps, all other  
33 places open to the general public and inviting public  
34 patronage or public assembly, or tendering to the public any  
35 item for human consumption, and places where trades or  
36 industries are conducted;

37 (c) Occupational and industrial health hazards, the  
38 sanitary conditions of streams, sources of water supply,  
39 sewerage facilities and plumbing systems and the  
40 qualifications of personnel connected with any of those  
41 facilities, without regard to whether the supplies or systems  
42 are publicly or privately owned; and the design of all water  
43 systems, plumbing systems, sewerage systems, sewage  
44 treatment plants, excreta disposal methods and swimming  
45 pools in this state, whether publicly or privately owned;

46 (d) Safe drinking water, including:

47 (1) The maximum contaminant levels to which all public  
48 water systems must conform in order to prevent adverse  
49 effects on the health of individuals, and, if appropriate,  
50 treatment techniques that reduce the contaminant or  
51 contaminants to a level which will not adversely affect the  
52 health of the consumer. The rule shall contain provisions to  
53 protect and prevent contamination of wellheads and well  
54 fields used by public water supplies so that contaminants do  
55 not reach a level that would adversely affect the health of the  
56 consumer;

57 (2) The minimum requirements for: Sampling and  
58 testing; system operation; public notification by a public  
59 water system on being granted a variance or exemption or  
60 upon failure to comply with specific requirements of this  
61 section and rules promulgated under this section;

62 recordkeeping; laboratory certification; as well as procedures  
63 and conditions for granting variances and exemptions to  
64 public water systems from state public water systems rules;  
65 and

66 (3) The requirements covering the production and  
67 distribution of bottled drinking water and may establish  
68 requirements governing the taste, odor, appearance and other  
69 consumer acceptability parameters of drinking water;

70 (e) Food and drug standards, including cleanliness,  
71 proscription of additives, proscription of sale and other  
72 requirements in accordance with article seven of this chapter  
73 as are necessary to protect the health of the citizens of this  
74 state;

75 (f) The training and examination requirements for  
76 emergency medical service attendants and emergency  
77 medical care technician-paramedics; the designation of the  
78 health care facilities, health care services and the industries  
79 and occupations in the state that must have emergency  
80 medical service attendants and emergency medical care  
81 technician-paramedics employed and the availability,  
82 communications and equipment requirements with respect to  
83 emergency medical service attendants and to emergency  
84 medical care technician-paramedics: *Provided*, That any  
85 regulation of emergency medical service attendants and  
86 emergency medical care technician-paramedics shall not  
87 exceed the provisions of article four-c of this chapter;

88 (g) The health and sanitary conditions of establishments  
89 commonly referred to as bed and breakfast inns. For purposes  
90 of this article, "bed and breakfast inn" means an  
91 establishment providing sleeping accommodations and, at a  
92 minimum, a breakfast for a fee: *Provided*, That the secretary  
93 may not require an owner of a bed and breakfast providing

94 sleeping accommodations of six or fewer rooms to install a  
95 restaurant-style or commercial food service facility:  
96 *Provided, however,* That the secretary may not require an  
97 owner of a bed and breakfast providing sleeping  
98 accommodations of more than six rooms to install a  
99 restaurant-type or commercial food service facility if the  
100 entire bed and breakfast inn or those rooms numbering above  
101 six are used on an aggregate of two weeks or less per year;

102 (h) Fees for services provided by the Bureau for Public  
103 Health including, but not limited to, laboratory service fees,  
104 environmental health service fees, health facility fees and  
105 permit fees;

106 (i) The collection of data on health status, the health  
107 system and the costs of health care;

108 (j) Opioid treatment programs duly licensed and  
109 operating under the requirements of chapter twenty-seven of  
110 this code. The Health Care Authority shall develop new  
111 certificate of need standards, pursuant to the provisions of  
112 article two-d of this chapter, that are specific for opioid  
113 treatment program facilities. No applications for a certificate  
114 of need for opioid treatment programs shall be approved by  
115 the Health Care Authority as of the effective date of the two  
116 thousand seven amendments to this subsection. The secretary  
117 shall promulgate revised emergency rules to govern licensed  
118 programs: *Provided,* That there shall be a moratorium on the  
119 licensure of new opioid treatment programs that do not have  
120 a certificate of need as of the effective date of the two  
121 thousand seven amendments to this subsection, which shall  
122 continue until the Legislature determines that there is a  
123 necessity for additional opioid treatment facilities in West  
124 Virginia. The secretary shall file revised emergency rules  
125 with the Secretary of State to regulate opioid programs in  
126 compliance with subsections (1) through (9), inclusive, of

127 this section: *Provided, however,* That any opioid treatment  
128 program facility that has received a certificate of need  
129 pursuant to article two-d, of this chapter by the Health Care  
130 Authority shall be permitted to proceed to license and operate  
131 the facility. All existing opioid treatment programs shall be  
132 in compliance within one hundred eighty days of the  
133 effective date of the revised emergency rules as required  
134 herein. The revised emergency rules shall provide at a  
135 minimum:

136 (1) That the initial assessment prior to admission for  
137 entry into the opioid treatment program shall include an  
138 initial drug test to determine whether an individual is either  
139 opioid addicted or presently receiving methadone for an  
140 opioid addiction from another opioid treatment program. The  
141 patient may be admitted to the program if there is a positive  
142 test for either opioids or methadone or there are objective  
143 symptoms of withdrawal, or both, and all other criteria set  
144 forth in the rule for admission into an opioid treatment  
145 program are met: *Provided,* That admission to the program  
146 may be allowed to the following groups with a high risk of  
147 relapse without the necessity of a positive test or the presence  
148 of objective symptoms: Pregnant women with a history of  
149 opioid abuse, prisoners or parolees recently released from  
150 correctional facilities, former clinic patients who have  
151 successfully completed treatment but who believe themselves  
152 to be at risk of imminent relapse and HIV patients with a  
153 history of intravenous drug use.

154 (2) That within seven days of the admission of a patient,  
155 the opioid treatment program shall complete an initial  
156 assessment and an initial plan of care. Subsequently, the  
157 opioid treatment program shall develop a treatment plan of  
158 care by the thirtieth day after admission and attach to the  
159 patient's chart no later than five days after such plan is

160 developed. The treatment plan is to reflect that detoxification  
161 is an option for treatment and supported by the program.

162 (3) That each opioid treatment program shall report and  
163 provide statistics to the Department of Health and Human  
164 Resources at least semiannually which includes the total  
165 number of patients; the number of patients who have been  
166 continually receiving methadone treatment in excess of two  
167 years, including the total number of months of treatment for  
168 each such patient; the state residency of each patient; the  
169 number of patients discharged from the program, including  
170 the total months in the treatment program prior to discharge  
171 and whether the discharge was for:

172 (A) Termination or disqualification;

173 (B) Completion of a program of detoxification;

174 (C) Voluntary withdrawal prior to completion of all  
175 requirements of detoxification as determined by the opioid  
176 treatment program; or

177 (D) An unexplained reason.

178 (4) That random drug testing of patients be conducted  
179 during the course of treatment. For purposes of these rules,  
180 random drug testing shall mean that each patient of an opioid  
181 treatment program facility has a statistically equal chance of  
182 being selected for testing at random and at unscheduled  
183 times. Any refusal to participate in a random drug test shall  
184 be considered a positive test: *Provided*, That nothing  
185 contained in this section or the legislative rules promulgated  
186 in conformity herewith will preclude any opioid treatment  
187 program from administering such additional drug tests as  
188 determined necessary by the opioid treatment program.



189 (5) That all random drug tests conducted by an opioid  
190 treatment program shall, at a minimum, test for the following:

191 (A) Opiates, including oxycodone at common levels of  
192 dosing;

193 (B) Methadone and any other medication used by the  
194 program as an intervention;

195 (C) Benzodiazepines including diazepam, lorazepam,  
196 clonazepam and alprazolam;

197 (D) Cocaine;

198 (E) Methamphetamine or amphetamine; and

199 (F) Other drugs determined by community standards,  
200 regional variation or clinical indication.

201 A positive test shall be a test that results in the presence  
202 of any drug or substance listed in this schedule and any other  
203 drug or substance prohibited by the opioid treatment  
204 program;

205 (6) That a positive drug test result after the first six  
206 months in an opioid treatment program shall result in the  
207 following:

208 (A) Upon the first positive drug test result, the opioid  
209 treatment program shall:

210 (1) Provide mandatory and documented weekly  
211 counseling to the patient, which shall include weekly  
212 meetings with a counselor who is licensed, certified or  
213 enrolled in the process of obtaining licensure or certification

214 in compliance with the rules and on staff at the opioid  
215 treatment program;

216 (2) Immediately revoke the take home methadone  
217 privilege for a minimum of thirty days; and

218 (B) Upon a second positive drug test result within six  
219 months of a previous positive drug test result, the opioid  
220 treatment program shall:

221 (1) Provide mandatory and documented weekly  
222 counseling, which shall include weekly meetings with a  
223 counselor who is licensed, certified or enrolled in the process  
224 of obtaining licensure or certification in compliance with the  
225 rules and on staff at the opioid treatment program;

226 (2) Immediately revoke the take-home methadone  
227 privilege for a minimum of sixty days; and

228 (3) Provide mandatory documented treatment team  
229 meetings with the patient.

230 (C) Upon a third positive drug test result within a period  
231 of six months the opioid treatment program shall:

232 (1) Provide mandatory and documented weekly  
233 counseling, which shall include weekly meetings with a  
234 counselor who is licensed, certified or enrolled in the process  
235 of obtaining licensure or certification in compliance with the  
236 rules and on staff at the opioid treatment program;

237 (2) Immediately revoke the take-home methadone  
238 privilege for a minimum of one hundred twenty days; and

239 (3) Provide mandatory and documented treatment team  
240 meetings with the patient which will include, at a minimum:  
241 The need for continuing treatment; a discussion of other  
242 treatment alternatives; and the execution of a contract with  
243 the patient advising the patient of discharge for continued  
244 positive drug tests.

245 (D) Upon a fourth positive drug test within a six-month  
246 period, the patient shall be immediately discharged from the  
247 opioid treatment program or, at the option of the patient, shall  
248 immediately be provided the opportunity to participate in a  
249 21-day detoxification plan, followed by immediate discharge  
250 from the opioid treatment program.

251 (7) That the opioid treatment program must report and  
252 provide statistics to the Department of Health and Human  
253 Resources demonstrating compliance with the random drug  
254 test rules including confirmation that:

255 (A) The random drug tests were truly random in regard  
256 to both the patients tested and to the times random drug tests  
257 were administered by lottery or some other objective standard  
258 so as not to prejudice or protect any particular patient.

259 (B) The total number and the number of positive results;  
260 and

261 (C) The number of expulsions from the program.

262 (8) That all opioid treatment facilities be open for  
263 business seven days per week: *Provided*, That the opioid  
264 treatment center maybe closed for eight holidays and two  
265 training days per year.

266 (9) That the Office of Health Facility Licensure and  
267 Certification develop policies and procedures in conjunction

268 with the Board of Pharmacy that will allow access to the  
269 Prescription Drug Registry maintained by the Board of  
270 Pharmacy before administration of methadone or other  
271 treatment in an opioid treatment program, after any positive  
272 drug test, and at each ninety-day treatment review to ensure  
273 the patient is not seeking prescription medication from  
274 multiple sources.

275 (k) Other health-related matters which the department is  
276 authorized to supervise and for which the rule-making  
277 authority has not been otherwise assigned.



## CHAPTER 121

**(H.B. 3057 - By Delegate Perdue)**

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[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2007.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-2K-1 and §16-2K-2, all relating to programs for all-inclusive care of the elderly, known as “PACE”; setting forth legislative intent; defining terms; and exempting “PACE” programs from regulation by the Insurance Commissioner.

*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 §16-2K-1 and §16-2K-2, all to read as follows:

**ARTICLE 2K. PROGRAMS OF ALL-INCLUSIVE CARE  
FOR THE ELDERLY, "PACE".**

§16-2K-1. Legislative findings and statement of purpose.

§16-2K-2. "PACE" program operation; exemption from regulation as an insurer; annual reports to the Legislature.

**§16-2K-1. Legislative findings and statement of purpose.**

1           (a) The United States Department of Health and Human  
2 Services has established a model of managed care service  
3 delivery that encourages innovative integrated health care  
4 delivery systems to serve frail and disabled elders with  
5 effective primary, preventive, restorative, supportive and  
6 palliative care. The program, as authorized in 42 CFR §460,  
7 §462, §466, §473 and §476, provides for the establishment of  
8 local programs to reorganize and reintegrate local health care  
9 delivery systems.

10           (b) The program for all-inclusive care for the elderly or  
11 "PACE" is a capitated program that is operated in accordance  
12 with federal law by a public, private, nonprofit or proprietary  
13 entity to provide comprehensive health and social services to  
14 disabled and frail elderly persons, certified by the state as  
15 nursing home eligible to maximize the autonomy and  
16 continued independence of these elderly persons.

17           (c) The Legislature finds that the "PACE" programs will  
18 enhance the quality of life, function and health of elderly  
19 persons.

20 (d) In order to promote the expansion of medical, social  
21 and long-term care services for the elderly, it is the intent of  
22 the Legislature to eliminate legal, statutory and regulatory  
23 barriers to the establishment of “PACE” programs by  
24 exempting health providers participating in these programs  
25 from regulation as insurers.

**§16-2K-2. “PACE” program operation; exemption from  
regulation as an insurer; annual reports to  
the Legislature.**

1 (a) A “PACE” program may operate in this state only in  
2 accordance with a contract with the United States Department  
3 of Health and Human Services, which is prepared in  
4 consultation with and approved by the West Virginia  
5 Department of Health and Human Resources.

6 (b) Notwithstanding the provisions of chapter thirty-  
7 three of this code to the contrary, participation by providers  
8 in a “PACE” program created and authorized pursuant to this  
9 article is not considered as providing insurance or as offering  
10 insurance services, and “PACE” providers and services are  
11 specifically excluded from the definitions of "insurer" and  
12 "insurance" as defined in article one, chapter thirty-three of  
13 this code, and from the definition of “health maintenance  
14 organization” as defined in article twenty-five-a of this code.  
15 Participating “PACE” providers are not unauthorized insurers  
16 pursuant to section four, article forty-four of chapter thirty-  
17 three of this code. These “PACE” programs are not subject  
18 to regulation by the Insurance Commissioner except to the  
19 extent set forth in this article.

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CHAPTER 122

**(Com. Sub. for H.B. 2986 - By Delegates Amores,  
Palumbo, Webster and Andes)**

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[Passed March 10, 2007; in effect ninety days from passage.]  
[Approved by the Governor on April 4, 2007.]

---

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-5B-16, relating to requiring hospitals, extended care facilities operated in connection with a hospital, ambulatory health care facilities, or ambulatory surgical facilities, freestanding or operated in connection with a hospital, licensed in the State of West Virginia to provide public notice of such hospital's or facility's intent to terminate operations; and requiring that the notice be at least three weeks prior to such termination of operations.

*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 §16-5B-16, to read as follows:

**ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.**

**§16-5B-16. Public notice regarding the closure of a licensed health care facility or hospital.**

1 Any hospital, extended care facility operated in  
2 connection with a hospital, ambulatory health care facility, or  
3 ambulatory surgical facility freestanding or operated in

4 connection with a hospital, licensed in the State of West  
5 Virginia under this article that intends to terminate operations  
6 shall provide at least three weeks notice of such intent to the  
7 public prior to the actual termination of operations. Pursuant  
8 to the provisions of Article 3 of Chapter 59 of this code, the  
9 hospital or facility shall cause a Class III legal advertisement  
10 to be published in all qualified newspapers of general  
11 circulation where the hospital or facility is geographically  
12 located. The first publication of the Class III legal  
13 advertisement shall occur at least three weeks prior to the  
14 date the hospital or facility intends to terminate operations.  
15 The Class III legal advertisement shall include, but is not  
16 limited to, a statement, along with the specific or proximate  
17 date, that the hospital, extended care facility operated in  
18 connection with a hospital, ambulatory health care facility, or  
19 ambulatory surgical facility freestanding or operated in  
20 connection with a hospital, intends to terminate operations.

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## CHAPTER 123

**(Com. Sub. for H.B. 2583 - By Delegates Hatfield,  
Perdue, Boggs, Brown and Border)**

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[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2007.]

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AN ACT to amend and reenact §16-22-3 of the Code of West Virginia, 1931, as amended, relating to the expansion of newborn testing to include sickle cell anemia, congenital adrenal hyperplasia, cystic fibrosis, biotinidase deficiency, isovaleric acidemia, glutaric acidemia type I, 3-Hydroxy-3-methylglutaric aciduria, multiple carboxylase deficiency,



methylnalonic acidemia-mutase deficiency form, 3-methylcrotonyl-CoA carboxylase deficiency, methylnalonic acidemia, Cbl A and Cbl B forms, propionic acidemia, beta-ketothiolase deficiency, medium-chain acyl-CoA dehydrogenase deficiency, very long-chain acyl-CoA dehydrogenase deficiency, long-chain acyl-CoA dehydrogenase deficiency, trifunctional protein deficiency, carnitine uptake defect, maple syrup urine disease, homocystinuria, citrullinemia type I, argininosuccinate acidemia, tyrosinemia type I, hemoglobin S/Beta-thalassemia, sickle C disease and hearing deficiency.

*Be it enacted by the Legislature of West Virginia:*

That §16-22-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 22. DETECTION AND CONTROL OF DISEASES  
IN NEWBORN CHILDREN.**

**§16-22-3. Tests for diseases specified by the State Public Health Commissioner; reports; assistance to afflicted children; Public Health Commissioner to propose rules.**

1       (a) The hospital or birthing center in which an infant is  
2 born, the parents or legal guardians, the physician attending  
3 a newborn child, or any person attending a newborn child not  
4 under the care of a physician shall require and ensure that  
5 each such child be tested for phenylketonuria, galactosemia,  
6 hypothyroidism, sickle cell anemia and certain other diseases  
7 specified by the Bureau for Public Health. No later than the  
8 first day of July, two thousand seven, the Bureau for Public  
9 Health shall also require testing for congenital adrenal  
10 hyperplasia, cystic fibrosis and biotinidase deficiency. No  
11 later than the first day of July, two thousand eight, the Bureau

12 for Public Health shall also require testing for isovaleric  
13 acidemia, glutaric acidemia type I, 3-Hydroxy-3-  
14 methylglutaric aciduria, multiple carboxylase deficiency,  
15 methylmalonic acidemia-mutase deficiency form, 3-  
16 methylcrotonyl-CoA carboxylase deficiency, methylmalonic  
17 acidemia, Cbl A and Cbl B forms, propionic acidemia, beta-  
18 ketothiolase deficiency, medium-chain acyl-CoA  
19 dehydrogenase deficiency, very long-chain acyl-CoA  
20 dehydrogenase deficiency, long-chain hydroxyacyl-CoA  
21 dehydrogenase deficiency, trifunctional protein deficiency,  
22 carnitine uptake defeat, maple syrup urine disease,  
23 homocystinuria, citrullinemia type I, argininosuccinate  
24 acidemia, tyrosinemia type I, hemoglobin S/Beta-  
25 thalassemia, sickle C disease and hearing deficiency.

26 (b) A positive result on any test specified in subsection  
27 (a) of this section, or a positive result for any other diseases  
28 specified by the Bureau for Public Health, shall be promptly  
29 reported to the Bureau for Public Health by the director of the  
30 laboratory performing such test.

31 (c) The Bureau for Public Health shall propose rules for  
32 legislative approval in accordance with article three, chapter  
33 twenty-nine of this code. These legislative rules shall  
34 include:

35 (1) A means for the Bureau for Public Health, in  
36 cooperation with other state agencies, and with attending  
37 physicians, to provide medical, dietary and related assistance  
38 to children determined to be afflicted with any disease  
39 specified in subsection (a) of this section and certain other  
40 diseases specified by the Bureau for Public Health; and

41 (2) A means for payment for the screening provided for  
42 in this section; and

43 (3) Anything further considered necessary by the Bureau  
44 for Public Health to implement the provisions of this section.

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CHAPTER 124

**(Com. Sub. for H.B. 3223 - By Delegates Long and Porter)**

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[Passed March 9, 2007; in effect from passage.]

[Approved by the Governor on March 23, 2007.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-29I-1, §16-29I-2, §16-29I-3, §16-29I-4, §16-29I-5, §16-29I-6, §16-29I-7, §16-29I-8, §16-29I-9 and §16-29I-10, all relating to creating a revolving loan fund to be administered by the West Virginia Health Care Authority Board to provide loans to assist hospitals in the rationalization and restructuring of their health care delivery systems; setting forth the criteria and conditions for approving hospital restructuring plans and loans from the revolving funds; and providing the Health Care Authority Board with reporting responsibilities and rule making authority to implement the provisions of the new article.

*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 §16-29I-1, §16-29I-2, §16-29I-3, §16-29I-4, §16-29I-5, §16-29I-6, §16-29I-7, §16-29I-8, §16-29I-9 and §16-29I-10, all to read as follows:

**ARTICLE 29I. WEST VIRGINIA HEALTH CARE  
AUTHORITY REVOLVING LOAN  
AND GRANT FUND.**

**§16-29I-1. Legislative findings; purpose.**

1 (a) The Legislature hereby finds and declares that the  
2 rationalization and restructuring of the health care delivery  
3 system, particularly for services provided by hospitals can  
4 provide for efficiencies and corresponding reduced costs for  
5 the delivery and provision of health care services provided by  
6 hospitals. Further, the Legislature finds and declares that the  
7 rationalization and restructuring of the health care delivery  
8 system by a hospital or combination of hospitals can, if  
9 undertaken properly, provide health care cost savings for  
10 both public health care funds administered or funded by the  
11 state and for private payors and health care insurers operating  
12 within the State of West Virginia.

13 (b) The Legislature further finds that state support of the  
14 rationalization and restructuring of the delivery of hospital  
15 services with state resources can be used to promote  
16 beneficial cost containment restructuring for the health care  
17 delivery system in the State of West Virginia.

18 (c) Therefore, the purpose of this article is to provide for  
19 a revolving loan fund to be administered and used by the  
20 board to provide loans, including low interest or no interest  
21 loans to hospitals or combinations of hospitals to assist in the  
22 rationalization and restructuring of the health care delivery  
23 system in the State of West Virginia.

**§16-29I-2. Short title.**

1 This article may be cited as the West Virginia Health  
2 Care Authority Revolving Loan Fund Act.

**§16-29I-3. Definitions.**

1 Definitions of words and terms defined in articles two-d,  
2 five-f and twenty-nine-b of this chapter are incorporated in  
3 this section for the purposes of this article unless this article  
4 contains different definitions.

5 (a) "Fund" means the West Virginia Health Care  
6 Authority Revolving Loan Fund created under section four of  
7 this article.

8 (b) "Hospital Restructuring Plan" means a plan submitted  
9 by a hospital or combination of hospitals to the board for  
10 review and approval pursuant to section five of this article.

**§16-29I-4. Revolving fund created.**

1 (a) (1) The board shall create and establish a special  
2 revolving fund of moneys made available to the fund by  
3 appropriation, grant, contribution, loan, or statutory  
4 dedication to be known as the West Virginia Health Care  
5 Authority Revolving Loan Fund. The fund shall be  
6 governed, administered and accounted for by the board.

7 (2) Any money collected pursuant to this section,  
8 including the repayment of loans made by the board, shall be  
9 paid into the fund by any state agent or entity charged with  
10 the collection of the money, credited to the fund, and used  
11 only for the purposes set forth in this article.

12 (b) The board may pledge revenues to the fund and from  
13 time to time establish one or more restricted accounts within  
14 the fund for the purpose of providing funds to guarantee  
15 loans made pursuant to this article. No loan guarantee shall  
16 be made pursuant to this article unless recourse under the  
17 loan guarantee is limited solely to amounts in the restricted

18 account or accounts. No person shall have any recourse to  
19 any restricted accounts established pursuant to this subsection  
20 other than those persons to whom the loan guarantee or loan  
21 guarantees have been made.

22 (c) Each loan or loan guarantee made or provided by the  
23 board from the fund shall be evidenced by a loan document,  
24 a loan guarantee document or any other writing or document  
25 or documents as the board may consider appropriate, between  
26 the Health Care Authority Board and the hospital or hospitals  
27 to which the loan, or loan guarantee, was made available or  
28 provided. The agreements shall include, without limitation  
29 and to the extent applicable, the following provisions:

30 (1) The estimated total costs of the hospital restructuring  
31 plan, the amount of the loan, or loan guarantee and the terms  
32 of repayment and the security for the loan if any;

33 (2) The specific purposes for which the loan proceeds  
34 shall be expended and the conditions and procedures for  
35 dispersing a loan proceeds; and

36 (3) The duties, conditions and obligations imposed by the  
37 board upon the hospital or hospitals regarding the hospital  
38 restructuring plan.

39 (d) Moneys in the fund shall be approved for expenditure  
40 by the Health Care Authority Board only as the moneys are  
41 available in the fund. Approval of expenditures by the board  
42 may occur without appropriation by the Legislature prior to  
43 the first day of July, two thousand eight. After the first day  
44 of July, two thousand eight, expenditures from the fund shall  
45 be made by the board only pursuant to available amounts  
46 appropriated by the Legislature.

**§16-29I-5. Use of revolving loan funds by loan hospital restructuring plans.**

1 A hospital or combination of hospitals, whether or not  
2 related by common ownership or management, may submit  
3 to the board for its approval, a hospital restructuring plan  
4 which provides for the rationalization and restructuring of  
5 health care delivery services provided by the hospital or  
6 combination of hospitals. The submission of a hospital  
7 restructuring plan or plans by a hospital or a combination of  
8 hospitals, shall be in a form and manner authorized by the  
9 board and shall include the following information:

10 (1) The sponsoring hospital or combination of hospitals  
11 submitting the hospital restructuring plan;

12 (2) All financial information required by the board  
13 relevant to an analysis of the proposed hospital restructuring  
14 plan and the subsequent delivery of impacted services;

15 (3) An estimate of savings and the methodologies used to  
16 calculate those savings for both public and private health care  
17 payors attributable to the implementation of the hospital  
18 restructuring plan;

19 (4) The amount of any loan requested by the hospital or  
20 combination of hospitals and the purposes for which any loan  
21 will be used by the hospital or combination of hospitals, to  
22 implement the hospital restructuring plan;

23 (5) An identification of any other benefits or  
24 enhancements of services provided by the hospital or  
25 combination of hospitals attributable to the implementation  
26 of the hospital restructuring plan; and

27 (6) Any other relevant information requested by the board  
28 necessary to review and analyze the submitted hospital  
29 restructuring plan.

**§16-29I-6. Review of hospital restructuring plans.**

1 (a) The board shall review and may approve or reject  
2 hospital restructuring plans submitted to it from time to time.  
3 Upon approval of any submitted plan, the board may in its  
4 sole discretion provide from the fund a loan, low-interest  
5 loan, or no-interest loan, in a form and on those terms and  
6 conditions as the board considers appropriate to assist in the  
7 implementation of the hospital restructuring plan. Prior to  
8 approving any plan, the board shall make a factual  
9 determination that the implementation of the hospital  
10 restructuring plan will rationalize and restructure the delivery  
11 of health care services provided by the hospital or  
12 combination of hospitals submitting the plan, and shall  
13 further determine that the implementation of the plan will  
14 provide a cost savings for hospital services delivered by the  
15 hospital or combination of hospitals for both public and  
16 private health care payors.

17 (b) The board may approve hospital restructuring plans  
18 and loans from the revolving fund contingent upon any  
19 conditions considered necessary by the board to assure the  
20 repayment of any loan, which may include but need not be  
21 limited to the successful implementation of the cost  
22 containment objectives of any hospital restructuring plan.

23 (c) The board may withhold future rate approvals,  
24 certificates of need and rural health system loans and grants  
25 if any of the terms or conditions of the loan provided by the  
26 board are not subsequently satisfied or met by the hospital or  
27 combination of hospitals receiving the loan from the fund.



**§16-29I-7. Temporary exemption for approval process.**

1 The board may conduct any hearing or hearing it  
2 considers necessary for the consideration of hospital  
3 restructuring plans: *Provided*, That both the application  
4 consideration process and the loan approval process provided  
5 for in this article and undertaken by the board and completed  
6 prior to the first day of July, two thousand eight, are exempt  
7 from the requirements of articles two-d and twenty-nine-b of  
8 this chapter for holding hearings upon the written demand of  
9 any person alleging that they are interested in or affected by  
10 any act or failure to act by the board pursuant to article  
11 twenty-nine-b of this chapter.

**§16-29I-8. Review of final decisions of board.**

1 A final decision of the board accepting or rejecting a  
2 hospital restructuring plan submitted pursuant to the terms of  
3 this article, shall upon request of the hospital or combination  
4 of hospitals making application of the plan be reviewed and  
5 approved pursuant to the provisions of article twenty-nine-b  
6 of this chapter: *Provided*, That no appeal or review authority  
7 shall have the authority or jurisdiction to require the board to  
8 provide or alter the conditions of any loan.

**§16-29I-9. Rule-making authority.**

1 The board may propose rules, including emergency rules,  
2 for legislative approval in accordance with the provisions of  
3 article three, chapter twenty-nine-a of this code, to implement  
4 and make effective the powers, duties and responsibilities  
5 contained in this article.

**§16-29I-10. Annual report.**

1 The board shall within thirty days following the close of  
2 the fiscal year, or from time to time as requested by the

3 Legislature, prepare and transmit to the Governor and the  
 4 Legislative Oversight Commission on Health and Human  
 5 Resources Accountability, a report of its operations and  
 6 activities for the proceeding year regarding the consideration,  
 7 denial or approval of hospital restructuring plans and any  
 8 loans made pursuant to the approval of the plans.

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## CHAPTER 125

**(Com. Sub. for H.B. 3093 - By Delegate Perdue)**

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(Passed March 10, 2007; in effect ninety days from passage.)  
 [Approved by the Governor on April 2, 2007.]

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AN ACT to amend and reenact §16-30-4 of the Code of West Virginia, 1931, as amended, relating to providing a form for a combined medical power of attorney and living will.

*Be it enacted by the Legislature of West Virginia:*

That §16-30-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 30. WEST VIRGINIA HEALTH CARE DECISIONS ACT.**

**§16-30-4. Executing a living will or medical power of attorney or combined medical power of attorney and living will.**

1 (a) Any competent adult may execute at any time a living  
 2 will or medical power of attorney. A living will or medical  
 3 power of attorney made pursuant to this article shall be: (1)  
 4 In writing; (2) executed by the principal or by another person

5 in the principal's presence at the principal's express direction  
6 if the principal is physically unable to do so; (3) dated; (4)  
7 signed in the presence of two or more witnesses at least  
8 eighteen years of age; and (5) signed and attested by such  
9 witnesses whose signatures and attestations shall be  
10 acknowledged before a notary public as provided in  
11 subsection (d) of this section.

12 (b) In addition, a witness may not be:

13 (1) The person who signed the living will or medical  
14 power of attorney on behalf of and at the direction of the  
15 principal;

16 (2) Related to the principal by blood or marriage;

17 (3) Entitled to any portion of the estate of the principal  
18 under any will of the principal or codicil thereto: *Provided,*  
19 That the validity of the living will or medical power of  
20 attorney shall not be affected when a witness at the time of  
21 witnessing such living will or medical power of attorney was  
22 unaware of being a named beneficiary of the principal's will;

23 (4) Directly financially responsible for principal's  
24 medical care;

25 (5) The attending physician; or

26 (6) The principal's medical power of attorney  
27 representative or successor medical power of attorney  
28 representative.

29 (c) The following persons may not serve as a medical  
30 power of attorney representative or successor medical power  
31 of attorney representative: (1) A treating health care provider  
32 of the principal; (2) an employee of a treating health care

33 provider not related to the principal; (3) an operator of a  
34 health care facility serving the principal; or (4) any person  
35 who is an employee of an operator of a health care facility  
36 serving the principal and who is not related to the principal.

37 (d) It shall be the responsibility of the principal or his or  
38 her representative to provide for notification to his or her  
39 attending physician and other health care providers of the  
40 existence of the living will or medical power of attorney or a  
41 revocation of the living will or medical power of attorney.  
42 An attending physician or other health care provider, when  
43 presented with the living will or medical power of attorney,  
44 or the revocation of a living will or medical power of  
45 attorney, shall make the living will, medical power of  
46 attorney or a copy of either or a revocation of either a part of  
47 the principal's medical records.

48 (e) At the time of admission to any health care facility,  
49 each person shall be advised of the existence and availability  
50 of living will and medical power of attorney forms and shall  
51 be given assistance in completing such forms if the person  
52 desires: *Provided*, That under no circumstances may  
53 admission to a health care facility be predicated upon a  
54 person having completed either a medical power of attorney  
55 or living will.

56 (f) The provision of living will or medical power of  
57 attorney forms substantially in compliance with this article by  
58 health care providers, medical practitioners, social workers,  
59 social service agencies, senior citizens centers, hospitals,  
60 nursing homes, personal care homes, community care  
61 facilities or any other similar person or group, without  
62 separate compensation, does not constitute the unauthorized  
63 practice of law.

64 (g) The living will may, but need not, be in the following  
 65 form and may include other specific directions not  
 66 inconsistent with other provisions of this article. Should any  
 67 of the other specific directions be held to be invalid, such  
 68 invalidity shall not affect other directions of the living will  
 69 which can be given effect without the invalid direction and to  
 70 this end the directions in the living will are severable.

71 **STATE OF WEST VIRGINIA**  
 72 **LIVING WILL**

73 Living will made this \_\_\_\_\_ day of

**The Kind of Medical Treatment I Want and Don't Want  
 If I Have a Terminal Condition or  
 Am In a Persistent Vegetative State**

74 \_\_\_\_\_ month, year).

75 I, \_\_\_\_\_, being of  
 76 sound mind, willfully and voluntarily declare that I want my  
 77 wishes to be respected if I am very sick and not able to  
 78 communicate my wishes for myself. In the absence of my  
 79 ability to give directions regarding the use of life-prolonging  
 80 medical intervention, it is my desire that my dying shall not  
 81 be prolonged under the following circumstances:

82 If I am very sick and not able to communicate my wishes  
 83 for myself and I am certified by one physician, who has  
 84 personally examined me, to have a terminal condition or to  
 85 be in a persistent vegetative state (I am unconscious and am  
 86 neither aware of my environment nor able to interact with  
 87 others), I direct that life-prolonging medical intervention that

88 would serve solely to prolong the dying process or maintain  
 89 me in a persistent vegetative state be withheld or withdrawn.  
 90 I want to be allowed to die naturally and only be given  
 91 medications or other medical procedures necessary to keep  
 92 me comfortable. I want to receive as much medication as is  
 93 necessary to alleviate my pain.

94 I give the following SPECIAL DIRECTIVES OR  
 95 LIMITATIONS: (Comments about tube feedings, breathing  
 96 machines, cardiopulmonary resuscitation, dialysis and mental  
 97 health treatment may be placed here. My failure to provide  
 98 special directives or limitations does not mean that I want or  
 99 refuse certain treatments.)

100 \_\_\_\_\_  
 101 \_\_\_\_\_  
 102 \_\_\_\_\_  
 103 \_\_\_\_\_

104 It is my intention that this living will be honored as the  
 105 final expression of my legal right to refuse medical or  
 106 surgical treatment and accept the consequences resulting  
 107 from such refusal.

108 I understand the full import of this living will.

109 \_\_\_\_\_  
 110 Signed  
 111 \_\_\_\_\_

112 \_\_\_\_\_  
 113 Address

114 I did not sign the principal's signature above for or at the  
 115 direction of the principal. I am at least eighteen years of age

116 and am not related to the principal by blood or marriage,  
 117 entitled to any portion of the estate of the principal to the best  
 118 of my knowledge under any will of principal or codicil  
 119 thereto, or directly financially responsible for principal's  
 120 medical care. I am not the principal's attending physician or  
 121 the principal's medical power of attorney representative or  
 122 successor medical power of attorney representative under a  
 123 medical power of attorney.

124 \_\_\_\_\_  
 125 Witness DATE

126  
 127 \_\_\_\_\_  
 128 Witness DATE

129 \_\_\_\_\_  
 130 STATE OF

131 \_\_\_\_\_  
 132 COUNTY OF

133 I, \_\_\_\_\_, a Notary Public of said  
 134 County, do certify that \_\_\_\_\_, as  
 135 principal, and \_\_\_\_\_ and \_\_\_\_\_, as  
 136 witnesses, whose names are signed to the writing above  
 137 bearing date on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
 138 have this day acknowledged the same before me.

139 Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

140 My commission expires: \_\_\_\_\_

141 \_\_\_\_\_  
142 Notary Public

143 (h) A medical power of attorney may, but need not, be in  
144 the following form, and may include other specific directions  
145 not inconsistent with other provisions of this article. Should  
146 any of the other specific directions be held to be invalid, such  
147 invalidity shall not affect other directions of the medical  
148 power of attorney which can be given effect without invalid  
149 direction and to this end the directions in the medical power  
150 of attorney are severable.

151 **STATE OF WEST VIRGINIA**  
152 **MEDICAL POWER OF ATTORNEY**

**The Person I Want to Make Health Care Decisions  
For Me When I Can't Make Them for Myself**

153 Dated: \_\_\_\_\_, 20\_\_\_\_\_

154 I, \_\_\_\_\_, hereby  
155 (Insert your name and address)  
156 appoint as my representative to act on my behalf to give,  
157 withhold or withdraw informed consent to health care  
158 decisions in the event that I am not able to do so myself.

159 **The person I choose as my representative is:**

160 \_\_\_\_\_  
161 *(Insert the name, address, area code and telephone*  
162 *number of the person you wish to designate as your*  
163 *representative)*



164 **The person I choose as my successor representative is:**

165 If my representative is unable, unwilling or disqualified  
166 to serve, then I appoint:

167 \_\_\_\_\_  
168 *(Insert the name, address, area code and telephone*  
169 *number of the person you wish to designate as your*  
170 *successor representative)*

171 This appointment shall extend to, but not be limited to,  
172 health care decisions relating to medical treatment, surgical  
173 treatment, nursing care, medication, hospitalization, care and  
174 treatment in a nursing home or other facility, and home  
175 health care. The representative appointed by this document  
176 is specifically authorized to be granted access to my medical  
177 records and other health information and to act on my behalf  
178 to consent to, refuse or withdraw any and all medical  
179 treatment or diagnostic procedures, or autopsy if my  
180 representative determines that I, if able to do so, would  
181 consent to, refuse or withdraw such treatment or procedures.  
182 Such authority shall include, but not be limited to, decisions  
183 regarding the withholding or withdrawal of life-prolonging  
184 interventions.

185 I appoint this representative because I believe this person  
186 understands my wishes and values and will act to carry into  
187 effect the health care decisions that I would make if I were  
188 able to do so and because I also believe that this person will  
189 act in my best interest when my wishes are unknown. It is  
190 my intent that my family, my physician and all legal  
191 authorities be bound by the decisions that are made by the  
192 representative appointed by this document and it is my intent

193 that these decisions should not be the subject of review by  
194 any health care provider or administrative or judicial agency.

195 It is my intent that this document be legally binding and  
196 effective and that this document be taken as a formal  
197 statement of my desire concerning the method by which any  
198 health care decisions should be made on my behalf during  
199 any period when I am unable to make such decisions.

200 In exercising the authority under this medical power of  
201 attorney, my representative shall act consistently with my  
202 special directives or limitations as stated below.

203 I am giving the following SPECIAL DIRECTIVES OR  
204 LIMITATIONS ON THIS POWER: (Comments about tube  
205 feedings, breathing machines, cardiopulmonary resuscitation,  
206 dialysis, funeral arrangements, autopsy and organ donation  
207 may be placed here. My failure to provide special directives  
208 or limitations does not mean that I want or refuse certain  
209 treatments.)

210 \_\_\_\_\_  
211 \_\_\_\_\_

212 THIS MEDICAL POWER OF ATTORNEY SHALL  
213 BECOME EFFECTIVE ONLY UPON MY INCAPACITY  
214 TO GIVE, WITHHOLD OR WITHDRAW INFORMED  
215 CONSENT TO MY OWN MEDICAL CARE.

216 \_\_\_\_\_  
217 Signature of the Principal

218 I did not sign the principal's signature above. I am at  
219 least eighteen years of age and am not related to the principal  
220 by blood or marriage. I am not entitled to any portion of the  
221 estate of the principal or to the best of my knowledge under

222 any will of the principal or codicil thereto, or legally  
223 responsible for the costs of the principal's medical or other  
224 care. I am not the principal's attending physician, nor am I  
225 the representative or successor representative of the principal.

226 \_\_\_\_\_  
227 Witness: \_\_\_\_\_ DATE \_\_\_\_\_

228 \_\_\_\_\_  
229 \_\_\_\_\_  
230 Witness: \_\_\_\_\_ DATE \_\_\_\_\_

231 \_\_\_\_\_  
232 STATE OF \_\_\_\_\_

233 \_\_\_\_\_  
234 COUNTY OF \_\_\_\_\_

235 I, \_\_\_\_\_, a Notary Public of said  
236 County, do certify that \_\_\_\_\_, as  
237 principal, and \_\_\_\_\_ and \_\_\_\_\_, as  
238 witnesses, whose names are signed to the writing above  
239 bearing date on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_,  
240 have this day acknowledged the same before me.

241 Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

242 My commission expires: \_\_\_\_\_

243 \_\_\_\_\_

244 Notary Public

245 (i) A combined medical power of attorney and living will  
246 may, but need not, be in the following form, and may include  
247 other specific directions not inconsistent with other  
248 provisions of this article. Should any of the other specific  
249 directions be held to be invalid, such invalidity does not  
250 affect other directions of the combined medical power of

251 attorney and living will which can be given effect without  
 252 invalid direction and to this end the directions in the  
 253 combined medical power of attorney and living will are  
 254 severable.

255 **STATE OF WEST VIRGINIA**  
 256 **COMBINED MEDICAL POWER OF ATTORNEY**  
 257 **AND LIVING WILL**

The Person I Want to Make Health Care Decisions  
 For Me When I Can't Make Them for Myself And The  
 Kind of Medical Treatment I Want and Don't Want

258 Dated: \_\_\_\_\_, 20\_\_\_\_

259 I, \_\_\_\_\_, hereby  
 260 *(Insert your name and address)*  
 261 appoint as my representative to act on my behalf to give,  
 262 withhold or withdraw informed consent to health care  
 263 decisions in the event that I am not able to do so myself.

264 The person I choose as my representative is:

265 \_\_\_\_\_  
 266 *(Insert the name, address, area code and telephone*  
 267 *number of the person you wish to designate as your*  
 268 *representative).*

269 If my representative is unable, unwilling or disqualified  
 270 to serve, then I appoint as my successor representative:

271 \_\_\_\_\_

272        *(Insert the name, address, area code and telephone*  
273 *number of the person you wish to designate as your*  
274 *successor representative).*

275        This appointment shall extend to, but not be limited to,  
276 health care decisions relating to medical treatment, surgical  
277 treatment, nursing care, medication, hospitalization, care and  
278 treatment in a nursing home or other facility, and home  
279 health care. The representative appointed by this document  
280 is specifically authorized to be granted access to my medical  
281 records and other health information and to act on my behalf  
282 to consent to, refuse or withdraw any and all medical  
283 treatment or diagnostic procedures, or autopsy if my  
284 representative determines that I, if able to do so, would  
285 consent to, refuse or withdraw such treatment or procedures.  
286 Such authority shall include, but not be limited to, decisions  
287 regarding the withholding or withdrawal of life-prolonging  
288 interventions.

289        I appoint this representative because I believe this person  
290 understands my wishes and values and will act to carry into  
291 effect the health care decisions that I would make if I were  
292 able to do so, and because I also believe that this person will  
293 act in my best interest when my wishes are unknown. It is  
294 my intent that my family, my physician and all legal  
295 authorities be bound by the decisions that are made by the  
296 representative appointed by this document, and it is my intent  
297 that these decisions should not be the subject of review by  
298 any health care provider or administrative or judicial agency.

299        It is my intent that this document be legally binding and  
300 effective and that this document be taken as a formal  
301 statement of my desire concerning the method by which any  
302 health care decisions should be made on my behalf during  
303 any period when I am unable to make such decisions.

304 In exercising the authority under this medical power of  
305 attorney, my representative shall act consistently with my  
306 special directives or limitations as stated below.

307 I am giving the following SPECIAL DIRECTIVES OR  
308 LIMITATIONS ON THIS POWER: (Comments about tube  
309 feedings, breathing machines, cardiopulmonary resuscitation,  
310 dialysis, mental health treatment, funeral arrangements,  
311 autopsy, and organ donation may be placed here. My failure  
312 to provide special directives or limitations does not mean that  
313 I want or refuse certain treatments).

314 1. If I am very sick and not able to communicate my  
315 wishes for myself and I am certified by one physician who  
316 has personally examined me, to have a terminal condition or  
317 to be in a persistent vegetative state (I am unconscious and  
318 am neither aware of my environment nor able to interact with  
319 others,) I direct that life-prolonging medical intervention that  
320 would serve solely to prolong the dying process or maintain  
321 me in a persistent vegetative state be withheld or withdrawn.  
322 I want to be allowed to die naturally and only be given  
323 medications or other medical procedures necessary to keep  
324 me comfortable. I want to receive as much medication as is  
325 necessary to alleviate my pain.

326 2. Other directives: \_\_\_\_\_  
327 \_\_\_\_\_  
328 \_\_\_\_\_  
329 \_\_\_\_\_  
330 \_\_\_\_\_

331 THIS MEDICAL POWER OF ATTORNEY SHALL  
332 BECOME EFFECTIVE ONLY UPON MY INCAPACITY  
333 TO GIVE, WITHHOLD OR WITHDRAW INFORMED  
334 CONSENT TO MY OWN MEDICAL CARE.

335 \_\_\_\_\_  
336 Signature of the Principal

337 I did not sign the principal's signature above. I am at least  
 338 eighteen years of age and am not related to the principal by  
 339 blood or marriage. I am not entitled to any portion of the  
 340 estate of the principal or to the best of my knowledge under  
 341 any will of the principal or codicil thereto, or legally  
 342 responsible for the costs of the principal's medical or other  
 343 care. I am not the principal's attending physician, nor am I  
 344 the representative or successor representative of the principal.  
 345 Witness \_\_\_\_\_ DATE \_\_\_\_\_  
 346 Witness \_\_\_\_\_ DATE \_\_\_\_\_  
 347 STATE OF \_\_\_\_\_  
 348 COUNTY OF \_\_\_\_\_

349 I, \_\_\_\_\_, a Notary Public of said  
 350 county, do certify that \_\_\_\_\_, as principal,  
 351 and \_\_\_\_\_ and \_\_\_\_\_,  
 352 as witnesses, whose names are signed to the writing above  
 353 bearing date on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_,  
 354 have this day acknowledged the same before me.

355 Given under my hand this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

356 My commission expires: \_\_\_\_\_

357 \_\_\_\_\_  
 358 Signature of Notary Public

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**CHAPTER 126**

**(Com. Sub. for H.B. 2877 - By Mr. Speaker, Mr. Thompson,  
and Delegate Armstead)  
[By Request of the Executive]**

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[Passed March 10, 2007; in effect July 1, 2007.]  
[Approved by the Governor on April 2, 2007.]

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AN ACT to amend and reenact §5B-2-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §15-2-12 of said code; and to amend and reenact §17C-17B-3 and §17C-17B-4, all relating to the funding of entities ensuring transportation public safety on state highways; eliminating certain funding from the state road fund or reimbursement from the Division of Motor Vehicles; and providing for the funding of a courtesy patrol.

*Be it enacted by the Legislature of West Virginia:*

That §5B-2-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §15-2-12 of said code be amended and reenacted; and that §17C-17B-3 and §17C-17B-4 of said code be amended and reenacted, all to read as follows:

**Chapter**

- 5B. Economic Development Act of 1985.**
- 15. Public Safety.**
- 17C. Traffic Regulations and Laws of the Road.**

**CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.**

**ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.**

**§5B-2-12. Tourism promotion fund continued; use of funds.**

- 1 There is hereby continued in the State Treasury the special
- 2 revenue fund known as the “Tourism Promotion Fund” created
- 3 under prior enactment of section nine, article one of this chapter.



4 (a) The Legislature finds that a courtesy patrol program  
5 providing assistance to motorists on the state's highways is one  
6 of the most beneficial methods to introduce a tourist visiting the  
7 state of the state's hospitality and good will. For that reason,  
8 four million seven hundred thousand dollars of the moneys  
9 deposited in the fund each year shall be deposited in a special  
10 revenue account in the State Treasury to be known as the  
11 "Courtesy Patrol Fund". Expenditures from the fund shall be  
12 used solely to fund the courtesy patrol program providing  
13 assistance to motorists on the state's highways. Amounts  
14 collected in the fund which are found from time to time to  
15 exceed funds needed for the purposes set forth in this subsection  
16 may be transferred to other accounts or funds and redesignated  
17 for other purposes by appropriation of the Legislature.

18 (b) If there are funds remaining after the distribution  
19 required in subsection (a) of this section, a minimum of five  
20 percent of the moneys deposited remaining in the fund each year  
21 shall be used solely for direct advertising for West Virginia  
22 travel and tourism: *Provided*, That no less than twenty percent  
23 of these funds be expended with the approval of the Director of  
24 the Division of Natural Resources to effectively promote and  
25 market the state's parks, state forests, state recreation areas and  
26 wildlife recreational resources. Direct advertising means  
27 advertising which is limited to television, radio, mailings,  
28 newspaper, magazines, and outdoor billboards, or any  
29 combination thereof.

30 (c) The balance of the moneys deposited in the fund shall be  
31 used for direct advertising within the state's travel regions as  
32 defined by the commission. The funds shall be made available  
33 to these districts beginning the first day of July, one thousand  
34 nine hundred ninety-five, according to legislative rules  
35 authorized for promulgation by the Tourism Commission.

36 (d) All advertising expenditures over twenty-five thousand  
37 dollars from the tourism promotion fund require prior approval  
38 by recorded vote of the commission. No member of the  
39 commission or of any committee created by the commission to  
40 evaluate applications for advertising or other grants may  
41 participate in the discussion of, or action upon, an application  
42 for or an award of any grant in which the member has a direct  
43 financial interest.

## CHAPTER 15. PUBLIC SAFETY.

### ARTICLE 2. WEST VIRGINIA STATE POLICE.

#### **§15-2-12. Mission of the State Police; powers of superintendent, officers and members; patrol of turnpike.**

1 (a) The West Virginia State Police shall have the mission of  
2 statewide enforcement of criminal and traffic laws with  
3 emphasis on providing basic enforcement and citizen protection  
4 from criminal depredation throughout the state and maintaining  
5 the safety of the state's public streets, roads and highways.

6 (b) The superintendent and each of the officers and  
7 members of the division are hereby empowered:

8 (1) To make arrests anywhere within the state of any  
9 persons charged with the violation of any law of this state, or of  
10 the United States, and when a witness to the perpetration of any  
11 offense or crime, or to the violation of any law of this state, or  
12 of the United States, to make arrests without warrant; to arrest  
13 and detain any persons suspected of the commission of any  
14 felony or misdemeanor whenever a complaint is made and a  
15 warrant is issued thereon for the arrest, and the person arrested  
16 shall be immediately brought before the proper tribunal for  
17 examination and trial in the county where the offense for which  
18 the arrest has been made was committed;

19 (2) To serve criminal process issued by any court or  
20 magistrate anywhere within this state: *Provided*, That they may  
21 not serve civil process; and

22 (3) To cooperate with local authorities in detecting crime  
23 and in apprehending any person or persons engaged in or  
24 suspected of the commission of any crime, misdemeanor or  
25 offense against the law of this state, or of the United States, or  
26 of any ordinance of any municipality in this state; and to take  
27 affidavits in connection with any application to the Division of  
28 Highways, Division of Motor Vehicles and of West Virginia  
29 State Police for any license, permit or certificate that may be  
30 lawfully issued by these divisions of state government.

31 (c) Members of the West Virginia State Police are hereby  
32 designated as forest patrolmen and game and fish wardens  
33 throughout the state to do and perform any duties and exercise  
34 any powers of forest patrolmen and game and fish wardens, and  
35 may apprehend and bring before any court or magistrate having  
36 jurisdiction of these matters, anyone violating any of the  
37 provisions of chapters twenty, sixty and sixty-one of this code.  
38 The West Virginia State Police is at any time subject to the call  
39 of the West Virginia Alcohol Beverage Control Commissioner  
40 to aid in apprehending any person violating any of the  
41 provisions of chapter sixty of this code. They shall serve and  
42 execute warrants for the arrest of any person and warrants for  
43 the search of any premises issued by any properly constituted  
44 authority, and shall exercise all of the powers conferred by law  
45 upon a sheriff. They may not serve any civil process or exercise  
46 any of the powers of such officer in civil matters.

47 (d) Any member of the West Virginia State Police knowing  
48 or having reason to believe that any person has violated the law  
49 may make complaint in writing before any court or officer  
50 having jurisdiction and procure a warrant for the offender,  
51 execute the warrant and bring the person before the proper

52 tribunal having jurisdiction. The member shall make return on  
53 all warrants to the tribunals and his or her official title shall be  
54 "member of the West Virginia State Police". Members of the  
55 West Virginia State Police may execute any summons or  
56 process issued by any tribunal having jurisdiction requiring the  
57 attendance of any person as a witness before the tribunal and  
58 make return thereon as provided by law. Any return by a  
59 member of the West Virginia State Police showing the manner  
60 of executing the warrant or process has the same force and  
61 effect as if made by a sheriff.

62 (e) Each member of the West Virginia State Police, when  
63 called by the sheriff of any county, or when directed by the  
64 Governor by proclamation, has full power and authority within  
65 the county, or within the territory defined by the Governor, to  
66 direct and command absolutely the assistance of any sheriff,  
67 deputy sheriff, chief of police, policeman, game and fish warden  
68 and peace officer of the state, or of any county or municipality  
69 therein, or of any able-bodied citizen of the United States, to  
70 assist and aid in accomplishing the purposes expressed in this  
71 article. When called, any officer or person is, during the time  
72 his or her assistance is required, for all purposes a member of  
73 the West Virginia State Police and subject to all the provisions  
74 of this article.

75 (f) The superintendent may also assign members of the  
76 division to perform police duties on any turnpike or toll road, or  
77 any section of any turnpike or toll road, operated by the West  
78 Virginia Parkways, Economic Development and Tourism  
79 Authority: *Provided*, That the authority shall reimburse the  
80 West Virginia State Police for salaries paid to the members and  
81 shall either pay directly or reimburse the division for all other  
82 expenses of the group of members in accordance with actual or  
83 estimated costs determined by the superintendent.

84 (g) The West Virginia State Police may develop proposals  
85 for a comprehensive county or multicounty plan on the  
86 implementation of an enhanced emergency service telephone  
87 system and may cause a public meeting on the proposals, all as  
88 set forth in section six-a, article six, chapter twenty-four of this  
89 code.

90 (h) By the first day of July, one thousand nine hundred  
91 ninety-three, the superintendent shall establish a network to  
92 implement reports of the disappearance of children by local  
93 law-enforcement agencies to local school division  
94 superintendents and the State Registrar of Vital Statistics. The  
95 network shall be designed to establish cooperative arrangements  
96 between local law-enforcement agencies and local school  
97 divisions concerning reports of missing children and notices to  
98 law-enforcement agencies of requests for copies of the  
99 cumulative records and birth certificates of missing children.  
100 The network shall also establish a mechanism for reporting the  
101 identities of all missing children to the State Registrar of Vital  
102 Statistics.

103 (i) The superintendent may at his or her discretion and upon  
104 the written request of the West Virginia Alcohol Beverage  
105 Control Commissioner assist the commissioner in the  
106 coordination and enforcement of article sixteen, chapter eleven  
107 of this code and chapter sixty of this code.

108 (j) Notwithstanding the provisions of article one-a, chapter  
109 twenty of this code, the superintendent of the West Virginia  
110 State Police may sell any surplus real property to which the  
111 West Virginia State Police or its predecessors retain title, and  
112 deposit the net proceeds into a special revenue account to be  
113 utilized for the purchase of additional real property and for  
114 repairs to or construction of detachment offices or other  
115 facilities required by the West Virginia State Police. There is  
116 hereby created a special revolving fund in the State Treasury

117 which shall be designated as the "surplus real property proceeds  
118 fund." The fund shall consist of all money received from the  
119 sale of surplus real property owned by the West Virginia State  
120 Police. Moneys deposited in the fund shall only be available for  
121 expenditure upon appropriation by the Legislature: *Provided,*  
122 That amounts collected which are found from time to time to  
123 exceed the funds needed for the purposes set forth in this  
124 subsection may be transferred to other accounts or funds and  
125 redesignated for other purposes by appropriation of the  
126 Legislature.

127 (k) Notwithstanding any other provision of this code, the  
128 agency for surplus property is hereby empowered to transfer  
129 funds generated from the sale of vehicles, other equipment and  
130 commodities belonging to the West Virginia State Police to a  
131 special revenue account within the West Virginia State Police  
132 entitled the West Virginia State Police surplus transfer account.  
133 Moneys deposited in the fund shall only be available for  
134 expenditure upon appropriation by the Legislature: *Provided,*  
135 That amounts collected which are found from time to time to  
136 exceed the funds needed for the purposes set forth in this  
137 subsection may be transferred to other accounts or funds and  
138 redesignated for other purposes by appropriation of the  
139 Legislature. Any funds transferred to this account may be  
140 utilized by the superintendent to defray the cost of normal  
141 operating needs of the division.

142 (l) If the State Police or any other law-enforcement agency  
143 in this state receives a report that a person who has Alzheimer's  
144 disease and related dementia is missing, the State Police or any  
145 other law-enforcement agency shall immediately open an  
146 investigation for the purpose of determining the whereabouts of  
147 that missing person. Any policy of the State Police or any other  
148 law-enforcement agency relating to a waiting period prior to  
149 initiation of an investigation of a missing person shall not apply

150 in the case of a person who has Alzheimer's disease or other  
151 related dementia of the type referred to in this subsection.

152 (m) Notwithstanding any provision of this code to the  
153 contrary, effective on and after the first day of July, two  
154 thousand seven, the expenses and salaries paid to the members  
155 of the West Virginia State Police for the monitoring and  
156 enforcement duties defined in chapter seventeen-c of this code  
157 may not be paid from the state road fund or subject to  
158 reimbursement from the Division of Motor Vehicles but shall be  
159 subject to appropriation by the Legislature.

**CHAPTER 17C. TRAFFIC REGULATIONS AND  
LAWS OF THE ROAD.**

**ARTICLE 17B. TRANSFER OF CERTAIN JURISDICTION  
AND EMPLOYEES TO PUBLIC SERVICE  
COMMISSION.**

§17C-17B-3. Transfer of certain employees from Department of Transportation to Public Service Commission.

§17C-17B-4. Costs of enforcement to be funded from revenues in General Revenue Fund or from fees collected by Public Service Commission.

**§17C-17B-3. Transfer of certain employees from Department of  
Transportation to Public Service Commission.**

1 Effective the first day of July, two thousand three,  
2 employees of the Department of Transportation whose primary  
3 governmental duties as of the thirtieth day of June, two  
4 thousand three, included the administration and enforcement of  
5 this code and rules promulgated under this code relating to  
6 vehicular weight or the issuance of permits for excess vehicular  
7 weight shall be transferred from the Department of  
8 Transportation to the Public Service Commission of West  
9 Virginia.

**§17C-17B-4. Costs of enforcement to be funded from revenues in General Revenue Fund or from fees collected by Public Service Commission.**

1 (a) On and after the first day of July, two thousand three, the  
2 cost of enforcement of this code and rules promulgated under  
3 this code, relating to vehicular weight, including inspections of  
4 vehicles and loads, training of enforcement officers,  
5 administrative proceedings, personal services, employees  
6 benefits and all other costs associated with enforcement matters,  
7 shall be funded by revenues in the state road fund, established  
8 pursuant to the provisions of section one, article three, chapter  
9 seventeen of this code: *Provided*, That effective on and after the  
10 first day of July, two thousand seven, all of the costs described  
11 in this subsection shall be funded by fees collected from the  
12 Public Service Commission or other appropriation by the  
13 Legislature: *Provided, however*, That the foregoing proviso may  
14 not be construed to require appropriation by the Legislature.

15 (b) The secretary of transportation and the treasurer shall  
16 take all actions necessary to implement the transfer of funding  
17 to effectuate the purposes of this article.

18 (c) For fiscal years beginning on and after the first day of  
19 July, two thousand four, the commission shall include in its  
20 budget to the Legislature the costs of implementation and  
21 continuing enforcement of this article for payment and  
22 appropriation into the Public Service Commission Fund.



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CHAPTER 127

**(Com. Sub. for H.B. 2406 - By Delegates DeLong,  
Tabb, Doyle and Wysong)**

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[Passed March 10, 2007; in effect ninety days from passage.]  
[Approved by the Governor on April 4, 2007.]

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AN ACT to amend and reenact §19-23-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §19-23-10 and §19-23-13b of said code, all relating to horse and dog racing generally; providing that in the event a yearling was born in another state and transported to this state, the definition of "Raiser of an accredited West Virginia horse" does not apply to any pari-mutuel racing facility in Jefferson County; providing for a five-year sunset provision relative to the applicability of this definition at any pari-mutuel racing facility in Hancock County; changing formula for distribution of the greyhound breeder development fund moneys to equalize purses by establishment of a points system as approved by the West Virginia Racing Commission; authorizing use of reserve balance funds for a training facility; authorizing the racing commission to annually establish appropriate numbers of West Virginia whelped greyhounds at racetrack kennels; sanctions for not kenneling the minimum number of West Virginia whelped greyhounds; adding accreditation to the qualification of a West Virginia thoroughbred sire; adding a minimum of fourteen stakes horse races at Charles Town for restricted races; races adding two restricted per racing day where sufficient horses and purse funds are available; funding for additional races at Charles Town; and continuing limitation on certain purse funds at Mountaineer Park.

*Be it enacted by the Legislature of West Virginia:*

That §19-23-3, §19-23-10 and §19-23-13b of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

## **ARTICLE 23. HORSE AND DOG RACING.**

- §19-23-3. Definitions.  
§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.  
§19-23-13b. West Virginia Thoroughbred Development Fund; distribution; restricted races; nonrestricted purse supplements; preference for West Virginia accredited thoroughbreds.

### **§19-23-3. Definitions.**

1 Unless the context in which used clearly requires a different  
2 meaning, as used in this article:

3 (1) "Horse racing" means any type of horse racing,  
4 including, but not limited to, thoroughbred racing and harness  
5 racing;

6 (2) "Thoroughbred racing" means flat or running type horse  
7 racing in which each horse participating therein is a  
8 thoroughbred and is mounted by a jockey;

9 (3) "Harness racing" means horse racing in which the horses  
10 participating therein are harnessed to a sulky, carriage or other  
11 vehicle and shall not include any form of horse racing in which  
12 the horses are mounted by jockeys;

13 (4) "Horse race meeting" means the whole period of time  
14 for which a license is required by the provisions of section one  
15 of this article;

16 (5) "Dog racing" means any type of dog racing, including,  
17 but not limited to, greyhound racing;

18 (6) "Purse" means any purse, stake or award for which a  
19 horse or dog race is run;

20 (7) "Racing association" or "person" means any individual,  
21 partnership, firm, association, corporation or other entity or  
22 organization of whatever character or description;

23 (8) "Applicant" means any racing association making  
24 application for a license under the provisions of this article or  
25 any person making application for a permit under the provisions  
26 of this article, or any person making application for a  
27 construction permit under the provisions of this article, as the  
28 case may be;

29 (9) "License" means the license required by the provisions  
30 of section one of this article;

31 (10) "Permit" means the permit required by the provisions  
32 of section two of this article;

33 (11) "Construction permit" means the construction permit  
34 required by the provisions of section eighteen of this article;

35 (12) "Licensee" means any racing association holding a  
36 license required by the provisions of section one of this article  
37 and issued under the provisions of this article;

38 (13) "Permit holder" means any person holding a permit  
39 required by the provisions of section two of this article and  
40 issued under the provisions of this article;

41 (14) "Construction permit holder" means any person  
42 holding a construction permit required by the provisions of  
43 section eighteen of this article and issued under the provisions  
44 of this article;

45 (15) "Hold or conduct" includes "assist, aid or abet in  
46 holding or conducting";

47 (16) "Racing commission" means the West Virginia Racing  
48 Commission;

49 (17) "Stewards" means the steward or stewards representing  
50 the racing commission, the steward or stewards representing a  
51 licensee and any other steward or stewards, whose duty it is to  
52 supervise any horse or dog race meeting, all as may be provided  
53 by reasonable rules of the racing commission, and the  
54 reasonable rules shall specify the number of stewards to be  
55 appointed, the method and manner of their appointment and  
56 their powers, authority and duties;

57 (18) "Pari-mutuel" means a mutuel or collective pool that  
58 can be divided among those who have contributed their wagers  
59 to one central agency, the odds to be reckoned in accordance to  
60 the collective amounts wagered upon each contestant running in  
61 a horse or dog race upon which the pool is made, but the total to  
62 be divided among the first three contestants on the basis of the  
63 number of wagers on these;

64 (19) "Pari-mutuel clerk" means any employee of a licensed  
65 racing association who is responsible for the collection of  
66 wagers, the distribution of moneys for winning pari-mutuel  
67 tickets, verification of the validity of pari-mutuel tickets and  
68 accounting for pari-mutuel funds;

69 (20) "Pool" means a combination of interests in a joint  
70 wagering enterprise or a stake in such enterprise;

71 (21) "Legitimate breakage" is the percentage left over in the  
72 division of a pool;

73 (22) "To the dime" means that wagers shall be figured and  
74 paid to the dime;

75 (23) "Code" means the Code of West Virginia, one thousand  
76 nine hundred thirty-one, as heretofore and hereinafter amended;

77 (24) "Accredited thoroughbred horse" means a  
78 thoroughbred horse that is: (a) Foaled in West Virginia; (b)  
79 sired by an accredited West Virginia sire; or (c) as a yearling,  
80 finished twelve consecutive months of verifiable residence in  
81 the state, except for thirty days' grace: (A) for the horse to be  
82 shipped to and from horse sales where the horse is officially  
83 entered in the sales catalogue of a recognized thoroughbred  
84 sales company; or (B) for obtaining veterinary services,  
85 documented by veterinary reports;

86 (25) "Accredited West Virginia sire" is a sire that is  
87 permanently domiciled in West Virginia, stands a full season in  
88 West Virginia and is registered with West Virginia  
89 Thoroughbred Breeders Association;

90 (26) "Breeder of an accredited West Virginia horse" is the  
91 owner of the foal at the time it was born in West Virginia;

92 (27) "Raiser of an accredited West Virginia horse" is the  
93 owner of the yearling at the time it finished twelve consecutive  
94 months of verifiable residence in the state. During the period,  
95 the raiser will be granted one month of grace for his or her horse  
96 to be shipped to and from thoroughbred sales where the horse is  
97 officially entered in the sales catalogue of a recognized  
98 thoroughbred sales company. In the event the yearling was born  
99 in another state and transported to this state, this definition does  
100 not apply after the thirty-first day of December, two thousand  
101 seven, to any pari-mutuel racing facility located in Jefferson  
102 County; nor shall it apply after the thirty-first day of December,  
103 two thousand twelve, and thereafter to any pari-mutuel racing  
104 facility located in Hancock County. Prior to the horse being  
105 shipped out of the state for sales, the raiser must notify the  
106 racing commission of his or her intentions;

107 (28) The "owner of an accredited West Virginia sire" is the  
108 owner of record at the time the offspring is conceived;

## HORSE AND DOG RACING

109 (29) The "owner of an accredited West Virginia horse"  
110 means the owner at the time the horse earned designated purses  
111 to qualify for restricted purse supplements provided in section  
112 thirteen-b of this article;

113 (30) "Registered greyhound owner" means an owner of a  
114 greyhound that is registered with the National Greyhound  
115 Association;

116 (31) "Fund" means the West Virginia Thoroughbred  
117 Development Fund established in section thirteen-b of this  
118 article; and

119 (32) "Regular purse" means both regular purses and stakes  
120 purses.

### **§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.**

1 (a) Any racing association conducting thoroughbred racing  
2 at any horse racetrack in this state shall pay each day upon  
3 which horse races are run a daily license tax of two hundred  
4 fifty dollars. Any racing association conducting harness racing  
5 at any horse racetrack in this state shall pay each day upon  
6 which horse races are run a daily license tax of one hundred  
7 fifty dollars. Any racing association conducting dog races shall  
8 pay each day upon which dog races are run a daily license tax  
9 of one hundred fifty dollars. In the event thoroughbred racing,  
10 harness racing, dog racing, or any combination of the foregoing  
11 are conducted on the same day at the same racetrack by the  
12 same racing association, only one daily license tax in the  
13 amount of two hundred fifty dollars shall be paid for that day.  
14 Any daily license tax shall not apply to any local, county or  
15 state fair, horse show or agricultural or livestock exposition at  
16 which horse racing is conducted for not more than six days.

17 (b) Any racing association licensed by the racing  
18 commission to conduct thoroughbred racing and permitting and  
19 conducting pari-mutuel wagering under the provisions of this  
20 article shall, in addition to the daily license tax set forth in  
21 subsection (a) of this section, pay to the racing commission,  
22 from the commission deducted each day by the licensee from  
23 the pari-mutuel pools on thoroughbred racing a tax calculated  
24 on the total daily contribution of all pari-mutuel pools  
25 conducted or made at any and every thoroughbred race meeting  
26 of the licensee licensed under the provisions of this article. The  
27 tax, on the pari-mutuel pools conducted or made each day  
28 during the months of January, February, March, October,  
29 November and December, shall from the effective date of this  
30 section and for fiscal year one thousand nine hundred eighty-  
31 five be calculated at two and six-tenths percent; for fiscal year  
32 one thousand nine hundred eighty-six, be calculated at two and  
33 three-tenths percent; for fiscal year one thousand nine hundred  
34 eighty-seven, be calculated at two percent of the pool; for fiscal  
35 year one thousand nine hundred eighty-eight, be calculated at  
36 one and one-half percent; for fiscal year one thousand nine  
37 hundred eighty-nine, be calculated at one percent of the pool;  
38 for fiscal year one thousand nine hundred ninety, seven tenths  
39 of one percent, and for fiscal year one thousand nine hundred  
40 ninety-one and each fiscal year thereafter be calculated at four  
41 tenths of one percent of the pool; and, on the pari-mutuel pools  
42 conducted or made each day during all other months, shall from  
43 the effective date of this section and for fiscal year one thousand  
44 nine hundred eighty-five, be calculated at three and six-tenths  
45 percent; for fiscal year one thousand nine hundred eighty-six, be  
46 calculated at three and three-tenths percent; for fiscal year one  
47 thousand nine hundred eighty-seven, be calculated at three  
48 percent of the pool; for fiscal year one thousand nine hundred  
49 eighty-eight, be calculated at two and one-half percent; for fiscal

50 year one thousand nine hundred eighty-nine, be calculated at  
51 two percent of the pool; for fiscal year one thousand nine  
52 hundred ninety, be calculated at one and seven-tenths percent of  
53 the pool; and for fiscal year one thousand nine hundred ninety-  
54 one and each fiscal year thereafter, be calculated at one and  
55 four-tenths percent of the pool: *Provided*, That out of the  
56 amount realized from the three tenths of one percent decrease in  
57 the tax effective for fiscal year one thousand nine hundred  
58 ninety-one and thereafter, which decrease correspondingly  
59 increases the amount of commission retained by the licensee,  
60 the licensee shall annually expend or dedicate: (i) One half of  
61 the realized amount for capital improvements in its barn area at  
62 the track, subject to the racing commission's prior approval of  
63 the plans for the improvements; and (ii) the remaining one half  
64 of the realized amount for capital improvements as the licensee  
65 may determine appropriate at the track. The term "capital  
66 improvement" shall be as defined by the Internal Revenue Code:  
67 *Provided, however*, That any racing association operating a  
68 horse racetrack in this state having an average daily pari-mutuel  
69 pool on horse racing of two hundred eighty thousand dollars or  
70 less per day for the race meetings of the preceding calendar year  
71 shall, in lieu of payment of the pari-mutuel pool tax, calculated  
72 as in this subsection, be permitted to conduct pari-mutuel  
73 wagering at the horse racetrack on the basis of a daily pari-  
74 mutuel pool tax fixed as follows: On the daily pari-mutuel pool  
75 not exceeding three hundred thousand dollars the daily pari-  
76 mutuel pool tax shall be one thousand dollars plus the otherwise  
77 applicable percentage rate imposed by this subsection of the  
78 daily pari-mutuel pool, if any, in excess of three hundred  
79 thousand dollars: *Provided further*, That upon the effective date  
80 of the reduction of the daily pari-mutuel pool tax to one  
81 thousand dollars from the former two thousand dollars, the  
82 association or licensee shall daily deposit five hundred dollars



83 into the special fund for regular purses established by  
84 subdivision (1), subsection (b), section nine of this article: *And*  
85 *provided further*, That if an association or licensee qualifying  
86 for the foregoing alternate tax conducts more than one racing  
87 performance, each consisting of up to thirteen races in a  
88 calendar day, the association or licensee shall pay both the daily  
89 license tax imposed in subsection (a) of this section and the  
90 alternate tax in this subsection for each performance: *And*  
91 *provided further*, That a licensee qualifying for the foregoing  
92 alternate tax is excluded from participation in the fund  
93 established by section thirteen-b of this article: *And provided*  
94 *further*, That this exclusion shall not apply to any thoroughbred  
95 racetrack at which the licensee has participated in the West  
96 Virginia thoroughbred development fund for more than four  
97 consecutive years prior to the thirty-first day of December, one  
98 thousand nine hundred ninety-two.

99 (c) Any racing association licensed by the racing  
100 commission to conduct harness racing and permitting and  
101 conducting pari-mutuel wagering under the provisions of this  
102 article shall, in addition to the daily license tax required under  
103 subsection (a) of this section, pay to the racing commission,  
104 from the commission deducted each day by the licensee from  
105 the pari-mutuel pools on harness racing, as a tax, three percent  
106 of the first one hundred thousand dollars wagered, or any part  
107 thereof; four percent of the next one hundred fifty thousand  
108 dollars; and five and three-fourths percent of all over that  
109 amount wagered each day in all pari-mutuel pools conducted or  
110 made at any and every harness race meeting of the licensee  
111 licensed under the provisions of this article.

112 (d) Any racing association licensed by the racing  
113 commission to conduct dog racing and permitting and

114 conducting pari-mutuel wagering under the provisions of this  
115 article shall, in addition to the daily license tax required under  
116 subsection (a) of this section, pay to the racing commission,  
117 from the commission deducted each day by the licensee from  
118 the pari-mutuel pools on dog racing, as a tax, four percent of the  
119 first fifty thousand dollars or any part thereof of the pari-mutuel  
120 pools, five percent of the next fifty thousand dollars of the pari-  
121 mutuel pools, six percent of the next one hundred thousand  
122 dollars of the pari-mutuel pools, seven percent of the next one  
123 hundred fifty thousand dollars of the pari-mutuel pools, and  
124 eight percent of all over three hundred fifty thousand dollars  
125 wagered each day: *Provided*, That the licensee shall deduct  
126 daily from the pari-mutuel tax an amount equal to one tenth of  
127 one percent of the daily pari-mutuel pools in dog racing in fiscal  
128 year one thousand nine hundred ninety; fifteen hundredths of  
129 one percent in fiscal year one thousand nine hundred ninety-  
130 one; two tenths of one percent in fiscal year one thousand nine  
131 hundred ninety-two; one quarter of one percent in fiscal year  
132 one thousand nine hundred ninety-three; and three tenths of one  
133 percent in fiscal year one thousand nine hundred ninety-four and  
134 every fiscal year thereafter. The amounts deducted shall be paid  
135 to the racing commission to be deposited by the racing  
136 commission in a banking institution of its choice in a special  
137 account to be known as "West Virginia Racing  
138 Commission-Special Account-West Virginia Greyhound  
139 Breeding Development Fund". The purpose of the fund is to  
140 promote better breeding, a training facility and racing of  
141 greyhounds in the state through awards and purses to bona fide  
142 resident registered greyhound owners of accredited West  
143 Virginia whelped greyhounds. In order to be eligible to receive  
144 an award or purse through the fund, the registered greyhound  
145 owner of the accredited West Virginia whelped greyhound must  
146 be a bona fide resident of this state. To qualify as a bona fide

147 resident of West Virginia, a registered greyhound owner may  
148 not claim residency in any other state. A registered greyhound  
149 owner must prove bona fide residency by providing to the  
150 commission personal income tax returns filed in the State of  
151 West Virginia for the most recent tax year and the three  
152 previous tax years, has real or personal property in this State on  
153 which the owner has paid real or personal property taxes during  
154 the most recent tax year and the previous three tax years and an  
155 affidavit stating that the owner claims no other state of  
156 residency. The racing commission and the West Virginia  
157 registered greyhound owners and breeders association shall  
158 maintain a registry for West Virginia bred greyhounds. The  
159 moneys shall be expended by the racing commission for purses  
160 for stake races, supplemental purse awards, administration,  
161 promotion and educational programs involving West Virginia  
162 whelped dogs, owned by residents of this state under rules  
163 promulgated by the racing commission. The racing commission  
164 shall pay out of the greyhound breeding development fund to  
165 each of the licensed dog racing tracks the sum of seventy-five  
166 thousand dollars for the fiscal year ending the thirtieth day of  
167 June, one thousand nine hundred ninety-four. The licensee shall  
168 deposit the sum into the special fund for regular purses  
169 established under the provisions of section nine of this article.  
170 The funds shall be expended solely for the purpose of  
171 supplementing regular purses under rules promulgated by the  
172 racing commission.

173 Supplemental purse awards will be distributed as follows:  
174 Supplemental purses shall be paid directly to the registered  
175 greyhound owner of an accredited greyhound.

176 The registered greyhound owner of accredited West  
177 Virginia whelped greyhounds that earn points at any West

178 Virginia meet will receive a bonus award calculated at the end  
179 of each month as a percentage of the fund dedicated to the  
180 owners as purse supplements, which shall be a minimum of fifty  
181 percent of the total moneys deposited into the West Virginia  
182 greyhound breeding development fund monthly.

183 The total amount of the fund available for the owners'  
184 awards shall be distributed according to the ratio of points  
185 earned by an accredited greyhound to the total amount earned in  
186 races by all accredited West Virginia whelped greyhounds for  
187 that month as a percentage of the funds dedicated to the owners'  
188 purse supplements. The point value at all greyhound tracks  
189 shall be the same as approved by the racing commission to be  
190 effective April 1, 2007.

191 The registered greyhound owner of an accredited West  
192 Virginia whelped greyhound shall file a purse distribution form  
193 with the racing commission for a percentage of his or her dog's  
194 earnings to be paid directly to the registered greyhound owner  
195 or owners of the greyhound. Distribution shall be made on the  
196 fifteenth day of each month for the preceding month's  
197 achievements.

198 In no event shall points earned at a meet held at a track  
199 which did not make contributions to the West Virginia  
200 greyhound breeder's development fund out of the daily pool on  
201 the day the meet was held qualify or count toward eligibility for  
202 supplemental purse awards.

203 Any balance in the purse supplement funds after all  
204 distributions have been made for the year revert to the general  
205 account of the fund for distribution in the following year:  
206 *Provided*, That not more than one million dollars from the

207 balance in the purse supplemental fund shall be used for the  
208 construction and maintenance of a dog training track and  
209 facilities if such be approved by the West Virginia Racing  
210 Commission. The West Virginia Racing Commission shall be  
211 authorized to promulgate rules governing dog training tracks.

212 In an effort to further promote the breeding of quality West  
213 Virginia whelped greyhounds, a bonus purse supplement shall  
214 be established in the amount of fifty thousand dollars per  
215 annum, to be paid in equal quarterly installments of twelve  
216 thousand five hundred dollars per quarter using the same  
217 method to calculate and distribute these funds as the regular  
218 supplemental purse awards. This bonus purse supplement is for  
219 three years only, commencing on the first day of July, one  
220 thousand nine hundred ninety-three, and ending the thirtieth day  
221 of June, one thousand nine hundred ninety-six. This money  
222 would come from the current existing balance in the greyhound  
223 development fund.

224 Each pari-mutuel greyhound track shall provide stakes races  
225 for accredited West Virginia whelped greyhounds: *Provided,*  
226 That each pari-mutuel track shall have one juvenile and one  
227 open stake race annually. To assure breeders of accredited West  
228 Virginia whelped greyhounds an opportunity to participate in  
229 the West Virginia Greyhound Breeding Development Fund the  
230 West Virginia Racing Commission by the first day of July each  
231 year shall establish and announce the minimum number of  
232 accredited West Virginia whelped greyhounds that greyhound  
233 racing kennels at West Virginia dog tracks must have on their  
234 racing active list during the calendar year following such action.  
235 The minimum number may vary from dog track to dog track.  
236 The minimum number shall be established after consultation  
237 with the West Virginia Greyhound Owners and Breeders

238 Association and kennel owners and operators. Factors to be  
239 considered in establishing this minimum number shall be the  
240 number of individually registered accredited West Virginia  
241 whelped greyhounds whelped in the previous two years. The  
242 number of all greyhounds seeking qualification at each West  
243 Virginia dog track, the ratio of active running greyhounds to  
244 housed number of greyhounds at each West Virginia dog track,  
245 and the size and number of racing kennels at each West Virginia  
246 dog track. Any greyhound racing kennel not having the  
247 minimum number of accredited West Virginia whelped  
248 greyhounds determined by the West Virginia Racing  
249 Commission on their active list shall only be permitted to race  
250 the maximum allowable number on the active list less the  
251 number of accredited West Virginia whelped greyhounds below  
252 the established minimum number. Consistent violations of this  
253 minimum requirement may for review by the Racing  
254 Commission and may constitute cause for denial or revocation  
255 of a kennel's racing license. The racing commission shall  
256 oversee and approve racing schedules and purse amounts.

257 Ten percent of the deposits into the greyhound breeding  
258 development fund beginning the first day of July, one thousand  
259 nine hundred ninety-three and continuing each year thereafter,  
260 shall be withheld by the racing commission and placed in a  
261 special revenue account hereby created in the State Treasury  
262 called the "administration, promotion and educational and  
263 capital improvement account". The racing commission is  
264 authorized to expend the moneys deposited in the  
265 administration, promotion and educational and capital  
266 improvement account at such times and in such amounts as the  
267 commission determines to be necessary for purposes of  
268 administering and promoting the greyhound development  
269 program: *Provided*, That beginning with fiscal year one

270 thousand nine hundred ninety-five and in each fiscal year  
271 thereafter in which the commission anticipates spending any  
272 money from the account, the commission shall submit to the  
273 executive department during the budget preparation period prior  
274 to the Legislature convening before that fiscal year for inclusion  
275 in the executive budget document and budget bill, the  
276 recommended expenditures, as well as requests of  
277 appropriations for the purpose of administration, promotion and  
278 education. The commission shall make an annual report to the  
279 Legislature on the status of the administration, promotion and  
280 education account, including the previous year's expenditures  
281 and projected expenditures for the next year.

282 The racing commission, for the fiscal year one thousand  
283 nine hundred ninety-four only, may expend up to thirty-five  
284 thousand dollars from the West Virginia greyhound breeding  
285 development fund to accomplish the purposes of this section  
286 without strictly following the requirements in the previous  
287 paragraph.

288 (e) All daily license and pari-mutuel pools tax payments  
289 required under the provisions of this section shall be made to the  
290 racing commission or its agent after the last race of each day of  
291 each horse or dog race meeting, and the pari-mutuel pools tax  
292 payments shall be made from all contributions to all pari-mutuel  
293 pools to each and every race of the day.

294 (f) Every association or licensee subject to the provisions of  
295 this article, including the changed provisions of sections nine  
296 and ten of this article, shall annually submit to the racing  
297 commission and the Legislature financial statements, including  
298 a balance sheet, income statement, statement of change in  
299 financial position and an audit of any electronic data system

300 used for pari-mutuel tickets and betting, prepared in accordance  
301 with generally accepted auditing standards, as certified by an  
302 experienced public accountant or a certified public accountant.

**§19-23-13b. West Virginia Thoroughbred Development Fund;  
distribution; restricted races; nonrestricted  
purse supplements; preference for West  
Virginia accredited 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  
14 association or licensee designated to the Thoroughbred  
15 Development Fund under the provisions of subsection (b),  
16 section nine of this article, subdivision (3), subsection (e),  
17 section twelve-b of this article, subsection (b), section twelve-c  
18 of this article, paragraph (B), subdivision (3), subsection (b),  
19 section thirteen-c of this article and sections ten and ten-b,  
20 article twenty-two-a, chapter twenty-nine of this code into  
21 accounts for each thoroughbred racetrack licensee with a  
22 banking institution of its choice with a separate account for each  
23 association or licensee. Each separate account shall be a special  
24 account to be known as "West Virginia Racing Commission



25 Special Account – West Virginia Thoroughbred Development  
26 Fund” and shall name the licensee for which the special account  
27 has been established: *Provided, however,* That the Racing  
28 Commission shall deposit all moneys paid into the  
29 Thoroughbred Development Fund by a thoroughbred racetrack  
30 licensee that did not participate in the Thoroughbred  
31 Development Fund for at least four consecutive calendar years  
32 prior to the thirty-first day of December, one thousand nine  
33 hundred ninety-two from the eighth day of July, two thousand  
34 five until the effective date of the amendment to this section  
35 passed during the fourth extraordinary session of the seventy-  
36 seventh Legislature shall be paid into the purse fund of that  
37 thoroughbred racetrack licensee: *Provided further,* That the  
38 moneys paid into the Thoroughbred Development Fund by a  
39 thoroughbred racetrack licensee that did not participate in the  
40 Thoroughbred Development Fund for at least four consecutive  
41 calendar years prior to the thirty-first day of December, one  
42 thousand nine hundred ninety-two, shall be transferred into that  
43 licensee’s purse fund until the first day of April, two thousand  
44 six. Notice of the amount, date and place of the deposits shall  
45 be given by the Racing Commission, in writing, to the State  
46 Treasurer. The purpose of the funds is to promote better  
47 breeding and racing of thoroughbred horses in the state through  
48 awards and purses for accredited breeders/raisers, sire owners  
49 and thoroughbred race horse owners: *And provided further,*  
50 That five percent of the deposits required to be withheld by an  
51 association or licensee in subsection (b), section nine of this  
52 article shall be placed in a special revenue account hereby  
53 created in the State Treasury called the "Administration and  
54 Promotion Account".

55 (b) The Racing Commission is authorized to expend the  
56 moneys deposited in the administration and promotion account

57 at times and in amounts as the Commission determines to be  
58 necessary for purposes of administering and promoting the  
59 thoroughbred development program: *Provided*, That during any  
60 fiscal year in which the Commission anticipates spending any  
61 money from the account, the Commission shall submit to the  
62 executive department during the budget preparation period prior  
63 to the Legislature convening before that fiscal year for inclusion  
64 in the executive budget document and budget bill the  
65 recommended expenditures, as well as requests of  
66 appropriations for the purpose of administration and promotion  
67 of the program. The Commission shall make an annual report  
68 to the Legislature on the status of the administration and  
69 promotion account, including the previous year's expenditures  
70 and projected expenditures for the next year.

71 (c) The fund or funds and the account or accounts  
72 established in subsection (a) of this section shall operate on an  
73 annual basis.

74 (d) Funds in the Thoroughbred Development Fund or funds  
75 in the separate accounts for each association or licensee as  
76 provided in subsection (a) of this section shall be expended for  
77 awards and purses except as otherwise provided in this section.  
78 Annually, the first eight hundred thousand dollars shall be  
79 available for distribution for a minimum of fourteen accredited  
80 stakes races at a racetrack which has participated in the West  
81 Virginia Thoroughbred Development Fund for a period of more  
82 than four consecutive calendar years prior to the thirty-first day  
83 of December, one thousand nine hundred ninety-two. The  
84 weights for all accredited stakes races shall be weight for age.  
85 One of the stakes races shall be the West Virginia Futurity and  
86 the second shall be the Frank Gall Memorial Stakes. For the  
87 purpose of participating in the West Virginia Futurity only, all

88 mares, starting with the breeding season beginning the first day  
89 of February through the thirty-first day of July, two thousand  
90 four, and each successive breeding season thereafter shall be  
91 bred back that year to an accredited West Virginia stallion only  
92 which is registered with the West Virginia Thoroughbred  
93 Breeders Association. The accredited stake races shall be  
94 chosen by the committee set forth in subsection (f) of this  
95 section.

96 (e) Awards and purses shall be distributed as follows:

97 (1) The breeders/raisers of accredited thoroughbred horses  
98 that earn a purse at a participating West Virginia meet shall  
99 receive a bonus award calculated at the end of the year as a  
100 percentage of the fund dedicated to the breeders/raisers, which  
101 shall be sixty percent of the fund available for distribution in  
102 any one year. The total amount available for the  
103 breeders'/raisers' awards shall be distributed according to the  
104 ratio of purses earned by an accredited race horse to the total  
105 amount earned in the participating races by all accredited race  
106 horses for that year as a percentage of the fund dedicated to the  
107 breeders/raisers. However, no breeder/raiser may receive from  
108 the fund dedicated to breeders'/raisers' awards an amount in  
109 excess of the earnings of the accredited horse at West Virginia  
110 meets. In addition, should a horse's breeder and raiser qualify  
111 for the same award on the same horse, they will each be  
112 awarded one half of the proceeds. The bonus referred to in this  
113 subdivision may only be paid on the first one hundred thousand  
114 dollars of any purse and not on any amounts in excess of the  
115 first one hundred thousand dollars.

116 (2) The owner of an accredited West Virginia sire of an  
117 accredited thoroughbred horse that earns a purse in any race at

118 a participating West Virginia meet shall receive a bonus award  
119 calculated at the end of the year as a percentage of the fund  
120 dedicated to sire owners, which shall be fifteen percent of the  
121 fund available for distribution in any one year. The total  
122 amount available for the sire owners' awards shall be distributed  
123 according to the ratio of purses earned by the progeny of  
124 accredited West Virginia stallions in the participating races for  
125 a particular stallion to the total purses earned by the progeny of  
126 all accredited West Virginia stallions in the participating races.  
127 However, no sire owner may receive from the fund dedicated to  
128 sire owners an amount in excess of thirty-five percent of the  
129 accredited earnings for each sire. The bonus referred to in this  
130 subdivision shall only be paid on the first one hundred thousand  
131 dollars of any purse and not on any amounts in excess of the  
132 first one hundred thousand dollars.

133 (3) The owner of an accredited thoroughbred horse that  
134 earns a purse in any participating race at a West Virginia meet  
135 shall receive a restricted purse supplement award calculated at  
136 the end of the year, which shall be twenty-five percent of the  
137 fund available for distribution in any one year, based on the  
138 ratio of the earnings in the races of a particular race horse to the  
139 total amount earned by all accredited race horses in the  
140 participating races during that year as a percentage of the fund  
141 dedicated to purse supplements. However, the owners may not  
142 receive from the fund dedicated to purse supplements an amount  
143 in excess of thirty-five percent of the total accredited earnings  
144 for each accredited race horse. The bonus referred to in this  
145 subdivision shall only be paid on the first one hundred thousand  
146 dollars of any purse and not on any amounts in excess of the  
147 first one hundred thousand dollars.

148       (4) In no event may purses earned at a meet held at a track  
149 which did not make a contribution to the Thoroughbred  
150 Development Fund out of the daily pool on the day the meet  
151 was held qualify or count toward eligibility for an award under  
152 this subsection.

153       (5) Any balance in the breeders/raisers, sire owners and  
154 purse supplement funds after yearly distributions shall first be  
155 used to fund the races established in subsection (f) of this  
156 section. Any amount not so used shall revert into the general  
157 account of the Thoroughbred Development Fund for each racing  
158 association or licensee for distribution in the next year.

159       Distribution shall be made on the fifteenth day of each  
160 February for the preceding year's achievements.

161       (f) (1) Each pari-mutuel thoroughbred horse track shall  
162 provide at least one restricted race per racing day: *Provided*,  
163 That sufficient horses and funds are available. For purposes of  
164 this subsection, there are sufficient horses if there are at least  
165 seven single betting interests received for the race: *Provided*  
166 *further*, That, if sufficient horses and funds are available, any  
167 thoroughbred horse racetrack whose licensee participated in the  
168 Thoroughbred Development Fund for at least four consecutive  
169 calendar years prior to the thirty-first day of December one  
170 thousand nine hundred ninety-two, shall provide two restricted  
171 races per racing day, at least one of which may be split at the  
172 discretion of the racing secretary. The restricted race required  
173 by this section must be included in the first nine races written in  
174 the condition book for that racing day.

175 (2) The restricted races established in this subsection shall  
176 be administered by a three-member committee at each track  
177 consisting of:

178 (A) The racing secretary;

179 (B) A member appointed by the authorized representative  
180 of a majority of the owners and trainers at the thoroughbred  
181 track; and

182 (C) A member appointed by the West Virginia  
183 Thoroughbred Breeders Association.

184 (3) Restricted races shall be funded by each racing  
185 association from:

186 (A) Moneys placed in the general purse fund: *Provided,*  
187 That a thoroughbred horse racetrack which did not participate  
188 in the West Virginia Thoroughbred Development fund for a  
189 period of more than four consecutive years prior to the thirty-  
190 first day of December, one thousand nine hundred ninety-two,  
191 may fund restricted races in an amount not to exceed one  
192 million dollars per year.

193 (B) Moneys as provided in subdivision (5), subsection (e)  
194 of this section, which shall be placed in a special fund called the  
195 "West Virginia Accredited Race Fund".

196 (4) The racing schedules, purse amounts and types of races  
197 are subject to the approval of the West Virginia Racing  
198 Commission.

199 (5) If less than seventy-five percent of the restricted races  
200 required by this subsection fail to receive enough entries to race,

201 the Racing Commission shall, on a quarterly basis, dedicate  
202 funds in each fund back to the general purse fund of the racing  
203 association or licensee: *Provided*, That no moneys may be  
204 dedicated back to a general purse fund if the dedication would  
205 leave less than two hundred fifty thousand dollars in the fund.

206 (g) As used in this section, "West Virginia bred-foal" means  
207 a horse that was born in the State of West Virginia.

208 (h) To qualify for the West Virginia Accredited Race Fund,  
209 the breeder must qualify under one of the following:

210 (1) The breeder of the West Virginia bred-foal is a West  
211 Virginia resident;

212 (2) The breeder of the West Virginia bred-foal is not a West  
213 Virginia resident, but keeps his or her breeding stock in West  
214 Virginia year round; or

215 (3) The breeder of the West Virginia bred-foal is not a West  
216 Virginia resident and does not qualify under subdivision (2) of  
217 this subsection, but either the sire of the West Virginia bred-foal  
218 is a West Virginia stallion, or the mare is covered only by a  
219 West Virginia accredited stallion or stallions before December  
220 31 of the calendar year following the birth of that West Virginia  
221 bred-foal.

222 (i) From the first day of July, two thousand one, West  
223 Virginia accredited thoroughbred horses have preference for  
224 entry in all accredited races at a thoroughbred race track at  
225 which the licensee participates in the West Virginia  
226 Thoroughbred Development Fund.

227 (j) Beginning the first day of July, two thousand six, any  
228 racing association licensed by the Racing Commission to  
229 conduct thoroughbred racing and permitting and conducting

230 pari-mutuel wagering under the provisions of this article must  
231 have a West Virginia Thoroughbred Racing Breeders Program.

232 (k) The Commission shall, during calendar year two  
233 thousand nine, conduct a study of the adequacy of funding  
234 provided for the Thoroughbred Development Fund at any  
235 thoroughbred racetrack which has not participated in the West  
236 Virginia Thoroughbred Development Fund for a period of more  
237 than four consecutive calendar years prior to the thirty-first day  
238 of December, one thousand nine hundred ninety-two, and shall  
239 report its findings and recommendations to the Joint Committee  
240 on Government and Finance on or before the first day of  
241 December, two thousand nine.

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## CHAPTER 128

**(Com. Sub. for S.B. 178 - By Senators Tomblin,  
Mr. President, and Caruth)  
[By Request of the Executive]**

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[Passed March 10, 2007; in effect ninety days from passage.]  
[Approved by the Governor on April 4, 2007.]

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AN ACT to amend and reenact §7-18-2 and §7-18-14 of the Code of West Virginia, 1931, as amended, all relating to hotel occupancy tax; allowing counties to increase the hotel occupancy tax to not more than six percent; requiring public hearing prior to enacting increase; and including incentives for passenger air service within the state, emergency services in certain areas and the support of the Hatfield-McCoy Recreational Authority, its purposes and operations by participating counties as permissible expenditures of the proceeds from the hotel occupancy tax.



*Be it enacted by the Legislature of West Virginia:*

That §7-18-2 and §7-18-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 18. HOTEL OCCUPANCY TAX.**

§7-18-2. Rate of tax.

§7-18-14. Proceeds of tax; application of proceeds.

**§7-18-2. Rate of tax.**

1 (a) The rate of tax imposed shall be three percent of the  
2 consideration paid for the use or occupancy of a hotel room.

3 (b) On and after the first day of July, two thousand five,  
4 a municipality may by ordinance increase the rate of tax  
5 imposed in this section to not more than six percent of the  
6 consideration paid for the use or occupancy of a hotel room:  
7 *Provided*, That notwithstanding any other provision of this  
8 article to the contrary, a municipality may not impose any tax  
9 authorized by this article on a hotel located within its  
10 corporate limits upon which a county was imposing a tax  
11 authorized by this article on or after the first day of January,  
12 two thousand five, and continuously thereafter to and  
13 including the effective date of annexation of the territory in  
14 which the hotel is located pursuant to article six, chapter eight  
15 of this code and, as to that hotel, the county is authorized to  
16 continue to impose and collect the tax authorized by this  
17 article at the rate of three percent of the consideration paid for  
18 the use or occupancy of a hotel room: *Provided, however*,  
19 That after the thirtieth day of June, two thousand seven, the  
20 county is authorized to continue to impose and collect the tax  
21 authorized by this article at the rate of not more than six  
22 percent of the consideration paid for the use or occupancy of  
23 a hotel room: *Provided further*, That prior to any increase in  
24 the rate of tax, the county shall comply with the requirements

25 of subsection (c) of this section: *And provided further*, That  
26 in the event the county commission duly enters an order of  
27 record that ceases to impose the tax authorized by this article  
28 on that hotel, then, as to that hotel, the municipality in which  
29 the hotel is located by reason of the annexation may impose  
30 the tax authorized by this article. Prior to the second reading  
31 of an ordinance proposed by a municipality to increase the  
32 rate of tax, the municipality shall conduct a properly noticed  
33 public hearing on the issue.

34 (c) On and after the first day of July, two thousand seven,  
35 a county may by ordinance increase the rate of tax imposed  
36 in this section to not more than six percent of the  
37 consideration paid for the use or occupancy of a hotel room.  
38 At least ten days prior to the final vote of a county  
39 commission on an ordinance proposed by a county  
40 commission to increase the rate of tax, the county  
41 commission shall conduct a properly noticed public hearing  
42 on the issue.

43 (d) The consideration paid for the use or occupancy of a  
44 hotel room shall not include the amount of tax imposed on  
45 the transaction under article fifteen, chapter eleven of this  
46 code or charges for meals, valet service, room service,  
47 telephone service or other charges or consideration not paid  
48 for use or occupancy of a hotel room.

#### **§7-18-14. Proceeds of tax; application of proceeds.**

1 (a) *Application of proceeds.* -- The net proceeds of the tax  
2 collected and remitted to the taxing authority pursuant to this  
3 article shall be deposited into the General Revenue Fund of  
4 such municipality or county commission and, after  
5 appropriation thereof, shall be expended only as provided in  
6 subsections (b) and (c) of this section.

7       (b) *Required expenditures.* -- At least fifty percent of the  
8 net revenue receivable during the fiscal year by a county or  
9 a municipality pursuant to this article shall be expended in  
10 the following manner for the promotion of conventions and  
11 tourism:

12       (1) *Municipalities.* -- If a convention and visitor's bureau  
13 is located within the municipality, county or region, the  
14 governing body of such municipality shall appropriate the  
15 percentage required by this subsection to that bureau. If a  
16 convention and visitor's bureau is not located within such  
17 municipality, county or region, then the percentage  
18 appropriation required by this subsection shall be  
19 appropriated as follows:

20       (A) Any hotel located within such municipality, county  
21 or region may apply to such municipality for an appropriation  
22 to such hotel of a portion of the tax authorized by this article  
23 and collected by such hotel and remitted to such  
24 municipality, for uses directly related to the promotion of  
25 tourism and travel, including advertising, salaries, travel,  
26 office expenses, publications and similar expenses. The  
27 portion of such tax allocable to such hotel shall not exceed  
28 seventy-five percent of that portion of such tax collected and  
29 remitted by such hotel which is required to be expended  
30 pursuant to this subsection: *Provided*, That prior to  
31 appropriating any moneys to such hotel, such municipality  
32 shall require the submission of, and give approval to, a  
33 budget setting forth the proposed uses of such moneys.

34       (B) If there is more than one convention and visitor's  
35 bureau located within a municipality, county or region, the  
36 city council may allocate the tax authorized by this article to  
37 one or more of such bureaus in such portion as the city  
38 council in its sole discretion determines.

39 (C) The balance of net revenue required to be expended  
40 by this subsection shall be appropriated to the regional travel  
41 council serving the area in which the municipality is located.

42 (2) *Counties.* -- If a convention and visitor's bureau is  
43 located within a county or region, the county commission  
44 shall appropriate the percentage required by this subsection  
45 to that convention and visitor's bureau. If a convention and  
46 visitor's bureau is not located within such county or region,  
47 then the percentage appropriation required by this subsection  
48 shall be appropriated as follows:

49 (A) Any hotel located within such county or region may  
50 apply to such county for an appropriation to such hotel of a  
51 portion of the tax authorized by this article and collected by  
52 such hotel and remitted to such county, for uses directly  
53 related to the promotion of tourism and travel, including  
54 advertising, salaries, travel, office expenses, publications and  
55 similar expenses. The portion of such tax allocable to such  
56 hotel shall not exceed seventy-five percent of that portion of  
57 such tax collected and remitted by such hotel which is  
58 required to be expended pursuant to this subsection:  
59 *Provided,* That prior to appropriating any moneys to such  
60 hotel such county shall require the submission of, and give  
61 approval to, a budget setting forth the proposed uses of such  
62 moneys.

63 (B) If there is more than one convention and visitor's  
64 bureau located within a county or region, the county  
65 commission may allocate the tax authorized by this article to  
66 one or more of such bureaus in such portion as the county  
67 commission in its sole discretion determines.

68 (C) The balance of net revenue required to be expended  
69 by this subsection shall be appropriated to the regional travel  
70 council serving the area in which the county is located.

71       (3) *Legislative finding.* -- The Legislature hereby finds  
72 and declares that in order to attract new business and industry  
73 to this state and to retain existing business and industry all to  
74 provide the citizens of the state with economic security, and  
75 to advance the business prosperity and economic welfare of  
76 this state, it is necessary to enhance recreational and tourism  
77 opportunities. Therefore, in order to promote recreation and  
78 tourism, the Legislature finds that public financial support  
79 should be provided for constructing, equipping, improving  
80 and maintaining projects, agencies and facilities which  
81 promote recreation and tourism. The Legislature also finds  
82 that the support of convention and visitor's bureaus, hotels  
83 and regional travel councils is a public purpose for which  
84 funds may be expended. Local convention and visitor's  
85 bureaus, hotels and regional travel councils receiving funds  
86 under this subsection may expend such funds for the payment  
87 of administrative expenses, and for the direct or indirect  
88 promotion of conventions and tourism, and for any other uses  
89 and purposes authorized by subdivisions (1) and (2) of this  
90 subsection.

91       (c) *Permissible expenditures.* -- After making the  
92 appropriation required by subsection (b) of this section, the  
93 remaining portion of the net revenues receivable during the  
94 fiscal year by such county or municipality, pursuant to this  
95 article, may be expended for one or more of the purposes set  
96 forth in this subsection, but for no other purpose. The  
97 purposes for which expenditures may be made pursuant to  
98 this subsection are as follows:

99       (1) The planning, construction, reconstruction,  
100 establishment, acquisition, improvement, renovation,  
101 extension, enlargement, equipment, maintenance, repair and  
102 operation of publicly owned convention facilities, including,  
103 but not limited to, arenas, auditoriums, civic centers and  
104 convention centers;

- 105 (2) The payment of principal or interest or both on  
106 revenue bonds issued to finance such convention facilities;
- 107 (3) The promotion of conventions;
- 108 (4) The construction, operation or maintenance of public  
109 parks, tourist information centers and recreation facilities,  
110 including land acquisition;
- 111 (5) The promotion of the arts;
- 112 (6) Historic sites;
- 113 (7) Beautification projects;
- 114 (8) Passenger air service incentives and subsidies directly  
115 related to increasing passenger air service availability to  
116 tourism destinations in this state;
- 117 (9) Medical care and emergency services, in an amount  
118 not exceeding two hundred thousand dollars, in any county  
119 where:
- 120 (A) There is an urgent necessity to preserve the delivery  
121 of acute medical care and emergency services;
- 122 (B) There is an increase in need for acute medical care  
123 and emergency services directly related to tourism;
- 124 (C) Recurrent flooding in the county significantly  
125 disrupts, on a periodic basis, the delivery of acute medical  
126 care and emergency services;
- 127 (D) There is an inadequate economic base within the  
128 county from any source other than tourism to preserve the  
129 delivery of acute medical care and emergency services;

130 (E) There is an inadequate economic base directly related  
131 to low population in the county, specifically, a population of  
132 less than ten thousand persons according to the census of the  
133 year one thousand nine hundred ninety;

134 (F) There is one and only one hospital within the county;  
135 and

136 (G) The county commission makes specific findings, by  
137 resolution, that all of the foregoing conditions within the  
138 county exist; or

139 (10) Support and operation of the Hatfield-McCoy  
140 Recreation Area by the participating county commissions in  
141 the Hatfield-McCoy Regional Recreational Authority.

142 (d) *Definitions.* -- For purposes of this section, the  
143 following terms are defined:

144 (1) *Convention and visitor's bureau and visitor's and*  
145 *convention bureau.* -- "Convention and visitor's bureau" and  
146 "visitor's and convention bureau" are interchangeable and  
147 either shall mean a nonstock, nonprofit corporation with a  
148 full-time staff working exclusively to promote tourism and to  
149 attract conventions, conferences and visitors to the  
150 municipality, county or region in which such convention and  
151 visitor's bureau or visitor's and convention bureau is located  
152 or engaged in business within.

153 (2) *Convention center.* -- "Convention center" means a  
154 convention facility owned by the state, a county, a  
155 municipality or other public entity or instrumentality and  
156 shall include all facilities, including armories, commercial,  
157 office, community service and parking facilities and publicly  
158 owned facilities constructed or used for the accommodation  
159 and entertainment of tourists and visitors, constructed in

160 conjunction with the convention center and forming  
161 reasonable appurtenances thereto.

162 (3) *Fiscal year*. -- "Fiscal year" means the year beginning  
163 the first day of July and ending the thirtieth day of June of the  
164 next calendar year.

165 (4) *Net proceeds*. -- "Net proceeds" means the gross  
166 amount of tax collections less the amount of tax lawfully  
167 refunded.

168 (5) *Promotion of the arts*. -- "Promotion of the arts"  
169 means activity to promote public appreciation and interest in  
170 one or more of the arts. It includes the promotion of music  
171 for all types, the dramatic arts, dancing, painting and the  
172 creative arts through shows, exhibits, festivals, concerts,  
173 musicals and plays.

174 (6) *Recreational facilities*. -- "Recreational facilities"  
175 means and includes any public park, parkway, playground,  
176 public recreation center, athletic field, sports arena, stadium,  
177 skating rink or arena, golf course, tennis courts and other  
178 park and recreation facilities, whether of a like or different  
179 nature, that are owned by a county or municipality.

180 (7) *Region*. -- "Region" means an area consisting of one  
181 or more counties that have agreed by contract to fund a  
182 convention and visitor's bureau to promote those counties.

183 (8) *Regional travel council*. -- "Regional travel council"  
184 means a nonstock, nonprofit corporation, with a full-time  
185 staff working exclusively to promote tourism and to attract  
186 conventions, conferences and visitors to the region of this  
187 state served by the regional travel council.



188 (9) *Historic site.* -- "Historic site" means any site listed on  
189 the United States national register of historic places, or listed  
190 by a local historical landmarks commission, established  
191 under state law, when such sites are owned by a city, a  
192 county or a nonprofit historical association and are open,  
193 from time to time, to accommodate visitors.

194 (e) Any member of a governing body who willingly and  
195 knowingly votes to or causes to be expended moneys  
196 generated by the provisions of this section for purposes other  
197 than specifically set forth in this section is guilty of a  
198 misdemeanor and, upon conviction thereof, shall be fined not  
199 more than one hundred dollars.



## CHAPTER 129

**(S.B. 613 - By Senators Fanning, Bowman and Barnes)**

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[Passed March 10, 2007; in effect ninety days from passage.]  
[Approved by the Governor on April 3, 2007.]

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AN ACT to amend and reenact §20-2-5 of the Code of West Virginia, 1931, as amended, relating to restrictions on carrying a crossbow afield and in a vehicle.

*Be it enacted by the Legislature of West Virginia:*

That §20-2-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. WILDLIFE RESOURCES.****§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.**

1 Except as authorized by the director, it is unlawful at any  
2 time for any person to:

3 (1) Shoot at or to shoot any wild bird or animal unless it  
4 is plainly visible to him or her;

5 (2) Dig out, cut out or smoke out, or in any manner take  
6 or attempt to take, any live wild animal or wild bird out of its  
7 den or place of refuge except as may be authorized by rules  
8 promulgated by the director or by law;

9 (3) Make use of, or take advantage of, any artificial light  
10 in hunting, locating, attracting, taking, trapping or killing any  
11 wild bird or wild animal, or to attempt to do so, while having  
12 in his or her possession or subject to his or her control, or for  
13 any person accompanying him or her to have in his or her  
14 possession or subject to his or her control, any firearm,  
15 whether cased or uncased, bow, arrow, or both, or other  
16 implement or device suitable for taking, killing or trapping a  
17 wild bird or animal: *Provided*, That it is lawful to hunt or  
18 take raccoon, opossum or skunk by the use of artificial light  
19 subject to the restrictions set forth in this subdivision:  
20 *Provided, however*, That it is lawful to hunt or take coyotes  
21 by the use of amber- or red-colored artificial light subject to  
22 the restrictions set forth in this subdivision. No person is  
23 guilty of a violation of this subdivision merely because he or  
24 she looks for, looks at, attracts or makes motionless a wild  
25 bird or wild animal with or by the use of an artificial light,  
26 unless at the time he or she has in his or her possession a  
27 firearm, whether cased or uncased, bow, arrow, or both, or  
28 other implement or device suitable for taking, killing or

29 trapping a wild bird or wild animal, or unless the artificial  
30 light (other than the head lamps of an automobile or other  
31 land conveyance) is attached to, a part of or used from within  
32 or upon an automobile or other land conveyance.

33 Any person violating the provisions of this subdivision is  
34 guilty of a misdemeanor and, upon conviction thereof, shall  
35 for each offense be fined not less than one hundred dollars  
36 nor more than five hundred dollars and shall be imprisoned  
37 in jail for not less than ten days nor more than one hundred  
38 days;

39 (4) Hunt for, take, kill, wound or shoot at wild animals or  
40 wild birds from an airplane, or other airborne conveyance, an  
41 automobile, or other land conveyance, or from a  
42 motor-driven water conveyance, except as authorized by  
43 rules promulgated by the director;

44 (5) Take any beaver or muskrat by any means other than  
45 by trap;

46 (6) Catch, capture, take or kill by seine, net, bait, trap or  
47 snare or like device of any kind any wild turkey, ruffed  
48 grouse, pheasant or quail;

49 (7) Destroy or attempt to destroy needlessly or willfully  
50 the nest or eggs of any wild bird or have in his or her  
51 possession the nest or eggs unless authorized to do so under  
52 rules promulgated by or under a permit issued by the director;

53 (8) Except as provided in section six of this article, carry  
54 an uncased or loaded gun in any of the woods of this state  
55 except during the open firearms hunting season for wild  
56 animals and nonmigratory wild birds within any county of  
57 the state unless he or she has in his or her possession a permit  
58 in writing issued to him or her by the director: *Provided,*

59 That this section shall not prohibit hunting or taking of  
60 unprotected species of wild animals and wild birds and  
61 migratory wild birds, during the open season, in the open  
62 fields, open water and open marshes of the state;

63 (9) Have in his or her possession a crossbow with a  
64 nocked bolt, a loaded firearm or a firearm from the magazine  
65 of which all shells and cartridges have not been removed, in  
66 or on any vehicle or conveyance, or its attachments, within  
67 the state, except as may otherwise be provided by law or  
68 regulation. Except as hereinafter provided, between five  
69 o'clock postmeridian of one day and seven o'clock  
70 antemeridian, eastern standard time of the day following, any  
71 unloaded firearm or crossbow, being lawfully carried in  
72 accordance with the foregoing provisions, shall be so carried  
73 only when in a case or taken apart and securely wrapped.  
74 During the period from the first day of July to the thirtieth  
75 day of September, inclusive, of each year, the foregoing  
76 requirements relative to carrying certain unloaded firearms  
77 are permissible only from eight-thirty o'clock postmeridian  
78 to five o'clock antemeridian, eastern standard time:  
79 *Provided*, That the time periods for carrying unloaded and  
80 uncased firearms are extended for one hour after the  
81 postmeridian times and one hour before the antemeridian  
82 times established above if a hunter is preparing to or in the  
83 process of transporting or transferring the firearms to or from  
84 a hunting site, campsite, home or other place of abode;

85 (10) Hunt, catch, take, kill, trap, injure or pursue with  
86 firearms or other implement by which wildlife may be taken  
87 after the hour of five o'clock antemeridian on Sunday on  
88 private land without the written consent of the landowner any  
89 wild animals or wild birds except when a big game season  
90 opens on a Monday, the Sunday prior to that opening day will  
91 be closed for any taking of wild animals or birds after five  
92 o'clock antemeridian on that Sunday: *Provided*, That traps

93 previously and legally set may be tended after the hour of  
94 five o'clock antemeridian on Sunday and the person so doing  
95 may carry only a twenty-two caliber firearm for the purpose  
96 of humanely dispatching trapped animals. Any person  
97 violating the provisions of this subdivision is guilty of a  
98 misdemeanor and, upon conviction thereof, in addition to any  
99 fines that may be imposed by this or other sections of this  
100 code, shall be subject to a one hundred dollar fine;

101 (11) Hunt with firearms or long bow while under the  
102 influence of intoxicating liquor;

103 (12) Hunt, catch, take, kill, injure or pursue a wild animal  
104 or bird with the use of a ferret;

105 (13) Buy raw furs, pelts or skins of fur-bearing animals  
106 unless licensed to do so;

107 (14) Catch, take, kill or attempt to catch, take or kill any  
108 fish at any time by any means other than by rod, line and  
109 hooks with natural or artificial lures unless otherwise  
110 authorized by law or rules issued by the Director: *Provided,*  
111 That snaring of any species of suckers, carp, fallfish and  
112 creek chubs shall at all times be lawful;

113 (15) Employ or hire, or induce or persuade, by the use of  
114 money or other things of value, or by any means, any person  
115 to hunt, take, catch or kill any wild animal or wild bird except  
116 those species on which there is no closed season, or to fish  
117 for, catch, take or kill any fish, amphibian or aquatic life  
118 which is protected by the provisions of this chapter or rules  
119 of the director or the sale of which is prohibited;

120 (16) Hunt, catch, take, kill, capture, pursue, transport,  
121 possess or use any migratory game or nongame birds  
122 included in the terms of conventions between the United

123 States and Great Britain and between the United States and  
124 United Mexican States for the protection of migratory birds  
125 and wild mammals concluded, respectively, the sixteenth day  
126 of August, one thousand nine hundred sixteen, and the  
127 seventh day of February, one thousand nine hundred  
128 thirty-six, except during the time and in the manner and  
129 numbers prescribed by the federal Migratory Bird Treaty Act,  
130 16 U. S. C. §703, *et seq.*, and regulations made thereunder;

131 (17) Kill, take, catch or have in his or her possession,  
132 living or dead, any wild bird other than a game bird; or  
133 expose for sale or transport within or without the state any  
134 bird except as aforesaid. No part of the plumage, skin or  
135 body of any protected bird shall be sold or had in possession  
136 for sale except mounted or stuffed plumage, skin, bodies or  
137 heads of the birds legally taken and stuffed or mounted,  
138 irrespective of whether the bird was captured within or  
139 without this state, except the English or European sparrow  
140 (*passer domesticus*), starling (*sturnus vulgaris*) and cowbird  
141 (*molothrus ater*), which may not be protected and the killing  
142 thereof at any time is lawful;

143 (18) Use dynamite or any like explosive or poisonous  
144 mixture placed in any waters of the state for the purpose of  
145 killing or taking fish. Any person violating the provisions of  
146 this subdivision is guilty of a felony and, upon conviction  
147 thereof, shall be fined not more than five hundred dollars or  
148 imprisoned for not less than six months nor more than three  
149 years, or both fined and imprisoned;

150 (19) Have a bow and gun, or have a gun and any arrow or  
151 arrows, in the fields or woods at the same time;

152 (20) Have a crossbow in the woods or fields or use a  
153 crossbow to hunt for, take or attempt to take any wildlife,  
154 unless the person possesses a Class Y permit;

155 (21) Take or attempt to take turkey, bear, elk or deer with  
156 any arrow unless the arrow is equipped with a point having  
157 at least two sharp cutting edges measuring in excess of three  
158 fourths of an inch wide;

159 (22) Take or attempt to take any wildlife with an arrow  
160 having an explosive head or shaft, a poisoned arrow or an  
161 arrow which would affect wildlife by any chemical action;

162 (23) Shoot an arrow across any public highway or from  
163 aircraft, motor-driven watercraft, motor vehicle or other land  
164 conveyance;

165 (24) Permit any dog owned by him or her or under his or  
166 her control to chase, pursue or follow upon the track of any  
167 wild animal or wild bird, either day or night, between the first  
168 day of May and the fifteenth day of August next following:  
169 *Provided*, That dogs may be trained on wild animals and wild  
170 birds, except deer and wild turkeys, and field trials may be  
171 held or conducted on the grounds or lands of the owner or by  
172 his or her bona fide tenant or tenants or upon the grounds or  
173 lands of another person with his or her written permission or  
174 on public lands at any time: *Provided, however*, That  
175 nonresidents may not train dogs in this state at any time  
176 except during the legal small game hunting season: *Provided*  
177 *further*, That the person training said dogs does not have  
178 firearms or other implements in his or her possession during  
179 the closed season on wild animals and wild birds, whereby  
180 wild animals or wild birds could be taken or killed;

181 (25) Conduct or participate in a field trial,  
182 shoot-to-retrieve field trial, water race or wild hunt hereafter  
183 referred to as trial: *Provided*, That any person, group of  
184 persons, club or organization may hold the trial at any time  
185 of the year upon obtaining a permit as is provided in section  
186 fifty-six of this article. The person responsible for obtaining

187 the permit shall prepare and keep an accurate record of the  
188 names and addresses of all persons participating in said trial  
189 and make same readily available for inspection by any  
190 conservation officer upon request;

191 (26) Except as provided in section four of this article,  
192 hunt, catch, take, kill or attempt to hunt, catch, take or kill  
193 any wild animal, wild bird or wild fowl except during the  
194 open season established by rule of the director as authorized  
195 by subdivision (6), section seven, article one of this chapter;

196 (27) Hunting on public lands on Sunday after five o'clock  
197 antemeridian is prohibited; and

198 (28) Hunt, catch, take, kill, trap, injure or pursue with  
199 firearms or other implement which wildlife can be taken, on  
200 private lands on Sunday after the hour of five o'clock  
201 antemeridian: *Provided*, That the provisions of this  
202 subdivision do not apply in any county until the county  
203 commission of the county holds an election on the question  
204 of whether the provisions of this subdivision prohibiting  
205 hunting on Sunday shall apply within the county and the  
206 voters approve the allowance of hunting on Sunday in the  
207 county. The election is determined by a vote of the resident  
208 voters of the county in which the hunting on Sunday is  
209 proposed to be authorized. The county commission of the  
210 county in which Sunday hunting is proposed shall give notice  
211 to the public of the election by publication of the notice as a  
212 Class II-0 legal advertisement in compliance with the  
213 provisions of article three, chapter fifty-nine of this code and  
214 the publication area for the publication shall be the county in  
215 which the election is to be held. The date of the last  
216 publication of the notice shall fall on a date within the period  
217 of the fourteen consecutive days next preceding the election.



218 On the local option election ballot shall be printed the  
219 following:

220 Shall hunting on Sunday be authorized in \_\_\_\_\_  
221 County?

222  Yes  No

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

224 Any local option election to approve or disapprove of the  
225 proposed authorization of Sunday hunting within a county  
226 shall be in accordance with procedures adopted by the  
227 commission. The local option election may be held in  
228 conjunction with a primary or general election or at a special  
229 election. Approval shall be by a majority of the voters  
230 casting votes on the question of approval or disapproval of  
231 Sunday hunting at the election.

232 If a majority votes against allowing Sunday hunting, no  
233 election on the issue may be held for a period of one hundred  
234 four weeks. If a majority votes "yes", no election  
235 reconsidering the action may be held for a period of five  
236 years. A local option election may thereafter be held if a  
237 written petition of qualified voters residing within the county  
238 equal to at least five percent of the number of persons who  
239 were registered to vote in the next preceding general election  
240 is received by the county commission of the county in which  
241 Sunday hunting is authorized. The petition may be in any  
242 number of counterparts. The election shall take place at the  
243 next primary or general election scheduled more than ninety  
244 days following receipt by the county commission of the  
245 petition required by this subsection: *Provided*, That the issue  
246 may not be placed on the ballot until all statutory notice  
247 requirements have been met. No local law or regulation  
248 providing any penalty, disability, restriction, regulation or

249 prohibition of Sunday hunting may be enacted and the  
 250 provisions of this article preempt all regulations, rules,  
 251 ordinances and laws of any county or municipality in conflict  
 252 with this subdivision.

253 (29) Hunt or conduct hunts for a fee where the hunter is  
 254 not physically present in the same location as the wildlife  
 255 being hunted within West Virginia.

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## CHAPTER 130

**(Com. Sub. for H.B. 2078 - By Delegate Talbott (By Request))**

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[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2007.]

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AN ACT to amend and reenact §20-2-22 of the Code of West Virginia, 1931, as amended, relating to tagging of certain game; providing tagging procedure; completing and placing the game tag; reporting to a conservation officer or an official checking station and providing penalties.

*Be it enacted by the Legislature of West Virginia:*

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

### **ARTICLE 2. WILDLIFE RESOURCES.**

**§20-2-22. Tagging, removing, transporting and reporting bear, bobcat, deer, wild boar and wild turkey.**

- 1 (a) Each person killing a bear, bobcat, deer, wild boar, or
- 2 wild turkey found in a wild state shall either attach a

3 completed game tag to the animal or remain with the animal  
4 and have upon his or her person a completed game tag before  
5 removing the carcass in any manner from where it was killed.

6 (b) While transporting the carcass of a bear, bobcat, deer,  
7 wild boar, or wild turkey from where it was killed, each  
8 person shall either attach a completed game tag to the animal  
9 or have upon his or her person a completed game tag.

10 (c) Upon arriving at a residence, camp, hunting lodge,  
11 vehicle or vessel each person shall attach a game tag to the  
12 killed bear, bobcat, deer, wild boar, or wild turkey. The  
13 game tag shall remain on the carcass until it is retagged by a  
14 conservation officer or an official checking station.

15 (d) If a person who does not possess a game tag kills a  
16 bear, bobcat, deer, wild boar, or wild turkey, he or she shall  
17 make a tag. The tag shall bear the name, address, and if  
18 applicable, the license number, of the hunter, and the time,  
19 date and county of killing.

20 (e) The carcass of a wild turkey shall be delivered to a  
21 conservation officer or an official checking station for  
22 checking and retagging before it is either skinned or  
23 transported beyond the boundaries of the county adjacent to  
24 that in which the kill was made.

25 (f) The fresh skin and head or carcass of the deer shall be  
26 delivered to a conservation officer or an official checking  
27 station for checking and retagging before it is transported  
28 beyond the boundaries of the county adjacent to that in which  
29 the kill was made.

30 (g) A person who kills a bear shall treat the carcass and  
31 remains in accordance with the provisions of section twenty-  
32 two a, article two, chapter twenty-two.

33 (h) For each violation of this section, a person is subject  
34 to the penalties provided in this article.

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**CHAPTER 131**

**(Com. Sub. for S.B. 612 - By Senators Fanning,  
Bowman and Barnes)**

[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §20-7-9 of the Code of West Virginia, 1931, as amended, relating to increasing the criminal penalties for violation of certain hunting and fishing laws by nonresidents.

*Be it enacted by the Legislature of West Virginia:*

That §20-7-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING,  
LITTER.**

**§20-7-9. Violations of chapter generally; penalties.**

1 Any person violating any of the provisions of this chapter  
2 or rules promulgated under the provisions of this chapter, the  
3 punishment for which is not prescribed, shall be guilty of a  
4 misdemeanor and, upon conviction thereof, shall for each  
5 offense be fined not less than twenty nor more than three  
6 hundred dollars or confined in jail not less than ten or more  
7 than one hundred days, or be both fined and imprisoned  
8 within the limitations aforesaid and, in the case of a violation  
9 by a corporation, every officer or agent thereof directing or  
10 engaging in such violation shall be guilty of a misdemeanor

11 and, upon conviction thereof, shall be subject to the same  
12 penalties and punishment as herein provided: *Provided*, That  
13 any person violating subdivision (3), section five, article two  
14 of this chapter shall be guilty of a misdemeanor and, upon  
15 conviction thereof, shall be fined not less than one hundred  
16 dollars nor more than five hundred dollars and shall be  
17 imprisoned for not less than ten days nor more than one  
18 hundred days: *Provided, however*, That any person who is in  
19 violation of section twenty-seven, article two of this chapter  
20 as a result of their failure to have a valid Class E nonresident  
21 hunting and trapping license, as defined by section forty-two-  
22 d of this article, or a valid Class EE nonresident bear hunting  
23 license, as defined by section forty-two-e of this article, shall  
24 be guilty of a misdemeanor and, upon conviction thereof,  
25 shall be fined not less than two hundred fifty dollars nor more  
26 than five hundred dollars, or confined in jail not less than ten  
27 nor more than one hundred days, or both fined and  
28 imprisoned: *Provided further*, That any person who is in  
29 violation of section twenty-seven, article two of this chapter  
30 as a result of their failure to have a Class F nonresident  
31 fishing license, as defined by section forty-two-f of this  
32 article, shall be guilty of a misdemeanor and, upon conviction  
33 thereof, fined not less than one hundred dollars nor more than  
34 three hundred dollars or confined in jail not less than ten nor  
35 more than one hundred days, or both fined and imprisoned:  
36 *And provided further*, That any person violating any parking  
37 or speeding regulations as promulgated by the director on any  
38 state parks, state forests, public hunting and fishing areas and  
39 all other lands and waters owned, leased or under the control  
40 of the Division of Natural Resources shall be guilty of a  
41 misdemeanor and, upon conviction thereof, shall be fined not  
42 less than two nor more than one hundred dollars or  
43 imprisoned in jail not more than ten days, or both fined and  
44 imprisoned.

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**CHAPTER 132****(Com. Sub. for S.B. 425 - By Senators Kessler and McKenzie)**

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[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2007.]

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AN ACT to amend and reenact §16-13E-2, §16-13E-4, and §16-13E-6 of the Code of West Virginia, 1931, as amended; and to amend and reenact §22C-2-1 and §22C-2-5 of said code, all relating to enhancement of existing public infrastructure funding sources; adding water treatment and wastewater treatment as authorized projects in community enhancement districts; expanding the definition of “local entity” for purposes of eligibility for funding from the Water Pollution Control Revolving Fund; and authorizing the Water Development Authority to take security or other interest in certain property to secure loans made from the fund.

*Be it enacted by the Legislature of West Virginia:*

That §16-13E-2, §16-13E-4 and §16-13E-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §22C-2-1 and §22C-2-5 of said code be amended and reenacted, all to read as follows:

**Chapter**

- 16. Public Health,**
- 22C. Environmental Resources; Boards, Authorities, Commissions and Compacts.**

**CHAPTER 16. PUBLIC HEALTH.**

**ARTICLE 13E. COMMUNITY ENHANCEMENT ACT.**

§16-13E-2. Definitions.

§16-13E-4. Petition for creation or expansion of community enhancement district; petition requirement.

§16-13E-6. Creation of community enhancement district; community enhancement district to be a public corporation and political subdivision; powers thereof; community enhancement boards.

**§ 16-13E-2. Definitions.**

1 For purposes of this article:

2 (a) “Assessment bonds” means special obligation bonds  
3 or notes issued by a community enhancement district which  
4 are payable from the proceeds of assessments.

5 (b) “Assessment” means the fee, including interest, paid  
6 by the owner of real property located within a community  
7 enhancement district to pay for the cost of a project or  
8 projects constructed upon or benefitting or protecting such  
9 property and administrative expenses related thereto, which  
10 fee is in addition to all taxes and other fees levied on the  
11 property.

12 (c) “Board” means a community enhancement board  
13 created pursuant to this article.

14 (d) “Code” means the Code of West Virginia, one  
15 thousand nine hundred thirty-one, as amended.

16 (e) “Community enhancement district” or “district”  
17 means a community enhancement district created pursuant to  
18 this article.

19 (f) “Cost” means the cost of:

20 (1) Construction, reconstruction, renovation and  
21 acquisition of all lands, structures, real or personal property,  
22 rights, rights-of-way, franchises, easements and interests  
23 acquired or to be acquired by the district;

24 (2) All machinery and equipment, including machinery  
25 and equipment needed to expand or enhance county or city  
26 services to the district;

27 (3) Financing charges and interest prior to and during  
28 construction and, if deemed advisable by the district or  
29 governing body, for a limited period after completion of the  
30 construction;

31 (4) Interest and reserves for principal and interest,  
32 including costs of municipal bond insurance and any other  
33 type of financial guaranty;

34 (5) Costs of issuance in connection with the issuance of  
35 assessment bonds;

36 (6) The design of extensions, enlargements, additions and  
37 improvements to the facilities of any district;

38 (7) Architectural, engineering, financial and legal  
39 services;

40 (8) Plans, specifications, studies, surveys and estimates  
41 of costs and revenues;

42 (9) Administrative expenses necessary or incident to  
43 determining to proceed with any project; and



44 (10) Other expenses as may be necessary or incident to  
45 the construction, acquisition and financing of a project.

46 (g) “County commission” means the governing body of  
47 a county as defined in section one, article one, chapter seven  
48 of this code.

49 (h) “Governing body” means, in the case of a county, the  
50 county commission and in the case of a municipality, the  
51 mayor and council together, the council or the board of  
52 directors as charged with the responsibility of enacting  
53 ordinances and determining the public policy of such  
54 municipality.

55 (i) “Governmental agency” means the state government  
56 or any agency, department, division or unit thereof; counties;  
57 municipalities; any watershed enhancement districts, soil  
58 conservation districts, sanitary districts, public service  
59 districts, drainage districts, school districts, urban renewal  
60 authorities or regional governmental authorities established  
61 pursuant to this code.

62 (j) “Municipality” means a municipality as defined in  
63 section two, article one, chapter eight of this code.

64 (k) “Person” means an individual, firm, partnership,  
65 corporation, voluntary association or any other type of entity.

66 (l) “Project” means the design, construction,  
67 reconstruction, establishment, acquisition, improvement,  
68 renovation, extension, enlargement, equipping, maintenance,  
69 repair (including replacements) and start-up operation of  
70 water source of supply, treatment, transmission and  
71 distribution facilities, sewage treatment, collection and  
72 transmission facilities, stormwater systems, police stations,

73 fire stations, libraries, museums, schools, other public  
74 buildings, hospitals, piers, docks, terminals, drainage  
75 systems, culverts, streets, roads, bridges (including  
76 approaches, causeways, viaducts, underpasses and connecting  
77 roadways), motor vehicle parking facilities (including  
78 parking lots, buildings, ramps, curb-line parking, meters and  
79 other facilities deemed necessary, appropriate, useful,  
80 convenient or incidental to the regulation, control and  
81 parking of motor vehicles), public transportation, public  
82 recreation centers, public recreation parks, swimming pools,  
83 tennis courts, golf courses, equine facilities, motor vehicle  
84 competition and recreational facilities, flood protection or  
85 relief projects, or the grading, regrading, paving, repaving,  
86 surfacing, resurfacing, curbing, recurbing, widening, lighting  
87 or otherwise improving any street, avenue, road, highway,  
88 alley or way, or the building or renewing of sidewalks and  
89 flood protection; and the terms shall mean and include any  
90 project as a whole, and all integral parts thereof, including all  
91 necessary, appropriate, useful, convenient or incidental  
92 appurtenances and equipment in connection with any one or  
93 more of the above.

**§16-13E-4. Petition for creation or expansion of community  
enhancement district; petition requirements.**

1 (a) The owners of at least sixty-one percent of the real  
2 property, determined by acreage, located within the  
3 boundaries of the area described in the petition, by metes and  
4 bounds or otherwise in a manner sufficient to describe the  
5 area, may petition a governing body to create or expand a  
6 community enhancement district.

7 (b) The petition for the creation or expansion of a  
8 community enhancement district shall include, where  
9 applicable, the following:

10 (1) The proposed name and proposed boundaries of such  
11 district and a list of the names and addresses of all owners of  
12 real property within the proposed district;

13 (2) A detailed project description;

14 (3) A map showing the proposed project, including all  
15 proposed improvements;

16 (4) A list of estimated project costs and the preliminary  
17 plans and specifications for such improvements, if available;

18 (5) A list of nonproject costs and how they will be  
19 financed;

20 (6) A consultant study outlining the projected  
21 assessments, setting forth the methodology for determining  
22 the assessments and the methodology for allocating portions  
23 of an initial assessment against a parcel expected to be  
24 subdivided in the future to the various lots into which the  
25 parcel will be subdivided and demonstrating that such  
26 assessments will adequately cover any debt service on bonds  
27 issued to finance the project and ongoing administrative  
28 costs;

29 (7) A development schedule;

30 (8) A list of recommended members for the board;

31 (9) If the project includes water, wastewater or sewer  
32 improvements, written evidence from the utility or utilities  
33 that will provide service to the district, if any, that said utility  
34 or utilities:

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

38 (B) Will review and approve all plans and specifications  
39 for the improvements to determine that the improvements  
40 conform to the utility's reasonable requirements and, if the  
41 improvement consists of water transmission or distribution  
42 facilities, that the improvements provide for adequate fire  
43 protection for the district; and

44 (C) If built in conformance with said plans and  
45 specifications, will accept the improvements following their  
46 completion, unless such projects are to be owned by the  
47 district;

48 (10) If the project includes improvements other than as  
49 set forth in subdivision (9) of this subsection that will be  
50 transferred to another governmental agency, written evidence  
51 that such agency will accept such transfer, unless such  
52 projects are to be owned by the district;

53 (11) The benefits that can be expected from the creation  
54 of the district and the project; and

55 (12) A certification from each owner of real property  
56 within the proposed district who joins in the petition that he  
57 or she is granting an assessment against his or her property in  
58 such an amount as to pay for the costs of the project and  
59 granting a lien for said amount upon said property  
60 enforceable in accordance with the provision of this article.

61 (c) After reviewing the petition presented pursuant to this  
62 section, the governing body may by order or ordinance  
63 determine the necessity and economic feasibility of creating

64 a community enhancement district and developing,  
65 constructing, acquiring, improving or extending a project  
66 therein. If the governing body determines that the creation of  
67 a community enhancement district and construction of the  
68 project is necessary and economically feasible, it shall set a  
69 date for the public meeting required under section five of this  
70 article and shall cause the petition to be filed with the clerk  
71 of the county commission or the clerk or recorder of the  
72 municipality, as the case may be, and be made available for  
73 inspection by interested persons before the meeting.

74 (d) Notwithstanding any other provision of this article to  
75 the contrary, nothing in this article shall modify:

76 (1) The jurisdiction of the public service commission to  
77 determine the convenience and necessity of the construction  
78 of utility facilities, to resolve disputes between utilities  
79 relating to which utility should provide service to a district or  
80 otherwise to regulate the orderly development of utility  
81 infrastructure in the state; or

82 (2) The authority of the infrastructure and jobs  
83 development council as to the funding of utility facilities to  
84 the extent that loans, loan guarantees, grants or other funding  
85 assistance from a state infrastructure agency are involved.

**§16-13E-6. Creation of community enhancement district;  
community enhancement district to be a  
public corporation and political subdivision;  
powers thereof; community enhancement  
boards.**

1 (a) Each community enhancement district shall be created  
2 by adoption or enactment of an order or ordinance.

3 (b) From and after the date of the adoption or enactment  
4 of the order or ordinance creating a community enhancement  
5 district, it shall thereafter be a public corporation and political  
6 subdivision of this state, but without any power to levy or  
7 collect ad valorem taxes. Each community enhancement  
8 district is hereby empowered and authorized, in addition to  
9 any other rights, powers and authorities conferred upon it in  
10 this article or elsewhere in this code, to:

11 (1) Acquire, own and hold, in its corporate name, by  
12 purchase, lease, right of eminent domain, gift or otherwise,  
13 such property, both real and personal and other interests in  
14 real estate, or any other property, whether tangible or  
15 intangible, as may be necessary or incident to the planning,  
16 financing, development, construction, acquisition, extension,  
17 improvement and completion of a project;

18 (2) Design, plan, finance, develop, construct, acquire,  
19 extend, improve and complete one or more projects and  
20 assess the cost of all or any portion of a project on real  
21 property located within the community enhancement district;

22 (3) Sue or be sued;

23 (4) Establish a bank account or accounts in its name;

24 (5) Enter into agreements or other transactions with any  
25 person or governmental agency necessary or incident to the  
26 development, planning, construction, acquisition or  
27 improvement of a project or for the operation, maintenance  
28 or disposition of a project or for any other services required  
29 by a project;

30 (6) Annually, on or before the seventh day of June,  
31 certify to the sheriff of the county in which the property is

32 located the assessments granted against all property in the  
33 district for inclusion in the tax ticket;

34 (7) Expend funds to acquire, or construct part of a project  
35 on property located outside of a community enhancement  
36 district, and for any work undertaken thereon, as may be  
37 necessary or incident to the completion of a project;

38 (8) Enter into agreements with one or more counties,  
39 municipalities, public service districts or community  
40 enhancement districts to plan, develop, construct, acquire or  
41 improve a project jointly;

42 (9) Accept appropriations, gifts, grants, bequests and  
43 devises and use or dispose of the same to carry out its  
44 corporate purpose;

45 (10) Make and execute contracts, releases, assignments,  
46 compromises and other instruments necessary or convenient  
47 for the exercise of its powers, or to carry out its corporate  
48 purpose;

49 (11) Have a seal and alter the same;

50 (12) Raise funds by the issuance and sale of assessment  
51 bonds;

52 (13) Obtain options to acquire real property, or any  
53 interest therein, by purchase, lease or otherwise, which is  
54 found by the board to be suitable as a site, or part of a site,  
55 for the construction of a project;

56 (14) Pledge funds generated by assessments in a district  
57 or proceeds from the sale of assessment bonds to payment of  
58 debt service on tax increment financing obligations issued

59 under article eleven-b, chapter seven of this code for the  
60 period of time determined by the community enhancement  
61 board; and

62 (15) Take any and all other actions consistent with the  
63 purpose of this article and not in violation of the constitution  
64 of this state as may be necessary or incident to the  
65 construction and completion of a project.

66 (c) The powers of each community enhancement district  
67 shall be vested in and exercised by a community  
68 enhancement board which shall be composed of five  
69 members, four of whom shall be appointed by the governing  
70 body of the county or municipality in which the community  
71 enhancement district is located and one of whom shall be the  
72 sheriff or his or her designee of the county or the treasurer or  
73 his or her designee of the municipality (or such other person  
74 serving in an equivalent capacity if there is no treasurer), as  
75 the case may be, in which the community enhancement  
76 district is located. At least three members of the board shall  
77 be residents of the assessment district: *Provided*, That should  
78 less than three persons reside within the boundaries of the  
79 community enhancement district, then at least three members  
80 of the board shall be residents of the county or municipality,  
81 as the case may be: *Provided, however*, That if no persons  
82 reside within the boundaries of the community enhancement  
83 district then at least three members must be approved by the  
84 owner or owners of the land. No more than three initial  
85 members of the board may be from the same political party.

86 (d) The four members appointed by the governing body  
87 shall be appointed for overlapping terms of four years each  
88 and thereafter until their respective successors have been  
89 appointed and have qualified. For the purpose of initial



90 appointments, one member shall be appointed for a term of  
91 four years; one member shall be appointed for a term of three  
92 years; one member shall be appointed for a term of two  
93 years; and one member shall be appointed for a term of one  
94 year. Members may be reappointed for any number of terms.  
95 Before entering upon the performance of his or her duties,  
96 each member shall take and subscribe to the oath required by  
97 section five, article IV of the constitution of this state.  
98 Vacancies shall be filled by appointment by the governing  
99 body of the county or municipality creating the assessment  
100 district for the unexpired term of the member whose office  
101 shall be vacant and such appointment shall be made within  
102 thirty days of the occurrence of such vacancy. Any such  
103 member may be removed by the governing body which  
104 appointed such member in case of incompetency, neglect of  
105 duty, gross immorality or malfeasance in office. Members  
106 shall be entitled to no more than fifty dollars per meeting and  
107 reasonable expenses associated with their services.

108 (e) The board shall organize within thirty days following  
109 the first appointments and annually thereafter at its first  
110 meeting after the first day of January of each year by  
111 selecting one of its members to serve as chairman, one to  
112 serve as treasurer and one to serve as secretary. The  
113 secretary, or his or her designee, shall keep a record of all  
114 proceedings of the board which shall be available for  
115 inspection as other public records and the treasurer, or his or  
116 her designee, shall maintain records of all financial matters  
117 relating to the community enhancement district, which shall  
118 also be available for inspection as other public records.  
119 Duplicate records shall be filed with the clerk or recorder, as  
120 the case may be, of the county or municipality which created  
121 the community enhancement district and shall include the  
122 minutes of all board meetings. The secretary and treasurer  
123 shall perform such other duties pertaining to the affairs of the

124 community enhancement district as shall be prescribed by the  
125 board.

126 (f) The members of the board, and the chairman,  
127 secretary and treasurer thereof, shall make available to the  
128 governing body responsible for appointing the board, at all  
129 times, all of its books and records pertaining to the  
130 community enhancement district's operation, finances and  
131 affairs for inspection and audit. The board shall meet at least  
132 semiannually.

133 (g) A majority of the members of the board constitutes a  
134 quorum and meetings shall be held at the call of the  
135 chairman.

136 (h) Staff, office facilities and costs of operation of the  
137 board may be provided by the county or municipality which  
138 created the community enhancement district or by contract  
139 and said costs of operations shall be funded from assessments  
140 collected within the district.

141 (i) The chairman shall preside at all meetings of the board  
142 and shall vote as any other members of the board, but if he or  
143 she should be absent from any meeting the remaining  
144 members may select a temporary chairman, and if the  
145 member selected as chairman resigns as such or ceases for  
146 any reason to be a member of the board, the board shall select  
147 one of its members as chairman to serve until the next annual  
148 organizational meeting.

149 (j) The board shall, by resolution, determine its own rules  
150 of procedure, fix the time and place of its meetings and the  
151 manner in which special meetings may be called. The  
152 members of the board shall not be personally liable or  
153 responsible for any obligations of the assessment district or

154 the board but are answerable only for willful misconduct in  
155 the performance of their duties.

156 (k) The official name of a community enhancement  
157 district created under the provisions of this article may  
158 contain the name of the county or municipality, as the case  
159 may be, in which it is located.

160 (l) Notwithstanding any provision in this code to the  
161 contrary, the power and authority hereby conferred on  
162 community enhancement districts may extend within the  
163 territory of a public service district created under section two,  
164 article thirteen-a of this chapter.

**CHAPTER 22C. ENVIRONMENTAL RESOURCES;  
BOARDS, AUTHORITIES, COMMISSIONS AND  
COMPACTS.**

**ARTICLE 2. WATER POLLUTION CONTROL REVOLVING  
FUND ACT.**

§22C-2-1. Definitions.

§22C-2-5. Collection of money due to the fund.

**§22C-2-1. Definitions.**

1 Unless the context in which used clearly requires a  
2 different meaning, as used in this article:

3 (a) "Authority" means the Water Development Authority  
4 provided for in section four, article one of this chapter.

5 (b) "Cost" as applied to any project financed under the  
6 provisions of this article means the total of all costs incurred  
7 by a local entity that are reasonable and necessary for

8 carrying out all works and undertakings necessary or incident  
9 to the accomplishment of any project including:

10 (1) Developmental, planning and feasibility studies,  
11 surveys, plans and specifications;

12 (2) Architectural, engineering, financial, legal or other  
13 special services;

14 (3) Acquisition of land and any buildings and  
15 improvements on the land or buildings, including the  
16 discharge of any obligations of the sellers of the land,  
17 buildings or improvements;

18 (4) Site preparation and development, including  
19 demolition or removal of existing structures, construction and  
20 reconstruction, labor, materials, machinery and equipment;

21 (5) The reasonable costs of financing incurred by the  
22 local entity in the course of the development of the project,  
23 carrying charges incurred before placing the project in  
24 service, interest on funds borrowed to finance the project to  
25 a date subsequent to the estimated date the project is to be  
26 placed in service, necessary expenses incurred in connection  
27 with placing the project in service and the funding of  
28 accounts and reserves which the authority may require; and

29 (6) Other items that the Department of Environmental  
30 Protection determines to be reasonable and necessary.

31 (c) "Fund" means the State Water Pollution Control  
32 Revolving Fund provided for in this article as it may be  
33 expanded or modified, from time to time, pursuant to the  
34 Clean Water Act, 33 U. S. C. §1251, *et seq.*, as amended, the

35 Federal Safe Drinking Water Act 42 U. S. C. §300f through  
36 §300j-26, inclusive, as amended, or by the executive order of  
37 the Governor issued to comply with federal laws relating to  
38 the acts.

39 (d) "Instrumentality" means the Department of  
40 Environmental Protection or the agency designated by an  
41 order of the Governor as having the primary responsibility  
42 for administering the fund pursuant to the Clean Water Act,  
43 33 U. S. C. §1251, *et seq.*, as amended, and the Federal Safe  
44 Drinking Water Act 42 U. S. C. §300f through §300j-26,  
45 inclusive, as amended, or other federal laws.

46 (e) "Local entity" means any county, city, town,  
47 municipal corporation, authority, district, public service  
48 district, commission, banking institution, political  
49 subdivision, regional governmental authority, state  
50 government agency, interstate agency or not-for-profit  
51 association or corporation in West Virginia.

52 (f) "Project" means any water or wastewater treatment  
53 facility located or to be located in or outside this state by a  
54 local entity and includes:

55 (1) Sewage and wastewater collection, treatment and  
56 disposal facilities;

57 (2) Public water transportation, treatment and distribution  
58 facilities;

59 (3) Drainage facilities and projects;

60 (4) Administrative, maintenance, storage and laboratory  
61 facilities related to the facilities delineated in subdivisions  
62 (1), (2) and (3) of this subsection;

63 (5) Interests in land related to the facilities delineated in  
64 subdivisions (1), (2), (3) and (4) of this subsection; and

65 (6) Other projects allowable under federal law.

**§22C-2-5. Collection of money due to the fund.**

1 (a) In order to ensure the timely payment of all sums due  
2 and owing to the fund under a revolving fund loan agreement  
3 between the state and a local entity, and notwithstanding any  
4 provisions of this code to the contrary, the authority has and  
5 may, at its option, exercise the following rights and remedies  
6 in the event of any default by a local entity under a loan  
7 agreement:

8 (1) The authority may directly impose, in its own name  
9 and for its own benefit, service charges upon all users of a  
10 project funded by a loan distributed to a local entity pursuant  
11 to this article and may proceed directly to enforce and collect  
12 the service charges, together with all necessary costs of the  
13 enforcement and collection.

14 (2) The authority may exercise, in its own name or in the  
15 name of and as the agent for a particular local entity, all of  
16 the rights, powers and remedies of the local entity with  
17 respect to the project or which may be conferred upon the  
18 local entity by statute, rule, regulation or judicial decision,  
19 including all rights and remedies with respect to users of the

20 project funded by the loan distributed to that local entity  
21 pursuant to this article.

22 (3) The authority may, by civil action, mandamus or  
23 other judicial or administrative proceeding, compel  
24 performance by a local entity of all of the terms and  
25 conditions of the loan agreement between the state and that  
26 local entity including:

27 (A) The adjustment of service charges as required to  
28 repay the loan or otherwise satisfy the terms of the loan  
29 agreement;

30 (B) The enforcement and collection of service charges;  
31 and

32 (b) The enforcement by the local entity of all rights and  
33 remedies conferred by statute, rule, regulation or judicial  
34 decision. The rights and remedies enumerated in this section  
35 are in addition to rights and remedies conferred upon the  
36 authority by law or pursuant to the loan agreement.

37 (c) For loans made for projects defined in subdivision (6),  
38 subsection (f), section one of this article, at the direction of  
39 the Department of Environmental Protection, the authority  
40 shall take a security or other interest in real or personal  
41 property with the right to foreclose upon a default to secure  
42 loans made from the fund.

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**CHAPTER 133**

**(Com. Sub. for S.B. 18 - By Senators Prezioso, Minard,  
Stollings, Hunter, Kessler, Sprouse and McCabe)**

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[Passed March 5, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 26, 2007.]

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AN ACT to amend and reenact §5-16-7 and §5-16-9 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §9-5-20; to amend said code by adding thereto a new section, designated §33-15-4i; to amend said code by adding thereto a new section, designated §33-16-3s; to amend said code by adding thereto a new section, designated §33-24-7i; to amend said code by adding thereto a new section, designated §33-25-8g; and to amend said code by adding thereto a new section, designated §33-25A-8h, all relating to modifying required insurance benefits; modifying required benefits for public employees insurance, accident and sickness insurance, group accident and sickness insurance, hospital service corporations, medical service corporations, dental service corporations, health service corporations, health care corporations and health maintenance organizations; requiring insurance policies and medical benefit plans to include certain coverages when medically appropriate and consistent with relevant national guidelines; requiring coverage from Medicaid for testing for chronic kidney disease; public education of providers on management of chronic kidney disease; defining diagnostic criteria for chronic kidney disease; ensuring the Public Employees Insurance Agency will



continue and maintain medical and prescription drug coverage for Medicare-eligible retired employees; and providing that if a Medicare/Advantage Prescription Drug Plan should fail, the Public Employees Insurance Agency will take all Medicare-eligible retired employees back into the existing Public Employees Insurance Agency plan or provide another plan of equal or better coverage.

*Be it enacted by the Legislature of West Virginia:*

That §5-16-7 and §5-16-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §9-5-20; that said code be amended by adding thereto a new section, designated §33-15-4i; that said code be amended by adding thereto a new section, designated §33-16-3s; that said code be amended by adding thereto a new section, designated §33-24-7i; that said code be amended by adding thereto a new section, designated §33-25-8g; and that said code be amended by adding thereto a new section, designated §33-25A-8h, 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.**
- 9. **Human Services.**
- 33. **Insurance.**

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

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

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

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

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

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

9 (1) Coverages and benefits for X-ray and laboratory  
10 services in connection with mammograms when medically  
11 appropriate and consistent with current guidelines from the  
12 United States Preventive Services Task Force; pap smears,  
13 either conventional or liquid-based cytology, whichever is  
14 medically appropriate and consistent with the current  
15 guidelines from either the United States Preventive Services

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\*CLERK'S NOTE: This section was also amended by S.B. 129 (Chapter 208), which passed subsequent to this act.

16 Task Force or The American College of Obstetricians and  
17 Gynecologists; and a test for the human papilloma virus  
18 (HPV) when medically appropriate and consistent with  
19 current guidelines from either the United States Preventive  
20 Services Task Force or The American College of  
21 Obstetricians and Gynecologists, when performed for cancer  
22 screening or diagnostic services on a woman age eighteen or  
23 over;

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

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

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

41 (5) For plans which provide coverages for post-delivery  
42 care to a mother and her newly born child in the home,  
43 coverage for inpatient care following childbirth as provided  
44 in subdivision (3) of this subsection if inpatient care is  
45 determined to be medically necessary by the attending

46 physician. Those plans may also include, among other  
47 things, medicines, medical equipment, prosthetic appliances  
48 and any other inpatient and outpatient services and expenses  
49 considered appropriate and desirable by the agency; and

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

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

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

74 (C) The agency shall not discriminate between medical-  
75 surgical benefits and mental health benefits in the  
76 administration of its plan. With regard to both medical-  
77 surgical and mental health benefits, it may make

78 determinations of medical necessity and appropriateness and  
79 it may use recognized health care quality and cost  
80 management tools, including, but not limited to, limitations  
81 on inpatient and outpatient benefits, utilization review,  
82 implementation of cost-containment measures,  
83 preauthorization for certain treatments, setting coverage  
84 levels, setting maximum number of visits within certain time  
85 periods, using capitated benefit arrangements, using fee-for-  
86 service arrangements, using third-party administrators, using  
87 provider networks and using patient cost sharing in the form  
88 of copayments, deductibles and coinsurance.

89 (b) The agency shall make available to each eligible  
90 employee, at full cost to the employee, the opportunity to  
91 purchase optional group life and accidental death insurance  
92 as established under the rules of the agency. In addition,  
93 each employee is entitled to have his or her spouse and  
94 dependents, as defined by the rules of the agency, included in  
95 the optional coverage, at full cost to the employee, for each  
96 eligible dependent; and with full authorization to the agency  
97 to make the optional coverage available and provide an  
98 opportunity of purchase to each employee.

99 (c) The finance board may cause to be separately rated  
100 for claims experience purposes: (1) All employees of the  
101 State of West Virginia; (2) all teaching and professional  
102 employees of state public institutions of higher education and  
103 county boards of education; (3) all nonteaching employees of  
104 the university of West Virginia board of trustees or the board  
105 of directors of the State College System and county boards of  
106 education; or (4) any other categorization which would  
107 ensure the stability of the overall program.

108 (d) The agency shall maintain the medical and  
109 prescription drug coverage for Medicare-eligible retirees by

110 providing that coverage through one of the existing plans or  
111 by enrolling the Medicare-eligible retired employees into a  
112 Medicare-specific plan, including, but not limited to, the  
113 Medicare/Advantage Prescription Drug Plan. In the event  
114 that a Medicare-specific plan would no longer be available or  
115 advantageous for the agency and the retirees, the retirees  
116 shall remain eligible for coverage through the agency.

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

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

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

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

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

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

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

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

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

44 (c) The group life and accidental death insurance herein  
45 provided for shall be in the amount of ten thousand dollars  
46 for every employee. The amount of the group life and

47 accidental death insurance to which an employee would  
48 otherwise be entitled shall be reduced to five thousand dollars  
49 upon such employee attaining age sixty-five.

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

53 (e) The provisions of article three, chapter five-a of this  
54 code, relating to the Division of Purchasing of the  
55 Department of Finance and Administration, shall not apply to  
56 any contracts for any insurance coverage or professional  
57 services authorized to be executed under the provisions of  
58 this article. Before entering into any contract for any  
59 insurance coverage, as authorized in this article, the director  
60 shall invite competent bids from all qualified and licensed  
61 insurance companies or carriers, who may wish to offer plans  
62 for the insurance coverage desired: *Provided*, That the  
63 director shall negotiate and contract directly with health care  
64 providers and other entities, organizations and vendors in  
65 order to secure competitive premiums, prices and other  
66 financial advantages. The director shall deal directly with  
67 insurers or health care providers and other entities,  
68 organizations and vendors in presenting specifications and  
69 receiving quotations for bid purposes. No commission or  
70 finder's fee, or any combination thereof, shall be paid to any  
71 individual or agent; but this shall not preclude an  
72 underwriting insurance company or companies, at their own  
73 expense, from appointing a licensed resident agent, within  
74 this state, to service the companies' contracts awarded under  
75 the provisions of this article. Commissions reasonably  
76 related to actual service rendered for the agent or agents may  
77 be paid by the underwriting company or companies:  
78 *Provided, however*, That in no event shall payment be made  
79 to any agent or agents when no actual services are rendered



80 or performed. The director shall award the contract or  
81 contracts on a competitive basis. In awarding the contract or  
82 contracts the director shall take into account the experience  
83 of the offering agency, corporation, insurance company or  
84 service organization in the group hospital and surgical  
85 insurance field, group major medical insurance field, group  
86 prescription drug field and group life and accidental death  
87 insurance field and its facilities for the handling of claims. In  
88 evaluating these factors, the director may employ the services  
89 of impartial, professional insurance analysts or actuaries or  
90 both. Any contract executed by the director with a selected  
91 carrier shall be a contract to govern all eligible employees  
92 subject to the provisions of this article. Nothing contained in  
93 this article shall prohibit any insurance carrier from soliciting  
94 employees covered hereunder to purchase additional hospital  
95 and surgical, major medical or life and accidental death  
96 insurance coverage.

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

102 (g) Each employee who is covered under any contract or  
103 contracts shall receive a statement of benefits to which the  
104 employee, his or her spouse and his or her dependents are  
105 entitled under the contract, setting forth the information as to  
106 whom the benefits are payable, to whom claims shall be  
107 submitted and a summary of the provisions of the contract or  
108 contracts as they affect the employee, his or her spouse and  
109 his or her dependents.

110 (h) The director may at the end of any contract period  
111 discontinue any contract or contracts it has executed with any

112 carrier and replace the same with a contract or contracts with  
113 any other carrier or carriers meeting the requirements of this  
114 article.

115 (i) The director shall provide by contract or contracts  
116 entered into under the provisions of this article the cost for  
117 coverage of children's immunization services from birth  
118 through age sixteen years to provide immunization against  
119 the following illnesses: Diphtheria, polio, mumps, measles,  
120 rubella, tetanus, hepatitis-b, haemophilus influenza-b and  
121 whooping cough. Additional immunizations may be required  
122 by the Commissioner of the Bureau for Public Health for  
123 public health purposes. Any contract entered into to cover  
124 these services shall require that all costs associated with  
125 immunization, including the cost of the vaccine, if incurred  
126 by the health care provider, and all costs of vaccine  
127 administration, be exempt from any deductible, per visit  
128 charge and/or copayment provisions which may be in force  
129 in these policies or contracts. This section does not require  
130 that other health care services provided at the time of  
131 immunization be exempt from any deductible and/or  
132 copayment provisions.

## **CHAPTER 9. HUMAN SERVICES.**

### **ARTICLE 5. MISCELLANEOUS PROVISIONS.**

#### **§9-5-20. Medicaid program; chronic kidney disease; evaluation and classification.**

1 (a) Any enrollee in Medicaid who is eligible for services  
2 and who has a diagnosis of diabetes or hypertension or, who

3 has a family history of kidney disease, shall receive coverage  
4 for an evaluation for chronic kidney disease through routine  
5 clinical laboratory assessments of kidney function.

6 (b) Any enrollee in Medicaid who is eligible for services  
7 and who has been diagnosed with diabetes or hypertension or  
8 who has a family history of kidney disease and who has  
9 received a diagnosis of kidney disease shall be classified as  
10 a chronic kidney patient.

11 (c) The diagnostic criteria used to define chronic kidney  
12 disease should be those generally recognized through clinical  
13 practice guidelines which identify chronic kidney disease or  
14 its complications based on the presence of kidney damage  
15 and level of kidney function.

16 (d) Medicaid providers shall be educated by the Bureau  
17 for Public Health in an effort to increase the rate of  
18 evaluation and treatment for chronic kidney disease.  
19 Providers should be made aware of:

20 (i) Managing risk factors, which prolong kidney function  
21 or delay progression to kidney replacement therapy;

22 (ii) Managing risk factors for bone disease and  
23 cardiovascular disease associated with chronic kidney  
24 disease;

25 (iii) Improving nutritional status of chronic kidney  
26 disease patients; and

27 (iv) Correcting anemia associated with chronic kidney  
28 disease.

**CHAPTER 33. INSURANCE.****Article**

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

**ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.****§33-15-4i. Third-party reimbursement for kidney disease screening.**

1 (a) Notwithstanding any provision of any policy,  
 2 provision, contract, plan or agreement applicable to this  
 3 article, reimbursement or indemnification for annual kidney  
 4 disease screening and laboratory testing as recommended by  
 5 the National Kidney Foundation may not be denied for any  
 6 person when reimbursement or indemnity for laboratory or  
 7 X-ray services are covered under the policy and are  
 8 performed for kidney disease screening or diagnostic  
 9 purposes at the direction of a person licensed to practice  
 10 medicine and surgery by the board of medicine. The tests are  
 11 as follows: Any combination of blood pressure testing, urine  
 12 albumin or urine protein testing and serum creatinine testing.

13 (b) The same deductibles, coinsurance, network  
 14 restrictions and other limitations for covered services found  
 15 in the policy, provision, contract, plan or agreement of the  
 16 covered person may apply to kidney disease screening and  
 17 laboratory testing.

**ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.****§33-16-3s. Third-party reimbursement for kidney disease screening.**

1 (a) Notwithstanding any provision of any policy,  
 2 provision, contract, plan or agreement applicable to this  
 3 article, reimbursement or indemnification for annual kidney

4 disease screening and laboratory testing as recommended by  
5 the National Kidney Foundation may not be denied for any  
6 person when reimbursement or indemnity for laboratory or  
7 X-ray services are covered under the policy and are  
8 performed for kidney disease screening or diagnostic  
9 purposes at the direction of a person licensed to practice  
10 medicine and surgery by the board of medicine. The tests are  
11 as follows: Any combination of blood pressure testing, urine  
12 albumin or urine protein testing and serum creatinine testing.

13 (b) The same deductibles, coinsurance, network  
14 restrictions and other limitations for covered services found  
15 in the policy, provision, contract, plan or agreement of the  
16 covered person may apply to kidney disease screening and  
17 laboratory testing.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS,  
M E D I C A L S E R V I C E  
CORPORATIONS, DENTAL SERVICE  
CORPORATIONS AND HEALTH  
SERVICE CORPORATIONS.**

**§33-24-7i. Third-party reimbursement for kidney disease  
screening.**

1 (a) Notwithstanding any provision of any policy,  
2 provision, contract, plan or agreement applicable to this  
3 article, reimbursement or indemnification for annual kidney  
4 disease screening and laboratory testing as recommended by  
5 the National Kidney Foundation may not be denied for any  
6 person when reimbursement or indemnity for laboratory or  
7 X-ray services are covered under the policy and are  
8 performed for kidney disease screening or diagnostic  
9 purposes at the direction of a person licensed to practice  
10 medicine and surgery by the board of medicine. The tests are

11 as follows: Any combination of blood pressure testing, urine  
12 albumin or urine protein testing and serum creatinine testing.

13 (b) The same deductibles, coinsurance, network  
14 restrictions and other limitations for covered services found  
15 in the policy, provision, contract, plan or agreement of the  
16 covered person may apply to kidney disease screening and  
17 laboratory testing.

## **ARTICLE 25. HEALTH CARE CORPORATION.**

### **§33-25-8g. Third-party reimbursement for kidney disease screening.**

1 (a) Notwithstanding any provision of any policy,  
2 provision, contract, plan or agreement applicable to this  
3 article, reimbursement or indemnification for annual kidney  
4 disease screening and laboratory testing as recommended by  
5 the National Kidney Foundation may not be denied for any  
6 person when reimbursement or indemnity for laboratory or  
7 X-ray services are covered under the policy and are  
8 performed for kidney disease screening or diagnostic  
9 purposes at the direction of a person licensed to practice  
10 medicine and surgery by the board of medicine. The tests are  
11 as follows: Any combination of blood pressure testing, urine  
12 albumin or urine protein testing and serum creatinine testing.

13 (b) The same deductibles, coinsurance, network  
14 restrictions and other limitations for covered services found  
15 in the policy, provision, contract, plan or agreement of the  
16 covered person may apply to kidney disease screening and  
17 laboratory testing.

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

### **§33-25A-8h. Third-party reimbursement for kidney disease screening.**

1 (a) Notwithstanding any provision of any policy,  
2 provision, contract, plan or agreement applicable to this

3 article, reimbursement or indemnification for annual kidney  
4 disease screening and laboratory testing as recommended by  
5 the National Kidney Foundation may not be denied for any  
6 person when reimbursement or indemnity for laboratory or  
7 X-ray services are covered under the policy and are  
8 performed for kidney disease screening or diagnostic  
9 purposes at the direction of a person licensed to practice  
10 medicine and surgery by the board of medicine. The tests are  
11 as follows: Any combination of blood pressure testing, urine  
12 albumin or urine protein testing and serum creatinine testing.

13 (b) The same deductibles, coinsurance, network  
14 restrictions and other limitations for covered services found  
15 in the policy, provision, contract, plan or agreement of the  
16 covered person may apply to kidney disease screening and  
17 laboratory testing.

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## CHAPTER 134

**(Com. Sub. for H.B. 2940 - By Delegates Cann, Kominar,  
White, Beach, Barker, Perry, Perdue and Evans)**

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[Passed March 10, 2007; in effect July 1, 2007.]

[Approved by the Governor on April 4, 2007.]

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AN ACT to amend and reenact §5-16-13 of the Code of West Virginia, 1931, as amended; and to amend and reenact §33-16-1a of said code, all relating to the public employees insurance program and group accident and sickness insurance; and increasing the age of certain dependents for health insurance coverage.

*Be it enacted by the Legislature of West Virginia:*

That §5-16-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §33-16-1a of said code be amended and reenacted, all to read as follows:

**Chapter**

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

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

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

**§5-16-13. Payment of costs by employer and employee; spouse and dependent coverage; involuntary employee termination coverage; conversion of annual leave and sick leave authorized for health or retirement benefits; authorization for retiree participation; continuation of health insurance for surviving dependents of deceased employees; requirement of new health plan, limiting employer contribution.**

- 1       (a) *Cost-sharing.* -- The director shall provide under any
- 2 contract or contracts entered into under the provisions of this
- 3 article that the costs of any group hospital and surgical
- 4 insurance, group major medical insurance, group prescription
- 5 drug insurance, group life and accidental death insurance
- 6 benefit plan or plans shall be paid by the employer and
- 7 employee.



8       (b) *Spouse and dependent coverage.* -- Each employee is  
9 entitled to have his or her spouse and dependents included in  
10 any group hospital and surgical insurance, group major  
11 medical insurance or group prescription drug insurance  
12 coverage to which the employee is entitled to participate:  
13 *Provided*, That the spouse and dependent coverage is limited  
14 to excess or secondary coverage for each spouse and  
15 dependent who has primary coverage from any other source.  
16 For purposes of this section, the term "primary coverage"  
17 means individual or group hospital and surgical insurance  
18 coverage or individual or group major medical insurance  
19 coverage or group prescription drug coverage in which the  
20 spouse or dependent is the named insured or certificate  
21 holder. For the purposes of this section, "dependent" means  
22 an eligible employee's unmarried child or stepchild under the  
23 age of twenty-five if that child or stepchild meets the  
24 definition of a "qualifying child" or a "qualifying relative" in  
25 section 152 of the Internal Revenue Code. The director may  
26 require proof regarding spouse and dependent primary  
27 coverage and shall adopt rules governing the nature,  
28 discontinuance and resumption of any employee's coverage  
29 for his or her spouse and dependents.

30       (c) *Continuation after termination.* -- If an employee  
31 participating in the plan is terminated from employment  
32 involuntarily or in reduction of work force, the employee's  
33 insurance coverage provided under this article shall continue  
34 for a period of three months at no additional cost to the  
35 employee and the employer shall continue to contribute the  
36 employer's share of plan premiums for the coverage. An  
37 employee discharged for misconduct shall not be eligible for  
38 extended benefits under this section. Coverage may be  
39 extended up to the maximum period of three months, while  
40 administrative remedies contesting the charge of misconduct  
41 are pursued. If the discharge for misconduct be upheld, the

42 full cost of the extended coverage shall be reimbursed by the  
43 employee. If the employee is again employed or recalled to  
44 active employment within twelve months of his or her prior  
45 termination, he or she shall not be considered a new enrollee  
46 and may not be required to again contribute his or her share  
47 of the premium cost, if he or she had already fully  
48 contributed such share during the prior period of  
49 employment.

50 (d) *Conversion of accrued annual and sick leave for*  
51 *extended insurance coverage upon retirement for employees*  
52 *who elected to participate in the plan before July, one*  
53 *thousand nine hundred eighty-eight.* — Except as otherwise  
54 provided in subsection (g) of this section, when an employee  
55 participating in the plan, who elected to participate in the plan  
56 before the first day of July, one thousand nine hundred  
57 eighty-eight, is compelled or required by law to retire before  
58 reaching the age of sixty-five, or when a participating  
59 employee voluntarily retires as provided by law, that  
60 employee's accrued annual leave and sick leave, if any, shall  
61 be credited toward an extension of the insurance coverage  
62 provided by this article, according to the following formulae:  
63 The insurance coverage for a retired employee shall continue  
64 one additional month for every two days of annual leave or  
65 sick leave, or both, which the employee had accrued as of the  
66 effective date of his or her retirement. For a retired  
67 employee, his or her spouse and dependents, the insurance  
68 coverage shall continue one additional month for every three  
69 days of annual leave or sick leave, or both, which the  
70 employee had accrued as of the effective date of his or her  
71 retirement.

72 (e) *Conversion of accrued annual and sick leave for*  
73 *extended insurance coverage upon retirement for employees*  
74 *who elected to participate in the plan after June, one*

75 *thousand nine hundred eighty-eight.* -- Notwithstanding  
76 subsection (d) of this section, and except as otherwise  
77 provided in subsections (g) and (l) of this section when an  
78 employee participating in the plan who elected to participate  
79 in the plan on and after the first day of July, one thousand  
80 nine hundred eighty-eight, is compelled or required by law to  
81 retire before reaching the age of sixty-five, or when the  
82 participating employee voluntarily retires as provided by law,  
83 that employee's annual leave or sick leave, if any, shall be  
84 credited toward one half of the premium cost of the insurance  
85 provided by this article, for periods and scope of coverage  
86 determined according to the following formulae: (1) One  
87 additional month of single retiree coverage for every two  
88 days of annual leave or sick leave, or both, which the  
89 employee had accrued as of the effective date of his or her  
90 retirement; or (2) one additional month of coverage for a  
91 retiree, his or her spouse and dependents for every three days  
92 of annual leave or sick leave, or both, which the employee  
93 had accrued as of the effective date of his or her retirement.  
94 The remaining premium cost shall be borne by the retired  
95 employee if he or she elects the coverage. For purposes of  
96 this subsection, an employee who has been a participant  
97 under spouse or dependent coverage and who reenters the  
98 plan within twelve months after termination of his or her  
99 prior coverage shall be considered to have elected to  
100 participate in the plan as of the date of commencement of the  
101 prior coverage. For purposes of this subsection, an employee  
102 shall not be considered a new employee after returning from  
103 extended authorized leave on or after the first day of July,  
104 one thousand nine hundred eighty-eight.

105 (f) *Increased retirement benefits for retired employees*  
106 *with accrued annual and sick leave.* -- In the alternative to  
107 the extension of insurance coverage through premium  
108 payment provided in subsections (d) and (e) of this section,

109 the accrued annual leave and sick leave of an employee  
110 participating in the plan may be applied, on the basis of two  
111 days retirement service credit for each one day of accrued  
112 annual and sick leave, toward an increase in the employee's  
113 retirement benefits with those days constituting additional  
114 credited service in computation of the benefits under any  
115 state retirement system. However, the additional credited  
116 service shall not be used in meeting initial eligibility for  
117 retirement criteria, but only as additional service credited in  
118 excess thereof.

119       (g) *Conversion of accrued annual and sick leave for*  
120 *extended insurance coverage upon retirement for certain*  
121 *higher education employees.* — Except as otherwise provided  
122 in subsection (l) of this section, when an employee, who is a  
123 higher education full-time faculty member employed on an  
124 annual contract basis other than for twelve months, is  
125 compelled or required by law to retire before reaching the age  
126 of sixty-five, or when such a participating employee  
127 voluntarily retires as provided by law, that employee's  
128 insurance coverage, as provided by this article, shall be  
129 extended according to the following formulae: The insurance  
130 coverage for a retired higher education full-time faculty  
131 member, formerly employed on an annual contract basis  
132 other than for twelve months, shall continue beyond the  
133 effective date of his or her retirement one additional year for  
134 each three and one-third years of teaching service, as  
135 determined by uniform guidelines established by the  
136 University of West Virginia Board of Trustees and the board  
137 of directors of the state college system, for individual  
138 coverage, or one additional year for each five years of  
139 teaching service for "family" coverage.

140       (h) Any employee who retired prior to the twenty-first  
141 day of April, one thousand nine hundred seventy-two, and

142 who also otherwise meets the conditions of the "retired  
143 employee" definition in section two of this article, shall be  
144 eligible for insurance coverage under the same terms and  
145 provisions of this article. The retired employee's premium  
146 contribution for any such coverage shall be established by the  
147 finance board.

148 (i) *Retiree participation.* -- All retirees under the  
149 provisions of this article, including those defined in section  
150 two of this article; those retiring prior to the twenty-first day  
151 of April, one thousand nine hundred seventy-two; and those  
152 hereafter retiring are eligible to obtain health insurance  
153 coverage. The retired employee's premium contribution for  
154 the coverage shall be established by the finance board.

155 (j) *Surviving spouse and dependent participation.* -- A  
156 surviving spouse and dependents of a deceased employee,  
157 who was either an active or retired employee participating in  
158 the plan just prior to his or her death, are entitled to be  
159 included in any group insurance coverage provided under this  
160 article to which the deceased employee was entitled, and the  
161 spouse and dependents shall bear the premium cost of the  
162 insurance coverage. The finance board shall establish the  
163 premium cost of the coverage.

164 (k) *Elected officials.* -- In construing the provisions of  
165 this section or any other provisions of this code, the  
166 Legislature declares that it is not now nor has it ever been the  
167 Legislature's intent that elected public officials be provided  
168 any sick leave, annual leave or personal leave, and the  
169 enactment of this section is based upon the fact and  
170 assumption that no statutory or inherent authority exists  
171 extending sick leave, annual leave or personal leave to  
172 elected public officials and the very nature of those positions  
173 preclude the arising or accumulation of any leave, so as to be

174 thereafter usable as premium paying credits for which the  
175 officials may claim extended insurance benefits.

176 (l) *Participation of certain former employees.* — An  
177 employee, eligible for coverage under the provisions of this  
178 article who has twenty years of service with any agency or  
179 entity participating in the public employees insurance  
180 program or who has been covered by the public employees  
181 insurance program for twenty years may, upon leaving  
182 employment with a participating agency or entity, continue  
183 to be covered by the program if the employee pays one  
184 hundred and five percent of the cost of retiree coverage:  
185 *Provided*, That the employee shall elect to continue coverage  
186 under this subsection within two years of the date the  
187 employment with a participating agency or entity is  
188 terminated.

189 (m) *Prohibition on conversion of accrued annual and*  
190 *sick leave for extended coverage upon retirement for new*  
191 *employees who elect to participate in the plan after June, two*  
192 *thousand one.* — Any employee hired on or after the first day  
193 of July, two thousand one who elects to participate in the plan  
194 may not apply accrued annual or sick leave toward the cost  
195 of premiums for extended insurance coverage upon his or her  
196 retirement. This prohibition does not apply to the conversion  
197 of accrued annual or sick leave for increased retirement  
198 benefits, as authorized by this section: *Provided*, That any  
199 person who has participated in the plan prior to the first day  
200 of July, two thousand one, is not a new employee for  
201 purposes of this subsection if he or she becomes reemployed  
202 with an employer participating in the plan within two years  
203 following his or her separation from employment and he or  
204 she elects to participate in the plan upon his or her  
205 reemployment.

**CHAPTER 33. INSURANCE.**

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

**§33-16-1a. Definitions.**

1 As used in this article:

2 (a) "Bona fide association" means an association which  
3 has been actively in existence for at least five years; has been  
4 formed and maintained in good faith for purposes other than  
5 obtaining insurance; does not condition membership in the  
6 association on any health status-related factor relating to an  
7 individual; makes accident and sickness insurance offered  
8 through the association available to all members regardless  
9 of any health status-related factor relating to members or  
10 individuals eligible for coverage through a member; does not  
11 make accident and sickness insurance coverage offered  
12 through the association available other than in connection  
13 with a member of the association; and meets any additional  
14 requirements as may be set forth in this chapter or by rule.

15 (b) "Commissioner" means the commissioner of  
16 insurance.

17 (c) "Creditable coverage" means, with respect to an  
18 individual, coverage of the individual after the thirtieth day  
19 of June, one thousand nine hundred ninety-six, under any of  
20 the following, other than coverage consisting solely of  
21 excepted benefits:

22 (1) A group health plan;

23 (2) A health benefit plan;

24 (3) Medicare Part A or Part B, 42 U. S. C. §1395 et seq.;  
25 Medicaid, 42 U. S. C. §1396a et seq. (other than coverage  
26 consisting solely of benefits under Section 1928 of the Social  
27 Security Act); Civilian Health and Medical Program of the  
28 Uniformed Services (CHAMPUS), 10 U. S. C., Chapter 55;  
29 and a medical care program of the Indian Health Service or  
30 of a tribal organization;

31 (4) A health benefits risk pool sponsored by any state of  
32 the United States or by the District of Columbia; a health plan  
33 offered under 5 U. S. C., chapter 89; a public health plan as  
34 defined in regulations promulgated by the federal secretary  
35 of health and human services; or a health benefit plan as  
36 defined in the Peace Corps Act, 22 U. S. C. §2504(e).

37 (d) "Dependent" means an eligible employee's spouse or  
38 any unmarried child or stepchild under the age of twenty-five  
39 if that child or stepchild meets the definition of a "qualifying  
40 child" or a "qualifying relative" in section 152 of the Internal  
41 Revenue Code.

42 (e) "Eligible employee" means an employee, including an  
43 individual who either works or resides in this state, who  
44 meets all requirements for enrollment in a health benefit plan.

45 (f) "Excepted benefits" means:

46 (1) Any policy of liability insurance or contract  
47 supplemental thereto; coverage only for accident or disability  
48 income insurance or any combination thereof; automobile  
49 medical payment insurance; credit-only insurance; coverage  
50 for on-site medical clinics; workers' compensation insurance;  
51 or other similar insurance under which benefits for medical  
52 care are secondary or incidental to other insurance benefits;  
53 or



54 (2) If offered separately, a policy providing benefits for  
55 long-term care, nursing home care, home health care,  
56 community-based care or any combination thereof, dental or  
57 vision benefits or other similar, limited benefits; or

58 (3) If offered as independent, noncoordinated benefits  
59 under separate policies or certificates, specified disease or  
60 illness coverage, hospital indemnity or other fixed indemnity  
61 insurance, or coverage, such as medicare supplement  
62 insurance, supplemental to a group health plan; or

63 (4) A policy of accident and sickness insurance covering  
64 a period of less than one year.

65 (g) "Group health plan" means an employee welfare  
66 benefit plan, including a church plan or a governmental plan,  
67 all as defined in section three of the Employee Retirement  
68 Income Security Act of 1974, 29 U. S. C. §1003, to the extent  
69 that the plan provides medical care.

70 (h) "Health benefit plan" means benefits consisting of  
71 medical care provided directly, through insurance or  
72 reimbursement, or indirectly, including items and services  
73 paid for as medical care, under any hospital or medical  
74 expense incurred policy or certificate; hospital, medical or  
75 health service corporation contract; health maintenance  
76 organization contract; or plan provided by a  
77 multiple-employer trust or a multiple-employer welfare  
78 arrangement. "Health benefit plan" does not include  
79 excepted benefits.

80 (i) "Health insurer" means an entity licensed by the  
81 commissioner to transact accident and sickness in this state  
82 and subject to this chapter. "Health insurer" does not include  
83 a group health plan.

84 (j) "Health status-related factor" means an individual's  
85 health status, medical condition (including both physical and  
86 mental illnesses), claims experience, receipt of health care,  
87 medical history, genetic information, evidence of insurability  
88 (including conditions arising out of acts of domestic  
89 violence) or disability.

90 (k) "Medical care" means amounts paid for, or paid for  
91 insurance covering, the diagnosis, cure, mitigation, treatment  
92 or prevention of disease, or amounts paid for the purpose of  
93 affecting any structure or function of the body, including  
94 amounts paid for transportation primarily for and essential to  
95 such care.

96 (l) "Mental health benefits" means benefits with respect  
97 to mental health services, as defined under the terms of a  
98 group health plan or a health benefit plan offered in  
99 connection with the group health plan.

100 (m) "Network plan" means a health benefit plan under  
101 which the financing and delivery of medical care are  
102 provided, in whole or in part, through a defined set of  
103 providers under contract with the health insurer.

104 (n) "Preexisting condition exclusion" means, with respect  
105 to a health benefit plan, a limitation or exclusion of benefits  
106 relating to a condition based on the fact that the condition  
107 was present before the enrollment date for such coverage,  
108 whether or not any medical advice, diagnosis, care or  
109 treatment was recommended or received before the  
110 enrollment date.

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**CHAPTER 135**

**(Com. Sub. for S.B. 643 - By Senator Minard)**

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[Passed March 9, 2007; in effect ninety days from passage.]  
[Approved by the Governor on April 3, 2007.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-2-3a; and to amend and reenact §33-2-7 and §33-2-19 of said code, all relating to investigations of violations of insurance laws; clarifying that the Insurance Commissioner may investigate noncriminal violations; authorizing use of Class A registration plates; clarifying that immunity granted in certain cases applies to criminal prosecutions only; and clarifying the authority and duties of the Insurance Commissioner with regard to information obtained during investigations.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §33-2-3a; and that §33-2-7 and §33-2-19 of said code be amended and reenacted, all to read as follows:

**ARTICLE 2. INSURANCE COMMISSIONER.**

§33-2-3a. Administrative investigations.  
§33-2-7. Immunity of witness.  
§33-2-19. Confidentiality of information.

**§33-2-3a. Administrative investigations.**

- 1 (a) In addition to the authority granted to the fraud unit
- 2 created in article forty-one of this chapter and to the workers'

3 compensation fraud and abuse unit previously transferred to  
4 the commissioner pursuant to section one-b, article one,  
5 chapter twenty-three of this code, the commissioner has the  
6 authority to conduct investigations whenever he or she has  
7 cause to believe that a violation of any provision of this  
8 chapter or of chapter twenty-three of this code has been or is  
9 being committed.

10 (b) Employees designated by the commissioner are  
11 permitted to operate vehicles owned or leased by the state  
12 displaying Class A registration plates when engaged in  
13 carrying out the investigative duties assigned to the  
14 commissioner by this chapter.

**§33-2-7. Immunity of witness.**

1 If any person shall ask to be excused from attending and  
2 testifying or from producing any books, papers, records,  
3 correspondence or other documents at any hearing conducted  
4 pursuant to this chapter or chapter twenty-three of this code  
5 or in any cause or proceeding instituted by the commissioner  
6 pursuant to this chapter or chapter twenty-three of this code  
7 on the ground that the testimony or evidence required of him  
8 may tend to incriminate him or subject him to a criminal  
9 penalty and shall notwithstanding be directed by the  
10 commissioner to give such testimony or produce such  
11 evidence, he must nonetheless comply with such direction,  
12 but he shall not thereafter be prosecuted or subjected to any  
13 criminal penalty for or on account of any matter or thing  
14 concerning which he may testify or produce evidence,  
15 pursuant thereto, and no testimony so given or evidence  
16 produced shall be received against him upon any criminal  
17 action, investigation or proceeding: *Provided*, That no such  
18 individual so testifying shall be exempt from prosecution or  
19 punishment for any perjury or false swearing, committed by  
20 him while so testifying and the testimony or evidence so

21 given or produced is admissible against him upon any  
22 criminal action, investigation or proceeding concerning such  
23 perjury or false swearing, nor is he exempt from the refusal,  
24 revocation or suspension of any license, permission or  
25 authority conferred, or to be conferred, pursuant to this  
26 chapter. Any such individual may execute, acknowledge and  
27 file in the office of the commissioner a statement expressly  
28 waiving such immunity or privilege in respect to any  
29 transaction, matter or thing specified in such statement and  
30 thereupon the testimony of such person or such evidence in  
31 relation to such transaction, matter or thing may be received  
32 or produced before any judge or justice, court, tribunal, grand  
33 jury or otherwise, and if so received or produced such  
34 individual is not entitled to any immunity or privilege on  
35 account of any testimony he may so give or evidence so  
36 produced.

**§33-2-19. Confidentiality of information.**

1 (a) Documents, materials or other information in the  
2 possession or control of the commissioner that are obtained  
3 in an investigation of any suspected violation of any  
4 provision of this chapter or chapter twenty-three of this code  
5 are confidential by law and privileged, are not subject to the  
6 provisions of chapter twenty-nine-b of this code and are not  
7 open to public inspection. The commissioner may use the  
8 documents, materials or other information in the furtherance  
9 of any regulatory or legal action brought as a part of the  
10 commissioner's official duties. The commissioner may use  
11 the documents, materials or other information if they are  
12 required for evidence in criminal proceedings or for other  
13 action by the state or federal government and in such context  
14 may be discoverable only as ordered by a court of competent  
15 jurisdiction exercising its discretion.

16 (b) Neither the commissioner nor any person who  
17 receives documents, materials or other information while  
18 acting under the authority of the commissioner may be  
19 permitted or required to testify in any private civil action  
20 concerning any confidential documents, materials or  
21 information subject to subsection (a) of this section except as  
22 ordered by a court of competent jurisdiction.

23 (c) In order to assist in the performance of the  
24 commissioner's duties, the commissioner may:

25 (1) Share documents, materials, communications or  
26 information, including otherwise confidential and privileged  
27 documents, materials or information, with other state, federal  
28 and international regulatory agencies, with the National  
29 Association of Insurance Commissioners and its affiliates and  
30 subsidiaries, and with regulatory and law-enforcement  
31 officials of other foreign or domestic jurisdictions: *Provided*,  
32 That the recipient agrees to maintain the confidentiality and  
33 privileged status of the document, material, communication  
34 or other information;

35 (2) Receive documents, materials, communications or  
36 information, including otherwise confidential and privileged  
37 documents, materials or information, from the National  
38 Association of Insurance Commissioners and its affiliates and  
39 subsidiaries and from regulatory and law-enforcement  
40 officials of other foreign or domestic jurisdictions and shall  
41 maintain as confidential or privileged any document, material  
42 or information received with notice or the understanding that  
43 it is confidential or privileged under the laws of the  
44 jurisdiction that is the source of the document, material or  
45 information; and

46 (3) Enter into agreements governing sharing and use of  
47 information consistent with this subsection.

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**CHAPTER 136**

**(Com. Sub. for S.B. 381 - By Senator Minard)**

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[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2007.]

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AN ACT to amend and reenact §33-4-8 of the Code of West Virginia, 1931, as amended; to amend and reenact §33-41-8 and §33-41-11 of said code; and to amend said code by adding thereto a new section, designated §33-41-8b, all relating to insurance fraud; clarifying that the insurance code contains specific criminal penalties for felony offenses; authorizing certain employees of the fraud unit of the Insurance Commissioner to investigate fraud relating to the Public Employees Insurance Agency and to present criminal complaints directly to a magistrate with the approval of a prosecuting attorney; and modifying the monetary threshold for felonies to comport with general felony provisions.

*Be it enacted by the Legislature of West Virginia:*

That §33-4-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §33-41-8 and §33-41-11 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-41-8b, all to read as follows:

**Article**

- 4. General Provisions.**
- 41. Insurance Fraud Prevention Act.**

**ARTICLE 4. GENERAL PROVISIONS.****§33-4-8. General penalty.**

1 In addition to the refusal to renew, suspension or  
2 revocation of a license, or penalty in lieu of the foregoing,  
3 because of violation of any provision of this chapter, it is a  
4 misdemeanor for any person to violate any provision of this  
5 chapter unless the violation is declared to be a felony by this  
6 chapter or other law of this state. Unless another penalty is  
7 provided in this chapter or by the laws of this state, every  
8 person convicted of a misdemeanor for the violation of any  
9 provision of this chapter shall be fined not more than one  
10 thousand dollars or confined in jail not more than six months,  
11 or both fined and confined.

**ARTICLE 41. INSURANCE FRAUD PREVENTION ACT.**

§33-41-8. Creation of insurance fraud unit; purpose; duties; personnel qualifications.

§33-41-8b. Fraud investigators may present complaint directly to magistrate.

§33-41-11. Fraudulent claims to insurance companies.

**§33-41-8. Creation of insurance fraud unit; purpose; duties;  
personnel qualifications.**

1 (a) There is established the West Virginia Insurance  
2 Fraud Unit within the office of the Insurance Commissioner  
3 of West Virginia. The commissioner may employ full-time  
4 supervisory, legal and investigative personnel for the unit  
5 who shall be qualified by training and experience in the areas  
6 of detection, investigation or prosecution of fraud within and  
7 against the insurance industry to perform the duties of their  
8 positions. The director of the fraud unit is a full-time  
9 position and shall be appointed by the commissioner and  
10 serve at his or her will and pleasure. The commissioner shall  
11 provide office space, equipment, supplies, clerical and other  
12 staff that is necessary for the unit to carry out its duties and  
13 responsibilities under this article.



14 (b) The fraud unit may in its discretion:

15 (1) Initiate inquiries and conduct investigations when the  
16 unit has cause to believe violations of any of the following  
17 provisions of this code relating to the business of insurance  
18 have been or are being committed: This chapter; chapter  
19 twenty-three of this code; article three, chapter sixty-one of  
20 this code; and section five, article four of said chapter.  
21 Notwithstanding any provision of this code to the contrary,  
22 the fraud unit may, with the agreement of the Director of the  
23 Public Employees Insurance Agency, conduct investigations  
24 related to possible fraud under article sixteen, chapter five of  
25 this code;

26 (2) Review reports or complaints of alleged fraud related  
27 to the business of insurance activities from federal, state and  
28 local law-enforcement and regulatory agencies, persons  
29 engaged in the business of insurance and the general public  
30 to determine whether the reports require further investigation;  
31 and

32 (3) Conduct independent examinations of alleged  
33 fraudulent activity related to the business of insurance and  
34 undertake independent studies to determine the extent of  
35 fraudulent insurance acts.

36 (c) The insurance fraud unit may:

37 (1) Employ and train personnel to achieve the purposes  
38 of this article and to employ legal counsel, investigators,  
39 auditors and clerical support personnel and other personnel  
40 as the commissioner determines necessary from time to time  
41 to accomplish the purposes of this article;

42 (2) Inspect, copy or collect records and evidence;

43 (3) Serve subpoenas issued by grand juries and trial  
44 courts in criminal matters;

45 (4) Share records and evidence with federal, state or local  
46 law-enforcement or regulatory agencies, and enter into  
47 interagency agreements. For purposes of carrying out  
48 investigations under this article, the unit shall be deemed a  
49 criminal justice agency under all federal and state laws and  
50 regulations and as such shall have access to any information  
51 that is available to other criminal justice agencies concerning  
52 violations of the insurance laws of West Virginia or related  
53 criminal laws;

54 (5) Make criminal referrals to the county prosecutors;

55 (6) Conduct investigations outside this state. If the  
56 information the insurance fraud unit seeks to obtain is located  
57 outside this state, the person from whom the information is  
58 sought may make the information available to the insurance  
59 fraud unit to examine at the place where the information is  
60 located. The insurance fraud unit may designate  
61 representatives, including officials of the state in which the  
62 matter is located, to inspect the information on behalf of the  
63 insurance fraud unit, and the insurance fraud unit may  
64 respond to similar requests from officials of other states;

65 (7) The insurance fraud unit may initiate investigations  
66 and participate in the development of and, if necessary, the  
67 prosecution of any health care provider, including a provider  
68 of rehabilitation services, suspected of fraudulent activity  
69 related to the business of insurance;

70 (8) Specific personnel, designated by the commissioner,  
71 shall be permitted to operate vehicles owned or leased for the  
72 state displaying Class A registration plates;

73 (9) Notwithstanding any provision of this code to the  
74 contrary, specific personnel designated by the commissioner  
75 may carry firearms in the course of their official duties after  
76 meeting specialized qualifications established by the  
77 Governor's Committee on Crime, Delinquency and  
78 Correction, which shall include the successful completion of  
79 handgun training provided to law-enforcement officers by the  
80 West Virginia State Police: *Provided*, That nothing in this  
81 subsection shall be construed to include any person  
82 designated by the commissioner as a law-enforcement officer  
83 as that term is defined by the provisions of section one,  
84 article twenty-nine, chapter thirty of this code; and

85 (10) The insurance fraud unit shall not be subject to the  
86 provisions of article nine-a, chapter six of this code and the  
87 investigations conducted by the insurance fraud unit and the  
88 materials placed in the files of the unit as a result of any such  
89 investigation are exempt from public disclosure under the  
90 provisions of chapter twenty-nine-b of this code.

91 (d) The insurance fraud unit shall perform other duties as  
92 may be assigned to it by the commissioner.

**§33-41-8b. Fraud investigators may present complaint directly  
to magistrate.**

1 Notwithstanding any other provision of this code to the  
2 contrary, any person authorized under this article to initiate  
3 and conduct investigations may submit complaints directly to  
4 a magistrate after review and approval by the prosecuting  
5 attorney, if the complaint is related to the business of  
6 insurance and may be prosecuted as a criminal violation  
7 under this chapter; chapter twenty-three of this code; article  
8 three, chapter sixty-one of this code; or section five, article  
9 four of said chapter.

10 The complaint shall be in the form of a written statement  
11 of the essential facts constituting the offense charged. The  
12 complaint shall be presented to and sworn before a magistrate  
13 in the county where the offense is alleged to have occurred.

14 If it appears from the complaint, or from an affidavit or  
15 affidavits filed with the complaint, that there is probable  
16 cause to believe that an offense has been committed and that  
17 the defendant committed it, a warrant for the arrest of the  
18 defendant shall be issued to any officer authorized by law to  
19 arrest persons charged with offenses against the state.

**§33-41-11. Fraudulent claims to insurance companies.**

1 (a) Any person who knowingly and willfully and with  
2 intent to defraud submits a materially false statement in  
3 support of a claim for insurance benefits or payment pursuant  
4 to a policy of insurance or who conspires to do so is guilty of  
5 a crime and is subject to the penalties set forth in the  
6 provisions of this section.

7 (b) Any person who commits a violation of the provisions  
8 of subsection (a) of this section where the benefit sought is  
9 one thousand dollars or more in value is guilty of a felony  
10 and, upon conviction thereof, shall be imprisoned in a  
11 correctional facility for not less than one nor more than ten  
12 years, fined not more than ten thousand dollars, or both, or in  
13 the discretion of the circuit court confined in jail for not more  
14 than one year and fined not more than ten thousand dollars,  
15 or both.

16 (c) Any person who commits a violation of the provisions  
17 of subsection (a) of this section where the benefit sought is  
18 less than one thousand dollars in value is guilty of a  
19 misdemeanor and, upon conviction thereof, shall be confined

20 in jail for not more than one year, fined not more than two  
21 thousand five hundred dollars, or both.

22 (d) Any person convicted of a violation of this section is  
23 subject to the restitution provisions of article eleven-a,  
24 chapter sixty-one of this code.

25 (e) In addition to the foregoing provisions, the offenses  
26 enumerated in sections twenty-four-e through twenty-four-h,  
27 inclusive, article three, chapter sixty-one of this code are  
28 applicable to matters concerning workers' compensation  
29 insurance.

30 (f) The circuit court may award to the unit or other  
31 law-enforcement agency investigating a violation of this  
32 section or other criminal offense related to the business of  
33 insurance its cost of investigation.

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## CHAPTER 137

**(Com. Sub. for S.B. 559 - By Senators Hunter and Minard)**

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[Passed March 9, 2007; in effect ninety days from passage.]  
[Approved by the Governor on March 27, 2007.]

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AN ACT to amend the Code of West Virginia, 1931, as amended,  
by adding thereto a new section, designated §33-4-21, relating  
to predatory insurance sales practices; and authorizing the  
Insurance Commissioner to promulgate emergency rules to  
protect military personnel.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §33-4-21, to read as follows:

**ARTICLE 4. GENERAL PROVISIONS.**

**§33-4-21. Deceptive sales on military bases prohibited; rules.**

1 No person in the business of insurance may engage in  
 2 dishonest or predatory insurance sales practices on federal  
 3 land or facilities in this state. The commissioner may  
 4 promulgate emergency rules pursuant to the provisions of  
 5 section fifteen, article three, chapter twenty-nine-a of this  
 6 code to identify certain false, misleading, deceptive and  
 7 unfair insurance sales practices as dishonest or predatory and  
 8 to protect service members of the United States armed forces  
 9 from these practices. To the extent permitted by federal law,  
 10 the commissioner may enforce this chapter and the rules  
 11 promulgated pursuant to this chapter on federal land and  
 12 facilities in this state.

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## CHAPTER 138

**(Com. Sub. for H.B. 2763 - By Delegates Kominar, Barker,  
 Moore, Perry, Ashley, Walters and Hartman)**

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[Passed March 10, 2007; in effect ninety days from passage.]  
 [Approved by the Governor on March 28, 2007.]

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AN ACT to amend and reenact §33-7-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §33-33-2 and §33-33-6 of said code, all relating to financial examinations of insurers; eliminating the exclusion of certain

assets in the determination of the financial condition of insurers; defining term; prohibiting use of indemnification agreements by accountants performing certain audits; and permitting mediation or arbitration agreements in certain circumstances.

*Be it enacted by the Legislature of West Virginia:*

That §33-7-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §33-33-2 and §33-33-6 of said code be amended and reenacted, all to read as follows:

**Article**

**7. Assets and Liabilities.**

**33. Annual Audited Financial Report.**

**ARTICLE 7. ASSETS AND LIABILITIES.**

**§33-7-3. Assets not allowed.**

1 In addition to assets impliedly excluded by the provisions  
2 of section one of this article, the following expressly shall not  
3 be allowed as assets in any determination of the financial  
4 condition of an insurer:

5 (a) Goodwill, trade names and other like intangible  
6 assets.

7 (b) Advances to officers (other than policy loans) whether  
8 secured or not, and advances to employees, agents and other  
9 persons on personal security only.

10 (c) Stock of the insurer, owned by it, or any equity  
11 therein or loans secured thereby, or any proportionate interest  
12 in the stock acquired or held through the ownership by the  
13 insurer of an interest in another firm, corporation or business  
14 unit.

15 (d) Furniture, fixtures, furnishings, safes, vehicles,  
16 libraries, stationery, literature and supplies, and except, in the  
17 case of any insurer, personal property the insurer is permitted  
18 to hold pursuant to article eight of this chapter, or which is  
19 acquired through foreclosure of chattel mortgages acquired  
20 pursuant to said article or which is reasonably necessary for  
21 the maintenance and operation of real estate lawfully  
22 acquired and held by the insurer other than real estate used by  
23 it for home office, branch office and similar purposes.

24 (e) The amount, if any, by which the aggregate book  
25 value of investments as carried in the ledger assets of the  
26 insurer exceeds the aggregate value thereof as determined  
27 under this chapter.

### **ARTICLE 33. ANNUAL AUDITED FINANCIAL REPORT.**

§33-33-2. Definitions.  
§33-33-6. Qualifications fo independent certified public accountants.

#### **§33-33-2. Definitions.**

1 (a) "Accountant" and "independent certified public  
2 accountant" means an independent certified public accountant  
3 or accounting firm in good standing with the American  
4 Institute of Certified Public Accountants and in all states in  
5 which the accountant is licensed to practice; for Canadian and  
6 British companies, the terms mean a Canadian-chartered or  
7 British-chartered accountant.

8 (b) "Annual statement" means the annual financial  
9 statement required to be filed by insurers with the  
10 commissioner pursuant to the provisions of this chapter.

11 (c) "Audited financial report" means and includes those  
12 items specified in section four of this article.



13 (d) "Indemnification" for the purposes of this article  
14 means an agreement of indemnity or a release from liability  
15 where the intent or effect of the agreement or release is a  
16 shifting or a limitation to any degree of the potential liability  
17 to the person or firm for failure to adhere to applicable  
18 auditing or other professional standards regardless of whether  
19 the potential liability arises from known misrepresentations  
20 made by the insurer or its representatives.

21 (e) "Insurer" for purposes of this article means any  
22 domestic insurer as defined in section six, article one of this  
23 chapter and includes any domestic stock insurance company,  
24 mutual insurance company, reciprocal insurance company,  
25 farmers' mutual fire insurance company, fraternal benefit  
26 society, hospital service corporation, medical service  
27 corporation, health care corporation, health maintenance  
28 organization, captive insurance company or risk retention  
29 group and any licensed foreign or alien insurer defined in  
30 article one of this chapter.

31 (f) "Workpapers" means and includes audit planning  
32 documentation, work programs, analyses, memoranda, letters  
33 of confirmation and representation, abstracts of company  
34 documents and schedules or commentaries prepared or  
35 obtained by the independent certified public accountant in the  
36 course of the examination of the financial statements of an  
37 insurer and which support the opinion thereon.

**§33-33-6. Qualifications of independent certified public accountants.**

1 (a) The commissioner may not recognize any person or  
2 firm as a qualified independent certified public accountant for  
3 purposes of performing the annual audited financial report if  
4 the person or firm:

5 (1) Is not in good standing with the American Institute of  
6 Certified Public Accountants and in all states in which the  
7 accountant is licensed to practice, or, for a Canadian or  
8 British company, that is not a chartered accountant; or

9 (2) Has either directly or indirectly entered into an  
10 indemnification with respect to an audit of the insurer.

11 (b) Except as otherwise provided herein, the  
12 commissioner shall recognize an independent certified public  
13 accountant as qualified as long as he or she conforms to the  
14 standards of his or her profession, as contained in the Code  
15 of Professional Ethics of the American Institute of Certified  
16 Public Accountants and the Rules and Regulations and Code  
17 of Ethics and Rules of Professional Conduct of the West  
18 Virginia Board of Accountancy.

19 (c) A qualified independent certified public accountant  
20 may enter into an agreement with an insurer to have disputes  
21 relating to an audit resolved by mediation or arbitration. In  
22 the event a delinquency proceeding is commenced against the  
23 insurer under article ten of this chapter, the mediation or  
24 arbitration provisions shall operate at the option of the  
25 receiver.

26 (d) No partner or other person responsible for rendering  
27 a report may act in that capacity for more than seven  
28 consecutive years. Following a period of service the person  
29 shall be disqualified from acting in that or a similar capacity  
30 for the same company or its insurance subsidiaries or  
31 affiliates for a period of two years. An insurer may make  
32 application to the commissioner for relief from the above  
33 rotation requirement on the basis of unusual circumstances.  
34 The commissioner may consider the following factors in  
35 determining if the relief should be granted:

36 (1) Number of partners, expertise of the partners or the  
37 number of insurance clients in the currently registered firm;

38 (2) Premium volume of the insurer; or

39 (3) Number of jurisdictions in which the insurer transacts  
40 business.

41 (e) The commissioner may not recognize as a qualified  
42 independent certified public accountant, nor accept any  
43 annual audited financial report, prepared in whole or in part  
44 by, any natural person who:

45 (1) Has been convicted of fraud, bribery, a violation of  
46 the Racketeer Influenced and Corrupt Organizations Act, 18  
47 U.S.C. Sections 1961-1968, or any dishonest conduct or  
48 practices under federal or state law;

49 (2) Has been found to have violated the insurance laws of  
50 this state with respect to any previous reports submitted  
51 under this article; or

52 (3) Has demonstrated a pattern or practice of failing to  
53 detect or disclose material information in previous reports  
54 filed under the provisions of this article.

55 (f) The commissioner may hold a hearing to determine  
56 whether a certified public accountant is qualified and  
57 considering the evidence presented, may rule that the  
58 accountant is not qualified for purposes of expressing an  
59 opinion on the financial statements in the audited financial  
60 report made pursuant to this article and require the insurer to  
61 replace the accountant with another whose relationship with  
62 the insurer is qualified within the meaning of this article.

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**CHAPTER 139**

**(Com. Sub. for H.B. 2764 - By Delegates Kominar, Barker,  
Moore, Perry, Ashley, Walters, Schoen and Hartman)**

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[Passed March 10, 2007; in effect ninety days from passage.]  
[Approved by the Governor on March 23, 2007.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-12-37, relating to criminal history checks for applicants for insurance producer licenses; defining terms; authorizing Insurance Commissioner to establish and collect fees; requiring applicants to submit fingerprints; requiring the Insurance Commission to transmit fingerprints to the State Police and Federal Bureau of Investigation; requiring certain records be confidential; exempting certain information from disclosure pursuant to subpoena or discovery; and authorizing Insurance Commissioner to promulgate emergency rules.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §33-12-37, to read as follows:

**ARTICLE 12. INSURANCE PRODUCERS AND  
SOLICITORS.**

**§33-12-37. Authorization for criminal history record check;  
fees; rules.**

1 (a) In furtherance of the national goal of promoting  
2 uniformity and reciprocity among the states with regard to  
3 producer licensing, this section sets forth the requirements to  
4 obtain access to the Federal Bureau of Investigation Criminal  
5 Justice Information Services Division criminal history record  
6 information and to secure information or reports from the  
7 Federal Bureau of Investigation Criminal Justice Information  
8 Services Division. The scope of this section is to set forth the  
9 applicability of the criminal history record check to  
10 applicants for a home state insurance producer license.

11 (b) As used in this section, the following terms have the  
12 meanings ascribed in this subsection, unless a different  
13 meaning is clearly required by the context:

14 (1) "Applicant" means a natural person applying for:

15 (A) An initial home state license as an insurance  
16 producer;

17 (B) An additional line of authority under an existing  
18 home state insurance producer license where a criminal  
19 history record check has not been obtained; or

20 (C) A resident insurance producer license under change  
21 of home state provisions.

22 "Applicant" does not mean a person applying for renewal  
23 or continuation of a home state insurance producer license or  
24 a nonresident insurance producer license.

25 (2) "Fingerprint" means an impression of the lines on the  
26 finger taken for the purpose of identification. The impression

27 may be obtained electronically or in ink converted to an  
28 electronic format.

29 (c) In order to make a determination of license eligibility,  
30 the commissioner is authorized to require fingerprints of  
31 applicants and to submit the fingerprints and the fee required  
32 to perform the criminal history record checks to the West  
33 Virginia State Police and to the Federal Bureau of  
34 Investigation for the state and national criminal history record  
35 checks.

36 (d) The commissioner shall require a criminal history  
37 record check on each applicant in accordance with this  
38 section. The commissioner shall require each applicant to  
39 submit a full set of fingerprints, including a scanned file from  
40 a hard copy fingerprint, in order for the commissioner to  
41 obtain and receive national criminal history records from the  
42 Federal Bureau of Investigation Criminal Justice Information  
43 Services Division.

44 (e) The commissioner shall collect a fee from each  
45 applicant in an amount established by rule. The amount of  
46 the fee must be sufficient to cover:

47 (1) The cost of the collection and transmittal of  
48 fingerprints by persons, including local law enforcement  
49 agencies that are approved by the commissioner to capture  
50 fingerprints, to the West Virginia State Police and the Federal  
51 Bureau of Investigation; and

52 (2) The cost of any amounts charged by the State Police  
53 and the Federal Bureau of Investigation to perform the  
54 criminal history record checks.

55 (f) The commissioner may contract for the collection and  
56 transmission of fingerprints authorized under this section and  
57 may order that the fee for collecting and transmitting  
58 fingerprints be payable directly by the applicant to the  
59 contractor.

60 (g) The commissioner is authorized to receive criminal  
61 history record information directly from the Federal Bureau  
62 of Investigation, in lieu of via transmission of the information  
63 from the Federal Bureau of Investigation to the West Virginia  
64 State Police.

65 (h) The commissioner shall treat and maintain an  
66 applicant's fingerprints and any criminal history record  
67 information obtained under this section as confidential and  
68 shall apply security measures consistent with the Federal  
69 Bureau of Investigation Criminal Justice Information  
70 Services Division standards for the electronic storage of  
71 fingerprints and necessary identifying information. The  
72 commissioner shall limit the use of records solely to the  
73 purposes authorized in this section. The fingerprints and the  
74 criminal history record information in the custody of the  
75 commissioner are not subject to subpoena, other than one  
76 issued in a criminal action or investigation; are confidential  
77 by law and privileged; and are not subject to discovery or  
78 admissible in evidence in any private civil action.

79 (i) The commissioner shall promulgate emergency rules  
80 pursuant to the provisions of section fifteen, article three,  
81 chapter twenty-nine-a of this code as are necessary for the  
82 administration of this section, including rules governing the  
83 issuance of provisional producer licences pending receipt of  
84 the criminal background check.

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**CHAPTER 140**

**(H.B. 2578 - By Delegates Kominar, Craig, Hrutkay, Mahan,  
Palumbo, Webster, White, Armstead and Ellem)**

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[Passed March 10, 2007; in effect from passage.]  
[Approved by the Governor on March 22, 2007.]

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AN ACT to amend and reenact §33-16-3a of the Code of West Virginia, 1931, as amended, relating to extending mental health benefit packages; removing the sunset provision for mandated insurance parity; and removing insurance commissioner reporting requirement.

*Be it enacted by the Legislature of West Virginia:*

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

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

**§33-16-3a. Same -- Mental health.**

1 (a)(1) Notwithstanding the requirements of subsection (b)  
2 of this section, any health benefits plan described in this  
3 article that is delivered, issued or renewed in this state shall  
4 provide benefits to all individual subscribers and members  
5 and to all group members for expenses arising from treatment  
6 of serious mental illness. The expenses do not include



7 custodial care, residential care or schooling. For purposes of  
8 this section, "serious mental illness" means an illness  
9 included in the American psychiatric association's diagnostic  
10 and statistical manual of mental disorders, as periodically  
11 revised, under the diagnostic categories or subclassifications  
12 of: (i) Schizophrenia and other psychotic disorders; (ii)  
13 bipolar disorders; (iii) depressive disorders; (iv) substance-  
14 related disorders with the exception of caffeine-related  
15 disorders and nicotine-related disorders; (v) anxiety  
16 disorders; and (vi) anorexia and bulimia.

17 (2) Notwithstanding any other provision in this section to  
18 the contrary, in the event that an insurer can demonstrate  
19 actuarially to the insurance commissioner that its total  
20 anticipated costs for treatment for mental illness, for any plan  
21 will exceed or have exceeded two percent of the total costs  
22 for such plan in any experience period, then the insurer may  
23 apply whatever cost containment measures may be  
24 necessary, including, but not limited to, limitations on  
25 inpatient and outpatient benefits, to maintain costs below two  
26 percent of the total costs for the plan: *Provided*, That for any  
27 group with twenty-five members or less, the insurer may  
28 apply such additional cost containment measures as may be  
29 necessary if the total anticipated actual costs for the treatment  
30 of mental illness will exceed one percent of the total costs for  
31 the group.

32 (3) The insurer shall not discriminate between medical-  
33 surgical benefits and mental health benefits in the  
34 administration of its plan. With regard to both medical-  
35 surgical and mental health benefits, it may make  
36 determinations of medical necessity and appropriateness, and  
37 it may use recognized health care quality and cost  
38 management tools, including, but not limited to, utilization

39 review, use of provider networks, implementation of cost  
40 containment measures, preauthorization for certain  
41 treatments, setting coverage levels including the number of  
42 visits in a given time period, using capitated benefit  
43 arrangements, using fee-for-service arrangements, using  
44 third-party administrators, and using patient cost sharing in  
45 the form of copayments, deductibles and coinsurance.

46 (4) The provisions of this subsection shall apply with  
47 respect to group health plans for plan years beginning on or  
48 after the first day of January, two thousand three.

49 (b) With respect to mental health benefits furnished to an  
50 enrollee of a health benefit plan offered in connection with a  
51 group health plan, for a plan year beginning on or after the  
52 first day of January, one thousand nine hundred ninety-eight,  
53 the following requirements shall apply to aggregate lifetime  
54 limits and annual limits.

55 (1) Aggregate lifetime limits:

56 (A) If the health benefit plan does not include an  
57 aggregate lifetime limit on substantially all medical and  
58 surgical benefits, as defined under the terms of the plan but  
59 not including mental health benefits, the plan may not impose  
60 any aggregate lifetime limit on mental health benefits;

61 (B) If the health benefit plan limits the total amount that  
62 may be paid with respect to an individual or other coverage  
63 unit for substantially all medical and surgical benefits (in this  
64 paragraph, "applicable lifetime limit"), the plan shall either  
65 apply the applicable lifetime limit to medical and surgical  
66 benefits to which it would otherwise apply and to mental  
67 health benefits, as defined under the terms of the plan, and  
68 not distinguish in the application of the limit between medical

69 and surgical benefits and mental health benefits, or not  
70 include any aggregate lifetime limit on mental health benefits  
71 that is less than the applicable lifetime limit;

72 (C) If a health benefit plan not previously described in  
73 this subdivision includes no or different aggregate lifetime  
74 limits on different categories of medical and surgical  
75 benefits, the commissioner shall propose rules for legislative  
76 approval in accordance with the provisions of article three,  
77 chapter twenty-nine-a of this code under which paragraph (B)  
78 of this subdivision shall apply, substituting an average  
79 aggregate lifetime limit for the applicable lifetime limit.

80 (2) Annual limits:

81 (A) If a health benefit plan does not include an annual  
82 limit on substantially all medical and surgical benefits, as  
83 defined under the terms of the plan but not including mental  
84 health benefits, the plan may not impose any annual limit on  
85 mental health benefits, as defined under the terms of the plan;

86 (B) If the health benefit plan limits the total amount that  
87 may be paid in a twelve-month period with respect to an  
88 individual or other coverage unit for substantially all medical  
89 and surgical benefits (in this paragraph, "applicable annual  
90 limit"), the plan shall either apply the applicable annual limit  
91 to medical and surgical benefits to which it would otherwise  
92 apply and to mental health benefits, as defined under the  
93 terms of the plan, and not distinguish in the application of the  
94 limit between medical and surgical benefits and mental health  
95 benefits, or not include any annual limit on mental health  
96 benefits that is less than the applicable annual limit;

97 (C) If a health benefit plan not previously described in  
98 this subdivision includes no or different annual limits on

99 different categories of medical and surgical benefits, the  
 100 commissioner shall propose rules for legislative approval in  
 101 accordance with the provisions of article three, chapter  
 102 twenty-nine-a of this code under which paragraph (B) of this  
 103 subdivision shall apply, substituting an average annual limit  
 104 for the applicable annual limit.

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

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## CHAPTER 141

### (H.B. 2141 - By Delegate Pino)

[Passed February 9, 2007; in effect ninety days from passage.]  
 [Approved by the Governor on February 23, 2007.]

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AN ACT to amend and reenact §52-1-8 of the Code of West Virginia, 1931, as amended, relating to raising the age at which a person may request to be excused from jury duty from sixty-five to seventy.

*Be it enacted by the Legislature of West Virginia:*

That §52-1-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### **ARTICLE 1. PETIT JURIES.**

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

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

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

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

13 (2) Is unable to read, speak and understand the English  
14 language. For the purposes of this section, the requirement of  
15 speaking and understanding the English language is met by  
16 the ability to communicate in American sign language or  
17 signed English;

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

24 (4) Has, within the preceding two years, been summoned  
25 to serve as a petit juror, grand juror or magistrate court juror,  
26 and has actually attended sessions of the magistrate or circuit  
27 court and been reimbursed for his or her expenses as a juror  
28 pursuant to the provisions of section twenty-one of this  
29 article, section thirteen, article two of this chapter, or

30 pursuant to an applicable rule or regulation of the Supreme  
31 Court of Appeals promulgated pursuant to the provisions of  
32 section eight, article five, chapter fifty of this code;

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

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

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

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

44 (e) A person who is physically disabled and can render  
45 competent service with reasonable accommodation shall not  
46 be ineligible to act as juror or be dismissed from a jury panel  
47 on the basis of disability alone: *Provided*, That the circuit  
48 judge shall, upon motion by either party or upon his or her  
49 own motion, disqualify a disabled juror if the circuit judge  
50 finds that the nature of potential evidence in the case  
51 including, but not limited to, the type or volume of exhibits  
52 or the disabled juror's ability to evaluate a witness or  
53 witnesses, unduly inhibits the disabled juror's ability to  
54 evaluate the potential evidence. For purposes of this section:

55 (1) Reasonable accommodation includes, but is not  
56 limited to, certified interpreters for the hearing impaired,  
57 spokespersons for the speech impaired and readers for the  
58 visually impaired.

59 (2) The court shall administer an oath or affirmation to  
60 any person present to facilitate communication for a disabled  
61 juror. The substance of such oath or affirmation shall be that  
62 any person present as an accommodation to a disabled juror  
63 will not deliberate on his or her own behalf, although present  
64 throughout the proceedings, but act only to accurately  
65 communicate for and to the disabled juror.

66 (f) Nothing in this article shall be construed so as to limit  
67 in any way a party's right to preemptory strikes in civil or  
68 criminal actions.

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CHAPTER 142

**(S.B. 204 - By Senators Kessler, Oliverio, Chafin, Foster, Green,  
Hunter, Jenkins, Minard, Stollings, Wells, White, Barnes, Caruth,  
Deem, Hall, McKenzie and Yoder)**

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[Passed March 10, 2007; in effect ninety days from passage.]  
[Approved by the Governor on April 4, 2007.]

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AN ACT to amend and reenact §52-1-17 of the Code of West Virginia, 1931, as amended, relating to assessing the cost of petit juries in magistrate court.

*Be it enacted by the Legislature of West Virginia:*

That §52-1-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. PETIT JURIES.****§52-1-17. Reimbursement of jurors.**

1       (a) A juror shall be paid mileage, at the rate set by the  
2 Secretary of the Department of Administration, for travel  
3 expenses to and from the juror's residence to the courthouse  
4 or other place where the court is convened and shall be  
5 reimbursed for other expenses incurred as a result of his or  
6 her required attendance at sessions of the court at a rate of not  
7 less than fifteen dollars nor more than forty dollars, set at the  
8 discretion of the circuit court or the chief judge of the circuit  
9 court, for each day of required attendance. The  
10 reimbursement shall be based on vouchers submitted to the  
11 sheriff and shall be paid out of the State Treasury.

12       (b) When a jury in any case is placed in the custody of  
13 the sheriff, he or she shall provide the jury with meals and  
14 lodging while they are in the sheriff's custody at a reasonable  
15 cost to be determined by an order of the court. The costs of  
16 the meals and lodging shall be paid out of the State Treasury.

17       (c) Any time a panel of prospective jurors has been  
18 required to report to court for the selection of a petit jury in  
19 any scheduled matter, the court shall, by specific provision in  
20 a court order, assess a jury cost. In both magistrate and  
21 circuit court cases the jury cost shall be the actual cost of the  
22 jurors' service: *Provided*, That the actual cost of a magistrate  
23 jury can only be assessed where the jury request or demand  
24 occurs on or after the first day of July, two thousand seven.  
25 For any magistrate court case in which the jury request or  
26 demand occurred prior to the first day of July, two thousand  
27 seven, the jury cost assessed shall be two hundred dollars.  
28 The jury costs shall be assessed against the parties as follows:



29 (1) In every criminal case, against the defendant upon  
30 conviction, whether by plea, by bench trial or by jury verdict;

31 (2) In every civil case, against either party or prorated  
32 against both parties, at the court's discretion, if the parties  
33 settle the case or elect for a bench trial; and

34 (3) In the discretion of the court, and only when fairness  
35 and justice so require, a circuit court or magistrate court may  
36 forego assessment of the jury fee, but shall set out the reasons  
37 for waiving the fee in a written order: *Provided*, That a  
38 waiver of the assessment of a jury fee in a case tried before  
39 a jury in magistrate court may only be permitted after the  
40 circuit court, or the chief judge of the circuit court, has  
41 reviewed the reasons set forth in the order by the magistrate  
42 and has approved the waiver.

43 (d)(1) The circuit or magistrate court clerk shall by the  
44 tenth day of the month following the month of collection  
45 remit to the State Treasurer for deposit as described in  
46 subdivision (2) of this subsection all jury costs collected and  
47 the clerk and the clerk's surety are liable for the collection on  
48 the clerk's official bond as for other money coming into the  
49 clerk's hands by virtue of the clerk's office. When the  
50 amount of the jury costs collected in a magistrate court case  
51 exceeds two hundred dollars, the magistrate court clerk shall  
52 separately delineate the portion of the collected jury costs  
53 which exceeds two hundred dollars.

54 (2) The jury costs described in subdivision (1) of this  
55 subsection shall upon receipt by the State Treasurer be  
56 deposited as follows:

57 (A) All jury costs collected in a magistrate court case  
58 which exceed two hundred dollars shall be deposited in the  
59 state's General Revenue Fund; and

60 (B) The remaining balance of the collected jury costs  
61 shall be deposited as follows:

62 (i) One-half shall be deposited into the Parent Education  
63 and Mediation Fund created in section six hundred four,  
64 article nine, chapter forty-eight of this code; and

65 (ii) One-half shall be deposited into the Domestic  
66 Violence Legal Services Fund created in section six hundred  
67 three, article twenty-six of chapter forty-eight of this code.

68 (e) The sheriff shall pay into the State Treasury all jury  
69 costs received from the court clerks and the sheriff shall be  
70 held to account in the sheriff's annual settlement for all  
71 moneys.

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## CHAPTER 143

**(S.B. 59 - By Senators Prezioso and McCabe)**

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[Passed March 9, 2007; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2007.]

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AN ACT to amend and reenact §5-11A-3 and §5-11A-3a of the Code of West Virginia, 1931, as amended; to amend and reenact §21-11-3 of said code; and to amend said code by adding thereto a new section, designated §21-11-10a, all

relating to defining “universal design”; providing immunity from civil damages to a worker, contractor, engineer or architect who, in good faith, provides services for materials, without remuneration, to build or install basic universal design features in accordance with applicable codes and state and federal laws; and providing for a standard form informational list of basic universal design features to be provided to a future buyer of any proposed residential housing in the state by the licensed contractor.

*Be it enacted by the Legislature of West Virginia:*

That §5-11A-3 and §5-11A-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §21-11-3 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §21-11-10a, 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.**
- 21. Labor.**

**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 11A. WEST VIRGINIA FAIR HOUSING ACT.**

§5-11A-3. Definitions.

§5-11A-3a. Volunteer services or materials to build or install basic universal design features; workers, contractors, engineers, architects; immunity from civil liability.

**§5-11A-3. Definitions.**

1 As used in this article:

2 (a) "Commission" means the West Virginia Human  
3 Rights Commission;

4 (b) "Dwelling" means any building, structure or portion  
5 thereof which is occupied as, or designed or intended for  
6 occupancy as, a residence or sleeping place by one or more  
7 persons or families and any vacant land which is offered for  
8 sale or lease for the construction or location thereon of any  
9 such building, structure or portion thereof;

10 (c) "Family" includes a single individual;

11 (d) "Person" includes one or more individuals,  
12 corporations, partnerships, associations, labor organizations,  
13 legal representatives, mutual companies, joint-stock  
14 companies, trusts, unincorporated organizations, trustees,  
15 trustees in cases under Title 11 of the United States Code,  
16 receivers and fiduciaries;

17 (e) "To rent" includes to lease, to sublease, to let and  
18 otherwise to grant for a consideration the right to occupy  
19 premises not owned by the occupant;

20 (f) "Discriminatory housing practice" means an act that  
21 is unlawful under section five, six, seven or nineteen of this  
22 article;

23 (g) "Handicap" means, with respect to a person:

24 (1) A physical or mental impairment which substantially  
25 limits one or more of such person's major life activities;

26 (2) A record of having such an impairment; or

27 (3) Being regarded as having such an impairment, but  
28 such term does not include current, illegal use of or addiction  
29 to a controlled substance, as defined in Section 102 of the  
30 Controlled Substances Act, Title 21, United States Code,  
31 Section 802;

32 (h) "Aggrieved person" includes any person who:

33 (1) Claims to have been injured by a discriminatory  
34 housing practice; or

35 (2) Believes that such person will be injured by a  
36 discriminatory housing practice that is about to occur;

37 (i) "Complainant" means the person, including the  
38 commission, who files a complaint under section eleven of  
39 this article;

40 (j) "Familial status" means:

41 (1) One or more individuals who have not attained the  
42 age of eighteen years being domiciled with:

43 (A) A parent or another person having legal custody of  
44 such individual or individuals; or

45 (B) The designee of such parent or other person having  
46 such custody with the written permission of such parent or  
47 other person; or

48 (2) Any person who is pregnant or is in the process of  
49 securing legal custody of any individual who has not attained  
50 the age of eighteen years;

51 (k) "Conciliation" means the attempted resolution of  
52 issues raised by a complaint or by the investigation of such  
53 complaint through informal negotiations involving the  
54 aggrieved person, the respondent and the commission;

55 (l) "Conciliation agreement" means a written agreement  
56 setting forth the resolution of the issues in conciliation;

57 (m) "Respondent" means:

58 (1) The person or other entity accused in a complaint of  
59 an unfair housing practice; and

60 (2) Any other person or entity identified in the course of  
61 investigation and notified as required with respect to  
62 respondents so identified under subsection (a), section eleven  
63 of this article;

64 (n) The term "rooming house" means a house or building  
65 where there are one or more bedrooms which the proprietor  
66 can spare for the purpose of giving lodgings to such persons  
67 as he or she chooses to receive; and

68 (o) The term "basic universal design" means the design  
69 of products and environments to be useable by all people, to  
70 the greatest extent possible, without the need for adaptation  
71 or specialization.

**§5-11A-3a. Volunteer services or materials to build or install basic universal design features; workers, contractors, engineers, architects; immunity from civil liability.**

1 Any person, including a worker, contractor, engineer or  
2 architect, who in good faith provides services or materials,  
3 without remuneration, to build or install basic universal  
4 design features as set forth in section ten-a, article eleven,  
5 chapter twenty-one of this code may not be liable for any  
6 civil damages as the result of any act or omission in  
7 providing such services or materials: *Provided*, That the basic  
8 universal design feature or features shall be built or  
9 constructed in accordance with applicable state and federal  
10 laws and applicable building codes.

**CHAPTER 21. LABOR**

**ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.**

§21-11-3. Definitions.

§21-11-10a. Informational list for basic universal design features; penalties.

**§21-11-3. Definitions.**

1 (a) "Commissioner" means the Commissioner of the  
2 Division of Labor.

3 (b) "Board" means the West Virginia Contractor  
4 Licensing Board.

5 (c) "Contractor" means a person who in any capacity for  
6 compensation, other than as an employee of another,

7 undertakes, offers to undertake, purports to have the capacity  
8 to undertake or submits a bid to construct, alter, repair, add  
9 to, subtract from, improve, move, wreck or demolish any  
10 building, highway, road, railroad, structure or excavation  
11 associated with a project, development or improvement, or to  
12 do any part thereof, including the erection of scaffolding or  
13 other structures or works in connection therewith, where the  
14 cost of the undertaking is two thousand five hundred dollars  
15 or more.

16 Contractor includes a construction manager who  
17 performs management and counseling services for a  
18 construction project for a professional fee.

19 Contractor does not include:

20 (1) One who merely furnishes materials or supplies  
21 without fabricating or consuming them in the construction  
22 project;

23 (2) A person who personally performs construction work  
24 on the site of real property which the person owns or leases  
25 whether for commercial or residential purposes;

26 (3) A person who is licensed or registered as a  
27 professional and who functions under the control of any other  
28 licensing or regulatory board, whose primary business is real  
29 estate sales, appraisal, development, management and  
30 maintenance, who acting in his or her respective professional  
31 capacity and any employee of such professional, acting in the  
32 course of his or her employment, performs any work which  
33 may be considered to be performing contracting work;



34 (4) A pest control operator licensed under the provisions  
35 of section seven, article sixteen-a, chapter nineteen of this  
36 code to engage in the application of pesticides for hire, unless  
37 the operator also performs structural repairs exceeding one  
38 thousand dollars on property treated for insect pests; or

39 (5) A corporation, partnership or sole proprietorship  
40 whose primary purpose is to prepare construction plans and  
41 specifications used by the contractors defined in this  
42 subsection and who employs full time a registered architect  
43 licensed to practice in this state or a registered professional  
44 engineer licensed to practice in this state. Employees of such  
45 corporation, partnership or sole proprietorship shall also be  
46 exempt from the requirements of this article.

47 (d) "Electrical contractor" means a person who engages  
48 in the business of contracting to install, erect, repair or alter  
49 electrical equipment for the generation, transmission or  
50 utilization of electrical energy.

51 (e) "General building contractor" means a person whose  
52 principal business is in connection with any structures built,  
53 being built or to be built for the support, shelter and enclosure  
54 of persons, animals, chattels or movable property of any kind,  
55 requiring in the construction the use of more than two  
56 contractor classifications, or a person who supervises the  
57 whole or any part of such construction.

58 (f) "General engineering contractor" means a person  
59 whose principal business is in connection with public or  
60 private works projects, including, but not limited to, one or  
61 more of the following: Irrigation, drainage and water supply  
62 projects; electrical generation projects; swimming pools;  
63 flood control; harbors; railroads; highways; tunnels; airports

64 and airways; sewers and sewage disposal systems; bridges;  
65 inland waterways; pipelines for transmission of petroleum  
66 and other liquid or gaseous substances; refineries; chemical  
67 plants and other industrial plants requiring a specialized  
68 engineering knowledge and skill; piers and foundations; and  
69 structures or work incidental thereto.

70 (g) "Heating, ventilating and cooling contractor" means  
71 a person who engages in the business of contracting to install,  
72 erect, repair, service or alter heating, ventilating and air  
73 conditioning equipment or systems to heat, cool or ventilate  
74 residential and commercial structures.

75 (h) "License" means a license to engage in business in  
76 this state as a contractor in one of the classifications set out  
77 in this article.

78 (i) "Multifamily contractor" means a person who is  
79 engaged in construction, repair or improvement of a  
80 multifamily residential structure.

81 (j) "Person" includes an individual, firm, sole  
82 proprietorship, partnership, corporation, association or other  
83 entity engaged in the undertaking of construction projects or  
84 any combination thereof.

85 (k) "Piping contractor" means a person whose principal  
86 business is the installation of process, power plant, air, oil,  
87 gasoline, chemical or other kinds of piping; and boilers and  
88 pressure vessels using joining methods of thread, weld,  
89 solvent weld or mechanical methods.

90 (l) "Plumbing contractor" means a person whose principal  
91 business is the installation, maintenance, extension and

92 alteration of piping, plumbing fixtures, plumbing appliances  
93 and plumbing appurtenances, venting systems and public or  
94 private water supply systems within or adjacent to any  
95 building or structure; included in this definition is installation  
96 of gas piping, chilled water piping in connection with  
97 refrigeration processes and comfort cooling, hot water piping  
98 in connection with building heating and piping for stand  
99 pipes.

100 (m) "Residential contractor" means a person whose  
101 principal business is in connection with construction, repair  
102 or improvement of real property used as, or intended to be  
103 used for, residential occupancy.

104 (n) "Specialty contractor" means a person who engages  
105 in specialty contracting services which do not substantially  
106 fall within the scope of any contractor classification as set out  
107 herein.

108 (o) "Residential occupancy" means occupancy of a  
109 structure for residential purposes for periods greater than  
110 thirty consecutive calendar days.

111 (p) "Residential structure" means a building or structure  
112 used or intended to be used for residential occupancy,  
113 together with related facilities appurtenant to the premises as  
114 an adjunct of residential occupancy, which contains not more  
115 than three distinct floors which are above grade in any  
116 structural unit regardless of whether the building or structure  
117 is designed and constructed for one or more living units.  
118 Dormitories, hotels, motels or other transient lodging units  
119 are not residential structures.

120 (q) "Subcontractor" means a person who performs a  
121 portion of a project undertaken by a principal or general  
122 contractor or another subcontractor.

123 (r) "Division" means the Division of Labor.

124 (s) "Cease and desist order" means an order issued by the  
125 commissioner pursuant to the provisions of this article.

126 (t) The term "basic universal design" means the design of  
127 products and environments to be useable by all people, to the  
128 greatest extent possible, without the need for adaptation or  
129 specialization.

**§21-11-10a. Informational list for basic universal design  
features; penalties.**

1 (a) Ninety days after the Contractor Licensing Board  
2 certifies and makes available to the general public the  
3 standard form informational list of basic universal design  
4 features pursuant to this section, a licensed contractor of any  
5 proposed residential housing in the state shall provide to the  
6 buyer an informational list of basic universal design features  
7 that would make the home entrance, interior routes of travel,  
8 the kitchen and the bathroom or bathrooms universally  
9 accessible. Basic universal design features are to include, but  
10 not be limited to, the following:

11 (1) At least one nonstep entrance into the dwelling;

12 (2) All doors on the entry-level floor, including  
13 bathrooms, have a minimum of thirty-six inches;

14 (3) At least one accessible bathroom on the entry-level  
15 floor with ample maneuvering space;

16 (4) Kitchen, general living space and one room capable  
17 of conversion into a bedroom, all with ample maneuvering  
18 space, on the entry-level floor; and

19 (5) Any other external or internal feature requested at a  
20 reasonable time by the buyer and agreed to by the seller.

21 (b) If a buyer is interested in a specific informational  
22 feature on the list established by subsection (a) of this  
23 section, the seller or builder upon request of the buyer shall  
24 indicate whether the feature is standard, limited, optional or  
25 not available and, if available, shall further indicate the cost  
26 of such a feature to the buyer.

27 (c) The standard form informational list of basic universal  
28 design features shall be certified and made available for  
29 reproduction by the board, in accordance with the provisions  
30 of subsection (a) of this section, based on mutual  
31 recommendation of the board, the American Institute of  
32 Architects-West Virginia, the Home Builders Association of  
33 West Virginia and the West Virginia Center for Excellence  
34 in Disabilities.

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**CHAPTER 144**

**(Com. Sub. for S.B. 70 - Senators McKenzie, Bowman, Kessler,  
McCabe, Hall, Love, Wells and Hunter)**

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[Amended and again passed March 18, 2007, as a result of the objections  
of the Governor; in effect ninety days from passage.]  
[Approved by the Governor on April 3, 2007.]

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AN ACT to amend and reenact §21-1B-2, §21-1B-3 and §21-1B-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §21-1B-6 and §21-1B-7, all relating to employment of unauthorized workers; defining terms; authorizing limited access to state agency information to confirm legal status of workers; establishing criminal penalties for violations of article; denying tax deduction for certain employment expenses if convicted of violating this article; authorizing suspension or revocation of license; creating presumption for administrative action against license upon conviction; and establishing notice requirements.

*Be it enacted by the Legislature of West Virginia:*

That §21-1B-2, §21-1B-3 and §21-1B-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §21-1B-6 and §21-1B-7, all to read as follows:

**ARTICLE 1B. VERIFYING LEGAL EMPLOYMENT  
STATUS OF WORKERS.**

§21-1B-2. Definitions.

§21-1B-3. Unauthorized workers; employment prohibited.

§21-1B-5. Penalties.

§21-1B-6. Denial of deductible business expense.

§21-1B-7. Suspension or revocation of license.

**§21-1B-2. Definitions.**

1 (a) “Employer” means any individual, person,  
2 corporation, department, board, bureau, agency, commission,  
3 division, office, company, firm, partnership, council or  
4 committee of the state government, public benefit  
5 corporation, public authority or political subdivision of the  
6 state or other business entity which employs or seeks to  
7 employ an individual or individuals.

8 (b) “Commissioner” means the labor commissioner or his  
9 or her designated agent.

10 (c) “Unauthorized worker” means a person who does not  
11 have the legal right to be employed or is employed in  
12 violation of law.

13 (d) “Records” means records that may be required by the  
14 commissioner of labor for the purposes of compliance with  
15 the provisions of this article.

16 (e) “Knowingly” means, with respect to conduct or to a  
17 circumstance described by a statute defining an offense, that  
18 a person is aware by documentation or action that the  
19 person’s conduct is of that nature or that the circumstance  
20 exists. Failure to request or review documentation of an  
21 employee’s legal status or authorization to work is deemed to  
22 be “knowingly”.

23 (f) "License" means any permit, certificate, approval,  
24 registration, charter or similar form of authorization that is  
25 required by law and that is issued for the purpose of  
26 operating a business in this state.

**§21-1B-3. Unauthorized workers; employment prohibited.**

1 (a) It is unlawful for any employer to knowingly employ,  
2 hire, recruit or refer, either for him or herself or on behalf of  
3 another, for private or public employment within the state, an  
4 unauthorized worker who is not duly authorized to be  
5 employed by law.

6 (b) Employers shall be required to verify a prospective  
7 employee's legal status or authorization to work prior to  
8 employing the individual or contracting with the individual  
9 for employment services.

10 (c) For purposes of this article, proof of legal status or  
11 authorization to work includes, but is not limited to, a valid  
12 social security card, a valid immigration or nonimmigration  
13 visa, including photo identification, a valid birth certificate,  
14 a valid passport, a valid photo identification card issued by a  
15 government agency, a valid work permit or supervision  
16 permit authorized by the Division of Labor, a valid permit  
17 issued by the Department of Justice or other valid document  
18 providing evidence of legal residence or authorization to  
19 work in the United States.

20 (d) For purposes of enforcing the provisions of this  
21 article, and notwithstanding any other provision of this code  
22 to the contrary, the commissioner or his or her authorized  
23 representative may access information maintained by any  
24 other state agency, including, but not limited to, the Bureau



25 of Employment Programs and the Division of Motor  
26 Vehicles, for the limited purpose of confirming the validity  
27 of a worker's legal status or authorization to work. The  
28 commissioner shall promulgate rules in accordance with the  
29 provisions of chapter twenty-nine-a of this code to safeguard  
30 against the release of any confidential or identifying  
31 information that is not necessary for the limited purpose of  
32 enforcing the provisions of this article.

**§21-1B-5. Penalties.**

1 (a) Any employer who knowingly violates the provisions  
2 of section three of this article by employing, hiring, recruiting  
3 or referring an unauthorized worker is guilty of a  
4 misdemeanor and, upon conviction thereof, is subject to the  
5 following penalties:

6 (1) For a first offense, a fine of not less than one hundred  
7 dollars nor more than one thousand dollars for each violation;

8 (2) For a second offense, a fine of not less than five  
9 hundred dollars nor more than five thousand dollars for each  
10 violation;

11 (3) For a third or subsequent offense, a fine of not less  
12 than one thousand dollars nor more than ten thousand dollars,  
13 or confinement in jail for not less than thirty days nor more  
14 than one year, or both.

15 (b) Any employer who knowingly and willfully provides  
16 false records as to the legal status or authorization to work of  
17 any employee to the commissioner or his or her authorized  
18 representative is guilty of a misdemeanor and, upon

19 conviction thereof, shall be confined in jail not more than one  
20 year or fined not more than two thousand five hundred  
21 dollars, or both.

22 (c) Any employer who knowingly and willfully and with  
23 fraudulent intent sells, transfers or otherwise disposes of  
24 substantially all of the employer's assets for the purpose of  
25 evading the record-keeping requirements of section four of  
26 this article is guilty of a misdemeanor and, upon conviction  
27 thereof, shall be confined in jail not more than one year or  
28 fined not more than ten thousand dollars, or both.

**§21-1B-6. Denial of deductible business expense.**

1 On or after the first day of January, two thousand eight,  
2 no wages or remuneration for services paid to an  
3 unauthorized worker of six hundred dollars (\$600.00) or  
4 more per annum may be claimed and allowed as a deductible  
5 business expense for state income tax purposes by a taxpayer  
6 if the employer has been convicted under this article of  
7 employing, hiring, recruiting or referring the unauthorized  
8 worker. The commissioner shall notify the Department of  
9 Revenue of any conviction of an employer under this article  
10 and the department is to take the appropriate action against  
11 the taxpayer.

**§21-1B-7. Suspension or revocation of license.**

1 (a) If, upon examination of the record or records of  
2 conviction, the commissioner determines that an employer  
3 has been convicted of a third or subsequent offense under

4 subsection (a), section five of this article or has been  
5 convicted of the offenses described in subsection (b) or (c) of  
6 said section, the commissioner may enter an order imposing  
7 the following disciplinary actions:

8 (1) Permanently revoke or file an action to revoke any  
9 license held by the employer; or

10 (2) Suspend a license or move for a suspension of any  
11 license held by the employer for a specified period;

12 (b) The order shall contain the reasons for the revocation  
13 or suspension and the revocation or suspension periods.  
14 Further, the order shall give the procedures for requesting a  
15 hearing. The person shall be advised in the order that  
16 because of the receipt of the record of conviction by the  
17 commissioner a presumption exists that the person named in  
18 the record of conviction is the person named in the  
19 commissioner's order and this constitutes sufficient evidence  
20 to support a revocation or suspension and that the sole  
21 purpose for the hearing held under this section is for the  
22 person requesting the hearing to present evidence that he or  
23 she is not the person named in the record of conviction. A  
24 copy of the order shall be forwarded to the person by  
25 registered or certified mail, return receipt requested. No  
26 revocation or suspension shall become effective until ten  
27 days after receipt of a copy of the order.

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**CHAPTER 145**

**(H.B. 2710 - By Delegates Tucker, Martin, Shook, Yost,  
Perry, Stemple, Caputo, Hamilton, Marshall,  
Sobonya and Perdue)**

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[Passed March 10, 2007; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2007.]

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AN ACT to amend and reenact §21-9-2 of the Code of West Virginia, 1931, as amended, relating to the elimination of the licensure exemption for certain contractors of manufactured housing installation.

*Be it enacted by the Legislature of West Virginia:*

That §21-9-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 9. MANUFACTURED HOUSING CONSTRUCTION  
AND SAFETY STANDARDS.**

**§21-9-2. Definitions.**

1 (a) “Board” means the West Virginia Manufactured  
2 Housing Construction and Safety Board created in this  
3 article.

4 (b) “Commissioner” means the Commissioner of the  
5 West Virginia State Division of Labor.

6 (c) "Contractor" means any person who performs  
7 operations in this state at the occupancy site which render a  
8 manufactured home fit for habitation. The operations  
9 include, without limitation, installation or construction of the  
10 foundation, positioning, blocking, leveling, supporting, tying  
11 down, connecting utility systems, making minor adjustments  
12 or assembling multiple or expandable units. The operations  
13 also include transporting the unit to the occupancy site by  
14 other than a motor carrier regulated by the West Virginia  
15 Public Service Commission.

16 Contractor does not include:

17 A person who personally does work on a manufactured  
18 home which the person owns or leases.

19 (d) "Dealer" means any person engaged in this state in  
20 the sale, leasing or distributing of new or used manufactured  
21 homes, primarily to persons who in good faith purchase or  
22 lease a manufactured home for purposes other than resale.

23 (e) "Defect" includes any defect in the performance,  
24 construction, components or material of a manufactured  
25 home that renders the home or any part of the home not fit  
26 for the ordinary use for which it was intended.

27 (f) "Distributor" means any person engaged in this state  
28 in the sale and distribution of manufactured homes for resale.

29 (g) "Federal standards" means the National Manufactured  
30 Housing Construction and Safety Standards Act of 1974, and  
31 federal manufactured home construction and safety standards  
32 and regulations promulgated by the secretary of HUD to  
33 implement that act.

34 (h) “HUD” means the United States Department of  
35 Housing and Urban Development.

36 (i) “Manufacturer” means any person engaged in  
37 manufacturing or assembling manufactured homes, including  
38 any person engaged in importing manufactured homes for  
39 resale.

40 (j) “Manufactured home” means a structure, transportable  
41 in one or more sections, which in the traveling mode is eight  
42 body feet or more in width or forty or more feet in length or,  
43 when erected on site, is three hundred twenty or more square  
44 feet, and which is built on a permanent chassis and designed  
45 to be used as a dwelling with or without a permanent  
46 foundation when connected to the required utilities, and  
47 includes the plumbing, heating, air-conditioning and  
48 electrical systems contained therein; except that such term  
49 shall include any structure which meets all the requirements  
50 of this definition except the size requirements and with  
51 respect to which the manufacturer voluntarily files a  
52 certificate which complies with the applicable federal  
53 standards. Calculations used to determine the number of  
54 square feet in a structure will be based on the structure’s  
55 exterior dimensions measured at the largest horizontal  
56 projections when erected on site

57 (k) “Purchaser” means the first person purchasing a  
58 manufactured home in good faith for purposes other than  
59 resale.